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TANNER RITCHIE & CO

PUBLIC & PRIMARY SECTOR ADVISERS

Review of Council Support for the Clean Tech Trust

Report to the Kapiti District Council

Updated version, 17 September 2014

Commercial – in- confidence

Executive Summary

This report ('the Tanner Ritchie report') was commissioned by the Council to advise it on lessons to be learned from the establishment, implementation, funding and oversight of the Clean Tech Trust, based in Otaki.

The Clean Tech Trust ('CTT') was established on 4 July 2012. The origin of the establishment was a review undertaken in November 2011 for the Council about the (then) current circumstances of the Otaki Clean Tech Park, and the Clean Tech Centre ('CTC') that had been established within it in November 2010. The purpose of the CTC was to provide support services and to act as an incubator for start-up clean technology businesses. The CTC premises were, and remain, leased for this purpose by Grow Wellington, the regional economic development agency. The purpose of the CTC was to provide support services and to act as an incubator for start-up clean technology businesses.

Existing tenants of the CTC, had expressed concern about the extent to which promised business support services for CTC member companies had been made available, and the lack of progress in terms of establishing relationships with research and tertiary institutions.

Given the concerns about support services, the suggestion was made by the CT companies to form a trust or other structure in addition to the CTC's operations to offer a more comprehensive support package than what then existed. The suggestion was canvassed in an independent report, which recommended the formation of a Clean Technology Trust.

Grow Wellington had an objective of promoting and supporting the development of clean technology businesses in the Wellington region and had focused on the Kapiti region as the potential location for a clean technology business park. That support was welcomed by the District Council then in office, given its own objective of supporting environmentally sustainable policies and practices in the district, and facilitating the development of clean technology businesses. Support for the clean technology sector was also identified as a key strategic focus area in the Council's Draft Strategy for Supporting Economic Development of Kapiti published in February 2012 (finalised June 2012).

The establishment of a Clean Technology Trust was intended to manage development, establish a full suite of customized commercialization, research and development services for Park tenants, and to attract new tenants to the Clean Technology Park. An important part of this initial set up stage would be the construction of a new (i.e. the second) building at the Park which would provide office space for the Trust and for new tenants. It was proposed to the Council that it provide seed funding to set up the new organization and establish the services outlined above. This proposal was included in the 2012-32 Draft Long Term Plan that was adopted for public consultation on 5 April 2012.

On 7 June 2012, Council staff reported back on submissions to the Long Term Plan and advised that investigations had confirmed that the most appropriate structure to develop and run the Park would be a charitable trust. The staff report to the Council also proposed a $1.5million loan to the Trust as the mechanism for supporting the establishment of the Trust and the Park. The Council confirmed inclusion of the $1.5 million loan in the Long Term Plan, and authorized the Chief Executive to finalise and sign the loan agreement with the Trust.

The first meeting of the Trust was held on 4 July, and the Trust Deed and Facilities Agreement were signed the next day.

The Council was advised that there were a number of risks associated with its support of the project and in terms of making a loan facility available. Eleven key risks were listed, together with possible mitigation actions. The Tanner Ritchie report notes that a majority of the risks identified for the Council were subsequently realized, and questions whether appropriate monitoring processes were actually implemented.

Preparation for the construction of the second (i.e. Stage 2) building continued throughout 2012 and into 2013. This building would be subleased by the CTT to other clean technology businesses for office space. In March 2013, following a formal request from the CTT, a staff report to the Council recommended a change to the Loan Agreement with the Council, whereby

the Council's agreement to underwrite the CTT's lease of that building would be increased from $250,000 to $520,000. This would be achieved by reducing the amount allocated for clean technology projects by the same amount, to preserve the total amount of the Council's commitment. The staff report noted that in agreeing to this request from the Trust, the Council would be moving some of the risk profile from project based initiatives to the tenancy underwrite. It added "while risks do exist and the risk profile is changed, the level of risk that was identified as part of the Council's original decision to fund has not changed". It is however clear in hindsight that the risk profile resulting for the Council from this change of funding allocation did indeed change, and that this was not fully understood at the time.

In November 2013 Council staff reported to the Council on significant issues that had arisen with respect to the CTT:

- All of the administration start-up funds had essentially been spent. The Trust had not secured other sources of revenue. It therefore had no income to operate with.
- The Trust had diverged from the original concept of how it would operate[1].
- The Trust had focused on establishing a new building at the Park (at that point still yet to be finished and available for lease), but that at that stage only one tenant had been found for it.
- The Trust Board was not united on either what its current situation was, or on a go-forward strategy.

The outcome of the Council's deliberations over the subsequent month was that the Council would provide no further funding to the CTT (other than some $30,000 to enable it to meet current liabilities), and negotiate a new lease with the property owner whereby the Council itself would take over the lease of the second building. This would enable the Council to reduce its future exposure to more expenditure and remove the rental underwrite.

The CTT's affairs have subsequently been wound up and the Trust has ceased to exist.

Following interviews with most of the participants in this project, the Report identifies the Council's actions in contributing to the establishment and operations of the Trust; the actions taken by the Trust towards implementing the purpose for which it was set up; and sets out the lessons to be learned, to enable improvements in the Council's management of such initiatives in future.

The report finds that the business case relating to the development of the CTT that was presented to the Council in February 2012 was very brief and that staff analysis of the proposition for investment was inadequate. It seemed to be accepted that Council investment would be required in order for the Clean Technology Centre and Park to be further developed, but this proposition was not fully tested. The Council was in effect committing to an 'investment business model' with unclear expectations of what such a model implied for the Council, and with only limited means of monitoring the performance of that investment.

Moreover the report finds that the business case for an investment in a second clean technology office building was also not fully investigated by the Council.

The report concludes that there are a number of lessons that the Council should consider from the experience with the Clean Tech Trust.

a. A full business case needs to be prepared for any significant business proposal seeking Council support. The council should seek appropriately qualified external support to analyse any proposal if necessary, and engage in a sound 'due diligence' process.
b. There may be components within the overall business proposal that need specific commercial analysis (i.e. the Stage 2 building proposal in this instance).
c. The role of the Council in respect of particular projects needs to be determined, and the nature of its interests set out formally and understood by all involved. Why it should invest in a proposal needs to be properly elaborated and reviewed.

[1] This perception by Council staff was not investigated further in our Review.

d. If a new organisation is to be established, and if the Council is required to invest in it, consideration should be given to what structural options are available and how the Council's 'ownership' as well as its 'purchase' interests should be formulated.
e. Care needs to be taken to understand the implications of the investment approach or model chosen for the purpose. In particular, the style of management subsequently required for a significant Council investment should be fully explored from the outset
f. The Council's ongoing relationship with any new entity that it is supporting should be specified in a relevant form of agreement—i.e. either an MoU, a contract for services, or some other form of performance agreement.
g. Risks that are identified for the Council should be incorporated into a relevant risk register and regularly monitored and updated. Appropriate mitigation steps should be in place and acted upon.
h. Where there is a technical component to any proposal (e.g. clean technology in this instance) appropriate external advice should be sought. In this instance, were the clean technology enhancements required by the Council actually likely to be commercially viable?
i. There needs to be clear expectations established from the outset as to financial and service performance reporting requirements.
j. Appropriate steps need to be taken by both parties to a business relationship to understand the other's strategy and business direction so that any issues can be resolved quickly. There is likely to be a need for relationships to be established and maintained at both Councillor as well as at staff levels.

