

Date:

AGREEMENT

Between:

Central Plains Water Trust
And
Central Plains Water Limited

BACKGROUND:

For the purposes of this Agreement, Clause 3.1 of the CPWT / CPWL Memorandum of Understanding of 5 November 2004 ('the MOU') states:

"Prior to the issue of the Resource Consents, subject to the issue of Resource Consents on terms and conditions satisfactory to the CPWL and the Water Trust and in pursuance of its broad objectives, the Water Trust will do the following in conjunction and close consultation with CPWL:

.....

- (c) *Enter into further agreements with CPWL recording the terms and conditions on which the Water Trust makes the Resource Consents exclusively available to CPWL but, subject always to clause 14, such terms and conditions will be consistent with the terms and conditions of the Resource Consents themselves and shall not be detrimental to the commercial viability of CPWL's operation; ..."*

Further, Clause 14 states:

"14. USE OF RESOURCE CONSENTS

14.1 Notwithstanding any other provision of this Memorandum, the terms upon which the Water Trust makes the Resource Consents available to CPWL shall be:

- (a) *Consistent with the efficient and economic use of water within the Scheme Area; and*

(b) Consistent with the terms of the Resource Consents.

14.2 In consideration for the exclusive right to use the Resource Consents and for the purpose of ensuring compliance with the terms of the Resource Consents, CPWL will:

- (a) Adhere to and uphold best practice environmental standards of such type and to such levels of performance as shall be agreed by the Parties. Such standards (both as to type and performance levels):*
 - (i) Must be reasonable and appropriate;*
 - (ii) Must be financially viable to implement;*
 - (iii) Must not affect the financial viability of water users' use of water from the Scheme;*
 - (iv) Will apply across the Scheme Area unless otherwise agreed;*
and
 - (v) Must be consistent with the principles set out in the Schedule hereto.*

- (b) Ensure that all Water Use Agreements reflect and Implement the requirements and conditions of the Resource Consents to the extent that they are applicable;*

- (c) Take all reasonable and effective steps to ensure that users of the Scheme comply with the terms of the Water Use Agreements; and*

- (d) Accommodate and/or facilitate any recreational, social, cultural or environmental benefit/s which can be added to the Scheme that either it or the Water Trust Identifies and requires provided that the provision of such benefit does not adversely affect the financial viability of CPWL's operation."*

The Schedule referred to in clause 14.2 (a) (v) is the outline of best practice environmental standards attached as a schedule to this agreement.

The Sustainability Protocols which forms part of this Agreement, and are consistent with the Schedule are attached to and form part of this Agreement.

THE TERMS AND CONDITIONS UPON WHICH THE RESOURCE CONSENTS WILL BE MADE AVAILABLE:

A. THE ROLE FOR THE TRUST IN RESPECT OF ITS RESPONSIBILITIES AS THE HOLDER OF THE RESOURCE CONSENTS:

1. Fundamental principles

Subject always to the provisions of the MOU, the functions of the trust will:

- Be performed at governance level and will not infringe upon CPWL's management of the scheme.
- Be based as far as practicable on an 'outcomes' approach, rather than an 'inputs' or 'regulatory' approach.
- As far as may be achievable seek to reduce the extent to which the terms and conditions of the resource consents will require 'heavy handed' monitoring by Ecan and Selwyn District Council, and to optimise the concept of 'audited self-management' to ensure compliance with resource consent requirements and the environmental objectives of CPWT.
- Be funded by CPWL by way of a fee payable annually in advance to CPWT by CPWL for the use of the resource consents. Such fee will be:
 - 1) Financially viable to implement (MOU Clause 14.2(ii))
 - 2) Proposed annually by CPWT to cover its costs of carrying out its roles and responsibilities, including these purposes:
 1. Independently assessed trustees fees (refer MOU clause 5.1)
 2. Auditing costs (including those in part A. 3. (2). below) (refer MOU clause 5.1)
 3. An environmental levy (refer MOU clauses 4.1 (g) and 7.1(l) as to a "host fee") payable annually for as long as the CPWL irrigation scheme is in operation, which will include:
 - The actual costs, not payable directly by CPWL, of maintaining the environmental enhancements established as part of the scheme,

