

15. **REPORT OF THE HEARINGS PANEL – PROPOSED CHARITABLE TRUST RELATED TO THE ELLERSLIE INTERNATIONAL FLOWER SHOW – PART ONE**



<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services DDI 941-8462
<b>Officer responsible:</b>	Legal Services Manager
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**PURPOSE OF REPORT**

1. The purpose of this report is to:
  - (a) report the result of the Special Consultative Procedure adopted by the Council in relation to the proposed establishment of a charitable trust related to the Ellerslie International Flower Show (“the Flower Show”) as a Council-controlled organisation; and
  - (b) recommend that the Council resolves to establish the proposed charitable trust as a Council-controlled organisation as part of the legal and financial structure to operate the Flower Show.

**EXECUTIVE SUMMARY**

2. At an extraordinary meeting of the Council held on 19 November 2007 the Council generally authorised the purchase of the Flower Show.
3. In the report considered by the Council at that meeting it was signalled to the Council that the previous operators of the Flower Show adopted an operating structure or model that included a charitable trust. In particular it was noted in that report that:

*“The current structure adopted by New Zealand Flower and Garden Show 2004 Limited [the previous operator] includes a trust that works alongside the company for the purpose of sourcing community grants and gaming funding and a management contract with an associated company. It is recommended that the Council authorise the Chief Executive to take the appropriate steps to establish and put in place such financial and legal structures that he considers appropriate for the operation of the event.”*

4. At its extraordinary meeting of 19 November 2007 the Council specifically resolved, inter alia:
  - “(d) That the Chief Executive be authorised to take the appropriate steps to establish a vehicle to be settled by the Council, for the purpose of ensuring that outside funding sources can be obtained.
  - (e) That the Chief Executive be authorised to establish and put in place the financial and legal structures that he considers appropriate for the establishment and operation of the event.”
5. At the Council’s meeting of 11 September 2008 the Council resolved to:
  - “(a) Approve the Statement of Proposal and Summary of Information attached to this report.
  - (b) Adopt the special consultative procedure for consulting with the public on the proposal to establish a charitable trust as part of the operation of the Ellerslie International Flower Show.
  - (c) Appoint a hearings panel comprised of Councillors Broughton, Johanson and Wells to consider any oral submissions that may be made in respect of the proposal.”
6. Councillor Johanson withdrew from the Hearings Panel due to a conflict of interest and Councillor Button was substituted for him by the Council Secretary under delegated authority.
7. The proposal was publicly notified on 19 September 2008 and the consultation period ran from 22 September 2008 to 22 October 2008. Three written submissions were received within the required timeframe and all three of these submitters asked to be heard by the Hearings Panel. A fourth late written submission was received and was also considered by the Panel, however that submitter did not ask to be heard by the Hearings Panel.

8. The Hearings Panel heard submissions on 5 November 2008.
9. The four submissions received generally supported the Ellerslie International Flower Show concept and the proposal, although each of the submissions expressed views as to the definition in the proposed Trust Deed of the Trust's charitable objects, the possibility of the proposed Trust competing with the submitter organisation for funds and the make-up of the proposed Trust Board.
10. More detailed commentary on the submissions is contained in the Legal Considerations section of this report. In addition, attached to this report are:
  - (a) full copies of all the written submissions received; and
  - (b) full copies of the speaking notes prepared by the submitter representatives to the Hearings Panel; and
  - (c) a summary of the submissions prepared by Council staff.
11. As a result of the submissions received, it is recommended that the Council approves the establishment of the trust as a Council-controlled organisation and appoints the initial trustees of the trust (although the Hearings Panel's recommendations as to trustee appointments are contained in a separate report on the Council's public excluded agenda to be considered later on the same date as this report is considered).

#### **FINANCIAL IMPLICATIONS**

12. There are no direct financial implications for the Council with the establishment of the Trust. The establishment of the Trust will provide an ability to link into other funding sources which would not otherwise be available to the community.
13. One of the benefits of establishing the Trust will be that some of the costs to the community of participating in the Flower Show may be met without recourse to the other financial resources of the Christchurch City Council. It is expected that approximately 40 percent of the Flower Show's content will be based on exhibitions by not-for-profit community groups or organisations. The monies collected by the Trust will be distributed to these not-for-profit community groups or organisations as grants to enable them to compete and exhibit at the Flower Show.

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

14. Yes. The establishment of the Trust will have no affect on current LTCCP budgets. The Ellerslie International Flower Show budget aims to break even with no extra funding being required from the Events and Festivals Fund.

#### **LEGAL CONSIDERATIONS**

15. The Special Consultative Procedure was adopted and carried out by the Council in accordance with section 56 of the Local Government Act 2002.
16. At the Council's meeting of 11 September 2008 the Council resolved to:
  - “(a) Approve the Statement of Proposal and Summary of Information attached to this report.*
  - “(b) Adopt the special consultative procedure for consulting with the public on the proposal to establish a charitable trust as part of the operation of the Ellerslie International Flower Show.*
  - “(c) Appoint a hearings panel comprised of Councillors Broughton, Johanson and Wells to consider any oral submissions that may be made in respect of the proposal.”*

Councillor Johanson withdrew from the Hearings Panel due to a conflict of interest and Councillor Button was substituted for him by the Council Secretary under delegated authority.

