

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Business and Investment Subcommittee will be held on:

Date: Tuesday 2 August 2016
Time: 12.30pm
Meeting Room: Committee Room 1
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Business and Investment Subcommittee OPEN AGENDA

Membership

Chairperson Her Worship the Mayor J Hardaker
Members Cr M Forsyth
Cr A King
Cr A O'Leary
Cr R Pascoe

Quorum: Three members

Meeting Frequency: Quarterly – or as required

Becca Brooke
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28 July 2016

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Terms of Reference:

- To enhance Hamilton's economic position.
- Promote investment and business attraction opportunities for Hamilton.
- Oversee implementation of the Economic Development Agenda.
- To receive information and provide advice in relation to potential major developments.
- Recommend funding for Hamilton & Waikato Tourism (HWT) and Hamilton Central Business Association (HCBA) and receive six monthly/quarterly and annual reports.
- Develop and recommend to the Strategy and Policy Committee the Central City Transformation Plan.
- Develop and recommend a strategy to optimize use of the Municipal Endowment Fund and the Domain Endowment Fund by 30 March 2014.

Special Notes:

- The sub-committee may request expert advice through the Chief Executive when necessary.
- This sub-committee monitors Hamilton Properties Ltd.

Power to act:

- Recommend funding for Hamilton & Waikato Tourism (HWT) and Hamilton Central Business Association (HCBA) to the Finance Committee or Council.
- Make operational decisions that are aligned to the outcomes of the Economic Development Agenda.

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1 Apologies

2 Confirmation of Agenda

The Committee to confirm the agenda.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Policy Review - Freeholding of
Council Endowment Land

Author: Nicolas Wells

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Freeholding of Council Endowment Land Policy</i>
Financial status	<i>Not Applicable</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Councils Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i>

1. Purpose of the Report

2. To approve the reviewed Freeholding of Council Endowment Land Policy.

3. Recommendations from Management – Recommendation to Strategy and Policy Committee

That:

- a) the report be received;
- b) the Subcommittee recommends to the Strategy and Policy Committee to:
 - i. approve the Freeholding of Council Endowment Land Policy; and
 - ii. delete the current Freeholding of Council Domain & Municipal Endowment Leases Policy.

4. Attachments

5. Attachment 1 - Freeholding of Council Endowment Land Policy - FINAL
6. Attachment 2 - Freeholding of Council Endowment Land Policy - TRACKED CHANGES

7. Key Issues

8. Background
9. Council owns land originally acquired by endowment from the Crown. Council owns the freehold interest in the land. The leasehold interest in the land, together with all

improvements, is owned by the lessee (Council’s tenant). The reasons for which Council was endowed with the land are set out in the attached policy.

10. Policy review

11. Staff have reviewed the Freeholding of Council Endowment Land Policy. The Freeholding of Council Endowment Land Policy is still required because it:

- Sets clear and consistent rules for the process to sell this category of Council-owned land,
- Provides transparency for the community (including Council’s tenants).

12. There are no substantive changes to the policy. The minor changes proposed are intended to clarify the policy by writing in plain english, and simplify the policy by eliminating unnecessary content. The changes are summarised below and shown in detail in the attachments.

- Name changed
- Format changed
- Strategic Alignment section deleted
- References section deleted
- Duplication of content eliminated

13. Consultation

14. Consultation is not required. Freeholding is a legal transaction between Council acting as a landlord and Council’s tenant (the lessee).

15. Financial and Resourcing Implications

16. Council receives a very low financial return from leased endowment land (3.7% average).

17. Freeholding of Council-owned leased endowment land is encouraged. Freeholding allows Council to obtain a greater return by placing the money generated into higher yield investments.

18. The money obtained from sale of the freehold land must be used for the purpose of the relevant endowment described in the policy.

19. All Council’s costs associated with freeholding are paid by the applicant lessee.

20. The value of the leased endowment land is established by a registered valuer. The value is based on “best and highest use” and is intended to ensure that Council receives full value recognising potential development.

21. Risk

22. The operational and service delivery risks of retaining the leased endowment land are low. There is no risk associated with retaining the before or during the freeholding process. Similarly there are no operational or service delivery risks associated with freeholding (selling) the land.

23. Making no changes to the policy risks leaving Council with a policy that is not written in plain english and is more complicated than it needs to be. The reviewed policy has been re-written to eliminate the risk of confusion and to provide clarity for the reader.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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First adopted:	24 May 2012
Revision dates/version:	19 July 2016
Next review date:	19 July 2019
Engagement required:	No
Document number:	D-2154462
Associated documents:	None
Sponsor/Group:	General Manager City Growth Group

Freeholding of Council Endowment Land Policy

Purpose and Scope

1. This policy describes the process to freehold (sell) Council-owned land which is subject to Domain or Municipal Endowment ground leases.
2. Council owns land originally acquired by endowment from the Crown. Council owns the freehold interest in the land. The lessee (tenant) owns the leasehold interest in the same land.
3. This policy applies to land subject to Domain or Municipal Endowment ground leases (listed in Schedule 1 and 2 below).
4. This policy does not apply to any other Council-owned land or buildings.

Principles of Policy

5. Council uses the income from the Domain Endowment (listed in Schedule 1) to maintain or improve reserves, purchase land in the name of the Crown as Recreation Reserve, or purchase land in the name of Council for the purposes of the Hamilton Domain Endowment Act 1979.
6. Council uses the income from the Municipal Endowment (listed in Schedule 2) for municipal purposes.
7. Council encourages lessees to freehold the land. Ground leases typically yield low returns. Council can benefit ratepayers by obtaining a greater return by placing the proceeds of sale in higher yielding investments.

Policy

8. Council will freehold Endowment Land on application from the lessee.
9. Freeholding of **Domain Endowment** land shall proceed at 100% of the Current Market Value of the land based on independent valuation. The value may be contestable by arbitration.
10. Freeholding of **Municipal Endowment** land shall proceed at 100% of the Current Market Value of the land based on independent valuation OR the Lessors Interest Value based on independent valuation, whichever is the greater. The value may be contestable by arbitration.
11. The applicant lessee will pay all Council's reasonable costs in the matter.
12. The sale proceeds shall be immediately credited to the relevant Endowment Fund and used for the purpose of the original endowment.

Monitoring and Implementation

13. The General Manager Growth Group will monitor the implementation of this policy.
14. The policy will be reviewed every three years, or at the request of Council, or in response to changed statutory requirements, or in response to any issues that may arise.

Schedule 1: Domain Endowment Leasehold Land

Property Reference	Property Address	Legal Description	Land Area
10002	297 Ulster Street	Lot 1 DPS 12212	2157.5m ²
10010	225 Dey Street	Lot 10 DP 35144	812m ²
10017	189 Fox Street	Lot 7 DPS 1200	675m ²
10020	5 Henry Street	Lot 8 DPS 2099	759m ²
10026	5 Cotter Place	Lot 8 DPS 4051	679m ²
10027	126 Fox Street	Lot 4 DPS 5647	718m ²
10029	103 Dey Street	} merged Lots 7 & 8 DP 34426 and Lot 1 DPS 82950	1457m ²
10030	101 Naylor & Dey Streets		

SCHEDULE 2: Municipal Endowment Leasehold Land

Property Reference	Property Address	Legal Description	Land Area
20017.001	145-149 Ward Street	} Lots 14 & 15 DP 17135	791m ²
20017.002	145-149 Ward Street		
20017	151-155 Ward Street	Lots 16 & 17 DP 17135	971m ²
20019	179 Ward Street	Lots 23 & 24 DP 17135	592m ²
20007	92 Clyde Street	Lot 6 DP 35296	559m ²
20015	258 Fox Street	Lot 13 DP 35611	558m ²
20016	12 Wiremu Street	Lot 9 DPS 5418	830m ²
20023.001	77 Norton Road	Lots 3, 4 & 6 DPS 8955	1668m ²
20023.002	79 Norton Road	Lot 5 DPS 8955	614m ²

First adopted:	24 May 2012
Revision dates/version:	Reviewed by May 2015 19 July 2016
Next review date:	19 July 2019
Engagement required:	No
Document number:	D-2154462
Associated documents:	None
Sponsor/Group:	General Manager Events and Economic Development <u>General Manager Growth Group</u>



~~FREE-HOLDING OF COUNCIL DOMAIN AND MUNICIPAL ENDOWMENT~~ LEASES POLICY

Purpose and Scope

~~0.1. The purpose of t~~This p~~Policy is to outline a high level~~describes the process for to the free-hold
~~(sell) ing of Council-owned land which is subject to Domain and or Municipal Endowment~~
~~Perpetual ground l~~leases.

Objective and Scope

Objective

~~2. Hamilton City Council owns land originally acquired by endowment from the Crown held by~~
~~Council on the terms of the original endowment. Council owns the freehold interest in the land.~~
~~The lessee (tenant) owns the leasehold interest in the same land.~~

~~This policy outlines a process for determining land value and land disposal.~~

~~0.3. This policy applies to land is held for the purposes of endowment funds~~subject to Domain or
Municipal Endowment ground leases (listed in Schedule 1 and 2 below).

~~0.4. This p~~Policy does not apply to any other Council-owned land or buildings.

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Strategic Alignment

1. This policy assists in the delivery of Council's outcomes and goals as follows:

PROSPEROUS AND INNOVATIVE	OUTSTANDING CITY LEADERSHIP	PEOPLE LOVE LIVING HERE
<ul style="list-style-type: none"> ▪ Hamilton has a strong, productive economy and we build on our economic strengths. ▪ We have a thriving CBD. ▪ It's easy to do business here. ▪ Our city grows and prospers in a sustainable way. 	<ul style="list-style-type: none"> ▪ The city is led by effective, open and responsive governance. ▪ Council's finances are sustainable for the long term. ▪ We operate efficiently and provide exceptional service. ▪ The city takes a leadership role regionally and nationally. 	<ul style="list-style-type: none"> ▪ Hamilton embraces the Waikato River and it is the focal point of our city. ▪ We value, preserve and protect Hamilton's natural, green environment. ▪ Our city is attractive, well-designed and compact with outstanding architecture and distinctive public spaces. ▪ Our city is a fun place to live with a vibrant Arts scene. ▪ Hamilton is a safe city. ▪ It's easy to get around. ▪ We celebrate our people and many cultures.

■ = primary contribution

Principles of Policy

2. The guiding principles for this policy are as follows:

- Council encourages lessees to freehold low yielding land.

3.5. Council uses the income from the Domain Endowment (listed in Schedule 1) is held by Council for the purposes of the Domain Endowment Fund which include the maintenance or improvement of reserves, purchase of land in the name of the Crown as Recreation Reserve, or purchase of land in the name of Council for the purposes of the Hamilton Domain Endowment Act 1979 (listed in Schedule 1).

6. Council uses the income from the Municipal Endowment (listed in Schedule 2) is held by Council for purposes of the Municipal Endowment Fund, is to generate income which is used to reduce the rates requirement of the City (listed in Schedule 2).

4.7. Council encourages lessees to freehold the land. Ground leases typically yield low returns. Council can benefit ratepayers by obtaining a greater return by placing the proceeds of sale in higher yielding investments.

Policy Guidelines

5.8. Upon application from the lessee, Council will freehold Council Domain and Municipal Endowment Leases Land on application from the lessee as follows:

Domain Endowment Leases

~~6.9.~~ Free-holding of **Domain Endowment** ~~land~~Leases shall proceed at 100% of the Current Market Value of the land based on independent valuation. The value may be contestable by arbitration.

~~▪ The applicant lessee will pay all Council's reasonable costs in the matter, including arbitration costs.~~

Municipal Endowment Leases

~~7.10.~~ Free-holding of **Municipal Endowment** ~~land~~Leases shall proceed at 100% of the Current Market Value of the land based on independent valuation OR the Lessors Interest Value based on independent valuation, whichever is the greater. The value may be contestable by arbitration.

~~11.~~ The applicant lessee will pay all Council's reasonable costs in the matter.

~~8.~~

~~9.~~

The sale proceeds shall be immediately credited to the relevant ~~Domain~~-Endowment Fund ~~and~~ ~~of~~ the Municipal Endowment Fund.

~~10.12.~~ Those proceeds shall be used for ~~(in the case of Domain Endowment Land) the maintenance or improvement of reserves, purchase of land in name of Crown as Recreation Reserve, or purchase of land in name of Council for purposes of the Act; and (in the case of Municipal Endowment Land) for the purchase of commercial properties, the income from which is used to reduce the rates requirement of the City.~~ the purpose of the original endowment.

Monitoring and Implementation

~~13.~~ The General Manager ~~Events and Economic Development~~Growth Group will monitor the implementation of this policy.

~~11.~~

~~12.~~

The policy will be reviewed every three years, or at the request of Council, or in response to changed ~~legislative and~~ statutory requirements, or in response to any issues that may arise.

~~14.~~

References

Municipal Endowment Fund Investment Policy

SCHEDULE 1: DOMAIN ENDOWMENT LEASEHOLD LAND

Property Reference	Property Address	Legal Description	Land Area
10002	297 Ulster Street	Lot 1 DPS 12212	2157.5m ²
10005	92 Bryce Street	Lot 1 DPS 28891	1.2228 ha
10010	225 Dey Street	Lot 10 DP 35144	812m ²
10017	189 Fox Street	Lot 7 DPS 1200	675m ²
10020	5 Henry Street	Lot 8 DPS 2099	759m ²
10026	5 Cotter Place	Lot 8 DPS 4051	679m ²
10027	126 Fox Street	Lot 4 DPS 5647	718m ²
10029	103 Dey Street	} merged Lots 7 & 8 DP 34426 and Lot 1 DPS 82950	1457m ²
10030	101 Naylor & Dey Streets		
10033	13 Graham Street	Lot 2 DPS 9966	3407m²
10036	37 Sillary Street	Lot 1 DP 33843	2023m²

SCHEDULE 2: MUNICIPAL ENDOWMENT LEASEHOLD LAND

Property Reference	Property Address	Legal Description	Land Area	
20017.001	145-149 Ward Street	} Lots 14 & 15 DP 17135	791m ²	
20017.002	145-149 Ward Street			
20017	151-155 Ward Street	Lots 16 & 17 DP 17135	971m ²	
20019	179 Ward Street	Lots 23 & 24 DP 17135	592m ²	
20021.001	109 Ward Street	} Lots 1 & 2 DP 17135	590m²	
20021.002	109 Ward Street		Lots 3 & 4 DP 17135	788m²
20021.003	109 Ward Street		Lots 5 & 6 DP 17135	788m²
20003	58 Willoughby Street	Lot 11 DP 33796	586m ²	
20007	92 Clyde Street	Lot 6 DP 35296	559m ²	
20012	205 Clyde Street	Lot 13 DPS 6250	696m²	
20015	258 Fox Street	Lot 13 DP 35611	558m ²	
20016	12 Wiremu Street	Lot 9 DPS 5418	830m ²	
20023.001	77 Norton Road	Lots 3, 4 & 6 DPS 8955	1668m ²	
20023.002	79 Norton Road	Lot 5 DPS 8955	614m ²	

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Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Policy Review - Sale and
Disposal of Council Land

Author: Nicolas Wells

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Sale and Disposal of Council Land Policy</i>
Financial status	<i>Not Applicable</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Councils Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i>

1. Purpose of the Report

2. To approve the reviewed Sale and Disposal of Council Land Policy.

3. Recommendations from Management – Recommendations to Strategy and Policy Committee

That:

- a) the report be received;
- b) the Subcommittee recommends to the Strategy and Policy Committee to:
 - i. approve the Sale and Disposal of Council Land Policy; and
 - ii. delete the current Property Sale and Disposal Policy.
- c) the Financial Delegation to Officers be amended to allow the Chief Executive to negotiate sale and purchase of land within a 10% margin either side of the estimated market value determined by a registered valuer.

4. Attachments

5. Attachment 1 - Sale and Disposal of Council Land Policy - FINAL
6. Attachment 2 - Sale and Disposal of Council Land Policy - TRACKED CHANGES

7. Key Issues

8. Background

9. The Sale and Disposal of Council Land Policy sets out the process to sell Council-owned land and buildings. The policy requires that land to be sold is valued on the basis of highest and best use and is sold for the highest possible price.

10. All Council-owned land to be sold requires a specific resolution from Council or the Finance Committee (unless previously approved for sale by Council and included in the adopted Long Term Plan).

11. Policy review

12. Staff have reviewed the Sale and Disposal of Council Land Policy. The Sale and Disposal of Council Land Policy is still required because it:

- Sets clear and consistent rules for the process to sell Council-owned land,
- Provides transparency for the community.

13. There is one substantive change to the policy. It is proposed to allow staff the discretion to negotiate the sale of land for a price “not less than 90% of the current market valuation”.

14. Price Waterhouse Coopers has recommended a change to the approval process for sale of Council land. They have recommended that Council staff are given the delegated authority to complete the sale of land within a specified percentage of the current market value. This is consistent with other public and private sector organisations involved in property transactions.

15. The remaining minor changes are intended to clarify the policy by writing in plain english, and simplify the policy by eliminating unnecessary content. The changes are summarised below and shown in detail in attachment 2.

- Name changed
- Format changed
- Definitions section deleted
- References section deleted
- Duplication of content eliminated

16. Consultation

17. Consultation is not required. All Council-owned land to be sold is subject to a rigorous due diligence process which includes legal review and status report. This identifies all parties with any claim on the land and confirms whether or not any specific offer-back obligations exist.

18. Financial

19. Resourcing for the review of this policy has been covered within existing budgets.

20. Risk

21. Making no changes to the policy risks leaving Council with a policy that is not written in plain english and is more complicated than it needs to be. The reviewed policy has been re-written to eliminate the risk of confusion and to provide clarity for the reader.

Item 5

- 22. If no policy was approved Council would have no transparent process for the community to see how Council-owned land is sold.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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Sale and Disposal of Council Land Policy

Purpose and Scope

1. This policy describes the process to sell Council-owned land and buildings.
2. This policy is to ensure that Council-owned land to be sold is sold for the highest possible price.
3. This policy requires that Council-owned land is sold for the highest possible price except where special Council approved circumstances dictate otherwise.
4. This policy applies to land, land and improvements (including buildings and structures) and land covered by water.
5. This policy does not apply to sale of Council plant (vehicles), equipment (machinery) or financial investments (shareholdings).

Policy

6. All land to be sold is to be valued on the basis of highest and best use by a registered valuer. The current market valuation must be completed within two months of the date of Council's decision to sell. Land to be sold must be sold for a sum not less than 90% of the current market valuation.
7. Land to be sold will be sold by the most appropriate sale method in each case. In the first instance, competitive open-market methods of sale will be considered and determined on merit.
8. Council may consider alternative methods of sale more appropriate in some circumstances, including:
 - a. Land that does not comply with the development requirements of the District Plan
 - b. Land that has no legal access
 - c. Land to be developed by another level of government
 - d. Land identified by Council for some other use
 - e. Land of nominal value
 - f. Land for inclusion with an adjacent holding
 - g. Land that will complement a proposed development on an adjoining site consistent with Council's objectives.
9. Council land to be sold will be disposed of in accordance with the relevant law.

Monitoring and Implementation.

10. The General Manager Growth Group will monitor implementation of this policy.
11. The policy will be reviewed every three years, or at the request of Council, or in response to changed statutory requirements, or in response to any issues that may arise.

First adopted:	24 May 2006
Revision dates/version:	10 March 2008; <u>19 July 2016</u>
Next review date:	<u>19 July 2019</u>
Engagement required:	<u>No</u>
Document number:	<u>D-2154480</u>
Associated documents:	<u>None</u>
Sponsor/Group:	<u>Deputy Chief Executive – Community Outcome Intelligent and Progressive General Manager Growth Group</u>



PROPERTY SALE AND DISPOSAL OF COUNCIL LAND POLICY

Business growth that is in harmony with the city's identity and community spirit.

This policy describes the process to sell Council-owned land and buildings.

Objective and Scope

Purpose and Scope

1. This policy describes the process to sell Council-owned land and buildings.
2. This policy is to ensure that Council-owned land to be sold is sold for the highest possible price.

Objective

3. This policy ensure requires that the sale and disposal process of Council-owned surplus land will obtain the highest value for the land for Council is sold for the highest possible price except where special Council approved circumstances dictate otherwise.
4. This policy applies to land, land and improvements (including buildings and structures) and land covered by water.
- 1-5. This policy does not apply to sale of Council plant (vehicles), equipment (machinery) or financial investments (shareholdings).

2. Scope **XXXXX**

This Policy applies to:

- XXX.**
- XXX.**

This Policy does not apply to:

- XXX.**
- XXX.**
- XXX.**

Related Policies

The Property Sale and Disposal Policy must be read in conjunction with

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- Investment – Council Policy
- Delegations – Council Policy
- Delegated Financial Authority – Management Policy
- Delegation to Officers Policy – Management Policy

This policy should be read in conjunction with XXXX.

Definitions

This Policy defines land as a physical entity including buildings, structures or improvements to land or land covered by water or a strata lot or unit.

The highest and best use concept is defined as the most reasonable, probable, and legally permissible use that will support the highest present value.

Principles of Policy

3. The guiding principles for this Policy are:

- XXXX
- XXXX

Policy

- ~~6. All land to be sold is to be valued on the basis of highest and best use by a registered valuer. The current market valuation must be completed within two months of the date of Council's decision to sell. Land to be sold must be sold for a sum not less than 90% of the current market valuation.~~
- ~~4. Land to be sold will be sold by the most appropriate sale method in each case.~~
- ~~5. Council~~
- ~~6. requires all land declared surplus to be sold on the basis of the highest value and best use concept.~~
- ~~7. requires all land declared surplus to be sold for a value no less than that set by a current independent valuation by a Registered Valuer. The valuation is to be undertaken within two months prior to being presented to Council.~~
- ~~8. endorses the practice of selling surplus land by the method considered most appropriate for the property being sold.~~
- ~~9.~~
- ~~7. In the first instance, competitive open-market methods of sale will be considered and determined on merit.~~
- ~~10. These may include: public tender, public auction or private treaty.~~
- ~~11.~~
- ~~12-8. In some circumstances Council may consider a sale or disposal other than through the open market based on individual case merits alternative methods of sale more appropriate in some circumstances, including: These circumstances may include but are not limited to the following:~~
- a. Land that ~~because of its small size, dimensions or irregular shape would not readily support a self-contained development outcome, does not comply with the development requirements of the District Plan~~
 - b. Land that has no legal access

- c. Land to be developed by another level of government
- d. ~~Preferred future use for the land as identified by the Council~~ Land identified by Council for some other use
- e. Land of nominal value
- f. Land for inclusion with an adjacent holding
- g. Land that will complement a proposed development on an adjoining site, ~~the sale of which is~~ consistent with Council's objectives.

~~13.~~

~~14. In all cases any discount relating to the disposal of surplus land shall be by way of a separate Grant approved by Council, not by way of reduction of the purchase price.~~

~~15.~~

~~16.~~

~~17. Legal Compliance~~

~~18.9.~~ Council land ~~declared surplus to be sold to requirements~~ will be disposed of in accordance with the relevant ~~Statute(s)~~ law.

Monitoring and Implementation.

~~10. The General Manager Growth Group will monitor implementation of this policy.~~

~~19. The policy will be reviewed every three years, or at the request of Council, or in response to changed statutory requirements, or in response to any issues that may arise.~~

~~20. References~~

~~21.11. xxx~~

Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Policy Review - Municipal and
Domain Endowment Fund
Policy

Author: Nicolas Wells

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Hamilton Plan Economic Development Agenda</i>
Financial status	<i>There is \$60,000 budget allocated - \$42,072 spent</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Council's Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i>

1. Purpose of the Report

- To (1) approve the reviewed Municipal and Domain Endowment Fund Policy and (2) approve in principle the transfer of the Endowment Funds to a Council Controlled Trading Organisation (CCTO) – Hamilton Properties Limited (HPL).

3. Executive Summary

- On 29 June 2016 the Business and Investment Subcommittee recommended changes to the Municipal Endowment Fund Policy and the Hamilton Properties Limited constitution. The recommendation set the intent, following the PWC report that the Municipal Endowment Fund should be more actively managed.
- This report responds to the recommendations from the 29th June 2016 meeting in particular it includes an updated policy and constitution for Hamilton properties Limited and a timeline to effect the transition of management and ownership of both the Municipal Endowment Fund and Domain Endowment Fund to Hamilton Properties Limited.
- This report also responds to specific questions raised at the 29th June 2016 meeting.
- The policy requires approval by the Business and Investment Subcommittee for recommendation to the Strategy and Policy Committee for adoption.