1. Introduction

The following is our report[2] on the establishment, implementation, funding and oversight of the Clean Tech Trust. We have been asked in particular to:

- identify the Council's actions in contributing to the establishment and operations of the Trust (including agreements made with Riverbank Estates Limited);
- identify the actions taken by the Trust towards implementing the purpose for which it was set up;
- assess the effectiveness of these actions; and
- identify key issues or actions which contributed to the wind-up of the Trust

The focus is on the lessons to be learned, to enable improvements in the Council's management of such initiatives in future. Our terms of reference are set out in Appendix One.

The report is set out in the following sequence:

a. Background and context
b. The business model
c. The Council's involvement
d. The establishment and management of the Trust
e. Contracts and agreements
f. Planning and decision-making
g. Funding and financial management
h. Monitoring and reporting systems
i. Findings and conclusion
j. Recommendations

2. Background and context

The Clean Tech Trust ('CTT') was established on 4 July 2012. Its purposes are set out in Appendix 2 to this report. The origin of the establishment was a review undertaken in November 2011 for the Council and for Pritchard Enterprises (whose MD is Mr Stuart Pritchard) about the (then) current circumstances and practices of the Otaki Clean Tech Park, and the Clean Tech Centre ('CTC') that had been established within it in November 2010. Riverbank Estates Ltd, (also directed by Mr Pritchard)is the private developer and owner of the Clean Tech Park. Riverbank Estates Ltd. owns the building located within the Park that is occupied by the Clean Tech Centre. The CTC premises were, and remain[3], leased for this purpose by Grow Wellington, the regional economic development agency. The purpose of the CTC was to provide support services and to act as an incubator for start-up clean technology businesses.

The report of that review[4] ('the Green Chip report') provided to the Council addressed concerns expressed and issues raised both by existing tenants of the CTC, and also other businesses in the region who might be termed 'prospective tenants'. These concerns focused on the extent to which promised business support services for CTC member companies had been made available, and the lack of progress in terms of establishing relationships with research and tertiary institutions.

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[2] This report has been written by Ross Tanner, Principal of Ross Tanner Consulting Ltd, t/a Tanner Ritchie and Co.

[3] The statement was correct at the time of preparing this report. Grow Wellington has recently announced its withdrawal from this venture.

[4] 'Otaki Clean Technology Centre and Park: Economic Opportunities for the Kapiti Region: A Strategic Operational Review'; Green Chip Ltd., February 2012

Given the concerns about support services, the suggestion was made by the CT companies to form a trust or other structure in addition to the CTC's operations to offer a more comprehensive support package than what then existed. The suggestion was canvassed in the Green Chip report and formation of a Clean Technology Trust was recommended. The report contains a very brief outline of a business case, and mentions three financial scenarios for establishment, all of which required an investment of capital funding by the Kapiti District Council. A short risk assessment, outlining five key risks, was also included.

It should be noted as well, that the authors of this report had also previously (July 2010) reported to Grow Wellington with an assessment of Wellington regional clean technology capability and Kapiti Business Park sustainability. That earlier report discussed and promoted ideas for the development of the Clean Technology Park.

It is clear from a reading of the 2010 report that Grow Wellington had an objective of promoting and supporting the development of clean technology businesses in the Wellington region and had focused on the Kapiti region as the potential location for a clean technology business park. That support was welcomed by the District Council, given its own objective of supporting environmentally sustainable policies and practices in the district, and facilitating the development of clean technology businesses. Support for the clean technology sector was also identified as a key strategic focus area in the Council's Draft Strategy for Supporting Economic Development of Kapiti published in February 2012 (finalised June 2012).

The Green Chip report was provided to the Council's Corporate Business Committee on 16 February 2012 under cover of a Council staff report. The purpose stated in this report was to provide the Committee with an update on recent developments at the Clean Technology Centre and Park and to seek approval for ongoing investigations into a proposal for future development of the Clean Technology Park Concept.

The Council staff report states (paragraph 13) that "in order to facilitate the growth of the Park a new organization will need to be established. The purpose of the organization will be to manage development, establish a full suite of customized commercialization, research and development services for Park tenants, and to attract new tenants to the Park".

The Council report continues (para 15) that "the <u>recommended</u> (our emphasis) structure for the new park organization is an independent Trust" and proceeds to describe a proposed approach for its establishment, including the appointment of a chief executive officer. The report notes that the Council would be represented on the establishment board but that <u>the Trust would be fully independent of the Council</u>.

The report then advises that "an important part of this initial set up stage would be the construction of a new building at the Park which would provide office space for the Trust and for new tenants. Pritchard Enterprises is currently working through the design and consent stage of a new building and expects construction to start during <u>April 2012"</u>.

The staff report advises (para 20) that "there is an opportunity for Council to support the initial development of the Park with further investment over time, and repeats the three investment scenarios from the Green Chip report without any further analysis other than to then propose that a loan of $1.5 million from the Council to the Trust (the second of three options outlined) be used to set up the new organization and establish the services outlined above.

Finally, the report outlined five key risks associated with the proposal and suggested means of mitigation for each of these. The risk identified differed in several respects from those listed in the Green Chip report. It is worth noting at this point that each of the five risks identified in the Council staff report was actually realized. We will return to this issue later.

The Corporate Business Committee was at that point asked to (and did) approve further investigations into the potential to support the future development of the Clean Technology Park, Otaki, with a report back to council as part of the 2012 Long term Plan Process. However it is clear that much more activity than merely 'an investigation' was quickly under way:

- Council staff appointed Green Chip to establish 'a new organisation' (but clearly with a Trust in mind) "through the completion of key agreements, recruitment of trustees, discussions with key stakeholders and the design of some critical business and funding functions"[5].

- Preparations for the construction of another building at the Park were well underway, as noted above.
- Financial arrangements for potential Council support for the Trust were under discussion, leading toward specific agreements that were then to be documented. Evidence for this is that a proposal to provide seed funding of $1.5 million for the establishment of an expanded Clean Technology Park and associated Trust was included in the 2012-32 Draft Long Term Plan that was adopted for public consultation on 5 April 2012.

We also assume from the way that the staff report described above was written that Councillors would have known what was proposed in terms of the establishment of the Trust. A further staff report was submitted to the full Council and dated 7 June 2012. Its purpose was to report back on submissions to the Long Term Plan and to update the Council on work undertaken on the framework for the Clean Technology Trust and Park, as the basis for a Council decision to confirm funding for the Trust. This report advised that "investigations have confirmed that the most appropriate structure to develop and run the Park would be a charitable trust". Work on the formation of the Trust had commenced and a draft Trust Deed (as well as five other legal documents) was attached to the report. There was no further commentary on alternative structures, nor why a charitable trust was the most appropriate structure.

