

17. ESTABLISHMENT OF CHRISTCHURCH AGENCY FOR ENERGY TRUST – PART ONE

General Manager responsible:	General Manager Corporate Services, DDI 941- 8528
Officer responsible:	Energy Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek Council approval for the terms of a draft Trust Deed and a draft “Deed Dealing with an Appointor in Relation to the Christchurch Agency for Energy” (“Appointor Agreement”) which have been prepared for the Christchurch Agency for Energy Trust.

EXECUTIVE SUMMARY

2. On 27 September 2007 the Council adopted the Sustainable Energy Strategy for Christchurch 2008–2018 (“the Strategy”). The initiatives in the Strategy include the establishment of the Christchurch Agency for Energy (“CAfE”).
3. A Statement of Proposal to establish the CAfE as a charitable trust was included in the draft 2009–19 Long Term Council Community Plan. It was proposed that the CAfE would be a council controlled organisation.
4. On 26 June 2009, following public consultation, the Council resolved to adopt the proposal that the CAfE be established, to carry out the initiatives in the Strategy and for the purposes of promoting energy efficiency and renewable energy in the Council’s district.
5. Kerry Ayers, a Senior Partner at law firm Helmore Ayers, has prepared a draft Trust Deed (**Attachment 1**) and draft Appointor Agreement for the café (**Attachment 2**). These draft documents are attached to this report for the Council’s approval.
6. The draft Trust Deed establishes the CAfE as a Council controlled organisation. The draft Trust Deed gives the Council the power to appoint 50 per cent of the Trustees of the CAfE. The Council also has the power to appoint the CAfE Chairperson. The CAfE Chairperson has a second and casting vote in the event that any vote is tied. In addition, clause 19.1 of the draft Trust Deed gives the Council the power of veto if required in respect to the exercise of powers by the Trustees.
7. Approval is sought in Part Two of this report, which is a Public Excluded item, for three Council representatives to be appointed as Trustees to the CAfE, including one Council representative to be appointed as the CAfE Chairperson.
8. The following organisations have indicated an interest in joining the CAfE and a willingness to provide financial support towards the administrative costs of the CAfE:
 - Orion New Zealand Limited
 - Meridian Energy Limited
 - Environment Canterbury
 - The Energy Efficiency and Conservation Authority
 - Solid Energy (through Solid Energy Renewable Fuels Limited).
9. The details of the financial support offered by these organisations are set out in Part Two of this Report. Approval is sought in Part Two for the Council to appoint these organisations as “Appointors” under the Trust Deed. Each Appointor organisation has the right to appoint a trustee to the CAfE. Any organisation wishing to become an Appointor is required to sign an Appointor Agreement setting out the financial contributions they agree to make to the CAfE.

FINANCIAL IMPLICATIONS

10. The funding for the first five year period of the action plan in the Sustainable Energy Strategy for Christchurch 2008–2018 is to come from revenue received from the sale of carbon credits

to British Gas. This includes a five year commitment to provide \$100,000 per annum towards the administration costs of the CAfE. The Council earned the carbon credits following the successful commissioning of the project to use gas captured at the Burwood landfill as an energy source for the QEII sports and recreation facility.

11. The Appointor organisations recommended in Part Two of this report have all indicated that they will provide financial assistance to the CAfE.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

12. Yes, as above.

LEGAL CONSIDERATIONS

13. The Local Government Act 2002 requires a local authority to carry out a Special Consultative Procedure before establishing a council controlled organisation. As discussed below in the "Consultation Fulfilment" section of this report, the Special Consultative Procedure in respect to the establishment of the CAfE was carried out as part of the consultation for the 2009-19 LTCCP. Section 56(2) of the Local Government Act 2002 states that the Special Consultative Procedure required for establishing a council controlled organisation can be conducted in this manner.
14. The draft Trust Deed and Appointor Agreement have been prepared by Kerry Ayers, in conjunction with the Christchurch City Council's Legal Services Unit. Mr Ayers and the Legal Services Unit consider that the terms included in the draft Trust Deed and Appointor Agreement provide the most appropriate arrangements for the establishment of the CAfE as a charitable trust.
15. If the Trust Deed is approved by the Council, the CAfE will need to apply for registration under the Charitable Trusts Act 1957 and the Charities Act 2005.

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

16. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. The establishment of the CAfE is included as a Major Initiative on page 20 of the 2009-19 LTCCP.
18. The Energy Conservation Activity Management Plan includes as a performance standard the establishment of a local Energy Agency to implement the Sustainable Energy Strategy for Christchurch 2008-18.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

19. Yes, as above.

ALIGNMENT WITH STRATEGIES

20. On 27 September 2007 the Council adopted the Sustainable Energy Strategy for Christchurch 2008 -2018. The purpose of the Strategy is to lead the Christchurch community towards a more sustainable energy future.
21. The Strategy includes 28 energy efficiency and renewable energy initiatives. The initiatives include the establishment of the CAfE. The Strategy states that the purpose of the CAfE is to organise and manage the implementation of the other strategic initiatives included in the Strategy.

Do the recommendations align with the Council's strategies?

