

## 2. CENTRAL PLAINS WATER TRUST

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8549
<b>Officer responsible:</b>	General Manager Regulation and Democracy Services
<b>Author:</b>	Peter Mitchell

### PURPOSE OF REPORT

1. The purpose of this report is to:
  - (a) Meet the terms of a Council resolution of 3 May 2007 to enable the Council to formulate a position before it has a joint meeting with the Selwyn District Council and Central Plains Water Trust (CPWT);
  - (b) To advise the Council of CPWT's financial statements for the nine months ending 31 March 2007;
  - (c) Advise the Council (in public excluded) of the implications for the Council of the shortfall of \$1M by Central Plains Water Limited (CPWL) referred to in CPWT's financial statements for the 9 months ended 31 March 2007.

### FINANCIAL IMPLICATIONS

2. There are no financial implications regarding (a) and (b) above. There may be financial implications regarding (c) depending upon the decision made by the Council.

### Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

3. Yes.

### LEGAL CONSIDERATIONS

4. Yes; the report in public excluded regarding the CPWL shortfall of \$1M has been considered by the Council's Legal Services Unit and external legal advice has been obtained for the Council.

### Have you considered the legal implications of the issue under consideration?

5. Yes

### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

6. Yes.

### Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

7. Not applicable.

### ALIGNMENT WITH STRATEGIES

8. No specific strategies involved.

### Do the recommendations align with the Council's strategies?

9. Yes.

### CONSULTATION FULFILMENT

10. There is no statutory requirement to consult the public regarding the recommendations to the Council in this report.

## **STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Determine the sole questions and issues to be raised at the joint meeting between Christchurch City Council and Selwyn District Council and with CPWT.
- (b) Agree that the issues/questions from Councillors attached as Appendix 1, together with any additional issues/questions identified at the Council meeting on 5 June 2007, be raised at the joint meeting with the Selwyn District Council.
- (c) Receive the CPWT's financial statements for the nine months ending 31 March 2007.

## BACKGROUND

11. At its meeting on 3 May 2007 the Council had before it CPWT's Statement of Intent for the year ended 30 June 2008, and CPWT's financial statements for the six months ending 31 December 2006. A copy of the Statement of Intent for year ending 30 June 2008 is attached.
12. At its 3 May 2007 meeting the Council resolved:

*"That the Central Plains Water Trust report be deferred, to enable questions to be asked of the Trust's representatives at a joint Christchurch City Council/Selwyn District Council meeting, before responding to the Draft Statement of Intent."*
13. The minutes of that meeting also noted the following:

*"The General Manager Regulation and Democracy Services requested Councillors to provide him with any relevant questions they might have as soon as possible, to enable him to provide all Councillors with a briefing document addressing the issues raised."*

*It was also agreed that the briefing document should then be discussed at a Council seminar, to enable the Council to identify the key issues it wished to raise with the Trust at the joint meeting with the Selwyn District Council."*
14. The Council meeting on 5 June 2007 is to fulfil this Council resolution of 3 May 2007 to enable the Council to identify key issues it wishes to raise with the Trust at the forthcoming joint meeting. Although the minutes use the phrase "Council seminar" the meeting on 5 June 2007 is a formally notified meeting of the Council as it is considered that it is necessary to have a formal meeting to reach a considered Council position before the joint meeting with the Selwyn District Council. Otherwise if it is constituted as a seminar then the desire that the Council had at its 3 May 2007 meeting to have a considered position would not be able to be achieved.
15. This report is intended to be the briefing document referred to in the Council's 3 May resolution.
16. A date for the joint meeting with the Selwyn District Council has yet to be scheduled and Councillors will be separately advised of this date.
17. Since the Council meeting of 3 May 2007 the Council has received CPWT's financial statements for the 9 months ending 31 March 2007 (see comments below). Those financial statements identify that CPWL is facing a shortfall of \$1M for the conduct of the resource consent hearings before commissioners appointed by Selwyn District and Ecan. Officers have been briefed by the Chairperson of CPWT and by CPWL and it is considered appropriate to take the opportunity to refer this matter of the shortfall to the Council meeting on 5 June 2007. CPWT and CPWL have requested the Council to make a decision on the shortfall issue as soon as possible given that the resource management hearings are due to start in a few months and CPWL needs to confirm it has funding available for that hearing.
18. Advice to the Council regarding this matter of the shortfall is contained in a separate public excluded report on this agenda. It is considered appropriate to discuss this matter in public excluded given both the legal advice to the Council and the commercial negotiations that are presently underway.

