

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

Date: Thursday 15 March 2018
Time: 9.30am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Council OPEN AGENDA

Membership

Chairperson	Mayor A King
Deputy Chairperson	Deputy Mayor M Gallagher
Members	Cr M Bunting
	Cr J R Casson
	Cr S Henry
	Cr D Macpherson
	Cr G Mallett
	Cr A O'Leary
	Cr R Pascoe
	Cr P Southgate
	Cr G Taylor
	Cr L Tooman
	Cr R Hamilton

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly – or as required

Lee-Ann Jordan
Governance Manager

9 March 2018

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Purpose

The Council is responsible for:

1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

Terms of Reference

1. To exercise those powers and responsibilities which cannot legally be delegated by Council:
 - a) The power to make a rate.
 - b) The power to make a bylaw.
 - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
 - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
 - e) The power to appoint a Chief Executive.
 - f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long Term Plan, or developed for the purpose of the Council's governance statement, including the 30-Year Infrastructure Strategy.
 - g) The power to adopt a remuneration and employment policy.
 - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
 - i) The power to approve or amend the Council's Standing Orders.
 - j) The power to approve or amend the Code of Conduct for Elected Members.
 - k) The power to appoint and discharge members of committees.
 - l) The power to establish a joint committee with another local authority or other public body.
 - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council not accept the recommendation.
 - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
 - a) Resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
 - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
 - c) Approval of any changes to city boundaries under the Resource Management Act.
 - d) Adoption of governance level strategies, plans and policies which advance Council's vision and strategic goals.
 - e) Approval of the Triennial Agreement.

- f) Approval of the local governance statement required under the Local Government Act 2002.
- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.

Oversight of Policies:

- *Corporate Hospitality and Entertainment Policy*
- *Delegations to Positions Policy*
- *Elected Members Support Policy*
- *Significance and Engagement Policy*

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1 Apologies

2 Confirmation of Agenda

The Council 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.

4 Public Forum

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for three minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6439.

Council Report

Committee: Council **Date:** 15 March 2018
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Committee Advisor **Position:** Governance Team Leader
Report Name: Confirmation of Council Minutes - Open - 8 February 2018

Report Status	<i>Open</i>
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Staff Recommendation

That the Council confirm the Open Minutes of the Council Meeting held on 8 February 2018 as a true and correct record.

Attachments

Attachment 1 - Council Minutes - Open - 8 february 2018

Council

OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Thursday 8 February 2018 at 9.37am.

PRESENT

Chairperson	Mayor A King
Deputy Chairperson	Deputy Mayor M Gallagher
Members	Cr M Bunting
	Cr J R Casson
	Cr S Henry
	Cr D Macpherson
	Cr G Mallett
	Cr A O'Leary
	Cr R Pascoe
	Cr P Southgate
	Cr G Taylor
	Cr L Tooman
	Vacancy

In Attendance:	Richard Briggs – Chief Executive
	Lance Vervoort – General Manager Community
	Chris Allen – General Manager City Infrastructure
	Kelvyn Eglinton – General Manager City Growth
	David Bryant – General Manager Corporate
	Sean Hickey – General Manager Strategy and Communications
	Sean Murray – General Manager Major Events, Venues and Tourism
	Jen Baird – Unit Manager Communications and Marketing
	Julie Clausen – Programme Manager Strategy
	Nigel Ward – Communications Team Leader
	Brendan Stringer – Legal Services and Governance Officer
	Jeff Neems – Communications Advisor
	Tracy Wood – City Events Manager
	Chelsey Stewart – Project Manager 10 Year Plan

Governance Staff:	Lee-Ann Jordan – Governance Manager
	Becca Brooke – Governance Team Leader
	Amy Viggers – Committee Advisor

Meeting opened by Kaumatua Tame Pokaia and the Venerable Paul Weeding.

1. Apologies

There were no apologies.

2. Confirmation of Agenda

Resolved: (Cr Casson/Cr Mallett)

That the agenda be confirmed noting that:

- Debate will be 2 minutes with an extension of 1 minute if required;
- the meeting will break from 1.15pm to approximately 3.15pm to allow all Elected Members to attend the Waikato Business Summit; and
- there are some additions to the Chair's Report as previously communicated to Elected Members.

3. Declarations of Interest

Cr Tooman declared conflict of interest in relation to Item 11 (*New Lease - Verandah Cafe - Hamilton Lake Domain*). He did not take part in this item.

4. Public Forum

No members of the public wished to speak.

5. Confirmation of Council Minutes - 6 December 2017 (10 Year Plan)

The Governance Manager spoke to the minutes noting that there had been changes to the 6 December 2017 (10 Year Plan) minutes which had been circulated prior to the meeting to all Elected Members. It was noted by some Elected Members that they misunderstood the intent of the Central City Park alteration motion (below) when voting. It was accepted that the outcome of the vote would not have changed.

Resolved: (Cr Mallett/Cr Taylor)

That the Council confirm the Open Minutes of the Council Meeting (10 Year Plan) held on 6 December as a true and correct record noting the following changes/amendments:

- Pg 39 and 40 of the Agenda - Cr Tooman was recorded twice on the River Plan vote in error. The second 'Tooman' should have been Cr Mallett.
- Pg 9 of the Agenda – typo - Principle should be Principal.
- Pg 22 of the Agenda - Votes for the Playgrounds Proposal should include Crs Pascoe, O'Leary, and Macpherson as voting for the amendment.
- Pg 25 of the Agenda – typo – 'Brian' Squair spelt incorrectly.
- An explanation regarding the Standing Order rule for alterations and revocations would be added to the minutes by way of explanation that 75% of members votes were required for this.
- Deputy Mayor Gallagher be recorded as saying that he would be seconding the mayor on his proposals as a matter of process in his capacity as Deputy Mayor.

6. Confirmation of Council Open Minutes - 12 December 2017 (10 Year Plan)

Resolved: (Cr Casson/Cr Mallett)

That the Council confirm the Open Minutes of the Council Meeting (10 Year Plan) held on 12 December as a true and correct record.

7. Confirmation of Council Open Minutes - 14 December 2017

Resolved: (Cr Casson/Cr Mallett)

That the Council confirm the Open Minutes of the Council Meeting held on 14 December 2017 as a true and correct record.

