

Statement of Proposal

Dissolution of Kaikōura Enhancement Trust (KET)

1. Introduction

KET is a registered charitable trust set up by Kaikōura District Council (KDC) in 2000 and is noted as a Strategic Asset in the Kaikōura Long Term Plan 2021-2031. KET is a Council Controlled Organisation of KDC. The primary purpose for KET was progressing environmental projects and accessing external funds to achieve that goal. KDC also has Innovative Waste Kaikōura (IWK) as a CCO and KET owns 100% of all the shares in IWK serving as the governance mechanism for IWK. The historical intent of establishing both KET and IWK as charitable entities was to take advantage of their tax-exempt status, which would provide tax deductions for donations to those entities while also attracting grants from external parties. With the Income Tax Act change in 2008, CCOs were no longer deemed tax exempt (that they are CCOs is established elsewhere in this paper). As a result, there is no longer any tax advantage for KET and, in addition, as a CCO rather than an independent community entity, does not fit the type of community trust that large grant organisations typically fund.

KDC now finds that this structure is no longer fit for purpose due to:

- i) there being no tax exemption advantages
- ii) the restrictions imposed on IWKs ability to expand further as a commercial entity
- iii) difficulty in exploring other CCO style options which could benefit the community due to the limitations imposed as a result of KET's constitution

Another variable for consideration is staff resourcing and funding. Council staff need to commit time to ensuring KET meets its audit requirements as per the Local Government Act (2002) sections 98 and 99 and there is the financial impact of AuditNZ fees (estimated at \$10,800 for the 2022/23 financial year alone). Given the limited size of the Finance team, involvement in KET accounts means their time to focus on other more value add activities is reduced.

Lastly, the actual governance benefit of a standalone KET Board for IWK is reduced given Councillors being on the Board of IWK and Council staff having day to day interactions and influence on IWK operations.

The conclusion of this Statement of Proposal is a recommendation that KET is disestablished and new options for a future relevant structure are explored.

2. Purpose of this Statement of Proposal

The Council must follow the Special Consultative Procedure contained in the Local Government Act for community consultation and comment in respect of a proposal to transfer ownership or control of any asset it has identified as a Strategic Asset.

As part of the Special Consultative Procedure the Council must produce a Statement of Proposal, which contains a summary of information that is a fair representation of the major matters in the proposal and make it available to the community. This document is the Statement of Proposal. The information contained in this Statement of Proposal has been approved by Council for notification and consultation.

3. **Kaikōura Enhancement Trust Background**

KET's charitable objectives relate to the collection and disposal of waste in an ecologically sound manner, sustainable waste management, promotion of recycling and raising public awareness of sustainable resource management. The trustees of KET are appointed by KDC with trustees having broad powers to spend funds and apply property toward furthering the charitable objectives. On a wind up, any surplus property and money is to be applied towards charitable purposes of a like nature within the Kaikōura District.

KET holds 100% of shares in IWK which is a charitable company that operates the Kaikōura resource recovery centre and landfill and also holds a multi-year contract with KDC to provide 3 Waters Maintenance in the district. IWK's charitable purpose is the promotion, development and implementation of environmentally sound waste management processes and practises. KET has the power to appoint directors for IWK.

4. **Proposal**

There is benefit in being able to complete the wind up of KET by 31 December 2023 as this will reduce the level of Audit time required for the 2022/23 financial year and should remove any requirement to conduct an audit for the 2023/24 financial year. The reduced time required will translate to lower audit fees charged. As soon as KET is disestablished we can also begin exploring alternative options if relevant.

As such it is proposed to conduct the necessary processes to wind up KET including determining tax liabilities, transfer of IWK shares to KDC and associated actions.

There are some tax considerations which will and have been taken into account:

- **Tax Structure**

Generally, charities are exempt from income tax under either section CW41 or section CW 42 of the Income Tax act. However, Council Controlled entities (Council Controlled Organisation or Council Controlled Trading Organisation) are not exempt from income tax. Council Controlled Organisation (CCO) is defined in section YA 1 of the Act and references various definitions in section 6 of the Local Government Act 2002 (LGA).

KET is considered a CCO within paragraph (b) of the definition of that term in section 6 of the LGA as it is an entity in respect of which KDC has the right to appoint 1 or more of the trustees of the entity. In addition, it is considered a CCO as KDC has the right to appoint 50% or more of its trustees and lastly, it is considered a CCO as KDC has control of the votes and appointment of directors for IWK (IWK too being a CCO).

There has been very little income for KET over the last 2 years and while further analysis would be required, it is anticipated that there would be minimal, if any, tax to pay.

- **Tax issues on wind up of KET**

There should be no tax income considerations for KET if the IWK shares are transferred to KDC for no consideration. This is on the basis that the IWK shares are held on the capital account and KET will still be acting within its charitable purposes in transferring the shares to KDC. KET is also not considered tax exempt and therefore deregistration tax does not apply when a charity is already in the tax net (because it is a CCO).

In addition, consideration for whether there would be tax based on the value of the shares transferred to KDC is deemed to be nil. This is because:

- i) The shares will not be received as part of any KDC business activities
- ii) KDC is not receiving the shares as any beneficiary of KET, rather the transfer of shares is to transfer the shares not on trust but to support efficiency and further KETs objectives around waste management and the shares are not a distribution from any foreign trust
- iii) IWK is a CCO and already a taxpayer therefore no tax issues for IWK

5. **Options**

There are 2 options identified for feedback from the community:

5.1 Option 1 – Preferred Option:

Council to progress the necessary actions to close out tax liabilities, transfer of shares from KET to KDC and explore alternative, agile and future relevant structures to support the Kaikōura District. If the need is identified, consideration could be given in the future to the establishment of a new fit for purpose body focusing on enhancement opportunities.

Option 2 – Status Quo:

Council stays with the current structure resulting in additional and ongoing costs relating to Audit fees and staff time. The existing structure also currently provides limited or no benefit to either Kaikōura District Council or the community and restricts future options.

6. **Community Engagement Process**

The consultation period will be for one month from 1st November to 30th November 2023.

During this time information about the proposal will be available from the KDC website, Facebook group and local newspaper.

A press release will signal the commencement of the consultation period.

The community will be invited to provide their feedback by completing a submission questionnaire to indicate their preferred option.

7. **Submissions on this Proposal**

Community engagement is proposed to occur upon approval of this proposal commencing on the 1st November 2023 and running until the 30th November 2023.

The online submission form will be available on the KDC Website and links to this will be provided on Facebook. Paper-based submission forms will be available at KDC reception.

Submissions may be made in writing or by completing the online submission form, addressed to submissions@kaikoura.govt.nz

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