### Christchurch City Council's Relationship With CPWT

19. By way of background the Council's relationship to CPWT was described in the document entitled:

*"Report for a meeting of the joint councils (Christchurch City Council and Selwyn District Council) relating to the central plains water enhancement scheme held on Friday 20th October 2006"*

prepared for Christchurch City Council and Selwyn District Council by Mr Paul Rogers from the law firm, Anthony Harper.

20. Extracts from that document regarding the expectations of Christchurch City and Selwyn District in 2000 regarding the then proposed Central Plains Water Scheme were:

*CCC and SDC considered that the Scheme had potential to benefit the region economically and on behalf of the public formed a Central Plains Water Steering Committee (the Steering Committee) in the year 2000 to investigate the feasibility of a district-wide irrigation scheme on the Plains. The CCC and SDC contributed grants towards the work of the Steering Committee.*

1. *A Memorandum of Understanding (MOU 4/4/03) between CCC and SDC came into being at a time when the Steering Committee had completed its work. That work included undertaking feasibility studies for the Central Plains area to allow decisions on the advisability of proceeding to resource consent applications and eventual scheme implementation.*
2. *Of critical importance the MOU 4/4/03 establishes the overriding objective of continued public ownership through CCC and SDC of the resource consents to be obtained for the purposes of the Scheme which outcome will ensure long term community protection of the region's scarce water resource. Further the MOU 4/4/03 records that the Trust will not be established to pursue purely commercial objectives but the commercial objectives will be pursued through entities which will constitute the permanent structure for the ownership and operation of the Scheme.*
3. *The means of achieving these non-commercial objectives were that CCC and SDC would have a controlling right to appoint and remove trustees of the Trust. However notwithstanding that control SDC and CCC in terms of the MOU 4/4/03 recognised that their degree of control over the Trust may be required to change in order to accommodate the legitimate expectations of any additional person or organisation which provided substantial financial investment into the Scheme. Many of the themes established in this foundation document are continued through subsequent documents.*

*The Trust Deed is the next document in chronological order and appears to have been signed contemporaneously with the MOU 4/4/03.*

4. *The purpose of the Trust Deed is to set up a charitable trust for the benefit of the present and future inhabitants of the regions. The regions mean the respective areas within the geographical boundaries of CCC and SDC.*

*The Trust Deed declares and constitutes the trust, specifies its objectives and provides for its control and CCC in terms of the MOU 4/4/03 recognised that their degree of control over the Trust may be required to change in order to accommodate the legitimate expectations of any additional person or organisation which provided substantial financial investment into the Scheme. Many of the themes established in this foundation document are continued through subsequent documents.*

5. *The purpose of the Trust Deed is to set up a charitable trust for the benefit of the present and future inhabitants of the regions. The regions mean the respective areas within the geographical boundaries of CCC and SDC.*
6. *The Trust Deed declares and constitutes the trust, specifies its objectives and provides for its control and governance and regulation. The Trust Deed also refers to a "trust fund". The trust fund includes the resource and other statutory consents applied for and obtained by the trustees and any money, investments or other property paid or given to or acquired by the trustees after the Trust Deed has been executed with the intention that it be held by the trustees in accordance with the provisions of the Trust Deed.*
7. *The trustees are empowered to apply the trust fund for the following general purposes within New Zealand. They are:*
  - (a) *To encourage, support and facilitate sustainable development of the water resources of the regions for the benefit of the inhabitants;*