8. Chair's Report - 8 February 2018

The Mayor acknowledged the success of the International Sevens' event and thanked staff for securing the event and ensuring the smooth running of the event. He noted a correction to the calculations in relation to the Central Park total cost which should be \$22,200 rather than \$22,000. He gave a verbal update on the Housing Infrastructure Fund, a Hamilton fuel tax, the establishment of a short term review panel for Development Contributions Policy, and a mid-year recess from Council and Committee meetings.

Along with staff he responded to questions from Elected Members concerning the following:

- Council's need for funding sources such as a Hamilton Fuel tax;
- The expectation from Central Government that Special Housing Accord agreements would have an affordability target of 40%; and
- The known terms of the Housing Infrastructure Fund and future discussions on the fund.

Resolved: (Mayor King/Cr Macpherson)

That the Council:

- a) requests the Chief Executive to develop the case for a fuel tax to support Hamilton City Council's Transport Improvements budget, and the steps necessary to promote it.

Crs O'Leary and Southgate Dissenting.

Motion: (Mayor King/Deputy Mayor Gallagher)

That the Council:

- b) approves \$ 19,200 for the activation of the Victoria on the River open space for the remainder of the 2017/18 summer period.

The Motion was put.

Those for the Motion:

Mayor King, Councillors Gallagher, Macpherson and Southgate.

Those against the Motion:

Councillors Pascoe, Mallett, Tooman, O'Leary, Bunting, Casson, Henry and Taylor.

The Motion was declared lost.

Resolved: (Crs Mallett/Pascoe)

That the Council:

- c) appoints Deputy Mayor Gallagher to the role of Deputy Chair of the Community and Service Committee in an interim capacity until the full review of the Governance Structure and the by-election are completed.

Resolved: (Crs Mallett/Pascoe)

That the Council:

- d) appoints:
- i. Cr James Casson to the Single Year Community Grants Allocation Committee;
 - ii. Cr Siggie Henry to the Multi Year Community Grants Allocation Committee;
 - iii. Cr Leo Tooman to the University of Waikato Animal Ethics Committee.

Resolved: (Deputy Mayor Gallagher/Cr O'Leary)

That the Council:

- e) approves the 2018 Schedule of Reports for Council.

Resolved: (Mayor King/Cr Bunting)

That the Council:

- f) approves the establishment of a Development Contributions review panel for a period of three months and appoints Mayor Andrew, Crs Pascoe, Mallett and Macpherson to the panel to work with staff and bring recommendations back to Council for consideration.

Resolved: (Mayor King/Deputy Mayor Gallagher)

That the Council:

- g) approves the cancellation of Finance Committee, Growth and Infrastructure Committee and Community and Services Committee meetings and the Elected Member briefings scheduled between 2 July and 29 July inclusive 2018 (inclusive).

The Meeting moved into a Public Excluded session at 11.10am to accommodate external presenters.

14. Resolution to Exclude the Public

Resolved: (Cr Casson/Mayor King)

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	Ground(s) under section 48(1) for the passing of this

	matter	resolution
C1.	Confirmation of Council Public Excluded Minutes - 12 December 2017 (10 Year Plan)) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987
C2.	Confirmation of Council Public Excluded Minutes - 14 December 2017)
C3.	Major Event Opportunity for Hamilton	
C4.	Contract for Electoral Services for 2019 Triennial Elections	

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 protect the privacy of natural persons	Section 7 (2) (a)
	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)
Item C4.	to enable Council to carry out negotiations	Section 7 (2) (i)

The meeting moved back into the open session at 12.15pm.

Item 12 (Regulatory and Effectiveness Programme – half yearly report from Taskforce) was taken next to accommodate staff availability.

12. Regulatory Efficiency and Effectiveness Programme - half yearly report from Taskforce

The General Manager City Growth introduced the item. He responded to questions from Elected Members concerning the cost benefit in relation to the regulatory efficiency and effectiveness programme; whether the programme could be incorporated with Re-imagining Local Government; and the possible outcome to the program based on the evidence staff had accumulated.

Resolved: (Mayor King/Cr Casson)

That the Council receives the report.

Crs O’Leary and Henry Dissenting.

The meeting adjourned from 12.55pm to 3.25pm.

9. 10 Year Plan Engagement

The Programme Manager Strategy introduced the report, noting that this report was in response to a question from Elected Members during the 10 Year Plan meeting as to whether contact information requested from submitters should be mandatory and verified. She outlined the background behind the staff recommendation which was to seek approval regarding profile questions.

Staff responded to questions from Elected Members concerning:

- What questions were being asked and where in the submission process the question were listed.
- The possible impact of making names and addresses mandatory.
- Elected Members were advised that it is their decision as to how much weight they put on each submission.

Resolved: (Mayor King/Cr Bunting)

That the Council directs staff to make the contact details questions on the submission form for consultation on the draft 2018-28 10-Year Plan mandatory questions (Option b in this report).

Cr Southgate Dissenting.

10. Priority Vehicular and Pedestrian Thoroughfares and Routes of Strategic Importance

The report was taken as read. Staff responded to questions from Elected Members concerning the requirement for council to identify priority vehicular and pedestrian thoroughfares and transport routes strategically important from a emergency management perspective as well as the impact on property owners if their property was to be determined to be earthquake prone.

Resolved: (Mayor King/Cr Mallett)

That the Council:

- a) receives the report; and
- b) approves the proposal for public consultation on priority vehicular and pedestrian thoroughfares and routes of strategic importance in Hamilton between 5 March 2018 to 6 April 2018.

11. New Lease - Verandah Cafe - Hamilton Lake Domain

The report was taken as read. Staff responded to questions from Elected Members concerning the procurement process council follows for lease agreements and extension, the exclusivity clause within the Verandah Café lease, and the requested change to commission and rent calculations.

Resolved: (Crs Macpherson/Mayor King)

That this item be reported back to the 15 March 2018 Council meeting, with staff entering into further discussions with the current operator, that addresses the discussion by Council at the 8 February 2018 Council Meeting concerning comparability with other leases and additional services within the area of exclusivity.

Cr Tooman had previously declared a conflict of interest in relation to the above item. He did not partake in the discussion or vote on the matter.

Cr Bunting retired from the meeting (4.08pm) during the discussion of the above Item. He was not present when the matter was voted on.

13. Private Developer Agreements - Change to Council Delegations

The report was taken as read. Staff responded to questions from Elected Members concerning the purpose of private developer agreements which allowed work to be upsized or infrastructure completed on behalf of Council in new subdivision or developments. Elected members also clarified the change in delegation that the Chief Executive would have under the proposed changes to the policy which would approve agreements up to \$3 million and not exceeding 5 years.

