

37. 2018/19 Capital Endowment Fund Application

Reference: 19/300581

Presenter(s): John Filsell, Head of Community Support, Governance & Partnerships

Confidentiality

Section under the Act:	The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.
Sub-clause and Reason:	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege.
Plain English Reason:	Council will require privileged legal advice to consider this application.
Report can be released:	12 April 2019 As soon as practicable following Council's decision

1. Purpose of Report

- 1.1 The purpose of this report is for the Council to consider an application for funding from the 2018/19 Capital Endowment Fund for the Legal Services Unit of the Council to provide funds to Aotearoa Water Action (AWA).

Organisation	Project Name	Amount Requested	Amount Recommended
Legal Services Unit Christchurch City Council	Contribution to legal costs of Aotearoa Water Action	\$50,000	\$50,000
Total		\$50,000	\$50,000

2. Staff Recommendations

That:

1. If the Council resolves to provide \$50,000 toward the legal costs of the Aotearoa Water Action (AWA) in respect of judicial review proceedings in the High Court against the Environment Canterbury (ECan) resource consent decisions over Cloud Ocean Water Ltd and Rapaki Natural Resources Ltd resource consents, then Council approve that being from the 2018/19 Capital Endowment Fund and managed by the Legal Services Unit, on the conditions that:
 - a. The funds are spent solely on the legal fees incurred by AWA for the substantive hearing and dispersed solely in payment of invoices as approved by the Legal Services Unit.
 - b. Final reporting to be submitted 12 months following final instalment or at the conclusion of the project, whichever is sooner.

3. Key Points

Issue or Opportunity

- 3.1 On 12 April 2018 the Council resolved to establish criteria for distributing the proceeds of the Capital Endowment Fund (CEF) (CNCL/2018/00057). On 10 May 2018 Council resolved to utilise all income from the CEF for three years, 2018/19 to 2020/21 (i.e. not use part of the income to inflation-protect the fund).
- 3.2 On 13 December 2018 Council established eligibility and assessment criteria for the CEF and an application process. Assessment criteria are as follows:
 - 3.2.1 Evidence that the proposal is for a specific project or activity projects. Or evidence of economic or environmental benefits.
 - 3.2.2 Evidence that the project demonstrates a benefit for the City of Christchurch, or its citizens, or for a community of people living in Christchurch.
 - 3.2.3 Evidence that the benefits will be experienced now and in the future.
- 3.3 An opportunity has arisen to apply to the CEF to make a grant to financially contribute to the legal costs of AWA in respect of judicial review proceedings in the High Court against the Environment Canterbury (ECan) resource consent decisions over Cloud Ocean Water Ltd and Rapaki Natural Resources Ltd resource consents.

Strategic Alignment

- 3.4 The recommendations align with the Long Term Plan Activity: Strategic Planning and Policy namely the Level of Service: 17.0.1.7 Advice to Council on high priority policy and planning issues that affect the City.
- 3.5 The proposed grant covers a fixed contribution toward the legal costs of the Aotearoa Water Action (AWA) in the High Court against the Environment Canterbury (ECan) resource consent decisions over Cloud Ocean Water Ltd and Rapaki Natural Resources Ltd resource consents.

Decision Making Authority

- 3.6 Authority for making grant decisions for the CEF sits with the Council.
- 3.7 Allocations must be consistent with any policies, standards or criteria adopted by the Council.

Assessment of Significance and Engagement

- 3.8 The decisions in this report are of low significance in relation to the Christchurch City Council's Significance and Engagement Policy.
- 3.9 The level of significance was determined by the number of people affected and/or with an interest. The decision required in this report is whether Council should make a grant from a funding scheme via an eligible application. It is distinct from Council's decision on whether Council should contribute to legal proceedings. This decision is informed by a report prepared by the Legal Services Unit on this issue.
- 3.10 Due to the assessment of low significance, no further community engagement and consultation is required.

Balance of the Capital Endowment Fund Available for Allocation

- 3.11 At the time of writing, the balance of the 2018/19 CEF is as below.

Available for allocation	Balance if staff recommendation adopted
\$345,288	\$295,288

- 3.12 Based on the current Council approved CEF criteria, applications of this type are eligible for funding through the CEF. The attached decision matrix provides information on the application. This includes organisational details, project details, financial information and a staff assessment.
- 3.13 There is currently a balance of \$345,288 remaining in the 2018/19 CEF. Should the application be approved by the Council \$295,288 would remain in the 2018/19 budget. This will be carried forward to the 2019/20 financial year, assuming no further allocations this financial year.
- 3.14 This will be the final scheduled application for the 2018/19 CEF. The next scheduled round of applications will be considered by Council in June 2019. Approximately \$1,433,000 will be available for allocation, mainly in the Civic and community category of the fund, at this time for the 2019/2020 financial year.

Alternative Funding

- 3.15 Council’s Finance and Commercial Group have confirmed there is no operational budget set aside for the purpose of this application.
- 3.16 There are insufficient funds remaining in the 2018/2019 Discretionary Response Fund to cover this application.
- 3.17 Staff advise this application is ineligible for the Community Resilience and Partnership Fund as it does not meet the eligibility criteria. The Community Resilience Partnership Fund was established in 2017 in partnership with the Ministry of Health. The contract identifies the purpose of the fund as supporting projects that strengthen communities by increasing community participation, connectedness and resilience. The intention is that the fund will focus on innovative projects that will make a measurable difference within communities.

Legal Considerations

- 3.18 Staff advise Council to consider the information contained in the accompanying report “Involvement in Aotearoa Water Action Judicial Review” prior to considering this application to the CEF.
- 3.19 Staff recommend that the Council consider the merits and the gain or outcome that will be achieved for the community from the AWA judicial review proceedings.

