



CHRISTCHURCH CITY COUNCIL AGENDA

THURSDAY 24 NOVEMBER 2005

AT 9.30AM

IN THE COUNCIL CHAMBER, CIVIC OFFICES

Council: The Mayor, Garry Moore (Chairperson).
Councillors Helen Broughton, Sally Buck, Graham Condon, Barry Corbett, David Cox,
Anna Crighton, Carole Evans, Pat Harrow, Bob Shearing, Gail Sheriff, Sue Wells and Norm Withers.

DESCRIPTION

APOLOGIES

CONFIRMATION OF MINUTES - COUNCIL MEETING OF 17.11.2005

DEPUTATIONS BY APPOINTMENT

PRESENTATION OF PETITIONS

CORRESPONDENCE

COUNCIL TEMPORARY FREEZE ON CYCLEWAYS

LTCCP PROCESS REGARDING RATE INCREASES

DRAFT CAPITAL PLAN FOR THE 2006/16 LTCCP

CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

TENDER FOR DIGESTERS 5 AND 6 - CHRISTCHURCH WASTEWATER TREATMENT PLANT

OCEAN OUTFALL CONSENT APPEAL

NOTICES OF MOTION

QUESTIONS

RESOLUTION TO EXCLUDE THE PUBLIC

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- 1. APOLOGIES**

- 2. CONFIRMATION OF MINUTES - COUNCIL MEETING OF 17.11.2005**
Attached.

- 3. DEPUTATIONS BY APPOINTMENT**

- 4. PRESENTATION OF PETITIONS**

- 5. CORRESPONDENCE**

6. COUNCIL TEMPORARY FREEZE ON CYCLEWAYS

General Manager responsible:	General Manager City Environment
Authors:	Jane Parfitt, DDI 941-8656, Peter Mitchell, DDI 941-8549

PURPOSE OF REPORT

1. The purpose of this report is to seek clarity around the Council resolutions of 16 June 2005 and 6 October 2005 on cycleways, to raise some practical implications of those resolutions, and to seek clear direction from Councillors on 'where to from here'.
2. This report has been updated to reflect the issues raised and discussion at the 15 November 2005 workshop. It includes amended recommendations.

EXECUTIVE SUMMARY

3. The June resolution to place a temporary freeze on cycleways was made at short notice, with no considered staff advice to hand, and in anticipation of a seminar to provide that information which would enable the freeze to be lifted shortly thereafter. The seminar was held in August and staff prepared a report reflecting the outcome of the seminar. On 6 October when the Council considered the report the resolution did not lift the cycling freeze. A workshop was held on 15 November and while many issues were raised, these issues focused predominantly on the implementation of the cycle strategy rather than the content of the strategy itself.
4. The result is that there continues to be some serious issues and implications which arise from the resolutions passed by the Council to date. These include the indeterminate length of the freeze, the potential effects on the capital budget and programme and legal issues which present potential risks to the Council.
5. This report provides a summary of the current state of play, including Councillor input at the Councillor workshop on 15 November and staff advice and recommendations.

STAFF RECOMMENDATIONS

It is recommended that the Council:

1. (a) Receive the report.
2. (a) Proceed with the marketing review of the Cycling Strategy.
(b) Note that staff will provide a report by 15 December 2005 on the issues and questions raised at the workshop on 15 November 2005.
(c) Note that there is a process in place to ensure elected member input prior to roading projects being signed off.
(d) Note that work on the value of cycle lanes on Riccarton Road is effectively underway.
3. Revoke the Council resolutions of 16 June and 6 October 2005 and lift its temporary freeze on cycleway capital projects.

6 Cont'd

BACKGROUND ON COUNCIL TEMPORARY FREEZE ON CYCLEWAYS - CLARIFICATION

6. On 16 June 2005 the Council resolved ***'that a temporary freeze be imposed on the letting of tenders for cycleway capital projects, pending the outcome of the forthcoming seminar to review the current financial programme for cycleways'***.
7. On 16 August 2005 the Council held its seminar on cycleways and instructed staff to prepare a report, incorporating ideas from the seminar and recommending an end to the temporary freeze on the letting of tenders for cycleway capital projects.
8. On 6 October 2005 the Council considered the staff report which recommended:
 - (a) ***That the Council lift its temporary freeze on cycleway capital projects.***
 - (b) ***That staff report back to the Liveable City Portfolio Group within two months on the outcome of the marketing review and updating the Cycle Network Plan.***
9. The Council did not pass the recommendation to lift the freeze and resolved:
 - (a) ***That staff report back to the Liveable City Portfolio Group within two months on the outcome of the marketing review and updating of the Cycle Network Plan.***
 - (b) ***That the value of the cycle lanes on Riccarton Road be investigated.***
10. The Council's current position is reflected in its resolution of 16 June 2005 that a *"temporary freeze be imposed on the letting of tenders for cycleway capital projects ..."* As the Auditor-General noted in his letter of 12 October 2005 regarding the Civic Offices projects, the words in resolutions need to be given their ordinary meaning. In this case it is a question of interpreting the phrase "temporary freeze".
11. "Temporary" is defined as meaning:
 1. Lasting only a short time; transitory
 2. Not permanent; provisional
12. The resolution regarding the temporary freeze has now been in place for five months and the question needs to be asked as to when the freeze is going to be ended, or some other change to the Council's resolution is going to be made. There is a real risk here that what has begun as a "temporary freeze" becomes a de facto permanent freeze.
13. As the Auditor-General also noted in his letter, when decisions such as a "temporary freeze" resolution is made, their context and practical implications need to be considered at the time of making the resolution.
14. The workshop held on 15 November raised the following issues and questions:

Cycle Lanes

 - Consider each road re safety
 - Is an alternative nearby?
 - If off-road available, no on-road

Specifications

 - Width requirements?
 - Lanes narrow at intersections
 - Red paint (where, how?)

Other

 - Dual-use footpaths / bus lanes
 - Swap parking / cycle lanes
 - Rubberised surfaces
 - Arterials first, then corridors for alternative modes

6 Cont'd

- Stronger separation of modes on roads
- Develop cycle / ride bus infrastructure
- Bells compulsory?
- Education effective
- Map of 'gaps'
- Wider consultation
- Transport plan maps

Schools – what more can we do to increase attractiveness?

Capital Programme – Reprioritisation for all modes

Legislation / plans – if not achieving goals, change needed (Government, ECan)

Retailers in strips on road – parking being lost, hurts business

Questions

- Funding
- Total costs
- Accurate usage information
- Scooters on footpaths
- Speed limits (30km/h)

15. Staff expressed the view that the issues raised in the 15 November workshop and summarised above can all be accommodated within the current strategy. An undertaking was made by staff to provide a high level response to the issues and questions by 15 December 2005.
16. The sign off process with regard to roading projects was discussed. The process is that following consultation and option development, all projects are signed off by either a Community Board, the Council, or both. This provides the opportunity for changes to be made as long as they are in accordance with best practice, safety and design standards. All projects are safety audited before designs are finalised.

