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## Workshop - Ōtākaro Avon River Corridor Co-governance Establishment Committee

### AGENDA

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#### Notice of Information Session/Workshop:

A Workshop - Ōtākaro Avon River Corridor Co-governance Establishment Committee will be held on:

**Date:** Monday 25 March 2024  
**Time:** 10am  
**Venue:** Committee Room 1, Level 2, Civic Offices, 53 Hereford Street

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#### Membership

Co-Chairs	Lianne Dalziel and Dr Te Maire Tau
Members	Kelly Barber
	Julyan Falloon
	Hayley Guglietta
	Thomas Hildebrand
	Tutehounuku Korako
	Dr John Reid
	Dr Cynthia Roberts
	Tania Wati

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20 March 2024

#### Principal Advisor

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#### Please Note:

**This forum has no decision-making powers and is purely for information sharing.**

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## **1. Apologies Ngā Whakapāha**

At the close of the agenda no apologies had been received.





## 2. Otakaro Avon River Corridor Enduring Governance Recommendation

Reference Te Tohutoro: 24/452213














Presenter(s) Te Kaipāhō: Andrew Rutledge (GM Citizens and Community – Acting)  
Brent Pizzey (Lawyer)

### 1. Detail Te Whakamahuki

<b>Timing</b>	This workshop is expected to last for two hours.
<b>Purpose / Origin of this Workshop</b>	The Committee has previously considered options for its recommendations to Council on an enduring collaborative governance framework for the Ōtākaro Avon River Corridor (OARC). The workshop will discuss the attached draft report to the Committee in which staff make recommendations on the options. Staff will then finalise that report and present it for the Establishment Committee's resolutions at a subsequent Committee meeting.
<b>Confidentiality</b>	The workshop and any shared information not confidential.
<b>Background</b>	<p>The Terms of Reference for the Establishment Committee relevant to collaborative governance advice are:</p> <p><i>Purpose:</i> 2.2 Provide advice on the development of the enduring co-governance entity/framework for the ŌARC.</p> <p><i>Function:</i> 3.4. Provide advice on roles and functions of the co-governance entity and the potential legal structure of the entity. 3.5. Investigate and develop advice on the development of a local bill to establish the entity and provide an enduring legal status for the Corridor within a local Act of Parliament.</p> <p>The Committee has had several workshops and meetings to discuss that advice. The attached draft staff report reflects the staff's current understanding of the outcome of those discussions.</p>
<b>ELT Consideration</b>	The draft report to the Committee has not been considered by ELT however, the Acting General Manager Citizens and Community is an author of the draft report.
<b>Key Issues</b>	<ul style="list-style-type: none"> <li>Whether the Committee seeks further advice or clarification on the recommendations in the draft report before staff present the report to the Establishment Committee.</li> </ul>

<b>Next Steps</b>	<ul style="list-style-type: none"> <li>• Council staff will finalise the report.</li> <li>• Staff will present the report to an Establishment Committee meeting.</li> <li>• The Establishment Committee will then make recommendations to Council.</li> <li>• Council will then decide whether to accept the Establishment Committee's recommendations.</li> </ul>
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## Attachments Ngā Tāpirihanga

No.	Title	Reference	Page
A 	Questions for next OARC workshop	24/461305	7
B 	OARC Collaborative Governance Entity for the Ōtakaro Avon River Corridor Report	24/462338	10
C 	Appendix A OARC Framework	24/143284	26
D 	Appendix B Draft Terms of Reference and Delegated Authority	24/159749	28
E 	Appendix C OARC Regeneration Map	24/461308	31
F 	Appendix D Te Maire Tau memo OARC	24/462191	32
G 	Appendix E Buddle Findlay advice	24/461310	36
H 	Appendix F OARC s33 memo Oct 2023	24/461311	49
I 	Appendix G new s33 memo	24/461313	54
J 	Appendix H Collaborative governance options table	24/461314	58
K 	Appendix I Christopher Finlayson KC advice June 2021	24/462193	64
L 	Appendix J Chrissie Williams discussion paper Oct 2021	24/462244	70
M 	Appendix K OARC Entity Role re Council Functions and Powers	24/461317	80

## Signatories Ngā Kaiwaitohu

<b>Authors</b>	Brent Pizzey - Senior Legal Counsel Andrew Rutledge - Acting General Manager Citizens and Community
<b>Approved By</b>	Andrew Rutledge - Acting General Manager Citizens and Community

## Legal & Democratic Services

*Memo*

*Legal Privilege Applies*

*Not to be distributed without approval from Head of Legal & Democratic Services*

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Date: 19 February 2024  
From: Brent Pizzey (lawyer) and Luke Smeele (advisor)  
To: OARC Establishment Committee members

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### **What are the Committee's OARC questions for staff to respond to in the last workshop on 25 March 2024?**

#### **Purpose of Memo:**

**For Establishment Committee members to ensure that staff address what you want addressed in the next workshop.**

#### **Context**

The OARC Establishment Committee intends to have one more workshop on 25 March 2024, and then have a formal Committee meeting to resolve the Establishment Committee's recommendations to Council.

The Committee wants to be clear to staff about the questions/topics for staff to address at the last workshop. This is the staff record of what the Committee wants addressed. Thanks for your comments on the first draft of this list. If you want any further additions, clarifications, or other questions, please respond by Wednesday.

The Committee consensus at last week's workshop seemed to be that a Council Committee should be established to exercise governance functions in relation to the OARC for a transitional period (which may be different timeframes for different parts of the OARC) and that the enduring entity be established as a Charitable Trust, subject to further discussion of a Trust's function, timing of establishment, risks, liabilities and costs. That's the starting point for the following record of the matters that you want addressed at the last workshop.

#### **Questions/Gaps to be filled**

- (1) Merits of full transfer of Council's RMA powers to iwi under section 33 of the RMA.
- (2) Rectifying information bias – the description of the background of Ngāi Tūāhuriri's historic relationship with the OARC needed to be better articulated. Council staff will work with whoever Te Maire requests to be involved for Ngāi Tūāhuriri in preparing material for the last workshop. Nuk – use the Ngāi Tahu Research Centre.
  - Nuk: Te Ihutai MR 900 would be part of this.
- (3) Committee membership – does the Establishment Committee want to request the Council to appoint the Establishment Committee members to be the members of the new Council Committee – noting that staff will provide additional advice on the option of a smaller committee (which hasn't yet been discussed by the Committee) with more elected members eg the Council representatives being the Mayor, Deputy Mayor and Cllr Barber, and three members appointed by Ngāi Tūāhuriri. Community representatives?
  - What skill base and key relationship resources will it have. This is relevant to funding (Nuk).

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- Nuk: We need to engage with ECan before the workshop as we need to discuss their representation on the new entity.
- (4) More information about a Local Act (more of the benefits identified and how the council/committee could gain cross party support to ensure it was an enduring arrangement. Providing examples would be helpful - local and national.)
- (5) **A Council Committee:**
  - 5.1 More about why staff recommend against transfer of RMA powers and duties;
  - 5.2 Advice on the protections that apply to councillors and that those protections apply to appointed members of a Council committee.
- (6) **Charitable Trust as the Enduring Entity**
  - 6.1 Pros and cons of various Trust structures – why a Charitable Trust instead of another type of Trust?
    - (a) Use Council/community experience with other trusts eg the Rod Donald Trust.
    - (b) How to maintain a charitable structure?
    - (c) How would the charitable trust get funds from Council or other funding opportunities (Hayley)? Future funding streams? (Nuk/Cynthia)
  - 6.2 Pros and cons of a transition from Council Committee to a Charitable Trust:
    - (a) More about the costs as a current constraint
    - (b) The ability for the Trust to get other funding sources? Future funding streams? (Nuk/Cynthia)
  - 6.3 Thomas:
    - Can the land required for the physical infrastructure, stock banks, power infrastructure, storm water infrastructure etc within the OARC be retained under Council ownership?
    - Would this reduce the Trust’s liability and obligations for maintenance and improvements in the future if Council retains the land ownership for the infrastructure?
    - The possible pros and cons of this approach?
  - 6.4 Should RMA powers and duties be transferred to the Trust? Why or why not?
  - 6.5 Risks and liabilities of the Trust/Trustees?
  - 6.6 Timing: Discuss options for the Establishment Committee’s recommendation to Council on timing of when a Charitable Trust should be set up:
    - (a) No Decision yet: ie the Council Committee will later decide whether/when it wants to ask the Council to set up a Trust;
    - (b) Request that there be a Trust and that the timing be at Council’s discretion at some future date depending on development being finished, or some other trigger?
    - (c) Request Council to set up a Trust immediately recognising that the background work will take months, to eventually run in parallel with the Council Committee.
  - 6.7 Expert/professional assistance for the Trust?
  - 6.8 Use Rod Donald Charitable Trust as a case study, and ask Suky Thompson (its former manager) whether she can attend the workshop to describe her experiences? Nuk. Cynthia.
  - 6.9 Ngā Puna Wai Trust - what were the learnings, the pitfalls and the challenges? Julyan suggests David Bailey for CCC could be given 10 minutes at the workshop?

## **7. Draft staff recommendations on resolutions of the Establishment Committee for further discussion**

The Establishment Committee also noted changes they would like to see to the Establishment Committee resolutions currently recommended by staff in the draft staff report to the Committee:

- 7.1 Resolution 3 –change “appropriate governance structure” to “appropriate enduring governance structure”;
- 7.2 Resolution 3(b) - the 25 March workshop will discuss whether to delete “after significantly more

- development has occurred” from the staff recommendation for the Committee’s resolution.
- 7.3 Resolution 4(e) – change/clarify meaning of “within the policy”, and change/clarify the meaning of “does not negatively impact the budget set by the Council”;
  - 7.4 Resolution 6 about when a charitable trust would be established – this draft staff recommendation is to be further discussed at the workshop (item 6.6 above).
  - 7.5 Resolution 7 – this draft staff recommendation will be further discussed at the workshop in conjunction with item (3) – Committee membership - above.

Brent Pizzey  
Lawyer  
Legal Services  
Extension 5550

Item 2

Attachment A

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## 4. Enduring Collaborative Governance Entity for the Ōtākaro Avon River Corridor (Information Report)

Reference / Te Tohutoro: 24/433390

Report of / Te Pou  
Matua: Andrew Rutledge, Acting General Manager Citizens and Community  
Senior Manager /  
Pouwhakarae: Lynn McClelland, Assistant Chief Executive Strategic Policy and Performance

### 1. Purpose and Origin of Report Te Pūtake Pūrongo

- 1.1 Information to enable the Ōtākaro Avon River Corridor Co -Governance Establishment Committee to recommend to Council its preferred governance structure for implementing the Ōtākaro Avon River Corridor Regeneration Plan.
- 1.2 In 2019 Council set up the Establishment Committee (Committee of Council) to evaluate options and make a recommendation to Council for governance of the Ōtākaro Avon River Corridor (OARC).

### 2. Topics addressed

- 2.1 We here focus on the list of questions from the February workshop. Mr Finlayson KC will be present to provide strategic advice. Mr Odlin from Buddle Findlay will be present to summarise his attached advice regarding charitable trusts. Ms Thompson will be present to describe her learnings from the Rod Donald Banks Peninsula Trust.
- 2.2 The working draft staff recommendations to the Committee are at the end of this report, with track changes showing the changes arising from Committee comments at the previous workshop, and further suggestions from staff.
- 2.3 The appendices to this report are mainly the same as the ones that staff proposed in February being attached to their recommendation report to the Committee: the OARC framework and draft Terms of Reference (Appendices A and B) and the advice on collaborative options – the Table of options, and the 2021 advice from Mr Finlayson KC and Ms Williams' Discussion paper. The new appendices are further explained below.
- 2.4 We here address the list of questions from the previous workshop (previously distributed and distributed again with this report).

### 3. Ngāi Tūāhuriri and Te Ihutai Ahu Whenua Trust relationship with the OARC

- 3.1 The staff report to the Committee will contain more detail. The following passage from the OARC Regeneration Plan could be used.

*The river and surrounding land have played many roles in the history of Ōtautahi/Christchurch. Creating a plan for the future starts with understanding these stories of the past.*

*NGĀI TAHU HISTORY The Ōtākaro/Avon River and surrounding area have a long and vibrant cultural history. Ngāi Tahu – and Ngāti Māmoë and Waitaha before them – had permanent and temporary kāinga and pā in the greater Christchurch area. The Ōtākaro/Avon River and Ihutai/Avon Heathcote Estuary are of vital importance to manawhenua, who prized the*

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*abundant food and natural resources that could be harvested from the springs, waterways, wetlands, grasslands and lowland podocarp forests that flourished in this area.*

*Te Rūnanga o Ngāi Tahu is statutorily recognised as the representative tribal body of Ngāi Tahu whānui under the Te Rūnanga o Ngāi Tahu Act 1996. Te Rūnanga o Ngāi Tahu has a responsibility to ensure the well-being of all those who live in its takiwā in accordance with the tikanga of manaakitanga.*

*Te Ngāi Tūāhuriri is identified in the Te Rūnanga o Ngāi Tahu (Declaration of Membership) Order 2001 as the entity with responsibility for resources and protection of tribal interests within the Regeneration Area. Therefore, Ngāi Tūāhuriri is the rūnanga holding manawhenua or authority over the Regeneration Area.*

*Te Ihutai Ahu Whenua Trust is established in accordance with Te Ture Whenua Māori Act 1993 to administer lands covered by the Ngāi Tahu Deed of Settlement, incorporating Ihutai Reserve (MR900), which has a ki uta ki tai relationship with the lands to be governed by the Regeneration Plan.*

*Te Rūnanga o Ngāi Tahu, Te Ngāi Tūāhuriri and Te Ihutai Ahu Whenua Trust have an expectation that those representing Crown interests will honour Te Tiriti o Waitangi (the Treaty) and the principles on which the Treaty is founded, in particular the Treaty principles of rangatiratanga, partnership, active participation in decision-making and active protection.*

- 3.2 Attached as **Appendix C** is a map from the Regeneration Plan that assists in showing the mana whenua use of the area. This can be included in the staff recommendation report to the Committee.
- 3.3 The staff report can also refer to and attach a memo by Dr Te Maire Tau dated March 2021 which was attached to a report to the Council meeting on 9 December 2021. That memo is attached as **Appendix D**. Dr Tau proposed the following principles for governance and ownership of the OARC:
- (i) Community benefit: because of its unique background and its path to Council ownership, the governance and ownership structure should reflect that it is legitimately regarded as a community resource and that “...it is an asset that exists for the sake of itself and for the benefit of the community as a whole rather than any particular organisation or group”.
  - (ii) Objectives, priorities and principles for governance should be clear and enduring: A strong vision in a foundation document or ;legislation is more likely to achieve objectives. Those parameters would have their own legal effect, directing governance decisions. “Governance and development of the Corridor should be for the sake of the area, as determined in its founding principles by mana whenua and the community, not contingent on political pressures or the needs of outside groups”.
  - (iii) Genuine integration between the land and the river environment:  
“The connection between the Ōtākaro Avon river and the Corridor is inextricable, and crucial to meeting the aspirations of the community and mana whenua for the area. Proper development and management of the Corridor should be linked to the river environment and water in the governance and ownership model to prevent regulatory or management misalignment between the land and water through atomised ownership and governance”.

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- (iv) Co-governance with mana whenua must be meaningful, and respect and provide for Ngāi Tahu rangatiratanga over freshwater:  
*"This requires a governance model capable of recognising and aligning with Ngāi Tahu rangatiratanga over freshwater, as well as mana whenua values and practices being reflected in the foundational objectives and priorities in the governance structure (for example providing for best practice in mahinga kai and environmental outcomes in the river environment)".*
  - (v) Accountability:  
Accountability through transparent publicly published accounts is important.
  - (vi) Self-funding (as far as practicable):  
Self-funding helps limit impediments to the execution of the vision that could be caused by reliance on central or local government, which are more responsive to three-yearly political cycles.
- 3.4 Some of Dr Tau's recommended principles are reflected in the "Assessment Framework for projects in the Ōtākaro Avon River Corridor" that the Establishment Committee has previously adopted and which this report recommends that the Council adopt.

#### 4. Further discussion of timing and staging of setting up a charitable trust

- 4.1 For the February workshop we noted the following practical development factors:

*Due to its size, the Ōtākaro Avon River Corridor Regeneration Plan is being delivered as a series of discrete projects, encompassing Parks, Transport and Three Waters components within each project area as relevant. The Bexley estuarine wetland project is a good example of this, which includes:*

- (a) *Three Waters components (long term stopbank and a Stormwater Management Area);*
- (b) *Parks components (walking/cycling path, wetland restoration works, terrestrial planting); and*
- (c) *Transport components (removal of disused roads, possible changes to 'in service' roads).*

*Across each three year Long Term Plan cycle we run multiple coordinated projects in this manner, and over time more and more of the Parks, Three Waters and Transport works in the Corridor will be completed and the land returned to a delta, in line with the aims of the Regeneration Plan and the Ōtākaro Avon River Corridor Framework (**Appendix A**).*

*As substantive portions are completed (the Bexley wetland area for instance), the Council could transfer decision making for ongoing governance and management of the Parks components of areas to a Trust. These would exclude Three Waters and Transport assets, due to the liabilities involved.*

*This transfer could occur either:*

*At Final Completion of each project (the end of the planting maintenance period),  
or*



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*As part of the three yearly LTP cycle, transferred in tranches.*

*Funding of maintenance, levels of service and exact boundaries between the Trust and Council assets would need to be carefully considered if employing this approach.*

- 4.2 The proposed resolutions are based on the governance framework being a two-stage process. The first stage is a council Committee and the second a charitable trust. The issue here is the optimal timing for a Council decision on setting up a charitable trust and for the practical steps of establishing it. The first stage recommended by staff is a Council Committee for which Ngāi Tūāhuriri and the Council have a 50:50 role in appointing members.
- 4.3 Further detailed information about charitable trusts is in the Buddle Findlay letter **attached as Appendix E**.
- 4.4 Council is managing significant challenges in ensuring that the 2024-2024 Long Term Plan has a balanced budget that minimises cost risks to rate payers. Ratepayers may consider that establishing **and funding** at this time a new governance entity is excessive when Council already has the ability to call on shared resources to adequately manage governance of the OARC in the short to medium term.
- 4.5 There are costs in setting up a charitable trust. The setup costs are likely to be manageable within existing (and currently proposed in the LTP) Council budgets. However, funding the activity of the Trust would require community consultation and change to the LTP or entry in an annual plan. Council might be reluctant to do that for a few years.
- 4.6 The options for the timing of setting up a Trust are summarised in the table below (noting also that the Council decision on whether to set up a Trust for the governance of the OARC is likely to require engagement and consultation under the LGA before the Council makes a decision).