Staff undertook to bring a report to a future Elected Member Briefing concerning the Private Developer Agreements.

s

Resolved: (Mayor King/Cr Casson)

That the Council:

- a) ratifies the Private Developer Agreements signed by staff during the current triennium, as scheduled in Attachment 1 of the staff report.
- b) approves the changes to the Governance Structure, as set out in Attachment 2 of the staff report.
- c) approves the changes to the Delegations to Positions Policy, as set out in Attachment 3 of the staff report.

The meeting was declared closed at 4.45pm.

Council Report

Committee: Council **Date:** 15 March 2018
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Committee Advisor **Position:** Governance Team Leader
Report Name: Confirmation of Extraordinary Council Minutes - Open - 22 February 2018

Report Status	<i>Open</i>
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Staff Recommendation

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 22 February 2018 as a true and correct record.

Attachments

Attachment 1 - Extraordinary Council Minutes - Open - 22 February 2018

Extraordinary Council

OPEN MINUTES

(Swearing in Ceremony)

Item 6

Attachment 1

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Thursday, 22 February 2018 at 9.00am.

PRESENT

Chairperson	Mayor A King
Members	Deputy Mayor M Gallagher Cr M Bunting Cr J Casson Cr S Henry Cr D Macpherson Cr G Mallett Cr A O’Leary Cr R Pascoe Cr P Southgate Cr G Taylor Cr L Tooman Cr Hamilton
In Attendance	Richard Briggs – Chief Executive Sean Murray – Executive Director H3 & Events Kelvyn Eglinton – General Manager City Growth David Bryant – General Manager Corporate Blair Boycott – Executive Director Special Projects Lance Vervoort – General Manager Community Sean Hickey – General Manager Strategy & Communication Chris Allen – General Manager City Infrastructure
Governance Staff	Lee-Ann Jordan - Governance Manager Becca Brooke – Governance Team Leader Amy Viggers, Clarie Guthrie, and Rebecca Watson Committee Advisors

Kaumatua Tame Pokaia opened the meeting with a Whakatau (welcome and blessing).

The Chief Executive welcomed everyone to the meeting, acknowledging in particular, family and friends of Cr Hamilton in attendance.

Mayor Andrew declared the meeting open and welcomed Cr Hamilton as a new Councillor.

Cr Hamilton was then sworn in and signed his Statutory Declaration, required by the Local Government Act 2002, which was witnessed by Mayor Andrew King. Following the declaration, he addressed the meeting, thanking his family and friends for the support he received during his campaign.

The Reverend Phil Wilson closed the meeting with a prayer.

The meeting was declared closed at 9.20am

Council Report

Committee: Council **Date:** 15 March 2018
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Committee Advisor **Position:** Governance Team Leader
Report Name: Confirmation of the Elected Member Briefing Notes - 13 February 2018

Report Status	<i>Open</i>
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Staff Recommendation

That the Council confirm the Open Minutes of the Council Meeting held on 22 February 2018 as a true and correct record.

Attachments

Attachment 1 - Elected Member Briefing Notes - 13 February 2018

Elected Member Briefing Notes –13 February 2018 – Open

Time and date:	13 February 2018
Venue:	Committee Room 1, Hamilton City Council
In Attendance:	Mayor King, Deputy Mayor Gallagher, Crs Henry, Southgate, Bunting, Mallett, Tooman, Macpherson
Apology for Full Session:	Cr Taylor, O’Leary, Casson
Apologies for lateness/early departure:	Cr Southgate

Discussion

The briefing session covered the following topics in the open session:

1. Draft Development Contributions Policy
2. Tomkins Wake refresher training – Decision making for Elected Members under LGA
3. 10-Year Plan engagement update

There were a number of key points arising from the discussions:

1 **Draft Development Contributions Policy** (Presentation was provided)

The Team Leader, Growth Funding and Analytics introduced the presentation, noting that the purpose of the presentation was to receive feedback from Elected Members regarding the draft Development Contributions Policy, which was going out for public consultation in March 2018.

Elected Members asked questions in relation to the following:

- Terms of reference of the working group
- Payment of growth infrastructure

2 **Tomkins Wake refresher training – Decision making for Elected Members under LGA** (Presentation was provided)

Staff from Tomkins Wake spoke to the presentation, noting that decisions must be lawful and fair.

Elected Members asked questions in relation to the following:

- Conflicts of interests
- Proving an open mind for decision making
- Right to participate in council meetings and decision making
- Maaori participation in decision making
- Register of conflicts
- Personal accountability
- Definition of ‘reasonable’.

3 10-Year Plan engagement update
(Presentation was provided)

The Programme Manager, Strategy introduced the presentation, noting that pre-formal engagement is underway. Email invitations have been sent out and those elected members who have been requested specifically to attend should ensure they attend, others are not compulsory.

Council Report

Item 8

Committee: Council
Author: Amy Viggers
Position: Committee Advisor
Report Name: Chair's Report - 15 March 2018

Date: 15 March 2018
Authoriser: Becca Brooke
Position: Governance Team Leader

Report Status	<i>Open</i>
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Recommendation

Deferred Reports

1. That the Council:
 - a) defers the report on the management contract for Te Rapa Sportsdrome to the 24 May 2018 Council meeting; and
 - b) defers the report on Verandah Café Lease to the 19 April 2018 Council meeting.

Amenity/Community Infrastructure Development levies

2. That the Council:
 - a) supports the Government with the introduction of Amenity/Community Infrastructure Development levies;
 - b) complete any consultation required for the Amenity/Community Infrastructure Development levies through the Development Contribution Policy consultation; and
 - c) includes a statement in the draft 10-Year Plan consultation document stating Council is supportive of introducing an Amenity/Community Infrastructure Development levy.

Kirikiroa

3. That the Council requests a staff report outlining the process for changing the name of Hamilton City Council to Kirikiroa City Council and seek to identify a formal iwi position on such a change.

Attachments

Attachment 1 - Chair's Report - 15 March 2018

Attachment 2 - PwC Financial Strategy Update Letter



Chair's Report

Elected Member Briefings

I remind all Councillors of the importance of attending briefings. Councillors need to be informed prior to making decisions and these briefings make up a significant part of being informed, especially on complex subjects.