The staff report to the Council also proposed a $1.5million loan to the Trust as the mechanism for supporting the establishment of the Trust and the Park along the lines proposed in the previous (February) report to the Council. The details of the loan arrangement were specified, but there was no analysis as to why the loan was required, or the implications for the Council of providing it. This was despite the fact that, as the report showed, 36% of submissions received on the LTP opposed the proposal for seed funding of the Clean Technology Trust and Park.

A further summary assessment of risks associated with making the loan available was included in the report, which increased the number of key risks to 11, and listed possible mitigation actions. We note again here that a majority of the risks identified for the Council were subsequently realized.

The report asked the Council to:

a) Confirm inclusion of the $1.5 million loan in the Long Term Plan
b) Note that a report would be brought back to the Council on 28 June 2012 for the appointment of a trustee by the Council to the CTT
c) Authorize the Chief Executive to advance for finalisation and then sign the draft agreements attached to the report.

The draft agreements included the following documents:

i. Draft Declaration of Trust establishing the Clean Technology Trust
ii. Draft Facilities Agreement
iii. Draft Enhancements Agreement
iv. Draft Head Lease
v. Draft Deed of Rental Underwrite and Guarantee
vi. Agreement to Sub-Lease

The purpose of these agreements, which were described in the staff report, was summarized as being: "which in combination will minimise the risk of failure and the potential non-repayment of the loan". Our own report further below will show that these agreements might have been a legal backstop, but they could not by themselves 'minimize the risk of failure'.

The first meeting of the Trust was held on 4 July, and the Trust Deed and Facilities Agreement were signed. The details of the $1.5 million loan from the Council, which had several components, are set out in Appendix 3. The other documents listed above were subsequently signed almost a year later, in July 2013.

[5] Letter from Neil Mackay, Green Chip Ltd. to GM, Strategy and Partnerships, KCDC, 5 March 2012

Preparation for the construction of a second (i.e. Stage 2) building that would be leased by the Trust itself from Riverbank Estates continued throughout 2012 and into 2013. This building would be subleased by the CTT to other clean technology businesses for office space. In March 2013, following a formal request from the CTT, a staff report to the Council recommended a change ('addendum') to the Facilities Agreement with the Council, whereby the Council's agreement to underwrite the CTT's lease of that building would be increased from $250,000 to $520,000. This would be achieved by reducing the amount allocated for clean technology projects by the same amount, to preserve the total amount of the Council's commitment. The staff report noted that in agreeing to this request from the Trust, the Council would be moving some of the risk profile from project-based initiatives to the tenancy underwrite. It later added "while risks do exist and the risk profile is changed, the level of risk that was identified as part of the Council's original decision to fund has not changed". It is however clear in hindsight that the risk profile resulting for the Council from this change of funding allocation did indeed change, and that this was not fully understood at the time.

It is now a matter of record, that in November 2013 Council staff reported to the Council on significant issues that had arisen with respect to the CTT:

- All of the administration start-up funds had essentially been spent. The Trust had not secured other sources of revenue. It therefore had no income to operate with.
- The Trust had diverged from the original concept of how it would operate[6].
- The Trust had focused on establishing a new building at the Park (at that point still yet to be finished and available for lease), but that at that stage only one tenant had been found for it.
- The Trust Board was not united on either what its current situation was, or on a go-forward strategy.

The outcome of the Council's deliberations over the subsequent month was that the Council would provide no further funding to the CTT (other than some $30,000 to enable it to meet current liabilities), and negotiate a new lease with Riverbank Estates whereby the Council itself would take over the lease of the second building. This would enable the Council to reduce its future exposure to more expenditure and remove the rental underwrite.

The CTT's affairs have subsequently been wound up and the Trust has ceased to exist.

We now turn to an analysis of the actions of the respective parties as requested, and a discussion of what lessons the Council might draw from this experience.

3. The business model

We have been asked to advise on the effectiveness of the business model chosen for the development of the Clean Technology Park i.e. to establish the CTT. Was an independent Trust the best means to successfully deliver the initiative?

It is first useful to consider what the purpose of the organization was intended to be. The February 2012 report to the Corporate Business Committee, which first proposed the trust model, states that the purpose of the organization will be 'to manage development, establish a full suite of customized commercialization and research and development services for Park tenants, and to attract new tenants to the Park'.

The June 2012 report to the Council states that 'the business model is to develop a trust to provide direct services to emerging technology businesses, such as access to research and development facilities and commercialisation services". The Trust would provide the governance for the Clean Technology Park. It was clear that what was then envisaged was that the trust would lease buildings in a staged way as tenants are identified, with sub-leases provided to tenants. This report stated simply that the most appropriate structure to develop and run the Park would be a charitable trust because of the following factors:

- It would be 'able to earn income which will not be taxed <u>within the trust</u>' (sic)

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[6] See footnote 1

- It could carry on in perpetuity
- Money can be given or lent to a charitable trust
- It can be structured so that it will continue to grow through investment or by compounding part of the income.

There was no other analysis either in this report or the previous report to Council, of any other structural options or business models available.

Our expectation is that the advice to the Council should have set out and analysed other business models. Instead the advice seems to have accepted what was proposed in the Green Chip report as the preferred—indeed the only—option.

There are in our view at least three options that could have been considered:

a) A Council- controlled organization (CCO), perhaps established as a company.
b) An independent trust as was proposed.
c) A private sector company, with no Council involvement.

Given that the purposes of the CTT once established (see Appendix Two for details) include purposes that are inherently commercial[7], the absence of any analysis of different business models is surprising. We therefore pursued this issue during interviews conducted. Reasons for not considering other options were given as

- The Council did not want to own a company.
- A Trust structure offered options for further fundraising to support the objectives.

We sought to establish from the various reports submitted to the Council <u>why</u> the Council should be asked to financially support the development of the Park through the establishment of the Trust, and whether any of them provided a discussion about what the Council's role should be (or options in that respect). The Council's Strategy for Supporting Economic Development of Kapiti (Section 3.1.1) established that 'support for the clean technology sector will continue to be a key focus area'. The strategy document sets out some key activities for the Council in this project area. One proposed activity was to build on the Clean Technology Centre and grow a Clean Technology Park. "This will include establishing a new business model to provide direct services to clean technology businesses such as access to research and development facilities and commercialisation services".

This strategy document appears to provide the only justification for Council involvement in the CTC and Park. It does not however discuss why the Council needs to be involved, nor why the Council's direct involvement in establishing a 'new business model' was warranted. Councillors who were interviewed for this project voiced the view that the reason why a Trust seemed attractive was that it would be able to attract alternative sources of funding that were not accessible commercially, and would not be tied in to the Council's own budgeting cycle and requirements.