- A further sum to enable CPWT to improve and expand environmental enhancements associated with the scheme, proposed by CPWT from time to time. Such enhancements will include works to preserve the biodiversity of the area served by the scheme, facilities for the public to enjoy the enhanced physical environment generated by the scheme, and areas of planting in the wetlands created by the scheme and in other areas associated with scheme infrastructure.
 - A sum for ongoing research into the long term effects of the CPWL irrigation scheme on the physical environment of Central Canterbury including the area served by the scheme and the areas downstream of it (including Lake Waihora /Ellesmere and Christchurch City).
 - 4. General administration expenses (refer MOU clause 5.1)
 - 5. Other costs necessary or reasonably attributable to the performance by CPWT of its functions under this agreement, including CPWT's reasonable communications requirements (refer MOU clause 5.1)
- 3) A fair and reasonable fee for these purposes. The annual fee proposed by CPWT will be the subject of negotiation and agreement by and between the parties, prior to which CPWL may at its option require the proposal to be professionally audited against the purposes it is proposed to fund.
- 4) Determined in accordance with the dispute procedure specified in MOU clause 22.3. Clauses 22.4, 22.5, and 22.6 of the MOU should also apply should the parties fail to reach agreement within two months of the proposal being communicated in writing by CPWT to CPWL.
- Subject to part B. 3. hereof, the capital funding requirements of CPWT to carry out environmental and recreation projects will not be obtainable from CPWL under this agreement.
 - Ensure that the Resource Consent will always be available to CPWL to allow the continuation of the operation of the scheme uninterrupted, notwithstanding any unresolved dispute between CPWT and CPWL.

- CPWL and CPWT will act in good faith at all times to resolve issues between them.

2. Definition of Role of CPWT:

As stated in the MOU the CPWT will carry out its responsibilities under *“the terms and conditions on which the Water Trust makes the Resource Consents exclusively available to CPWL”* by agreeing with CPWL to a regime under which the Trust can ensure that CPWL will:

- *“Adhere to and uphold best practice environmental standards of such type and to such levels of performance as shall be agreed by the Parties”*
The Schedule referred to in MOU clause 14.2 (a) (v) is applicable and is attached hereto.
- *“Ensure that all Water Use Agreements reflect and Implement the requirements and conditions of the Resource Consents to the extent that they are applicable”*
- *“Take all reasonable and effective steps to ensure that users of the Scheme comply with the terms of the Water Use Agreements”*
- *“Accommodate and/or facilitate any recreational, social, cultural or environmental benefit/s which can be added to the Scheme that either it or the Water Trust identifies and requires provided that the provision of such benefit does not adversely affect the financial viability of CPWL’s operation.”*

3. Within the above framework, this Regime will include the following processes:

- 1) Immediately following the commencement of the necessary resource consents, an agreement will be entered into by the parties as to the detailed information which will be collected by CPWL for CPWT, the periods which will apply, and how the information is to be collected and presented to CPWT, by which the operation of the scheme can be monitored. The parties will use their best endeavors in the agreement to avoid any duplication in the monitoring functions of CPWT and those carried out by the consent authorities directly.
- 2) An independent auditor will be jointly appointed by the parties, the auditor’s function being to:
 - Verify the accuracy of the information provided by CPWL

- Provide an assessment of the results of that information against the RMA consent conditions and any other conditions agreed between the parties under the MOU
 - Provide an assessment of the results of that information against the Key Performance Indicators to be agreed from time to time by the parties, for establishing and maintaining the required or agreed standards for 'best environmental practice' by water users. Such practice will be included as requirements by CPWL in its water use agreements with water users, and will be based upon the results of the study carried out by the Ritso Society for the Sustainable Farming Fund, and will also take into account the proper and reasonable requirements of Ngai Tahu as the Tangata Whenua.
 - Report all results to both the CPWT board and the CPWL board.
 - On behalf of and under the direction of CPWT, to report to the regulatory authorities (Ecan and SDC) as required under the resource consent conditions.
- 3) Following the auditor's report, a commentary by CPWL will be provided to CPWT on the auditor's report, together with a proposal by CPWL as to how it will address, at CPWL's cost in all respects, any deficiencies identified in the audit report, and any recommendations made by the auditor.
- 4) Where CPWL has not met the requirements of
- the resource consent conditions,
 - of any other regulatory authority having jurisdiction,
 - or of any one or more of the KPIs referred to in 2) above,
- as evidenced by the auditor's report, and / or by the consent authorities, then after CPWT having given reasonable notice to do so to CPWL, CPWL will promptly, effectively and diligently take such effective and reasonable actions as may be specified in the notice, and within such reasonable period of time as will be specified in the notice, to meet such requirements.
- 5) For these purposes:
- the reasonableness of notice (as to both time and content),
 - the effectiveness and reasonableness of actions to be specified,

- and the reasonableness of any period to meet the requirements of such notice,

will be determined according to professional advice provided by CPWL and / or obtained by CPWT (including peer review where required by CPWT), and by prudent and usual practice for irrigation schemes of the scale and nature of the Central Plains Scheme, bearing in mind that the primary objective is to ensure compliance with the resource consent conditions and the integrity and continuation of the resource consents to allow the uninterrupted operation of the Scheme.