ISSUES AND IMPLICATIONS

The Indeterminate Length of the Freeze

17. The Council resolution imposes a 'temporary' freeze over tendering any capital projects with cycleways. While the resolution states this is for a temporary period, there is no effective Council resolution to establish what is needed to ensure that it is only temporary.
18. The current cycling strategy is in a state of limbo with it being unclear as to what the Council's position is with respect to the strategy going forward. During debate over the cycleways temporary freeze some Councillors have mentioned reviewing the entire strategy. To complete an unscheduled full review of the strategy would take approximately 15 to 18 months.
19. Alternatively if the Council simply wants to see specific issues addressed within the current Strategy, the Council could resolve to consult directly on the proposed changes to its current Cycle Strategy as a partial review. To do this it is fundamental that the Council debates and agrees what aspects of the current Strategy it would like changed. This would also require at least six months to complete.
20. In either case the Council would need to revisit priorities it has already assigned to its development of current Council strategies to fit the review in with the strategy development and review programme.
21. Given the discussion at the workshop, Council officers believe that we can now progress the marketing review.

6 Cont'd

Effects on the Capital Budget and Programme

22. The freeze has now been in place for five months. If it is continued the following effects will ensue:
- Projects within the 2005/06 financial year and in the Council's current LTCCP which are currently stalled as a result of the temporary freeze equate to approximately \$500,000. These projects will need to be deferred or substituted this financial year. There are, however, associated risks around doing this without appropriate consultation; refer Risks and Legal Issues section below.
 - Capital roading projects where on-road cyclists' needs are apparent, or where they have been consulted on and where as a result cycle lanes are proposed in the design, are proceeding. However they do not include cycle lanes, but kerbside lanes will be widened appropriately to permit shared use by motor vehicles and cyclists.
 - Increased unbudgeted capital costs may be incurred if capital roading projects proceed and cycleways need to be incorporated at a later date.

Review of Value of Cycle Lanes on Riccarton Road

23. The Council resolved 'that the value of cycle lanes on Riccarton Road be investigated'. A current project is being processed to investigate an integrated traffic management plan for Riccarton Road. The project is currently at the stage of identifying issues to be addressed. Staff believe the current course of action is entirely consistent with the resolution to assess the value of cycle lane provision and this will be included as part of the report back on options for addressing the issues.
24. Riccarton Road has been identified as a candidate for development as a future bus priority corridor but is not included in the initial set of corridors and implementation on Riccarton Road will be some years off. This future bus priority project will of necessity reassess and evaluate all options and again is consistent with the Council's resolution.
25. It is the view of Council officers that the above work will fulfil the resolution "that the value of the cycle lanes on Riccarton Road be investigated".

Risks and Legal Issues

26. Although the Council has adopted the Strategy it is not bound to comply strictly with it as it is not directly bound to a LTCCP commitment. In other words the Strategy was adopted by a resolution of the Council (29 July 2004) and does not form part of the LTCCP. Even if it does form part of the LTCCP section 96(2) of the LGA 2002 applies.
27. Section 96 LGA 2002: *Effect of resolution adopting long-term council community plan or annual plan:*
1. *The effect of a long-term council community plan and an annual plan adopted by a local authority is to provide a formal and public statement of the local authority's intentions in relation to the matters covered by the plan.*
 2. *A resolution to adopt a long-term council community plan or an annual plan does not constitute a decision to act on any specific matter included within the plan.*
 3. *Subject to section 80, and except as provided in section 97, a local authority may make decisions that are inconsistent with the contents of any long-term council community plan or annual plan.*
 4. *No person is entitled to require a local authority to implement the provisions of a long-term council community plan or an annual plan.*

6 Cont'd

28. Subsection 2 provides that although the Council may adopt an annual plan or LTCCP this does not impose a condition that the Council must complete nor begin any activity specified in that plan. However, this is constrained by section 80 which provides that the Council cannot act inconsistently with adopted plans without first identifying the inconsistency, the reasons for it and whether a change to the plan will be made.
29. Section 80 provides:

“(1) if a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this act or any other enactment, the local authority must, when making the decision, clearly identify – (a) the inconsistency, and (b) the reasons for the inconsistency, and (c) any intention of the local authority to amend the policy or plan to accommodate the decision.
30. The cycle strategy is part of the Regional Land Transport Strategy which the Council has adopted under the Land Transport Act 1998 and operates within that statutory framework. In addition the provision of cycling facilities is provided for in the Long Term Council Community Plan and it is the opinion of officers that the decision of the Council to have a “temporary freeze” with no end date provided for by the Council means that that the Council is at serious risk of breaching Section 80 in that the decision to have the freeze is “significantly inconsistent” with policies and plans the Council has already adopted.
31. The Council is clearly entitled to change its position regarding cycling facilities. However, as Section 80 requires in making its decision to do that it must identify inconsistency with the existing plans and policies, the reasons for that inconsistency and the Council's intention to amend those policies and plans. The full Council must settle on the reasons for the inconsistency as required by s.80.
32. Following the workshop of 15 November 2005 the staff advice is the issues raised by Councillors have not identified inconsistencies, for the purposes of Section 80 with the Cycling Strategy such as to justify the continuation of the temporary freeze.
33. To date the Council still has not met the Section 80 and will continue to be in breach of Section 80 if it does not lift the freeze. If the Council wants to review the Cycling Strategy it would need to
 - (a) lift the temporary freeze; and
 - (b) debate, identify, and resolve what they consider to be the significant inconsistencies between the current Cycling Strategy and Councillors' preferred outcomes.
34. Also, the reasons for those inconsistencies would need to be identified by Councillors and they would need to resolve that they intend to amend the Cycling Strategy to accommodate their preferred outcomes (refer to paragraphs 19 and 20 for associated timeframes).
35. Also this ongoing breach leaves the Council open to a successful challenge by way of judicial review of all its resolutions regarding the freeze.

7. LTCCP PROCESS REGARDING RATE INCREASES

General Managers responsible:	General Manager Corporate Services and General Manager Regulation and Democracy Services
Author:	Roy Baker, DDI 941-8540

PURPOSE OF REPORT

1. The purpose of this report is to provide some certainty with regard to the LTCCP process as regards an acceptable level of rate increase.