Option	Pros	Cons	Advice
<b><i>No Decision yet: ie the Council Committee will later decide whether/when it wants to ask the Council to set up a Trust.</i></b>	Avoids immediate cost and set-up work Is consistent with Trust <i>not yet being suitable</i> .	No influence by the Establishment Committee No certainty that it will be established.	No – the Council ought to be able to make a decision on this now.
<b><i>Recommend that there be a Trust and that the timing be at Council's discretion at some future date depending on there being funding in the LTP</i></b>	As above Increased comfort from a Council resolution now that there will be a Trust.	Still no guarantees that the Council will establish it at a time preferred by the Establishment Committee	This was the staff advice in the draft report to the 12 February workshop
<b><i>Recommend Council to set up a Trust immediately recognising that the background work will take months, to</i></b>	Improved certainty that the Trust will be established. The costs of setting up the Trust, while not yet having a transfer of	Immediate costs and work for establishing the Trust The Trust cannot be active until and unless	If the set-up costs are acceptable, the Establishment Committee could recommend this to the Council.

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<i>eventually run in parallel with the Council Committee.</i>	responsibilities to it, might be acceptable.	there is finding in the LTP	
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## 5. Delegation or transfer of RMA powers

- 5.1 The Establishment Committee sought advice from staff about whether the Council should transfer under section 33 of the RMA its RMA functions, powers and duties to the alternative governance body. **The advice in the memo of October 2023 attached as Appendix F** was that this is possible. However, staff consider that it is complex, and would be duplication with other work by the Council, to establish a governance structure that has responsibility for the District Plan, RMA enforcement, and processing of resource consents.
- 5.2 The Establishment Committee also sought more information from staff about the possibility of using section 33 of the RMA to transfer powers to Ngāi Tūāhuriri. That advice is in **the new memo attached as Appendix G. That advice applies to transfer of powers from either the Christchurch City Council or ECan.**
- 5.3 If the first stage body is a Council Committee, without ECan, then there is no need to involve the complexities of section 33 in order for the Council Committee to exercise RMA powers and functions. It does not require any “transfer” as the decision maker in RMA terms is still the territorial authority – the Council, by delegation to its Committee.
- 5.4 The range of RMA powers that are exercised by the Council are described in **Appendices F and G**. If the key interest of the governance body is in activities and works within the corridor, then decision making related to resource consents and plan changes is what controls that activity.
- 5.5 Many of these will be ECan’s function under the RMA – ECan’s Land and Water Regional Plan, and resource consents for discharge to water. If the Committee was to exercise ECan powers under the RMA, there would need to be either a transfer of the ECan powers to the Council under section 33 of the Act, followed by Council delegation of that to the Committee; or setting up a joint committee with ECan and both councils delegating those functions to that joint committee.
- 5.6 The RMA contains detailed provisions which determine relevant considerations for assessing plan change proposals or resource consent applications. There is a huge body of caselaw from the courts in relation to those provisions. This is a highly technical field.
- 5.7 Councils’ governors are not involved in resource consent decision making, other than sometimes as members on a panel of commissioners that includes technical experts. That is because resource consent decision making requires specialist skills, knowledge and experience. If there is a hearing of a resource consent application the hearing panel members must (unless there are exceptional circumstances) have “accreditation” as a decision maker . If there is not a hearing, Council process is that the decisions on resource consent applications are made by experts with planning/resource management qualifications – either senior planners employed by the Council or planning or legal experts engaged by the Council.
- 5.8 Councils’ governance is always involved in making the district plan, regional plans and regional policy statement which set to objective and policy framework within which resource

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- consent applications must be assessed. The Council decision (by elected members) is on what proposed plan change to notify and then, after a hearing conducted by an Panel of independent experts – usually including an iwi representative or expert in Te Ao Māori - , whether to accept the expert panel’s recommendations on any changes to that plan change.
- 5.9 As for resource consents, this is a technically complex process that relies on hearing submissions and expert evidence and making decisions in accordance with the requirement of the Act and caselaw. Commissions on Hearing Panels hear evidence and submissions. As a matter of natural justice, governance bodies cannot generally just reject the recommendations of a hearing panel, unless the governance body has heard new evidence and/or reestablish a hearings panel.
- 5.10 Delegation or transfer of RMA powers is not required if the Council delegates to the OARC Committee authority to decide as landowner whether it is going to permit activities on its land. That means that even if there is a plan change proposed by the Council for the purposes of changing the Regeneration Development Plan or change the district plan maps that record permitted activity, the activity on the land is not going to change unless the Committee OARC Committee, wearing the Council’s “landowner” hat, authorises it. The same applies to resource consents. A resource consent is an approval under the RMA. It is not a landowner’s approval. The consented activity cannot happen unless the landowner authorises it.
- 5.11 The staff recommendation is that the Council delegates those “landowner approval” functions to the Council OARC Committee but not the authority under the RMA to approve a plan change. There is a process risk in that. The process risk is that the Council accepts expert advice to propose a plan change, it decides on the change, and then the change cannot be implemented because the Council OARC Committee wearing the “landowner” hat does not authorise the activities. The process risk there is of a spilt and dispute between two parts of Council governance – the Council, and the Committee – about what the objectives are for the OARC and how they are going to be achieved.
- 5.12 For the above reasons, council staff consider that:
- (a) It is not feasible for a “first stage” Council OARC committee, or the Trust, to be decision maker on resource consents, enforcement and other technical functions under the RMA;
  - (b) It may be feasible for the Council to delegate authority to the Committee to make decisions on notifying a plan change, and final decisions on the plan change after a hearing of submissions. Council’s experts and consultants would give advice and make recommendations to the Council OARC Committee in the same manner that they do to the Council at present. The Council OARC Committee would be required to make decisions in accordance with the evidence, Act and caselaw, just as is the Council at present.
  - (c) Delegation of the plan change function to the Council OARC Committee is consistent with the delegation of the “landowner approval” function, as it would assist achieving consistency between “landowner approval” decisions and plan change decisions, and would help the Council OARC Committee ensure that it applies RMA rigour to decisions regarding changes to the district plan change and development plan. It would, however, require extensive advice and education for the Committee members about their function, powers and duties for plan changes.
  - (d) If the Council was to delegate the plan change role to the OARC Committee, it is not possible to transfer to a Trust RMA decision making on plan changes. Section 33 does not provide for it. Therefore either the plan change function would returns to the

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Council when the Trust is established – and we have a renewed risk of a Trust performing a “landowner approval” function that is contrary to the Council’s plan change approval objectives – OR the Council retains the Council OARC Committee concurrently with the Trust and the Trustee membership is replicated on the Committee.

- 5.13 The Establish Committee could request Council to further consider the feasibility, merits and costs of delegating that plan change role under the RMA to the first stage Council OARC Committee. We have added a possible draft resolution that effect.

## 6. Recap on Governance Options Considered

- 6.1 For ease of reference we here repeat the information discussed in the February workshop, and add more detail requested by the Committee with regard to charitable trusts and Local Acts. There is further description of these options in the Table in **Appendix H** and discussed in the advice by Mr Christopher Finlayson KC (**Appendix I**) and in the Discussion Paper by Ms Williams (**Appendix J**).

### 6.2 Memorandum of Understanding or Agreement to Co-operate

*Benefits include:* no formal legal changes to each entity ( CCC / Ngāi Tūāhuriri). Flexible to change methods, regularity, formality of co-operation as required. Can be managed by staff or escalated to Governance depending on the issue.

*Disadvantages include:* No delegated decision making authority, Greater risk of misalignment and different positions by each participating party on an issue.

### 6.3 Formation of a new Governance Entity in the form of a Company or Trust

Range of options to design a structure that best suits the parties, including ordinary Trusts, an Incorporated Trust (must be charitable), Ordinary partnership, Limited partnership or a company. **The Buddle Findlay advice regarding charitable trusts is attached as Appendix E.**

Benefits include:

Can be formally established with clear roles, rights and responsibilities.

Range of options to design a structure that best suits the parties

Can change any of the terms by agreement and reasonably promptly, e.g. delegated powers, membership rules, functions, reporting obligations.

Disadvantages include:

Creation of a whole new formal structure to be managed and funded, no funding currently exists. The new entity would be a CCO if CCC has 50% control.

Will have accounting and reporting duties.

Will have additional establishment costs to document and form up.

Parties can influence and control by letter of expectation and appointment of representatives.

Public influence would be contained to a letter of Intent to appointees (trustees)

### 6.4 Local Act of parliament to establish a new governance arrangement

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*Benefits include:* Clear statutory creation of entity, roles and responsibilities incorporated into legislation. Possible considerations in favour of a local act are that:

- (a) It could secure achieving the vision and objectives of the Regeneration Plan: When the Regeneration Plan was finalised the legislation provided that Council decision making must be not inconsistent with the regeneration Plan. That legislation has expired. There is no legislative direction that the councils must implement that plan. A Local Act could secure that.
- (b) If the Local Act requires a particular collaborative governance structure, that structure is better secured than if it is established by Council resolution alone. A charitable trust established by the Council can be disestablished or defunded by Council resolution. A Local Act can require that the structure, delegations, functions and funding remain in place.

*Disadvantages include:* Bound by parliamentary process and priorities, Future changes to the Act would require parliamentary approval and sponsorship from a local Member of Parliament. This can often take considerable time.

- 6.5 The Establishment Committee asked for more information about, and examples of, local acts. Examples of a Local Act:

**Canterbury Museum Trust Board Act 1993**

*An Act to amend the law relating to the Canterbury Museum Trust Board, made necessary by the reform of local government, by altering the constitution of the Board, better defining its functions, and making provision for the continuation of the work of the institution and for the finances and administration of the Board*

*Preamble*

*Whereas the Canterbury Museum is a non-profit-making permanent institution, founded by the people of Canterbury for the service and development of their community: And whereas the Museum acknowledges a particular responsibility for the natural and cultural heritage of the wider Canterbury region: And whereas responsibility for the maintenance and development of the said institution should continue to be widely shared.*

The Act states: Objectives of the museum; governance by a Trust Board; appointment of members to the Board; functions; annual plan requirement; levying, borrowing and reporting.

**Riccarton Racecourse Act 2016**

Repealed the Christchurch Racecourse Reserve Act 1878 and continued a Board of Trustees under that Act. The Board holds reserve land – recreation reserve under the reserves act - on trust for the purposes of racing. It can lease the land for other purposes that are not inconsistent with the racecourse purposes. Any income from the land must be used for the racecourse purposes.

**Masterton DC (Montfort Trimble Foundation) Act 2003**

Establishes the Montfort Trimble Foundation as a body corporate with perpetual succession.

States the objects of the Foundation:

- (a) the production and care of timber for economic purposes:
- (b) the maintenance of forests:
- (c) providing a supply of timber for public wants:
- (d) assisting the Council to establish forests:

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(e) providing for the conservation of native and commercial forests:

(f) amenity and protection planting and their maintenance.

Describes how Board members are appointed and function, meetings, reporting.

Proceeds from the Trimble forest must be used for the Trust purposes.

**New Plymouth DC (Waitara Lands) Act 2018**

The Crown acknowledged the dispossession and the impacts of landlessness to Te Atiawa in 2014, with the settling of Te Atiawa's historical Treaty claims. In the deed of settlement, the Crown apologised to Te Atiawa tūpuna, hapū, and whānau. That settlement was not supported by the Waitara hapū. The Council holds land that was confiscated from the Waitara hapū. This Act:

(a) enables the transfer of land to the Waitara hapū and secures for them and their descendants a foundation for the future, as a rock to endure the relentless tide (kōwhatu e te moana); and

(b) allows lessees to freehold their properties; and

(c) creates an enduring fund for the benefit of the Waitara community, including the Waitara hapū, as well as a fund for river restoration and a fund for land to be acquired by the Waitara hapū.

Fee simple remains vested in the Council. Provisions enable the hapu to buy parts of it. Reserve land is managed by the Council but the hapu's Trust Board can make proposals for the management of it. All income from the land goes to expenses or to various Trusts for the land.

**6.6 Legal Personality for the Ōtākaro Avon River Corridor**

The OARC does not include the river. Other models of "legal personality" for natural resources have attached to the river, not the land. Creation of formal separate legal personality for the OARC with Trustees or the like to govern in the best interests of the OARC. Creating "legal personality" would require legislative change to support this.

*Benefits include*, provides a strong public message regarding the importance of the area.

*Disadvantages include*: As above. An Act of parliament is overall not required for effective co governance of the OARC, particularly in the transformative years of the land and associated public infrastructure installations.

**Committee membership**

- 6.7 There was some discussion about the details of Committee membership at the February workshop.
- 6.8 Foundation documents and advice stress the importance of community participation and engagement.
- 6.9 The OARC Regeneration Plan community objectives are <sup>1</sup>
- *Support safe, strong and healthy communities that are well-connected with each other and with the wider city.*
  - *Provide opportunities for enhanced community participation, recreation and leisure.*

<sup>1</sup> ŌARC Regeneration Plan p24.

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- 6.9 The Regeneration Plan expands on that regarding community participation in governance, as follows<sup>2</sup>:

*Community participation in decision-making:*

*The communities along this eleven-kilometre stretch of the river hold rich local knowledge and it is important to acknowledge that many already provide stewardship of the area. Community participation in decision-making ensures that local knowledge is captured and informs future design and delivery. It gives people a way of contributing to their communities, which is important for well-being. A close connection between the governance structure and communities will be essential to the successful regeneration of the Area.*

- 6.10 Phase 1 of implementing the Regeneration Plan is to “Create the Platform” in the short term. The recommendations of the Establishment Committee on the composition of governance structures is crucial to that. The Regeneration Plan there again stresses the importance of participation of communities<sup>3</sup>:

*The development of the Ōtākaro Avon River Corridor Regeneration Plan is a significant step in the process of regeneration following the destructive earthquakes of September 2010 and February 2011. However, before any major works can begin, the platform for regeneration of the whole Area must be established through a series of key actions. To succeed in this multi-decade project, local and central government, manawhenua, communities and the private sector will need to co-ordinate their efforts. This initial phase will focus on creating a robust platform to provide confidence and certainty that the framework for implementation will deliver maximum benefits as the Area develops.*



*Establishing a governance structure with overarching responsibility for leading regeneration of the Area and overseeing development of the Implementation Plan are vital steps to realising the Vision and Objectives of this Plan....*

<sup>2</sup> ŌARC Regeneration Plan p30.

<sup>3</sup> This, and the graphic, are from ŌARC Regeneration Plan p62.

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*Another important step will be to confirm the ways that the community can participate in decision-making.*<sup>4</sup>

- 6.11 The Crown-Council Global Settlement Agreement<sup>5</sup> reflects that emphasis on community participation in governance:

*The parties agree that a phased approach will be taken to increasing community involvement in land use governance that reflects the current and proposed future residential red zone land ownership as follows:*

...

*ii. Phase 2: A community governance group/entity, with delegated decision-making powers, could be established once the Council owns all or a sufficiently substantive amount of residential red zone land.*<sup>6</sup>

*In Phase 2, the Council will assume decision-making powers in stages, as parcels of land are transferred from LINZ, The Council proposes establishing a community co-governance entity with the appropriate decision-making power to make decisions on the Council's behalf.*<sup>7</sup>

*The Council will be responsible for all costs associated with the establishment and operation of the community governance entity (Phase 2).*<sup>8</sup>

- 6.12 The Council resolutions listed in the first draft staff report to the Establishment Committee (workshop 12 February) also require a "community co-governance entity":

Nov 2020 CNCL/2020/00139: "To establish a permanent community co-governance entity".

Dec 2021 CNCL/2021/00210: "Confirm the intent to establish a co-governance entity to govern the Ōtākaro Avon River Corridor comprising equal representation by Ngāi Tūāhuriri and Christchurch City Council, noting the Council appointees would be drawn from the Council and the wider community".

- 6.13 The 2021 advice of Mr Finlayson KC (**Appendix I**) is:

<sup>4</sup> P65.

<sup>5</sup> September 2019, redacted version released under the Official Information Act.

<sup>6</sup> Page 16.

<sup>7</sup> Page 17.

<sup>8</sup> Page 17.



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*Who should serve on the co-governance body?*

10. This is a question for careful consideration, given the range of community interests involved. The usual model for co-governance bodies has become a 50/50 split between Council and iwi-appointed representatives.
  11. The Council-appointed half of the body will usually consist of elected councillors, but provision can be made for the appointment of other people. I am unsure about whether you would want or need to include a representative from Environment Canterbury.
  12. There is also room for the nomination of representatives by third parties, for example the Avon-Ōtākaro Network.
  13. The precise make-up of the board will be a question for you to consider, but could look something along the following lines:
    - a) 4 appointees nominated by Ngāi Tūāhuriri;
    - b) 4 appointees nominated by the Christchurch City Council, including 1 appointee nominated by the Christchurch City Council after consultation with the Avon-Ōtākaro Network.
- 6.14 Ms Williams' discussion paper advice to the Establishment Committee (**Appendix J**) said:  
*Collating the lessons and insights from these publications and the 2019 symposium, a governance entity would need to demonstrate:... An entity with members appointed by the Council and mana whenua, including some members from the communities neighbouring the OARC.*<sup>9</sup>
- The entity should include members to have a balance of skills, knowledge and leadership capabilities<sup>10</sup>
  - Members would be selected and appointed through defined, transparent and independent processes<sup>11</sup>
  - The successful implementation of the Regeneration Plan is dependent on continued community ownership and advocacy for the Vision and Objectives of the Regeneration Plan, requiring on-going effective community engagement and collaboration.<sup>12</sup>
  - The views of the community could be provided by having members appointed to the entity and strengthened through a community advisory panel, or similar.<sup>13</sup>
- 6.15 Ms Williams' suggestion for the makeup of a Trust Board might be equally useful for a Committee: has about 8 members selected for their relevant skill sets, half appointed by Council and half by Ngāi Tūāhuriri. The appointees need not be members of the Council or of Te Runanga o Ngāi Tūāhuriri. It would be important to have some members who have strong links to the communities from the OARC.<sup>14</sup>

<sup>9</sup> Page 5 of the Discussion Paper.