17. The necessary Statement of Proposal as required under the Special Consultative Procedure was publicly notified on 19 September 2008 and the consultation period ran from 22 September 2008 to 22 October 2008. The Statement of Proposal proposed “the establishment of a charitable trust as a Council-Controlled Organisation for the purpose of sourcing charitable donations, community grants and gaming funding to enable grants to be made by the Trust to not-for-profit organisation and community group exhibitors to support their participation in the Ellerslie International Flower Show”. The proposed objects of the proposed Trust were detailed in full in the Statement of Proposal and in addition a full copy of the proposed Deed of Trust was attached to the Statement of Proposal.
18. A Council-controlled organisation cannot be established unless the Special Consultative Procedure is used. The Council has complied with this requirement.
19. Whilst the four submissions received generally supported the Ellerslie International Flower Show concept and the proposal generally, there were three main areas of concern to submitters, as follows:
  - (a) The broad nature of the way in which the charitable objects of the proposed Trust had been drafted; and
  - (b) The potential for competition between the proposed Trust and the submitter organisations for funding; and
  - (c) The make-up of the proposed Board of Trustees.
20. The proposed Deed of Trust for the proposed Trust has been prepared by Kerry Ayers, a partner of the law firm of Helmore Ayers in conjunction with the Legal Services Unit. Mr Ayers is a legal practitioner of recognised substantial experience in the trusts law area and is currently a member of the New Zealand Charities Commission appointed by the Government. Mr Ayers was present during the deliberations of the Hearings Panel and was available to advise it in respect to the concern raised by the submitters as to the broad nature of the charitable objects of the Trust as drafted in the proposed Trust Deed.
21. Mr Ayers’, and the Legal Services Unit’s, advice to the Hearings Panel was that for the proposed Trust to achieve the required charitable status for it to operate as intended it was necessary to draft the charitable objects of the proposed Trust in a broad or general way. The reason for this is that for an entity to be charitable at law its objects must fall within one of the four accepted heads of charity, that is the trust must be for the relief of poverty, or the support of education, or the support of religion or for the benefit of the community. It is therefore necessary for the Trust’s objects to be drafted broadly to fall within one of those categories, the support of education and the benefit of the community being the applicable heads in relation to the proposed Trust.
22. A common thread amongst submitters was that the proposed Trust Deed should expressly limit the proposed Trust’s activities to specifically supporting only the Flower Show. However, Mr Ayers advised that such an amendment to the proposed charitable objects to explicitly tie the proposed Trust’s activities to the Flower Show would endanger the charitable status of the proposed Trust. This would be so, as, if that was done it could then be argued that the purpose of the proposed Trust was to benefit the operation of the Flower Show rather than to benefit the charitable objects of the Trust. In essence, in that event, a private benefit could be said to prevail over the public benefit and it could be argued therefore that the Trust accordingly ceased to be charitable. Mr Ayers advised however, that there was nothing to prevent the Trust from using the Flower Show as it’s chosen vehicle for delivering its charitable objects, but the focus of the Trust Deed needs to be on its charitable objects and not the Flower Show per se. Accordingly, Mr Ayers has recommended that the proposed Trust Deed contain a provision stating that “The Trust may have an involvement in the Ellerslie International Flower Show to the extent that it thereby fulfils one or more of the charitable objects”.

23. Mr Ayers and the Legal Services Unit further advised the Hearings Panel that the best method of a Trust settlor controlling or influencing the proposed Trust was to retain the power to appoint and remove the trustees. The establishment of the Trust as a Council-controlled organisation will enable the Council an element of control to ensure that the charitable trust functions, as far as is legally possible, in concert with the operation of the Flower Show. The proposed Trust Deed has been drafted accordingly.
24. The potential for the proposed Trust to compete with the submitter organisations for funding was considered by the Hearings Panel. The advice that the Hearing Panel received from Council staff was that the intended focus of the Trust was to be at a national level, rather than at a local level, and that while there may be some competition between it and the submitter organisations for Christchurch based funding, Council staff anticipate that most of the Trust's proposed funding will be sourced from the North Island.
25. In relation to the make-up of the proposed Trust Board the submitters were concerned to achieve a balance between relevant local representation and the need to ensure the Board is populated by persons with the required qualities and skills. The Hearings Panel believes that its recommendations for Trust Board membership contained in Part Two of this report to be considered in the public excluded part of the Council's agenda meets this balance.
26. Having considered the submissions received, the Hearings Panel sought that the following amendments be made to the proposed Trust Deed:
- (a) the inclusion of an express requirement on the Trust to report and provide information to the Council at least annually and more often as required by the Council.
  - (b) the inclusion of a requirement that trustees be appointed for terms of three years to coincide with the Council's electoral cycle.
  - (c) the ability to appoint an alternate for the proposed Councillor appointee to the Trust Board.
  - (d) the appointment of a deputy chairperson of the Trust Board.
  - (e) the ability of the Trust Board to conduct meetings by teleconference.
  - (f) the amendment of clause 10.3 to make it clear that that any committee or person receiving delegated authority to act for the Trust must act only within the terms of any delegated authority.