EXECUTIVE SUMMARY

2. A Council seminar is planned for 21 February 2006, to consider for the first time the rating impacts of our Revenue, Capex programme, and Operating expenditure (based on Council-agreed levels of services). The seminar will be an opportunity to inform the Council of the various changes/increases that are driving our business and the resulting rate increases required to meet these.
3. Staff would expect feedback from the seminar to enable us to complete our draft LTCCP and to put before the Council approximately one week later. This means there is not much time to make any dramatic changes.
4. The 2004/14 LTCCP indicated a rates increase of 3% for the 2006/07 year. Based on the increased costs that we experienced when putting together the current year's operating budget, which clearly will therefore increase our base operating costs going forward, these costs will certainly challenge the 3% figure. In fact already for this year we are experiencing cost increases to our basic services that are well in excess of inflation. By way of example, a recent tender for street cleaning alone is likely to have a 1% increase in the rates. When the Council considered the long-run capital expenditure levels at the meeting on 27 October, it signed off on a long-run average of up to \$130m pa. Over the ten years this indicated a long-run average rate increase of 4.32%. As advised at the 27 October meeting, the average 4.32% rate increase was indicative only and did not take into account changes in our operating cost structure from 2004/05, nor did it allow for any inflationary impacts on our capital, or Opex implications for specific capital projects.
5. The professional view of the General Manager Corporate Services is that at current levels of service and economic activity, rates will need to be in excess of the 3%, as shown in the old LTCCP and indeed are likely to be in excess of the long-run average of 4.32% referred to above.
6. The impact of this is that at the February seminar, and indeed the meeting set for 9 March when the draft LTCCP is to be adopted, is not the time for a dramatic move to have rates set at a different level than indicated by previous Council resolutions such as the level of CPI or below.
7. A rate level at or below the CPI, which is estimated to be 3%, can only be achieved with a reduction in service levels. The time to signal such a change must be when the Council considers the Activity Management Plans over the four days ending 29 November to enable the reduction in service levels to be identified by Councillors and for staff advice to be provided as to the implications of those reductions.
8. Last year by way of a notice of motion, a proposal was put to the Council to reduce rates to 2.7%. This notice of motion was presented at the eleventh hour on the day the Annual Plan was to be adopted. The motion was lost 7/6 but would have caused some considerable concern should the notice of motion been successful. It was at the end of the Annual Plan consultation process and the only way to achieve a rate increase of 2.7% would have been to cut levels of service for which there would have been no consultation.
9. Should the Council have such a desire to specify a particular rate range, then that must be done now.

7 Cont'd

STAFF RECOMMENDATION

That the Council note, that owing to the decision-making requirements of the Local Government Act 2002, with the need for Councillors to be fully advised of options, and the comments made by the Auditor-General regarding the need for Councillors to be aware of the practical implications of resolutions, requests by Councillors in 2006 (whether by way of notices of motion or amendments) for changes to the directions already given by the Council to staff by November 2005, would not be able to be met, when the draft LTCCP is to be adopted.

8. DRAFT CAPITAL PLAN FOR THE 2006/16 LTCCP

General Manager responsible:	General Manager Corporate Services
Officer responsible:	General Manager Corporate Services
Author:	Roy Baker, DDI 941-8540

PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Council a list of capital expenditure projects that will form the basis of the capital programme for the 2006/16 Long Term Council Community Plan.

EXECUTIVE SUMMARY

2. Capital expenditure priorities are listed in Appendix A (attached), and are the result of a number of priority ranking exercises conducted with Councillors over the past couple of months, at a number of seminars designed to get a general consensus as to the projects that will ultimately form part of the next LTCCP.
3. The initial review of the capital programme indicated a level of capital expenditure over the ten years, approximately \$300m to \$400m more than what the original 2004/14 (for LTCCP) was indicating.
4. The prime drivers for the increase in capital expenditure level were:
 - (i) Significant cost increases associated with many projects as a result of the price increases we have experienced over the past couple of years with construction costs being considerably above the rate of inflation;
 - (ii) We now have better planning information for projects in the years four to ten (these were in the years six to ten in the old LTCCP); and
 - (iii) The identification of a number of new initiatives that need to be considered along with existing identified projects.
5. This saw us review how we classified capital and determined the categories: The core category is Base, namely projects and programmes carried out to maintain the current level of service, ie what the community receives today. This is effectively our renewals and replacement programmes together with some asset improvements or new asset projects that are directly related to meeting growth where we have no choice, eg new subdivision-related infrastructure work. The other category was Choice – all asset improvements and new assets.
6. All choice projects (projects that were identified in the 2004/14 LTCCP) and all new initiatives that did not meet our definition of base (renewals and replacements) were considered against a prioritisation process and matrix, comparing service delivery gaps and strategic priority (Appendix B - attached).
7. The initial list of projects totalled 93, and collectively represented expenditure up to \$500m (Appendix C - attached).

8 Cont'd

8. Two other key ingredients of the capital programme were also considered, firstly affordability of the overall programme, ie the rate level, and secondly the ability of the Council to deliver the desired capital programme.
9. It was determined that in terms of delivering the core infrastructure type capital projects, we have constraints regarding people and processes that will limit our ability to deliver a programme in the first two years of the 2006/16 LTCCP, beyond the \$80-\$90m per annum level. This level also allows for use of consultants to deliver in the order of \$30m.
10. At the Council meeting on 27 October, the Council endorsed a long-run capital spend of up to \$130m per annum, ie \$1.3b over the ten years. This allows for:
 - (i) Projects in the base category;
 - (ii) Large base (the strategic land acquisition for Aidenfield and the Ocean Outfall project);
 - (iii) Base no choice category (projects originally on the list as either choice or new initiative projects but upon examination were in fact base-type projects or projects where we don't have any choice but to proceed with them); and
 - (iv) \$147m of the capital programme yet to be allocated to specific projects.
11. At a seminar on 10 November, the Council reviewed the list of projects that had received the most support by Councillors as a result of a ranking exercise up to a capex limit of \$250m.
12. There was general consensus as to the order of the list of projects, and a recognition of where the line would be drawn (through the list) to meet the 27 October Council decision of a long-run average capex of up to \$130m.
13. At the seminar staff advised that they would look at the costings of the priority list and see if there were options to "move the line down".
14. Staff have conducted a high level review and believe that it is possible to:
 - (i) Manage some of the strategic land acquisitions within a revolving fund concept. This will reduce the capex requirement down by \$10m.
 - (ii) Move towards the MCTS at \$85m pa rather than the \$100m originally planned.
 - (iii) Deliver a City Mall redevelopment concept for \$10m rather than \$12m.
15. The result of this is that \$27m is available for funding the next few projects on the list.
16. Once the Council has formally adopted its priority list, staff will start working in some detail on the capex and opex implications of the projects. This will form the basis of the draft LTCCP and will be discussed with the Council on 21 February 2006 at a seminar when the full impact of the capex, revenue and opex streams will indicate the likely rate impact.
17. It is at this February 2006 seminar that the Council will have the opportunity to review the capex list desired in light of the level of rates. Please note, however, that while we could handle slight movements in the priority list (say up to \$10m), any significant reassessment would place the process to sign off the LTCCP at risk. This seminar will also detail any other funding options that are available, eg Development Contributions, Transfund subsidy.
18. While this report indicates the line lower than at the seminar, because of continuing cost pressure on existing base projects, it may be that the line will need to go back up.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Receive this report.
- (b) Adopt the priority list of capex projects as per Appendix A, as those (to the value of \$150m) to form the basis of the capital programme for the 2006/16 LTCCP.
- (c) Note where the current \$150m cut-off total falls and accept that it may move up or down slightly as the whole capital programme (base and priority) is finalised.

9. CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

General Manager responsible:	General Manager Regulation & Democracy Services
Officer responsible:	Environmental Services Manager
Author:	Scott Blair, 941-6205

PURPOSE OF REPORT

1. The purpose of this report is to recommend that a City Plan variation be publicly notified to overcome difficulties identified by the Environment Court in relation to a reference to the Proposed City Plan by Suburban Estates Ltd.