There was no business case relating to the development of the CTT (or of the Park) that would have underpinned the Council staff reports other than the report we have described above prepared by Green Chip Ltd that was presented to the Council in February 2012. The Green Chip report seems to have been accepted without further analysis as the basis of staff advice. We have noted already that the business case outlined in that report was very brief and that it mentions three financial scenarios for establishment of the CTT, all of which required an investment of capital funding by the Kapiti District Council. The Council's own analysis therefore seems inadequate. It seemed to be accepted that Council investment would be required in order for the CTC and Park to be further developed, but this became an implicit assumption rather than a proposition that needed to be fully tested.

From a different perspective, it seems apparent that the Council was in effect committing to an 'investment business model' with unclear expectations of what such a model implied for the

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[7] E.g. 'Promote, create and develop the commercialisation of and otherwise turn to account, Clean Technology' and 'promote, create and establish and enter into joint ventures and public/ private partnerships etc…"

Council, and with only limited means of monitoring the performance of that investment. An investor-led business development would normally lead to an entirely different management approach. We will return to this issue in separate commentary on the Trust's operations below.

We have also been asked whether the Trust's own business plan was adequate to deliver on the proposed goals of the Trust and its financial obligation to the Council. Our enquiries so far have suggested that such business plans as existed were relatively high level. We have seen reference in notes of Trust meetings to a strategic business plan that was to be prepared in mid-2012 based on the Council's own sustainable technology development strategic framework, but no evidence that such a plan was actually completed. A summary business plan that we have seen was prepared in November 2013 for discussion with the Council at the point where the Trust was having difficulty. That business plan is focused around the proposed operation and leasing of the new Stage 2 building, and its implications for the Trust's cashflow. It is apparent from our interviews that the focus of the Trust from the outset was the construction of the Stage 2 building and securing tenants for that. The strategy was based on a bullish view of "build it and they (i.e., the businesses and tenants) will come". The Council and its staff were fully aware that that was the case, although there was an expectation that a minimum of 50% tenancy would be required before a commitment was made to the Stage 2 building. The circumstances surrounding this are discussed further on page 12.

4. **The Council's involvement**

It will be apparent from the discussion so far in this report that we do not believe that the Council received adequate advice on the proposal that it invest in the development of the Clean Technology Trust and Park. The staff reports that we have referred to above, appear to regard the establishment of a Trust as the only way to proceed. From Councillors' perspective it appears to be almost a 'fait accompli'. How did this occur?

The Council's engagement with the clean technology concept and its potential for job creation on the Kapiti Coast, and with a range of interested parties, was driven by the (then) General Manager for Strategy & Partnerships.. Green Chip was engaged to undertake the "strategic operational review" of the CTC and Park in 2011 when the existing tenants were expressing some dissatisfaction. This report was jointly funded by Pritchard Enterprises.

Between early 2012 and July of that year, when the CTT was established, things moved relatively quickly. We do not however believe that either the Council, or its Chief Executive, was supported in decision-making by adequate advice. At the least, some further independent advice should have been sought from skilled business analysts, and a proper business case prepared that reviewed the rationale for Council involvement and options for that. This would have included analysis of different business models for the establishment of whatever organisation was deemed necessary to govern and develop the Park. The Green Chip report did not in our view provide an adequate basis for proceeding, and the Council staff's subsequent reporting added little value to the decision-making process. The process might be described as relatively efficient, but it was certainly not effective. It should be noted that Green Chip Ltd expected to present the Report to KCDC management and engage in discussions covering the content and next steps. This opportunity was not made available to them.Given the extent of the Council's projected financial commitment to the project, we would expect there to have been a discussion about the manner in which the Council's contractual interest might need to be formulated. The following factors ought to have been explored and taken into account in any recommendation to the Council:

- Could the outcomes sought by the Council be specified in a contractual agreement?
- What risks existed in terms of the proposed financing arrangement (e.g. if a loan was to be provided could this be repaid on schedule)? Could these risks be managed without the need for direct Council ownership?
- Was there a need for operational independence from the Council?
- Was there any justification for Council ownership that outweighed the need for independence?

- To what extent would the Council require reporting from the Trust as part of its own public accountability and could these requirements be adequately specified in contractual arrangements?
- What was the legal justification for establishing a Trust model as opposed to the alternatives? How does each model compare in terms of potential risk exposure for the Council?

It does not appear that any of these factors was properly canvassed in Council reporting or formal discussion.

We will deal in subsequent sections of this report with the question of ongoing performance reporting to the Council about its investment. We have however been asked whether the appointment of a Councillor to the Trust was the best mechanism for protecting the Council's investment.

We have established earlier that the Council's support for the clean technology sector investment was based on the Council's Economic Development Strategy. But why it should invest in the Trust in the way proposed was not fully analysed. The staff report to the Council of 7 June 2012 notes that the Trust will comprise between an initial three and finally seven trustees, of whom one will (our emphasis again) be appointed by the Council. No reason for having a Council - appointed trustee is given. A subsequent report to Council later in the month recommending an appointment noted that "Support for the Trust is consistent with the draft Strategy for Supporting Economic Development on the Kāpiti Coast". It recommended that the person to be appointed have skills and experience ideally in the areas of governance, economic development and financial accountability. We assume therefore that the purpose in having a Council-appointed trustee was primarily to ensure that the Council's interests in respect of the development of the clean technology park were progressed. Our expectation was in respect of the relationship between the Council and the CTT that there would have been two levels of engagement, i.e. at Councillor level with the Trustees (but not necessarily by way of appointment of a Councillor as a trustee) and at staff level. In this instance, the initial level of engagement with the Trust was through the appointment of a Councillor as trustee, and also through the involvement of the General Manager Strategy with the project. The engagement at staff level appears to have reduced once the GM left Council employment in July 2013. The relationship was also not governed by a shared understanding about performance reporting requirements by the Trust. After 1 July, when the situation facing the Trust became difficult and staff requested further information, the difficulty in getting a mutual understanding of the issues appear to have been somewhat of an irritant to some Trustees. Equally, the trustees themselves noted that their relationship with Council staff had not been productive. The Chair of the Trust finally met the CE of the Council in November 2013, at a joint meeting with the CE of Grow Wellington, when the Council was by that stage aware of the problems being faced by the Trust. The relationship therefore does not appear to have been well managed by either party.

5. The establishment and management of the Trust

This next section of our report discusses the establishment and operation of the Trust itself. We comment briefly on its role and direction, planning and decision-making; governance arrangements; financial management and reporting. It should be noted here that we have not had access to the full internal minutes and records of the Trust. Our perspectives have been drawn from interviews and from a selection of documents that those interviewed made available to us. Any inferences and comments are our own.

a) Purpose of the trust

The purpose statement in the Trust Deed (as set out in Appendix two) includes a mixed range of objectives. They include:

- education, training, development of and use of, Clean Technology;

- developing, constructing and promoting facilities for the education of persons in the use or application of Clean Technology;
- creating the CTP and establishing, maintaining, managing and/ or developing research and development facilities and a technology resource;
- the commercialisation of Clean Technology and development of intellectual property.

There are clearly a mix of educational and commercial objectives and also one relating to facilities (i.e. property) development. If the trustees had been involved in the establishment of the Trust, it could be expected that they would have established a business plan and priorities between these objectives in terms of implementation.

