

REVIEW OF THE OPERATIONS OF THE WEST COAST DEVELOPMENT TRUST – TRUSTEES’ AND SETTLOR’S AGREEMENT ON THE OUTCOME OF THE REVIEW

The West Coast Development Trust Deed requires the Settlor and the Trustees to carry out a “one-off” review of the operations of the Trust after five years of operation. Treasury is representing the Settlor (i.e., the Minister of Finance) during the review. Any consequential changes to the Trust Deed can only be made by agreement between the Trustees and the Settlor.

The Minister of Finance, in his capacity as Settlor, and Trustees to the West Coast Development Trust met at 10.30 am 14 June 2007 to agree the outcome of the review. The overall findings as agreed between the Settlor and the Trustees are set out below, along with any agreed changes that are to be made to Trust settings in response to the Trustee and stakeholder submissions.

The overall findings are:

- The Trust has been very successful in getting its operations established and supported by a strong set of policies and processes within a short time-frame;
- Its investment strategy, supported by its Statement of Investing Policies and Objectives, has resulted in the growth of the initial capital from \$92 million to \$120 million over 6 years. The Trust has therefore managed its funds well, achieving significant returns;
- The extent of the Trust’s role in community distributions is a significant shift from what was envisaged by the Settlor at the outset of the Trust. There are many aspects to any economic development strategy, requiring a number of parties (e.g., central and local government) to play a co-ordinated part. Given other parties’ responsibilities in the community distributions sphere, the Trust should now reconsider its level of involvement in this area, particularly in minor distributions with limited economic impact;
- The Advisory Body, a fundamental aspect of the Trust Deed, is taking a relatively limited role in Trust distributions for community purposes over \$100,000. It is important that, to meet the objects of the Trust, applications for community distributions are treated in a similar manner to direct business related applications i.e., considering sustainable economic benefits, linkages to regional strategic development plans, potential for other sources of funding etc. It is the Advisory Body that has the skill set (and role) to carry out this function, albeit that some inherent difficulties around ranking individual community projects may require flexibility around the options recommended to the Trustees;
- The Advisory Body and Trust management have put considerable work into developing an approach for assessing the extent that community projects contribute to the objects of the Trust moving forward - the Trust is encouraged to further develop this work;
- As the Trust has steadily grown in size, capability, and operations, Trustees have needed to adopt more of a “governance” focus i.e., determining the direction and major policy settings of the Trust. The Trustees are encouraged to strengthen

the emphasis on the Trustees’ governance role. The Trustees’ intended shift to a more tiered application processing approach will support this emphasis; and

- The role of council appointed Trustees was queried during the review. Both the Deed and the general law require that council appointed trustees act in the best interests of the beneficiaries “as a whole” (i.e., the West Coast region, not any one district). An appointing Council has the power to remove the trustee and to appoint another in his/her place if that trustee is not acting as the appointer would have wished. However, to the extent that a council appointed trustee takes decisions for any interests of a district or council interest that is in conflict with the interests of the beneficiaries as a whole, the trustee would be in breach of his/her fiduciary duty and could possibly incur personal liability.

Changes to be made to Trust settings in response to the Trustee and stakeholder submissions

Two significant changes are to be made to Trust settings that do not require deed amendment:

- The Settlor and Trustees have agreed to clarify the nature of the “infrastructure inclusion clause” in the Trust Deed. The interpretation offers flexibility to fund more discretionary projects, such as aquatic and other recreational facilities.
- A number of deed amendment options were discussed to enhance the efficiency of processing applications. The Trustees intend to introduce a tiered system of delegation, which does not require deed amendment, whereby:
 - The CEO has the power to approve business related applications up to \$100k.
 - The CEO, on advisory body recommendation, has power to approve applications up to an amount (likely to be \$500k).
 - A trust sub-committee, on advisory body recommendation, has power to approve applications up to an amount (likely to be \$1m).
 - The full trust, on advisory body recommendation, still approves major applications (likely to be above \$1m).

The Settlor and the Trustees have also agreed to amend the Trust Deed in some areas; the significant amendments are:

- The number and composition of Trustees has been changed to enable more effective governance, while continuing to ensure a strong and across the board “West Coast” presence on the Trust and retaining links to councils. The amended governance structure will take effect when council elections take place later this year.

<i>Current Trustee governance structure</i>	<i>Amended Trustee governance structure</i>
Twelve Trustees consisting: <ul style="list-style-type: none"> • Four Trustees appointed by the four West Coast Councils respectively (the 	Six Trustees consisting: <ul style="list-style-type: none"> • One Trustee appointed by the four West Coast Councils jointly (the Appointed

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<p>Appointed Trustees);</p> <ul style="list-style-type: none">• Six Trustees elected - two for each of the three West Coast districts (the Elected Trustees);• One Trustee appointed (the Tangata Whenua Trustee); and• One Trustee appointed jointly by the Law Society and Institute of Chartered Accountants (the Independent Trustee).	<p>Trustee);</p> <ul style="list-style-type: none">• Three Trustees elected - one for each of the three West Coast districts (the Elected Trustees);• One Trustee appointed (the Tangata Whenua Trustee); and• One Trustee appointed jointly by the Law Society and Institute of Chartered Accountants (the Independent Trustee).
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- The Trust will be able to borrow up to 10% of the investment fund for the purposes of investing.
- The Settlor or Trustees can trigger another review of the operations of the Trust after 5 years
- Trustee remuneration will be set on the basis of a new independent framework used for statutory agencies and management boards. This will result in the Chair's remuneration decreasing slightly from around \$30,200 to \$29,900, while Trustee remuneration increases from around \$10,113 to \$14,900.
- The new conflict of interest practices put in place by the Trust are codified. These changes will:
 - Apply Trustee conflict of interest rules to the Advisory Body
 - Introduce a deputy chair
 - Clarify the treatment of the chair and role of the deputy chair in relation to conflicts of interest