In any event such notice and action will not be less than is specified in any notice or other requirement by the consent authorities or any other regulatory authority having jurisdiction.

- 6) Subject to 4) above and to clause 15 of the MOU, CPWT shall have the reserve powers referred to in clause 15 of the MOU:
 - to withdraw the right of CPWL to exercise CPWT's resource consents to continue to operate the Scheme, or
 - to review the terms upon which the resource consents are made available exclusively and to give directions to CPWL as essential conditions upon which CPWL is permitted by CPWT to continue to exercise CPWT's resource consents to continue to operate the Scheme.

- 7) CPWT will annually prepare and publish a Sustainability (or Triple Bottom Line) report, including the outcomes of the monitoring procedure, to its stakeholders and community partners. Such stakeholders and community partners will include the relevant Councils, organisations representing the communities in the Scheme area, Ngai Tahu iwi, relevant environmental interest groups, and appropriate government departments. The report will include a description of any measures proposed to address issues raised in the monitoring process as set out above, together with reports on:
 - the economic performance of the Scheme (including its effects on the regional economy),
 - the environmental effects of the scheme,
 - the recreational benefits of the Scheme,
 - the social effects of the Scheme,

- cultural effects of the Scheme (with special reference to the cultural issues for the Tangata Whenua and in particular to Ngai Tahu values in relation to water, the natural environment and other taonga).

B. FUNCTIONS OF CPWT FOR ENVIRONMENTAL AND RECREATIONAL ENHANCEMENTS:

1. CPWT will carry out its Environmental policy and programme in the way set out in the MOU between CPWL and CPWT, in conjunction with CPWL, to realise the wider environmental objectives of the Scheme.
2. CPWT will carry out its recreational programme in the way set out in the MOU between CPWL and CPWT, in conjunction with CPWL, to realise the wider recreational objectives of the Scheme.
3. In so doing CPWT will discuss with CPWL, and the parties will co-operate with each other on the means by which CPWT will carry out its environmental and recreational enhancement programmes; and the parties will reach agreement before the resource consent hearings are commenced upon those aspects of the Scheme which will require action by CPWL to accommodate CPWT's reasonable and agreed requirements. Such requirements will include:
 - a. the definition of land areas to be held in mitigation as part of the Scheme for environmental and / or recreational purposes,
 - b. reasonable alterations and additions to the Scheme infrastructure which can be accommodated without infringing the provisions of the MOU relating to the economic viability of the Scheme or to the economic viability of water use,
 - c. other such issues fundamental to the performance of CPWT's role in the achievement of its environmental, social, cultural, and recreational objectives.

It is not intended that the detail of such requirements will be agreed prior to the resource consent hearings; and the parties agree to discuss and agree upon such detail in due course before the commencement of the applicable resource consents by which the scheme will become enabled.

C. OTHER ROLES:

1. To liaise and consult effectively with its stakeholders and to communicate effectively with the community generally, including:
 - Establishing and maintaining a community liaison group
 - Maintaining liaison with Ngai Tahu
 - Establishing appropriate liaison with recreational and environmental Groups.

And for these purposes CPWT will regularly issue news releases, and will maintain a website for public information, will publish a Sustainability report, and will report to the Christchurch City Council and the Selwyn District Council by way of the Statement of Intent process and the other requirements specified by the Local Government Act.

2. As set out in clauses 4.1 (h) and 17 of the MOU, to co-operate with CPWL to facilitate any renewals, amendments, and extensions of the resource consents properly required for the ongoing development of the Central Plains Water Scheme, which are required by CPWL from time to time. Such amendments and extensions will be consistent with the objectives of the Scheme as set out in the MOU and will be considered and agreed with CPWL in all respects in a manner consistent with the requirements of the MOU for the initial consent application process. Such amendments and extensions may include applications for water use for energy generation and other uses compatible with the initial Scheme, additional areas for irrigation, and measures to improve the performance of the Scheme.

ATTESTATION:

Signed on behalf of CPWT by:

Chairman

Signed on behalf of CPWL by:

Chairman