Recommendations from Management – Recommendation to Strategy and Policy Committee

That:

- a) the report be received;
- b) the Business and Investment Subcommittee agree in principle to transfer the assets of the Municipal and Domain Endowment Funds to a Council Controlled Trading Organisation (CCTO), Hamilton Properties Limited;
- c) the Business and Investment Subcommittee approves the draft Municipal and Domain Endowment Fund Policy and constitution for Hamilton Properties Limited and recommends adoption at the next Strategy and Policy Committee meeting;
- d) the Business and Investment Subcommittee approves the timeline for activation and operation of Hamilton Properties Limited and recommends adoption of this timeline at the next Strategy and Policy Committee meeting; and
- e) the Business and Investment Subcommittee recommends that the Chief Executive is delegated the necessary authority to implement this decision.

8. Attachments

9. Attachment 1 - Hamilton Properties Limited - Existing Constitution
10. Attachment 2 - Hamilton Properties Limited - Revised Draft Constitution
11. Attachment 3 - PricewaterhouseCoopers - Municipal Endowment Fund - Final Report
12. Attachment 4 - PricewaterhouseCoopers - Hamilton Properties Limited - Overheads Analysis
13. Attachment 5 - Municipal and Domain Endowment Fund Policy - TRACKED CHANGES
14. Attachment 6 - Municipal and Domain Endowment Fund Policy - FINAL
15. Attachment 7 - Appointment of Remuneration of Board Members of COs, CCOs, and CTOs Policy
16. Attachment 8 - Hamilton Properties Limited - Tompkins Wake Advice
17. Attachment 9 - Hamilton Properties Limited - Revised Process Timeline

18. Key Issues

19. Background
20. The history and background information on the Endowment Funds is detailed in a report to the Business and Investment Subcommittee on 29 June 2016 linked [here](#).
21. PricewaterhouseCoopers (PWC) has reviewed deployment of the Municipal Endowment Fund and provided options to maximise the fund's benefit to the city. The PWC final report is Attachment 3.
22. On 29 June 2016 the Business and Investment Subcommittee resolved that:
 - a) *The report ("Policy Review – Municipal Endowment Fund Policy") be received;*

- b) *The Business and Investment Subcommittee recommend that the management of the Municipal Endowment Fund be transferred to Hamilton Properties Limited to be managed in terms of the Municipal Endowment Fund Policy and the Hamilton Properties Limited constitution;*
- c) *The General Manager report back to the 2 August 2016 Business and Investment Subcommittee Meeting on the following:*
- *Recommended changes to Hamilton Properties Limited Constitution;*
 - *Recommended changes to the first draft Municipal Endowment Fund Policy;*
 - *Hamilton Properties Limited's investment objectives, flexibility in its return to the Council, board structure and overheads; and*
 - *An update on the tax status of Hamilton Properties Limited.*
- d) *The General Manager report back to the 2 August 2016 Business and Investment Subcommittee Meeting on the Domain Endowment Property Policy review.*

23. Policy Review

24. The policy has been reviewed following feedback from the previous Business and Investment Subcommittee and the update policy is attached. The key change is that it includes the domain endowment fund and it sets up the objects to be achieved in managing the fund regardless of the vehicle. The policy also sets a minimum return.

25. Domain Endowment

26. There is currently no specific Council policy governing deployment of the Domain Endowment Fund.
27. The Domain Endowment functions differently from the Municipal Endowment in that it was established and operates under a unique legislative framework and the money from sale of Domain Endowment land is utilised for different purposes, specifically:
- To meet the cost of improvement or development of recreation reserves;
 - To purchase land as recreation reserve subject to the Reserves Act.
28. In the past Council has used money from sale of Domain Endowment land to develop commercial premises (such as *The Verandah* at Hamilton Lake Domain), on the basis that they enhance the amenity of the reserve land on which they sit, and the income they generate is used to benefit reserves within the city.
29. The fundamental obligation on Council regarding the Domain Endowment is to ensure that it is held to enhance existing reserves or to acquire new land for reserve. Domain Endowment assets (land, buildings and cash) must retain a separate identity.
30. When HPL was trading it managed both Domain and Municipal Endowments.

31. Hamilton Properties Limited (HPL)

32. Constitution
33. HPL's constitution has been revised by Tomkins Wake to:
- Increase the number of directors;

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- Ensure consistency with Council’s policy governing appointment and remuneration of board members of CCTOs (Attachment 7);
 - Include specific provisions to ensure compliance with the Statement of Intent.
34. Attachment 1 is HPL’s existing Constitution and Attachment 2 is the revised Draft Constitution.
35. Investment Objectives
36. Council’s objectives for investment of the Endowment Funds are set out in the Municipal and Domain Endowment Fund Policy (Attachment 6).
37. HPL’s Statement of Intent will be prepared with reference to these objectives – and will contain the specific actions that HPL will undertake to ensure that it meets the objectives that Council has set out in the Municipal and Domain Endowment Fund Policy.
38. Returns to Council
39. The Municipal and Domain Endowment Fund Policy (Attachment 6) requires HPL to pay Council an annual minimum return equivalent to the Council’s prevailing cost of debt. Any annual income generated above the minimum return will be available for;
- Reinvestment, or,
 - Alternative purposes approved by Council, or,
 - Payment of a dividend to Council.
40. The policy sets a minimum distribution in order to allow flexibility. Council’s expectation is that HPL will distribute average annual returns consistent with returns from equivalent market sectors. The specific distribution made by HPL to Council will be agreed annually between the two parties and captured in HPL’s Statement of Intent, as either:
- Budgeted transfer of an agreed sum, or
 - Payment of a dividend (based on an agreed percentage return), or
 - Combination of both.
41. The Statement of Intent will contain the specific annual financial performance measures that HPL must achieve.
42. Board Structure
43. Council can appoint additional or new directors (Mr Richard Briggs is currently HPL’s sole director) in accordance with its policy for appointment of directors to CCTOs (Attachment 7).
44. It may be prudent to consider appointing directors at an early stage so that they can be actively involved in development of HPL’s Statement of Intent.
45. Overheads
46. PWC has provided analysis on HPL’s overheads while it traded between 1991 and 1998 (Attachment 4).
47. In summary annual overheads fluctuated between \$488,000 and \$611,000 across the nine year period. The majority of the overhead cost (66%) was administration which included staff wages and salaries. The other overheads were a mixture of audit fees, depreciation, directors’ fees and lease and rental expenses.
48. Over the nine year period annual overheads ranged between 4% - 9% as a percentage of revenue.
49. Tax Status

50. HPL is a limited liability company and a taxable entity with the CCO exemption described below.
51. HPL has ceased trading and has losses carried forward (as at 31 March 2016) of \$130,606.
52. HPL remains a 100% owned Council-controlled company of Hamilton City Council and therefore any tax losses available to HPL can be offset against current or future taxable income of Hamilton City Council (or relevant group entities – subject to a “commonality” of shareholding).
53. In practice this means that if HPL is trading and making taxable income it will not be required to pay tax on the first \$130,606 of its profit (for example tax payable at 28% on \$130,606 = \$36,569 tax credit).
54. Currently Council does not pay tax on income derived from the Endowment Fund assets.

55. Other Considerations

56. CCO Exemption
57. All HPL’s shares are held by Council and it therefore falls within the statutory definition of a CCO. However while HPL ceased trading Council claimed an exemption under section 7 of the LGA 2002 in order to preserve tax losses attributable to HPL, and remove the need to comply with annual reporting requirements while the company remained dormant.
58. At present HPL is not a CCO for the purposes of the LGA. Council must resolve to revoke that exemption as part of the process to revive HPL. The sequencing of that decision is shown on the timeline (Attachment 9).
59. Statement of Intent
60. The Statement of Intent should be prepared by HPL and needs to show how they intend to meet the objectives that Council has set for them. The Statement of Intent is a complex and detailed document which will take some time to prepare and which the directors of HPL will need to approve.
61. The statutory requirements for the contents of the Statement of Intent are set out in paragraph 10 of Attachment 8.
62. Contractual Arrangements between Council and HPL
63. Council’s policy objectives define the outcomes that the Council seeks from HPL. The Statement of Intent sets out how HPL will achieve those objectives.
64. Tompkins Wake advise that there is merit in having, in addition, a formal contract between Council and HPL to deal with matters including the following:
 - The term of the arrangement
 - Initial funding obligations and expectations, including:
 - Staff and management
 - Premises
 - Other costs
 - The extent to which Council staff or resources might be seconded
 - Prioritisation of properties or activities if required
 - Reporting arrangements (over and above statutory requirements) if any.

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- 65. Many of these items will be contained in the Statement of Intent. However Council’s ability to require variation of the provisions of the Statement of Intent is limited by the current statutory regime. This contract would necessarily guide HPL in the preparation of its Statement of Intent, and would be enforceable.
- 66. Consultation
- 67. Tompkins Wake has provided advice on the requirement for consultation (paragraphs 18 – 26 in Attachment 8). In summary the high value of the endowment assets involved increases the degree of significance and the need for consultation.
- 68. The terms of any contract between Council and HPL will substantially determine whether or not consultation is required and consequently what form that consultation should take.
- 69. There is a positive correlation between the amount of independence that is granted to HPL to determine how assets are managed (particularly if they are sold by HPL without reference back to the Council) and the need for, and extent of, consultation around the terms of the contract.
- 70. Tompkins Wake advise that delegating the power to sell endowment assets and purchase replacement assets to HPL without reference back to Council is significant and some form of formal consultation is required.
- 71. The ultimate form and extent of consultation required will become clearer once Council has determined the nature and extent of the control HPL will have over the endowment assets.
- 72. It is recommended that focused engagement is undertaken prior to the draft policy being adopted by the Strategy and Policy Committee.
- 73. Local Government Act 2002 Amendment Bill
- 74. Tompkins Wake has provided advice on the impact of the Local Government Act 2002 Amendment Bill on CCOs (paragraphs 27 - 31 in Attachment 8).
- 75. In summary Council’s ability to modify HPL’s Statement of Intent will be enhanced by the new Local Government Amendment Bill if it becomes law.

76. Business Case

- 77. It is recommended that a full business case is prepared prior to the activation of, and transfer of assets to, HPL. This business case will ensure a full budget is prepared and that the necessary information is available for the Statement of Intent and any Strategic Planning undertaken by the Board.

78. Timeline

- 79. The following outlines a draft timeline for the activation of HPL and the management of the MEF fund. Please note that recommendations to the Strategy and Policy Committee will need to go to the full Council for approval.

Date	Action	Owner
2 August 2016	Draft Municipal and Endowment Fund Policy Adopted	Business and Investment Subcommittee
August 2016	Focused Engagement Undertaken	GM City Growth

30 August 2016	Municipal and Endowment Fund Policy Adopted	Strategy and Policy Committee
2 August 2016/ 30 August 2016	HPL constitution adopted	Business and Investment Subcommittee/ Strategy and Policy Committee
September 2016	Commission report into Director Remuneration	General Manager City Growth
March 2017	Approve Director Remuneration	CCO Subcommittee (or equivalent)
September 2016	Commence recruitment of Directors	General Manager City Growth
March 2017	Appointment Directors	CCO Subcommittee (or equivalent)
September 2016	Commence Business Case for transfer of assets to HPL <i>To ultimately be owned by Board but will inform Strategic Planning and Statement of Intent process.</i>	GM City Growth
March 2017	Receive the Business Case for the transfer of assets to HPL	CCO Subcommittee (or equivalent)
March 2017	Activate HPL and revocation of CCO exemption	CCO Subcommittee (or equivalent)
1 April 2017	Hamilton Properties Limited operational in transitional mode	
April 2017	1 st Board meeting	Board
	Strategy prepared by Board	Board
	Statement of Intent prepared in draft	Board/CCO Subcommittee (or equivalent)
1 July 2017 (effective)	Establish delegated authority to manage assets not transferred	Council
1 July 2017 (effective)	Transfer of Cash and Assets	Council
1 July 2017	Hamilton Properties Limited fully operational	

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80. Financial and Resourcing Implications

81. \$42,072 has been spent to date on the project for consultant support from a budget of \$60,000.

82. Risk

83. Making no changes to the policy risks leaving Council with a policy that is not written in plain english and is more complicated than it needs to be. The reviewed policy has been re-written to eliminate the risk of confusion and to provide clarity.

84. If no policy was approved Council would be unable to alter how the Endowment Funds are managed and deployed.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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Registered document

425257 HAMILTON PROPERTIES LIMITED

Registration Date and Time	18 October 2013 10:09:28
Document Type	Amendment of Constitution
Presenter	David Andrew LEONG
	Pirivate Bag 3010
	Hamilton 3240
	New Zealand

Amendment of Constitution	CONAA6759790535493863943.pdf
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Size	384kb
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Resolution date	02 July 2013
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<http://www.business.govt.nz/companies/app/ui/pages/companies/425257/18812941/ent...> 1/07/2016

HAMILTON PROPERTIES LIMITED

("Company")

SPECIAL RESOLUTION OF SOLE SHAREHOLDER

RESOLVED the 2nd day of July 2013 in accordance with sections 32 and 122 of the Companies Act 1993 that the existing constitution of the Company be amended with immediate effect by deleting clause 21.1 and replacing with the following new clause 21.1:

"21.1 Number of directors: The number of directors will be one."

The shareholder further resolves that the amendments to the constitution of the Company be notified to the Companies Office.

SIGNED by the sole shareholder of the Company:

SIGNED for and on behalf of HAMILTON CITY COUNCIL LIMITED by its Chief Executive Officer)

[Handwritten signature]

SIGNED for and on behalf of HAMILTON CITY COUNCIL LIMITED by two elected members)

[Handwritten signature]

AMENDMENT TO THE CONSTITUTION OF HAMILTON PROPERTIES LIMITED

Clause 21.1 of the Constitution of Hamilton Properties Limited has been deleted and replaced by the following:

"21.1 *Number of Directors:* The number of directors will be one."

RXS-348176-233-7-V1:dl



The Companies Act 195
Notice of

10021818622

**Adoption, Alteration, or
Revocation of Constitution**

(Section 32 (3))

Please note that the information in this form must be either
typewritten or printed. It must not be handwritten.

44

(for office use only)

Form 6

Company Name

HAMILTON PROPERTIES LIMITED

Company Number

HN425257

The abovenamed company has —
(Place a tick ✓ in the appropriate box)

adopted a constitution

altered its constitution

revoked its constitution

The company adopted a constitution / altered its constitution* / revoked its constitution* on

24

Day

09

Month

98

Year

A copy of the constitution as adopted / alteration of the constitution is attached to this notice.

*Delete if not applicable

Signature of Director/Authorised Person

Name of Director/Authorised Person

Date 14.9.98

ENTERED
21 25/9

Presented by

SWARBRICK DIXON
Solicitors
PO Box 19 010
HAMILTON

Postal Address

Account No.

Telephone

839 5166

Facsimile

839 3439

Avon Publishing Ltd.

CO-610

AMENDMENT TO THE CONSTITUTION OF HAMILTON PROPERTIES
LIMITED

Clause 21.1 of the Constitution of Hamilton Properties Limited has been deleted and replaced by the following:

"The number of directors will be four".

dlw



CONSTITUTION OF HAMILTON PROPERTIES LIMITED

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1 Constitution and the Companies Act

- 1.1 *Registration.* The company is registered under the Companies Act 1993 and is regulated by the Act and this constitution.
- 1.2 *Definitions.* The defined words and expressions in clause 43, where used in this constitution, have the meanings given to them in clause 43.

2 Issue of shares

- 2.1 *Issue of shares.* The board may issue shares with preferred, deferred or other special rights or restrictions, whether in regard to distributions, voting, return of capital or otherwise.
- 2.2 *Rights of shares.* Unless the terms of issue of any shares specifically otherwise provide, the board may issue shares that rank as to distributions, voting, return of capital or otherwise, equally with, or prior to, existing shares PROVIDED THAT all shares to be issued must first be offered to the Council and may not be issued to any other party within two months of the offer to the Council except with the written consent by the Council.

3 Purchase by company of its shares

- 3.1 *Purchase of shares.* The company may purchase or otherwise acquire shares issued by the company.
- 3.2 *Offer to purchase shares.* The company may make an offer to all shareholders or to one or more shareholders to purchase or otherwise acquire shares issued by the company.

4 Pre-emptive rights on transfers

Except as provided in clause 11 (transfer approved by all shareholders) no shares may be sold or transferred by any shareholder, liquidator, official assignee or personal representative of any shareholder, unless and until the rights of pre-emption contained in clauses 5 to 10 of this constitution have been exhausted.

5 Transfer notice

- 5.1 Except where the transfer is made pursuant to clause 11 (transfer approved by all shareholders), any shareholder proposing to sell or transfer any shares ("proposing transferor") must give notice in writing ("transfer notice") to the company that the proposing transferor desires to sell or transfer the shares. The transfer notice must specify the sum which the proposing transferor considers to be the value of the shares and must make the company the proposing transferor's agent for the sale of the shares to any shareholder at the price specified or, at the option of the shareholder willing to purchase the

3/10/16

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shares ("purchasing shareholder"), at a fair value to be fixed in accordance with clause 7 (arbitration of fair value).

- 5.2 If a transfer notice includes several shares it will not operate as if it were a separate transfer notice in respect of each of the shares, and the proposing transferor will be under no obligation to sell or transfer part only of the shares specified in the transfer notice.
- 5.3 A transfer notice is not revocable without the sanction of the board in writing.
- 5.4 If no price is specified by a proposing transferor then the proposing transferor will be deemed to want to sell or transfer the shares at their fair value determined under clause 7 (arbitration of fair value).

6 Company finding buyer

If the company, within three months after being served with a transfer notice, finds a shareholder willing to purchase the shares ("purchasing shareholder") and gives notice of that to the proposing transferor, the proposing transferor will be bound to transfer the shares to the purchasing shareholder upon payment to the proposing transferor of the sum specified in the transfer notice or, as the case may be, of the fair value determined under clause 7 (arbitration of fair value) less any sum paid to the company by the purchasing shareholder necessary to discharge any lien the company holds over the shares.

7 Arbitration of fair value

- 7.1 If any difference arises between a proposing transferor and a purchasing shareholder as to the value of the shares the fair value will be fixed on the application of either party by the arbitration of a single arbitrator. Such an application must be made within three months of the date of the transfer notice. If the parties fail to agree on a single arbitrator then the matter will be determined by the arbitration of two arbitrators, one to be appointed by each party. The arbitrators will appoint an umpire before entering upon their reference. The arbitration will be determined in accordance with the Arbitration Act 1908 or any statutory modification or re-enactment of that Act for the time being in force. The costs of any arbitration will be borne equally between the proposing transferor and the purchasing shareholder.
- 7.2 Upon the fair value being fixed under clause 7.1 the value specified in the transfer notice will be deemed to have been the fair value fixed under clause 7.1.

8 Right to revoke

If the fair value fixed in accordance with clause 7 is less than the sum specified by the proposing transferor in the transfer notice as the sum the proposing transferor considers to be the value of the shares, the proposing transferor will be entitled, at any time before the expiration of seven days

after the date of receiving notice of the award fixing the fair value, to revoke the transfer notice.

9 Default by transferor

9.1 If a proposing transferor, after becoming bound to transfer the shares described in the transfer notice, defaults in transferring the shares, any director may execute a transfer of the shares on behalf of the proposing transferor, and the company may receive the purchase money and cause the name of the purchasing shareholder to be entered in the register as the holder of the shares.

9.2 The company will hold the purchase money (subject to any lien in favour of the company) in trust for the proposing transferor. The receipt of the company for the purchase money will be a good discharge to the purchasing shareholder.

10 Company not finding buyer

10.1 If the company does not, within three months after being served with a transfer notice, find shareholders willing to purchase all the shares and gives notice to the proposing transferor to that effect, then the proposing transferor may, at any time within three months afterwards, sell or transfer the shares, or those not purchased, to any person.

10.2 The proposing transferor may not transfer all or any of the shares at a price lower than the value specified in the transfer notice.

11 Transfer approved by all shareholders

Any share may be transferred by a shareholder to any person if the transfer is approved in writing by all shareholders. The restrictions in clauses 4 to 10 do not apply to any transfer authorised by this clause.

12 Right to refuse registration of transfer

The board may refuse or delay the registration of a duly completed transfer of any share if the board (subject only to its duty to act in good faith) considers that:

- (a) to effect the transfer would result in a breach of the law or this constitution; or
- (b) the shareholder has failed to pay to the company any amount due in respect of that share; or
- (c) the transferee is a person without legal capacity to contract; or
- (d) the transfer has not been properly executed; or

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(e) where a share certificate has been issued, the transfer is not accompanied by the relevant share certificate, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board; or

(f) it is not in the best interests of the company to register the transfer.

13 Trusts not recognised

Except as required by law, no person will be recognised by the company as holding any share upon trust and the company will not be bound by or be compelled in any way to recognise (even when having notice of it) any equitable, contingent, future or partial interest in any share or any interest in a fractional part, except the absolute legal right to the entirety of the share vested in the registered shareholder.

14 Calls on shares

14.1 *Board may make calls.*

(a) The board may make calls for the payment of any amounts unpaid on shares which are not payable at a fixed time or times by the terms of issue of those shares. Each shareholder will, subject to receiving at least 14 days' written notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called. A call may be revoked or postponed as the board may determine.

(b) Failure to give notice to a shareholder will not invalidate a call but the call will not be payable by a shareholder until a notice has been served on that shareholder.

(c) The board may, in making any call, differentiate between the shareholders as to the amount to be paid and the time of payment.

14.2 *Timing of calls.* A call may be made payable at all times and in the amounts which the directors decide.

14.3 *Liability of joint holders.* Joint shareholders of a share will be jointly and severally liable to pay all calls in respect of the share.

14.4 *Interest and expenses.* If a sum called in respect of a share is not paid before or on the time payment is due, the person from whom the sum is due will pay:

(a) interest on that sum from the day payment was due to the day of actual payment, at the rate which the board determines either at or after the time of the call; and

(b) all expenses which the company may incur by reason of non-payment of the sum called in respect of the share.

The board may waive payment of all or part of the interest or expenses.

- 14.5 *Instalments.* Any sum which by the terms of issue of a share becomes payable on issue or at any fixed time will, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue the sum becomes payable. If the sum is not paid on issue or at the fixed time, as the case may be, clause 14.4 will apply as if the sum had become payable by virtue of a call duly made and notified, and the terms of issue will be deemed to be written notice specifying the time and place of payment.
- 15 **Suspension of right to distributions and lien**
- 15.1 *Notice of suspension of right to distributions.* If a shareholder fails to pay any call on the day appointed for payment the board may, at any time after that date, while any part of the call remains unpaid, suspend payment of any distributions payable to the shareholder until so much of the call as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of the non-payment, have been paid to the company in full.
- 15.2 *Application of suspended distributions.* All distributions which would have been payable in respect of shares which are subject to a suspension of the right to distributions must be withheld and applied by the company to reduce the amount owing under the call.
- 15.3 *Lifting of suspension of right to distributions.*
- (a) When the total distributions withheld and applied under clause 15.2 equal the total amount owing under the call including amounts owing under clause 15.3(b) the suspension of the right to distributions will be lifted, and all rights to be paid distributions on the shares will resume.
 - (b) The amount owing under the call may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.
- 15.4 *Lien.* The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, and upon any distributions from time to time payable in respect of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder and for all other money presently payable by the shareholder to the company on any account whatever and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder (whether the period for the payment, fulfilment or discharge respectively has actually arrived or not).
- 15.5 *Sale on exercise of lien.*
- (a) If any sum remains unpaid in respect of which a lien on a share held by the shareholder presently exists, the board may at any time thereafter

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serve notice ("sale notice") on the shareholder requiring payment of that sum.

- (b) The sale notice shall name a day (not earlier than the expiration of 14 days from the date of service of the sale notice) on or before which the payment required by the sale notice is to be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the sale notice was given will be liable to be sold by the company including a sale to itself.
- (c) If the requirements of any sale notice are not complied with, any share in respect of which the sale notice was given may be sold on whatever terms and in whatever manner the board decides. At any time before sale the sale may be cancelled on whatever terms the board decides. If any share is sold the residue, if any, of the proceeds of the sale after payment of all costs and expenses of the sale and all money owing in respect of the share sold and interest on it, and costs and expenses of any prior attempted sale in respect of that share will be paid to the shareholder whose share has been sold or to the shareholders' executors, administrators or assigns.
- (d) A shareholder whose share has been sold pursuant to clause 15.5(c) will cease to be a shareholder in respect of that share, but will, nevertheless, remain liable to pay to the company all money which, at the time of sale, was payable by the shareholder to the company in respect of that share, but that liability will cease if and when the company receives payment in full of all the money in respect of that share.
- (e) A statutory declaration in writing made by a director declaring that a share has been duly disposed of on a date stated in the declaration will be conclusive evidence of the facts stated in the declaration as against all persons claiming to be entitled to that share.
- (f) The company may receive the consideration, if any, given for a share on any sale of the share and may authorise any person to execute a transfer of the share in favour of the person to whom the share is sold, and that person will be registered as the shareholder of the share and will not be bound to see the application of the purchase money, if any, nor will that person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the sale of the share.