<sup>10</sup> Page 6.

<sup>11</sup> Page 6.

<sup>12</sup> Page 7.

<sup>13</sup> Page 7.

<sup>14</sup> Page 8.

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- 6.16 Applying all of the above, staff recommend that the Establishment Committee leave it to the Council and Ngāi Tūāhuriri to decide between them the appropriate makeup of the collaborative governance committee or Board of Trustees, while noting the benefits of having appointees with close ties to the local communities.

**ECan participation**

- 6.17 The Establishment Committee Chairs have not had the opportunity to discuss the Establishment Committee work with ECan.

**Indemnity for Committee members and trustees**

- 6.18 The Establishment Committee asked for more information about indemnities and liabilities.
- 6.19 The LGA 2002 provides that committee members are indemnified if they are acting in good faith<sup>15</sup>.
- 43 *Certain members indemnified*
- (1) *A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the Local Electoral Act 2001 or appointed by the local authority, for—*
- (a) *costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and*
- (b) *costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member*
- 6.20 Similar principles apply for trustees on a charitable trust. This is explained in the Buddle Findlay letter attached as **Appendix E**.

**7 Functions for the Council to delegate to the Committee**

- 7.1 The February workshop had some discussion and questions about what role the OARC governance entity would have in relation to infrastructure provision. This was summarised in the draft Terms of Reference and delegated functions in **Appendix B**.
- 7.2 This is an important discussion. That possible role was discussed above in relation to RMA powers. We further set it out in the table attached as **Appendix K**. We propose to discuss that in detail at the workshop.

<sup>15</sup> There is a limited exception in sections 44-46 of the LGA. The exception is if the Auditor-General reports that local authority money has been unlawfully spent, an asset unlawfully sold, a liability unlawfully incurred or a negligent or intentional failure to collect money that is owed to the local authority.

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**8 Draft amended officer recommendations**

We here set out the draft staff recommendations for the Committee resolutions that the Committee considered in the February workshop, with track changes showing the changes requested in that workshop and further staff suggestions.

That the Ōtākaro Avon River Corridor Co-governance Establishment Committee:

1. Acknowledges that the regeneration programme for the Ōtākaro Avon River Corridor (OARC) is a 30-year programme.
1. Recommends that Council adopt the Ōtākaro Avon River Corridor framework collaboratively developed by the establishment committee members, attached as Attachment A, as the basis for all decisions impacting the corridor as detailed within this report.
2. Recommends that Council takes a two-stage approach to appropriate **enduring governance** structure:
  - (a) first, establishes a Committee to govern the implementation of some aspects of the Ōtākaro Avon River Corridor Regeneration Plan and some activities set out within Council's Ōtākaro Avon River Activity Plan with the Terms of Reference and delegations in Resolution 4 below; and
  - (b) secondly, **after significantly more development has occurred, establish an enduring** entity as a charitable trust for the governance of the OARC at an appropriate time.
3. Recommends to Council that the Terms of Reference and delegated authority for the Committee be that set out in Attachment B. The delegated powers are:
  - (a) The Council delegates to the NAME Committee the following authority in relation to decisions concerning the use of land within the Ōtākaro Avon River Corridor (OARC), noting that all decisions should align with the OARC Assessment Framework and Regeneration Plan and be consistent with the Council's obligations under the global stormwater discharge consent:
  - (b) Full decision-making powers of Council except for the following:
    1. Permanent disposal of any land within the OARC.
    2. To decide whether some or all of the land in the OARC be a strategic asset.
    3. The powers and duties of the Council under the Resource Management Act 1991.
  - (c) The powers of the Council under the Reserves Act 1977 and section 138(2) of the Local Government Act 2002, except the exclusions noted above and/or where limitations are specified with the Act.
  - (d) The powers of the Council under the Christchurch City Council Parks and Reserves Bylaw 2016 and the Christchurch City Council Marine, River, and Lake Facilities Bylaw 2017 except the where limitations are specified with the Bylaw.
  - (e) Authority to provide landowner approval for **any significant changes to the new OARC development Development plans Plan in Appendix 13.14.6.1 of the District Plan provided the design is within the policy and does not negatively impact it is within the budget set by the Council.**

**Commented [BP2]:** Change requested in February workshop.

**Commented [BP3]:** Establish Committee intend to discuss whether they agree with this part of the staff recommended resolution.

**Commented [PB4]:** References to "within policy" aren't needed in relation to landowner approval. Separate RMA decision making for resource consents or change to the Development Plan in the District Plan will determine whether the changes are in accordance with policy.

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- (f) Authority to provide landowner approval for any new third-party development plans, provided the initiative is within ~~policy and does not negatively impact~~ the budget set by the Council.
- (g) Authority to grant leases, licenses, and access authorities for use of the OARC, where not otherwise covered by existing staff delegations.
- (h) Authority to resolve that any land owned by Christchurch City Council within the OARC be a reserve subject to any conditions specified in the resolution, to be held for any of the purposes specified in sections 17 to 23 of the Reserves Act 1977.
4. 5. ~~Recommends that the Council considers delegating to the Council Committee the function of notifying and deciding on plan changes that are specific to the OARC area.~~
5. ~~Recommends that the Council Committee membership be three members appointed by Ngāi Tūāhuriri and three members appointed by the Council to ensure collaborative decision making with mana whenua, noting the LGA 2002 Schedule 7, clause 31(4)(a) requires that at least one member be an elected Councillor.~~
6. ~~Recommends that Council further consider the establishment of a charitable trust for the ongoing management of developed areas of the OARC in several years, after development has progressed, in alignment with Long Term Plan deliberations, to enable full consideration of the financial requirements associated to development of the Trust.~~
7. Recommends that the Council dissolve the Establishment Committee when the Council Committee is operating.

Commented [PB5]: Staff recommend adding this resolution

Commented [PB6]: To be further discussed.

Commented [PB7]: Timing of setup of charitable trust to be further discussed

In addition to the attached documents, the following background information is available:

Document Name – Location / File Link

Not applicable

Confirmation of Statutory Compliance Te Whakatūtutanga ā-Ture

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

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(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 Ngā Kaiwaitohu

Authors	Brent Pizzey - Senior Legal Counsel Andrew Rutledge - Acting General Manager Citizens and Community
Approved By	Andrew Rutledge - Acting General Manager Citizens and Community

[Residential Red Zone]

# Memo

Date: 11 September 2023

## Assessment Framework for projects in the Ōtākaro Avon River Corridor.

This Assessment Framework provides a template for members of the Ōtākaro Avon River Corridor Co-governance Establishment Committee to evaluate projects and proposals in alignment with the Regeneration Plan's intent. Applicants are to consider the requirements below, and carry out a self-assessment as part of their project planning.

### Underpinning statement

The Committee recognise that the Ōtākaro Avon River Corridor is a natural, dynamic river delta, which was traditionally used as a space for gathering and practicing mahinga kai. Its value as a resource gathering area is reflected in the name of the wider landscape Ka Whata Kai a Te Rakihouia (The Food Storehouse of Rakihouia). These underpinning aspects help us to understand the landscape, and give guidance for the future.

### Weighting and gateways

Due to the scope of each project, it may not be possible to meet all of the requirements in the Framework table overleaf, however each matter should be addressed, and an explanation be put forward for any that are not achievable.

The Framework has three 'gateways', however there is no ranking within these categories, beyond the categories themselves. Gateway one aspects are the most important, then gateway two and so on.

Most weight is put on 'biophysical' aspects, as these respond to environmental factors that are generally out of our control. Ecological restoration aspects are prioritised next, which relate to the ability for the area to function as a mahinga kai resource. Cultural and community factors follow, and these should be assessed with respect to their fit within the earlier biophysical and ecological parameters.

## Assessment Framework table

### The Rebuilding of Ka Whata Kai a Te Rakihouia (The Food Storehouse of Rakihouia)

Item	Gateway One: Biophysical factors
a.	How does the project take an intergenerational view into account, including the long-term impacts of climate change?
b.	How does the project avoid risk to life, property and the built environment?

Item	Gateway Two: Ecological factors
c.	How does the project enhance peoples' capacity to engage in mahinga kai practices?
d.	How does the project contribute to, or enhance, the regeneration and reconstruction of the ecosystems as an interconnected mosaic in a way that represents the former delta?

Item	Gateway Three: Cultural and Community factors
e.	How does the project enhance the connections that generations of communities hold to the area?
f.	How does the project test or provide innovative ideas or ways of living that may be transferred beyond the OARC, particularly relating to life on a floodplain?
g.	How do they support our local economy, either by attracting domestic and international visitors or by encouraging local manufacturing and innovation.
h.	How does the project support the growth of healthy communities, and encourage participation in recreation, leisure and learning?

## **[NAME] Committee - Terms of Reference / Ngā Ārahina Mahinga**

<b>Chair</b>	To be elected from within the Committee.
<b>Deputy Chair</b>	To be elected from within the Committee.
<b>Membership</b>	Three members to be appointed by Ngāi Tūāhuriri and three members appointed by the Council.
<b>Quorum</b>	Half of the members of the Committee.
<b>Meeting Cycle</b>	Quarterly (4 per calendar year).
<b>Reports To</b>	Council.

### **Purpose**

The purpose of the Committee is to provide strategic direction for the integrated development and implementation of the Ōtākaro Avon River Corridor Regeneration Plan and Council's Otakaro Avon River Corridor (ŌARC) Activity Plan, and implement the Council's global stormwater discharge consent, with reference to the Mahaanui Iwi Management Plan; the Christchurch District Plan; and other national, regional and Council policies and strategies.

### **Delegations**

The Council delegates to the NAME Committee the following authority in relation to decisions concerning the use of land within the Otakaro Avon River Corridor (ŌARC), noting that all decisions should align with the OARC Assessment Framework and Regeneration Plan and be consistent with the Council's obligations under the global stormwater discharge consent:

- Full decision-making powers of Council except for the following:
  - Permanent disposal of any land within the OARC.
  - To decide whether some or all of the land in the OARC be a strategic asset.
  - The powers and duties of the Council under the Resource Management Act 1991.
- The powers of the Council under the Reserves Act 1977 and section 138(2) of the Local Government Act 2002, except the exclusions noted above and/or where limitations are specified with the Act.
- The powers of the Council under the Christchurch City Council Parks and Reserves Bylaw 2016 and the Christchurch City Council Marine, River, and Lake Facilities Bylaw 2017 except the where limitations are specified with the Bylaw.
- Authority to provide landowner approval for any new development plans provided the design is within the policy and does not negatively impact the budget set by the Council.



- Authority to provide landowner approval for any new third-party development plans, provided the initiative is within policy and does not negatively impact the budget set by the Council.
- Authority to grant leases, licenses, and access authorities for use of the OARC, where not otherwise covered by existing staff delegations.
- Authority to resolve that any land owned by Christchurch City Council within the OARC be a reserve subject to any conditions specified in the resolution, to be held for any of the purposes specified in sections 17 to 23 of the Reserves Act 1977.

### **Recommendations to the Council**

The NAME Committee will have the ability to make recommendations to the Council on the following matters in relation to the use of land within the Otakaro Avon River Corridor (OARC):

- Any proposal that some or all of the land be recognised as a strategic asset.
- Requests to the Council's Chief Executive to investigate the merits of, and make a recommendation to Council on, a change to the District Plan for part or all of the OARC.
- To exchange publicly owned land within the OARC for any privately owned land within the OARC.

### **Functions**

The NAME Committee will hold the following functions in relation to the Otakaro Avon River Corridor (OARC)

#### *Engagement and consultation*

- Identify and understand stakeholder interests to be able to direct engagement for specific decisions.
- Establish and maintain effective dialogue and relationships with stakeholders to support the role of the Committee.
- Ensure appropriate engagement and consultation has occurred with communities and organisations.
- Provide information and report to the public using methods such as reports and meetings.

#### *Monitoring performance and reporting*

- Receive regular performance reports on the Activity Plan.
- Monitor the implementation of the Activity Plan including delivery of its Levels of Service.

- Consider and advise on conflicts and risks to achieving the Activity Plan.
- Report to Council annually, or more frequently if required.

### **Meetings and Membership**

- Committee membership will be three members appointed by Ngāi Tūāhuriri and three members appointed by the Council.
- The Committee will work to achieve consensus wherever possible, and work in a collaborative and cooperative manner taking into account the interests of all sectors of the community.
- A Chairperson shall be elected from with the Committee membership and that person shall have a casting vote to enable effective decision making should the need arise.
- The Committee will operate in accordance with the requirements of the Local Government Official Information and Meetings Act 1987.
- All meetings will be advertised, and an agenda published.
- The Committee will meet on a quarterly basis.
- Members will contribute their knowledge and perspective but not promote the views or positions of any particular interest or stakeholder group.
- The Committee may receive presentations by invitation or agreement of the Chair.

### **Committee remuneration**

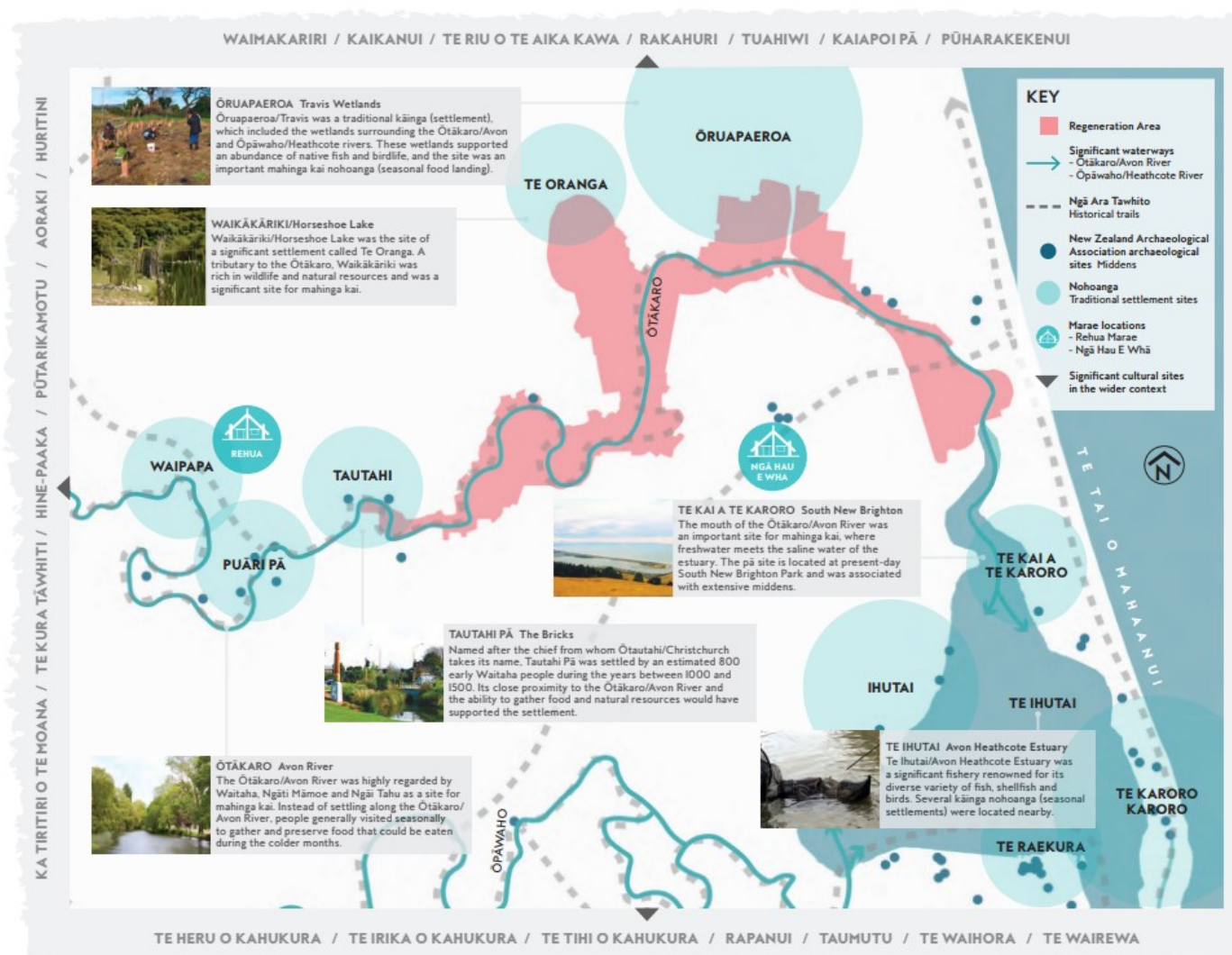
- Remuneration for chairs and members will be set annually.
- The participation of an elected member in the Committee is part of their remunerated role as a councillor or Mayor.

### **Support for the Committee**

The Council and Te Rūnanga o Ngāi Tūāhuriri will provide support to the Committee including:

- An advisor from the Council and an advisor from Ngāi Tūāhuriri as Principal Advisors.
- The Council will provide secretarial administrative and procedural support to the Committee.
- Relevant staff from across the Council will provide advice to the Committee.