These amendments have been incorporated into the form of the proposed Trust Deed attached to this report.

27. The Legal Services Unit and Mr Ayers have advised that the proposed Trust Deed in the form attached will meet the necessary statutory requirements to enable the proposed Trust, if formed, to be registered under the Charitable Trusts Act 1957 and the Charities Act 2005. Mr Ayers has also advised that the intended functioning of the proposed Trust in support of the Flower Show will meet the statutory requirement that the operation of the Trust be in accordance with the charitable objects set out in the proposed Trust Deed.
28. Once the Council approves the establishment of the Trust it will be necessary to register the Trust under the Charitable Trusts Act 1957 and the Charities Act 2005.

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

29. Yes – see above.

**Proposed Trust Name**

30. It is proposed that the name of the Trust be 'Garden Events Trust'.

## Proposed Trustees

31. The Hearings Panel's recommendations as to membership of the proposed Trust Board are contained in a report included with the public excluded agenda to be considered at that same meeting as this report.

### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

32. The Flower Show is aligned with the current Events and Festivals Activity Management Plan and will be factored into the draft 2009 – 2019 Events and Festivals Activity Management Plan and the next LTCCP. The Flower Show aligns with the following key community outcomes:
- A City of Inclusive and Diverse Communities
  - A Prosperous City
  - A City for Recreation, Fun and Creativity
33. One of the submitters noted that the Council's "Events Strategy does not provide for the establishment of a trust to fund a commercial event. Therefore it could be said that this proposal does not fit with the Council's role as defined in the Events Strategy". The Events Strategy is pitched at a high level in terms of identifying strategic directions for the Council's involvement in the delivery of events. The Events Strategy is not intended to deal with specific events of the mechanics of how those events are delivered.

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

34. Yes. The Flower Show fits well into Council's objective specified in the 2006 – 2016 LTCCP – that is to "ensure that events and festivals contribute to the enjoyment of living in Christchurch. The Council's strategic direction is to provide and support a year round programme of events that:
- Attracts visitors and generates economic activity
  - Strengthens the distinctive identity and lifestyle qualities of Christchurch
  - Provides multiple and lasting benefits to the city
  - Celebrates and promotes Christchurch's culture and diversity.

### ALIGNMENT WITH STRATEGIES

35. The Events Strategy 2007 - 2017 was adopted in December 2007. The Flower Show delivers on several goals of the Events Strategy:
- Goal One: Events attract visitors and strengthen the distinctive identities and lifestyle qualities of Christchurch, where the strategy aims to deliver 2 icon events by 2010
  - Goal Two: A vibrant calendar of events that enhance Christchurch as a place to live and visit
36. The Flower Show also delivers on the Christchurch Visitor Strategy 2007 vision to maximise the Garden City identity for the City and its visitors. That Strategy's vision is stated as follows:
- In 2017, Christchurch is the leading destination for both domestic and international visitors in New Zealand.
  - Visitors are drawn by our Garden City identity, unique stories, culture, landscape and world-class facilities.
  - We are the world's gateway to the South Island and New Zealand.
  - Our visitor industry is a vibrant and robust sector that provides a sustainable flow of benefits for residents and businesses.
37. The Christchurch Visitor Strategy also contains the stated objective to:
- 'Strengthen and broaden the Christchurch 'The Garden City' identity'

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

38. Yes.

**CONSULTATION FULFILMENT**

39. The Council adopted and used the Special Consultative Procedure in relation to the proposed establishment of the Trust as a Council-controlled organisation.
40. There is no statutory impediment to the Council making a decision in respect of the recommendations contained in this report.

**HEARINGS PANEL RECOMMENDATION**

41. It is recommended that the Council, having received the report of the Hearings Panel and having considered the submissions received, resolves to:
- (a) Approve the establishment of a charitable trust as a Council-controlled organisation to facilitate community involvement in the Ellerslie International Flower Show.
  - (b) Adopt the Deed of Trust in the form attached to this report as the form to be used in the establishment of the charitable trust subject to such amendments as may be required by the Registrar of Charitable Trusts or the Charities Commission.
  - (c) Adopt the name 'Gardens Event Trust' as the formal name of the charitable trust or such other similar name as shall be approved by the Registrar of Charitable Trusts or the Charities Commission.
  - (d) Authorise the registration of the Trust under the Charitable Trusts Act 1957 and the Charities Act 2005.