

## 2. ESTABLISHMENT OF COUNCIL CONTROLLED ORGANISATIONS

<b>General Manager responsible:</b>	General Manager, Corporate Services, DDI 941-8528
<b>Officer responsible:</b>	Manager Planning & Performance
<b>Author:</b>	Ian Thomson, Solicitor

### PURPOSE OF REPORT

1. The purpose of this report is to recommend the establishment of three new Council-controlled organisations (CCOs) - two shelf companies and one charitable trust.

### EXECUTIVE SUMMARY

2. In 2007 the Council resolved to establish three CCOs. They were to be shelf companies, activated when the opportunity arose.
3. As outlined in the background section of this report, two of them have been used and one has been registered but not yet used for any particular activity.
4. Staff are now recommending that two new companies and a charitable trust be established as CCOs. This requires the use of the special consultative procedure. Establishing them now rather than when a specific opportunity arises is to ensure that the Council is able to respond in a timely manner to any new initiative. The alternative is to undertake a special consultative procedure each time there is a need for the creation of a CCO.

### FINANCIAL IMPLICATIONS

5. From a financial perspective, the establishment of these CCOs will not have any financial impact on the Council. Existing staff time will be used to administer the CCOs. There will be some minor costs associated with the creation of the legal structures and some minor administrative expenses, but nothing of significance.

### LEGAL CONSIDERATIONS

6. The charitable trust would be established with broad objectives that could be amended if necessary at some future time. It is proposed that two trustees be appointed initially, the Chief Executive and the GM Corporate Services.
7. Section 56 of the Local Government Act 2002 requires that a proposal to establish a CCO must be adopted in accordance with the special consultative procedure (SCP) before the Council can establish or become a shareholder in that organisation.
8. Section 56(2) allows the consultation to be undertaken as part of another proposal.
9. It is suggested that the proposal to establish the CCOs be included as part of the consultation process for the 2010/11 Annual Plan.
10. Having a number of non-trading CCOs available for use, does not remove any control from the Council. Each individual opportunity would be put to the Council for approval and each activated CCO would be subject to the requirements of the Local Government Act 2002. Any financial support (capital injection or debt) would need to be separately considered and approved by the Council. If the commencement of a particular activity triggered the Council's significant policy, then a SCP may still be required.

### STAFF RECOMMENDATION

It is recommended that the Council resolves to:

- (a) Approve in principle the establishment of three Council-controlled organisations to be activated when appropriate opportunities arise with further Council resolution.
- (b) Undertake consultation in respect of the proposal as part of the special consultative procedure required for the draft Annual Plan 2010/11.

## **BACKGROUND**

11. In 2007 the Council resolved to establish three CCOs. They were to be shelf companies, used only when an appropriate activity was identified.
12. One of the companies was registered as Ellerslie International Flower Show Limited, principally for the purpose of protecting the intellectual property in that name.
13. Another, CCC Two Ltd, was used to purchase assets and liabilities from Meta last year and now operates the businesses that were acquired from Meta as a CCTO (a CCO that operates a trading undertaking for the purpose of making a profit).
14. The third CCO has been registered but is not trading at present.
15. Each time it was proposed that a shelf company be activated, there was a report to Councillors setting out the reasons for the proposal. In the case of CCC Two Ltd, it was so that the Council could take immediate steps to protect its interest in the waste collection and processing facilities owned and/or operated by Meta.
16. Establishing a new CCO requires an SCP. Because this can take several months to complete, it may not be possible for the Council to act quickly if necessary on an individual opportunity when it arises. It could add time and complexity to an issue that needs to be dealt with quickly, such as the Meta transaction.
17. The reason for establishing a trust as one of the CCOs is that often a trust structure is preferred over a company. This has been the case with the World Buskers Festival and the two charitable trusts consulted on as part of the 2009/19 LTCCP.
18. The suggested approach is that we establish a number of CCOs (non trading) through the 2010/11 Annual Plan process. Any proposal to activate these would come back to the Council for a decision.

## **LEGAL CONSIDERATIONS**

19. As indicated earlier in this report, the Council is required to adopt the special consultative procedure before it can establish or become a shareholder in a CCO. That consultation may be undertaken as part of another proposal.
20. The Council will be shortly using the SCP before making a decision on the adoption of the 2010/11 Annual Plan.
21. Section 83A of the Act allows the Council to combine one SCP in relation to any decision with another SCP that it is required to carry out. It is recommended that the SCP in respect of the new CCOs be carried out as part of the SCP in respect of the Annual Plan.
22. Section 60 of the Act requires all decisions relating to the operation of a CCO to be made in accordance with its statement of intent and constitution. It is intended that each new CCO will have an initial statement of intent and constitution that can be amended once the organisation is activated. Any new statement of intent and/or constitution required will be brought back to the Council for approval. The provisions in the Act requiring performance monitoring, half-yearly and annual reports, and financial statements will apply to each CCO that is established.
23. If the Council approves in principle the establishment of the new CCOs and the result of the SCP is that a decision to establish them is recommended, a further report will be submitted seeking approval for the appropriate resolutions.