- (b) *To provide and facilitate opportunities for agricultural and horticultural diversity in the regions;*
  - (c) *To provide and facilitate education to the inhabitants of the regions in relation to water issues affecting the regions;*
  - (d) *To appropriately balance enhancement of economic benefits for the regions with enhancement of ecological, social and recreational values for the regions.*
8. *In pursuit of the objectives the trustees are to have regard to:*
- (a) *Appropriate strategic development plans for water resources of the region;*
  - (b) *Whether other sources of funding or support are available, including assistance provided through industry or regional development policies and programmes of local authorities or Central Government;*
  - (c) *The objectives, roles and activities of any other organisations engaged in economic development activities in the regions;*
  - (d) *Inter-generational issues in order to promote long term sustainability of the water resources of the regions; and*
  - (e) *Any other matters that they believe are relevant.*
9. *Importantly clause 4.3 provides the objectives of the trusts are and shall be charitable and shall not include or extend to any matter or thing which is, or shall be held or determined to be non-charitable. Any private benefit which is conferred on any individual or individuals must be incidental to the pursuit by the Trust of the objects. The powers and purpose of the trustees shall be restricted accordingly and limited to New Zealand.*
21. Key extracts from that October 2006 report regarding the Council's relationship to CPWT are:
- 1. *Given the expressed intentions and outcomes sought by CCC and SDC as contained within the MOU 4/4/03 the structure and content of the key documentation provides a method of delivering those outcomes. The outcomes and/or the intentions of the two Councils are clear in that they seek to ensure through their involvement in the Scheme, particularly through the power of appointment of trustees to the Trust, public ownership of the resource consents which underpin the Scheme.*
  - 2. *Public ownership is achieved by virtue of the fact that the Councils represent the interests of the inhabitants of their two regions. In addition, the objectives of the Trust that the two Councils have formed is to provide benefits for the present and future inhabitants of the regions by developing the water resources of the regions for the benefit of those inhabitants.*
  - 3. *The two Councils are pragmatic in their approach to this expectation or goal in that they recognise that their "controlling influence" through the power to appoint trustees to the Trust (which Trust will "own" the resource consents) may be affected or influenced in the future if another party makes a significant financial contribution to ensuring the Scheme is given effect to. However, provided a balance is maintained in terms of trustee appointments, and allowing for the appointment by such a party, then public ownership by virtue of the Council's continued involvement should be capable of being achieved.*

*It is considered that the concept and form of the key documents provide an appropriate means of achieving the Council's core interests and expectations. Those documents also provide a workable framework to achieve those outcomes. That framework includes adequate protections and sufficient safe guards of the interests of the parties involved.*

***What mechanisms are available to CCC and SDC to control the Trust and do those mechanisms of control extend to control CPWL?***

4. *The key control CCC and SDC have relates to their power of appointment and dismissal of the trustees as contained within the Trust Deed (Schedule 3, clause 2.2). The trustees themselves may co-opt from time to time persons to serve as additional trustees, but again, such persons so co-opted will be subject to the removal powers of the settlors SDC and CCC (see clause 2.5 of Schedule 3).*
5. *The other critical power of control that SDC and CCC have as per clause 18 of the Trust Deed is that the settlors must consent to have the Trust Deed amended or revoked. This is a significant controlling power.*
6. *The other controlling power available to CCC and SDC is via the mechanism of reporting. The Trust must report in accord with the Local Government Act 2002. Clause 15.5 of the Trust Deed requires the Trust to report to the settlors on a quarterly basis.*
7. *Given that the Trust is a CCO it must in accord with the Local Government Act 2002 section 64 have a statement of intent that complies with clause 9 of Schedule 8 of that Act. Clause 9 of Schedule 8 sets out a comprehensive list of matters which the CCO is required to provide information on. Compliance and satisfaction of this requirement also provides a form of mechanism of control in relation to the Trust.*
8. *CPWL is a private company and neither SDC nor CCC has any direct control over that company. However, it is through monitoring the activities of the Trust SDC and CCC can exert a level of indirect control of CPWL. For example, SDC and CCC could request the trustees to report on the explicit terms that the Trust has or will agree to enable CPWL to utilise the resource consents. They could through that reporting process ensure and satisfy itself that the terms and conditions of that agreement met the objectives of the Trust.*