[REDACTED]

- 3.21 This report has been reviewed by Council’s Legal Services Unit. The Legal Services Unit have also confirmed that applications of this type are eligible for funding through the CEF.

Attachments

No.	Title	Page
A	CEF Decision Making Matrix Legal Services	5

Confirmation of Statutory Compliance

Compliance with Statutory Decision-making Requirements (ss 76 - 81 Local Government Act 2002).

(a) This report contains:

- (i) sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages; and
- (ii) adequate consideration of the views and preferences of affected and interested persons bearing in mind any proposed or previous community engagement.

(b) The information reflects the level of significance of the matters covered by the report, as determined in accordance with the Council's significance and engagement policy.

Signatories

Author	John Filsell - Head of Community Support, Governance and Partnerships
Approved By	John Filsell - Head of Community Support, Governance and Partnerships Mary Richardson - General Manager Citizen and Community

CEF DECISION MATRIX V1

Lead Unit	Project Details	Project Funding	Staff Recommendation
Legal Services Unit	<p>The legal proceedings are in the High Court at Christchurch. AWA has engaged a senior counsel, Pru Stevens QC. AWA will be funding the balance of her legal fees.</p> <p>A Council contribution of up to \$50,000 would be spent in payment of her invoices.</p> <p>Outcomes If the legal challenge to the ECan decision making process for these transfers of resource consents is successful, new water bottling activities will not be able to rely on transfers of existing resource consents for the use of water. They would have a harder consenting pathway of seeking a new resource consent.</p>	<p>Total Project cost Unknown</p> <p>Amount requested from CEF \$50,000</p> <p>Contribution sought towards A contribution to Legal fees</p> <p>Other sources of funding AWA fund the balance of the legal costs.</p> <p>Ongoing operational expenses There are no identified future operational costs to Council because this application proposes that Council makes a fixed contribution to AWA to contribute to their legal costs.</p>	<p>If the Council resolves to provide \$50,000 toward the legal costs of the Aotearoa Water Action (AWA) in respect of judicial review proceedings in the High Court against the Environment Canterbury (ECan) resource consent decisions over Cloud Ocean Water Ltd and Rapaki Natural Resources Ltd resource consents, then</p> <ul style="list-style-type: none"> Staff recommend Council approve a grant of \$50,000 from the 2018/19 Capital Endowment Fund, managed by the Legal Services Unit, to fund this, on the conditions that: <ul style="list-style-type: none"> The funds are spent solely on the legal fees for approved legal services for the substantive hearing and dispersed solely in payment of invoices as approved by the Legal Services Unit. Final reporting to be submitted 12 months following final instalment or at the conclusion of the project, whichever is sooner.
Organisation Details:	Project Alignment (Please read this in conjunction with the Council report)	Staff Comments	
<p>Name: Aotearoa Water Action</p> <p>Location: Christchurch, c/- Peter Richardson, Linwood Law.</p> <p>Legal Status: Not for profit community group</p> <p>Organisation Description "Aotearoa Water Action is committed to empowering people and communities to take effective action to protect water. Our focus is on legal empowerment: helping people to understand, use and shape statutory plans and resource management law" (from: Facebook page)</p>	<p>Alignment with Council Strategies Does this support a level of service in the LTP, include name of level of service: This supports Activity: Strategic Planning and Policy namely the Level of Service: 17.0.1.7 Advice to Council on high priority policy and planning issues that affect the City.</p> <p>Category of Capital Endowment Fund <ul style="list-style-type: none"> Innovation, Economic and Environmental Category </p> <p>Alignment with Capital Endowment Fund <p><u>Evidence of environmental benefits:</u> ... This will allow Council to contribute to resolving a legal dispute concerning an important community issue that may have ongoing implications. If the legal challenge to the ECan decision making process for these transfers of resource consents is successful, new water bottling activities will not be able to rely on transfers of existing resource consents for the use of water.</p> <p><u>Evidence that the benefits will be for the people of Christchurch:</u> It is not known whether the AWA fund raising is able to raise the funds needed to cover legal fees to continue with its claim. It is understood that this funding will enable it to do so. The activity concerned is within Christchurch City Boundaries.</p> <p><u>Evidence benefits experienced now and into the future:</u>...The legal services to be funded are on a matter of considerable, widespread and immediate community interest and, if the claim is successful, may change the approach to the issue now and into the future until ECan changes its Land and Water Regional Plan.</p> <p>Advantages/ benefits? This will allow Council to contribute to resolving a legal dispute concerning an important community issue that may have ongoing implications.</p> <p>Disadvantages Council may have higher priorities for the fund and some may feel that the provision of legal services to another parties' High Court claim is not sufficiently tangible to constitute a priority use of the fund.</p> <p>Risks Risks concerning supporting the legal costs of the Aotearoa Water Action and the results of this are covered in the Council report prepared by the Legal Services Unit on this issue.</p> <p>A risk that there may be additional ongoing costs is mitigated because this application, and the recommendation proposed that Council makes a fixed contribution to AWA to contribute to their legal costs.</p> </p>	<p>Specialists Consulted Finance – Finance team have been consulted and confirm sufficient funds available in the CEF and that there is no other funding source available. Legal – Legal Services unit have been consulted and have reviewed this matrix and the accompanying report. Community Support Governance and Partnerships Unit have been consulted and have advised on and processed this CEF application</p> <p>Specialist Comments (if applicable) Legally privileged advice is provided in a public excluded agenda item for this Council meeting.</p> <p>Officer Comments The decision considered in this matrix is whether Council should make a grant from a funding scheme via an eligible application. It is distinct from Council's decision on whether Council should contribute to in legal proceedings.</p> <p>Please read the Council report prepared by the Legal Services Unit on this issue.</p>	

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