EXECUTIVE SUMMARY

2. The Living 1A zone in the City Plan zone prohibits the building of houses on lots of less than 1500m² where those lots are adjacent to rural zones. Similar rules in the subdivision chapter prevent the creation of such allotments. Suburban Estates Ltd (SEL) opposed the subdivision rules but omitted to oppose the Living zone rules, which are now deemed to be operative. There have been complications in the original hearing of the submission and with the subsequent Environment Court reference. The City Plan References Subcommittee has supported the position of SEL that both Living 1A and subdivision rules should be amended. An attempt to get the Environment Court to extend the scope of the reference to include the L1A zone using s293 of the Resource Management Act was unsuccessful. SEL has requested the City Council to prepare a variation to the City Plan to change the status of the Living 1A lot size rule to non-complying, to enable resource consents to be applied for. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request. The Council resolved on 30 June 2005 to consider and if appropriate publicly notify a variation to the City Plan prepared at the expense of SEL.
3. The Variation has now been prepared, and circulated amongst probable affected land owners for consultation purposes. However a small part of the proposed variation must be processed as a plan change. The proposed Variation and Plan Change and Section 32 analysis are set out in Appendix 1 (attached). A number of letters were received as well as a number of phone calls. Details of the circulation letter and responses are set out in Appendix 2 (attached).

FINANCIAL AND LEGAL CONSIDERATIONS

4. SEL has offered to fund the preparation of the variation. Consequently the financial costs to the Council will be minor, comprising limited staff time to review SEL's work and process the notification and hearing of the variation. SEL will pay for the notification costs. Introducing a variation could be the best way to resolve legal proceedings that are becoming very complex and protracted. The variation affects very discrete areas of the plan so the Council could continue to make the balance of the City Plan operative in part. (The plan may well be operative in part by the time that this report is considered by the Council.)

STAFF RECOMMENDATION

It is recommended that the Council agree to publicly notify Proposed Variation 95 and adopt Plan Change 1 for public notification – Subdivision and Residential Use of Allotments Less than 1500m² on the Rural Boundary of the Living 1a Zone.

9 Cont'd

BACKGROUND ON CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

5. When the City Plan was prepared in 1995 it contained several zones designed to provide a transition between Living, Rural zones, the airport and the Port Hills. Subdivision and building of new homes were prohibited in these zones where the allotments exceeded certain rules, notably minimum lot sizes. The submission related to prohibited activity rules in the Living 1A Living 1C Living HA and Living HB zones. These rules were contained in both the Living zones, which regulated building of houses and the subdivision rules, which regulate subdivision of allotments. Suburban Estates Ltd intended to oppose these provisions but lodged a submission only in respect of the subdivision rules. This submission is yet to be finally resolved as the Hearings Panel considering the submission only made a decision in relation to the Living 1C part of the submission. The Living zone rules have passed beyond the point of challenge and are deemed to be operative by the Resource Management Act.
6. The Hearings Panel declined the submission in relation to the Living 1C zone. SEL made a reference against the decision – but included those parts of the submission that the Panel had not made a decision on – Living 1A, Living HA and Living HB.
7. The policy underpinning this approach is Policy 6.3.12, as follows:

6.3.12 To reinforce the consolidation of the urban area by:

 - (a) *improving the landscape quality of the rural-urban interface;*
 - (b) *establishing a transition of low density housing, open space or esplanade reserves, adjacent to the urban boundary, particularly where no clear physical boundary to urban growth exists; and*
 - (c) *encouraging the planting of suitably located trees on the urban-rural interface, to create a high standard of amenity, and to better define and improve the quality of the urban edge of the City.*
8. The only zone remaining in contention for SEL is the Living 1A zone. In the L1A zone subdivision and building of new homes are both prohibited activities where the lots concerned would be less than 1500m². The rule currently provides:
 - (b) *Notwithstanding (a) above, a residential activity shall be a prohibited activity for which no resource consent shall be granted in the following circumstances:*
 - (i) *in the Living 1A Zone:*
 - (a).....
 - (b) *on all other sites in the Living 1A Zone where the site adjoins the Rural 2, Rural 3, Rural 5 or Cultural 3 (McKenzie School) Zones, or the site is opposite and separated from these zones by having frontage to a road or waterway, and where the net area of any site for a residential unit is less than 1500m².*
9. The effect is that even if the company succeeds in its submissions against the subdivision rules, it could gain no benefit as it would be able to subdivide lots of less than 1500m² on the rural edge but the resulting allotments could not be built on. It would not be possible to apply for resource consents.
10. As noted above, to complicate the issue the company's submissions were not fully dealt with by the Council. Although there was a hearing and decision and a reference to the Environment Court, it has been discovered since the Court hearing that the only part of the original submission dealt with by the Council was the Living 1C zone¹. SEL's reference in respect of the other zones is therefore invalid. The Council can and should hear and decide the remainder of the submission but this would address only the subdivision rules not the living zone rules. Prior to the discovery about the lack of a Council decision, the City Plan References Subcommittee had resolved to settle the reference in respect of the subdivision rules by consent, by changing the prohibited activity to non-complying for the other zones in the submission, including the Living HA and HB zones. It also resolved to join with the applicant in applying to the Environment Court to use its powers under s293 to extend the scope of the matter to include the Living zone rules. However, due to developing case-law on s293 the Court was unable to exercise that power and has declined to do so.

¹ It is noted that the because of Environment Court decisions on other references the Living 1C zone no longer exists.