#### **Questions Provided by Councillors for Joint Meeting**

22. As requested at the Council meeting on 3 May 2007, and in a subsequent email from the Council Secretary, Councillors were requested to forward any questions they may have regarding the Central Plains issue.
23. Comments/questions were received from Councillors Harrow and Buck and these are attached as Appendix 1.
24. It should be noted that the subject matter of a number of these questions (eg nitrates, economic benefits, recharging of aquifers) will be the subject of submissions to the resource consent hearing to be held in August or September 2007, and the subject of evidence to the Environment Court if appeals are filed.
25. Regarding the issues of economic benefits and environmental effects the Council has previously received advice on these two matters.

#### **Economic Benefits of the Project**

26. In 2006 the Council commissioned KPMG to provide it with advice regarding the potential economic benefits of the project. KPMG's conclusion was that there was sufficient benefit to warrant testing the project through the resource consent process, and that the decisions and conditions from that hearing's process would help CPWL to take the project to its next level of economic testing.
27. In addition Mr Rogers commented in his October 2006 report:
  9. *The Scheme is promoted on the basis that there will be significant economic benefits for the region. There are economic studies that have been undertaken which conclude subject to a range of assumptions those economic benefits for the region are available. All economic assessments are forecasts and from time to time there are differences between those forecasts and reality. Those differences can emerge because the forecasts are not as accurate as they can be in that the underlying assumptions that support them are not sound. In addition, as is more likely the case, particularly where there is a long duration between planning and implementation of a project change occurs which effects those forecasts.*

10. *Primary production is one of the strengths of the region. Boosting the regional economy by providing even better ways of doing what the region does best is a logical strategy. It is contended the agriculture sector currently outperforms the balance of New Zealand economy as a whole, that being the case boosting agricultural production is a sensible choice. Exercising that choice does not preclude other growth choices or strategies related to for example information technology, education, tourism and other initiatives. When operating at full capacity, the economic projections suggest that the regional income derived from the Scheme will exceed the total development cost within 1-2 years and this is a scheme which is intended to last for generations.*
11. *Given the scope of the Scheme it is not fanciful to suggest that there will be a wide range of economic benefits emerging from the Scheme. For example, during the construction phase there will be demand for construction and project management skills. If more intensive farming results as is predicted to be the case from the Scheme, then as a general rule intensification of land use requires a wide range of skills among those working the land. Following on from intensive land use there will emerge opportunities for employment in industries providing infrastructural support. Support in the way of new processing plants and the like are not fanciful outcomes. Even from this superficial overview it is can be seen that changes to primary production because it is one of the strengths of our region if not national economy, does lead through to flow-on benefits beyond the production site of the farm.*

### **Environmental Impacts**

28. In his 2006 report Mr Rogers commented:

- “1. *This matter can be easily disposed of. The resource consent process will determine whether or not the Scheme gives rise to environmental impacts which are unacceptable. If that is the outcome of the resource consent and notice of requirement applications consent will not issue. If the converse position is correct then consents will issue.*
2. *It is to be noted that any party has the ability to lodge a submission in either support or opposition of the Scheme. In doing so they can raise environmental issues of concern to them and have such issues tested within the resource consenting process.”*

### **Resource Consent Hearing**

29. Councillors will recall that applications for resource consents from Environment Canterbury and the Selwyn District Council are being managed by CPWL on behalf of CPWT. The Deed of Trust provides that the consents, if granted, will be held by the Trust in its own name.
30. It is anticipated the resource consent hearings will be held in August or September 2007.
31. At its meeting on 17 August 2006 the Christchurch City Council decided to lodge a submission against the applications made by the Trust to the Selwyn District Council and Environment Canterbury.
32. At that meeting the Council resolved:
 