Briefings also allow staff to receive feedback and provide answers to questions from elected members, and/or provide follow-up information if requested. This process reduces the questions during our Council meetings, assists in the report process and makes it less likely that reports are sent back to staff for more information.

I remind all Councillors that under our Code of Conduct elected members should attend all meetings, workshops and any appropriate training opportunities provided by Council.

I hope that briefing attendance will improve so all Councillors can be fully informed on the background to important issues and can provide accurate information to the community.

Deferred Reports

Two reports due to come back to this meeting for a decision have been delayed.

The report regarding a management lease of Te Rapa Sportsdrome with details of the contract is taking longer than anticipated. Staff are working to develop a suitable contract. In addition, the outdoor volleyball area will require a special license under the Reserves Act, should this be included. Staff have indicated they can report on this item at the May 2018 Council meeting. Bookings for the facility are continuing and will be confirmed by the new managers in due course.

The Verandah Café Lease which is a public-excluded item also needs to be deferred to the April 2018 Council meeting.

Recommendation:

That the Council:

- a) defers the report on the management contract for Te Rapa Sportsdrome to the 24 May 2018 Council meeting; and
- b) defers the report on Verandah Café Lease to the 19 April 2018 Council meeting.

Amenity/Community Infrastructure Development levies

The Local Government Minister has indicated a paper is to go to Cabinet proposing changes to allow local authorities to collect development levies for Amenity/Community Infrastructure. Council should pursue this avenue to allow for this funding mechanism for future community infrastructure and include a statement in this regard in the draft 10-Year Plan consultation document.

Recommendation:

That the Council:

- a) supports the Government with the introduction of Amenity/Community Infrastructure Development levies; and
- b) completes any consultation required for the Amenity/Community Infrastructure Development levies through the Development Contribution Policy consultation, and;
- c) includes a statement in the draft 10-Year Plan consultation document stating Council is supportive of introducing an Amenity/Community Infrastructure Development levy.

Special Housing Areas

I have previously informed Council of the conversations with Minister around affordable housing in Special Housing Areas (SHAs). The position of the Minister was to continue to support SHAs, but he wanted to see at least 40% of SHA housing be defined as affordable, which could be achieved by using the Government KiwiBuild program. I met with the Minister again last month and his position remains unchanged. From our interactions with Government officials we believe the KiwiBuild policy will set a price deemed as affordable. I believe we should not be making a recommendation to the Minister that does not meet his expectations.

Kirikiroa

I have had a number of discussions with local iwi representatives, including King Tuheitia, about Hamilton being more culturally-aware of our partnership with Maaori. I believe a significant step in this process would be renaming Council to Kirikiriroa City Council. A great deal of work needs to be done to understand the process and potential implications and we would need to engage formally with our partners and our community. I therefore suggest the Council request a staff report about the process for changing Council's name and further request staff, as part of this report, seek the views of local Iwi representatives and work to identify a formal Iwi position on a name change.

Recommendation:

That the Council requests a staff report outlining the process for changing the name of Hamilton City Council to Kirikiriroa City Council and seek to identify a formal Iwi position on such a change.

Financial Strategy

The Chief Executive commissioned independent consultants PwC to review councils financial strategy and the extent to which council's everyday revenues covered council's everyday costs. PwC completed their report on 20 July 2017 and have subsequently presented this report to Council.

A key finding from the report was that council was not yet covering all everyday costs by everyday revenue and as such was funding the difference from debt. PwC also recommended reviewing Council's "balancing the books" measure to better reflect the above financial outcome.

An updated "balancing the books" measure was adopted by Council and was used in the preparation of the draft 2018/2028 Draft 10 Year Plan during Council meetings in December 2017.

Attachment 1

The Chief Executive has asked PwC to confirm their position and views from their July 2017 and to comment on the extent to which Council has complied with their recommendation in the adoption of a new “balancing the books measure” and in preparation of the draft 10 Year Plan.

PwC have confirmed that we have complied with their recommendations. Refer attached for a copy of their report.

Andrew King
Mayor - Hamilton City Council
Love Hamilton

Item 8



Richard Briggs
Chief Executive
Hamilton City Council

By email: Richard.briggs@hcc.govt.nz

16 February 2018

Updated Analysis – Financial Strategy Assessment

Dear Richard

In accordance with your instructions we have been requested to:

- Provide comment on the Council’s 10 Year Plan Measure which has evolved from the PwC recommendation set out on pages 16 to 22 of our Financial Strategy Assessment report dated 20 July 2017 (the Report); and
- Update our analysis from the Report to include the Draft 2018 10 Year Plan (Draft 10YP).

Surplus / (Deficit) Measure

In the Report we recommended a revised approach to measure the Surplus / (Deficit) to ensure that the everyday costs of running the city will be met from everyday revenue and not funded from debt.

It was our recommendation that Council revise their approach, referred to as the ‘Revised Approach’, to measure the Surplus / (Deficit) to exclude all capital subsidies and to include 35% of Developer Contribution (DC) revenue.

- The 35% of DC revenue represents the interest component of the charge and is intended to offset against the interest cost, which is included in the everyday costs to run the city.
- Under a breakeven or ‘balanced books’ surplus position the new measure would allow the depreciation to pay for renewals and capital revenue to fund growth.

10 Year Plan Measure

The Revised Approach has been further developed by Council and is now referred to as the 10 Year Plan Measure. The key differences being:

1. Revenue will include capital subsidies received on transport renewals (subsidies spent on existing assets and not new assets); and
2. Debt funded operating expenditure classified as inter-generational is excluded from the measure. Included in this category are:
 - Contributions to the Waikato Regional Theatre; and
 - Contributions to a University owned indoor recreational facility.

The adjustments made by Council are consistent with the intent of the approach recommended in the Report to match everyday revenues with everyday costs. All references to reaffirming the Revised Approach will now reaffirm the 10 Year Plan Measure developed by Council.