In the case of the CTT however, the trustees were aware from the outset that they would likely be responsible for construction of a new building on the Park. The concept of such a building had been foreshadowed in the Green Chip Report, and as we have already noted, the staff's February 2012 report to the Corporate Business Committee stated that [Pritchard Enterprises] was currently working through the design and consent stage of a new building and expected construction to start imminently. There was initially some debate within the Trust as to when to proceed with construction. Following what was clearly a year of delays while work was undertaken to secure tenants for the building, on 5 July 2013 the trustees signed an Agreement to Lease the building to be later constructed on the designated site along with an amended Agreement to Purchase Enhancements to that building. The separate Deed of Rental Underwrite and Guarantees was also signed between the Council and Riverbank Estates on 5 July 2013.

Although the CTT was a party to all of these contractual agreements except for the rental underwrite, and had an opportunity to question whether proceeding to the Stage 2 building so quickly was the most appropriate course of action, they appear to have accepted that such a proposal was a good investment. It had been made clear to them by Council staff that the Council was fully supportive of the Pritchard Enterprises proposal, on the basis of 50% committed tenancy. The Trust adopted a higher target based on its calculation of the income it would require to service its loan. In the event when the Council and Trust signed off on the construction of the building this was done on the basis of contingent commitments that met these targets rather than signed tenancies, and over time these failed to eventuate. The trustees did not commission any independent advice on the proposal to commit to the building. However it employed its own independent lawyers to handle the legal documentation.

The Stage 2 building therefore quickly became a driver of the Trust's business. In an ideal situation, the construction of such a building should have been as a consequence of the Trust's progress towards its other objectives, and justified by a fully commercial business case.

b) Appointment of the Trustees

We have noted earlier that the staff report to the Council of 7 June 2012 noted that the Trust will comprise between an initial three and finally seven trustees, of whom one would be appointed by the Council. That report also stated that one trustee would be appointed by the landowner of the Park—Riverbank Estates Ltd. Both provisions were subsequently incorporated into the Trust Deed that established the CTT. It appears however that no consideration was given by the Council to the implications of such appointments. The 'landowner' appointee was to be Mr. Stuart Pritchard, MD of the Riverbank Estate. While Mr. Pritchard's involvement in and commitment to the development of the Park and the CTC is to be acknowledged, there appears to have been insufficient attention paid to the management of his various business interests in terms of his appointment also as a trustee, and any conflicts between these roles. Mr. Pritchard was nevertheless exposed to costs if the Trust did not achieve its objectives. His main interest was in it being successful.

The recruitment of an initial group of trustees other than the two specified appointments was handled by Green Chip Ltd. Mr. David Moloney, an experienced businessman and professional director, agreed to become chair, and Mr. Simon Arnold agreed to be a trustee. The initial four trustees signed the Trust Deed. Subsequently the Trust Board agreed to the appointment of two further trustees, Mr. Tim Armstrong and Mrs. Ann Verboeket, as provided for in the Trust Deed. It was also envisaged that a representative of the local iwi might be appointed as a trustee.

We note here that Cr Gaylor advised us that on two occasions she had attended Trust meetings as a substitute for Cr Lester. While that substitution was approved through the normal Council processes, it appears that there is no provision within the Trust Deed itself for the appointment of alternates. We have pointed this out to the Council's legal staff.

The appointment of a representative of the landowner to the Trust as a requirement of the Trust Deed would have been known to the Council, and indeed we were advised that this was in fact what the Council also wanted to happen, although there is no actual documentation to this effect apart from the staff reports we have discussed above. There was however to our knowledge only limited consideration given as to why the appointment of a sitting Councillor might be the appropriate way for the Council's interests to be represented.

c) Management of the Trust's business

We were advised that the Trust met frequently at the outset of its work, and then on a regular basis once a chief executive was appointed. Relationships between the trustees were initially professional and amicable, but we were informed that there were a number of disagreements when the pressures on the Trust began to mount. At least one of the trustees subsequently sought independent legal advice.

Our impression from the interviews we conducted is that the Trust's business was dominated by the need to attract businesses to the Park and in particular to the proposed Stage 2 building. It is not clear that much if any time of trustees was devoted to the other objectives of the Trust.

We asked trustees if there had been any business plans developed for the Trust. Several trustees commented that business planning and reporting to the Trust did not meet their expectations. It was subsequently pointed out to us that the chief executive had prepared at least one business plan early in his engagement. . The trustees however became concerned about business development during 2013.One of the trustees themselves had offered, and indeed had been engaged on a paid basis, to work with the chief executive to prepare a new business plan. There are also some high level 'strategic vision' presentations that were prepared by the chief executive, but these are not business plans e.g. there are no financials or cashflow forecasts incorporated.

d) Appointment of a CEO

An early decision was taken to appoint a chief executive for the Trust. That appointment had been envisaged by the earlier planning documents such as the Green Chip Report. Dr Steven Finlay was at that stage working for Grow Wellington as part of their support for the Clean Tech Centre, and was known to the Council staff as well as to some of the initial trustees. The decision was taken to interview him for the role, and only if he was not a suitable appointee to advertise the role more widely. Dr Finlay was subsequently appointed as chief executive.

In retrospect it is agreed by all of the trustees that the appointment of a chief executive was not justified. Given the nature of the Trust's actual business at that stage, the appointment of a sales manager who could have secured property leasing deals for the building would have been preferable.

The remuneration required to engage a chief executive was also expensive for the Trust at this early stage of its existence. It was also agreed in mid-2013, that given concerns about the management of the Trust's business that one of the trustees should be engaged on a paid basis to assist and work with the chief executive to ensure progress on the Trust's objectives. Such an appointment was expressly allowed for in the Trust Deed, but in reality of course added to an already increasing level of expenditure, for which there was no corresponding income except for the administrative support facility provided by the Council.

e) Financial performance

The Trustees received a schedule of monthly invoices for approval and a statement of cash flow (the primary expenses were known salaries and overheads). From June 2013 a balance sheet, P&L and account receivable report were added. However, we were advised, on enquiry, by several trustees that they considered that financial reporting within the Trust was inadequate. An independent accounting firm from Paraparaumu was engaged during 2013 to prepare financial statements for the Trust, and we have seen a draft financial report of the Trust for the year ended June 2013. We were advised that the Council has requested an audit of that annual financial statement, but that the audit has not yet been completed.

While the cash flow for the Trust and future commitments were discussed by the Trust and with the Council early in 2013, some trustees stated they weren't fully aware of the extent of financial commitments (including fees paid to one trustee for additional services) until late 2013. .

f) Relationship with the Clean Tech Centre

The Clean Tech Centre at the Park, otherwise referred to as the Stage One building, had been leased and managed by Grow Wellington as part of its own strategy to support a Centre of Excellence for clean technology in the Kapiti region. That building provided industrial working facilities for clean technology businesses. The Stage 2 building was designed to allow them to 'graduate' to office space once their businesses had become established. The relationship between the two entities (the CTC and the CTT) was difficult. Dr Finlay had come from that background and was clearly keen to help sort out some of the ongoing issues being experienced by tenants of that building (as reported in the Green Chip Report). The trustees instead instructed him to focus on the Trust's own business requirements. Attempts were made to engage Grow Wellington early in 2013 in discussions about the future governance and development of their respective facilities. The possibility of combined governance was suggested but did not proceed. It is clear in hindsight however that there were insufficient shared interests for any such engagement to succeed.