9 Cont'd

11. The case is now hopelessly mired in the Environment Court and there is no clear way forward. SEL has indicated that it may seek leave to lodge a late appeal in the High Court or reopen the case in the Environment Court. The Council could apply to have the case struck out on several technical grounds. If that succeeded it would get the case disposed of but certainly not solve the problem with the City Plan.
12. SEL has recently requested the Council to urgently prepare a variation to the City Plan to address the issue, so that it can incorporate this into a subdivision it wishes to apply for land at Templeton. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request. The Council resolved on 30 June 2005 to consider and if appropriate publicly notify a variation to the City Plan prepared at the expense of SEL.
13. By the time that this proposal is publicly notified the City Plan will be operative in part. Parts of the City Plan affected by the proposal have been 'held back' from being operative. These parts of the plan can be changed by variation. However the proposed changes include an amendment to an explanation of a policy (see Appendix 1) that will be operative. The change can only be by way of a Plan Change. This then would be Plan Change 1.
14. The Environment Court has commented in previous cases that it does not see the current L1A zoning as an effective technique for achieving a good urban-rural transition. Although it would create a row of larger lots at the boundary, these are often fenced with 2 metre paling fences, so the more open landscape being sought is completely lost. Retaining Policy 6.3.12 but allowing for resource consent applications would allow developers to come up with alternative ways of achieving a better transition, such as tree planting or more open fencing styles, so may better meet the policy than the present rules.
15. The matter affects only a small part of the Living zone rules and there are only a few undeveloped L1A sites affected by the rule, including the SEL site at Templeton. Therefore there would be minimal impact on making the City Plan operative in part – which it may well be by the time that the Council considers this report. The relevant rules will simply not be or have not been made operative.
16. SEL's planning consultants have drafted a Proposed Variation and Section 32 analysis. This has been circulated to identified directly affected land owners and other parties that Council officers would normally send draft variations to for consultation purposes. The written responses are set out in Appendix 2. In that period the writer received eight telephone calls. Some of these calls resulted in the letters set out in Appendix 2. Some calls were enquiries from adjacent rural land owners as to whether the variation would allow them to subdivide their properties.
17. The responses are a mixture of support and opposition to the proposed Variation. Of note are the responses from owners of properties within or adjacent to the Living 1A zones at Higham Lane and Cavendish Road/Regents Park. They suggest that they purchased their properties with the expectation that their and their neighbouring properties could not be further developed. It is noted that while the proposed Variation is changing the status of the subdivision of these lots from Prohibited to Non-Complying this is a difficult consent to obtain. Any applicant would need to show that their proposal was somehow unique and that granting approval would not undermine the consistent administration of the plan or public confidence in the administration of the plan. This should be a very difficult consent to obtain.
18. Also of note is the response from the representatives of the Campbell Family Trust. The Trust are section 274 parties to the reference as described above. Their particular area of interest is the changing of the prohibited activity status to non-complying for the subdivision of transitional lots in the Living HA and HB zones. They have asked that the proposed Variation extend to the Living HA and HB zones. As noted above the Council's Hearings Panel has not made a decision on this part of the SEL's submission therefore, technically, there can be no reference against which the Campbell Family Trust can be section 274 parties. The Campbell Family Trust has other options to pursue their interests in the Living HA and HB zones. They can shortly, or even now, if the plan is operative in part, apply for a private plan change to change the prohibited activity status of the subdivision of the lots that concern them.

9 Cont'd

19. It is also noted that the unheard/decided parts of the original SEL submission (those that relate to the Living HA and Living HA subdivision rules) and any further submissions, could be reported on with a recommendation at the same time that any submissions and further submissions are considered. While this could in theory lead to the situation where the subdivision rule is amended while the living zone rule remains the same – the Council must make a decision on the submission (unless SEL withdraws the submission). It is suggested that the Campbell Family Trust be informed that the best way for them to address their concerns about the prohibited activity status is to seek a private plan change.
20. The Campbell Family Trust may have some concern that the Council will elect to defer consideration of any privately initiated plan change within the two year period from the date the plan becomes operative. However, taking into account the private plan change policy recently adopted by the Council (and set out below), and not wishing to prejudge the matter, it is considered that this may not be likely.
21. The proposed Variation was also circulated amongst other Council officers and other organisations.
22. Other organisations included:
 - Transit New Zealand
 - Christchurch International Airport Limited
23. Other Council units consulted were:
 - City Streets
 - City water and Waste
 - Greenspace
24. Transit and CIAL did not have any comments to make on the proposed Variation. Comments to Davie Lovell Smith from ECan, City Water and Waste and City Streets are set out in Appendix 2. A meeting was held with Christine Heremaia of Greenspace in relation to the L1A areas adjacent to the Styx River. Ms Heremaia had indicated that she would have some comments to make.
25. At the time of writing no comments had been received. Any subsequent comments will be made available to the Council at the time that it considers this report.
26. The proposed Variation 95 and Plan Change 1 has been sent to Ngai Tahu and the Ministry for the Environment for comment. Any feedback will be reported to the Council at the time of consideration of this report.

Plan Change Policy and the First Schedule of the Resource Management Act 1991.

27. The Council has now adopted a policy in relation to proposed plan changes. Consideration as to whether to notify the Plan Change part of this proposal must take into account this policy. The policy is as follows:
 1. *Applications for changes to the Christchurch City Plan may be made in the manner set out in Part 2 of the First Schedule to the Resource Management Act. A flowchart outlining the City Plan Variation Application Procedure is attached.*
 2. *The Council will consider any applications in the manner set out in the First Schedule.*
 3. *The Council will recover its costs relating to such applications, as set out in Section 36 of the Resource Management Act 1991.*
 4. *Pursuant to Clause 25(4)(e) of the First Schedule the Council may reject applications for plan changes within two years of the City Plan becoming operative. In considering whether to do this the Council will have regard to whether any of the following matters apply:*

9 Cont'd

- (a) *The subject matter of the application affects an important strategic or policy issue the Council is currently investigating and may preclude options being considered.*
 - (b) *The proposal is for rezoning of a significant amount of land for urban growth and would pre-empt options for urban growth, being considered under the Metropolitan Christchurch Urban Development Strategy.*
 - (c) *The proposal is for rezoning of land for urban growth and the site is within a Priority 1 Area Plan currently under investigation by the Council. As at August 2005 Priority 1 Area Plans include Belfast, Memorial-Russley-Hawthornden, Southwest and Upper Styx-Harewood.*
5. *This policy will cease to have effect in regard to any provision of the City Plan which has been operative for two years or more.*
28. Also for the purposes of this assessment the Council must consider Clause 25 of the First Schedule of the RMA:
25. *Local authority to consider request -*
- (1) *A local authority shall, within 30 working days of-*
 - (a) *Receiving a request under clause 21; or*
 - (b) *Receiving all required information or any report which was commissioned under clause 23; or*
 - (c) *Modifying the request under clause 24 -*
whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.
 - [(2) *The local authority may either -*
 - (a) *Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so, -*
 - (i) *The request must be notified in accordance with clause 5 of this Schedule within 4 months of the local authority adopting the request; and*
 - (ii) *The provisions of Part I of this Schedule must apply; and*
 - (iii) *The request has effect once publicly notified; or*
 - (b) *Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.]*
 - (3) *The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part VI shall apply accordingly.*
 - (4) *The local authority may reject the request in whole or in part, but only on the grounds that -*
 - (a) *The request or part of the request is frivolous or vexatious; or*
 - (b) *The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or*
 - (c) *The request or part of the request is not in accordance with sound resource management practice; or*
 - (d) *The request or part of the request would make the policy statement or plan inconsistent with Part V; or*
 - (e) *In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.*
 - (5) *The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision.*
29. Accordingly it is noted:
- A) The Council has received a request in accordance with Part 2 of the First Schedule of the RMA.

9 Cont'd

- B) The draft Plan Change has been sent to the Minister for the Environment and Ngai Tahu for comment in accordance with the consultation requirements of Clause 3 of Part 1 of the First Schedule of the RMA². (Clause 25(2)(II) of the First Schedule of the RMA notes that Part 1 of the First Schedule of the RMA applies.)
- C) The applicants have agreed to pay the Council's costs in processing the application.
- D) There are no matters under Part 4 of the Privately Requested Plan Change Policy that would warrant the Council rejecting the application because it is within the two year period. I have discussed the proposals with the various Priority 1 area plan project leaders and they have not raised any issues of concern.
- E) There is no need to modify the request in accordance with Clause 25(1)(C) of Part II of the First Schedule of the RMA.
- F) There are no grounds under Clause 25(3) of Part II of the First Schedule of the RMA to consider the matter as a resource consent.
- G) There are no grounds under Clause 25(4) of Part II of the First Schedule of the RMA to reject the proposed plan change.