## MANAWHENUA HISTORY



Council  
09 December 2021

Christchurch  
City Council 

## Memo: Moving forward on the Ōtākaro Avon River Corridor Principles for progress

From: Dr. Te Maire Tau  
To: Her Worship Hon. Lianne Dalziel  
26 March 2021

### Introduction & scope

1. This document follows on from our meeting late last year to discuss possibilities for the future ownership and governance of the Ōtākaro Avon River Corridor ("the Corridor"). The unique history of this land represents an extraordinary opportunity to create a lasting and one of a kind legacy that is an enduring gift for all the people of Christchurch-Ōtautahi.
2. My intention is to set out, based on our discussion, the Regeneration Plan for the area and work done by the Avon-Ōtākaro Network and other community representatives, principles for the future ownership and governance structure for the Corridor.
3. The full and enumerated principles for the management, development, regeneration and care of the Corridor are beyond the scope of this memo and must be carefully worked through in detail. However, broad fundamental principles are referred to where these would necessarily (or ideally) be incorporated into the structure of the governance.

### Background

4. Under the terms of the 2019 Global Settlement Agreement between the Crown and Christchurch City Council, ownership of residential red zoned land, including the Ōtākaro Avon River Corridor, is progressively passing to the Council as (re)configuration of land titles is completed. The unique circumstances by which this area came to be vacated and in Council ownership has created a significant sense of the land as a "community asset". As a result, there is a strong expectation that the Ōtākaro Avon River Corridor will not retain the status of a simple Council asset.
5. The symposium in 2019 looked at research conducted into a number of governance models for community assets and/or natural resources, and found successful models often had a mix of the following characteristics:
  - a strong vision that is specified clearly in bespoke legislation or a Trust Deed.
  - co-governance with mana whenua, a proven and essential model in the post-Treaty settlement era.
  - members selected with a diverse range of skills and experience rather than based on representation, with a defined and transparent process for appointment.
  - Sustained support from local or central government independent of changing political priorities.
  - Accountability and responsiveness to the community and council.
  - A balance between broader environmental and social goals.
  - Innovative funding approaches, often at arm's length from central and local government.

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09 December 2021

Christchurch  
City Council 

6. A number of these features are complementary: independence from local and central government would best be achieved by making the Corridor area self-funding. Some of these features may initially seem in tension with each other – for example, accountability and responsiveness to the community and council, and sustained support independent of changing political priorities.
7. However, seemingly conflicting principles can be reconciled by other features: for example, ensuring that accountability and responsiveness to community values is enshrined in the governing documents or legislation.

#### Principles for governance and ownership

8. I propose the following principles for governance and ownership.

- (i) **Community benefit**  
Because of the unique background of the Ōtākaro Avon River Corridor and its path to current Council ownership, the area is legitimately regarded as a community resource, distinct from an asset of local government (despite the legal ownership and status). The future ownership and governance structure should reflect that its ownership status reflects that it is an asset that exists for the sake of itself and for the benefit of the community as a whole, rather than any particular organisation or group.
- (ii) **Objectives, priorities and principles for governance should be clear and enduring**  
A strong vision in a foundation document or legislation is more likely to achieve objectives. This means setting out the principles for the governance, management and development of the Corridor as parameters with their own legal effect, to direct the representatives of the day. Governance and development of the Corridor should be for the sake of the area, as determined in its founding principles by mana whenua and the community, not contingent on political pressures or the needs of outside groups.
- (iii) **Genuine integration between the land and the river environment**  
The connection between the Ōtākaro Avon river and the Corridor is inextricable, and crucial to meeting the aspirations of the community and mana whenua for the area. Proper development and management of the Corridor should be linked to the river environment and water in the governance and ownership model to prevent regulatory or management misalignment between the land and water through atomised ownership and governance.
- (iv) **Co-governance with mana whenua must be meaningful, and respect and provide for Ngāi Tahu rangatiratanga over freshwater**  
Co-governance arrangements with Ngāi Tūāhuriri Ngāi Tahu must be given meaningful effect. This requires a governance model capable of recognising and aligning with Ngāi Tahu rangatiratanga over freshwater, as well as mana whenua values and practices being reflected in the foundational objectives and priorities in the governance structure (for example, providing for best practice in mahinga kai and environmental outcomes in the river environment).
- (v) **Accountability**  
Accountability through transparent publicly published accounts is important. Responsiveness to the community should be given effect through the principles enshrined in the governance structure and document to ensure no future capture or dilution of those principles.

Council  
09 December 2021

Christchurch  
City Council 

(vi) *Self-funding (as far as practicable)*

The Corridor should be self-funding, in order to limit any impediments to the execution of the vision that could be caused by reliance on central or local government, which are more responsive to three-yearly political cycles. This would likely mean the ability to sell, borrow against, charge concessions for, and potentially buy (contiguous) land to realise the vision in a fiscally, environmentally and socially sustainable way.

**Conclusion and next steps**

9. The Ōtākaro Avon River Corridor represents an extraordinary opportunity for the city and the region. The ownership and governance structure should be designed to reflect its unique history and place within the city and the community.
10. I propose that the Council contract Christopher Finlayson QC to meet with us and to provide some advice on options on co-governance for the Ōtākaro Avon River Corridor. As you will be aware, Chris has considerable expertise in models of co-governance, and is well-placed to advise on a model that recognises the relationship Ngāi Tūāhuriri holds with the Ōtākaro and the responsibilities of the Council to the city.



## BUDDLE FINDLAY

20 March 2024

**To**

Brent Pizzey  
Christchurch City Council  
PO Box 73015  
Christchurch 8154

**From**

Samantha McArthur  
Mark Odlin

**By Email**

Brent.Pizzey@ccc.govt.nz

Dear Brent

**Ōtākaro Avon River Corridor (ŌARC) - Establishment of Enduring Collaborative Governance Entity**

1. Thank you for your instructions in relation to the trust questions raised by the OARC Establishment Committee for their workshop on 25 March. We have endeavoured to capture the Committee's questions regarding trusts in the **attached** scope.

**Context**

2. This advice is given in the context of the terms of reference of the Ōtākaro Avon River Corridor Co-Governance Establishment Committee (**Establishment Committee**) and the draft staff report to the Establishment Committee headed *Enduring Collaborative Governance Entity for the Ōtākaro Avon River Corridor (Draft Report)* which the Establishment Committee considered at its workshop on 12 February:
  - (a) Under the terms of reference for the Establishment Committee the purposes of the Establishment Committee include:

*Provide advice on the development of the Enduring Co-Governance Entity/Framework for the ŌARC.*
  - (b) The Draft Report includes the recommendation that:

*...Council takes a two-stage approach to appropriate governance structure:*

    - (a) *first, establish a committee to govern the implementation of some aspects of the Ōtākaro Avon River Corridor Regeneration Plan and some activities set out in Council's Ōtākaro Avon River Activity Plan with the Terms of Reference and Delegations in Resolution 4 below; and*
    - (b) *secondly, after significantly more development has occurred, establish an enduring entity as a charitable trust for the governance of the ŌARC at an appropriate time.*
3. This advice focusses on the establishment of the enduring entity contemplated by the terms of reference for the Establishment Committee and the Draft Report. In this regard we note that:



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- (a) The preponderance of the material we have reviewed has focussed on *governance* functions rather than necessarily ownership or other functions of operating the ŌARC.
- (b) While the terms of reference for the Establishment Committee referred to an *enduring co-governance entity/framework*, the main focus of the parties appears to have been on the establishment of an entity as a vehicle for governance as opposed to governance arrangements which do not involve the formation of an entity such as an unincorporated governance committee.
- (c) The draft staff recommendation considered at the workshop on 12 February contemplated establishment of an enduring governance/ownership entity as the *second stage* following the completion of a number of other tasks by the Establishment Committee or a successor committee and the Council itself. We gather from the draft staff report and the comments made by Council staff that there are a number of steps which need to be taken to develop infrastructure within the ŌARC including:
  - (i) significant capital expenditure on infrastructure; and
  - (ii) consolidation of any such infrastructure into the Council's existing infrastructure network.

**Appropriateness of incorporated charitable trust structure in context of Chris Finlayson KC advice**

- 4. Mr Finlayson identifies a number of co-governance models noting that at the "strong end" of the co-governance spectrum were arrangements like the Whanganui River and Tūhoe settlements which used the concept of legal personality applying to the underlying natural feature backed by unique governance arrangements. A charitable trust is different from this model because the separate legal personality is for the charitable trust itself as opposed to a natural feature – the land in the corridor.
- 5. An incorporated charitable trust is simpler to set up because it would be an "off the shelf" enduring entity rather than an entity created by statute such as the Waikato River Authority.
- 6. An incorporated charitable trust would, however:
  - (a) have more independence and autonomy than the other examples identified in Mr Finlayson's advice such as the Hawkes Bay Regional Planning Committee, Kaituna River Authority and Rangitīkei River Authority where Councils and iwi jointly administer significant rivers using a committee structure; and
  - (b) be a stronger co-governance measure than the advisory board structure referenced in Mr Finlayson's letter in the context of the Manawātū River Advisory Board (which can only offer advice to the relevant local authorities).
- 7. As Mr Finlayson notes, the key consideration will be how the enduring collaborative governance entity is:

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*... tailored to fit the Christchurch context, including the Council's relationship with Ngāi Tahu and Ngāi Tūāhuriri and the interests of third party groups and the general public in the Ōtākaro Avon River Corridor.*

8. While a number of the following features are not exclusive to charitable trusts, we think that this type of entity will provide significant (and appropriate) flexibility for the required *tailoring*:
- (a) The charitable trust deed can address the key matters mentioned in Mr Finlayson's letter including:
    - (i) a clear and enduring statement of the trust's purpose;
    - (ii) the membership of the trust;
    - (iii) arrangements for appointment of a chair or chairs; and
    - (iv) voting requirements (such as a requirement that decisions be reached by consensus and, only if that fails, a 75% rather than a 50% vote).
  - (b) Consistent with Mr Finlayson's advice, it would also be possible for:
    - (i) the Council and other relevant bodies, such as Ngāi Tahu, Ngāi Tūāhuriri, central government and third party groups with an interest in the ŌARC, to delegate decision-making power to the charitable trust;
    - (ii) legislation to empower the charitable trust; and
    - (iii) the charitable trust to be appointed as an *administering body* to control or manage the ŌARC under the Reserves Act 1977<sup>1</sup>.

**Choice of Charitable Trust as preferred type of independent entity**

9. As set out in the Christopher Finlayson KC and other advice to the Establishment Committee, there is a spectrum of options available to implement the desired collaborative governance outcome including:

*Unincorporated arrangements*

- (a) a simple memorandum of understanding or agreement between stakeholders to co-operate;
- (b) an unincorporated joint governance body formed between the key stakeholders;
- (c) an unincorporated structure (which could still be considered a council organisation or *entity* within the meaning of the Local Government Act 2002 (**LGA**)) including a:
  - (i) trust; or
  - (ii) partnership;

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<sup>1</sup> See generally Reserves Act 1977 and particularly sections 2(1) (definition of *administering body*) and 40 (functions of administering body).

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*Incorporated entities*

- (d) a separate legal entity incorporated under existing legislation or a local Act of Parliament such as:
    - (i) a charitable trust incorporated under the Charitable Trusts Act 1957 (CTA);
    - (ii) a company incorporated under the Companies Act 1993;
    - (iii) a limited partnership formed under the Limited Partnerships Act 2008;
    - (iv) an incorporated society<sup>2</sup> under the Incorporated Societies Act 2022; or
    - (v) another form of corporation formed under a local Act of Parliament or another statute;
  - (e) separate legal personality for the ŌARC itself (which would require an Act of Parliament).
10. As noted in the previous advice, all of the options on the spectrum are potentially suitable but all also bring different advantages and disadvantages in the context of the ŌARC. The favoured model to date appears to be a charitable trust incorporated under the CTA. We agree that this type of entity has a number of things to recommend it as a collaborative governance vehicle and possible holder of property, decision making powers (such as under the Reserves Act) and other rights (such as making decisions for the Council as landowner).

*Purpose*

- (a) Unlike an incorporated society, company or limited partnership, the incorporated charitable trust structure is expressly reserved for purposes which are *exclusively or principally* charitable in nature.<sup>3</sup>
- (b) While the definition of *charitable purpose* in the CTA refers to broadly the same body of common law as the definition of the same term in the Charities Act 2005:
  - (i) in practice, there is considerably less rigour applied in determining whether a trust seeking incorporation as a charitable trust is for a charitable purpose than when an entity is seeking registration under the Charities Act 2005; and
  - (ii) perhaps for this reason, there are a number of incorporated charitable trusts which are not registered charities (either because their applications for registration as a charity have been declined by Charities Services<sup>4</sup> or because they have not elected to seek registration).

<sup>2</sup> This option does not appear to be included in the advice. It is probably not suitable in this context but no less so than a company or limited partnership.

<sup>3</sup> Under section 7(1) of the Charitable Trusts Act 1957:

*The trustees of any trust which is exclusively or principally for charitable purposes my apply to the Registrar in accordance with this part for the incorporation of the trustees as a board under this part.*

<sup>4</sup> Ngā Ratonga Kaupapa Atawhai - part of the Department of Internal Affairs, Te Tari Taiwhenua.

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- (c) As we understand the briefing information, any enduring collaborative governance entity for the ŌARC is likely to have charitable purposes under the less rigorously applied terms of the CTA in that:

- (i) there will be no provision for private pecuniary gain for associated stakeholders; and
- (ii) the entity's purposes are likely to come within one or more of the recognised four heads of charity in New Zealand (most likely relating to an *other matter beneficial to the community* if nothing else).

Use of a charitable trust would seem to be broadly in line with this profile.

*Separate legal personality*

- (d) An incorporated charitable trust is a separate legal person from its:
- (i) trustees and officers; and
  - (ii) the individuals or bodies that set it up (settlers) and other *stakeholders* such as entities which:
    - (1) hold the right to appoint trustees and officers; and/or
    - (2) may have an interest in the achievement of the charitable objects or other activities of the charitable trust.
- (e) In this regard, an incorporated charitable trust:
- (i) is similar to a company, incorporated society or limited partnership which all have separate legal personality;
  - (ii) can be distinguished from:
    - (1) a group of persons;
    - (2) a trust which has not been incorporated under the CTA; or
    - (3) a partnership,which are all unincorporated and therefore do not have separate legal personality from their members or trustees; and
  - (iii) is separate from and not directly controlled by its stakeholders.
- (f) Separate legal personality generally limits the liability of those persons and stakeholders associated with an incorporated charitable trust. Absent a breach of duty, these associates will not be personally liable for the acts, omissions or debts and other liabilities of the incorporated charitable trust. Applicable duties are discussed from paragraph 5(h) below.

*Suitability as collaborative governance vehicle and right holder*

- (g) Having:
- (i) separate legal status and a number of the rights and responsibilities of a natural person; and

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- (ii) perpetual succession (meaning the charitable trust will continue to exist despite any changes in persons associated with it, such as the removal, resignation or appointment of trustees),

an incorporated charitable trust is also an appropriate entity to hold property, employ employees, be a party to court proceedings and hold and exercise other legal rights commonly enjoyed by other legal persons.

*Trustees' duties*

- (h) Importantly, the trustees of an incorporated charitable trust are under a duty to ensure that the charitable trust pursues its charitable objects as recorded in its charitable trust deed. This duty can be enforced in the High Court under section 60 of the CTA on application by the Attorney-General or a member of the public. The existence of this duty and potential remedy will be of obvious comfort to a settlor of a charitable trust.
- (i) The very limited New Zealand case law we can find on claims against trustees of charitable trusts suggests that they are not subject to fiduciary duties in the same nature as company directors (meaning that trustees of a charitable trust are not necessarily held to the same duties codified in sections 131 to 137 of the Companies Act 1993) and affected parties' sole remedy is under section 60 of the CTA.<sup>5</sup> However, we suspect that a court would also consider that (at the very least) a trustee of a charitable trust is under duties to act in good faith and for a proper purpose.

*Autonomy*

- (j) Unlike a Council committee, a charitable trust is not a subordinate decision-making body. As noted above, its officers and trustees are under a duty to pursue the charitable objects and otherwise act in good faith and for a proper purpose. This contrasts with the position for Council committees set out in clause 30(3) of Schedule 7 of the LGA which provides that:

*A committee or other subordinate decision-making body is subject in all things to the control of the local authority, and must carry out all general and special directions of the local authority given in relation to the committee or other body or the affairs of the committee or other body.*

- (k) Even if one half or more its trustees are appointed by the Council (and it is therefore a council-controlled organisation within the meaning of the LGA – see discussion in paragraph 11(b) below):
  - (i) a charitable trust is not subject to the same degree of control from the Council as a council committee would be subject to; and
  - (ii) neither the charitable trust nor its trustees would have obligations (over and above general governance obligations and charitable objects) to carry out general and special directions of the Council.

<sup>5</sup> *Fagerlund v Saunders & Ors* HC (CP 203/97).

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### *Vehicle for funding*

- (l) As a separate legal person, a charitable trust:
  - (i) can be funded by debt or absolute grant (noting that the trustees would normally only agree to the former if they considered that the charitable trust would at some stage be in a position to repay the same); and
  - (ii) may be more likely to attract third party grant funding and donations than the Council itself (particularly if it is registered as a charity under the Charities Act 2005 which would mean that donations were potentially tax deductible).

### **Requirements for the establishment of a charitable trust**

11. The establishment of a charitable trust would be a reasonably straightforward process:

#### *Preliminary steps*

- (a) Ngāi Tūāhuriri and the Council would need to determine the charitable trust's charitable objects and prepare an appropriate charitable trust deed recording these objects and detailing the parties' agreed position in relation to the matters set out in paragraph 8(a) above.
- (b) If the charitable trust will be a council-controlled organisation under the LGA (which will be the case if the Council has the ability, directly or indirectly, to appoint one half or more of the trustees):
  - (i) the Council will need to undertake consultation in accordance with section 82 of the Act before the charitable trust is established; and
  - (ii) the charitable trust will be required to comply with the planning, monitoring and reporting requirements under Part 5 of the LGA.
- (c) We anticipate that the parties will want to ensure that all other necessary project prerequisites of Phase 1 are satisfied including:
  - (i) making sure that all steps that are required to be taken while ŌARC is under Council control have occurred; and
  - (ii) making sure all necessary funding and resourcing is in place.

#### *Formation of trust*

- (d) The charitable trust can be formed by the initial trustees and the settlor(s) (if any) executing the trust deed.