*PricewaterhouseCoopers, Corner Ward and Anglesea Streets, PO Box 191, Hamilton 3240, New Zealand
T: +64 7 838 3838, F: +64 7 839 4178, pwc.co.nz*



Draft 2018 10 Year Plan

Detailed in Figure 1.1 at Appendix One is the historic financial performance and the forecast financial performance in the Draft 2018 10 Year Plan (Draft 10YP) as presented to Council on 6 December 2017. We note the following:

- The Draft 10YP includes rates increases of 9.5% in both 2018/19 and 2019/20 followed by 3.8% pa thereafter.
- The Draft 10YP forecasts a (\$10.2m) deficit in the 2018/19 year, the deficit will effectively be funded by debt. The subsequent rates increases ensure a Surplus position is forecast from 2019/20 and each subsequent year in the forecast period.
- The debt to revenue percentage peaks at 228% in 2020/21 allowing capacity of just \$6.4m based on the limit of 230% adopted by Council as presented in Figure 1.3
- The capital expenditure across the 10 year period totals \$1,967m with \$541m to be funded by a combination of debt and surpluses as detailed below:

Funding of Capital Expenditure Programme		
		\$m
Capital Expenditure - 10YP		1,967
<i>Funded by:</i>		
Depreciation	871	
Capital Subsidies	364	
Developer Contributions (65%)	186	
Other	5	
Surpluses - 10YP Measure	245	} \$541m
Debt increase	296	
Total	1,967	

Source: 2018-28 10YP model - final draft (12.02.18).xlsx

*Note: Depreciation is included as a source of funding as it is included in the everyday costs of running the city to be covered by everyday revenues. Therefore, as a non-cash expense, it is applied to capital expenditure.



Richard Briggs
16 February 2018

Item 8

Conclusion

- We consider the 10 Year Plan Measure to be the appropriate measure of financial sustainability as it applies everyday revenues against the everyday costs of running the city.
- Applying the 10 Year Plan Measure, surpluses are forecast every year (other than 2018/19) which is largely the product of rates increases of 9.5% in both 2018/19 and 2019/20.
 - Surpluses ensure that the cost of running the city is not funded by debt.
- The initial rates increases, and the subsequent 3.8% pa thereafter, drive cumulative surpluses of \$245m over the 10 year period as detailed in Figure 1.2.
 - However, \$215m of the cumulative surplus is forecast in the last 5 years, we note that both capital and operating forecasts are more certain in the earlier years and that actual expenditure could be higher, reducing surpluses and increasing the requirement for debt funding. Should actual expenditure be lower than forecast this would increase surpluses and decrease debt.
 - Debt is forecast to increase by \$296m over the Draft 10YP.
- The surpluses, driven by rates increases, are required to deliver the \$1,967m of capital expenditure forecast in the Draft 10YP, with the debt to revenue ratio peaking at 228% in 2020/21, providing little headroom against the limit of 230%.

Yours sincerely

Justin Liddell
Partner

Attachment 2



Appendix One: Supporting Tables

Figure 1.1

Historical Results vs. Draft 2018 10 YP	DRAFT 2018 10 Year Plan														
	2013/14	2014/15	2015/16	2016/17	2017/18 Annual Plan	2018/19 Forecast	2019/20 Forecast	2020/21 Forecast	2021/22 Forecast	2022/23 Forecast	2023/24 Forecast	2024/25 Forecast	2025/26 Forecast	2026/27 Forecast	2027/28 Forecast
\$ in 000s	Actual	Actual	Actual	Actual	Plan	Forecast									
Revenue															
Rates (excluding metered water)	126,473	133,045	139,339	146,232	153,361	172,638	193,892	206,622	220,083	234,211	249,105	264,811	281,362	298,798	317,194
Revenue from Activities	53,397	58,088	58,826	55,687	54,341	56,755	58,561	60,684	62,472	64,489	66,400	68,325	71,054	72,686	75,507
Capital Subsidies	6,694	5,713	5,508	8,682	4,905	37,274	56,894	36,796	50,824	48,477	31,113	22,481	27,922	28,202	24,500
Vested assets	34,615	19,824	34,274	22,740	8,581	30,000	31,230	32,479	33,291	34,057	34,874	35,746	36,640	37,592	38,607
Development Contributions	16,103	16,069	24,239	15,797	11,141	17,156	24,417	28,654	31,011	31,139	31,147	30,878	29,754	30,796	30,616
Other Contributions	1,988	2,291	3,499	4,814	1,797	1,264	1,696	1,315	3,336	1,258	1,056	614	907	2,527	793
Sundry	116	132	120	104	100	126	129	132	135	138	141	144	148	151	155
Interest received	1,279	2,319	2,369	2,124	2,000	2,475	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650
Total	240,665	237,481	268,174	256,180	236,226	317,688	368,469	368,333	402,802	415,419	415,486	424,649	449,437	472,404	489,022
Expenditure															
Other Expenditure	67,197	65,151	79,357	70,817	67,783	81,109	84,117	98,902	89,840	89,734	89,874	94,336	99,089	102,368	112,671
Personnel	57,248	65,943	64,042	70,672	73,884	80,087	83,872	86,489	89,241	91,495	93,691	96,157	98,878	101,464	104,418
Interest	23,269	23,591	21,713	20,114	21,819	24,331	28,039	31,691	33,568	34,121	33,214	31,732	30,570	29,505	28,557
Depreciation	55,060	57,278	60,416	61,306	63,870	67,780	70,643	76,863	80,437	85,046	89,767	94,311	97,198	102,569	106,475
Total	202,774	211,963	225,528	222,909	227,356	253,307	266,670	293,945	293,086	300,395	306,547	316,536	325,734	335,906	352,122
Net Surplus/(Deficit)	37,891	25,518	42,646	33,271	8,870	64,381	101,799	74,388	109,715	115,024	108,939	108,113	123,703	136,497	136,900
Balance the books	3,276	5,694	8,372	10,531	289	34,381	70,569	41,909	76,424	80,967	74,065	72,366	87,063	98,905	98,292
Revised Measure															
Rates	126,473	133,045	139,339	146,232	153,361	172,638	193,892	206,622	220,083	234,211	249,105	264,811	281,362	298,798	317,194
Activities	53,397	58,088	58,826	55,687	54,341	56,755	58,561	60,684	62,472	64,489	66,400	68,325	71,054	72,686	75,507
DC - 35%	5,636	5,624	8,484	5,529	3,899	6,005	8,546	10,029	10,854	10,899	10,901	10,807	10,414	10,779	10,716
Sundry	116	132	120	104	100	126	129	132	135	138	141	144	148	151	155
Interest	1,279	2,319	2,369	2,124	2,000	2,475	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650	1,650
Plus capital subsidies on transport renewals	2,645	3,008	3,205	4,151	4,536	5,084	6,265	4,789	5,135	4,704	4,925	4,748	4,813	4,885	5,059
Total	189,546	202,216	212,343	213,827	218,237	243,083	269,043	283,906	300,328	316,090	333,122	350,485	369,441	388,949	410,280
Expenses															
Total expenses	202,774	211,963	225,528	222,909	227,356	253,307	266,670	293,945	293,086	300,395	306,547	316,536	325,734	335,906	352,122
Less intergenerational opex funding	-	-	-	-	-	-	(6,132)	(13,578)	(2,135)	(2,184)	-	-	-	-	-
Total	202,774	211,963	225,528	222,909	227,356	253,307	260,538	280,367	290,951	298,211	306,547	316,536	325,734	335,906	352,122
Surplus / (deficit)	(13,228)	(9,747)	(13,185)	(9,082)	(9,119)	(10,224)	8,504	3,540	9,376	17,879	26,576	33,949	43,707	53,042	58,158
Rates Increases assumed						9.50%	9.50%	3.80%							