OPTIONS

30. The options are as follows:

- a. Agree to publicly notify Variation 95 and adopt Plan Change 1 for Public Notification. The preferred option.
- b. Not agree to publicly notify Variation 95 and Adopt Plan Change 1 for Public Notification. Maintaining the Status Quo.
- c. Amend Variation 95 and Plan Change 1 to accommodate matters raised in consultation prior to public notification of the Variation and adoption of Plan Change 1 for public notification.

PREFERRED OPTION

31. There is no "do nothing" option. Option (a) is the preferred option because it allows SEL and the Council a way forward in reaching an amendment to both the Living Zone rules and the Subdivision rules, in accordance with previous City Plan References Subcommittee resolutions. This option would also aid the Council in addressing a submission on the City Plan that has not previously been addressed (that part of the SEL submission relating the Living HA and Living HB. Option b) would not enable the resolution of a protracted Environment Court reference which the City Plan References Subcommittee has previously agreed to accede to. Option c) could see the Variation and Plan Change amended to accommodate matters raised in the feedback on the proposed Variation and Plan Change. Some feedback was in support some in opposition. It is not considered necessary to amend the Variation and Plan Change at this stage. These matters can best be considered and dealt with through any future formal submissions. There were no matters raised which would give the Council reason to consider not publicly notifying the Variation and Plan Change. In regard to the Campbell Family Trust and the Living HA and Living HB zones, the resolution of this matter through the private plan change process available after the City Plan becomes operative is a better mechanism by which to address this issue (either way the Campbell Family Trust would need to meet the costs of developing the plan change and notification).

² 3. Consultation

- (1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult
 - (a) The Minister for the Environment; and
 - (b) Those other Ministers of the Crown who may be affected by the policy statement or plan; and
 - (c) Local authorities who may be so affected; and
 - (d) The tangata whenua of the area who may be so affected, through iwi authorities and tribal runanga.
- (2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.

9 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental	Improves the opportunity for transitional landscapes to be developed between residential and rural areas.	
Economic	Enables greater use of residential land	Minor costs to the Council for reviewing and processing a variation.
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome "A Liveable City" Also contributes to "A Prosperous City"</p> <p>Impact on Council's capacity and responsibilities:</p> <p>Effects on Maori: None known</p> <p>Consistency with existing Council policies: No known inconsistency</p> <p>Views and preferences of persons affected or likely to have an interest: Likely to be favoured by property developers. Notification process will further discover views of neighbours and community groups.</p> <p>Other relevant matters:</p>		

9 Cont'd

Maintain The Status Quo (If Not Preferred Option)

This would mean completing only the existing unheard submission on the subdivisional rules.

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental		Maintains an existing anomaly in the plan
Economic		Likely to increase legal costs and complexities with completing City Plan.

Extent to which community outcomes are achieved:

Poor alignment with liveable city and prosperous city outcomes

Impact on Council's capacity and responsibilities:

Effects on Maori:

None known

Consistency with existing Council policies:

No inconsistency known

Views and preferences of persons affected or likely to have an interest:

Would not be favoured by developers. This process would not discover attitude of residents, neighbours, and community groups.

Other relevant matters:

9 Cont'd

Option 3 Amend Variation 95 to accommodate matters raised in consultation prior to public notification.

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental	Improve the opportunity for transitional landscapes to be developed between residential and rural areas.	
Economic	Enables greater use of residential land	Minor costs to the Council for reviewing and processing a variation.
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome "A Liveable City" Also contributes to "A Prosperity City"</p> <p>Impact on Council's capacity and responsibilities:</p> <p>Effects on Maori: None known</p> <p>Consistency with existing Council policies: No known inconsistency</p> <p>Views and preferences of persons affected or likely to have an interest: Likely to be favoured by property developers. Notification process will further discover views of neighbours and community groups.</p> <p>Other relevant matters:</p>		

10. TENDER FOR DIGESTERS 5 AND 6 - CHRISTCHURCH WASTEWATER TREATMENT PLANT

General Manager responsible:	General Manager City Environment
Officer responsible:	City Water & Waste Manager
Author:	Mark Christison, DDI 941-6231

PURPOSE OF REPORT

1. The purpose of this report is to seek additional funding for and approval to let the tender to G&T Construction Limited for the construction and commissioning of Digesters 5 and 6 at the Christchurch Wastewater Treatment Plant (CWTP).

EXECUTIVE SUMMARY

2. The final component of the planned upgrade of the CWTP involves the Council installing two additional thermophilic sludge digesters, with construction commencing in 2005/06 and commissioning planned for late 2007.
3. The additional digester capacity is required to meet the increasing solids loads at the plant. The digesters have been sized to meet predicted loads and flows through to 2026. The current four digesters are often overloaded at present and this can cause foaming of the units with subsequent process and odour problems. The current digesters are also in need of maintenance and this cannot be undertaken until new capacity is available to allow one existing unit to be taken off line. The additional process capacity cannot be delayed without significant ongoing risk of partial process failure at the treatment plant.
4. The capital cost for this project was originally estimated at \$6.2m (in 2002) and this was re-evaluated in December 2004 (in conjunction with several other projects) at \$10.0 million. This revised figure had the normal estimated level of accuracy of -10% +25%. Tenders have been received from four selected tenderers. Three tender prices were received, \$15.4m, \$16.9m and \$17m. The lowest tender (G&T Construction) is \$15.52 million giving an overall project cost of \$18.59 million.
5. City Water and Waste therefore requires the allocation of another \$8.59 million in capital funding to allow this project to proceed to the construction phase.

FINANCIAL AND LEGAL CONSIDERATIONS

6. Tenders were received from four tenderers for the construction and commissioning of two thermophilic digesters. City Solutions, CWW staff and CH2M Beca Consultants undertook a review of the tenders and evaluated the responses against a weighted attribute scoring system. The normalised tender results are indicated below:

Tenderer	Total Score	Adjusted tender sum	Comments
G&T Construction	64	\$15,520,104	
Fulton Hogan	56	\$16,944,612	
Brian Perry Civil (Fletcher Building subsidiary company)	56	\$17,096,975	
Hopkins Engineering	NA	NA	Withdrew from tender owing to resources.

7. G&T Construction scored the highest evaluation points and had the lowest tender sum. G&T Construction have undertaken a number of large civil projects for Christchurch City Council over the last few years including construction of Pump Station B at CWTP, deepening of oxidation ponds and site work for construction of Clarifiers 1 to 4 at CWTP. They are currently building Pump Station 11 as part of the Major Sewer Upgrade project.