#### *Incorporation*

- (e) Under section 7 of the CTA the trustees may then apply for incorporation. All that is required is a short application to the Registrar of Charitable Trusts. This application must:
  - (i) list the details of the trustees;
  - (ii) set out the proposed:

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- (1) name; and
  - (2) registered office,  
of the charitable trust; and
  - (iii) include the governing document (i.e., the trust deed) for the charitable trust.
- (f) Once the application has been accepted by the Registrar the charitable trust will appear on the Registry of Charitable Trusts. Very basic details such as the names of the charitable trust's officers and any filings will be searchable via the New Zealand Companies Office.
- 12. Property can be settled on a charitable trust at the outset when it is settled or progressively over time. Similarly, rights and responsibilities can be conferred on a charitable trust immediately or over time. A charitable trust could therefore lead a passive existence in parallel with the Establishment Committee or another Council committee pending completion of Phase 1 with transition phased to suit all stakeholders. The only downsides of this approach would seem to be:
  - (a) costs of establishment and ongoing administration for a longer period than strictly necessary; and
  - (b) entity related risk – i.e., something goes wrong with the governance or management of the charitable trust in the interim period.

**Other examples**

- 13. We are aware of a number of incorporated charitable trusts which may form useful examples in this context. These include:
  - (a) The Central Plains Water Trust (**CPWT**) which was established in March 2003 by the Christchurch City Council and the Selwyn District Council to facilitate sustainable development of Central Canterbury's water resource. CPWT holds the resource consents for the Central Plains Water Irrigation Scheme and licenses the same to Central Plains Water Limited. According to the CPWT's deed its objects include:
    - 4.2 *To promote the development of agriculture in the Central Canterbury Plains area of New Zealand for the benefit of all of the inhabitants of the Canterbury Region by:*
      - 4.2.1 *Encouraging supporting and facilitating:*
        - a) *sustainable development of the water resources of the Region*
        - b) *agricultural and horticultural diversity in the Central Canterbury Plains area*
        - c) *an appropriate balance of the benefits of agricultural development with the enhancement of ecological, social and recreational values in the Central Plains area.*
  - (b) CPWT is not, however, registered as a charity under the Charities Act 2005 having failed to convince the Registrar of Charities that its objects were sufficiently charitable.

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- (c) The trustees of CPWT are appointed by the Christchurch City Council and the Selwyn District Council as settlors. In making their trustee appointments the settlors are required by the trust deed to be mindful of the need to provide balanced representation in the trust including appropriate representation for tangata whenua, environmental protection agencies and whānau interest groups.
- 14. The Rod Donald Banks Peninsula Trust is registered as a charity under the Charities Act 2005. It has extensive charitable objects which relate to the protection of conservation values in the region formally administered by the Banks Peninsula District Council together with providing educational and research opportunities and projects in that area. The settlor (Christchurch City Council) has the right to appoint up to seven of a total of nine trustees with remaining trustees to be co-opted by the trustees themselves (but subject to removal by the settlor).
- 15. Both the Central Plains Water Trust and the Rod Donald Charitable Trust are council-controlled organisations within the meaning of the LGA in that a local authority has the ability to appoint 50% or more of the trustees.
- 16. We are not aware of any particularly salutary lessons from these two charitable trusts other than the fact that they appear to have endured and taken their roles seriously. There may be other (and more detailed) views about the success of these charitable trusts at Council.

**Ramifications**

- 17. Once incorporated, a charitable trust will be subject to normal legislation which applies to incorporated legal persons in New Zealand. Relevantly in this context, this may include:
  - (a) CTA;
  - (b) Reserves Act 1977 (which will apply if the charitable trust is an administering body);
  - (c) LGA (as noted above);
  - (d) the Resource Management Act 1991 and Building Act 2004;
  - (e) the Health and Safety at Work Act 2015 (HSWA) – see discussion in paragraphs 19 and 20 below; and
  - (f) any other legislation which applies to the ŌARC.
- 18. As outlined above, a charitable trust would amount to a useful and potentially autonomous governing body (noting that the Council and other key stakeholders like Ngāi Tūāhuriri might control appointing trustees). The charitable trust could also conceivably be:
  - (a) an owner of ŌARC land and buildings;
  - (b) the administering body of the ŌARC under the Reserves Act; and
  - (c) wholly or partially responsible for maintenance of part or all of the ŌARC,provided it had the necessary resources to discharge all responsibilities of ownership and administration including working in with other key infrastructure owners and operators in the vicinity.





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### Health and Safety at Work Act 2015

19. If the charitable trust is a purely volunteer association<sup>6</sup> working for a community purpose and not employing any staff:
- (a) it will not:
    - (i) be a person conducting a business of undertaking (PCBU); and
    - (ii) owe duties under HSWA; and
  - (b) the trustees will not have corresponding duties under the HSWA.
20. However, if the charitable trust employs<sup>7</sup> any person it will fall within the definition of PCBU in section 17 of the HSWA and both:
- (a) the charitable trust; and
  - (b) its officers<sup>8</sup>,
- will owe duties under Part 2, subparts 2 and 3 (respectively) of the HSWA. In the case of officers, the duty would be to exercise due diligence to ensure that the charitable trust complies with its PCBU obligations.
21. We note for completeness that Council committees are generally not considered to be a separate PCBU from the Council. In addition, volunteer committee members are protected from prosecution under section 51 of the HSWA.

### Risks/Liability of Trustees

22. As noted in paragraphs 10(d) to 10(f) above, separate legal personality protects associates of any charitable trust (such as trustees, the Council and mana whenua entities) from liability incurred by that charitable trust. However, we note that such protection is often not relied on because – for civic or political reasons - settlors and other associates are reluctant to let such an independent entity fail.
23. As noted in paragraphs 10(h), 10(i) and 20 above:

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<sup>6</sup> Section 17 of the HSWA defines *volunteer association* as:  
*...a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.*

(our **emphasis**) – we think that this definition would include an incorporated charitable trust where the trustees are all volunteers and there are no employees.

<sup>7</sup> We think that the Courts will treat contractors who are, in substance, employees as employees for these purposes so care may be required. Please also note that, even if the charitable trust engages a genuine contractor, that contractor and its officers are likely to have PCBU responsibilities themselves.

<sup>8</sup> Under section 18 of the HSWA, *officers* will include:

- the trustees (as persons occupying a position in the body that is comparable with that of a director of a company – section 18(a)(iv)); and
- any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example, a chief executive) – section 18(b).

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- (a) trustees and officers of any charitable trust are subject to a duty to ensure that the charitable trust pursues its charitable objects and (we would argue) a duty to act in good faith and otherwise for a proper purpose; and
  - (b) if the charitable trust employs any person, its officers must exercise due diligence to ensure that the charitable trust complies with its PCBU obligations.
24. Provided they carefully observe these duties there should be no personal liability for trustees and officers of a charitable trust.
25. Any charitable trust will, of course, need ongoing secretariat resource and advice appropriate to deal with the issues which face it. We are unsure whether this option will cost more or create more risk than an "in-house" option such as a Council committee.

**Conclusion**

26. Our general conclusion is that a charitable trust is generally suitable as an enduring collaborative governance entity if the stakeholders require a separate legal person for these purposes. A charitable trust would also be suitable as a holder of property, rights and responsibilities in relation to the ŌARC.
27. Specifically, as outlined in paragraph 10 above, although an incorporated charitable trust is only one of a number of options as a vehicle for collaborative governance and ownership, it does have a number of factors to recommend it and distinguish it from other options, including:
- (a) it would be simple to set up - see paragraphs 5 and 11 above, and in this regard, it would be an "off the shelf" legal entity distinguishable from:
    - (i) an entity created by statute – see paragraph 5 above; or
    - (ii) the concept of legal personality applied to an underlying natural feature – see paragraph 4 above;
  - (b) it would be amenable to *tailoring* (please see Mr Finlayson's advice cited in paragraph 7 above) to fit the Christchurch context for the reasons, and by the methods, set out in paragraph 8 above;
  - (c) it would have separate legal personality which has the advantages set out in paragraphs 6 and 10 above including:
    - (i) independence and autonomy – see paragraphs 6(a), 10(e)(iii), 10(j) and 10(k) above; and
    - (ii) limited liability – see paragraphs 10(d), 10(f), 22, 23 and 24 above;
    - (iii) suitability as collaborative governance vehicle and right holder:
      - (1) rights and responsibilities of a natural person - see paragraph 10(g)(i) above;
      - (2) perpetual succession – see paragraph 10(g)(ii) above; and
      - (3) ability to be:

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- A. a vehicle for Council and other entity delegation – see paragraph 8(b)(i) above; and
- B. empowered by legislation – see paragraph 8(b)(ii) above, including as an administering body under the Reserves Act 1977 – see paragraph 8(b)(iii) above; and
- (iv) being distinguishable in most, if not all, of these regards from the unincorporated entities or arrangement set out in paragraphs 9(a) to 9(c) above (inclusive) which include a simple memorandum of understanding, unincorporated joint governance body and unincorporated structure such as a trust or partnership; and
- (d) suitable for charitable purposes - see paragraphs 10(a) to 10(c) above (inclusive) and:
  - (i) distinguishable in this regard from an incorporated society, company or limited partnership; and
  - (ii) more likely to attract third party grant funding and donations – see paragraph 10(l)(ii) above.

28. We trust that this is of assistance. Please do not hesitate to telephone if you wish to discuss.

Yours sincerely



**Mark Odlin**  
Partner

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### Scope of Instructions

#### *Choice of charitable trust as preferred type of independent entity*

- Confirming advantages over other entities and structures identified in the comparison table;
  - Checking consistency with issues identified in the Chris Finlayson KC advice;
  - Noting statutory requirements for the establishment and operation of a charitable trust (principally Charitable Trusts Act, Reserves Act and Local Government Act); and
  - Drawing on our collective experience with other structures and models (including Rod Donald Charitable Trust, Ngā Puna Wai Trust and Central Plains Water Trust) and other case studies (such as Chris Finlayson KC's examples),
- in the context of the various questions and topics below.

#### *Funding*

- Charitable status and prerequisites.
- Implications for funding sources.

#### *Process for setting up charitable trust*

- Process required for establishment of charitable trust and transition from a Council committee governance model.
- Timing/phasing options for formation, incorporation, capitalisation and transition from a Council committee (to ensure efficient and safe cutover).

#### *Ramifications of charitable trust structure for governance and ownership*

- Ownership of physical infrastructure, stopbanks, power infrastructure, storm water infrastructure.
- Obligations for maintenance and improvements of infrastructure.

#### *Risks and liabilities of the Trust/Trustees*

- Entity risk and limited liability.
- Trustee, governor and officer risk.
- Ongoing advice and support requirements.

## Legal & Democratic Services

*Memo*

*Legal Privilege Applies*

*Not to be distributed without approval from Head of Legal & Democratic Services*

Date: 12 October 2023  
From: Brent Pizzey (lawyer)  
To: Andrew Rutledge (Head of Parks) and Mary Richardson (GM Citizens and Community)

### **OARC – co-management or co-governance of “RMA” decision making (lex24973)**

#### **Purpose of memo:**

1. You are helping the OARC Establishment Committee. The Committee is considering options for co-governance of Local Government Act (LGA) and RMA decision making. You and they have seen draft advice on co-governance options from Anderson Lloyd (draft letter and table dated 27 July 2023). The Committee asked you to advise whether there are options under the RMA that are not assessed in the Anderson Lloyd draft advice, in particular transfer of powers for RMA decision making under section 33 of the RMA.
2. You asked me to advise:
  - 2.1 Can the Council transfer or delegate its RMA powers to an OARC authority comprising either Council/iwi or Council/ECan/iwi; and
  - 2.2 Can the Council delegate other LGA decision making to the same body.
3. Powers under the RMA are a different topic than simply allowing people or entities to engage in activity on the land. That is a separate function that the Council can already perform under the LGA, subject to the activity being permitted or authorised under relevant legislation.
4. I understand from you that the Committee does not seek transfer of ownership of land to the new body. The Committee will need to think about what RMA powers it does want transferred. These can include:
  - Applying for resource consents;
  - Processing and deciding on applications for resource consent (by qualified Commissioners);
  - notifying plan changes;
  - deciding on plan changes; on the recommendation of an Independent Hearings Panel;
  - being a requiring authority for designations for public work;
  - deciding on applications for designations ;
  - enforcement of the RMA.

#### **Summary**

5. There are two ways of doing this under the Natural and Built Environment Act (NBEA) replacement to the RMA: transfer of statutory powers; and a joint management agreement. Both are possible and could achieve the Committee’s objective.

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6. To transfer statutory powers this needs to be to a “public authority” as defined in the NBEA. A suitable structure for a “public authority” could be a joint committee between the two councils under the LGA and appointing iwi/Runanga representatives to the joint committee. This was Option 2 in the Anderson Lloyd table. That joint committee could perform RMA and LGA functions.
7. If ECan is not involved, an alternative to this is the formation by Council of a new committee, that also has iwi/Runanga representatives appointed to it. RMA powers could be delegated to that committee by Council, rather than being “transferred”. This also is a structure available in Option 2 in the Anderson Lloyd table. This option is not available if ECan is a party to the arrangement.
8. If a joint management agreement is used, RMA powers can be jointly exercised by the councils and an iwi authority or a group representing hapū; however, those RMA powers cannot include final decision making on changes to the RMA plans (district plan, LWRP, RPS). They can agree on management of all other rights and responsibilities. If the transfer of powers option is used it can include final approval of the RMA plans – but that power will revert to councils when/if the region gets a new plan made under the NBEA in possibly 5-10 years.

#### Transfer of powers under the RMA

9. This is complicated a bit by the repeal of the RMA, and by a drafting error in the NBEA.
10. The Natural and Built Environment Act 2023 (NBEA) is replacing the RMA. The NBEA repealed the Transfer of Powers section 33 of the RMA from 24<sup>th</sup> August<sup>1</sup>. The NBEA sections on transfer of powers (sections 57-59) are in legal effect<sup>2</sup> but it will be several years before the Council is exercising consenting and plan change powers under the NBEA.
11. The Transitional Schedule of the NBEA therefore was intended to provide that until the Council is exercising those powers under the NBEA the transfer of powers sections of the NBEA will apply to RMA powers. It says<sup>3</sup>:  
52 *Transfer of functions, powers, and duties*  
(1) *Before the NBEA date in a region, a local authority may transfer under section 650(1) any of the functions, powers, or duties under the RMA that—*  
(a) *it could exercise or perform at the time of the transfer; or*  
(b) *it could transfer under section 33 of the Resource Management Act 1991; or*  
(c) *is an equivalent function, power, or duty that it will hold under this Act from the NBEA date for the region.*
12. The reference to “section 650(1)” must be an error as section 650(1) is irrelevant to transfer of powers. The drafters’ intent must have been to refer to section 57. As it was so obviously an error, and the purpose is obvious, we can interpret clause 52 as being a reference to section 57<sup>4</sup>. The Council and ECan can transfer under section 57 of the NBEA the functions, powers and duties that it could transfer under section 33 of the RMA.

<sup>1</sup> Section 805(4) and Schedule 16 Part 4 of the NBEA.

<sup>2</sup> Section 2(1)(a) of the NBEA.

<sup>3</sup> Schedule 1

<sup>4</sup> Burrows and Carter *Statute Law in New Zealand*, 5<sup>th</sup> Edition, LexisNexis, 2015, pp194, 318 and 333,

13. Section 33 of the RMA enabled a local authority transfer of “any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section”. Those powers include the power to change the district plan<sup>5</sup>.
14. The transfer must be to “another public authority in accordance with this section”<sup>6</sup>. “Public authority” is defined as<sup>7</sup>
- “Includes -
- (a) a local authority; and
  - (b) a regional planning committee; and
  - (c) an iwi authority; and
  - (d) a group representing hapū; and
  - (e) a statutory authority; and
  - (f) a government department; and
  - (g) a joint committee; and
  - (h) a local board”.
15. The term “joint committee” is not defined nor used elsewhere in the NBEA. Given the context about transfer of powers, it is reasonable to interpret “joint committee” as having the same meaning as in the LGA 2002. The LGA does not define “joint committee” but provides that the councils have the power to appoint a joint committee “with another local authority or other public body” and to delegate decision making to that committee<sup>8</sup>.
16. The iwi/Runanga are family/ancestral private groups, not publicly controlled and publicly accountable bodies. They are not public bodies for the purposes of the councils forming a joint committee. But the two councils can form a joint committee with each other, delegated to perform RMA and LGA functions, and in agreement with iwi/Runanga that there will be iwi/Runanga representatives on the joint committee.
17. That joint committee is within the definition of a “public authority” for the purposes for transfer of powers under section 57 of the NBEA.
18. This option fits well with Option 2 in the Anderson Lloyd table. The joint committee is equivalent to what Anderson Lloyd called a co-governance committee. The joint committee would be making decisions on both RMA and LGA decision making.
19. The pre-requisites and requirements in sections 57-59 of the NBEA for transfer of powers to a public authority seem achievable:
- it has used a process that gives effect to [section 82](#) of the Local Government Act 2002;
  - it has first given notice to the Minister of its proposal to transfer a power, function, or duty;
  - the local authority or regional planning committee and the public authority receiving the transfer agree that the transfer is desirable for all of the following reasons:
    - (i) the authority to which the transfer is to be made represents the appropriate community of interest relating to the performance or exercise of the function, power, or duty:

<sup>5</sup> This differs from s32A regarding delegation of powers, under which the Council cannot delegate to anyone the power to make a final decision on a plan change.

<sup>6</sup> Section 57(1) of the NBEA.

<sup>7</sup> Section 57(5) of the NBEA.

<sup>8</sup> Clauses 30-32 Schedule 7 of the LGA 2002.

- (ii) the transfer will result in greater efficiency in the performance or exercise of the function, power, or duty;
  - (iii) the authority to which the transfer is made has the requisite technical or special capability or expertise.
20. The NBEA does not permit a regional planning committee to transfer the power to give final approval of a plan made under the NBEA. That is a change from section 33 of the RMA, which did permit transfer of that power. As the transitional provisions in the NBEA enable transfer of powers that could be transferred under section 33 of the RMA, I consider that this must include the power to make changes to the RMA plans until there is a regional plan made under the NBEA.