22. Yes, as above.

CONSULTATION FULFILMENT

23. Consultation in respect to the establishment of the CAfE was carried out in 2009 in conjunction with the special consultative procedure used for the 2009–19 LTCCP.
24. The results of the consultation process were reported back to the Council on 26 June 2009. The Council resolved to adopt the proposal that the CAfE be established for the purposes set out in the Statement of Proposal.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Adopt the Deed of Trust in the form attached to this report as the form to be used in the establishment of the Christchurch Agency for Energy, subject to such amendments as may be required by the Registrar of Charitable Trusts or the Charities Commission.
- (b) Authorise the registration of the Christchurch Agency for Energy under the Charitable Trusts Act 1957 and the Charities Act 2005.
- (c) Approve the Deed Dealing with an Appointor in Relation to the Christchurch Agency for Energy in the form attached to this Report.

BACKGROUND (THE ISSUES)

25. On 27 September 2007 the Council adopted the Sustainable Energy Strategy for Christchurch 2008–18. The Strategy includes 28 energy efficiency and renewable energy initiatives. The initiatives include the establishment of the CAfE.
26. The draft 2009–19 Long Term Council Community Plan included a Statement of Proposal that the CAfE be established as a charitable trust, to carry out the initiatives in the Strategy and for the purposes of promoting energy efficiency and renewable energy in the Council's district. It was proposed that the CAfE would be a council controlled organisation.
27. The Statement of Proposal anticipated that the founding partners of the CAfE would represent a number of different sectors, including local government, transport, electricity, environmental protection bodies and the Government's Energy Agency - the Energy Efficiency and Conservation Authority. The overall budget for the CAfE would depend on the contributions received from these founding partner organisations.
28. Public consultation was carried out in respect to the proposal as part of the 2009–19 LTCCP process. The submissions were reported back to the Council on 26 June 2009. The Council resolved to adopt the proposal that the Christchurch Agency for Energy be established as a charitable trust, for the purposes set out in the Statement of Proposal.

Trustees

29. The Trust Deed prepared by Kerry Ayers provides three different ways in which a person can be appointed as a Trustee to the CAfE, as discussed below. The Council has direct control over the appointment of the Council appointed Trustees. The Council also has indirect control over the appointment of the Trustees nominated by Appointor Organisations (because the Council selects the Appointor organisations); and indirect control over the appointment of Elected Trustees (because the Council has the power to remove any Elected Trustees).

Council Appointed Trustees

30. The draft Trust Deed provides authority for the Council to appoint up to 50 per cent of the Trustees of the CAfE. The Council also has the power to appoint the Chairperson of the CAfE. In the event that any vote of the CAfE Board is tied, the Chairperson has a second and casting vote.
31. Part Two of this report, which is a public excluded item, includes a recommendation that three Trustees for the CAfE be appointed by the Council, including one person to act as the Chairperson.

Trustees Nominated by Appointor Organisations

32. The draft Trust Deed also states that the Council can invite organisations to be "Appointor" organisations for the purposes of the CAfE. An Appointor organisation has the right to appoint one Trustee to the CAfE (see clause 6.2(b) of the Trust Deed).
33. Any organisation wishing to be an Appointor organisation is required to sign an Appointor Agreement. The purpose of the Appointor Agreement is to set out the financial contributions that the Appointor organisation will make to the CAfE in return for the right to appoint a Trustee.
34. Council officers have approached certain organisations to ascertain their interest in becoming Appointors (and therefore financial partners) of the CAfE. The organisations approached were selected on the basis of the following criteria:
 - The organisation's track record and philosophy in the promotion of the vision and ideals of energy efficiency and renewable energy.
 - The organisation's ability (in public eyes), to be an ambassador for these ideals.

- The organisation's connections to the community of Christchurch - being a visible local player, introducing their own local energy efficiency initiatives, sponsoring other (non-energy) community events.
 - The organisation expressed an interest in the implementation of the Sustainable Energy Strategy for Christchurch (during the public consultation period in 2007 and after).
 - The organisation's ability to contribute to the success of specific initiatives of the action plan in the Strategy.
35. The following organisations have indicated an interest in becoming an Appointor organisation and a willingness to provide financial support towards the administrative costs of the CAfE:
- Orion New Zealand Limited
 - Meridian Energy Limited
 - Environment Canterbury
 - The Energy Efficiency and Conservation Authority
 - Solid Energy (through Solid Energy Renewable Fuels Limited).
36. The details of the financial support offered by these organisations are set out in Part Two of this Report, which is a Public Excluded item. Approval is sought in Part Two for the Council to appoint these organisations as "Appointors" under the Trust Deed.

Elected Trustees

37. Clause 6.2(d) of the Trust Deed also allows the Council and Appointor Trustees to appoint, by unanimous resolution, one or more further Trustees to the Trust (the "Elected Trustees"). These Elected Trustees have the same voting rights as the other Trustees, except that they cannot vote on the appointment of other Elected Trustees.
38. The Trust Deed gives the Council the power to remove any Elected Trustees.

Partner Organisations

39. Part 14 of the draft Trust Deed provides an additional way for organisations to be involved in the activities of the CAfE. This Part allows the Trustees to appoint organisations to be "Partners" to the CAfE. The purpose of Part 14 is to allow organisations that cannot make a financial commitment to the CAfE to nevertheless be involved in particular projects that they have an interest in.
40. The Trustees of the CAfE can determine the rights and privileges that any Partner organisation will have, and the terms and conditions that an organisation is required to comply with in order to obtain Partner status.