10 Cont'd

8. The revised project sum utilising G&T Construction's tender sum is illustrated below:

Project Component Descriptions	Project Costs post tender Oct 2005	Project Estimate Nov 2004
1. Construction Contract – a. Tender sum (incl construction contingency of \$ 600k).	\$15,520,104	\$6,237,790
2. CCC supplied equipment *	\$1,244,278	\$1,704,000
3. CCC Staff costs and consents	\$110,000	\$105,000
3. Staff Costs and Professional Fees	\$1,313,087	\$832,878
4. Project contingency Sum	\$400,000	\$1,120,332
Project Total	\$18,587,469.00	\$10,000,000.00

* Note that these items are sourced overseas and will be subject to movement in foreign exchange rates at time of purchase. **\$10,000,000**

9. The phasing of expenditure under this project is currently projected as follows:

Description	Financial Year				Project Total (\$m)
	2003/05 (\$m)	2005/06 (\$m)	2006/07 (\$m)	2007/08 (\$m)	
Digesters 5 and 6	0.656	3.20	8.271	6.46	18.587

10. The 2004/14 LTCCP (Volume 3 Page 62) refers to the additional digesters being funded solely through rates. Approximately 80% of this project is related to growth of loads and thus could be recovered via a contribution fee over time. Staff recommend that this project be integrated into the new contributions policy currently being developed in time for the 2006-16 LTCCP. This will allow a large proportion of the project sum to be recovered over time through developer contributions and minimise the impact on the rating base.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- Approve additional capital funding of \$8.59 million to allow award of the contract for the construction of Digesters 5 and 6. This will revise the project total budget to \$18.587 million.
- Approve awarding the contract for the construction of digesters 5 and 6 to G&T Construction Ltd for the lump sum figure of \$15,520,104 plus GST.
- Note LTCCP programme will need to be amended to reflect this change.

10 Cont'd

BACKGROUND ON THE DESIGN AND TENDER EVALUATION OF DIGESTERS 5 AND 6

11. Integral to the upgrade of the CWTP is the installation of two additional thermophilic digesters to provide increased process capacity for the solids inventory at the plant and to provide allowance for load growth through to 2026.
12. The need for additional digesters was identified following the commissioning of clarifiers 1 and 2 in 2002. The new clarifiers reduced the solids in the treated effluent but increased the treatment load on the digesters. The current four mesophilic digesters are at capacity and risk of overloading and subsequent process failure (as happened in 2002). The 2003/04 annual plan provided funding of \$6.2 million to allow the digester project to proceed. In December 2004 this figure was re-estimated at \$10 million as part of a revision of cost of several other key water and waste projects.
13. The design of the project has been undertaken in two components:
 - (a) Process design by CH2M Beca Limited based in Christchurch.
 - (b) Civil design by City Solutions.
14. The project team (comprising CWW staff, City Solutions and CH2M Beca) has spent the last six months working through detailed design reviews, HAZOP (hazardous operations) workshops and value engineering sessions. The value engineering workshops are designed to look for opportunities to reduce project cost without affecting operability and maintainability (ie remove the "gold plating"). The culmination of the intense design studies was an efficient design that all parties were satisfied met the operational requirements whilst representing a value engineered solution.
15. Four main contractors have shortlisted for the tender process after an open Registration of Interest process had been conducted and responses evaluated. One tenderer (Hopkins Engineering Ltd) pulled out of the tender owing to current work commitments.
16. It was noted that Fulton Hogan and Brian Perry's tenders were significantly higher than G&T Construction and this is thought to be due to their full "order books" at present. These major civil contractors have large infrastructure projects currently underway and are currently pricing accordingly.
17. G&T Construction is a Christchurch based organisation with considerable experience in the heavy civil engineering construction market. G&T Construction is very familiar with the treatment plant and its operational requirements. This is a very important factor on a brown field site. G&T Construction was awarded the Pump Station 11 Construction contract in December 2004 (\$7.2m) and has been progressing this project in a satisfactory manner.
18. It is worth noting that the increase in costs is primarily in the civil construction component of the project. Whilst this is the largest single element it is also predominantly locally sourced although materials such as cement and steel are priced on the world commodity markets. The booming construction market is reflected by the fact that while the lowest price was significantly higher than the budget, the two higher prices were very similar and \$1.5m more than the lowest price.

10 Cont'd

OPTIONS

19. The Council has two options with respect to this project tender:

Option 1 – Approve Increased Capital for Project and Award Tender

- (a) Increase capital funding available to the project to \$18.587 million and award construction contract to G&T Construction for immediate start. The project will be fully commissioned by the end of 2007 and the CWTP will have the enhanced process capability needed to handle the current solids inventory and predicted growth through to 2026.

Option 2 – Defer Project

- (b) Defer the project for several years in the hope that construction prices stabilise and the project can be built for a lower cost. This option incurs the following major risks:
 - (i) That CWTP loads will not increase any further and that no load incidents will occur over the next 4-5 years which could overload the current digester capacity and cause process and odour incidents. Such incidents can take several months for the plant processes to recover from. The likely outcome of such a process failure would be reduced biogas production, increased polymer consumption and associated dewatering issues, and production of a sludge that is not fully digested and as such would require special disposal at Kate Valley. The operational cost of this would be very significant until the digesters recovered.
 - (ii) That construction prices will change from those currently received in the latest tender. Current market indications are that infrastructure spending in New Zealand over the next 10 years is going to be maintained or increased due to impending work on roading systems and power generation. These major civil projects will impact on the cost of Council civil projects given the level of engineering resources available in New Zealand.

PREFERRED OPTION

20. The preferred option is to increase the project capital funding to \$18.587 million from the current \$10 million and award the construction contract to G&T Construction for the lump sum of \$15.520 million plus GST. This will allow the digesters to be commissioned by December 2007.

ASSESSMENT OF OPTIONS

The Preferred Option

Increase the capital funding for the construction and commissioning of Digesters 5 and 6 from \$10 million to \$18.587 million and award the construction contract to G&T Construction Limited for \$15.520 million.

10 Cont'd

	Benefits (current and future)	Costs (current and future)
Social	Less risk of process failure at the CWTP. Capacity will meet future needs of the city	Some increase in maintenance costs due to more assets on site. Expected increase in biogas production which will decrease reliance on any imported electricity and may produce some additional income through power export.
Cultural	Increase in treatment capacity maintains alignment with Maori goals for treatment of wastewater	Nil
Environmental	Digestion reduces the harmful effects of biosolids and opens up routes for reuse of the product other than disposal to Kate Valley (ie capping of Burwood Landfill)	Nil
Economic	Reduced risk of process failure and subsequent related odour events process failure and subsequent related odour events. Process failures also adversely affect plant operating costs.	Capital cost of project. Large portion should be recoverable through Contributions Policy.
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome a Healthy City Also contributes to a city of people who value and protect the natural environment.</p> <p>Impact on Council's capacity and responsibilities: Council is responsible for the collection and treatment of wastewater.</p> <p>Effects on Maori: Maori have a very strong interest in the treatment and disposal of biosolids. The installation of Digesters 5 and 6 improves the Council's processing of biosolids. There is no proposed change to the disposal of biosolids at Burwood under this project.</p> <p>Consistency with existing Council policies: This project is currently identified in the 2004/14 LTCCP as a key project contributing to community outcomes.</p> <p>Views and preferences of persons affected or likely to have an interest: Public consultation was conducted through previous LTCCP and annual plan processes.</p> <p>Other relevant matters: This is a key process step at the CWTP and this capacity enhancement is needed now due to current loads reaching the plant.</p>		

11. OCEAN OUTFALL CONSENT APPEAL

General Manager responsible:	General Manager City Environment
Officer responsible:	City Water & Waste Manager
Author:	John Moore, Project Delivery Team Leader DDI 941-8961

PURPOSE OF REPORT

1. The purpose of this report is to advise the Council regarding the resource consent decision for the ocean outfall received on 2 November, and to seek endorsement of staff actions to lodge an appeal on a number of minor conditions within the consents. The full text of the decision is available on the Environment Canterbury website.