16 Management by shareholders

- 16.1 *Shareholders' management resolution is binding.* The shareholders may pass a resolution relating to or for the purpose of managing or directing or supervising the management or supervision of the business or affairs of the company. Any such resolution will be a resolution of the company and will be binding on the board. No such resolution shall be passed unless the shareholders have first consulted with the directors of the company on the matter at a notified meeting.

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- 16.2 *Resolution may not be binding.* The shareholders may pass a resolution regarding the management of the company, expressed as a non-binding resolution, and any such resolution will not be binding on the company or the board.
- 16.3 *Resolution of the company.* The board has the express power to refer any matter arising out of the business or affairs of the company to the shareholders and any resolution passed by the shareholders at a general meeting directing, requiring or affirming a proposed course of conduct will be a resolution of the company and will be binding on the board.
- 17 Shareholders Proposals**
- 17.1 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- 17.2 The notice must be received by the board not less than 10 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board.
- 17.3 The board must give notice of a shareholder proposal and the text of a proposed resolution received by it under clause 17.1 in the notice of the meeting given to shareholders.
- 18 Meetings of shareholders**
- 18.1 *Annual meeting.*
- (a) The board must, in accordance with section 120 of the Act (annual meeting of shareholders), call an annual meeting of shareholders to be held:
- (i) once in each calendar year other than in the calendar year of the company's incorporation; and
 - (ii) not later than six months after the balance date of the company; and
 - (iii) not later than fifteen months after the previous annual meeting or, in respect of its first annual meeting, not later than eighteen months after the company's date of incorporation.
- (b) The company must hold the annual meeting on the date on which it is called to be held.
- 18.2 *Special meetings.* A special meeting of shareholders entitled to vote on an issue:
- (a) may be called at any time by the board or a person who is authorised by this constitution to call the meeting; and

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- (b) must, in accordance with section 121(b) of the Act (special meetings of shareholders), be called by the board on the written request of shareholders holding shares carrying together not less than five percent of the voting rights entitled to be exercised on the issue.

18.3 *Resolution in lieu of meeting.*

- (a) Subject to clause 18.3(b) a resolution in writing signed by not less than 75 percent in number of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.
- (b) A resolution pursuant to section 196(2) of the Act (appointment of auditors) to not appoint an auditor may be passed as provided in clause 18.3(a) provided that the resolution must be unanimous and be signed by all the shareholders entitled to vote on the resolution.
- (c) Within five working days of a resolution being passed under this clause the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

18.4 *Proceedings at meetings of shareholders.* The provisions of the First Schedule to the Act on the date of incorporation will apply to meetings of shareholders, including the right of shareholders to cast a postal vote.

19 **Chairperson of meetings of shareholders**

- 19.1 The chairperson of the board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 19.2 If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting.

20 **Shareholders entitled to notice of meetings**

- 20.1 The shareholders entitled to receive notice of a meeting of shareholders are the shareholders of the relevant class recorded in the register as registered shareholders:
 - (a) where the board has fixed a date for the purpose of establishing an entitlement to receive notice, on the date so fixed; or
 - (b) if no date has been fixed by the board for that purpose, at the close of business on the day immediately preceding the day on which the notice is given.

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- 20.2 A date fixed by the board under clause 20.1(a) must not be sent less than 10 working days before the date on which the meeting is to be held.
- 20.3 *Notice of meeting*
- Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to every director (and an auditor of the company in the case of the annual general meeting) not less than 10 working days before the meeting.
- 20.4 *Contents of notice*
- The notice referred to in clause 20.3 must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any resolution to be submitted to the meeting; and
- 20.5 *Irregularities in notice*
- An irregularity in a notice of a meeting required by clause 20.3 is waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 20.6 *Method of holding meeting*
- A meeting of shareholders, where notice of the meeting has been properly given, may be held either:
- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 20.7 *Adjournments*
- If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
- 20.8 *Minutes*
- 20.8.1 The board must ensure that full and accurate minutes are kept of all proceedings at meetings of shareholders.

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- 20.8.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

VOTING AT MEETINGS

20.9 Quorum

- 20.9.1 A quorum for a meeting of shareholders is present if those shareholders or their proxies or representatives who are present or who have cast postal votes are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 20.9.2 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 20.9.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called pursuant to a requisition of shareholders under Section 121(b) of the Act the meeting is dissolved;
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

20.10 Voting

- 20.10.1 In the case of a meeting of shareholders held under clause 20.6(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice; or
 - (b) voting by show of hands.
- 20.10.2 In the case of a meeting of shareholders held under clause 20.6(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 20.10.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 20.10.4.
- 20.10.4 At a meeting of shareholders a poll may be demanded by:
- (a) not less than 5 shareholders having the right to vote at the meeting; or

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- (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
 - (c) by a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right.
- 20.10.5 A poll may be demanded either before or after the vote is taken on a resolution.
- 20.10.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.
- 20.10.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.
- 20.11 Proxies and representatives**
- 20.11.1 A shareholder may exercise the right to vote either by being present or by proxy.
- 20.11.2 A proxy for a shareholder is entitled to attend, be heard and vote at a meeting of shareholders as if the proxy were the shareholder.
- 20.11.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 20.11.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received at least 48 hours before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause.
- 20.11.5 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 20.11.6 The Council and any member which is a local authority may by resolution of its Council or other appropriate governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, or of any class of members, at all such times until notice of revocation of such authority shall have been given to the company and any person so authorised shall entitle to exercise the same powers on behalf of the Council or the local authority which that person represents as the Council or that local authority could exercise if it were an individual member of the company. Any such person may be appointed the representative of any number of local authorities.

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20.12 Postal votes

- 20.12.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.
- 20.12.2 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.
- 20.12.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 20.12.4 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 20.12.5 Any person authorised to receive and count postal votes at a meeting:
- (a) must collect together all postal votes received by him or her or by the company; and
 - (b) in relation to each resolution to be voted on at the meeting, must count:
 - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
 - (c) must sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this clause, and which sets out the results of the counts required by paragraph (b) of this clause; and
 - (d) must ensure that the certificate required by paragraph (c) of this clause is presented to the chairperson of the meeting.
- 20.12.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- (a) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and
 - (b) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

- 20.12.7 The chairperson of a meeting must call for a poll on a resolution on which the chairperson holds sufficient postal votes that if a poll were taken the result could differ from that obtained on a show of hands.
- 20.12.8 The chairperson of a meeting must ensure that a certificate of postal votes held by the chairperson is annexed to the minutes of the meeting.
- 20.13 Unpaid shares**
- If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than at a meeting of an interest group.
- 21 Appointment and removal of directors**
- 21.1 *Number of directors.* The number of directors will be five.
- 21.2 *Appointment and removal by notice.*
- (a) During any period in which the Council holds all of the shares in the company, the Council may appoint any or all of the directors by notice in writing.
- (b) During any period in which Council holds all of the shares in the company, the Council may remove any director from office by notice in writing.
- (c) A notice given under clause 21.2(a) or 21.2(b) takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect.
- (d) A director holds office until his or her retirement, disqualification or removal in accordance with this constitution.
- 21.3 *Disqualification and removal.* A person will be disqualified from holding the office of director if he or she:
- (a) is removed under clause 21.2; or
- (b) resigns in writing; or
- (c) becomes disqualified from being a director pursuant to sections 151 (qualifications of directors), 382 (persons prohibited from managing companies) or 385 (Registrar of Companies may prohibit persons from managing companies) of the Act; or
- (d) dies; or
- (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or

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- (f) is under 18 years of age; or
- (g) is an undischarged bankrupt; or
- (h) is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that Act.

21.4 *Limitation in Hamilton City Councillors as Directors*

It is recorded that it is intended that the company be managed and directed by directors who have business acumen, independence or expertise in the field of property management. Not more than two directors at any one time shall also be sitting Councillors of the Council.

21.5 The members record that it is required that those persons who are appointed as directors of the company shall have:

- (a) business acumen;
- (b) sufficient time to devote to the affairs of the company.

21.6 *Alternate directors.*

- (a) Every director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director, and at the director's discretion by notice in writing to the company the director may remove the director's alternate director from office. On any such appointment being made the alternate director may, while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (including the right of acting as chairperson and signing board resolutions) of the director appointing the alternate director and is subject in all respects to the same terms and provisions as that director except as regards remuneration and except as regards the power to appoint an alternate director under this constitution. For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.
- (b) The notice of appointment of an alternate director should include an address for service of notice of meetings of directors. Failure to give an address will not invalidate the appointment, but notice of meetings of the board need not be given to the alternate director until an address is provided to the company.

22 Remuneration of directors

- 22.1 The Directors shall be paid out of the funds of the Company such sum or sums or at such rate per annum by way of remuneration for their services as Directors as the company may at any general meeting from time to time by

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resolution determine and any such determination shall apply to the year for which the same is passed and to all subsequent years until the company in general meeting shall by resolution alter the same.

- 22.2 Such remuneration may be fixed for all or any of the Directors individually or collectively, or partly by the one and partly by the other of such means and any remuneration payable to any Directors collectively shall be divided amongst them in such proportions and in such manner as they may by unanimous resolution determine and in default of such determination shall be divided amongst them in equal proportions. Until otherwise determined such remuneration shall be paid to the Directors by quarterly payments in arrears.
23. **Indemnity and insurance**
- 23.1 *Indemnity of directors and employees.*
- (a) The board may cause the company to indemnify a director or former director or an employee or former employee of the company for costs incurred by him or her in any proceeding:
- (i) that relates to liability for any act or omission in his or her capacity as a director or employee; and
 - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The board may cause the company to indemnify a director or former director or an employee or former employee of the company in respect of:
- (i) liability to any person other than the company for any act or omission in his or her capacity as director or employee; or
 - (ii) costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph 23.1(a)(i)
- provided that the liability is not criminal or (in the case of a director) in respect of a breach of the duty specified in section 131 of the Act (duty of directors to act in good faith and in best interests of the company) or (in the case of an employee) in respect of a breach of any fiduciary duty owed to the company.
- (c) The board must ensure that particulars of any indemnity given to any director or former director or employee or former employee of the company are forthwith entered in the interests register.
- 23.2 *Insurance of directors and employees.*
- (a) The board may, subject to section 162 of the Act (indemnity and insurance), cause the company to effect insurance for directors and

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former directors and for employees and former employees of the company in respect of:

- (i) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - (ii) costs incurred by that director or former director or employee or former employee in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by that director or former director or employee or former employee in defending any criminal proceedings in which he or she is acquitted.
- (b) The directors who vote in favour of authorising the effecting of insurance under clause 23.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- (c) The board must ensure that particulars of any insurance effected for any director or employee of the company or related company or any such former director or employee are forthwith entered in the interests register.

24. Rotation & Appointment of Directors

24.1 *Rotation of Directors*

- 24.1.1 At the annual general meeting of the Company in each year, two Directors for the time being, shall retire from office. A retiring Director shall hold office until the dissolution or adjournment of the meeting at which his or her successor is elected.
- 24.1.2 Any Director or Directors who during the year immediately preceding any annual general meeting has or have been appointed to fill a casual vacancy or casual vacancies shall retire from office and shall thus be re-eligible for re-election but shall not be taken into account in determining the number of Directors to retire by rotation at that meeting.
- 24.1.3 The Directors to retire at an annual general meeting shall be those Directors who have been in office for the longest unbroken period of time since they were last appointed or re-appointed or elected or re-elected and if it shall be necessary to decide between two or more of equal standing in that respect the same shall be determined by lot.
- 24.1.4 The Company at the meeting at which a Director retires in manner aforesaid may fill the vacated office by electing a person thereto (subject always to clause 24.1.7), and in default the retiring Director shall if offering himself or herself for re-election be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that Director is put to the meeting and lost.

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- 24.1.5 No person, other than a Director retiring at the meeting shall, unless nominated by the Directors, be eligible for election to the office of Director at any general meeting unless at some time after the close of the preceding financial year and not later than thirty (30) days before the date appointed for the meeting there has been left at the office notice in writing signed by a Member duly qualified to attend and vote at the meeting for which the notice is given, nominating that person for election, and also notice in writing signed by that person of his or her willingness to be elected.
- 24.1.6 Notice of every valid nomination for the office of Director shall either be included in the notice of such meeting or be sent by the Company to each Member entitled to receive notice of the meeting not less than seven (7) days before the meeting. Failure to give the notice shall not invalidate the nomination, but if notice of nomination is not given as required by this clause 24.1.6 the meeting, so far as election of Directors is concerned, shall stand adjourned until some later date to be fixed by the Chairman of the meeting and not less than seven (7) days notice of the nomination shall be given before any such adjourned meeting may proceed to elect Directors.
- 24.1.7 In any case where a poll is demanded on an election of Directors then separate polls shall be taken.
- 25 Powers and duties of the board**
- 25.1 *Powers of the board.*
- (a) Subject to clauses 16 and 17 the business and affairs of the company must be managed by or under the direction or supervision of the board.
- (b) Subject to clauses 16 and 17 the board has, and may exercise, all the powers necessary for managing, directing and supervising the management, business and affairs of the company except to the extent that this constitution or the Act expressly require those powers to be exercised by the shareholders or any other person.
- 25.2 *Directors to act in good faith.*
- (a) A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
- (b) Nothing in clause 25.2(a) limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.
- 25.3 *Gratuities.*
- (a) Subject to section 161 of the Act (remuneration and other benefits) the board may procure the establishment and maintenance of any non-contributory or contributory pension, superannuation fund or life

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assurance scheme for the benefit of, and the grant of donations, gratuities, pensions, allowances, benefits or emoluments to any persons (including directors and other officers) who are or have been at any time in the employment or service of the company, or of any company which is a subsidiary of the company, and spouses, surviving spouses, families or dependents of any of those persons.

- (b) The board may also procure the establishment and subsidy of, or subscription and support to, any institutions, associations, clubs, funds or trusts, calculated to be for the benefit of any of the persons referred to in clause 25.3(a) or otherwise to advance the interests and well-being of the company or of any subsidiary company referred in clause 25.3(a) or of its shareholders, and payments for or towards the insurance of any of those persons, and subscriptions or guarantees of money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.
- (c) The board may procure any of the matters referred to in clause 25.3(a) and in clause 25.3(b) be done by the company either alone or in conjunction with any other company.

26 Directors to act in good faith

- 26.1 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interest of the company.
- 26.2 During any period in which the Council holds all of the shares in the company a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the Council even though it may not be in the best interests of the company.

27 Major transactions

The board may not procure or permit the company to enter into a major transaction unless the transaction is:

- (a) approved by special resolution; or
- (b) contingent on approval by a special resolution.

PROCEEDINGS OF THE BOARD

28 Chairperson

- 28.1 The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- 28.2 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

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29 Convening meetings

- 29.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this clause 29.
- 29.2 Not less than 2 days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 29.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 29.4 Notice of a meeting may be given by any written means. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been received by the director the day following the date the letter is posted.

30 Meetings of board

A meeting of the board may be held either:

- (a) by the directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

31 Quorum

- 31.1 A quorum for a meeting of the board is a majority of the directors.
- 31.2 No business may be transacted at a meeting of directors if a quorum is not present.
- 31.3 An alternate director present at a meeting shall be included for the purpose of establishing a quorum.

32 Voting

- 32.1 Every director has one vote.
- 32.2 The chairperson shall have a casting vote in the event of equality of votes.
- 32.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

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32.4 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

33 Minutes

The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

34 Unanimous resolution

34.1 A resolution in writing, signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

34.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

34.3 A copy of any such resolution must be entered in the minute book of board proceedings.

35 Other proceedings

Except as provided in clauses 28 to 34 of this constitution the board may regulate its own procedure.

36 Notice to alternate directors

It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand, but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 29.2) be given to the alternate director.

37 Continuing directors

Notwithstanding any vacancy in the number of directors the board will continue to comprise the continuing directors, but, if their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors may act only for the purpose of increasing the number of directors to the minimum number, or for summoning a general meeting of the company.

38 Dividends

38.1 *Dividends proportionate to paid up capital.* Subject to the rights of the persons, if any, entitled to shares with special rights as to dividends, all dividends are to be declared and paid according to the amounts paid or

credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share, in advance of calls, is to be treated for the purpose of this clause as paid on the share. All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it is to rank for dividend as from a particular date, that share will rank for dividend accordingly.

- 38.2 *Deductions from dividends.* The board may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by that member to the company on account of calls, instalments, premiums or otherwise.
- 39 **Managing directors**
- 39.1 *Appointment and dismissal.*
- (a) The board may from time to time appoint one or more of their body to the office of managing director or managing directors of the company either for a fixed term or without any limitation as to the term.
- (b) Every managing director is liable to be dismissed or removed by a resolution of the board. The board may enter into any agreement on behalf of the company with any person who is or is about to become a managing director with regard to the length and terms of the managing director's employment, on the basis that the remedy of any such person for any breach of the agreement will be in damages only and that the managing director will not have a right or claim to continue in office as managing director contrary to the will of the board.
- 39.2 *Termination of employment.* A managing director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other directors and if the managing director ceases to hold the office of director for any reason the managing director will immediately cease to be a managing director.
- 40 **Notices**
- 40.1 *Service.* A notice may be served by the company upon any director or shareholder either personally or by posting it by fast post addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder.
- 40.2 *Time of service by facsimile.* A notice served by facsimile will be deemed to have been served on the day following completion of transmission of the notice.

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- 40.3 *Time of service by post.* A notice sent by post or delivered to a document exchange will be deemed to have been served 24 hours after the envelope or packaging containing the same was duly posted or delivered.
- 40.4 *Proof of service.* In proving service by post or delivery to a document exchange it will be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all postal or delivery charges paid. In proving service by facsimile, it will be sufficient to prove that the document was properly addressed and sent by facsimile.
- 40.5 *Service on joint holders.* A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.
- 41 **Method of contracting**
- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by two directors.
 - (b) An obligation which, if entered into by a natural person, would, by law, be required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority.
 - (c) An obligation which, if entered into by a natural person, would not, by law, be required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.
- 42 **Accountability to Shareholders**
- 42.1 *Principle objective to be successful business*
- 42.2 The principle objective of the company shall be to operate a successful business.
- 42.2.1 *Statement of Corporate Intent.* The Board of Directors shall deliver to the Council a draft statement of Corporate Intent not later than the 31st day of March in each year.
- 42.2.2 Each statement of Corporate Intent shall specify for the group comprising the company and its subsidiaries (if any), and in respect of the two financial years to follow the year in which it is delivered the following information:
- (a) The objectives of the company and the group of companies of which it forms part.
 - (b) The nature and scope of the activities to be undertaken.

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- (c) The ratio of consolidated shareholders' funds to total assets and definitions of those terms.
 - (d) The accounting policies.
 - (e) The performance targets and other measures by which the performance of the company or group (as the case may be) may be judged in relation to its objectives.
 - (f) An estimate of the amount or proportion of accumulated profits and capital reserves that it intended to be distributed to the Council.
 - (g) The kind of information to be provided to the Council by the company during the course of those financial years, including the information to be included in each half yearly report.
 - (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquire shares in any company or other organisation.
 - (i) Such other matters as are agreed by the Council and the Board of Directors.
- 42.2.3 The Board of Directors shall consider any comments made by the Council on the draft Statement of Corporate Intent made within two months after delivery of the draft to the Council, and shall deliver the completed Statement of Corporate Intent to the Council within three months after the commencement of the financial year.
- 42.2.4 A Statement of Corporate Intent for the company may be modified at any time by written notice from the Board of Directors to the Council, so long as the Board of Directors has first given written notice to the Council of the proposed modification and considered any comments made thereon by the Council within one month after the date on which the notice was given.
- 42.3.1 *Annual Reports, accounts and dividends.* Within three months after the end of each financial year of the company, the Board of Directors shall deliver to the Council:
- (a) A report on the operations of the company and those of its subsidiaries during that financial year; and
 - (b) Audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show the financial position of the company and its subsidiaries and the financial results of their operations during that financial year; and
 - (c) The auditor's report on those financial statements.
- 42.3.2 Every report under clause 42.3.1 shall:

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- (a) Contain such information as is necessary to enable an informed assessment of the operations of the company and its subsidiaries, including a comparison of the performance of the company with the relevant Statement of Corporate Intent; and
- (b) State the dividend payable to the Council by the company for the financial year to which the report relates.

42.4 Half yearly reports within two months after the end of the first half of each financial year of the company, the Board of Directors shall deliver to the shareholders a report of its operations during that half year.

Each report required by this Article shall include the information required by the Statement of Corporate Intent to be included therein.

42.5 *Other information.* The Board of Directors shall supply to the Council such information relating to the affairs of the company or any of its subsidiaries as the Council from time to time requests after consultation with the Board of Directors (whether or not the information is of a kind referred to in the Statement of Corporate Intent).

The Board of Directors shall however not be obliged to supply to the Council any information on an individual employee or customer of the company or of any subsidiary thereof, or any other person, if the information supplied will enable the identification of the person concerned or would breach any of the information privacy principles set out in the Privacy Act 1993.

42.6 *Sensitive Information.* Nothing in this constitution shall be construed as requiring the inclusion in any Statement of Corporate Intent, Annual Report, Financial Statements, or Half Yearly Report of any information that could probably be withheld if a request for that information were made to a Local Authority under the Local Government Official Information and Meetings Act 1987.

43 Definitions

43.1 In this constitution the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993.

"alternate director" means a director appointed pursuant to clause 21.6.

"annual meeting" means a meeting of shareholders held pursuant to clause 18.1(a).

"Auditor" means the audit office as defined in Section 14 of the Public Finance Act 1977.

"board" means the directors numbering not less than the required quorum acting as the board of directors of the company.

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"call" means a resolution of the board pursuant to clause 14.1(a) requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"company" means Hamilton Properties Limited.

"constitution" means this constitution of the company and all amendments made to it from time to time.

"Council" means the Hamilton City Council.

"director" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"distribution" means:

- (a) the direct or indirect transfer of money or property, other than shares, by the company to or for the benefit of a shareholder; and
- (b) the incurring of a debt by the company to or for the benefit of a shareholder -

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

"dividend" means a distribution by the company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance) of the Act applies.

"Local Authority" means a territorial authority or Regional Council or United Council within the meaning by the Local Government Act 1974, and including any public body declared by any Act or by the Governor General by Order-In-Council to be a local authority.

"managing director" means an employee of the company with the responsibility for the management of the company (together with any other employee) who is appointed by the board pursuant to clause 39.1.

"share" means a share issued by the company.

"shareholder" means a person:

- (a) registered in the share register as the owner of one or more shares; or
- (b) until the person's name is entered in the share register, a person named as a shareholder in the application for registration of the constitution of the company at the time of the incorporation of the company; or

(c) until the person's name is entered in the share register, a person who is entitled to have that person's name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated company.

43.2 Words importing the singular number only include the plural number and vice versa.

43.3 A reference to a person includes any firm, company or other body corporate.

43.4 Subject to the above expressions contained in this constitution bear the same meaning as in the Act at the date on which this constitution becomes binding on the company.

43.5 A reference to a clause means a clause of this constitution.

43.6 Unless the context otherwise requires references to a statute including:

- (a) amendments to that statute; and
- (b) any statute passed in substitution for that statute; and
- (c) regulations passed under that statute.

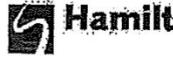
43.7 The clause headings and footnotes are included for the purposes of convenience and do not affect the construction of this constitution.

This document comprising pages numbered from 1 to 26 is certified as the constitution of Hamilton Properties Limited on this 26th day of September 1996.