*“That the Christchurch City Council adopt the following position on the CPWT application:*

  1. *It has serious concerns, including the environmental effects which may arise from the CPWT scheme, which are outlined in the Council’s submission.*
  2. *It does not at this stage have sufficient information to state categorically whether those effects are able to be avoided, remedied or mitigated.*
  3. *If those effects cannot be avoided, remedied or mitigated, the application should be declined.*
  4. *Given the enormous potential environmental impacts, the Council asks that a very cautious approach be taken.”*

33. Topics that were included in the Council's submission were:
- The potential for increased risk of nitrate contamination of groundwater impacting on the city's drinking water supply.
  - The potential for significantly increased risk of groundwater contaminants
  - The potential for raised natural groundwater levels in Christchurch
  - The effects of the proposal on the Christchurch aquifer recharge
  - CCC potentially becoming the "environmental underwriters."
  - The lack of quantifiable economic benefits and costs to the scheme
  - The potential biosecurity effects
  - The lack of specified community recreational benefits
34. This Council has also made submissions in relation to two other land use applications by the Trust. The Council will be represented at the hearings when they are held and will call expert evidence in support of its submissions.

#### **CPWT Quarterly Report for Nine Months Ending 31 March 2007**

35. Since the Council meeting on 3 May 2007 the 31 March 2007 Quarterly Report has been received from CPWT and a copy of this quarterly report is attached as Appendix 2. The Trust Deed requires that the Trustees provide such quarterly reports to the Council for information as an accountability mechanism.
36. Key points from this 31 March 2007 quarterly report are:
- (a) CPWL is facing a shortfall by the end of the initial Selwyn District/Ecan hearing of \$1,000,000. A separate report as to how CPWT and CPWL propose to address this shortfall is in the public excluded section of this agenda.
  - (b) CPWL does not expect the Selwyn District/Ecan joint hearings to begin until August 2007 at the earliest and possibly not until September 2007.

#### **Reappointment of CPWT Trustees**

37. The 2003 Trust Deed signed by Christchurch City and Selwyn District establishing CPWT provides there can be up to 12 Trustees. There are currently seven Trustees. The Deed provides Trustees are to jointly appointed by the two Councils for a term up to three years, and the two councils jointly can remove a trustee. Trustees can serve more than one term.
38. The Deed further provides that the Councils "*...will be mindful of the need to provide balanced representation in the Trust, including appropriate representation for the following interest groups:*
- (a) *tangata whenua*
  - (b) *environmental protection agencies*
  - (c) *farmer interest groups*"
39. The two Councils have appointed the existing Trustees to meet these requirements in the Trust Deed.



40. Current Trustees as at 30 June 2007 and their expiry dates:

Doug Marsh	30 June 2007
Doug Catherwood	30 June 2007
David Haslam	30 June 2007
Richard Davison	30 June 2009
Denis O'Rourke	30 June 2008
Viv Smart (Ngai Tahu)	30 June 2007
Claire Williams (Ngai Tahu)	30 June 2008

41. It should be noted that Messrs Marsh and Catherwood are also directors of CPWL.
42. As can be seen the appointments of Messrs Marsh, Catherwood, Haslam and Smart expire on 30 June 2007 and it will be necessary for the Council to give consideration to the reappointment of those trustees or other trustees.
43. Regarding trustees being recommended by the Parliamentary Commissioner for the Environment, she has recently written to Christchurch City and Selwyn District stating:
- “After some thought, I have decided that I do not wish to nominate anyone as a Trustee at this time. You will appreciate that I have only recently taken up my role, and I am not in a position to form a view on the merits of the Central Plains Water Enhancement Scheme. By nominating Trustees I would be implicitly supporting the Scheme.”*
44. The 2003 Trust Deed requires the two Councils as settlors to be mindful of the need to appoint Trustees which allow representation from a range of key interest groups, one being environmental protection agencies. A further report will be brought to the Council before 30 June to address these appointment issues.