We were advised that Grow Wellington's priorities and interests in respect of clean technology had also changed by that stage in the life of the Clean Tech Park. This reduction in nominal support for the clean technology park concept may have contributed to a lack of overall confidence in the 'graduation' business model.

6. The 'Stage 2' building

The Green Chip report had proposed that a Stage 2 building be developed "as an internationally recognised showcase for integrating designed and outfitted with appropriate clean tech features in an office/ industrial facility" (sic). The Council does not appear to have done any further due diligence on this proposal, and as reported, preparations were underway for the design and construction of such a building before the Trust was established. It is not clear the extent to which Councillors were actually briefed on the proposal, but the key staff involved were certainly informed and engaged in discussions about it.

The initial trustees were briefed on the proposal in late June and then signed the Facilities Agreement on 5 July 2012. Conceivably the trustees could have raised objections at that stage if they were not comfortable, but it appears that part of their brief was (to quote one of them) "to establish the trust, start the building and establish the long term arrangements for the CTT". Their task was to find tenants to reduce the risk to the Trust (and to the Council as underwriter).

A feature of the building was to be the inclusion of certain enhancements that would demonstrate the benefit and use of clean technology. Such enhancements included a wind power generator, solar panels, water recycling, back up energy storage solutions etc. The cost was to be paid by the Trust to the landowner, with funding for that provided by the Council as part of the loan arrangements. A formal agreement was signed to that effect between the Trust, the landowner, and the Council. This included a mechanism whereby the developer assumed risk via a sliding scale of repayments over time if the Trust were to fold.

Some of the enhancements, e.g. the wind generator, were expected of themselves to generate additional income for the Trust, and to facilitate repayment of that part of the Council's loan. However based on advice from one of the trustees that such expectations were overstated, the expenditure on enhancements as scaled back. Around $310,000 of an estimated total of $400,0000 was actually committed (a saving of some $90,000). The trustees advised us that they had sought advice from Council staff whether the enhancements were required and were advised that the Council required that a clean tech building be established to demonstrate the technology in action. These conditions are actually specified in the Council staff report of 7 June 2012 to the Council.

From the outset of establishment of the CTT, finding tenants for the proposed building became a major part of its work, and the CEO was tasked with finding tenants. It was anticipated that some of the tenants in the existing CTC building would move to the Stage 2 building, and that other companies could be attracted as well as some educational institutions e.g. Weltech. Letters of commitment were provided from several such prospective tenants but when the time came to sign up to formal leases, the commitments simply vanished. We are advised that when the building was finally opened for business in February 2014 only one tenant actually moved in.

As several councillors said to us, there was an ongoing discussion even at Council level during 2013 whether the right thing to do was to "build the building in the hope that tenants will come" or to wait until tenants had been secured and signed up. Our understanding from commercial property relationships is that property developers will not normally commence construction of a building until around 30-50% of (ownership) sales have been committed and with deposits paid. In this instance the Trust was committing to the whole building, based on there being also an underwrite from the Council which effectively transferred the risk involved to the Council.

We have been unable to ascertain whether there was any document or report where the actual business case for the construction of a new building and its enhancements, was actually set out and analysed. Neither the Green Chip Report, nor either of the two formal reports to the council elsewhere described in this report contained such an assessment. Each of the Council reports referred to the building proposal but in terms of acceptance that this was part of the deal. The construction of the building was therefore in our view accepted by the Council as part of its underwriting and facilities agreements with Riverbank Estate and the Trust without proper analysis. It seems likely that the Council assumed that the Trust itself would undertake the due diligence necessary.

7. Funding from the Council

The components of the loan are described in Appendix Three. The loan was formally documented in the Facilities Agreement that was signed by the trustees and the Chief Executive of the Council on 5 July 2012. We understand from our interviews that it was the Council that proposed that a structured facility of this type might be the most appropriate way to support the proposed development. As we have stated earlier however the initial idea of a loan facility from the Council to support the park development was proposed in the Green Chip report. There is no reference in the Council staff reports to there having been any consideration given to other means of financial support. For example, the question as to why the council should be the financier of the project was not explored. There is no reference to the loan facility in the Economic Development Strategy (although it does propose an 'Innovation Fund' to support commercialization of new technologies).

It seems nevertheless appropriate that the loan facility be structured into several components, to specify the purposes for which the loan was being granted and to enable the Council to manage the risks involved.

The loan was to be repayable in June 2021, nine years after signing. The Facilities Agreement records that interest on the loan (set initially at 4%) would not be payable for the first three years The covering report to Council (7 June 2012), also records that " the new budget prepared as part of the economic development activity review and included in the draft 2012-32 Long Term Plan includes funding to service a loan in the initial period until the Trust is generating sufficient income to cover the loan repayments".

In terms of repayment of the loan, the Facilities Agreement states that the full amount of the Facility then drawn down together with interest should be repaid by the Trust on the specified repayment date i.e. 2021. There was however the ability also agreed and specified for the loan or any part of it to be repaid prior to the final repayment date. There was no other schedule of repayments established. All of this information was available to the Council at the time as attachments to the 7 June staff report.

The loan facility and its repayment and interest terms therefore represent a generous, and indeed 'soft', funding contribution to the Trust.

We have been asked to comment whether the financing arrangements, levels and mechanisms were suitable and capable of delivering the desired results? Other than the comments made above about the nature of the loan itself, we are unable to assess whether the mechanism were 'capable of delivering the desired results'. This is because it is not clear to us what results the Council was expecting from the provision of the loan itself. The specific purposes of the various components are specified, but no targeted 'results' are specified in any of the Council's reports or decisions.

8. Contracts and agreements

We have also been asked to comment whether the Council's expectations in respect of the various contracts and agreements it signed with the various parties were clear? We take this to mean primarily the Facilities Agreement. Our report above has noted that the terms of this agreement were generous i.e. no repayment of any drawdowns was required until conclusion of the nine years, and interest payments were also specifically waived for the first three years as part of the agreement with the Council. It has been suggested to us by several persons interviewed that the Trustees and their CE had formed an expectation that the loan would not have to be repaid. Moreover there seems also to have been a notion that the part of the Council's underwrite facility could have been available for drawdown by the Trust to boost its income levels.

In respect of the first point a former Councillor advised that there had indeed been a suggestion that any funds that the trust repaid at some future point might be able to be reinvested in the project (and further drawdowns are in fact anticipated in the Facilities Agreement, but subject to the Council's discretion). That may have created a degree of misunderstanding. The Council's Chief Executive advised us that he was at pains to point out to trustees and their CE during discussions later in 2013 that the Council's loan facility was in fact just that—a loan to be repaid. Several trustees recorded their understanding of this requirement in response to our questions.