..... *[Signature]* Chairman of Directors
 Applicant (Director)

..... *[Signature]*
 Applicant (Director)

djwhpl.com



10062741711

Te kaunihera o Kirikiriroa

Private Bag 3010
Hamilton 3240
New Zealand

Phone 07 838 6699
Fax 07 838 6699

Info@hcc.govt.nz
www.hamilton.co.nz

10th July 2014

Companies Office
Northern Business Centre
Private Bag 92061
Victoria Street West
AUCKLAND 1142
FRA@companies.govt.nz

Dear Sir/ Madam

SUBJECT:
Company -Hamilton Properties Limited (Company Number 425257)
Non-active declaration

Hamilton Properties Limited (HPL) remains a non-active company for the year ended 30 June 2014. HPL is 100% subsidiary of Hamilton City Council (HCC).

I have attached the non-active declaration form (FRA1) which has been signed by the sole Director of this company.

In summary I confirm that HPL continues to meet the requirement to be exempted as a Council Controlled Organisation (CCO) under section 7(3) of the Local Government Act 2002 and also under FRA 1993, so that HPL is not required to prepare a statement of intent and annual financial statements, and having these audited and filed with the Companies Office.

Would you please confirm registration of the attached document.

Yours sincerely

David Leong
Treasury Accountant

Council Building
Garden Place, Hamilton
Phone 07 838 6972
Fax 07 838 6616
Email david.leong@hcc.govt.nz

BUSINESS & REGISTRIES
BRANCH, AUCKLAND
14 JUL 2014
RECEIVED

Registered document

425257 HAMILTON PROPERTIES LIMITED

Registration Date and Time	23 December 2015 16:01:52
Document Type	Annual Return Filed
Presenter	Morva KAYE (HAMILTON CITY COUNCIL) Private Bag 3010 Hamilton 3240 0000 New Zealand
Filing Year	2015
Ultimate holding company	No
Required addresses	
Registered Address:	Municipal Offices, Garden Place, Hamilton , New Zealand
Address for service:	Municipal Offices, Garden Place, Hamilton , New Zealand
Optional addresses	
Address for share register:	
Directors	
Full legal name:	Richard Graham BRIGGS
Residential Address:	1 Apollo Place, Rototuna North, Hamilton, 3210 , New Zealand
Appointment Date:	02 Jul 2013
Shareholdings	
Total Number of Shares:	1000
Shareholders in Allocation	
1000 Shares	HAMILTON CITY COUNCIL Municipal Building, Garden Place, Hamilton , New Zealand
Annual Return Information	
Annual return filed by:	Morva Kaye
Designation:	Authorised Person

<http://www.business.govt.nz/companies/app/ui/pages/companies/425257/22154768/ent...> 1/07/2016

DRAFT

08 JUL 2016

CONSTITUTION

of

HAMILTON PROPERTIES LIMITED

Item 6

Attachment 2

MBM-348176-233-20-V1:nw

WESTPAC HOUSE
430 VICTORIA STREET
PO BOX 258, DX GP20031
HAMILTON 3240
NEW ZEALAND
PH: 07 839 4771
www.tomwake.co.nz





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1. Objectives and activities of the Company

Objectives of the Company

- 1.1 The principal objectives of the Company are to:
- (a) achieve the objectives of its Shareholder, both commercial and non-commercial as specified in the Statement of Intent;
 - (b) be a good employer;
 - (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which the Company operates and by endeavouring to accommodate or encourage these when able to do so.
- 1.2 The Company must comply with its Statement of Intent.

2. Share Matters

Board may issue Shares

- 2.1 Subject to the provisions of the Act and this constitution, the Board may issue, in such classes and on such terms as the Board thinks fit, any of the following:
- (a) Shares;
 - (b) Securities that are convertible into or exchangeable for Shares;
 - (c) Options to acquire Shares; or
 - (d) shares that are redeemable by the Shareholder;

Provided that any such issue must first be approved by a Special Resolution of the Shareholders.

Consolidation and subdivision of Shares

- 2.2 The Board may do any of the following:
- (a) Consolidate and divide the Shares or the Shares of any class in proportion to those Shares or the Shares in that class.
 - (b) Subdivide the Shares or the Shares of any class in proportion to those Shares or the Shares in that class.

Share repurchases

- 2.3 The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

3. Pre-emptive rights on issue of new Shares

Section 45 applies

- 3.1 The pre-emptive provisions of section 45 of the Act apply to a new issue of Shares,

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unless waived in writing by a Special Resolution.

Transfer of Shares by the Company

3.2 Clause 3.1 applies to the transfer of Shares held by the Company itself as if the transfer was an issue of new Shares by the Company.

4. Alteration of Shareholders' rights

Special Resolution required

4.1 Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this constitution, the Act, or the terms on which the Shares were issued, must be approved by a Special Resolution.

5. Transfer of Shares

Right to transfer

5.1 Subject to the restrictions contained in this constitution, a Shareholder may transfer any Share by an instrument of transfer that complies with this constitution.

Transferor to remain holder until registration

5.2 The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.

Form of transfer

5.3 Every instrument of transfer of Shares must comply with all of the following provisions:

- (a) The form of the instrument of transfer must be any usual or common form or any other form approved by the Board.
- (b) The instrument of transfer must be signed or executed by or on behalf of the transferor.
- (c) Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

Delivery to Company

5.4 An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. The transferee must provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

Registration of transfer

5.5 On receipt of a form of transfer in accordance with clause 5.4, the Company must as soon as practicable enter the name of the transferee on the Share register as holder of the Shares, unless:

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- (a) the Board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
- (b) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and
- (c) the refusal or delay in the registration is permitted by clause 5.6.

Power of Board to refuse or delay registration

5.6 The Board may refuse or delay the registration of a transfer of any Share for any of the reasons set out below.

- (a) The Company has a lien on the Share.
- (b) The Share is not fully paid up.
- (c) The form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) and such other evidence as the Directors may reasonably require of the right of the transferor to make the transfer.
- (d) The holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share.
- (e) The Board considers that it would not be in the best interests of the Company to do so.

6. Meetings of Shareholders

Annual meetings

- 6.1 An annual meeting of Shareholders is to be held not later than 6 months after the balance date of the Company, and not later than 15 months after the previous annual meeting.
- 6.2 It will not be necessary for the Company to hold an annual meeting of Shareholders under clause 6.1 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 6.4.

Special meetings

- 6.3 A special meeting of Shareholders:
 - (a) may be called at any time by the Board; and
 - (b) must be called by the Board on the written request of a Shareholder.

Resolution in lieu of meeting

- 6.4 A resolution in writing signed by the requisite number of Shareholders in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Shareholders.

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Shareholder Representatives

- 6.5 Shareholders may exercise the right to vote by a Representative.
- 6.6 The Representative for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the Representative were the Shareholder.
- 6.7 The Representative must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 6.8 No Representative's appointment is effective in relation to a meeting unless it is produced to the Company before the start of the meeting.

Chairperson

- 6.9 If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.
- 6.10 If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, the Shareholders present may choose one of their number to be chairperson of the meeting.

Notice of meetings to Shareholders

- 6.11 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 6.12 Written notice of the time and place of a meeting of Shareholders must be given to every Shareholder entitled to receive notice of the meeting and to every Director and an auditor of the Company not less than 10 working days before the meeting.
- 6.13 The notice must state all of the following:
 - (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it;
 - (b) the text of any resolution to be submitted to the meeting.
- 6.14 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 6.15 If a meeting of Shareholders is adjourned for less than 20 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Entitlement to notice of meetings

- 6.16 The Shareholders who are entitled to receive notice of a meeting of Shareholders are, if the Board:
 - (a) fixes a date for the purpose, those Shareholders whose names are registered

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in the Share register on that date; or

- (b) does not fix a date for the purpose, those Shareholders whose names are registered in the Share register at the close of business on the day immediately preceding the day on which the notice is given.

Methods of holding meetings

6.17 A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

6.18 No business may be transacted at a meeting of Shareholders if a quorum is not present.

6.19 A quorum for a meeting of Shareholders is present if all Shareholders or their Representatives are present.

6.20 If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders pursuant to section 121(b) of the Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

Voting

6.21 In the case of a meeting of Shareholders assembled together in accordance with clause 6.17(a), unless a poll is demanded, voting by Shareholders will be by whichever of the following methods is determined by the chairperson of the meeting, by:

- (a) voice; or
- (b) show of hands.

6.22 In the case of a meeting of Shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

6.23 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.24.

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Poll

- 6.24 At a meeting of Shareholders a poll may be demanded by a Shareholder having the right to vote at the meeting, or the chairperson of the meeting.
- 6.25 A poll may be demanded either before or after the vote is taken on a resolution.
- 6.26 If a poll is taken, votes must be counted according to the votes attached to the Shareholder present in person or by the absent shareholder's Representative.
- 6.27 The chairperson of a Shareholders' meeting is not entitled to a casting vote.

Minutes

- 6.28 The Board must ensure that minutes are kept of all proceedings at the meetings of Shareholders.
- 6.29 Minutes that have been signed as correct by the chairperson of the meeting are evidence of the proceedings.

Other proceedings

- 6.30 Except as provided in this constitution, a meeting of Shareholders may regulate its own procedure.

7. Shareholder proposals**Notice to the Board**

- 7.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders.
- 7.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders.
- 7.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders.
- 7.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

Written statement

- 7.5 If the Directors intend that Shareholders may vote on the proposal by Representative or by postal vote, they must give the proposing Shareholder the right to include with

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the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

- 7.6 The Board is not required to include with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.

Costs

- 7.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

8. Appointment and removal of Directors

Number of Directors

- 8.1 The minimum number of Directors will be one and there is no maximum number of Directors.

Appointment of Directors

- 8.2 Subject to clauses 8.4 and 8.5, the Directors will be such person or persons as may from time to time be appointed by:

- (a) a notice in writing to the Company signed by the holder or holders of a majority of the Shares in the Company; or
- (b) an ordinary resolution of the Shareholders.

Directors may be appointed individually or together unless the Shareholders by ordinary resolution require any Director's appointment to be voted on individually.

Removal of Directors

- 8.3 Any Director may be removed from office by:
- (a) a notice in writing to the Company signed by the holder or holders of a majority of the Shares in the capital of the Company; or
 - (b) an ordinary resolution of the Shareholders, passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.

Directors' appointment policy

- 8.4 All Director appointments must comply with the appointing Shareholder's policy on the appointment and remuneration of Directors as required by the Local Government Act 2002.

Excluded Directors

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- 8.5 A person cannot be appointed a Director of the Company if that person is an elected member of the Hamilton City Council.

Vacation of office

- 8.6 A Director vacates office if that Director:
- (a) resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;
 - (b) is removed from office in accordance with clause 8.3;
 - (c) becomes disqualified from being a Director pursuant to section 151 of the Act; or
 - (d) dies.

9. Directors' meetings

Third Schedule to the Act not to apply

- 9.1 The Third Schedule to the Act (relating to the proceedings of a board) does not apply to the Company except to the extent included in this constitution.

Notice of meeting

- 9.2 A Director may convene a meeting of the Board by giving notice in accordance with clause 9.3.
- 9.3 The following provisions apply in relation to meetings of the Board:
- (a) Not less than two working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right.
 - (b) Notice to a Director of a meeting of the Board may be:
 - (i) delivered to the Director;
 - (ii) posted to the address given by the Director to the Company for such purpose;
 - (iii) sent by facsimile transmission to the facsimile number given by the Director to the Company for such purpose; or
 - (iv) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
 - (c) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.
 - (d) A notice given to a Director pursuant to this clause 9.3 is deemed to be given:

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- (i) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
- (ii) in the case of posting, three days after it is posted;
- (iii) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; or
- (iv) in the case of electronic means, at the time of transmission.

9.4 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.

Methods of holding meetings

9.5 A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.

Quorum

9.6 A quorum necessary for a meeting of the Board, other than an adjourned meeting, will be the majority of the Directors (including any Alternate Directors in the place of an absent Director).

9.7 No business may be transacted at a meeting of the Board if a quorum is not present.

Chairperson

9.8 The Directors may elect one of its number as Chairperson of the Board to hold office until he or she resigns or dies or until the Directors elect a different Chairperson in his or her place.

9.9 If no chairperson is elected, or if at a meeting of the Board the Chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their numbers to be Chairperson of the meeting.

9.10 The Chairperson must ensure that the Company holds at least four board meetings in every financial year of the Company.

Voting

9.11 Every Director has one vote.

9.12 The Chairperson does not have a casting vote.

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- 9.13 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it, unless a contract entered into by the Company and its shareholders requires a higher threshold.
- 9.14 A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:
- (a) expressly abstains from voting; or
 - (b) dissents from or votes against the resolution.

Minutes

- 9.15 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 9.16 Board minutes must be disclosed to the public in the manner set out in section 51 of the Local Government Official Information and Meetings Act 1987 on the proviso that the Board may refuse to disclose any information in the publicly available Board minutes that may be properly withheld if a request for that information were to be made to a local authority under the Local Government Official Information and Meetings Act 1987.

Written resolution

- 9.17 A unanimous resolution in writing, signed or assented to in written form by all of the Directors, is as valid as if it had been passed at a meeting of the Board duly convened and held.
- 9.18 A resolution pursuant to clause 9.17 may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 9.19 A copy of any such resolution must be entered in the minute book of Board proceedings.

Committees

- 9.20 A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

Validity of actions

- 9.21 The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

Other proceedings

- 9.22 Except as provided in this constitution, the Board may regulate its own procedure.

10. Powers of Directors

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Role of Directors

- 10.1 The role of a Director is to assist the Company to meet its objectives and any other requirements in the Company's Statement of Intent. This clause does not limit or affect the other duties that a Director has.

Management of Company

- 10.2 The business and affairs of the Company must be managed by, or under the direction of, the Board.
- 10.3 All decisions relating to the operation of the Company must be made by, or under the authority of, the Board in accordance with:
- (a) the Statement of Intent;
 - (b) this constitution; and
 - (c) any agreement governing the affairs of the Company entered into by the Company and its shareholders.

Exercise of powers by Board

- 10.4 The Board may exercise all the powers of the Company which are not required, either by the Act or this constitution, to be exercised by the Shareholders.

Delegation of powers

- 10.5 The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

Appointment of attorney

- 10.6 The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

11. Interested Transactions**Disclosure of interests**

- 11.1 A Director must comply with the disclosure requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

Actions by interested Directors

- 11.2 A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any of the following as if the Director were not interested in the transaction:
- (a) vote on any matter relating to a transaction;

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- (b) attend a meeting of the Board at which any matter relating to a transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to a transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to a transaction.

Company best interests

- 11.3 When exercising powers or performing duties as a Director, a Director must act in what the Director believes to be the best interests of the Company.

Use of Company information

- 11.4 A Director who has information in his or her capacity as a Director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

- (a) for the purposes of the Company; or
- (b) as required by law; or
- (c) in accordance with clauses 11.5 to 11.6 of this constitution; or
- (d) in complying with clause 11.1 of this constitution.

Necessary information

- 11.5 A Director may, unless prohibited by the Board, disclose information to:
- (a) a person whose interests the Director represents; or
 - (b) a person in accordance with whose directions or instructions the Director may be required or is accustomed to act in relation to the Director's powers and duties and, if the Director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

Procedure for disclosure and use

- 11.6 A Director may disclose, make use of or act on the information if:
- (a) particulars of the disclosure, use or act in question are entered in the interests register;
 - (b) the Director is first authorised to do so by the Board; and
 - (c) the disclosure, use or act in question will not, or will not be likely to, prejudice the Company.

12. Indemnity, insurance and remuneration

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Indemnity for Directors

- 12.1 Every Director will be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

Indemnities and insurance

- 12.2 In addition to the indemnity set out in clause 12.1, the Company may with the prior written approval of the Board do any of the following:
- (a) Indemnify a Director or employee of the Company for any costs referred to in section 162(3) of the Act.
 - (b) Indemnify a Director or employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act.
 - (c) Effect insurance for a Director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

Definitions

- 12.3 Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 12.

Directors' Remuneration

- 12.4 The Directors may not exercise any of the powers referred to in Section 161 of the Act unless authorised by the Shareholders of the Company.
- 12.5 Each Director will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business and the Board may authorise such payments without Shareholder approval.
- 12.6 The Shareholders may by resolution authorise the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity in accordance with any agreement between the Shareholders.

13. Reporting

Half yearly report

- 13.1 Within 2 months after the halfway point of the Company's financial year, the Board must deliver to the Shareholders a report on the Company's operations during that half year. That report must include the information required to be included by the Company's Statement of Intent.

Annual report

- 13.2 Within 3 months after the end of the Company's financial year, the Board must deliver to the Shareholders, and make available to the public, a report on the Company's operations during that year. That report must include the information required to be included by:
- (a) clause 13.3;

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- (b) the Company's Statement of Intent; and
- (c) the Act.

Contents of reports on operations of the Company

- 13.3 A report on the operations of the Company under clause 13.2 must:
- (a) contain the information that is necessary to enable an informed assessment of the operations of the Company and its subsidiaries (if any), including:
 - (i) a comparison of the performance of the Company and its subsidiaries (if any) with the Statement of Intent;
 - (ii) an explanation of any material variances between that performance and the Statement of Intent;
 - (b) include audited consolidated financial statements for that financial year for that organisation and its subsidiaries;
 - (c) include an auditor's report on:
 - (i) those financial statements; and
 - (ii) the performance targets and other measures by which performance was judged in relation to the Company's objectives.
- 13.4 The audited financial statements under clause 13.3(b) must be prepared in accordance with generally accepted accounting practices.

Protection from disclosure of sensitive information

- 13.5 Nothing in this clause 13 requires the inclusion in any Statement of Intent, annual report, financial statement, or half yearly report required to be produced under this constitution by the Company of any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

Statement of Intent

- 13.6 Without limiting the obligations of the Board and the Company under the Local Government Act 2002 in respect to the Company's Statement of Intent, the Board must:
- (a) deliver to the Shareholders a draft Statement of Intent on or before 1 March each year;
 - (b) consider any comments on the draft Statement of Intent that are made to it within 2 months of 1 March by the Shareholders or by any one of them; and
 - (c) deliver the completed Statement of Intent to the Shareholders on or before 30 June each year.
- 13.7 The Shareholders must make a decision whether or not to approve the draft

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Statement of Intent and modifications to each Statement of Intent within the time limits prescribed by the Local Government Act 2002 (or such earlier limits agreed to) so as to enable the Company to comply with applicable time limits.

14. Auditor

14.1 So long as the Company remains a Council Controlled Organisation, the Auditor-General shall be the auditor of the Company and of every subsidiary of the Company (if any) and shall have all of the functions, duties and powers:

- (a) of an auditor appointed under the Act; and
- (b) that the Auditor-General has under the Public Audit Act 2001.

15. Dividends

Power to authorise

15.1 The Board may, subject to the Act and this constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything that is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

Deductions

15.2 The Board may deduct from dividends payable to any Shareholder in respect of any Shares any of the following:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares; or
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

Entitlement Date

15.3 Dividends and other distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

Unclaimed dividends

15.4 Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for 5 years after having been authorised may be forfeited by the Board for the benefit of the Company, The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

16. Method of contracting

Deeds

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- 16.1 A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:
- (a) by 2 or more Directors of the Company;
 - (b) a Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed; or
 - (c) one or more attorneys appointed by the Company in accordance with section 181 of the Act.

Written contracts

- 16.2 An obligation or contract, which is required by law to be in writing and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the Company's express or implied authority.

Other contracts

- 16.3 An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

17. Definitions and Interpretation

Definitions

- 17.1 In this constitution the following definitions apply:

Act means the Companies Act 1993 as amended from time to time;

Alternate Director means a person appointed in accordance with this Constitution as an alternate director in the place of a Director during the absence from time to time of that Director;

Auditor-General means the Controller and Auditor-General appointed under the Public Audit Act 2001;

Board in relation to the Company means those Directors who number not less than the required quorum acting together as a board of directors;

Chairperson means a person who is appointed chairperson of the Company in accordance with this Constitution;

Company means Hamilton Properties Limited;

Council-Controlled Organisation has the meaning given to that term by the Local Government Act 2002;

Director means a person appointed as a director of the Company in accordance with this constitution, and, when acting in place of a Director, includes an Alternate Director;

Distribution has the meaning set out in section 2(1) of the Act;

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Representative means a person appointed as a Shareholder's Representative under clause 6.7;

Share means a share issued, or to be issued, by the Company;

Shareholder means a person whose name is entered in the share register of the Company as the holder for the time being of one or more Shares;

Special Resolution means a resolution approved by 75% of the votes of those Shareholders entitled to vote and voting on the resolution;

Statement of Intent means each statement of intent to be completed by the Board in terms of the Local Government Act 2002; and

Territorial Authority has the meaning given to that term by the Local Government Act 2002.

Interpretation

17.2 In this constitution, unless the context otherwise requires:

- (a) except as specified in clause 18.1, words or expressions used in this constitution that are defined in the Act or the Local Government Act 2002 have the meaning given by the applicable act;
- (b) a reference to writing includes facsimile and electronic communications resulting in visible reproduction;
- (c) an expression referring to a natural person includes a company, trust, partnership, association, body corporate, Territorial Authority, Council Controlled Organisation or public authority;
- (d) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes;
 - (i) that legislation or provision as from time to time amended, re- enacted or substituted; and
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution; and
- (f) a reference to the word 'include' or 'including' is to be construed without limitation.

Conflict between the Act and this constitution

17.3 If there is any conflict between:

- (a) a provision in this constitution and a mandatory provision in the Act or the Local Government Act 2002; or
- (b) a word or expression defined or explained in the Act or the Local Government

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Act 2002 and a word or expression defined or explained in this constitution, the provision, word or expression in the applicable act prevails.

MBM-348176-233-20-V1:

Hamilton City Council Municipal Endowment Fund

Final Report

*Strictly private
and confidential*

27 June 2016

pwc

Item 6

Attachment 3



Richard Briggs
Chief Executive
Hamilton City Council
Garden Place
Hamilton

27 June 2016

Assessment of the Municipal Endowment Fund and investment framework practices

Dear Richard

We are pleased to provide our report on the historical performance of the Municipal Endowment Fund and the options available to Council to continue to utilise the assets to achieve both a financial return and for the development of assets for a wider public benefit.

This report is provided in accordance with the terms of our engagement outlined in our letter dated 25 February 2016 and is subject to the restrictions set out in Appendix 5.1 of this report.

Our principal findings and conclusions together with details of the scope and approach to our work are set out in this report.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Wayne Tainui', with a stylized flourish at the end.

Wayne Tainui
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Hamilton City Council Municipal Endowment Fund
PwC

Strictly private and confidential

27 June 2016

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Executive Summary

The sale of a number of high yielding properties in recent years has resulted in a significant level of cash held within the fund. This makes it an opportune time to review the management and investment approach of the fund

History

- The original endowment properties appear to have been bare land endowed to Council in circa 1870.
- Over time, it appears the land was leased to private persons and organisations who constructed dwellings, both commercial and residential, on the land with the ground leases being 21 year perpetual leases without rent reviews.
- The management of endowment assets is undertaken in accordance with the Local Government Act 2002 and under the guidance of Council policy.
- Since 2009 the MEF cash holdings have been used by Council to offset debt.

Policy and Objectives

- Historical analysis has been undertaken on the management and performance of the MEF assets for the period 1991 to 1998 under the control of Hamilton Properties Limited ("HPL") and 2008 to 2015 under the control of Council.
- The policy or objectives across both periods were consistent, the key principles including the requirements to ensure:
 1. Capital is preserved;
 2. Income generation is maximised and returns are comparative to market;
 3. Income is applied to municipal purposes which historically has been distributed to Council to reduce the rates burden; and
 4. Investments are made and assets managed in a prudent and professional manner.

Legal Requirements

- Policy can be changed by Council so long as the fund is utilised for municipal purposes which has a broad definition. Legal advice confirms the following constraints:
 - The common law principle of endowment requires the preservation of capital; and
 - The policy can be changed by Council as long as the purpose of the policy provides a municipal purpose.

Hamilton Properties Limited Example

- In partnering with the private sector HPL successfully completed a number of key strategic and community developments returning an average return of 12.1% pa over the eight year period from 1991 to 1998.
- HPL had a number of high-profile and successful business leaders in its governance team and this will be a critical success factor if a similar approach is adopted in the future.
- HPL was able to operate with agility and under a commercially focused mandate to achieve the desired outcomes which included the following key developments: Pukete Industrial Estate; Downtown Plaza; BNZ Tower; and the Novotel Tainui as illustrated on page 10.

Other Councils

- Passive investments, including managed funds, appear to be mostly held within Council. In some cases the investment decisions are outsourced to external financial advisors.
- Through management of investments through a CCO the other Councils appear to have accessed 'wider expertise', in terms of governance and managerial capacity, independent of Council.
- The separation of governance and politics through structure, e.g. a CCO, and clearly set objectives is required to facilitate long-term strategy.
- Development activities are clearly aligned to aspects of Council plans for municipal purposes.