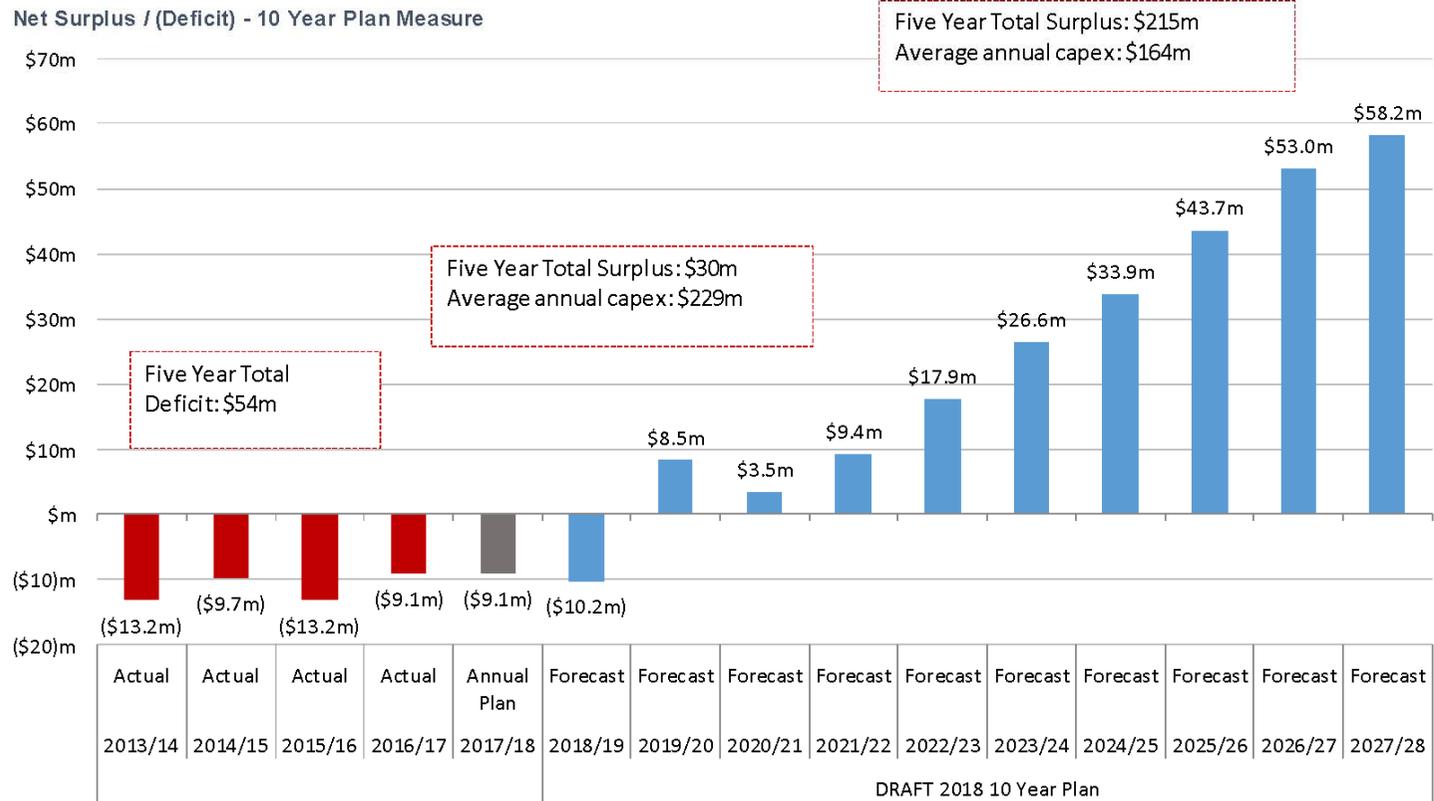
Source: 2018-28 10YR model - final draft.xlsx

PricewaterhouseCoopers, Corner Ward and Anglesea Streets, PO Box 191, Hamilton 3240, New Zealand
 T: +64 7 838 3838, F: +64 7 839 4178, pwc.co.nz