On the second issue raised above-- that the Underwrite Facility was available to the Trust for drawdowns -- we comment that this appears to be a further misunderstanding. The Trust was not a party to the Underwrite Agreement, which was signed between the Council and Riverbank Estates and could therefore not have drawn down any aspect of the facility relating to that Agreement.

On 6 March 2013 the Chairman of the Trust wrote to the Council seeking a larger underwrite provision i.e. extending the provision from $270,000 to $520,000. The provision was to be enabled by reducing the amount allocated within the Facilities Agreement for special projects, so that the overall loan amount of $1,500,000 would not be exceeded. A staff report was provided to the Council on 14 March recommending that the Facilities Agreement (the loan) be amended accordingly. The basis of the proposal was that the Trust had advised that it had secured sufficient tenancies to cover half the overall rental of the building and was prepared to carry some further risk itself. It was also confident enough to proceed with the building and to sign a head lease. However it still needed the Council to underwrite a further amount of residual risk in terms of the rental for the building.

This request represented an opportunity for the Council to engage in some hard re-evaluation of the need for such a building, given that it had been nine months since the Trust had been formed and indeed over a year since the Council was first advised that a second building was contemplated. Again however there does not appear to be any suggestion or analysis on this subject in the staff reports, but we gather from interviews that the Council may have had a more sustained discussion on the point. The Council eventually concluded that the prospects for tenanting the building were still promising. Grow Wellington had at that stage not yet changed its approach.

The staff report does refer to the changing risk profile for the Council i.e. shifting more of the risk on to the Council itself through the rental underwrite. It is not clear however whether the full implications of this were properly canvassed and understood.

We have been asked whether there were sufficient safeguards in the contracts and agreements to protect the Council's interests. We interpret the Council's interests in terms of the agreement to be as follows

a) To ensure that the funds were genuinely spent for the purposes intended
b) To ensure that the funding provided for the various components genuinely did result in the development of a clean technology Centre of Excellence in Otaki that would have demonstrable spin-offs for the Kapiti region and beyond
c) To ensure that the loan was repaid on time and that in due course that interest payments would in future be possible from annual income of the Trust.

As we have commented earlier, our view is that legal agreements can only go so far in terms of protecting the interests of the parties involved. Legal agreements provide a backstop when business relationships or commercial ventures get into difficulty but they do not guarantee success. Only the third of the above objectives can be said to be covered in the legal agreements. The ultimate safeguard even in that respect however would have been that the Trust had sufficient income over time to repay the loan and that the Council could assure itself through its own monitoring and the Trust's performance reporting that that was likely to be the case.

What was also required, and as we have earlier reported did not happen, was agreement on the formal relationship between the CTT and the Council. A draft memorandum was prepared, but not signed. We have seen an early draft of the MoU (there may have been more work done on it), but what we have sighted does not meet our expectations of what an MoU should have contained. As well as a statements of intent in terms of the relationship an MoU should have specified the Council's requirements for reporting from the Trust in terms of progress against specified objectives (for example, the objectives set out above could have been included), and the provision of regular financial reporting (especially since it was underwriting part of the Trust's activities).

The Facilities Agreement is standard for such agreements, but by itself it refers only to the conditions of the loan itself. It does not refer to the purposes of the loan other than to list its components in a schedule.

We also note here that the final version of the Agreement to Purchase Enhancements signed between the CTT and Riverbank Estates drew our attention in that the enhancements actually listed in the schedule to that Agreement appear to comprise elements that would normally be provided as part of the fit out of any building. Few of them seem to be related to clean technology enhancements, and do not seem to reflect the Council's statement of enhancement requirements described in the staff report of 7 June 2012.

9. Monitoring and reporting systems

We turn finally to the question of performance reporting. We have been asked:

a) Was reporting on the Trust's activities timely, accurate, adequate and informative to (a) the Trust Board and (b) to the Council?

b) Were the Council's expectations of what the Trust would deliver communicated clearly? Could this have been improved?

The Council received regular reports on the activities of the Trust. These were provided (i) by staff including reference to the Trust's progress and any issues arising within their quarterly reports to the Council's Environment and Community Development Committee. These reports were supplemented by briefings during the Committee meetings by Cr Lester, in his dual capacity as a trustee of the CTT. These briefings were verbal and accompanied on several occasions by a PowerPoint presentation for Councilors. Cr Lester advised that he also had regular meetings with the former Mayor where he reported on developments. There were at times also informal meetings of interested Councillors for update purposes.

The briefings however did not include financial reporting because as we have earlier described, such reports were not available to the Trustees either. They did not exist.

As time progressed, Council staff became more insistent on receiving financial information and performance reports from the Trust, which led ultimately to the actions undertaken by the newly appointed GM Strategy and Partnerships, and the Chief Executive.

It would appear however that from the outset, the Council's expectations of what the Trust would deliver by way of reporting was not communicated clearly by Council staff. It could have been given effect through the formation and agreement on an MoU or other relationship agreement.

We have also noted earlier in this report that although the Council reports both of 16 February and 7 June 2012, which recommended that the Council proceed, contained a list of identified risks and some mitigation steps in place or planned, that virtually all of those risks were subsequently realized. How could this happen? Our impression from our various interviews is that the risks identified were never properly made part of the Council's own risk management procedures and practices e.g. included in the Council's own risk register. There was no ongoing monitoring or reporting against the identified risks to either the Chief Executive or the Council.

We also consider that the Council staff appear not to have properly understood that an investment of this size in what was effectively a commercial business development (based largely on property) required active monitoring and an understanding of the commercial incentives and factors at play. The Council does not appear to have employed or engaged the right expertise to assist it in this respect.

10. Findings and Recommendations

It will be apparent from our analysis and discussion above that there are a number of lessons that the Council should consider from the experience with the Clean Tech Trust. It is not however our brief to list what went wrong or to attribute fault. Rather we have been asked to set out what the Council might do differently on any future occasion where a similar business venture is proposed for Council support.

Recommendations

k. A full business case needs to be prepared for any significant business proposal seeking Council support. The council should seek appropriately qualified external support to analyse any proposal if necessary, and engage in a sound 'due diligence' process.
l. There may be components within the overall business proposal that need specific commercial analysis (i.e. the Stage 2 building proposal in this instance).
m. The role of the Council in respect of particular projects needs to be determined, and the nature of its interests set out formally and understood by all involved. Why it should invest in a proposal needs to be properly elaborated and reviewed.
n. If a new organisation is to be established, and if the Council is required to invest in it, consideration should be given to what structural options are available and how the Council's 'ownership' as well as its 'purchase' interests should be formulated.
o. Care needs to be taken to understand the implications of the investment approach or model chosen for the purpose. In particular, the style of management subsequently required for a significant Council investment should be fully explored from the outset
p. The Council's ongoing relationship with any new entity that it is supporting should be specified in a relevant form of agreement—i.e. either an MoU, a contract for services, or some other form of performance agreement.
q. Risks that are identified for the Council should be incorporated into a relevant risk register and regularly monitored and updated. Appropriate mitigation steps should be in place and acted upon.

r. Where there is a technical component to any proposal (e.g. clean technology in this instance) appropriate external advice should be sought. In this instance, were the clean technology enhancements required by the Council actually likely to be commercially viable?
s. There needs to be clear expectations established from the outset as to financial and service performance reporting requirements.
t. Appropriate steps need to be taken by both parties to a business relationship to understand the other's strategy and business direction so that any issues can be resolved quickly. There is likely to be a need for relationships to be established and maintained at both Councillor as well as at staff levels.