EXECUTIVE SUMMARY

2. The decision from Environment Canterbury for the ocean outfall was received on 2 November 2005. Although the ocean outfall decision is generally favourable for the Council, there are a number of consent conditions which may be difficult to fully comply with. The impact of this would be that from time to time the Council would be in breach of one or more of the resource consents for the ocean outfall. This situation can be avoided if an appeal is lodged within 15 days of receipt (ie by 25 November) of this decision to those consents, and suitable changes to the consent are agreed. Staff have lodged an appeal on the consents where there is concern regarding the wording of conditions, due to the short period available for this process. It should be noted that it is possible to withdraw the appeal at any time.

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Council would wish to be fully compliant with any resource consent. Where it is known that breaches are a possibility, action should be taken to avoid the breach, either by compliance with the consent or by seeking an appropriate change to the consent. Any future non compliance of any consent condition could lead to enforcement action being taken by the consenting authority. The Council would then be subject to negative press and could be subject to penalties under the Resource Management Act.

STAFF RECOMMENDATION

It is recommended that the Council lodge an appeal with Environment Canterbury on 25 November to the ocean outfall resource consent conditions, addressing the issues raised in Attachment A and Attachment B.

BACKGROUND ON OCEAN OUTFALL CONSENT APPEAL

4. The Council applied in 2001 for an estuary discharge consent. This was not granted on terms favourable to the Council and after further evaluation, the Council resolved to prepare an Assessment of Environmental Effects for an Ocean Outfall Pipeline, no less than 2km long. A short term estuary discharge consent was then negotiated as a resolution to the appeal lodged by the Council with the registered interested parties, to that appeal. As part of the negotiations, a number of key milestones were agreed as follows.
 - (a) Ocean current modelling completed by 30 April 2004.
 - (b) Reconfiguration of oxidation ponds completed by 30 April 2004.
 - (c) Report available on water quality from plant upgrade by 31 August 2004.
 - (d) Lodge ocean outfall consent by 20 December 2004.
 - (e) Let construction contract within eight months of ocean outfall consent being granted.
 - (f) Ocean outfall operational within 19 months of contract being awarded, or 30 November 2009, whichever is earlier.
5. Items (a)–(d) have been completed to date, and Environment Canterbury have been advised that as a result of the Request for Information Process (ROI), contractors have advised that construction is likely to take 24 to 30 months in total. In all other respects, the Ocean Outfall project is on schedule.

11 Cont'd

Introduction

6. The decision on the ocean outfall consents was received from Environment Canterbury on 2 November 2005, granting all consents subject to conditions for consents applied for from Environment Canterbury, Christchurch City Council and Banks Peninsula District Council, as well as a recommendation to the Christchurch City Council regarding the granting of temporary and permanent easements over land vested in the Christchurch City Council under the Reserves Act.
7. The decision is 381 pages in length and is generally very favourable to the Christchurch City Council to achieve the outcomes being sought. The commissioners noted "*the submissions in relation to the project were largely concerned with conditions which should regulate the construction of works when commissioned, rather than mounting an attack on the project itself. It is obvious to us that the consultation process was thorough and effective.*"
8. The decision has therefore granted the consents being sought, and concentrated on suitable conditions to provide the community with confidence that the construction and operation will be undertaken in a manner that will not be significantly detrimental to the community or environment.
9. Analysis of these conditions shows that the great majority of these conditions are suitable and helpful to the Christchurch City Council. However, there are some conditions that require further consideration and amendment in order for the Council to have confidence that it can be in full compliance with the consents. These matters are largely in relation to monitoring requirements. For that reason an appeal document has been drafted with the intention of lodging an appeal within the 15 working day period allowed for this process.

Consent Conditions

10. There are four conditions out of a total 214 that the Council may have difficulty in achieving full compliance with. These are listed in (Attachment A), including a commentary on issues surrounding the problem conditions.
11. It is important that these conditions be amended at least in part, for the Christchurch City Council to have confidence that full compliance can be achieved for the future, based on the knowledge of the existing wastewater characteristics.
12. In addition to the conditions listed in the attachment being considered for appeal, staff have written to Environment Canterbury seeking their views on how a small number of other conditions will be interpreted by ECan. Some of these matters are minor, and could be considered administrative. However, on other matters the response may lead to additional consents also requiring amendment to ensure that CCC can achieve full compliance. This letter is Attachment B. Depending on how ECan responds to this letter there may be a need to add additional unfavourable conditions to the list in Attachment A.

OPTIONS

13. No Appeal

(a) Breach of Consent Conditions

CCC will inevitably be in breach of at least one of the conditions detailed in Attachment A. This would result in poor public perception of the ocean outfall as a solution for wastewater disposal and therefore compromise the ocean outfall being viewed as a successful project and major infrastructural improvement by the community. After the consent became operative (ie no appeals or appeals resolved) the Council could seek a variation to conditions. This option is not likely to be viewed by the community favourably, as the community would expect that where the Council is aware of issues, these would be resolved at the time of the decision. It is also noted that a breach in conditions will have financial implications in the future due to costs of seeking a variation, defending any court action, or payment of any penalties that may be imposed.

11 Cont'd

(b) Submitters Appealing

Other submitters may also appeal on conditions within the consents under consideration. CCC would not be permitted to address matters of concern with consents appealed by other submitters unless CCC had also lodged an appeal.

PREFERRED OPTION

14. Lodge Appeal

(a) Costs

Additional costs are likely to be incurred. It is expected that the appeal costs will be moderate, as it is likely that a negotiated settlement could be achieved rather than requiring a hearing at the Environment Court. These costs would be significantly less than defending a breach of a consent condition or seeking a variation to the consent at a later time.

(b) Time

The Council has a programme in place to meet milestones within the estuary discharge consent. A protracted appeal process could place these milestones at risk. It is noted that although some time has been programmed for an appeal process, delays would only be incurred on consents that are appealed. The Council's many concerns are with the ongoing operational consents. Consents that are not appealed would become final. Providing the issue regarding mercury in sediments can be resolved through negotiation, and no submitters appeal any of the construction consents, work could proceed on construction while the operational monitoring conditions are resolved through the appeal process.

12. NOTICES OF MOTION

13. QUESTIONS

14. RESOLUTION TO EXCLUDE THE PUBLIC

Attached.