Figure 1.2

Richard Briggs
16 February 2018

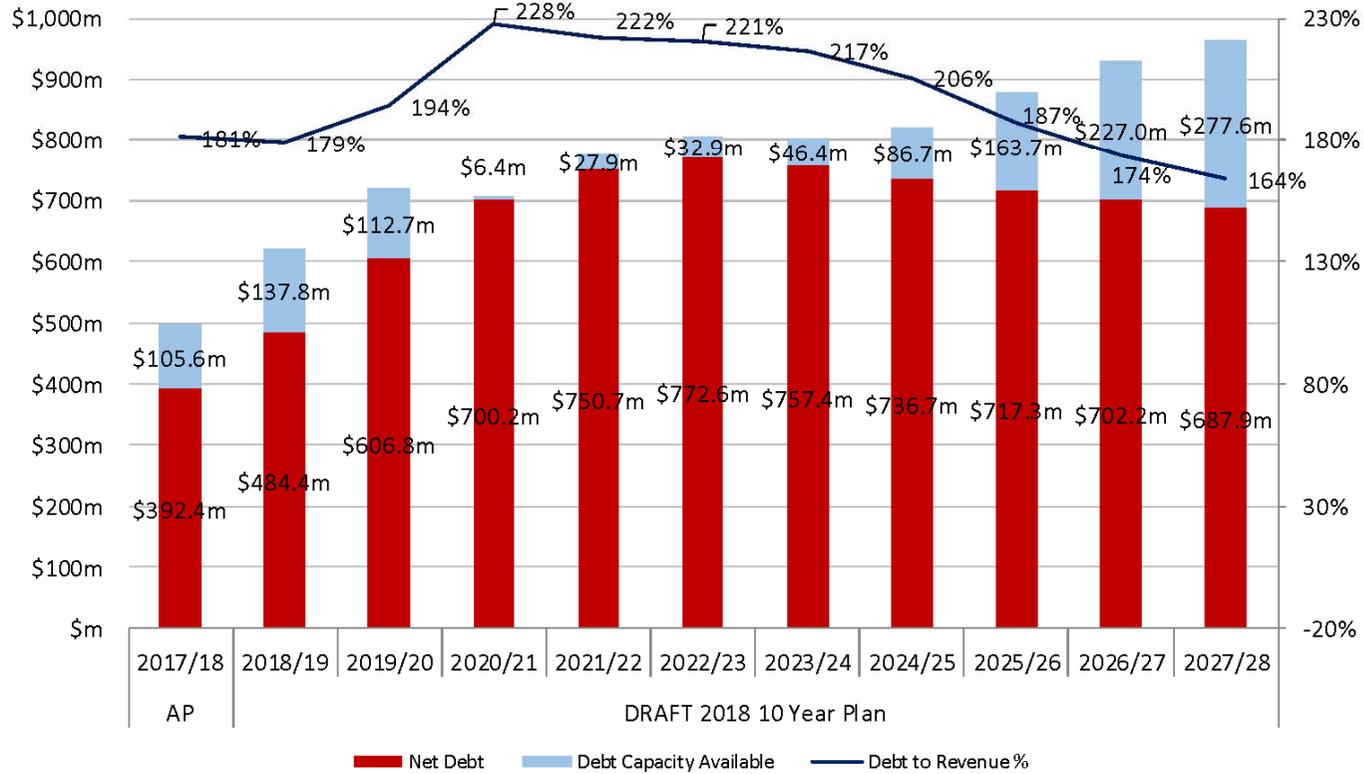


Source: 2018-28 10YP model – final draft (12.02.18).xlsx



Figure 1.3

Draft 2018 10YP - Forecast Debt & Debt Capacity



Source: 2018-28 10YP model – final draft (12.02.18).xlsx

Council Report

Item 9

Committee: Council
Author: Amy Viggers
Position: Committee Advisor
Report Name: Recommendation from the Community and Services Committee - Upgrade of Dame Hilda Ross Place/Plaza

Date: 15 March 2018
Authoriser: Becca Brooke
Position: Governance Team Leader

Report Status	<i>Open</i>
----------------------	-------------

1. To seek the Council's approval for a recommendation from the Community and Services Committee at its meeting on 27 February 2018, in respect of an upgrade to Dame Hilda Ross Place/Plaza.
2. The 27 February 2018 Community and Services Committee agenda and minutes are available via the following link:

http://www.hamilton.govt.nz/our-council/Council_meetings_and_public_information/meetings-and-minutes/Pages/default.aspx

Recommendation from the Community and Services Committee

3. That the Council approves up to \$50,000 be allocated to complete this project and that this be added to Risks and Opportunities, noting this could be covered by a saving from a capital project.

Attachments

There are no attachments for this report.

Council Report

Item 10

Committee: Council **Date:** 15 March 2018
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Committee Advisor **Position:** Governance Team Leader
Report Name: Recommendation from the Community and Services Committee - Central City Safety Strategy 2018-21

Report Status	<i>Open</i>
----------------------	-------------

1. To seek the Council's approval for a recommendation from the Community and Services Committee at its meeting on 27 February 2018, in respect of the Central City Safety Strategy 2018-21.
2. The 27 February 2018 Community and Services Committee agenda and minutes are available via the following link:

http://www.hamilton.govt.nz/our-council/Council_meetings_and_public_information/meetings-and-minutes/Pages/default.aspx

Recommendation from the Community and Services Committee

3. That the Council:
 - a) approves the Central City Safety Strategy 2018-21; and
 - b) requests that staff report back with a twelve-month action list at the 2 August 2018 Council meeting.

Attachments

There are no attachments for this report.

Council Report

Item 11

Committee: Council
Author: Blair Bowcott
Position: Executive Director Special Projects
Date: 15 March 2018
Authoriser: Blair Bowcott
Position: Executive Director Special Projects
Report Name: NZ Food Innovation (Waikato) Ltd Spray Dryer Two

Report Status	<i>Open</i>
----------------------	-------------

Purpose

1. To approve going to public consultation on the establishment of three subsidiary entities of NZ Food Innovation (Waikato) Ltd to own and operate a proposed second Spray Dryer.

Staff Recommendation

2. That the Council delegates to the Chief Executive the authority to undertake public consultation and make a formal decision on the formation of three (3) Council Controlled Organisations (as subsidiaries of NZ Food Innovation (Waikato) Ltd) in relation to the establishment of an entity to own and operate the proposed Spray Dryer Two.

Executive Summary

3. Council has previously resolved for NZ Food Innovation (Waikato) Ltd to invest in the establishment of a second Spray Dryer (Spray Dryer Two).
4. NZ Food Innovation (Waikato) Ltd have determined that the optimal ownership and operating model for Spray Dryer Two is a Limited Partnership, and this structure will result in the creation of three Council Controlled Organisations.
5. Public consultation is required before any Council Controlled Organisations can be established.
6. Staff consider the matter in this report has low significance and that the recommendations comply with the Council's previous resolutions on this matter and legal requirements.

Background

7. On 7 November 2017 the Finance Committee approved the setting up of an entity to build and operate Spray Dryer Two:
 - a) *approves the Spray Dryer Two proposal by NZ Food Innovation (Waikato) Ltd, on the basis that the shareholding arrangements in the new subsidiary does not inhibit Councils ability to sell its shareholding in NZ Food Innovation (Waikato) Ltd in the future;*
 - b) *notes that no Council direct investment is required in this proposal;*

- c) *notes the NZ Food Innovation (Waikato) Ltd will invest \$1.4m from existing cashflows in a new company to be established to build and operate a Spray Dryer and receive a 10% shareholding in the company;*
 - d) *notes the development of Spray Dryer Two aligns with the approved Innovation Waikato Ltd and Group of companies 2017-2018 Statement of Intent; and*
 - e) *that the CE investigate and report to council an exit strategy for NZ Food Innovation (Waikato) Ltd noting that this strategy is unable to be executed until 2020 at the earliest due the legal contractual considerations.*
8. Subsequent to this resolution, various investment and ownership options were considered by NZ Food Innovation (Waikato) Ltd and it has been determined that a Limited Partnership (LP) is the optimal model for the ownership and operation of Spray Dryer Two. The creation of a LP in turn triggers the creation of three Council Controlled Organisation (CCO) entities.