Council need to consider the preferred investment approach based on the desired municipal purpose and the appropriate vehicle to achieve results in the long-term

Strategic Alignment

The MEF could be utilised as a tool to assist Council to better achieve its longer-term strategic objectives as set out in Council plans.

The contribution of the MEF towards achieving these longer-term objectives could be aligned through policy change and may involve the setting of:

- The purpose of the MEF, including consideration of municipal purposes with wider public benefits which are consistent with long-term Council plans;
- A targeted minimum return; and
- An investment strategy in terms of how the purpose and targeted returns of the MEF can be achieved. i.e. management vehicles and types of investment.

Key Considerations

- The sale of a number of high yielding properties in recent years together with the significant level of cash held within the fund suggests that it is an appropriate time to review the management and investment approach of the fund.
- The key questions to address when considering the options include:
 1. **How should the fund be structured?**
Including consideration of transferring control to a vehicle, such as a CCO, to increase the speed and agility in which commercial decisions are made and opportunities captured.
This may also include outsourcing the management of existing properties.

2. What are the investment activities?

Given the current asset base of the fund it appears that a higher return could be achieved in either Balanced Managed Funds or units in Listed Property Companies on a long-run average basis.

3. Can the fund be utilised for other municipal purposes to make positive change in Hamilton through the development of key strategic assets whilst still making an acceptable return?

The achievements of HPL provide an excellent example of how the MEF could be used under a CCO structure to achieve clearly articulated objectives whilst delivering an acceptable financial return.

The involvement of influential business leaders in governance positions was and arguably still is a critical success factor.

Policy History

Current Policy

Currently MEF assets are managed by the Council property team, the current MEF Investment Policy has been in place since 1998 when the assets were transferred from HPL to Council

Operating Practices

- The investment of MEF assets and management of the investment properties is undertaken in accordance with the MEF Investment Policy dated 8 April 2009 presented opposite.
- The MEF assets are currently managed by Council staff within the Property team.
- Since 1998 when the MEF returned to Council control, it has not been actively managed and has not undertaken any economic development activity or joint ventures. It has been a passive investment, involving existing commercial property, ground leases and cash.
- The MEF under the current investment approach has achieved an average gross return of 7.5% pa, before the allocation of the HCC overhead or management charge, over the five years to 30 June 2015.
- A full list of properties and their performance is detailed in the analysis attached as appendices.

Future Investment Returns

The future investment returns will be impacted by the following:

- Approximately \$27.4m (66%) of the fund is held in cash and has an implied return of 5.5% as it has been applied against Council debt.
- An additional building, the Beggs Wiseman building, classified as a Municipal Investment Property (“MIP”) has recently been sold.
- Only three MIP’s remain, as at 30 June 2015 the properties were valued at \$10.5m and contractually will collectively earn a gross rental yield of 8.1%.
- Based on the current portfolio a gross return of approximately \$2.5m (6.1%) appears likely.

Current Policy

1. Maximise the returns on the Municipal Endowment Fund through property rental income and capital appreciation.
2. Maintain the real value of the Municipal Endowment Fund Investment and distribute maximum returns to the Council or in accordance with guidelines as otherwise determined by Council from time to time.
3. Manage properties in a professional and ethical manner ensuring compliance with legal and best practice requirements.
4. Manage the MEF in a prudent manner to minimise specific property and portfolio risk exposures.
5. At the time of new acquisition have an investment plan which provides clear guidance covering types of properties, their location and approved activities of tenants.
6. Operate sound control practices to prevent unauthorised transactions.
7. Provide timely, accurate and understandable information to Council on financial and other matters relating to the Municipal Endowment Fund Investment.

Hamilton Properties Limited

HPL operated under a set of objectives similar to the current MEF policy and was deemed to have achieved its strategic objectives by 1998 whilst achieving a market return

Background

Hamilton Properties Limited (“HPL”) is a Council Controlled Organisation (“CCO”) established in 1989 with the following purpose:

Managing of Council properties, the Domain Endowment Fund (“DEF”) and MEF on behalf of the HCC. Funds are held for reserve and investment purposes.

The objectives of the Company (detailed opposite) were explicitly set with a target date of June 1999. It was determined that the objectives were met by 30 June 1998 and the assets were transferred back to HCC.

HPL is now a dormant or non-active company with tax losses available.

The financial performance of HPL was measured in terms of the return from the development properties and the return from the original endowment properties.

HPL contributed to the development of a number of key strategic and community assets (detailed over-page) utilising the MEF fund and achieved an average return of 12.1% over the eight year period (1991 to 1998) on development activities.

HPL had its own Board of Directors, independent from Council, and appears to have formally reported to Council bi-annually with six monthly and annual reports produced.

Income earned by HPL was distributed to Council through dividends each year.

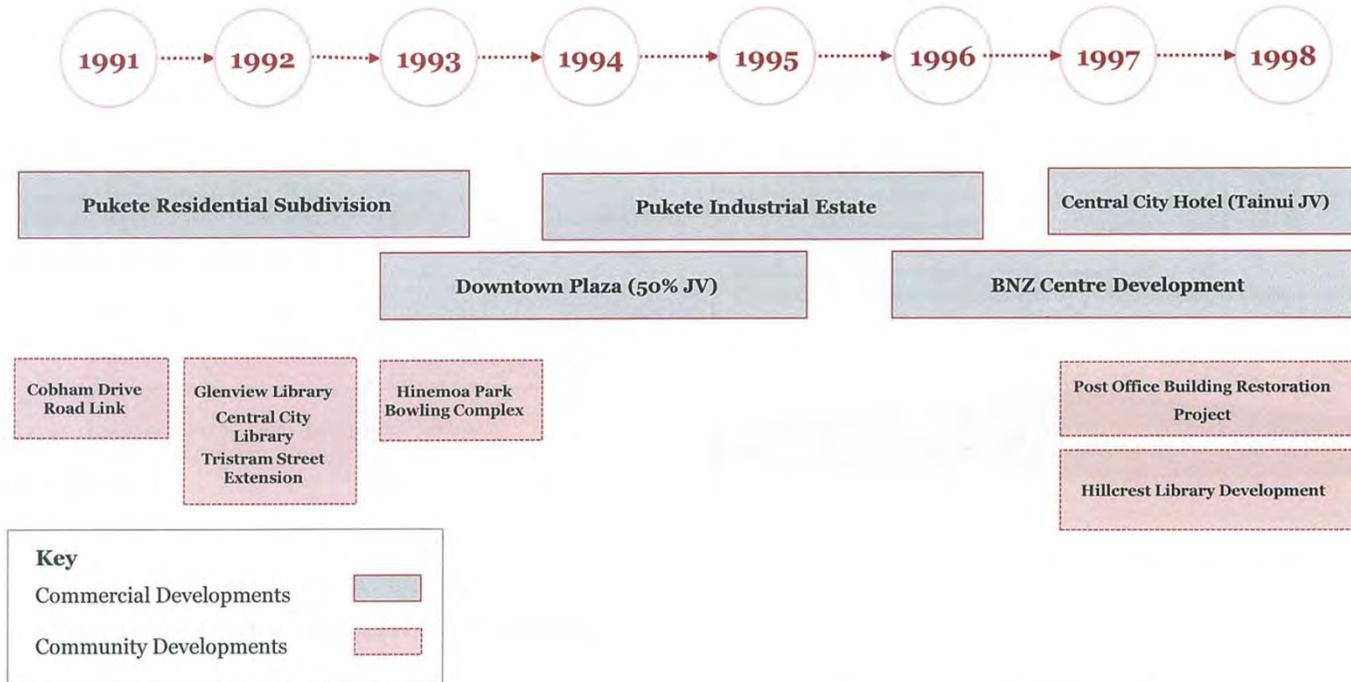
Statement of Objectives

The Company aims to increase the return on the shareholders’ assets under its management. To achieve this the Company intends to:

- I) Undertake new profitable investments as cash flows allow which, over their life, will yield a substantially greater return than previously achieved.
- II) Promote development of properties in a manner which will maximise the commercial value of the asset by ensuring that the addition of any new capacity is related as closely as possible to actual and forecast market demand;
- III) Encourage freeholding of endowment properties to generate capital for investment in higher yielding endowment properties as soon as practicable;
- IV) Enter into joint venture or turn-key developments to provide flexible options for the future;
- V) Strive to minimise operating costs;
- VI) Manage its financial assets and liabilities on a prudent basis;
- VII) Offer a property management service to Council including; but not limited to, property leasing, concessions and licenses, specific acquisitions, sales and purchases related to Council’s direct operations and to offer the service at competitive rates in a timely manner to the satisfaction of the client as determined by contracts;
- VIII) Seek and effectively administer service contracts with other public sector entities.

HPL – Development Timeline

HPL were responsible for a number of key strategic developments over the eight year period



Case Studies - Other Councils

Invercargill City Council (1 of 2)

ICC appear to have a diverse property portfolio including tenanted buildings and industrial, residential and rural development land under the control of a CCO

Invercargill City Council (“ICC”)

- The endowment land originated in June 1879 when Conveyance 12863 Deed 28/690 allocated land in the original subdivision of the Town of Invercargill to be set aside as municipal endowments. Additional endowment properties were created in 1956 by the Municipal Corporations Act.
- The Investment Property Activity (the Activity) manages and controls the investment property ultimately owned by ICC. The Activity sits within a CCO, Invercargill City Property Limited (“ICPL”) which is a subsidiary of Invercargill City Holdings Limited, a wholly owned subsidiary of Council.
- The Activity reports to the Finance and Policy Committee of Council which reports directly to Council.

Governance

- ICPL has a chairperson and two other directors.
 - The Chairperson is a former managing director of a commercial and industrial property Company with an accounting and finance background. He now holds multiple directorships in the private and local government sector.
 - One director holds a CEO position with a large infrastructure company whilst the second director is an experienced Councillor.

Fund Activity

- The Activity contributes to Councils role of “attracting a diverse range of business and industry to locate to Invercargill” by investing in property that supports appropriate commercial and economic developments in the district.

- The Activity has two areas of focus:
 1. The strategic purchase of property to promote prudent development; and
 2. Investment for the best economic return.
- The overarching goal of the ICC Investment Property Activity is to maximise the investment returns from properties. Its principal objectives are to:
 - a) Review changes to interest rates in the market place and to respond to market movements in an appropriate manner whenever possible.
 - b) Ensure that Council’s investment property is maintained to an appropriate standard in order to improve the quality of the portfolio.
 - c) Ensure that the performance of the individual investment properties is reviewed and monitored.
 - d) Promote appropriate development around the Invercargill area for industrial and commercial purposes.
 - e) Provide a continuing source of income to the Council.
- According to the Council’s Investment Property Activity Plan 2014, the property portfolio is valued annually. The latest valuation available performed by Trevor Thayer Valuation Limited as at 30 June 2014 indicates a portfolio value of \$25m.
- Of the \$25m of investment property, approximately 76% is classified as industrial property with approximately half the portfolio invested in Awarua industrial properties, 16% is classified as commercial property and the remaining 8% is split between rural, residential and development properties, and properties being prepared for disposal.
- The target rate of return on investment property was at least equal to the current market interest rate of 4% prevalent at that time which was achieved in 2014/15 at 5.66%.

Invercargill City Council (2 of 2)

ICC is committed to a central city revitalisation plan and has committed \$1.4m to this project

Activity Undertaken

Newspaper articles from late 2014, indicate that endowment funds are applied to Council development activities. Detailed below are examples of development activities undertaken by ICC.

Projects	Detail	Endowment related
Awarua Industrial Development (current)	Rezone rural to industrial, council funding infrastructure and services, actively marketing and pursuing tenants.	No mention of endowment property or funding.
The City Centre Revitalisation Project (current)	Contributing to "A city that is a great place to live and visit". Community outcome by designing spaces, buildings and roads with community safety and interests in mind and encouraging others to do the same. Specific improvements include new seating, gardens, landscaping areas, shelters, parks and new pavers.	\$1.4m committed in stages, no mention of specific funding from endowment property.
Urban Rejuvenation	Council to take a supporting role in identifying areas of need, bringing together residents who want to make things happen in their community. Assistance in proposal development and access to funding provided. The program has assisted in a number of initiatives including: a new entrance sign to Bluff, mosaic wall mural, the opening of a community art space and an outdoor snakes and ladders board.	An initial commitment of \$212k of funding to cover the estimated consultant's fees in relation to establishing the project and plan.
Don Street Development	A 3,500 square meter office building to be completed by July 2017. The site was purchased in 2014 as it was deemed a strategic CBD location, a second site was purchased in 2015 to enable the larger modern development.	No mention of endowment properties or funding.
Lower Esk Street	ICC purchased five buildings in lower Esk Street in 2011. A building was built to house the ICC and Southland District Council.	Purchase was made with \$2m of funding from the endowment funds.

Bay of Plenty Regional Council

BOPRC appear to have a well structured investment arm which operates under a statement of intent set by Council and governed by a mix of Council executives and independent directors

Bay of Plenty Regional Council (“BOPRC”)

Quayside Holdings Limited (“QHL”) is a 100% owned subsidiary of BOPRC and was established in 1991 to acquire and manage the commercial investment arm of BOPRC, namely its majority interest in the Port of Tauranga.

QHL remains, via a subsidiary, a major shareholder of the Port of Tauranga Limited.

QHL is also an issuer of debt securities on the New Zealand Stock Exchange.

Governance

The Board of Directors consists of seven members, only one of which is explicitly listed as an independent non-executive. There appears to be a mix of legal, financial, commercial and local government expertise across the Board.

Fund Activity

Perpetual Preference Shares

The success of the investment in the Port of Tauranga Limited enabled QHL, in 2008, to issue \$200m of Perpetual Preference Shares (PPS). The proceeds from issue of these non-voting units provides the basis for the Regional Councils \$200m Infrastructure Fund, from which the Council funds some of the regions infrastructure development.

Quayside Properties Limited (“QPL”)

QPL is a subsidiary of QHL and currently holds properties in Rangiuru and Tauranga.

The Rangiuru Industrial Park is the largest prospective industrial zone on the eastern side of Tauranga.

The zoning is 243ha of which 148.6ha is development land bordering the newly completed Tauranga Eastern Link motorway and the East Coast main Trunk Railway line.

The land was zoned industrial in 2007 through a private plan change, sponsored and funded by QPL at a cost of \$1.5m.

Statement of Intent (Extract)

- **Investment Portfolio** – Generation of commercial returns and an income stream through a diversified share investment portfolio.
 - The targeted return is measured by a three year rolling gross return of $\geq 7.5\%$ pa.
- **Infrastructure Portfolio** – Targeting long term commercial returns through the investment and or management of infrastructure assets (including property) across the Region.
 - Annual Board assessment of benefit of each asset holding.
- **Commercial Ventures** – targeting commercial returns and or regional benefits through significant strategic partnerships in new and existing businesses.
 - Positive long term commercial return having regard to potential regional benefits.
 - The targeted return is measured by a three year rolling gross return of $\geq 7.5\%$ pa.

Dunedin City Council

DCC have invested funds from the sale of endowment properties back into commercial property and have targeted geographic diversity and a minimum dividend return back to Council

Dunedin City Council (“DCC”) – Investment Property Portfolio

- The Investment Property Portfolio’s original endowment properties were endowed by the City’s Founders in 1848, the fund as at June 2014 had a portfolio value of \$95m and total debt of \$16m.
 - The DCC property portfolio appears to be held by both Dunedin City Holdings Limited (“DCHL”) and by Council directly. The Investment Property Portfolio represents the business unit under which Dunedin City Council’s investments in land and buildings are managed.
 - The primary objective of the portfolio is to maximise its return by investing in properties that will increase in value over time.
 - A significant portion of the portfolio is endowment land and under the Dunedin City Endowment Lands Act 1988, the Council is required to retain the endowment property capital in property.
 - Other objectives of the portfolio are to provide a non-rates income source to the Council, diversify investment outside Dunedin and to provide long-term wealth generation for ratepayers.
 - Currently the fund has approximately 22% of investment property outside Dunedin. This includes investments of: \$11.1m in Wellington, \$5.3m in Auckland and \$4.8m in Christchurch.
 - The fund is managed by a CEO with extensive commercial and industrial property management experience from the private sector.
 - The long term target of the Investment Property Portfolio is a return which is greater than the Council’s overall cost of capital. The Council’s draft budget provided a target return of 6% for the 2015/16 year.
- Over the next ten years the Council will transition toward the target return by identifying and selling properties that aren’t making an appropriate return and by reinvesting in properties that will provide the target rate of return on investment along with capital growth.
 - Performance of the property fund is measured through three main measures which include the:
 - Percentage variance from budgeted dividend;
 - Percentage of property portfolio with a net rate of return of 8%; and
 - Percentage of overall occupancy.
 - Major capital expenditure for 2014/15 included the Wall Street development, Dukes Road property purchase and School Street property purchase which totalled \$3.6m.

Waikato Regional Council

WRC has adopted a mostly passive approach to their Investment Fund, and have chosen to move away from subsidising rates to assist Regional Scale Projects

Waikato Regional Council (“WRC”)

The WRC Investment Fund arose as a consequence of the sale of Port of Tauranga and Port of Auckland shares in the mid 1990's.

Investment returns from the fund have been used to fund special projects, finance internal borrowings and reduce the overall level of rates.

Governance

WRC has 14 elected Council members, the representatives work in Committees to make decisions and recommendations.

Investment Goals

The broad investment goals of the fund are:

- To ensure assets of the fund are invested prudently and consistent with the Council's mission, vision and rules; and
- To provide a rates subsidy and set aside funds for regional and economic development.

In 2015 the fund achieved a gross return of 9.1%, above the target of a 4% net return.

Fund Activity

WRC has set a benchmark portfolio to best meet its objectives for the next 5-10 years which is presented opposite.

The fund is managed by an external investment professional, with the exception of 10% of the portfolio, which is managed internally.

Regional Scale Development

- In 2015 the WRC Long-Term Plan committed \$26m to be injected into regional scale projects. It will be funded from the WRC Investment Fund, after subsidising rates and allowing for inflation-proofing.
- The annual rates subsidy, currently \$2.3m, will be phased out over the next 10 years with the impact to rates offset by efficiency savings.

WRC Investment Fund

Asset Class	Weight (%)
NZ Equities	9
Global Equities	20
Real Assets	11
Growth Assets	40
NZ Fixed interest	16
Global Fixed interest	24
Cash	20
Income Assets	60
Total	100

Source: WRC Statement of Investment Policy & Objectives, dated July 2015

Summary of Key Findings

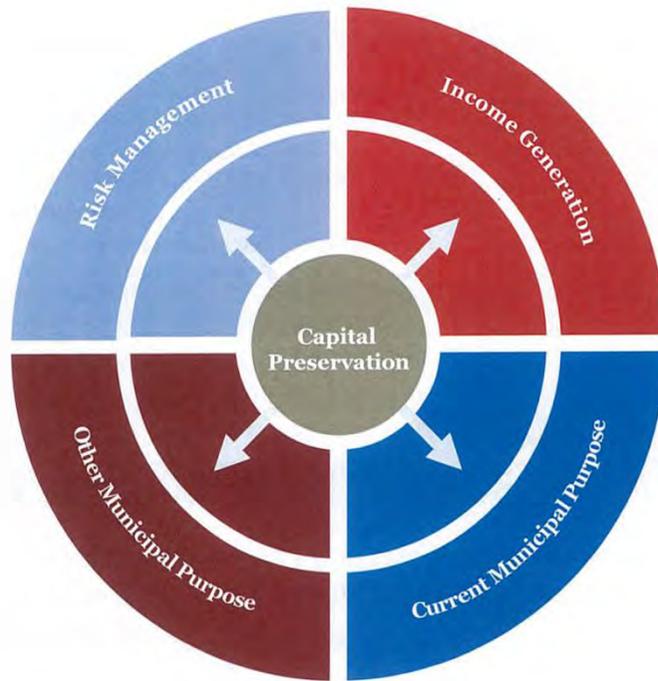
It appears that the use of CCO's and independent directors is common in managing Council commercial property investments with activities managed by way of clearly set objectives or statements of intent

Finding	Example	Key Takeaway
Structure	<ul style="list-style-type: none"> • ICC owns and manages its investment property portfolio through a CCO. The endowment properties are managed under the same objectives as the total ICC investment property portfolio. • BOPRC undertakes property development through an investment company subsidiary, QHL. • DCC appears to directly manage its investment property portfolio, including endowment properties. • The WRC Investment Fund is held within Council, but managed by an external professional advisor. 	<ul style="list-style-type: none"> • A CCO can allow 'wider expertise', in terms of governance and managerial capacity, independent of Council.
Governance	<ul style="list-style-type: none"> • The Board for the ICC CCO, although only three members, includes one Councillor, an independent director and chair who are both senior experienced businessmen from within the region. • The BOPRC CCO Board is required to have a minimum of six members, the CEO, two nominated executive directors and three non-executive independent directors from the community. • DCC appears to manage investment properties within the Council function, however there are clear objectives set. • WRC has broad objectives set including the provision to retain income to preserve capital in real terms. 	<ul style="list-style-type: none"> • The separation of governance and politics through structure (CCO) and clearly set objectives is required to facilitate long-term strategy.
Investment Activities	<ul style="list-style-type: none"> • ICC has undertaken numerous property developments, with endowment funds specifically used on at least one occasion. The development activity varies, including the construction of a new Council office building, industrial subdivision and commercial office building. • ICC is currently looking at a CBD revitalisation and rejuvenation project. • DCC has invested in commercial property in Auckland, Christchurch and Wellington to achieve geographic diversity. They have also borrowed \$16m against the portfolio value of \$95m to achieve desired outcomes. • WRC has passive investments only. A mix of cash, managed funds and managed property funds. 	<ul style="list-style-type: none"> • Development activities are clearly aligned to aspects of Council plans for municipal purposes. • Activities typically include a mix of development activities and passive investments such as managed funds.

Options

Overview of Considerations

The key common law principle of an endowment is the preservation of capital without which there would be no purpose for the endowment



The diagram opposite highlights the key factors to consider in undertaking an options analysis.

Capital Preservation – appears to be central to all options, it is a common law principle of endowment and legal advice suggests that policy change cannot challenge this requirement as without it, there would be no purpose for the endowment.

Income Generation – a key policy decision of the endowment fund and other similar funds is the requirement to generate a commercial return. This could be altered through policy change, and would require decisions to be made to either maximise income or accept a lower return for wider municipal benefit.

Risk Management – risk is relative to the return. HPL illustrated that increased returns could be achieved over a long period despite the perceived additional risk with development vs. purchasing tenanted buildings.

Current Municipal Purpose – the current municipal purpose is for the income to offset rates. There does not appear to be any legal impediment to alter the application of income to a wider-public benefit.

Other Municipal Purpose – a key principle of endowment is municipal purpose. This is a broad purpose that could include strategic developments with wider economic and public benefits to Hamilton.

Investment Options

The pros and cons of the alternative investment options should be considered along with the most suitable vehicle to hold and manage the investments

Cash at Bank		
<p><i>It is likely under Option 2 and Option 3 that a portion of the MEF is held in each investment class</i></p>		Managed Funds
		Development Activities
Option 1 – Cash Holdings	Option 2 – Managed Funds	Option 3 – Development Activities
<ul style="list-style-type: none"> The MEF continues to be applied to offset debt or held on term deposit - current state. <p>Advantages</p> <ul style="list-style-type: none"> This is a passive investment, requiring minimal administrative oversight. Following the sell down of existing properties there may be potential for administrative cost savings within Council. <p>Disadvantages</p> <ul style="list-style-type: none"> No ability to apply capital to other municipal purposes. If applied as a debt-offset there is no ability to apply income to other municipal purposes. If held as a term deposit, the MEF policy will dictate how the return is applied. If held in cash investments long-term, the capital value of the MEF will decrease in real-terms unless some of the cash is reinvested each year to keep up with inflation. 	<ul style="list-style-type: none"> The MEF is predominately invested in Managed Funds. This could be undertaken by HCC or via a CCO. <p>Advantages</p> <ul style="list-style-type: none"> This is a passive investment, requiring minimal administrative oversight with the possibility of future administrative cost savings within Council. Depending on the nature of the fund, on a long-run basis, historical analysis indicates a financial return in excess of the 5.5% debt offset. Managed funds allow the MEF to be applied across a variable risk scale depending on the desired financial return (i.e. conservative vs. growth funds). <p>Disadvantages</p> <ul style="list-style-type: none"> No ability to apply capital to other municipal purposes. 	<ul style="list-style-type: none"> The MEF to be applied to Development Activities. This could be undertaken by HCC or via a CCO. <p>Advantages</p> <ul style="list-style-type: none"> Development could act as a catalyst, through partnering with the private sector, to deliver outcomes for Hamilton with a wider public benefit. Returns over the long-term, could, as illustrated by the HPL example, significantly exceed the 5.5% pa earned as a debt offset. <p>Disadvantages</p> <ul style="list-style-type: none"> The MEF capital is at risk, requiring appropriate risk and investment frameworks. Development timeframes could mean a large portion of capital does not earn a return in any one year. Increased risk of volatility in the level of income distributed to Council per year.