Appendix One

Review of Council support for the Clean Technology Trust

Terms of Reference

Introduction

During 2011/2012 the Council reviewed its economic development strategy and service delivery and amongst other things decided to support the development of the clean technology sector based in Otaki. In order to do that it decided to fund the establishment of an independent trust.

The Clean Technology Trust (Trust) was set up to July 2012 to promote and support the development of the clean technology sector based in Otaki. The attached Trust Deed sets out its purposes and related matters in detail.

During August/September 2013, it became apparent that the Trust was not functioning as expected and a more thorough investigation was undertaken by Council staff. Subsequently the Council has changed the way it is supporting the clean technology sector in Otaki. This involves no longer funding the Trust. Once the Trust's final debts are discharged, it plans to voluntarily dissolve.

Purpose

The Council has decided that it wants an independent review into the establishment, implementation, funding and oversight of the Clean Tech Trust and its subsequent activities. This includes:

- planning and decision-making;
- the governance arrangements;
- funding, financial management, monitoring, and reporting; and
- the overall suitability of the business model used to establish the Trust.

This will involve both an analysis of the Council's and the Trust's actions. The focus is on the lessons to be learned. Such an understanding will enable improvements in the Council's input to and/or management of such initiatives in future.

Objectives

1. To undertake a thorough, independent review which:
   - identifies the Council's actions in contributing to the establishment and operations of the Trust (including agreements made with Riverbank Estates Limited[8]);
   - identifies the actions taken by the Trust towards implementing the purpose for which it was set up; and
   - assesses the effectiveness of these actions; and
   - identifies key issues or actions which contributed to the wind-up of the Trust.
2. To provide a written report to Council.
3. To make any appropriate recommendations particularly those which would enable improvements in the Council's involvement in such initiatives in future.

Scope

The scope of the investigation is to cover:

1. The effectiveness of the business model:
   - Was an independent Trust the best means to successfully deliver the initiative?
   - Was the Trust's business plan adequate to deliver on the proposed goals of the Trust and its financial obligation to the Council?
2. The appropriateness of Council's involvement:
   - Was the Council involved in an efficient and effective way?
   - Was the appointment of a Councillor to the Trust the best mechanism for protecting Councils investment?
3. Funding:
   - Were the financing arrangements, levels and mechanisms suitable and capable of delivering the desired results?
4. Contracts and agreements:
   - Were the Council's expectations clear?
   - Were there sufficient safeguards to protect the Council's interests?
5. The appointment of the Trustees:
   - What process was followed?
   - To what extent was the Council involved?
   - Was that involvement appropriate?
6. Monitoring and reporting systems:
   - Was reporting on the Trust's activities timely, accurate, adequate and informative to (a) the Trust Board and (b) to the Council?
   - Were the Council's expectations of what the Trust would deliver communicated clearly? Could this have been improved?

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[8] Noting that the actions of Riverbank Estates Limited cannot be reviewed as it is a private business.

Appendix Two

Purposes of the Clean Tech Trust

a) Promote, foster and advance the education, training, development of and use of, Clean Technology

b) Benefit the community by developing, constructing and promoting facilities for the education of persons in the use or application of Clean Technology and for those persons, firms and entities using or wishing to use Clean Technology

c) Benefit the community by creating the CTP and establishing, maintaining, managing and/ or developing research and development facilities and a technology resource at a Centre or Centres on the Kapiti Coast or such other places as the Trustees may determine.

d) Promote, create and develop the commercialisation of and otherwise turn to account, Clean Technology

e) Promote, create and establish and enter into joint ventures and public/ private partnerships to advance any of the purposes set out above

f) Develop, promote and turn to account intellectual property involved in or relating to the use of Clean Technology

g) Benefit or establish other charitable entities whose objects include all or any of the purposes referred to above.

Appendix Three: Purposes of the $1.5 million loan from the Council to support the establishment of the Clean Technology Trust

26 The loan would be used for the following purposes.

Released	Amount	Activity
At commencement	$300,000	For salaries and an administration budget to enable the Trust to appoint a CEO and establish an office.
At commencement	$400,000	For Building 2 which the Trust would be based in and which would house new tenants. The building will be owned by Riverbank Estates Ltd and leased to the Trust. It is expected to cost in the order of $1.9million to build. The Trust would specify and make available funds for the development of additional building features with this cost being paid back by the landlord via a reduced commercial rental. Release of these funds to the Trust would be dependent on the building having the following features: (a) Non-standard leading edge energy (PV, wind, passive thermal); (b) Water (grey water and recycled); (c) Back up energy storage solutions (grid tied inverter, back up emulsified diesel generation. These features were seen as essential to attract clean tech tenants providing an energy neutral building which also demonstrates the CTC member's technology in action. Release of funds would occur on receipt of certified invoices.
Held, only released if needed	$250,000	Building lease underwrite to cover a shortfall in rent payable by the Trust. This underwrite would remain in place until all funds are drawn down or the expiry of the nine year lease.
At a later date	$550,000	For three collaborative projects that offer the opportunity for assembling multi-company teams of Clean Tech Centre members: • Off Grid Pacific Eco-Village. Three green energy pods demonstrating education, health and technology benefits. • Electric vehicle, fuel testing and certification service. APT fuel and engine dynamometer to test emission reductions in bus and commercial fleet. • Sustainable design and building – includes Little Greenie and Weltec sustainable housing demonstrator. New sustainable housing test site with integrated data monitoring tools.
Total	**$1.5 million**	

Appendix Four

List of people interviewed for this report

Ross Church --Mayor

Jenny Rowan—former Mayor

Cr Gavin Welsh, Chair of the Corporate Business Committee

Cr Penny Gaylor, Chair of the Environment and Community Development Committee

Cr Jackie Elliott

Pat Dougherty, Chief Executive

Stephen McArthur, Group Manager Strategy and Partnerships

Philippa Richardson, Strategic Projects Manager

David Moloney, Chair of Trust

Simon Arnold, Trustee

Tim Armstrong, Trustee

Stuart Pritchard, Trustee and property owner

Ann Verboeket, Trustee

Tony Lester, former Councillor and Council representative on the Trust

Peter Huse—Council finance staff

Neil McKay—Green Chip Ltd

Angela Brownie—General Manager, Business Growth, Grow Wellington

Dr Steven Finlay --former CE, CTT[9].

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[9] Dr Finlay responded to telephone calls only after the review had been completed and a brief, but helpful, telephone conversation with the Reviewer ensued.