#### Joint management agreement

21. The NBEA provides for local authorities to enter joint management agreements <sup>9</sup>. The Act contains little detail about their makeup or purpose. In the absence of any further detail in the legislation, it must mean joint management of any of the local authority functions under the NBEA, with one specified exception: “A regional planning committee must not enter into a joint management agreement that provides for final approval of a plan to be given jointly” <sup>10</sup>. A decision made under a joint management agreement has legal effect as a decision of the local authority <sup>11</sup>.
22. The Transitional provisions of the NBEA <sup>12</sup> provide that a joint management agreement made under the NBEA may provide for the exercise and performance of functions, powers, and duties under the RMA relevant to the agreement until the earlier of the following:
- (a) the date on which a function, power, or duty is transitioned for a region from the RMA system to the system under this Act; and
  - (b) the region’s NBEA date.
23. That enables the councils to enter a joint management agreement for the exercise of RMA powers until this region has plans developed under the NBEA.
24. The process for entering a joint management agreement is relatively straightforward. Someone makes a request to the council for the joint management agreement. The Council must notify the Minister that the request has been made, give careful consideration to the request, respond to the requester (presumably with its decision on whether to enter the joint management agreement) within 6 months of receiving the request, and notify the Minister when the joint management is established <sup>13</sup>.
25. The Act expressly envisages that the joint management agreement might be with an iwi authority or group representing hapū <sup>14</sup>. There could be a joint management agreement in which the parties are the Council, ECan and the iwi authority or group representing hapū.
26. The information set out in the joint management agreement, in addition to the substance of what the joint

<sup>9</sup> Sections 63-65 NBEA.

<sup>10</sup> Section 63(3) of the NBEA.

<sup>11</sup> Section 65 NBEA.

<sup>12</sup> Clause 51(4) of Schedule 1 of the NBEA.

<sup>13</sup> Sections 63 and 59(4) and (5) of the NBEA.

<sup>14</sup> Section 63(2) of the NBEA.



management is going to do, must include <sup>15</sup> :

- (a) the resources that will be required for the administration of the agreement; and
- (b) how the administrative costs of the joint management agreement will be met; and
- (c) how the agreement may be altered or terminated; and
- (d) how risks and liabilities will be allocated between or among the parties to the joint management agreement.

- 27. However, the joint management cannot include “final approval of a plan”. This would mean that the joint management body, for plan changes, could decide what it wants to notify , notify it, receive submissions, appoint an IHP to hear submissions and make a recommendation, decide on the IHP recommendation, and then request the councils to then make the final decision on the Plan.
- 28. That separation of power to make the final decision on a plan change has potential to be problematic, but we have experience of it working in the context of the greater Christchurch partnership, where the partnership makes a decision and councils then need to adopt/ratify it.
- 29. As for transfer of powers, this option fits well with Option 2 in the Anderson Lloyd table. The joint committee is equivalent to what Anderson Lloyd called a co-governance committee. The joint committee would be making decisions on both RMA and LGA decision making.

Brent Pizzey  
Lawyer  
Legal Services  
039415550

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<sup>15</sup> Section 63(4) of the NBEA.

## Legal & Democratic Services

Memo

*Legal Privilege Applies*

*Not to be distributed without approval from Head of Legal & Democratic Services*

Date: 14 March 2024  
From: Andrew Rutledge (Acting GM) and Brent Pizzey (lawyer)  
To: OARC Establishment Committee

### Questions from OARC workshop lex24973

#### 1. Merits of full transfer of Council's RMA powers to Ngāi Tūāhuriri under section 33 of the RMA

1.1 The memo about transfer of powers that staff provided to the OARC Establishment Committee workshop on 19 October 2023 was mistakenly focused on a question regarding transfer to a joint authority, rather than to an iwi authority alone. The law is more straightforward if the transfer is to an iwi authority alone rather than to a joint committee.

1.2 Section 33 of the RMA provides <sup>1</sup>:

- 33 *Transfer of powers*
- (1) *A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.*
- (2) *For the purposes of this section, public authority includes—*
- (a) *a local authority; and*
  - (b) ***an iwi authority; and***
  - (c) *a government department; and*
  - (d) *a statutory authority; and*
  - (e) *a joint committee set up for the purposes of section 80; and*
  - (f) *a local board.*
- (3) ***A local authority must not transfer any of its functions, powers, or duties under this section unless—***
- (a) *it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and*
  - (b) *before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and*
  - (c) *both authorities agree that the transfer is desirable on all of the following grounds:*
    - (i) ***the authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty:***
    - (ii) ***efficiency:***
    - (iii) ***technical or special capability or expertise.***
- (4) *A transfer of functions, powers, or duties under this section must be made by agreement between the authorities concerned and on such terms and conditions as are agreed.*

<sup>1</sup> Parliament has repealed the Natural and Built Environment Act (NBEA) that the previous memo was describing. We are here describing current law, but note that the current government intends to replace the RMA with new legislation. We don't know whether changes to the transfer of powers provisions will be part of that. Part 4 Schedule 2 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (the Repeal Act) repealed the NBEA and also repealed section 33 of the RMA (Transfer of Powers) and replaced it with a new s33 that is the same as the old version, except tidied up to remove reference to repealed parts of the section.

- (5) *A public authority to which any function, power, or duty is transferred under this section may accept the transfer, unless expressly forbidden to do so by the terms of any Act by or under which it is constituted, and upon the transfer its functions, powers, and duties are deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the function, power, or duty.*
- (6) *A local authority that has transferred any function, power, or duty under this section may change or revoke the transfer at any time by notice to the transferee.*
- (7) *A public authority to which any function, power, or duty has been transferred under this section may relinquish the transfer in accordance with the transfer agreement.*

- 1.3 “Iwi authority” is defined in the RMA as “means the authority which represents an iwi and which is recognised by that iwi as having authority to do so”. Te Rūnanga o Ngāi Tahu is an iwi authority. This paper assumes that the delegations of authority in relation to "Iwi authority" would be resolved between Te Rūnanga o Ngāi Tahu and Ngāi Tūāhuriri in a manner that satisfies the Act’s requirement that the transfer be to an “iwi authority” as a category of “public authority”.
- 1.4 As noted in the previous memo, the Council and Ngāi Tūāhuriri would first consider what functions, powers and duties under the RMA they might want the Council to transfer in relation to the OARC, and on what conditions and terms. The transfer of these functions, powers and duties would also apply in regard to a transfer under section 33 to an Iwi Authority. These could be:
  - applying for resource consents;
  - processing and deciding on applications for resource consent (by qualified Commissioners);
  - notifying changes to the District Plan;
  - deciding on changes to the District Plan;
  - being a requiring authority for designations for public work;
  - deciding on applications for designations ;
  - enforcement of the RMA; and
  - monitoring the state of the environment.
- 1.5 Functions of district councils are focused on use of land. Functions of regional councils are focussed on use and discharge of water. Accordingly, if Ngāi Tūāhuriri wanted a transfer to it of RMA functions in relation to planning and approving water use and discharges this would be a transfer from ECan. Indeed an integrated resource management process managed by a ‘single authority’ for both land and water could be beneficial for the OARC project being more cost and time efficient. Transfer of powers under s33 is one way to achieve that. Other ways could be: transfer of powers between the regional and the district council; a joint management agreement (JMA) between the councils and Ngāi Tūāhuriri; or delegations to a joint committee.
- 1.6 Section 33 requires that, before making a decision to transfer any of those powers, the Council must use the special consultative procedure to learn the views and preferences of the community.
- 1.7 The Council must be satisfied of all three grounds in section 33(3)(c) in order for the Council to transfer the power:
  - (i) *The iwi authority represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty:*
  - (ii) *efficiency:*
  - (iii) *that the iwi authority has technical or special capability or expertise to perform the function, power or duty.*
- 1.8 There are few examples of councils transferring powers. It was for that reason that in 2005 Parliament

changed the RMA to include “Joint management agreement” provisions. The NBEA also had Joint management agreement provisions and we described those in our previous memo. With the subsequent repeal of the NBEA, “joint management agreement” provisions still exist in sections 36B to 36E of the RMA. Those provisions have broadly the same threshold barriers described above for transfer of powers under section 33. The Act requires that if the Council is considering entering a JMA with an iwi authority or a group that represents hapu the Council must satisfy itself that <sup>2</sup>

- Ngāi Tūāhuriri “represents the relevant community of interest”;
- Ngāi Tūāhuriri “has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority” and
- The JMA “is an efficient method of performing or exercising the function, power, or duty”.

1.9 JMAs entail <sup>3</sup>:

- Agreement is between a council and “iwi authorities or groups that represent hapu”. This therefore clearly provides that the agreement could be with the Ngāi Tūāhuriri hapu. That does not engage the possible issue as to whether Ngāi Tūāhuriri is within the definition of an “iwi authority”;
- The parties to the JMA jointly perform the Council’s powers, with the JMA specifying the powers and functions that are to be jointly exercised.

1.10 A 2015 Ministry for the Environment (MfE) survey of all councils <sup>4</sup> identified no transfers to iwi authorities had occurred. However 12 transfers occurred between district councils and regional councils in relation to topics on which the councils have overlapping functions.

1.11 The Waitangi Tribunal has commented on the barriers that section 33 create for transfer of powers. <sup>5</sup> In its Wai 2358 Stage 2 report of 2019 (on the National Freshwater and Geothermal Resources Claims) it noted that there had been no transfers to iwi authorities. It described the still current section 33 provisions as containing “statutory and practical barriers” to the transfer of powers to iwi authorities. It said  
*“The fact is that governance and co-management mechanisms have been available under the RMA for 28 and 14 years respectively. But Parliament has made those mechanisms virtually inaccessible to iwi, and the Crown has repeatedly omitted to introduce amendments and remove the unnecessary barriers. We found that this is profoundly unfair to Māori, and it is not consistent with the principles of the Treaty of Waitangi. Māori have been prejudiced by these repeated acts of omission. Those who lack co-governance and co-management arrangements in their Treaty settlements are unable to act effectively as Treaty partners in freshwater management. They are unable to exercise their tino rangatiratanga and kaitiakitanga in respect of their freshwater taonga, to the extent guaranteed and protected in the Treaty.”*

1.12 We are aware of just one transfer under section 33 to iwi authorities: in 2020 from the Waikato Regional Council to Ngāti Tūwharetoa (central North Island) for water quality monitoring functions around Lake Taupō<sup>6</sup>.

1.13 The coalition agreement for the current government states there will be significant changes to the RMA <sup>7</sup> and possibly repeal of the RMA and replacing it with “new resource management laws premised on the enjoyment of property rights as a guiding principle” <sup>8</sup>. In that context, Ngāi Tūāhuriri and the Council might prefer to see

<sup>2</sup> Section 36B RMA.

<sup>3</sup> Section 2 definition of JMA.

<sup>4</sup> Section 33 Transfer of functions, powers or duties – a stocktake of council practice [section-33-stocktake.pdf](#) ([environment.govt.nz](#))

<sup>5</sup> [Sharing and transfer of powers | Ministry for the Environment](#)

<sup>6</sup> [Section 33 Transfer with Waikato Regional Council | Tuwharetoa Maori Trust Board](#)

<sup>7</sup> Coalition Agreement between National and NZ First: amend the RMA to make it easier to get consents, streamlined plan changes, and a simplified planning system.

<sup>8</sup> Coalition Agreement between National and Act.

what the new legislation is going to provide before putting resources into investigating the possibility and practicality of transfer of powers under section 33 of the RMA. Alternatively, the Council, Ngāi Tūāhuriri or Te Rūnanga o Ngāi Tahu might be able to glean more information, than what is currently available to the Council, from their political connections about potential future changes to the RMA and section 33.

- 1.14 It will take considerably more work and assessment by Council staff, elected members and Ngāi Tūāhuriri in order for the parties to assess whether they are comfortable that the barriers to use of section 33 can be passed in relation to transfer of some or all RMA powers in relation to the OARC. In that context, until more information is known about what changes might be made to the RMA, Council staff consider that now is not the best time to put resources into assessing the pros and cons of transfer of RMA decision making powers.

END.

Item 2

Attachment I

## Collaborative Governance Options - Benefits and Disadvantages

Option	Benefits	Disadvantages
<b>1 MOU or Agreement to Co-operate</b> <ul style="list-style-type: none"> <li>Retain separate structures and parties consult and co-operate as required in a documented agreement.</li> </ul>	<ul style="list-style-type: none"> <li>No formal legal changes to each entity.</li> <li>Flexible to change methods, regularity, formality of co-operation as required.</li> <li>Can be managed by staff, or escalated to Governance depending on the issue.</li> </ul>	<ul style="list-style-type: none"> <li>Not a separate structure from any existing party, and does not delegate decision making to a new entity as expected in the Global Settlement Agreement.</li> <li>Decisions may take time through each organisation.</li> <li>Greater risk of mis-alignment and different positions by each participating party on an issue.</li> <li>Possible perception land-owner has final say and is not true collaboration.</li> </ul>
<b>2 Establish Committee of Christchurch City Council</b> <ul style="list-style-type: none"> <li>Committee appointed by CCC.</li> <li>Can involve elected members of CCC and representatives of Ngāi Tūāhuriri, other representatives of community groups or community boards.</li> </ul>	<ul style="list-style-type: none"> <li>Tried and true structure of Local Government based on statute.</li> <li>Serviced and supported by CCC staff in usual way.</li> <li>Various parties can have appropriate representation on committee.</li> </ul>	<ul style="list-style-type: none"> <li>Decisions can be time consuming via committee structure, with public meetings, motions, voting, minutes etc.</li> <li>May not be seen as a co-governance entity if a committee of Council.</li> </ul>

Option	Benefits	Disadvantages
<ul style="list-style-type: none"> <li>Could/should have delegated authority to make decisions rather than report to Council.</li> </ul>	<ul style="list-style-type: none"> <li>Can have delegation from CCC to make specified decisions on behalf of CCC.</li> </ul>	
<p><b>3 Form a New Governance Entity</b></p> <ul style="list-style-type: none"> <li>Form a new collaborative governance entity with representation from CCC, Ngāi Tūāhuriri, and other representatives of community groups or community boards. Can be in a range of forms (if Council holds 50% of control would be a Council Controlled Organisation in any of these forms): <ul style="list-style-type: none"> <li>(a) Ordinary Trust</li> <li>(b) Incorporated Trust (only if it has a charitable purpose)</li> <li>(c) Ordinary Partnership</li> <li>(d) Limited Partnership</li> <li>(e) Company</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Can be formally established with clear roles, rights and responsibilities.</li> <li>The new entity can be focused on its role to govern the OARC.</li> <li>Range of options to design a structure that best suits the parties.</li> <li>Can change any of the terms by agreement and reasonably promptly, e.g. delegated powers, membership rules, functions, reporting obligations.</li> </ul>	<ul style="list-style-type: none"> <li>Creation of a whole new formal structure to be managed.</li> <li>Needs formality to be clear about roles, rights and responsibilities.</li> <li>Will have accounting and reporting duties.</li> <li>Will have additional establishment costs to document and form up.</li> <li>Parties can influence and control by letter of expectation and appointment of representatives.</li> <li>Because of separation of powers and functions to a new entity there is a degree of loss of control for each entity depending on delegated functions to the representatives.</li> <li>The new entity will be a CCO if CCC has 50% control.</li> </ul>

Option	Benefits	Disadvantages
3(a) <i>Ordinary Trust</i>	<ul style="list-style-type: none"> <li>Is a suitable structure to enable parties to appoint specified numbers of trustees to a trust.</li> <li>The trustees can be provided clear delegation of powers.</li> <li>Reasonably flexible and trust deed can specify if changes can only be made by the original settlors (such as who can be a trustee and the powers or functions of trustees), or changes the trustees can make such as administrative matters.</li> </ul>	<ul style="list-style-type: none"> <li>Parties can appoint trustees in the trust deed, and have a letter of expectation but that is the extent of "control", so likely bound by trustees' decisions (if given authority to manage OARC).</li> <li>Is not a separate legal entity of its own from the trustees.</li> </ul>
3(b) <i>Incorporated Trust (if it has a charitable purpose and incorporated under the Charitable Trusts Act 1957)</i>	<ul style="list-style-type: none"> <li>Is a separate independent and incorporated legal entity of its own.</li> <li>Is a suitable structure to enable parties to appoint specified numbers of trustees to a trust.</li> <li>The trustees can be provided clear delegation of powers.</li> <li>An incorporated trust must be approved as having a charitable purpose to qualify.</li> <li>Reasonably flexible and trust deed can specify if changes can only be made by the original settlors (such as who can be a trustee and the powers or functions of trustees), or changes the trustees can make such as administrative matters.</li> </ul>	<ul style="list-style-type: none"> <li>Parties can appoint trustees in the trust deed, and have a letter of expectation but that is the extent of "control", so likely bound by trustees' decisions (if given authority to manage OARC).</li> </ul>



Option	Benefits	Disadvantages
3(c) <i>Ordinary Partnership</i>	<ul style="list-style-type: none"> <li>Governed by the Common Law on partnerships and a partnership agreement – both parties have fiduciary duties to each other.</li> </ul>	<ul style="list-style-type: none"> <li>Governed by Partnership agreement to set roles and responsibilities.</li> <li>Not well suited to arrangement between CCC, Ngāi Tūāhuriri and other entities because "partnership" is between entities not individuals.</li> <li>Parties are partners and responsible for the partnership.</li> <li>Not a true separate legal entity from the partners.</li> <li>Likely confusion of roles whether members or staff are acting for parties or "the partnership".</li> </ul>
3(d) <i>Limited Partnership (is more similar to a company structure with a general partner being an incorporated company)</i>	<ul style="list-style-type: none"> <li>Is a true separate legal entity.</li> <li>Usual reason for such a legal structure is to address taxation treatment of the limited partnership compared to the tax treatment of the entities forming it.</li> </ul>	<ul style="list-style-type: none"> <li>Governed by Limited Partnership Agreement to set roles and responsibilities.</li> <li>Likely complex decision making structures for carrying out a governance role. Seems unlikely taxation treatment would be a driver relevant for governance decisions.</li> </ul>
3(e) <i>Company</i>	<ul style="list-style-type: none"> <li>Governed by Company law, which is well established.</li> <li>Is a pure separate legal entity.</li> </ul>	<ul style="list-style-type: none"> <li>Governed by the Companies Act 1993 and its constitution.</li> </ul>