Delivery Options

The desired investment type and application of income will influence the vehicle required to provide the best chance of success

Option 1 – Cash Holdings		Option 2 – Managed Funds		Option 3 - Development Activities	
<p>A CCO provides a number of benefits should capital and / or income be applied to other municipal purposes</p>					
Within Council (HCC)		CCO – e.g. HPL Example			
<p>Option 1 – Cash Holdings</p> <ul style="list-style-type: none"> • Within Council is the lowest cost option and allows the MEF to be applied to a debt offset, providing a greater return than term deposits. <p>Option 2 – Managed Funds</p> <ul style="list-style-type: none"> • Policy change will be required for income to be applied to other municipal purposes. • If available, the ability to utilise income for other municipal purposes will be subject to short-term priorities within Council. <p>Option 3 – Development Activities</p> <ul style="list-style-type: none"> • Changing priorities can impact achievement of objectives in the long-term. • The application of income to other municipal purposes will be subject to political consideration. • There is potential that JV Partners will be less willing to partner direct with Council. 		<p>Option 1 – Cash Holdings</p> <ul style="list-style-type: none"> • Investment of the MEF through debt offset or term deposits does not warrant the administrative costs of a CCO. <p>Option 2 – Managed Funds</p> <ul style="list-style-type: none"> • The statement of objectives will be set by Council allowing the CCO to apply income to achieve a long-term strategy without changing priorities. <p>Option 3 – Development Activities</p> <ul style="list-style-type: none"> • The statement of objectives will be set by Council allowing the CCO to apply both capital and income to achieve a long-term strategy without changing priorities. • The appointment of external directors would bring experience, expertise and opportunities. • A CCO will arguably offer an improved ability to act quickly and partner with the private sector. • An independent Board of Directors removes Council from directly selecting one party over another, reducing perception risk. 			

Critical Success Factors

The strategic objectives of Council will drive the type of investment required which will in-turn dictate the vehicle to best achieve the desired outcomes

Investment Options

Option A – CCO

- The MEF could be invested in a mix of cash, managed funds and development activities where opportunities are identified.
- A number of critical success factors have been identified through the experience of HPL and other Councils as detailed opposite.
- The nature of investments, will be driven by the strategic objectives set by Council and influenced by the relationship between maximising commercial returns and seeking a wider municipal benefit such as economic stimulation or city revitalisation.
- The statement of objectives under which HPL operated previously (see page 8) appears relevant today, with the addition of targeting developments which drive economic activity aligned to Council’s strategic plans.
- The income earned from the CCO could either be distributed to Council via dividend and applied to a chosen municipal purpose or retained by the CCO and reinvested.

Option B –Within Council

- The MEF could be invested in both managed funds and property development activities and managed within Council.
- However, if development activities are undertaken within Council this will likely impact on the ability to incorporate a number of the critical success factors presented opposite. It is also possible that changing priorities within Council could impact the ability to achieve long-term strategic objectives.
- If the MEF was invested in a mix of cash and managed funds, both being passive investments, management within Council could be more cost effective than using a CCO.

Critical Success Factors
<ul style="list-style-type: none"> • The critical success factors identified through the experience of HPL are also present in the Invercargill City Council and Bay of Plenty Regional Council (Quayside) case studies. • All three entities undertook property development activities through a CCO with critical success factors including: <ul style="list-style-type: none"> – Independent Board members from within the region with relevant experience and contacts within the private sector; – Appropriately skilled and qualified management personnel; – Where appropriate, partnering with the private sector through joint ventures; – A stable long-term approach, achieved through clearly set objectives and separation from changing priorities in the short-term. – The ability to make timely decisions to take advantage of opportunities.

Revised Strategy

Council will need to confirm the strategy for the MEF which will need to set clear objectives including desired municipal purpose and targeted levels of income generation desired.

Currently Council do not have a strategy in relation to utilising the capital and returns from the MEF. Returns are applied to reduce rates.

Clear strategic objectives should be set, these objectives will ultimately determine where the MEF is invested and what vehicle is required to best achieve long-term strategic objectives.

At a high level the objectives need to clearly communicate the municipal purpose. The municipal purpose will influence the targeted returns.

Key considerations may include:

1. Targeted return

- Is a purely commercial return targeted or will returns be influenced by wider municipal purposes. If so to what degree will commercial returns be sacrificed.

Maximising the commercial return

vs.

Potentially accepting a lower return whilst initiating economic activity consistent with a long-term strategic objective.

2. Municipal Purpose

- Returns can be applied to rates, as is the current policy, to other municipal purposes, or a combination.
- Returns could be applied to projects or causes identified by Council. This may be done periodically or returns accumulated.

3. Mechanism to Deliver

The targeted returns and municipal purpose will determine the nature of the investment activity which in turn will influence the vehicle required to best deliver the desired outcome.

Investment options to consider include managed funds and property development activities which could be delivered through a CCO structure or from within Council.

4. The timeline

- Will objectives be measurable?
- Is there a set timeline in which to achieve objectives?
- What is the intention on achievement?
- Will the vehicle be disbanded on completion or will the strategy be revisited by Council?

Appendices

Restrictions

This report has been prepared for Hamilton City Council to outline the history and financial performance of the MEF and assess the options available to utilise the assets to achieve a financial return and also to be used to contribute to other municipal purposes that benefit Hamilton and its ratepayers. This report has been prepared solely for this purpose and should not be relied upon for any other purpose. We accept no liability to any party should it be used for any purpose other than that for which it was prepared.

This report has been prepared solely for use by Hamilton City Council and may not be copied or distributed to third parties without our prior written consent.

To the fullest extent permitted by law, PwC accepts no duty of care to any third party in connection with the provision of this report and/or any related information or explanation (together, the "Information"). Accordingly, regardless of the form of action, whether in contract, tort (including without limitation, negligence) or otherwise, and to the extent permitted by applicable law, PwC accepts no liability of any kind to any third party and disclaims all responsibility for the consequences of any third party acting or refraining to act in reliance on the Information.

We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of Hamilton City Council. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied.

The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.

The statements and opinions expressed in this report are based on information available as at the date of the report.

We reserve the right, but will be under no obligation, to review or amend our report, if any additional information, which was in existence on the date of this report, was not brought to our attention, or subsequently comes to light.

This report is issued pursuant to the terms and conditions set out in our engagement letter dated 25 February 2016.

Schedule of Properties

Schedule of Properties	Renewal	Date	Purchase	Sales	30-Jun-08	30-Jun-09	30-Jun-10	30-Jun-11	30-Jun-12	30-Jun-13	30-Jun-14	30-Jun-15	
	Date	Expiry Date	Purchased	Year	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	
Valuation per year													
Municipal Investment Properties													
BNZ Building	N/A	N/A	Jun-98	9,300	Feb-15	17,250	16,000	15,700	15,800	16,200	16,200	16,000	-
Beggs Wiseman Building	Various	Various	May-94	1,226		2,150	2,100	2,000	1,900	1,950	1,725	1,500	1,200
CI munro	N/A	N/A	Nov-99	2,627	Aug-11	8,500	6,900	6,855	7,450	-	-	-	-
ANZ Bank	N/A	N/A	Jul-99	850	Mar-15	1,200	1,125	1,060	1,100	1,100	1,025	1,140	-
Asaleo Care (SCA Hygiene)	Oct-21	Sep-40	May-00	5,271		8,500	7,700	7,650	7,550	7,500	7,050	7,000	6,900
Online Security (Iron Mountain)	None	Apr-18	Apr-02	1,944		2,900	2,600	2,500	2,500	2,400	2,400	2,400	2,875
Masters Avenue Shops	Various	Various	May-96	318		575	560	575	575	590	590	550	675
Total Municipal Investment				21,535		41,075	36,985	36,340	36,875	29,740	28,990	28,590	11,650
Municipal Endowment Properties													
109 Ward Street (PwC Building)	N/A	N/A	Jun-08	2,166	Jul-12	2,166	1,841	1,620	1,740	1,380	-	-	-
145-149 Ward Street	Feb-22	N/A	Jun-08	721		721	512	475	456	456	375	375	400
151-155 Ward Street	May-21	N/A	Jun-08	721		721	512	475	450	456	360	360	370
179 Ward Street	Jan-16	N/A	Jun-08	606		606	428	380	386	386	386	386	424
58 Willoughby Street	Nov-30	N/A	Jun-08	280		280	246	240	240	240	293	293	290
92 Clyde Street	Sep-11	N/A	Jun-08	260		260	189	195	195	160	180	180	180
205 Clyde Street	N/A	N/A	Jun-08	180	Oct-14	180	135	140	140	160	165	165	-
258 Fox street	Mar-20	N/A	Jun-08	165		165	135	140	140	160	165	165	175
12 Wreanu Street	Sep-21	N/A	Jun-08	265		265	222	220	180	190	200	200	210
77 Norton Road	Nov-28	N/A	Jun-08	270		270	225	237	237	240	258	270	270
79 Norton Road	Dec-29	N/A	Jun-08	160		160	130	140	140	140	145	150	160
Total Municipal Endowment				5,794		5,794	4,575	4,262	4,304	3,968	2,527	2,544	2,479
Cash										7,450	8,830	9,435	27,440
Summary													
Cash										7,450	8,830	9,435	27,440
Municipal Investment						41,075	36,985	36,340	36,875	29,740	28,990	28,590	11,650
Municipal Endowment						5,794	4,575	4,262	4,304	3,968	2,527	2,544	2,479
Total Assets						46,869	41,560	40,602	41,179	41,158	40,347	40,569	41,569

Source: Council files and Annual reports

Hamilton City Council Municipal Endowment Fund
PwC

Strictly private and confidential

27 June 2016

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Capital Return Analysis

Schedule of Properties	Date Purchased	Purchase Amount	Valuation / Sale Proceeds	Sale / Valuation Date	No. of Years	CAGR Analysis		Actual Capital Return		Inflationary Benchmark			
						Full term	5 Year CAGR	Appreciation / Depreciation	Capital Return - %	Inflationary Benchmark	Benchmark % gain	PPTS variance +/-	Actual vs. Inflation
Valuation per year													
Municipal Investment Properties													
BNZ Building	Jun-98	16,133	16,700	Feb-15	17	0.21%	1.24%	567	3.5%	9,394	58.2%	(54.7%)	(8,827)
Beggs Wiseman Building	May-94	1,226	1,200	Jun-15	21	(0.10%)	(9.71%)	(26)	(2.1%)	714	58.2%	(60.3%)	(739)
Clunro	Nov-99	2,627	7,335	Aug-11	12	9.18%	(3.62%)	4,709	179.3%	986	37.5%	141.7%	3,723
ANZ Bank	Jul-99	850	1,180	Mar-15	16	2.12%	2.17%	330	38.8%	374	43.9%	(5.1%)	(44)
Asaleo Care (SCA Hygiene)	May-00	5,271	6,900	Jun-15	15	1.81%	(2.04%)	1,629	30.9%	2,249	42.7%	(11.8%)	(620)
Online Security (Iron Mountain)	Apr-02	1,944	2,875	Jun-15	13	3.02%	2.83%	931	47.9%	678	34.8%	13.0%	253
Masters Avenue Shops	May-96	318	675	Jun-15	19	4.02%	3.26%	357	112.3%	166	52.2%	60.1%	191
Total Municipal Investment		28,368	36,865		15.81	1.67%	0.29%	8,497	30.0%	14,559	51.3%	(21.4%)	(6,063)
Municipal Endowment Properties													
109 Ward Street (PwC Building)	Jun-08	2,166	1,783	Jul-12	4	(4.74%)	(3.82%)	(383)	(17.7%)	254	11.7%	(29.4%)	(637)
145-149 Ward Street	Jun-08	721	400	Jun-15	7	(8.16%)	(3.38%)	(321)	(44.5%)	109	15.1%	(59.6%)	(430)
151-155 Ward Street	Jun-08	721	370	Jun-15	7	(9.19%)	(4.87%)	(351)	(48.7%)	109	15.1%	(63.8%)	(460)
179 Ward Street	Jun-08	606	424	Jun-15	7	(5.03%)	2.22%	(182)	(30.0%)	92	15.1%	(45.1%)	(274)
58 Willoughby Street	Jun-08	280	290	Jun-15	7	0.51%	3.86%	10	3.6%	42	15.1%	(11.5%)	(32)
92 Clyde Street	Jun-08	260	180	Jun-15	7	(5.17%)	(1.59%)	(80)	(30.8%)	39	15.1%	(45.9%)	(119)
205 Clyde Street	Jun-08	180	180	Oct-14	6	-	5.15%	-	0.0%	26	14.4%	(14.4%)	(26)
258 Fox street	Jun-08	165	175	Jun-15	7	0.85%	4.56%	10	6.1%	25	15.1%	(9.0%)	(15)
12 Wiremu Street	Jun-08	265	210	Jun-15	7	(3.30%)	(0.93%)	(55)	(20.8%)	40	15.1%	(35.9%)	(95)
77 Norton Road	Jun-08	270	270	Jun-15	7	-	2.64%	-	0.0%	41	15.1%	(15.1%)	(41)
79 Norton Road	Jun-08	160	160	Jun-15	7	-	2.71%	-	0.0%	24	15.1%	(15.1%)	(24)
Total Municipal Endowment		5,794	4,442		5.81	(4.47%)	0.83%	(1,352)	(23.33%)	801	13.8%	(37.16%)	(2,153)

Source: Council files and Annual reports and PwC calculations

MEF Financial Return Analysis

MEF - Financial Analysis								
\$ in 000s	Jun-08	Jun-09	Jun-10	Jun-11	Jun-12	Jun-13	Jun-14	Jun-15
Value								
Municipal Investment Properties (MIP)	41,075	36,985	36,340	36,875	29,740	28,990	28,590	11,650
Municipal Endowment Properties (MEP)	5,794	4,575	4,262	4,304	3,968	2,527	2,544	2,479
Cash	-	-	-	-	7,450	8,830	9,435	27,440
Total MEF value	46,869	41,560	40,602	41,179	41,158	40,347	40,569	41,569
Gross Yield								
Municipal Investment Properties (MIP)	3,098	3,458	3,463	3,407	2,344	2,622	2,470	1,907
Municipal Endowment Properties (MEP)	148	167	167	176	183	111	111	107
Total	3,245	3,625	3,630	3,583	2,527	2,732	2,580	2,014
Municipal Investment Properties (MIP)		8.9%	9.4%	9.3%	7.0%	8.9%	8.6%	9.5%
Municipal Endowment Properties (MEP)		3.2%	3.8%	4.1%	4.4%	3.4%	4.4%	4.3%
Total		8.2%	8.8%	8.8%	6.7%	8.4%	8.2%	8.9%
Net Yield								
Municipal Investment Properties (MIP)	2,670	3,234	3,236	3,317	2,267	2,556	2,365	1,739
Municipal Endowment Properties (MEP)	130	173	130	177	172	112	111	101
Cash - net yield	-	-	-	-	205	448	502	1,014
Total	2,801	3,407	3,366	3,494	2,644	3,116	2,978	2,853
Municipal Investment Properties (MIP)		8.3%	8.8%	9.1%	6.8%	8.7%	8.2%	8.6%
Municipal Endowment Properties (MEP)		3.3%	2.9%	4.1%	4.2%	3.4%	4.4%	4.0%
Cash		5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
Total		7.7%	8.2%	8.5%	6.4%	7.6%	7.4%	6.9%
Inflation Adjusted Returns								
RBNZ - General Inflation	3.1%	3.4%	1.9%	3.8%	2.3%	0.8%	1.5%	0.6%
Gross Yield		4.8%	7.0%	4.9%	4.5%	7.6%	6.7%	8.3%
Net Yield		4.4%	6.3%	4.7%	4.2%	6.8%	5.8%	6.3%

The return percentages are impacted by the sale of properties and use of average portfolio values in calculating yields

Source: Council files and Annual reports and PwC calculations

Listed Property Funds

Listed Property Companies										
Listed property funds	1 year	2 year	3 year	4 year	5 year	6 year	7 year	8 year	9 year	10 year
Augusta Capital Limited (NZSEAUG)										
Share price appreciation	23%	10%	15%	15%	16%	15%	5%	-1%		
Dividend yield	5%	5%	5%	6%	7%	10%	18%	13%	6%	
Total return	28%	15%	20%	21%	22%	25%	23%	12%	6%	
Stride Property Limited (NZSESTR)										
Share price appreciation	27%	6%	13%	12%						
Dividend yield	5%	6%	5%	7%	5%					
Total return	32%	12%	18%	19%						
Property for Industry Ltd. (NZSEPII)										
Share price appreciation	23%	10%	11%	8%	6%	6%	3%	1%	2%	4%
Dividend yield	4%	5%	5%	6%	6%	6%	6%	6%	5%	6%
Total return	27%	15%	16%	14%	12%	12%	10%	6%	7%	10%
Argosy Property Limited (NZSEARG)										
Share price appreciation	25%	8%	11%	12%	9%	12%	3%	-2%	0%	0%
Dividend yield	5%	7%	6%	7%	10%	11%	14%	9%	7%	8%
Total return	31%	14%	17%	19%	19%	22%	16%	7%	6%	8%
Precinct Properties New Zealand Limited (NZSEPCT)										
Share price appreciation	18%	7%	8%	9%	9%	5%	0%	-2%	1%	2%
Dividend yield	4%	5%	5%	5%	6%	8%	7%	7%	5%	7%
Total return	22%	12%	13%	15%	15%	13%	7%	5%	6%	9%
Goodman Property Trust (NZSEGMT)										
Share price appreciation	24%	7%	5%	6%	4%	7%	-2%	-4%	0%	1%
Dividend yield	5%	6%	6%	6%	9%	9%	13%	8%	6%	8%
Total return	30%	13%	11%	12%	12%	16%	11%	4%	6%	9%
Kiwi Property Group Limited (NZSEKPG)										
Share price appreciation	16%	5%	7%	7%	5%	5%	1%	-3%	0%	1%
Dividend yield	5%	5%	6%	7%	7%	8%	8%	7%	5%	6%
Total return	22%	11%	13%	13%	12%	13%	9%	4%	5%	8%
Average share price appreciation	22%	8%	10%	10%	8%	8%	2%	-2%	1%	2%
Average dividend yield	5%	6%	5%	6%	7%	9%	11%	8%	6%	7%
Average total return	27%	13%	15%	16%	16%	17%	13%	6%	6%	9%
	3 Years	5 Years	7 Years							
Average - Income return	5%	6%	7%							
Average - Capital return	10%	8%	2%							
Average - Total return	15%	14%	9%							

Note: Annual returns are based on years ending 31 March or last trading day of March
 Source: Capital IQ

Balanced Managed Funds

Balanced funds annual returns

For the year ending March

Balanced fund	2015	2014	2013	2012	2011	2010	2009
Milford Kiwisaver Balanced fund	15%	10%	18%	3%	4%		
Mercer Balanced	11%	8%	8%	0%	5%	25%	-21%
Staples Rodway Kiwisaver Balanced Fund	14%	9%	13%	3%	7%	20%	-14%
OneAnswer Balanced Growth Fund	15%	9%	14%	2%	6%	22%	-16%
ANZ Balanced Fund - Default	13%	7%	10%	3%	5%	14%	-11%
ANZ Balanced Growth Fund - Default	15%	9%	11%	2%	6%	18%	-16%
AON - ANZ Balance Fund	13%	7%	14%	3%	8%	26%	-10%
Westpac Balanced Fund	12%	7%	10%	0%	7%	19%	-10%
ASB Balanced Fund	13%	7%	10%		6%	22%	-18%
AMP - Fisher Balanced Fund	9%	7%	9%	1%	5%	16%	-10%
Forsyth Barr Balanced Portfolio	12%	2%	9%	-7%	1%	13%	
Average	13%	8%	11%	1%	6%	19%	-14%
Fundsourc Balanced fund average	12%	7%	11%	2%	6%	18%	-12%

	3 Years	5 Years	7 Years
Average return	11%	8%	6%

Note 1: LTM denotes last twelve months to September 2015

Note 2: all returns shown are after total fund fees (not membership fees) and tax (28% PIR).

Note: 3 Grey shading indicates data was unavailable

Source: <http://fundfinder.sorted.org.nz/>

Gareth Morgan (KiwiWealth) – Balanced Fund

The performance of the KiwiWealth Balanced Fund has been illustrated as we understand Council hold units through the Vibrant Trust.

Gareth Morgan - Balanced Fund annual returns												
For the year ending 31 December												
Balanced fund	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
Gareth Morgan - Balanced Fund	5.5%	9.3%	13.9%	7.6%	-1.6%	3.5%	3.7%	-8.9%	3.7%	14.6%	11.2%	10.8%
Fundsource Balanced fund average	12%	7%	11%	2%	6%	18%	-12%					
Additional / (reduced) return	-7%	2%	3%	6%	-7%	-15%	16%					
	3 Years	5 Years	7 Years	10 Years								
Average return	10%	6%	6%	5%								

Source: <http://fundfinder.sorted.org.nz/>

Glossary of terms used in this document

Term	Meaning
BMF	Balanced Managed Fund
CAGR	Compound Annual Growth Rate
CBD	Central Business District
CCO	Council Controlled Organisation
City	Hamilton City
DEF	Domain Endowment Fund
HCC or the Council	Hamilton City Council
HPL	Hamilton Properties Limited
LPC	Listed Property Companies
LTCCP	Long-term Council Community Plan
MEF	Municipal Endowment Fund
MEP	Municipal Endowment Properties
MIP	Municipal Investment Properties

**HCC - Municipal Endowment Fund
Hamilton Properties Limited**

Overview

The financial information is from the Hamilton Properties Limited ("HPL") annual reports obtained from the library archive. The reports from 1990 through 1998 were analysed.

The purpose of the analysis was to consider the overhead structure and the nature and reasonableness of the expenditure. To assess this the reader must understand the activities and structure of HPL, this is summarised below:

MEF and Domain assets

Pre 1996 - the MEF and Domain assets were managed by HPL with the income earned from the investment and development activities distributed back to HCC. HPL were paid a management fee which effectively covered the administrative overhead.

Post 1996 - the MEF and Domain assets were held by HPL on trust for HCC. HPL continued to undertake development and investment activities and to make distributions to Council. The Trust paid a management fee to HPL to cover the administrative overhead.

Any assessment of performance has to include the trust income and assets as the purpose of the management fee was to cover overheads and for HPL to effectively breakeven.

Objectives

HPL operated under a statement of objectives and was involved in the development of some key strategic assets for Hamilton whilst earning a commercial return.

HCC is now considering utilising the HPL vehicle to undertake future investment and development activity. The nature and quantum of historical overheads has been queried.

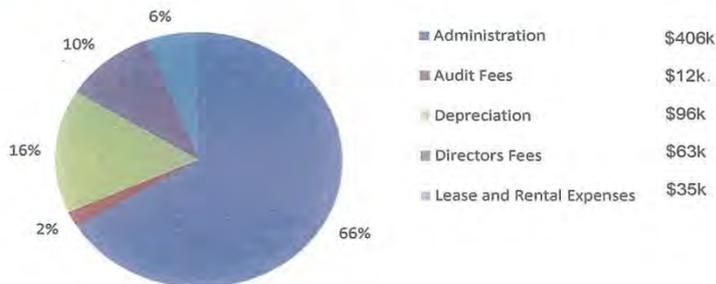
Overhead Structure

Please refer to the financial details in the workbook for an illustration of annual overheads.

Overheads, in real terms, fluctuated between \$488k and \$611k across the 9 year period excluding the \$150k sponsorship and \$332k redundancy costs incurred in the final year of trading.

Overheads consisted of:

Overheads (1998 - \$611k)



Based on the RBNZ wage inflation calculator \$611k equates to \$1,057k in today's terms.