Option	Benefits	Disadvantages
	<ul style="list-style-type: none"> <li>Can be provided clear delegated power.</li> </ul>	<ul style="list-style-type: none"> <li>Has to be governed and administered as a separate company.</li> <li>Parties can appoint Directors and have a letter of expectation but that is the extent of "control", so likely bound by Directors' decisions (if given authority to manage OARC).</li> </ul>
<b>4 Local Act of Parliament</b> <ul style="list-style-type: none"> <li>A local Act can establish a new governance arrangement.</li> </ul>	<ul style="list-style-type: none"> <li>Clear statutory creation of entity, roles and responsibilities (in theory, and only if legislation does so).</li> </ul>	<ul style="list-style-type: none"> <li>Clarity, flexibility and any influence for parties is in the hands of Parliament to enact.</li> <li>Relies on Parliamentary process to establish as legislation.</li> <li>Likely will take a long time to enact (being not a high central government priority).</li> <li>Changes to empowering Act requires legislative change. This requires local MP to sponsor Bill and it to be passed. Experience shows such changes can take years to effect.</li> <li>Overall an Act is unnecessary to co-govern and the parties can achieve this themselves without relying on Parliament.</li> </ul>

Option	Benefits	Disadvantages
<p><b>5 Legal Personality for OARC</b></p> <ul style="list-style-type: none"><li>Creation of formal separate legal personality for the OARC with Trustees or the like to govern in the best interests of the OARC. Creating "legal personality" would require legislative change as above.</li><li>An example is Te Awa Tupua set out in Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.</li></ul>	<ul style="list-style-type: none"><li>As above, but also provides a public symbol of the significance of the OARC.</li></ul>	<ul style="list-style-type: none"><li>As above but a step further to create legal personality and to publicly justify that.</li><li>Very hard to change arrangements in the future.</li><li>Legislation has done this in the past as part of a settlement with the Crown. Legislation is complex to cover off all implications of creating a legal entity. This includes status, powers, consequential changes to other Acts, and all other functions which much be in the Legislation to be authorised.</li><li>Overall an Act is unnecessary to co-govern and the parties can achieve this themselves without relying on Parliament, or the status of legal personality in land.</li></ul>

Council  
09 December 2021

Christchurch  
City Council

—[ HON CHRISTOPHER FINLAYSON q c  
BARRISTER

22 June 2021

Her Worship the Hon Lianne Dalziel  
Mayor of Christchurch  
PO Box 73016  
CHRISTCHURCH 8154

By email: [darel.hall@ccc.govt.nz](mailto:darel.hall@ccc.govt.nz)

Dear Lianne

**Ōtākaro/Avon River Corridor Co-governance Options**

1. Thank you for meeting with me earlier this month to discuss co-governance options for the Ōtākaro/Avon River corridor. Following our discussion, I updated several aspects of my draft opinion, which I now provide in its final form.
2. Co-governance agreements are a practical way of involving local iwi and hapū in the administration of significant natural resources in conjunction with local government and other community groups as appropriate.
3. This advice is intended to help scope out the metes and bounds of a co-governance body for the Ōtākaro/Avon River Corridor. In preparing it, I have read the background material provided to me, including the *Governance Case Studies* document and other information.
4. During my nine years as Minister for Treaty Negotiations, I negotiated a range of co-governance agreements with councils and iwi around the country. These ranged in their purpose, extent of their authority and the features of their membership:
  - a) At the strong end of the co-governance spectrum, settlements like the Whanganui River and Tūhoe settlements used the concept of legal personality, backed by unique (in the true sense of the word) governance arrangements.
  - b) Another example of a strong co-governance body is the Waikato River Authority, which exercises significant regulatory power over the Waikato River. The Waikato River arrangements have been acknowledged as a 'one-off' in terms of their scope.
  - c) A step further down the ladder, you find co-governance bodies like the Auckland Maunga Authority and the Te Oneroa-a-Tōhē / Ninety Mile Beach Board, where local councils co-govern those natural resources with local iwi but exercise slightly more limited powers than the Waikato River Authority.

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- d) After that, we have co-governance bodies like the Hawke's Bay Regional Planning Committee, Kaituna River Authority and Rangitikei River Authority, where councils and iwi jointly administer significant rivers.
  - e) Finally, at the weaker end of the spectrum, there are advisory boards such as the Manawatu River Advisory Board, which can offer advice to local government but exercise no greater powers than that.
- 5. Any arrangements for the Ōtākaro/Avon River Corridor will need to be positioned somewhere on this spectrum of co-governance agreements I have outlined above, but be tailored to fit the Christchurch context, including the Council's relationship with Ngāi Tahu and Ngāi Tūāhuriri, and the interest of third party groups and the general public in the Ōtākaro/Avon River Corridor.
  - 6. I think an option that sits in the middle of the spectrum of co-governance agreements is likely the most appropriate for an urban waterway like the Ōtākaro/Avon River Corridor.
  - 7. The following are some issues that will need to be considered in designing any arrangements, with my preliminary comments on each one:

*The form of a co-governance body*

- 8. It would be in line with other co-governance bodies that an Ōtākaro/Avon River Corridor co-governance body be established as an independent board which resembles, but is not, a joint committee.
- 9. A weaker form of co-governance would mean the Board was still responsible to the Council directly (i.e. it would be closer to a Council committee than an independent board).

*Who should serve on the co-governance body?*

- 10. This is a question for careful consideration, given the range of community interests involved. The usual model for co-governance bodies has become a 50/50 split between Council and iwi-appointed representatives.
- 11. The Council-appointed half of the body will usually consist of elected councillors, but provision can be made for the appointment of other people. I am unsure about whether you would want or need to include a representative from Environment Canterbury.
- 12. There is also room for the nomination of representatives by third parties, for example the Avon-Ōtākaro Network.
- 13. The precise make-up of the board will be a question for you to consider, but could look something along the following lines:
  - a) 4 appointees nominated by Ngāi Tūāhuriri;
  - b) 4 appointees nominated by the Christchurch City Council, including 1 appointee nominated by the Christchurch City Council after consultation with the Avon-Ōtākaro Network.

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*How should the co-governance body operate?*

14. A trend has emerged in the operation of co-governance bodies that they should strive to operate by consensus and, only if that fails, should issues be decided by a 75% rather than a 50% vote.
15. A number of co-governance bodies are chaired by an iwi/hapū representative, with the local body nominating the Deputy Chair. Alternatively, the positions can alternate.

*The authority for a co-governance body*

16. From where will the new body derive its authority? Legislation is not always necessary. Several boards, for example, were originally established under schedule 7, clauses 30, 30A and 31 of the Local Government Act 2002, which allows a local authority to appoint a joint committee. Another option is to use a trust.
17. In the case of the Ōtākaro/Avon River Corridor, however, I think some form of legislation will likely be necessary to provide certainty and clearly set out the powers and functions of any co-governance body.
18. As we discussed, it would probably make the most sense to see if we could do this through a local bill, which can change or limit the effect of the general law in its application to a locality such as Christchurch. While I do not think that will be necessary in this situation, a local bill may include consequential amendments to a public Act if that does turn out to be required.
19. As you will be aware, the local member of Parliament is often, but not always, the member in charge of a local bill. In this case, it would likely make most sense to see if Duncan Webb would promote any legislation as Member of Parliament for Christchurch Central.
20. There are various other rules for the introduction of local bills, which are summarised at the following link.<sup>1</sup>

*The legal status of the Ōtākaro/Avon River Corridor*

21. I do not think the question of legal status needs to be addressed in the legislation, although there is no reason why it could not be addressed were that desired. I do not, however, think importing the idea of 'legal personality' from the Whanganui River and Tūhoe settlements would be appropriate for the Ōtākaro/Avon River Corridor at this time. For one, it would be difficult to establish legal personality through a local bill. Most of all, however, I do not think it would add anything to the co-governance body or its operations.
22. One option to consider could be replicating the approach taken in the 2014 Treaty settlement with Ngāti Koroki Kahukura. That settlement involved the transfer of an area known as the Maungatautari Ecological Island to Ngāti Koroki Kahukura. Tensions emerged during negotiations because the area had been established by local farmers, who felt cut out by the transfer of the land back to Ngāti Koroki Kahukura.
23. The solution we found here was to, in effect, vest Maungatautari in the community itself. Section 73(1) of the Ngāti Koroki Kahukura Claims Settlement Act simply says:

<sup>1</sup> <https://www.parliament.nz/media/4600/introducing-local-and-private-bills.pdf>

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“Maungatautari Mountain Scenic Reserve is held for the use and enjoyment of the people of New Zealand.” A similar statement could be used in relation to the Ōtākaro/Avon River Corridor, without necessarily altering the underlying legal ownership of the riverbed. This could have the effect of emphasising that the new Board operates for the whole community, even though its membership reflects a balance between local government and Ngāi Tūāhuriri as the Crown’s Treaty partner in Christchurch.

*What should the objectives, functions and powers of the board be?*

24. The Maungatautari example could also be used to define the major objective of the new Board (“the role of the Ōtākaro/Avon River Corridor Authority is to administer, preserve and protect the Ōtākaro/Avon River Corridor for the common benefit, use and enjoyment of Ngāi Tūāhuriri, the people of Christchurch and wider community”). This approach was also used in the Tamaki Collective Claims Settlement Act to describe the duties of the Maunga Authority over the maunga and emphasise its duties to the broader community.
25. Another objective of the board could be to provide for the exercise by Ngāi Tūāhuriri of its rangatiratanga within its takiwā.
26. There are a range of further objectives we could look to import from other co-governance agreements depending on your views.
27. In terms of functions, the main purpose of most co-governance bodies is to produce a formal plan which is, at the weaker end of the spectrum, taken into account in local government planning processes or, at the stronger end of the spectrum, carries its own legal weight. This could provide an opportunity to develop a new plan, or incorporate the existing Ōtākaro Avon River Corridor Regeneration Plan. Many co-governance bodies also exercise further powers, including being the administering body for land and exercising functions under the Reserves Act 1977.
28. Depending on your views, we would need to look at the extent of how much of this we could enact through a local bill, however – if we want the plan to be recognised in statutory consenting and other processes, for example, we may need to look at a public bill.

*How should the co-governance body be accountable?*

29. At the least, the co-governance body should be required to prepare an annual report for each financial year, and provide them to the Council and the public. You could also look at options to require more frequent reporting to the Council.

*How should the co-governance body be funded?*

30. Realistically, the new body will likely need to be funded by the Council, at least at the start of its operations. That has been the situation with most other co-governance bodies, although there could be the opportunity to approach central government for a contribution to assist the functioning of the body.
31. I understand there are aspirations for the body to become self-funding. Those options would need to be worked through by a firm like PWC or Deloitte, and are outside the scope of this preliminary advice.

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*Heritage status*

32. At our meeting, I mentioned the possibility of seeking UNESCO world heritage status for the Corridor, particularly in light of the city's earthquake recovery and the plan to restore the riparian environment. New Zealand currently has three world heritage sites: Te Wahipounamu (several national parks in the south), Tongariro National Park and the Subantarctic Islands. There is not yet a world heritage site in an urban area although, at the time co-governance arrangements were established over the Auckland volcanic maunga in 2014, the government expressed a hope such status could be sought for the maunga. I understand work is currently underway towards such an application. As I said at your meeting, I think it could be worth exploring the possibility of seeking such status for the Ōtākaro/Avon River Corridor, which would further enhance the status of the new arrangements and create community buy-in.

*Next steps*

33. While much of what is included in this advice is hypothetical, I hope it will provide some assistance in defining the direction of travel for an Ōtākaro/Avon River Corridor co-governance board.
34. The positive thing with co-governance agreements is that we have the chance to tailor the arrangements to fit the political situation and various interests on the ground – there is no rulebook we have to stick to.
35. I am happy to provide any further advice once the Council and Ngāi Tūāhuriri have discussed further how they would like to progress this matter.

Yours sincerely



Christopher Finlayson





## Governance of the Ōtākaro Avon River Corridor - Discussion paper

*Prepared by Chrissie Williams, Independent Chair of Te Tira Kāhikuhiku,  
18 October 2021 - Updated from December 2020*

*With acknowledgement and thanks for the analysis and thought on the topic of governance by staff and consultants from Regenerate Christchurch, and the authors of the publications referred to in this paper.*

*This discussion paper has not directly included the advice from Te Maire Tau and the Honourable Chris Finlayson provided to the Mayor in March 2021 and June 2021. It is not inconsistent with that advice.*

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### 1 Background to governance of the Ōtākaro Avon River Corridor

- 1.1 The future governance arrangements for the Ōtākaro Avon River Corridor (ŌARC) have been considered, discussed, and researched by many people for a number of years.
- 1.2 It was anticipated in the *Outline for the Ōtākaro Avon River Corridor Regeneration Plan* that the Ōtākaro Avon River Corridor Regeneration Plan (Regeneration Plan) would 'confirm the funding responsibilities, delivery, and governance of the Regeneration Plan'.<sup>1</sup>
- 1.3 Regenerate Christchurch considered the governance of the ŌARC was a critical matter, and undertook considerable work defining the functions and structures of possible governance entities. However, on advice from the Department of the Prime Minister and Cabinet (DPMC) and the Christchurch City Council (the Council), Regenerate Christchurch did not include its advice on governance in the Regeneration Plan that was provided to the Minister for Greater Christchurch Regeneration (the Minister) in March 2019.<sup>2</sup> The Regeneration Plan however does indicate that in the short term governance arrangements for the ŌARC should be finalised.<sup>3</sup>

<sup>1</sup> *Outline for the Ōtākaro Avon River Corridor Regeneration Plan, March 2017*

<http://www.regeneratechristchurch.nz/assets/oarg-regeneration-plan-low-res.pdf>

<sup>2</sup> Letter from Chair of Regenerate Christchurch to Mayor and Minister for Greater Christchurch Regeneration, March 2019

<sup>3</sup> *Ōtākaro Avon River Corridor Regeneration Plan, page 65*

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- 1.4 When approving the Regeneration Plan in August 2019, the Minister stated the Global Settlement Agreement between the Crown and Council would consider the governance, management, and ownership of the area.<sup>4</sup>
- 1.5 The overarching and enduring purpose for a governance entity for the ŌARC should be to ensure the vision and objectives of the Regeneration Plan are upheld and achieved - the entity will be Kaitiaki of the Vision and objectives.

## 2 The Regeneration Plan: Vision and objectives

### 2.1 The Vision from the Regeneration Plan is:

The river is part of us, and we are part of the river.  
It is a living part of our city.

A place of history and culture  
where people gather, play, and celebrate together.

A place of learning and discovery  
where traditional knowledge, science and technology meet.

A place for ideas and innovation  
where we create new ways of living and connecting.

Our vision is for the river to connect us together –  
with each other, with nature and  
with new possibilities.

Nōku te awa. The river is mine.

We all share in the future of this river.  
Ōtākaro Avon River. Together we thrive.

### 2.2 The Objectives from the Regeneration Plan are:

#### For Christchurch:

- Support safe, strong and healthy communities that are well connected with each other and with the wider city.
- Provide opportunities for enhanced community participation, recreation and leisure.
- Create a restored native habitat with good quality water so there is an abundant source of mahinga kai, birdlife and native species.
- Create opportunities for sustainable economic activity and connections that enhance our wellbeing and prosperity now and into the future.

#### For New Zealand:

- Develop the Ōtākaro Avon River Corridor as a destination that attracts a wide range of domestic and international visitors.
- Establish a world-leading living laboratory, where we learn, experiment and research; testing and creating new ideas and ways of living.
- Demonstrate how to adapt to the challenges and opportunities presented by natural hazards, climate change and a river's floodplain.

<sup>4</sup> Report on Decisions made in approving the Draft Ōtākaro Avon River Corridor Regeneration Plan – DPMC  
<https://dpmc.govt.nz/sites/default/files/2019-08/MGCR%20Signed%20-%20Report%20on%20Decisions%20made%20in%20approving%20the%20Draft%20Otakaro%20Avon%20River%20Corridor%20Regeneration%20Plan.pdf>

Chrissie Williams, Ōtākaro Avon River Corridor Co-governance, Discussion paper, October 2021

### 3 The Global Settlement Agreement

- 3.1 The Global Settlement Agreement<sup>5</sup>, signed by the Crown and the Council in September 2019, outlined a process of transition planning for governance arrangements for the ŌARC. It involved a phased approach to increasing community involvement in governance over time.
- 3.2 In phase 1, while land ownership remains with the Crown, the Council and Land Information New Zealand (LINZ) would establish 'a consultative group comprising local stakeholders and community representatives to advise on transitional land use'. Te Tira Kāhikuhiku is that consultative group. It has delegations to make recommendations on transitional land uses and to grant funds from a Council provided Red Zones Transformative Fund.
- 3.3 Te Tira Kāhikuhiku is a group of 13 with a mix of representatives and independent members, comprising elected representatives from Community Boards, representatives from Ngāi Tūāhuriri and Ngāti Wheke, and five community members. It is not intended that it be a model for the long-term governance entity.
- 3.4 In phase 2, once the Council owns all or most of the river corridor land, a 'community governance group/entity, with delegated decision-making powers, could be established'.
- 3.5 As the predominant landowner, the Council will provide the majority of land, funding and resources for implementing the Regeneration Plan, and is the organisation with the obligation to establish this community governance entity.