Based on the breakdown above this would leave the administration element of \$406k (702k) to cover all staff wages and salaries and incidental administrative costs of managing the MEF and domain assets.

Given the lack of detail it is logical to assume that salaries and wages and other the incremental staff costs will form the majority of overhead costs for the reinstated HPL entity.

Therefore it is recommended that an organisational structure for the new entity is drafted and used to estimate the future overhead budget of HPL.

HCC - Municipal Endowment Fund
Hamilton Properties Limited

Historical Financial Analysis

\$ in 000s	For the year	For the 3 months	For the year ended 30 June								Total
	ended 30 March	ended 30 June	1990	1991	1992	1993	1994	1995	1996	1997	
Revenue											
Trust account - development & investment activities	8,892	2,278	8,892	14,417	14,193	11,895	9,350	4,808	6,471	10,752	91,947
HPL - other income	643	143	523	528	641	692	618	561	641	792	5,781
Total	9,535	2,421	9,415	14,944	14,834	12,587	9,968	5,369	7,112	11,544	97,728
Expenses											
Trust account - development & investment activities	3,196	674	3,191	10,578	12,734	7,222	6,050	1,180	1,560	4,045	50,429
HPL - other income	604	142	488	524	560	548	531	543	597	1,093	5,630
Total	3,799	816	3,678	11,103	13,294	7,770	6,581	1,723	2,157	5,138	56,059
Net Surplus											
Trust account - development & investment activities	5,696	1,604	5,701	3,838	1,458	4,673	3,300	3,628	4,911	6,707	41,518
HPL - other income	39	1	36	3	81	144	87	18	44	(301)	152
Total	5,735	1,605	5,737	3,842	1,540	4,817	3,387	3,646	4,955	6,406	41,670
Trust assets	N/A	N/A	N/A	N/A	7,376	8,400	6,312	61,783	65,941	47,520	
Other assets	40	41	59	112	112	205	265	281	316	(62)	
Total assets	40	41	59	112	7,488	8,605	6,578	62,064	66,257	47,459	
Net Surplus											
% of revenue	60%	66%	61%	26%	10%	38%	34%	68%	70%	55%	43%
Return on assets	N/A	N/A	N/A	N/A	N/A	N/A	N/A	6%	7%	13%	
Overheads											
% of revenue	6%	6%	5%	4%	4%	4%	5%	10%	8%	9%	
% of assets	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1%	1%	2%	

First adopted:	26 August 1998
Revision dates/version:	29 June 2016, 8 April 2009, 10 December 2008, 10 March 2008, 6 July 2005, 6 November 2002, 6 July 2005, 10 March 2008, 10 December 2008, 8 April 2009, 2 August 2016
Next review date:	29 June 2016 2 August 2019
Engagement required:	Yes TBC No
Document number:	D-2157562
Associated documents:	Appointment and Remuneration of Board Members of Council Controlled Trading Organisations (CCTOs) Policy; Freeholding of Council Endowment Land Policy; Sale and Disposal of Council Land Policy
Sponsor/Group:	General Manager City Growth

Municipal and Domain Endowment Fund Deployment Policy

Purpose and Scope

1. To provide strategic guidance for the deployment of the ~~capital and returns from the~~ Municipal and Domain Endowment Funds ("Endowment Funds").
- ~~2. This policy applies to the cash and commercial property assets of the Municipal Endowment Fund.~~
- ~~3. This policy does not apply to Municipal Endowment land subject to a perpetual ground lease.~~

Principles of Policy

- ~~4.2.~~ The key common law principle of an endowment is the preservation of capital without which there would be no purpose for the endowment.
- ~~3.~~ The Municipal Endowment Funds must be deployed for municipal and domain purposes aligned with Council's strategic plans, which will ~~— which may include:~~
 - ~~a. Ce~~ consideration of wider public benefits, and, s ~~which are consistent with long term Council plans.~~
 - ~~b. To examine the feasibility of P~~artnering with the private sector, and, ~~to deliver key municipal purpose developments aligned to Council's strategic plans.~~
 - ~~a.~~
 - ~~b.c.~~ The Municipal Endowment Fund is to be deployed to support for priority municipal purposes ~~projects~~ within the city.

Policy

- ~~4.~~ The Endowment Funds will be managed by a Council Controlled Trading Organisation (CCTO) which must increase the return on the Council's assets under its management. To achieve this the CCTO will:
 - ~~a.~~ Undertake new profitable investments as cash flows allow which, over their life, will yield a substantially greater return than previously achieved;
 - ~~b.~~ Promote development of properties in a manner which will maximise the commercial value of the asset by ensuring that the addition of any new capacity is related as closely as possible to actual and forecast market demand;
 - ~~c.~~ Encourage freeholding of endowment properties to generate capital for investment in higher yielding assets as soon as practicable;

- d. Enter into joint venture or turn-key developments to provide flexible options for the future;
 - e. Manage its financial assets and liabilities on a prudent basis;
 - f. Seek and effectively administer service contracts with other public sector entities;
 - g. Strive to minimise operating costs.
- ~~5. The CCTO will pay Council The assets of the Municipal Endowment Fund must be invested across a range of mechanisms including cash, property and managed funds.~~
- ~~6.5. The assets of the Municipal Endowment Fund must achieve an annual targeted minimum return equivalent to the Council's prevailing cost of debt (to avoid any immediate rates impact through reduced distributions to Council). Any income generated above the minimum return ("surplus income") will be available for;~~
- a. ~~Reinvestment, or,~~
 - b. Alternative Municipal purposes approved by Council, or,
 - ~~b.c. Payment of a dividend to Council, which will have a demonstrable public benefit.~~
- ~~7. Land can be purchased and commercial properties developed for strategic purposes consistent with Council's strategic direction provided;~~
- a. ~~A minimum return equivalent to the Council's prevailing cost of debt is likely to be achieved over the life of the development, or~~
 - ~~b. The overall fund continues to deliver the minimum required.~~
- ~~8. To support Council's strategic direction key development projects will be identified which will act as a catalyst for additional development by:~~
- a. ~~Partnering with the private sector to undertake development which is consistent with this policy, and by doing so initiate key development projects;~~
 - ~~b. Utilising surplus income and the Domain Endowment Fund to transform public spaces and;~~
 - ~~• De-risk associated Municipal Endowment Fund commercial development activity;~~
 - ~~• Act as a catalyst for private sector development.~~
- ~~9. Land purchased for strategic reasons will not be held to the minimum return requirements.~~

First adopted:	26 August 1998
Revision dates/version:	6 November 2002, 6 July 2005, 10 March 2008, 10 December 2008, 8 April 2009, 2 August 2016
Next review date:	2 August 2019
Engagement required:	Yes TBC
Document number:	D-2183176
Associated documents:	Appointment and Remuneration of Board Members of Council Controlled Trading Organisations (CCTOs) Policy; Freeholding of Council Endowment Land Policy; Sale and Disposal of Council Land Policy
Sponsor/Group:	General Manager City Growth

Municipal and Domain Endowment Fund Policy

Purpose and Scope

1. To provide principles and criteria for management of the Municipal Endowment Fund and Domain Endowment Fund ("Endowment Funds").

Principles

2. The capital must be preserved to comply with the common law principles of endowment.
3. Endowment Funds must be used for municipal and domain purposes.
4. Investment must aim to increase returns from the Endowment Funds and must return a dividend to Council that is equivalent to the average cost of Council's debt over the first three-year period of each 10-Year Plan.

Policy

5. Endowment Funds may be managed by Council, a Council Controlled Trading Organisation or any other entity or organisation that Council approves.
6. Endowment Funds must be used to directly or indirectly support, advance and implement Council's strategic plans. The Council will identify the priorities within these strategic plans in each 10-Year Plan.
7. To achieve the outcomes required in paragraph 6, the entity managing the Endowment Fund will:
 - a. Undertake new profitable investments as cash flows allow which, over their life, will yield a substantially greater return than previously achieved;
 - b. Promote development of properties in a manner which will maximise the commercial value of the asset by ensuring that the addition of any new capacity is related as closely as possible to actual and forecast market demand;
 - c. Encourage freeholding of endowment properties to generate capital for investment in higher yielding assets as soon as practicable;
 - d. Enter into joint venture or turn-key developments to provide flexible options for the future;
 - e. Manage its financial assets and liabilities on a prudent basis;
 - f. Seek and effectively administer service contracts with other public sector entities;
 - g. Strive to minimise operating costs.

First adopted:	March 2014
Revision dates/version:	
Next review date:	
Engagement required:	
Document number:	D-1372450
Associated documents:	
Sponsor/Group:	Corporate

Appointment and Remuneration of Board Members of:

- Council Organisations (COs)
- Council Controlled Organisations (CCOs)
- Council Controlled Trading Organisations (CCTOs)

Purpose and scope

1. This Policy is required by Section 57 of the Local Government Act 2002 (LGA). This Policy assists Hamilton City Council implement satisfactory governance over Council Controlled Organisations. This Policy applies to all CCOs, COs and CCTOs (all referred to as CO's in this Policy document) as defined in Section 6 of the LGA. Hamilton City Council's current CCO and COs are listed in Schedule 1.

Definitions

Definition	Detail
CO	A CO is an organisation in which Council has a voting interest and/or the right to appoint a director, trustee or manager.
CCO	A CCO is a CO in which one or more local authorities control, directly or indirectly, 50 percent or more of the voting rights and/or have the right, directly or indirectly, to appoint 50 percent or more of the directors, trustees or managers.
CCTO	A CO which operates a trading undertaking for which making a profit is one of its purposes.

Principles

2. Hamilton City Council must be transparent and objective in its appointment of competent and professional individuals to the governance bodies of HCC's COs.
3. Hamilton City Council should appoint independent directors. Elected Members and/or HCC officers should only be appointed in exceptional circumstances.

Policy

Appointments and performance management

4. Appointees should have the appropriate balance of skills, knowledge, integrity and governance experience.
5. All positions require a formal position description which all appointees must formally acknowledge and accept.
6. An annual review of appointees' delivery against the position description should be undertaken by the CCO Sub -Committee in conjunction with the respective CO's Chair.
7. No more than two Elected Members may be appointed to any particular CO.
8. Except under exceptional circumstances, Elected Members may not hold the position of Chair.

Page 1 of 2

Tenure and remuneration

9. All Hamilton City Council appointments to the boards of COs are at the CCO Sub-Committee's pleasure.
10. It is expected that, other than in exceptional circumstances, appointments are for two full and consecutive terms. A former appointee becomes eligible again after at least one full-term absence.
11. Remuneration of appointees is a matter of public interest and will be approved by resolution at the CO's Annual General Meeting.
12. Unless otherwise determined, Elected Members and Hamilton City Council officers appointed to the board of a CO shall not be entitled to any remuneration.

Appointment process

13. As per its delegated authority, the CCO Sub-Committee will approve all Hamilton City Council appointees.
14. For each appointee the CCO Sub-Committee shall:
 - a. Confirm the formal position description.
 - b. Instruct Hamilton City Council officers to compile a shortlist of candidates. This may involve collaboration with other stakeholders of the relevant CO.
 - c. Determine, in a public excluded meeting, the appointee most suitable for the position.
 - d. Gain acceptance of the appointment from the successful candidate.
 - e. Make a public announcement of the successful appointee as soon as is practical.

Conflicts of interest

15. Hamilton City Council expects that, in line with good governance practice, all appointees will avoid actions which could give rise to a conflict of interest. This includes, but is not limited to, the offering of gifts, hospitality, travel, entertainment. Appointees should follow the provisions of the New Zealand Institute of Directors' Code of Ethics.

Monitoring and implementation

16. This Policy will be activated and monitored by the CCO Sub-Committee which, as per its terms of reference, has the power to approve the appointment and remuneration of directors to the boards of the COs.
17. Hamilton City Council officers will advise the COs as to HCC's strategic direction, requirements of Statements of Intent and other relevant matters on behalf of the CCO Sub-Committee.
18. The Policy will be reviewed:
 - a. every three years or
 - b. at the request of HCC or
 - c. in response to changed legislation and statutory requirements.

Schedule 1

At the time of writing the entities subject to this Policy are:

- Civic Assurance (New Zealand Local Government Insurance Corporation Ltd).
- Local Authority Shared Services Ltd (LASS).
- Local Government Funding Agency Ltd (LGFA).
- Vibrant Hamilton Trust (VHT).
- SODA Inc.
- Waikato Innovation Park Ltd (WIPL) – a subsidiary of Innovation Waikato Ltd.
- Waikato Regional Airport Ltd (WRAL).



7 July 2016

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HAMILTON 3240

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Partner: A P Duncan

FILE REF: 348176-233

Hamilton Properties Limited - Management of Endowment Assets

1. I refer to our discussions earlier this week in respect of Council's interest in transferring the management (and investment) of Council's endowment assets to Hamilton Properties Ltd ("Company").

Scope of Advice

2. You have asked us to advise on the steps required to be taken to properly enable the Company, as a Council Controlled Organisation ("CCO"), to take over the management and investment of council's endowment assets. Those assets comprise, as we understand it, a portfolio of commercial properties, generally located within the Hamilton CBD, together with some established residential or industrial properties which are subject to perpetually renewable leases, and a significant amount of cash which represents the proceeds of sale of other endowment assets. We note Council's estimate that that the total value of the assets is in the order of \$42 million.
3. Issues that Council need to address to achieve this outcome include both updating the constitutional and governance arrangements of the Company to comply with the current CCO regime, and addressing policy and governance issues required to achieve the desired outcome.

Company Issues

4. While all the shares of the Company are held by Council, and the Company therefore falls within the statutory definition of a CCO, an exemption has been claimed by the Council under section 7 of the Local Government Act 2002 ("Act") which means that at present the Company is not a CCO for the purposes of the Act. The Council will need therefore to resolve under the provisions of section 7 (7) of the Act to revoke that exemption.
5. The Company's Constitution, while not seriously defective, has been updated to provide for an increased number of directors, and to include a provision that elected members of Council are not eligible to hold office as directors of the Company. We have taken the opportunity to generally update the Constitution of the Company as well, with specific provisions included to ensure compliance by the company with its Statement of Intent.

6. Council is likely to take the opportunity to appoint additional or new directors (Richard Briggs being currently the sole director of the Company) in accordance with its policy for appointment of directors to CCOs.
7. Once the exemption from compliance with the CCO regime is revoked by Council, the Company will have an obligation to prepare a Statement of Intent in accordance with the provisions of Schedule 8 of the Act.
8. This statement should be prepared by the Company rather than Council, but needs to reflect the objectives that Council wishes the Company to achieve. The Statement of Intent is a complex and detailed document which will take some time to prepare and which the directors of the Company would need to approve.
9. It may be prudent to consider appointing directors of the Company at an early stage – those directors could then be actively involved in the preparation of the Statement of Intent rather than having the statement prepared first and requiring new directors to accept it on appointment.
10. The statutory requirements for the contents of a Statement of Intent, as set out in Schedule 8 of the Act, are as follows:

1. *A statement of intent must, to the extent that is appropriate given the organisational form of the council-controlled organisation, specify for the group comprising the council-controlled organisation and its subsidiaries (if any), and in respect of the financial year immediately following the financial year in which it is required by clause 3(b) to be delivered and each of the immediately following 2 financial years, the following information:*
 - a. *the objectives of the group; and*
 - b. *a statement of the board's approach to governance of the group; and*
 - c. *the nature and scope of the activities to be undertaken by the group; and*
 - d. *the ratio of consolidated shareholders' funds to total assets, and the definitions of those terms; and*
 - e. *the accounting policies of the group; and*
 - f. *the performance targets and other measures by which the performance of the group may be judged in relation to its objectives; and*
 - g. *an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders; and*
 - h. *the kind of information to be provided to the shareholders by the group during the course of those financial years, including the information to be included in each half-yearly report (and, in particular, what prospective financial information is required and how it is to be presented); and*
 - i. *the procedures to be followed before any member or the group subscribes for, purchases, or otherwise acquires shares in any Company or other organisation; and*
 - j. *any activities for which the board seeks compensation from any local authority (whether or not the local authority has agreed to provide the compensation); and*
 - k. *the board's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, that value is to be reassessed; and*
 - l. *any other matters that are agreed by the shareholders and the board.*

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2. *If a council-controlled organisation has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, this undertaking or the amount of compensation obtained must be recorded in—*
 - a. *the annual report of the council-controlled organisation; and*
 - b. *the annual report of the local authority.*
 3. *Any financial information, including (but not limited to) forecast financial information, must be prepared in accordance with generally accepted accounting practice.*
11. Obviously the preparation of a statement of intent will require significant accounting and probably legal support, and will take some time to prepare, particularly given that forecasts need to be provided for three financial years.

COUNCIL ISSUES

Endowment property policy

12. Council's current policy for the administration of endowment properties and assets does not contemplate the transfer of management of those properties and assets to a CCO. The policy will need to be reviewed and amended to facilitate this. You have sent us a draft amended policy, and we have provided some comments on that. It is important that the policy make it clear that whether management of the endowment property is undertaken on behalf of council by a CCTO, Council must ensure that the management remains within the legal restrictions imposed by statute and common law on Council when dealing with endowment assets.

Objectives for CCO

13. Council should, by resolution, determine the objectives that it wishes the Company to achieve in the operation of its business. Those objectives might be similar to the objectives provided for the Company in the 1990s which included:
- (a) *To aim to increase the return on the shareholders assets under its management. For this purpose, the Company should undertake new profitable investments as cash flows allow which, over their life, will lead yield a substantially greater return than previously achieved*
 - (b) *To promote development of properties in a manner which will maximise the commercial value of the asset by ensuring that the addition of any new capacity is related as closely as possible to Actual and forecast market demand;*
 - (c) *To encourage freeholding of endowment properties to generate capital for investment in higher yielding endowment properties as soon as practicable;*
 - (d) *To enter into joint ventures or turnkey developments to provide flexible options for the future;*
 - (e) *To strive to minimise operating costs*
 - (f) *To manage its financial assets and liabilities on a prudent basis*
14. There is no specific focus in these objectives of rejuvenation of Hamilton's CBD, and I note that this has been an issue that at least in part has given rise to this initiative. and it may be considered an appropriate further objective. I note it is suggested that these

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objectives be enshrined in the policy for endowment properties – that is a sensible idea.

15. The Company's Statement of Intent will be prepared with reference to the objectives. While the Statement of Intent is required to specify the objectives, it makes sense for Council to determine what the objectives are, to provide direction to the Company to ensure that its Statement of Intent appropriately addresses all the issues that Council wishes the Company to manage.

Contractual Arrangements between Council and Company

16. The objectives above define the outcomes that the Council seeks from the Company. The statement of intent sets out how the Company will seek to achieve those objectives. However, consideration should be given to whether a formal contract should be put in place between the Council and the Company to record specific terms that will provide clarity and security for both the Company and the Council, as well as the persons that Council might wish to invite to become directors of the Company.
17. The contract might include a term during which the Company would be assured of the right to continue its operations, subject to satisfactory delivery on the Statement of Intent; parameters on appropriate remuneration of directors; the basis upon which the Company might have access to Council staff or resources; and other similar operational matters.

Requirement for Consultation

18. Section 56 of the Act requires the Council to undertake consultation in accordance with the provisions of section 82 of the Act before the Council may establish or become a shareholder in a CCO. However, as the company has orally been established, and the Council is the only shareholder, this consultation is not required.
19. Council has adopted a *Significance and Engagement Policy* ("Policy") in accordance with the provisions of Section 76AA of the Act. The Act, and the Policy, require the Council to engage with the community when decisions are to be made on matters of significance. Some of the matters that Council is to take into account when assessing the degree of significance, and the appropriate level of engagement, include level of financial consequences of a proposal or decision, and of the form of engagement used in the past for similar proposals and decisions.
20. It can be argued that the high value of the assets involved increases the degree of significance and therefore an increased need for engagement.
21. For this reason, the terms of any contract between Council and the Company are relevant.
22. Those terms will substantially determine whether or not consultation would be required in terms of the provisions of sections 82 to 90 of the Act; there would appear to be a positive correlation between the amount of independence that is granted to the Company in determining how assets are to be managed, particularly if they may be sold by the Company without reference back to the Council, and the need for and extent of consultation in respect of the terms of the agreement, to ensure that Council meets its statutory obligations for proper decision-making.
23. We understand that none of the assets that are likely to be transferred are defined as *significant assets* in the Policy – if they were, then clearly a level of consultation would be required.

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- 24. However, we would recommend that if the Company is to have the power to sell endowment assets and purchase replacement assets without reference back to Council, this is a delegation that is significant, and some formal level of consultation to determine community interest (although not necessarily the full Special Consultative Procedure) would be required. The ultimate form and extent of consultation required will become clearer once Council has determined the nature and extent of control the company will have over the endowment assets.
- 25. Attached are our marked up comments in respect of the proposed changes to Council's Endowment Policy – the adoption of what is a quite different policy to the status quo may merit consideration as to whether it is significant in itself; and an amended Constitution for the Company.
- 26. A timeline for the steps required to achieve transfer of the assets to the Company is also attached.

Impact of the Local Government Act 2002 Amendment Bill

- 27. The Local Government Act 2002 Amendment Bill received its first reading earlier this year, and has been referred to a select committee. It is due to be reported back from select committee by 28 October 2016.
- 28. While the Amendment Bill is focused on CCOs established by multiple territorial authorities to assist in the delivery of water and transport infrastructure, it does contain some significant structural changes that will, if the Bill becomes law, apply to all CCOs, including the Company.
- 29. Those changes include the increase of powers available to the Council in response to a statement of intent, with an obligation for the board of a CCO to give effect to comments made on the statement of intent by shareholders in most circumstances.
- 30. The Bill provides that detail required in the statement of intent, as set out in schedule 8 of the act, is amended, to differentiate between CCOs that are not intended to produce a profit, and CCTOs that are. Water and transport CCOs have additional requirements that would not apply to the Company.
- 31. This Amendment Bill, if and when it comes into force, will obviously have an impact on the advice that we have provided above.

Please contact us if we can provide further assistance.

TOMPKINS WAKE

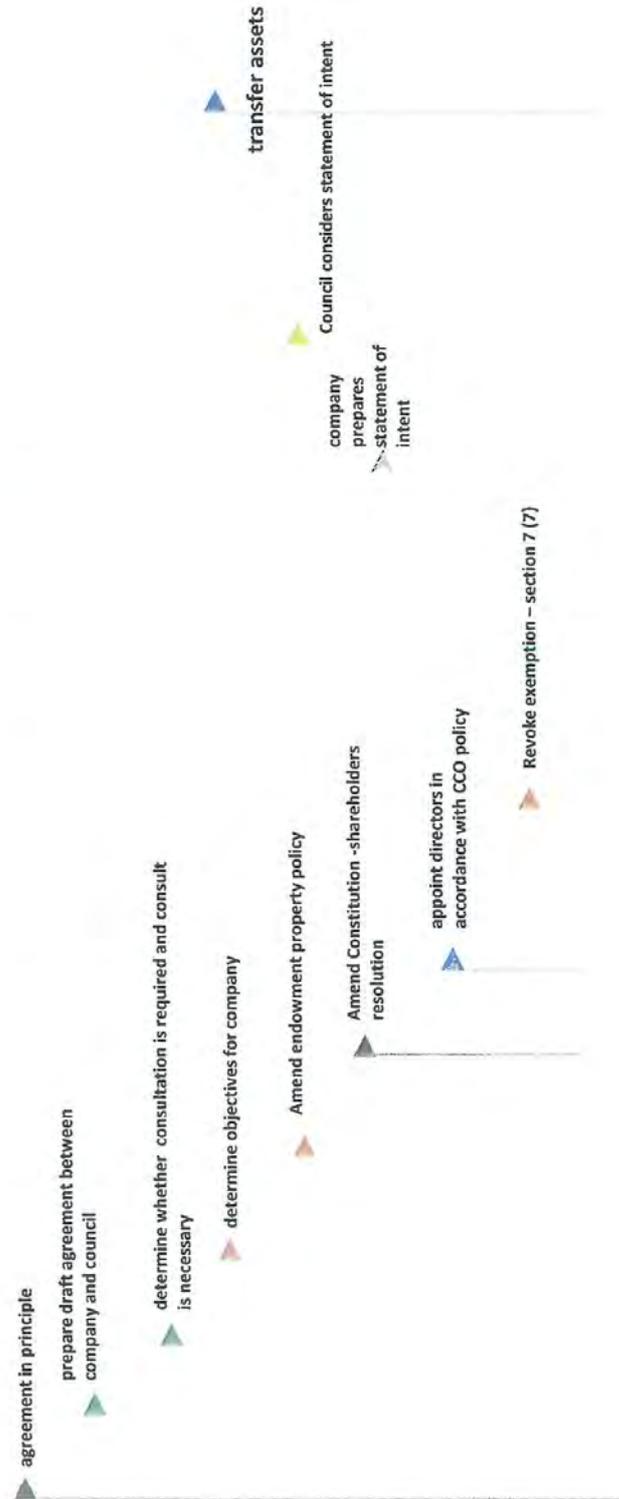


A P Duncan
Partner

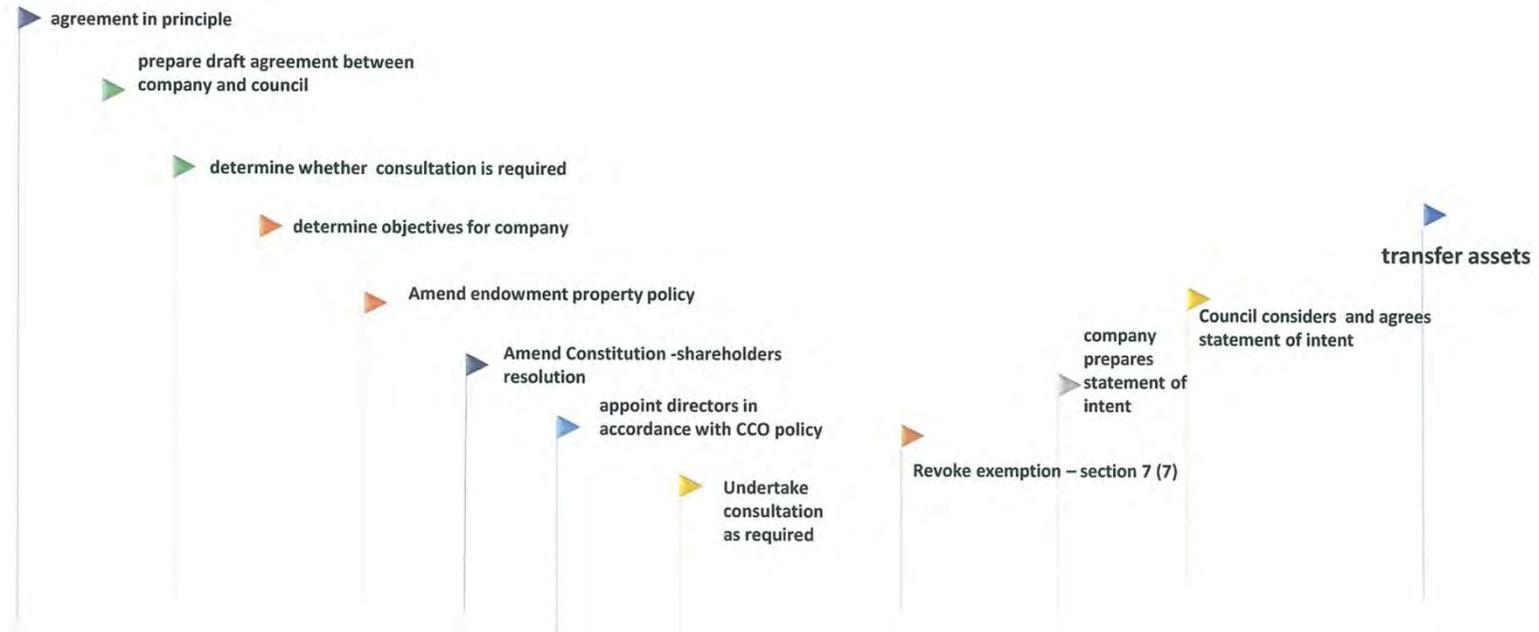
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HAMILTON PROPERTIES LTD - CCTO TIMELINE FOR TRANSFER OF ENDOWMENT ASSETS



HAMILTON PROPERTIES LTD - CCTO TIMELINE FOR TRANSFER OF ENDOWMENT ASSETS



Committee: Business and Investment Subcommittee

Date: 02 August 2016

Report Name: General Manager's Report
(Verbal Report)

Author: Kelvyn Eglinton

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Hamilton Plan, Central City Transformation Plan (CCTP), Economic Development Agenda</i>
Financial status	<i>There is no budget allocated</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Council's Significance Policy, a decision in accordance with the recommendation is not considered to have a high degree of significance</i>

1. Purpose of the Report

- To provide the Subcommittee with a verbal update on the Hamilton-Waikato Business Hub, the Central Business District Board proposal, the Central City Transformation Plan (CCTP) collaborative approach and the recommended metrics.

Recommendation from Management

That the verbal report be received.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Business and Investment
Subcommittee - Open Minutes
- 29 June 2016

Author: Becca Brooke

Status	<i>Open</i>
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Recommendation

That the Subcommittee confirm and adopt as a true and correct record the Open Minutes of the Business and Investment Subcommittee Meeting held on 29 June 2016

1. Attachments

- Attachment 1 - Business and Investment Subcommittee - Open Minutes - 29 June 2016

Business and Investment Subcommittee

OPEN MINUTES

Minutes of a meeting of the Business and Investment Subcommittee held in Kauri Room, Municipal Building, Garden Place, Hamilton on Wednesday 29 June 2016 at 9.00am.

PRESENT

Chairperson	Her Worship the Mayor J Hardaker
Members	Cr M Forsyth Cr A King Cr A O'Leary
In Attendance:	Cr M Gallagher Kelvyn Eglinton – General Manager City Growth Nicolas Wells – Strategic Property Manager
Committee Advisor	Becca Brooke.

1. Apologies

Resolved: (Her Worship the Mayor Hardaker/Cr Forsyth)

That the apologies from Cr Pascoe be received and accepted.

2. Confirmation of Agenda

Resolved: (Her Worship the Mayors Hardaker/O'Leary)

That the Subcommittee confirm the Agenda, noting that Item 4 (Business and Investment Subcommittee Open Minutes - 23 May 2016) and Item 5 (Business and Investment Subcommittee Open Action List – 29 June 2016) be taken at the end of the Open Agenda.

3. Declarations of Interest

No members of the Committee declared a Conflict of Interest.

Business and Investment Subcommittee 29 JUNE 2016 - OPEN

6. General Manager's Report

General Manager City Growth took the report as read and responded to questions from Subcommittee Members concerning:

- **Hamilton Central Business Association (HCBA)**
How the HCBA Business Plan was tracking and whether the Subcommittee could provide any assistance to HCBA on progressing the plan. The General Manager City Growth advised that he had been in contact with HCBA and had offered his assistance should they need it.
- **Waikato Property Council**
The Central City Board proposal.
- **Central City Transformation Plan (CCTP)**
Involvement of the Property Council in the CCTP.
- **Hamilton Waikato Business Hub**
It was still to be decided as to how the project would be structured and the Council's role within it. Potential spaces for the project were still to be looked into. A external Project Manager had been appointed to scope out the project and manage the process to establish what was required. It was hoped that this work would be completed by the end of July 2016. General Manager City Growth would speak to the Project Manager about involving the 3 surrounding District Councils about being involved with the project
- **Quarterly Economic Report**
The staff report was a summary of infometrics report. The General Manager City Growth was currently working on getting a team together to provide robust information and analysis of economic data for the city. This would form the basis for more comprehensive reports in the future.

Resolved: (Her Worship the Mayor Hardaker/Cr Forsyth)

That

- a) That the report be received;
- b) the Subcommittee invite the Waikato branch of the Property Council to present their more detailed proposal on a Central City Board at the 2 August Business and Investment Subcommittee Meeting;
- c) the Hamilton Central Business Association (HCBA) present their business plan at the 2 August Business and Investment Subcommittee Meeting;
- d) the General Manager present a report on joint responses to Central City Transportation Plan (CCTP) projects from the Waikato Chamber of Commerce, Waikato branch of the Property Council and Hamilton Central Business Association (HCBA) at the 2 August Business and Investment Subcommittee Meeting; and
- e) the General Manager provide the Business and Investment Subcommittee with a short report on his recommendations for a reporting framework (including analysis) for the economic performance of the city.

7. Policy Review - Municipal Endowment Fund Deployment Policy

General Manager City Growth and Strategic Property Manager took the report as read. They responded to questions from Subcommittee Members concerning:

- clarification of the staff recommendation and options for managing the Municipal Endowment Fund (MEF) and costs associated with each option;
- Hamilton Properties Limited (HPL) constitution and how it would potentially manage the fund;
- current management arrangement in place for the Municipal Endowment Fund (MEF); and
- revised Municipal Endowment Fund (MEF) Policy.

Resolved: (Her Worship the Mayor Hardaker/Cr O'Leary)

That:

- a) the report be received;
- b) the Business and Investment Subcommittee recommend that management of the Municipal Endowment Fund be transferred to Hamilton Properties Limited to be managed in terms of the Municipal Endowment Fund Policy and the Hamilton Properties Limited constitution;
- c) the General Manager report back to the 2 August Business and Investment Subcommittee Meeting on the following:
 - recommended changes to Hamilton Properties Limited Constitution;
 - recommended changes to the first draft Municipal Endowment Fund Policy;
 - Hamilton Properties Limited's investment objectives, flexibility in its return to the Council, board structure and overheads; and
 - an update on the tax status of Hamilton Properties Limited.
- d) the General Manager report back to the 2 August Business and Investment Subcommittee Meeting on the Domain Endowment Property Policy review.

Cr King Dissenting.

4. Business and Investment Subcommittee - Open Minutes - 23 May 2016

Resolved: (Her Worship the Mayor Hardaker/Cr O'Leary)

That the Subcommittee confirm and adopt as a true and correct record the Open Minutes of the Business and Investment Subcommittee Meeting held on 23 May 2016.

Business and Investment Subcommittee 29 JUNE 2016 - OPEN

5. Business and Investment Subcommittee - Open Action List - 29 June 2016

Resolved: (Her Worship the Mayor Hardaker/Cr Forsyth)
That the Report be received.

8. Resolution to Exclude the Public

Resolved: (Her Worship the Mayor Hardaker/Cr Forsyth)

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

General subject of each matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
C1. Business and Investment Subcommittee - Public Excluded Minutes - 23 May 2016) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Business and Investment Subcommittee - Public Excluded Action List - 29 June 2016)	
C3. Hotel Developments in Hamilton City		

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C3.	to enable Council to carry out commercial activities without disadvantage	Section 7 (2) (h)

The Meeting went into Public Excluded at 10.45pm.

Business and Investment Subcommittee 29 JUNE 2016 - OPEN

In the Public Excluded session of the Meeting, the following was resolved.

Resolved: (Her Worship the Mayor Hardaker/Cr O'Leary)

That Item C3 (Hotel Developments in Hamilton City) in the Public Excluded section of the Agenda, be moved into the Open section of the Agenda, following this Meeting, with the General Manager to remove any commercially sensitive information.

The above mentioned report will be made available as appendix 1 of these minutes.

The Meeting was declared closed at 11.50pm



Committee: Business and Investment
Subcommittee

Date: 29 June 2016

Report Name: Hotel Developments in
Hamilton City

Author: Kelvyn Eglinton

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Hamilton Plan, Economic Development Agenda, Hamilton Central City Transformation Plan (CCTP)</i>
Financial status	<i>There is no budget allocated Amount \$<enter amount></i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Councils Significance Policy, a decision in accordance with the recommendations is/is not considered to have a high degree of significance</i>

1. Purpose of the Report

2. The purpose of this report is to provide Subcommittee members with an update on matters relating to hotel developments in the city.

Recommendation/s from Management

- a) That the report be received

3. Attachments

4. There are no attachments for this report.

5. Sonning Car Park Land Update

8. The exclusivity arrangement between Council and the developer has lapsed and has not been renewed. The developers have signalled they wish to remain in discussions for the development of a 4 star plus hotel and residential apartments on the Sonning land with the Rydges Hotel operator and an investment partner. The developer has been advised that Council will continue to work with them on their proposal however we reserve the right to enter into discussions with other interested parties in the meantime.

Representatives for a Rydges Hotel have since been in direct contact to reaffirm their strong interest in coming into the Hamilton market. They understand our desire to hasten any action. This may take the form of a proposal with the developers or as an individual proposal.

Council have entered into tentative invitational discussions with two other hotel investment prospects to gauge their interest and await their response.

Council is aware of one other hotel development plan under active consideration in the CBD and notes that a planned major refurbishment of the hotel in Te Rapa will deliver a new higher end property into the Hamilton market under the 'Distinction' brand (NZ owned).

In our view neither of these developments will impact upon a hotel development on the Sonning land as Hamilton requires more high quality accommodation in the CBD.

9. Determining Hotel Demand for Hamilton City

10. Council is currently reliant on MBIE's Commercial Accommodation Monitor (CAM) for data across the region. The CAM is not useful for city-level monitoring purposes.

There are several reasons for this:

- The sector-level data is presented at the RTO level, which is not granular enough to understand city-level trends. The CAM results typically understate occupancy rates in main centres, due to lower occupancy rates in outlying areas within the RTO. This may result in erroneous conclusions about the availability of commercial accommodation at certain times of the year.
- It is unknown which accommodation providers are included in each of the CAM segments, and Statistics NZ will not provide information on this due to their strict confidentiality policy. This makes it difficult to understand and refine the stats reported in the CAM.
- As a result of these issues we would not recommend relying on the CAM as an accurate indicator of sector-level commercial accommodation trends in Hamilton.

For accurate commercial accommodation statistics for Hamilton City, Council would need to develop an individual monitoring programme by engaging Fresh Info, the company who undertook the Project Palace study (referred below) to undertake a similar project with a focus on Hamilton. Fresh Info consultants have advised that the model would be available should the hotel establishments agree to participate.

Fresh Info host a daily benchmarking programme for Wellington which would work well in Hamilton. This involves each hotel submitting a daily performance summary to at the end of each month. The consultants then process the data and provide a non-confidential report back to the hotels showing daily occupancy and Annual Daily Rate (ADR) trends across the month. Using a similar methodology to Project Palace would enable Hamilton to compare how the city stacks up with other metros and may help to foster central government recognition and potential investment.

11. Regional Commercial Accommodation

12. Commercial accommodation capacity in the HWT region is currently 5,467 stay unit nights including 898 hotel rooms and 1,555 motel units.

Guest nights spent in commercial accommodation in the HWT region have increased from 818,000 in the year ending February 2002 to 1.32 million in the year ending February 2014. This represents a 61% increase over the past 14 years. Guest nights in commercial accommodation in the HWT region have grown almost twice as quickly as guest nights in the rest of the North Island since 2002.

Commercial accommodation demand is highest in March (81,707 stay units in 2015) followed by January (77,334) and February (76,467).

13. Current Tourism Trends – Hamilton and Waikato

14. Visitors to the Hamilton & Waikato Tourism region (HWT region) spent \$1.23 billion in the local economy in the year ending March 2015, up from \$1.15 billion in the year ending March 2014. Domestic visitors accounted for 81% of this expenditure (\$998 million) and international visitors the remaining 19% (\$233 million). The HWT region currently captures 5.5% of national visitor expenditure, down from 5.7% in 2014. Tourism expenditure in the HWT region has continued to grow however it is at a slower rate than the other focus RTOs of the North Island.

At \$1.23 billion the HWT region had the fifth largest visitor economy in New Zealand in the year ending March 2015, sitting below Queenstown in fourth at \$1.69 billion and well ahead of Hawke's Bay in sixth at \$691 million.

Hamilton captured the largest share of visitor spend in the HWT region at \$606 million, followed by Waipa at \$200 million. The HWT region's share of national tourism spend varied between a high of 6.6% in June 2014 and a low of 4.8% in January and February 2015. Market share is lowest during the peak summer period when competing destinations are more popular.

15. Domestic market

16. At \$998 million the HWT region had the fourth largest domestic visitor economy in New Zealand in the year ending March 2015, sitting below Christchurch in third at \$1.08 billion and ahead of Hawke's Bay in fifth at \$581 million

17. International market

18. At \$233 million the HWT region had the sixth largest international visitor economy in New Zealand in the year ending March 2015, sitting below Rotorua in fifth at \$295 million and ahead of West Coast in seventh at \$211 million.

19. National Tourism Context

20. Tourism is one of the largest and fastest growing industries in New Zealand. In the year ending March 2015 tourism expenditure increased by 10.3% to reach a new high of \$29.8 billion which supported 12.1% of all jobs in New Zealand. Domestic travellers accounted for around 60% of all tourism expenditure at \$18.1 billion and international tourists the remaining \$11.8 billion. The money spent by international tourists accounted for 17.4% of total exports by value which resulted in tourism replacing dairy as New Zealand's largest export earner.

The New Zealand tourism sector is currently in the midst of its strongest ever growth cycle. This is driven by unprecedented growth in international tourism with visitor arrivals to NZ increasing by 9.7% in 2015 to reach a new high of 3.13 million, following increases of 5.3% in 2014 and 6.1% in 2013. MBIE predicts that this strong growth will continue with international visitor arrivals forecast to grow by 44% over the next seven years to reach 4.5 million by 2022, representing an average annual growth rate of 5.4% per annum.

21. Project Palace

22. The NZTE initiative, Project Place identified understand current and future hotel demand and supply conditions within five tourism focus regions. The major findings are listed below.

How Hamilton can leverage off the halo effects of the impacts on Auckland's supply issues is of interest in considerations of future hotel requirements for Hamilton city.

- **There is currently a critical shortage of hotel rooms during high demand periods in the five focus regions.**

Exceptionally strong growth in hotel demand in the past three years combined with minimal change in new hotel supply has resulted in a critical shortage of hotel rooms during high demand periods. This is reflected in actual occupancy rates with Auckland achieving 87-88% in the December quarter 2015.

- **High occupancy rates are driving significant increases in room prices.**
High occupancy rates are leading to significant room price increases with ADR rising by 9% across the five focus regions from NZ\$140 in 2014 to NZ\$152 in 2015.
- **Forecasts suggest that the hotel room shortage will become more severe over the next 10 years.**
A projected imbalance between hotel demand and supply is expected to lift annual occupancy rates over the next decade. Auckland is expected to increase most strongly with annual occupancy rates approaching 90%. Rotorua is expected to reach 85% by 2025. Auckland hotels will come under severe pressure in 2017 as a result of another major step-change in international tourism combined with several major events including World Masters Games, the British & Irish Lions Tour and the Rugby League World Cup
- **Rising occupancy rates will drive further increases in ADR.**
The growth outlook for Average Daily Rate (ADR) is positive across all of the focus regions as a result of highly constrained occupancy and limited new hotel supply. New hotels that do get built will likely command a market premium which will reinforce overall ADR gains.
- **Growth in international tourism, particularly from China, will drive hotel demand over the next 10 years.**
MBIE estimates that international visitor arrivals will grow from 3.13 million in 2015 to 4.51 million by 2022, representing overall growth of 44%. Extrapolating these forecasts suggests that visitor arrivals to New Zealand will reach 5 million in 2025. The next two years are estimated to be particularly strong with an additional 600,000 international visitors expected.
- **Hotel supply is not expected to keep pace with demand over the next 10 years.**
As at December 2015 the five focus regions had a combined total of 20,115 hotel rooms. Auckland had the largest number of rooms at 9,459 (47%) followed by Wellington at 3,494 (17%), Queenstown at 3,234 (16%), Christchurch at 2,019 (10%) and Rotorua at 1,909 (9%). Based on current projections it is estimated that the overall hotel supply in the five focus regions will increase to 25,289 in December 2025. This represents a total increase of 5,174 hotel rooms (26%) over the next decade.
- **Additional hotel investment is required in the five focus regions to maintain a sustainable balance between demand and supply.**
Analysis suggests that the hotel market could absorb up to 9,700 new hotel rooms across the five focus regions by 2025 while continuing to achieve 2015 occupancy rates. Taking into account projected growth in new hotel rooms over the next 10 years it is estimated

that there may still be a significant shortfall in hotel rooms of up to 4,526 across the five focus regions by 2025. The expected shortfall is greatest in Auckland.

- **Tourist behaviour suggests new 4 star and above hotels would be preferred.**
Based on current behaviour 4 and 5 star hotels are most popular across all markets except the Chinese which currently prefers 4 star hotels. This preference is significant given the role the Chinese will play in driving tourism growth over the next decade.

23. Financial and Resourcing Implications

24. Nil.

25. Risk

26. Nil.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Business and Investment
Subcommittee - Open Action
List - 2 August 2016

Author: Becca Brooke

Status	<i>Open</i>
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Recommendation

That the report be received.

1. Attachments

- Attachment 1 - Business and Investment Subcommittee - Open Action List - 2 August 2016

BUSINESS & INVESTMENT SUBCOMMITTEE

Action List - 2013-16

OPEN

Ref.	Meeting Date	GM Responsible	Action	DUE DATE for reporting back	Status (relative to due by date)	Notes
6	13/05/2015 Item 9	GM City Growth	Municipal Endowment Fund Investment Policy and Freeholding Council Domain and Municipal Endowment Leases Policy.	21-Apr-16	Completed	An update was presented at a Subcommittee workshop on 10 March 2016. PWC draft report received and a further workshop followed the 21 April 2016 Subcommittee meeting. Briefing to Elected Members on 17 May 2016, followed by a report to the 23 May B&I Subcommittee Meeting. Freeholding Council Domain and Municipal Endowment Leases policies are currently under review and will be submitted to the Business & Investment Subcommittee Meeting on 2 August 2016.
12	10/03/2016 Item 7	GM City Growth	CBD Board Proposal Staff report to the Subcommittee to consider the Property Council's CBD Board and how it would relate to the operation of BID association in the central city.	21-Apr-16	Completed	The CBD Board proposal will be covered under the General Manager's report to the 2 August 2016 B & I Subcommittee Meeting.
13	21/04/2016 Item 7	GM City Growth	Staff to update Subcommittee as to discussions between HCBA and Property Council.	23-May-16	Completed	To be covered in the General Manager's report to the 2 August 2016, B & I Subcommittee Meeting.
16	29/06/2016 Item 6	GM City Growth	General Managers Report GM to invite the Waikato branch of the Property Council to present their more detailed proposal on a Central city Board at the 2 August B & I Subcommittee Meeting.	02-Aug-16	In progress	Thomas Gibbons, the organisation's chair is overseas until the end of July so it is unlikely that this will form part of the Agenda for 2 August 2016 B & I Subcommittee Meeting.
17	29/06/2016 Item 6	GM City Growth	General Managers Report GM to organise for the Hamilton Central Business Association to present their business plan at the 2 August B & I Subcommittee Meeting.	02-Aug-16	In progress	Owing to the rescheduling of the B&I Subcommittee meeting of 24 August 2016 to 2 August 2016 this information will not be to hand and thus not part of the B & I Subcommittee Agenda for 2 August 2016. Suggested that HCBA present at a September B & I Subcommittee Meeting.
18	29/06/2016 Item 6	GM City Growth	General Managers Report GM to present a report on the joint responses to the Central City Transformation Plan projects from the Waikato Chamber of Commerce, Waikato branch of the Property Council, and the Hamilton Central Business Association at the 2 August B & I Subcommittee Meeting.	02-Aug-16	Completed	Verbal update will be provided to the 2 August B & I Subcommittee Meeting.

Item 9

Attachment 1

19	29/06/2016 Item 6	GM City Growth	General Managers Report: GM to provide a short report on his recommendations for a reporting framework (including analysis) for the economic performance of the city.	02-Aug-16	Completed	The General Manager will provide a memo on metrics to the B & I Subcommittee Meeting on 2 August 2016.
20	29/06/2016 Item 7	GM City Growth	Policy Review - Municipal Endowment Fund Deployment Policy GM report back to the 2 August B & I Subcommittee Meeting on: - recommended changes to Hamilton Properties Ltd constitution; - recommended changes to the first draft Municipal Endowment Fund Policy; - Hamilton Properties Ltd's investment objectives, flexibility in its return to the Council, board structure and overheads; and - an update on the tax status of Hamilton Properties Limited.	02-Aug-16	Completed	A report will be provided to the B & I Subcommittee Meeting on 2 August 2016.
21	29/06/2016 Item 7	GM City Growth	Policy Review - Municipal Endowment Fund Deployment Policy. GM to report back to the 2 August B & I Subcommittee Meeting on the Domain Endowment Property Policy review.	02-Aug-16	Completed	A report will be provided to the B & I Subcommittee Meeting on 2 August 2016.

Resolution to Exclude the Public

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

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C2. Business and Investment Subcommittee - Public Excluded Action List - 2 August 2016)	

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

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