### 4 Ngāi Tahu/Ngāi Tūāhuriri

*Note: The content in this section is a brief summary that has been extracted from various documents. It is anticipated that the section will be amended or replaced during/after discussions between Te Rūnanga o Ngāi Tūāhuriri and Council.*

- 4.1 Ngāi Tahu's status and relationship with the Crown is established through Te Tiriti o Waitangi (Te Tiriti). Te Tiriti recognises and guarantees to Māori tino rangatiratanga and the protection of their taonga, including waters, lands, fisheries, and mahinga kai.
- 4.2 Council's responsibilities to Te Tiriti are defined in statute - the Local Government Act 2002 (LGA), the Resource Management Act 1991 (RMA), the Conservation Act 1987, Te Rūnanga o Ngāi Tahu Act 1996 and the Ngāi Tahu Claims Settlement Act 1998.
- 4.3 Te Rūnanga o Ngāi Tahu provided views on the draft Regeneration Plan in November 2018<sup>6</sup>. Te Rūnanga o Ngāi Tahu expected that the Regeneration Plan would provide for and enable the exercise of tino rangatiratanga and kaitiakitanga by mana whenua, and provide for the relationship of mana whenua and their cultures and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.

<sup>5</sup> Global Settlement Agreement <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Strategies/Global-Settlement/CCC-Release-Global-Settlement-Agreement-23-September-2019.pdf>

<sup>6</sup> Te Rūnanga o Ngāi Tahu views provided to Regenerate Christchurch on the Draft ŌARC Regeneration Plan, November 2018, under s33 of the GCRA Act.

Chrissie Williams, Ōtākaro Avon River Corridor Co-governance, Discussion paper, October 2021

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- 4.4 The Regeneration Plan does acknowledge mana whenua: 'Ngāi Tūāhuriri and the Ihutai Ahu Whenua Trust collectively represent mana whenua, and have property rights and interests that are established by the Ngāi Tahu Claims Settlement Act 1998'.<sup>7</sup>
- 4.5 When approving the Regeneration Plan in August 2019, the Minister noted that the Regeneration Plan did not incorporate some of the comments provided by Te Rūnanga o Ngāi Tahu, particularly those that related to future land ownership and governance. The Minister expected that the views that were not incorporated in the Regeneration Plan would be considered as part of future decision-making, including in the Global Settlement Agreement<sup>8</sup>.
- 4.6 The role of Te Rūnanga o Ngāi Tahu as Treaty partner is somewhat recognised in the Global Settlement Agreement through the Council's commitment to 'Ngāi Tahu representation alongside other community representatives within the consultative group and in longer-term governance arrangements'. In determining governance principles and processes, the Council agreed in the Global Settlement to 'take into account the principles of Te Tiriti o Waitangi', for example, 'principles of partnership, rangatiratanga, active participation in decision-making, and active protection'.
- 4.7 The amendments to the Christchurch District Plan introduced through the Regeneration Plan do require 'recognition of the Ōtākaro/Avon River as a taonga and a cultural landscape for which Te Ngāi Tūāhuriri exercise kaitiakitanga to ensure values of cultural importance are managed, enhanced and/or protected'; and 'the restoration of the Ōtākaro Avon River Corridor for mahinga kai and the improvement of water quality' (Policy 13.14.2.1.7).
- 4.8 The *Mahaanui Iwi Management Plan 2013* is recognised under the RMA – the Council must take it into account when preparing or changing a district plan<sup>9</sup>. The section on Ihutai includes the catchments of the Ōtākaro/Avon River and Ōpāwaho/Heathcote River and is an essential resource when making decisions on the ŌARC<sup>10</sup>.
- 4.9 In establishing a governance entity for the ŌARC there is now the opportunity to recognise and respect Ngāi Tahu's interests and rights in the Ōtākaro/Avon River, and for Ngāi Tūāhuriri as mana whenua to be a key partner in the implementation of the Regeneration Plan in a co-governance role.
- 4.10 An option for the governance entity is that it be a council-controlled organisation. If it was, it would be required 'before making a decision that may significantly affect land or a body of water, to take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga'.<sup>11</sup>

<sup>7</sup> OARC Regeneration Plan page 66

<sup>8</sup> Report on Decisions made in approving the Draft Ōtākaro Avon River Corridor Regeneration Plan – DPMC  
<https://dpmc.govt.nz/sites/default/files/2019-08/MGCR%20Signed%20-%20Report%20on%20Decisions%20made%20in%20approving%20the%20Draft%20Otakaro%20Avon%20River%20Corridor%20Regeneration%20Plan.pdf>

<sup>9</sup> RMA s74(2A)

<sup>10</sup> <https://mahaanui.kurataiao.co.nz/iwi-management-plan/wahi-tuano/ihutai/>

<sup>11</sup> S60A Local Government Act 2002

Chrissie Williams, Ōtākaro Avon River Corridor Co-governance, Discussion paper, October 2021



## 5 Governance defined

- 5.1 Governance in this context refers to the legal rules, institutional arrangements and practices which determine who controls the implementation of the Regeneration Plan and who gains the benefits that flow from it.
- 5.2 Governance is a process through which the Council, mana whenua, the community and the private sector articulate their interests, exercise their rights and obligations, and mediate their differences. Governance is about power, relationships and accountability – who has influence, who decides, and how decision-makers are held accountable<sup>12</sup>.
- 5.3 Collaborative governance or co-governance, is where a public agency directly engages those from non-government organisations in collective decision-making that is formal, consensual and deliberative, to make or implement public policy. The entity would be delegated decision making, be organised and meet collectively.
- 5.4 In New Zealand, co-governance may take a specific meaning where natural resources are managed as part of or after a Treaty settlement between the Crown and iwi, by an entity with equal numbers of iwi representatives and council or Crown members.

## 6 Literature and research

- 6.1 The approach to governance and co-governance of natural resources and of regeneration projects, for both New Zealand and international case studies, has been described and summarised in the literature. Key publications (included as references) are:
  - Pawson et al, 2019: *Ōtākaro Avon River Corridor Regeneration Plan Governance case*.
  - Peart, Raewyn, and Cox, Brooke, 2019: *Governance of the Hauraki Gulf, a review of options*.
  - Johnston, Laurie, 2016: *Moving regeneration forward in Waimakariri: A Casebook of adaptive reuse*.
  - Office of the Controller and Auditor General, 2016: *Principles for effectively co-governing natural resources*.
- 6.2 In May 2019, a symposium on the governance of the ŌARC was held at the University of Canterbury. The symposium was an opportunity for individuals and groups who had separately considered possible governance arrangements to discuss options with others.

## 7 Lessons and insights

Collating the lessons and insights from these publications and the 2019 symposium, a governance entity would need to demonstrate:

### 7.1 Co-governance

- An entity with members appointed by Council and mana whenua, including some members from the communities neighbouring the ŌARC
- Effective appointees from mana whenua would recognise and provide for Ngāi Tūāhuriri rangatiratanga over the ŌARC

<sup>12</sup> Peart and Cox 2019

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#### 7.2 Legitimacy

- A clear mandate provided by a special Act of Parliament and/or a Trust Deed, providing legal status that would be difficult to amend or dismantle.
- An Act to provide a mechanism to ensure the Regeneration Plan endures in the long-term.

#### 7.3 Capability

- The entity should include members to have a balance of skills, knowledge and leadership capabilities.
- Members would be selected and appointed through defined, transparent and independent processes.
- Members would need to understand the extent of their decision-making powers and have clearly defined responsibilities.

#### 7.4 A balance of support from Council while having independence/autonomy

- Ownership and control of the entity would rest with the Council as it will provide the majority of land and funding for implementation.
- The Council will remain responsible for parks and reserves within the ŌARC; infrastructure works including stormwater management areas and flood mitigation works; the transport network; and a large part of the ecological restoration.
- At the same time, to be effective and efficient, the entity would need to have autonomy to act with minimal external direction and to operate at arm's length from the Council. It would need the mandate and delegation to have control of the land to be able to develop the land in accordance with the Regeneration Plan. This would require the ability to licence, procure and divest delivery responsibilities of land uses or projects, and to hold those delivery agents to account.

#### 7.5 Accountability and transparency

- Monitoring and reporting on the achievements of the entity, the progress on achieving the vision of the Regeneration Plan, and the challenges would be necessary. This could be through reporting to the Council and public on progress, using methods such as annual reports, annual meetings, and newsletters.
- Stakeholder interests would need to be identified and understood, to be able to engage in the decision-making process, and be able to understand how, why and who made any decisions.

#### 7.6 Financial sustainability

- The entity needs certainty of operational funding, which is likely to require sustained support from local or central government independent of changing political priorities.
- Having the entity set up to have independence from Council would allow it to manage public funds and to seek private and non-profit sector grants and other charitable donations; and to partner directly with private corporations and philanthropic organisations.

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- Over time, the entity would aim to be self-financing, with any profits reinvested into the activities of the entity.

#### 7.7 Adaptability

- The two phases of governance provided for in the Global Settlement Agreement acknowledge that the form and membership of the governance entity will be different in the transition period compared to what is required for longer-term implementation of the Regeneration Plan.
- An additional step would be to set up an 'Establishment Board' prior to the form of the final entity being determined. This would help refine the functions and membership of the entity, and would allow for deeper discussion on how an Act of Parliament could protect the land in perpetuity.
- The entity may need to evolve over time as the vision for the ŌARC is realised, and to adapt to external changes such as new approaches to managing catchments; climate change and rising sea levels; change in surrounding communities; and legislative and policy changes.
- Implementing the Regeneration Plan will take many years to complete. The entity will need to be sustained over many years, even decades

#### 7.8 Strategic direction

- The Regeneration Plan and the Christchurch District Plan would together provide the strategic direction for the entity. The Regeneration Plan provides examples of preferred land uses, and the variability of land use in different parts / reaches of the ŌARC. The Christchurch District Plan provisions give further guidance.
- The Regeneration Plan requires the development of an Implementation Plan to provide greater certainty about the funding, sequencing and delivery of the Regeneration Plan, and ensure coherent and co-ordinated development of the ŌARC.

#### 7.9 Strong community engagement and collaboration

- A key consideration in the implementation of the Regeneration Plan is the effects and benefits of activities in the ŌARC on surrounding communities, and the impacts that those communities will have on the corridor.
- The successful implementation of the Regeneration Plan is dependent on continued community ownership and advocacy for the Vision and Objectives of the Regeneration Plan, requiring on-going effective community engagement and collaboration.
- The views of the community could be provided by having members appointed to the entity and strengthened through a community advisory panel, or similar.

### 8 An option for an 'Establishment Board'

- 8.1 Based on the above insights a suggested governance model for an Establishment Board would be a Charitable Trust that:
- Is established by Council in late 2021/early 2022, with significant decision-making delegated by Council,

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- Has a Trust Deed that complies with the Charitable Trusts Act 1957. The Trust Deed would define the purpose and objects of the Trust based on the Vision and Objectives of the Regeneration Plan. It would articulate a shared understanding of the role, functions and procedures of the entity.
- Is a Council Controlled Organisation that complies with Part 5 of the LGA.<sup>13</sup> This would acknowledge that the Trust is dependent on continued support and funding from Council but is able to operate at arm's length from the Council.
- Has about eight members selected for their relevant skill-sets, with half the members appointed by Council and half by Te Rūnanga o Ngāi Tūāhuriri, and an Independent Chair appointed jointly by Council and Ngāi Tūāhuriri. It would be important to have some members who have strong links to the communities from the ŌARC.

## 9 An option for longer-term governance

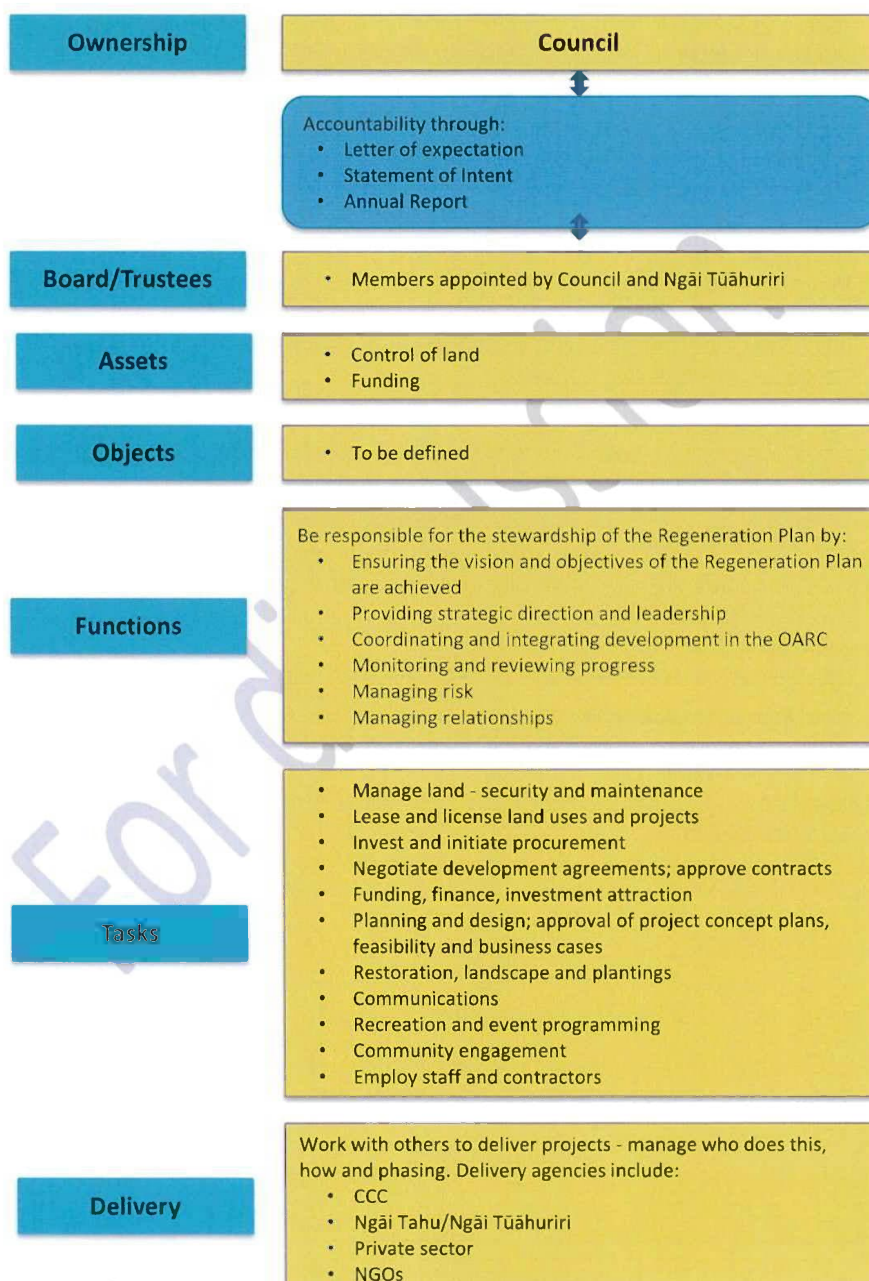
9.1 In the longer-term the entity could still be a Charitable Trust that would:

- Be established by Council under special/new legislation, such as a Local Bill
  - The legislation – and a Trust Deed derived from it – would define the objects based on the Vision and Objectives of the Regeneration Plan, and would articulate a shared understanding of purpose, functions and procedures of the entity.
- Be delegated significant decision-making by Council,
- Comply with the Charitable Trusts Act 1957.
- Be a Council Organisation or Council Controlled Organisation that complies with Part 5 of the LGA.<sup>14</sup> This would acknowledge that the Trust is dependent on continued support and funding from Council but is able to operate at arm's length from the Council.
- Have about eight members selected for their relevant skill-sets, with half the members appointed by Council and half by Te Rūnanga o Ngāi Tahu/Ngāi Tūāhuriri.
  - Those appointed would not necessarily be members of Council or of Te Rūnanga o Ngāi Tūāhuriri
  - It would be important to have some members who have strong links to the communities from the ŌARC.

<sup>13</sup> A council organisation is an entity for which the Council has the right, directly or indirectly, to appoint 1 or more of the trustees. A council-controlled organisation is an entity for which the Council has the right, directly or indirectly, to appoint 50% or more of the trustees. (s6 LGA)

<sup>14</sup> A council organisation is an entity for which the Council has the right, directly or indirectly, to appoint 1 or more of the trustees. A council-controlled organisation is an entity for which the Council has the right, directly or indirectly, to appoint 50% or more of the trustees. (s6 LGA)

## Ōtākaro Avon River Corridor Regeneration Plan Governance Entity



Chrissie Williams, Ōtākaro Avon River Corridor Co-governance, Discussion paper, October 2021

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Christchurch  
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OARC Entity Role re Council Functions and Powers

Council Function/Power	Potential power for the OARC governance entity?	
	Council OARC Committee	Charitable Trust
<b>LGA/landowner:</b>		
Edge housing	Yes	Yes
Temporary activity	Yes	Yes
Long term leases/licences that do not impact on infrastructure construction	Yes	Yes
Bylaw powers: Parks and Reserves; Marine, River and Lake	Yes	Yes
Allowing activity that would constrain infrastructure development	Is this appropriate?	Is this appropriate?
Technical functioning of stormwater, flood protection and traffic infrastructure	Is this appropriate?	Is this appropriate?
Landowner approval for significant changes from the OARC Development Plan	Recommendation, or Approval?	Recommendation, or Approval??
Design framework for infrastructure	Yes	Yes
Deciding whether land is a "strategic asset"	No – s76AA LGA requires that this be in the Council's significance and engagement policy and consulted on in a special consultative procedure.	
Setting Annual Plan/ LTP budgets	No – cl.32 Sch 7 LGA requires this be by Council	
Spending within Council's budgets, but not including on infrastructure	Yes	Yes
<b>Selling</b> land	No – cl.32 Sch 7 LGA requires this be by Council	
<b>Recommendations</b> to Council on exchanging publicly and privately owned land within the OARC	Yes	Yes
<b>Reserves Act:</b>		
Seeking reserve status for greenspace areas	Yes	Yes
<b>RMA:</b>		
Resource consent decisions	Not recommended – not a governance role	Not recommended
<b>Recommendations</b> to Council on proposing plan changes for the OARC	Yes	Yes
<b>Decision maker</b> on plan changes for the OARC?	Is this appropriate? Could be affirmed/supported in a joint management agreement with Ngāi Tūāhuriri under ss36B-36D RMA.	No – s33 RMA does not allow transfer of powers to a Trust.