Discussion

9. The proposed LP ownership model is outlined in a diagram attached to Appendix One. This ownership model will create more than one CCO due to the way the LP's are structured. Under the Local Government Act (LGA) any CCO, even as a subsidiary entity (or subsidiary of a subsidiary), cannot be created without public consultation occurring first.
10. This is a minor technical/legal compliance matter to give effect to the previous resolution to support the creation of an entity to operate Spray Dryer Two.
11. In order to meet the legal compliance requirements of the LGA, it is proposed that the Chief Executive be delegated the authority to conduct a consultation process and make any determination in relation to the proposed CCO's.
12. This process is the same as the steps followed for the establishment of the CCO, Waikato Innovation Growth Ltd (WIGL), when the Chief Executive was given the same authority as part of the restructure and sale process of Waikato Innovation Park Ltd.
13. In that case, the consultation was similarly technical and not significant and the duration was for one week. It is proposed to follow the same process for the creation of the LP CCO's.
14. This report would normally be considered by the next Finance Committee on 3 April 2018. However, a decision on the LP structure is required as soon as possible to enable the Spray Dryer Two project to proceed. The consideration of this matter at Council shortens the timeframes (including consultation) associated with the approval of this ownership structure.

Financial Considerations

15. There are no costs to Council to complete the public consultation for the establishment of the proposed CCO's apart from the use of existing staff time. All legal costs associated with the development of the proposed CCO structure and the preparation of the consultation document have been met by NZ Food Innovation (Waikato) Ltd.

Risks

16. There are no known risks associated with the decisions required for this matter. The resolutions of the Finance Committee on 7 November 2017 are being complied with.
17. The proposed ownership structure being consulted on, whilst new to Council, is a commonly used business structure in New Zealand, and complies with all legal and tax obligations.

18. The LP structure does not inhibit Council in the future from selling its shareholding in NZ Food Innovation (Waikato) Ltd. Any future sale would be of Council's 70% share in NZ Food Innovation (Waikato) Ltd, including any subsidiaries such as the LP structure outlined in this report.

Significance & Engagement Policy

Significance

19. Staff considered the following factors under the Significance and Engagement Policy:
There's a legal requirement to engage with the community.
20. Staff have assessed that the recommendation in this report has low significance.

Engagement

21. Given the low level of significance, staff recommend a short period of public engagement with the opportunity for submissions. Any submissions would be considered and determined by the Chief Executive.
22. A copy of the draft public consultation document is attached in Appendix One. It is intended that public consultation occur immediately following this Council meeting (with appropriate public communications).
23. The intention is that consultation is concluded prior to the draft 2018-28 Long Term Plan consultation commencing from 29 March 2018.

Attachments

Attachment 1 - Draft Proposal - Establishment of 3 Council Controlled Organisations

D-2617045

Proposal
Establishment of 3 Council Controlled
Organisations
March 2018



SML-348176-2465-5-7:kl

PROPOSAL

PURPOSE

1. This document is a Statement of Proposal ("**Proposal**") prepared by Hamilton City Council ("**Council**") for consultation, pursuant to sections 56 and 82 of the Local Government Act 2002 (the "**Act**").
2. This Proposal relates to Council's plan to establish 3 new council controlled organisations (as defined in the Act) (the "**CCOs**").
3. Information on this Proposal and more can be found at www.hamilton.govt.nz.

BACKGROUND TO PROPOSAL

4. The proposal to establish the 3 CCOs relates to a proposed investment opportunity being proposed by New Zealand Food Innovation (Waikato) Limited ("**NZFIW**"). Council indirectly owns 70% of the shares of NZFIW. The remaining 30% shareholding of NZFIW is owned by Callaghan Innovation, a government agency supporting hi-tech businesses in New Zealand.
5. NZFIW owns an independent spray dryer situated at Innovation Park, Ruakura, Hamilton ("**Dryer 1**"). Dryer 1 offers open access to New Zealand producers and product developers.
6. NZFIW proposes to construct a new spray dryer to manufacture Sheep, Goat, Bovine and Nutritional Powders ("**Dryer 2**"). Dryer 2 is to be located next to Dryer 1 and is proposed to be a stand-alone spray dryer.
7. Dryer 2 is proposed to be owned by a new limited partnership to be named NZFIW D2 LP (the "**Limited Partnership**"), structured as follows:
 - (a) Third party investors and NZFIW will invest in, and contribute capital to, the Limited Partnership as limited partners via their own investment vehicles. NZFIW will invest in the Limited Partnership via a limited liability company which will be a wholly owned subsidiary of NZFIW and proposed to be named NZFIW D2 LP Limited ("**NZFIW LP Co**").
 - (b) A wholly owned NZFIW subsidiary will also be the general partner of the Limited Partnership and proposed to be named NZFIW D2 GP Limited ("**NZFIW GP Co**"). Due to its experience with Dryer 1, it is proposed that the current NZFIW board will undertake the governance of NZFIW GP Co;
 - (c) NZFIW will provide management services and employees to the Limited Partnership for the operation of Dryer 2. As manager, NZFIW will prepare and provide to each limited partner financial statements and reports and will charge an agreed management fee.

The proposed structure is set out in Appendix A.

8. Under this structure the 3 new COO's will comprise:
 - (a) the Limited Partnership;
 - (b) NZFIW LP Co; and
 - (c) NZFIW GP Co.

RATIONALE

SML-348176-2465-5-7:kl

9. The reasons for the proposed structure are as follows:
 - (a) this structure allows Drier 1 to remain independent of Drier 2. NZFIW's governance model has shown that operating independently, from the parent investment arm is commercially optimal for the spray dryer "open access model";
 - (b) this structure provides flexibility within New Zealand law and is an internationally recognised structure that investors will expect and be familiar with;
 - (c) the Limited Partnership will have "look through" tax status and this structure provides flexibility to allow an investor to organize its own internal structuring and reporting;
 - (d) this structure will protect the individual investors from exposure to or liability from both the Limited Partnership and other investors .

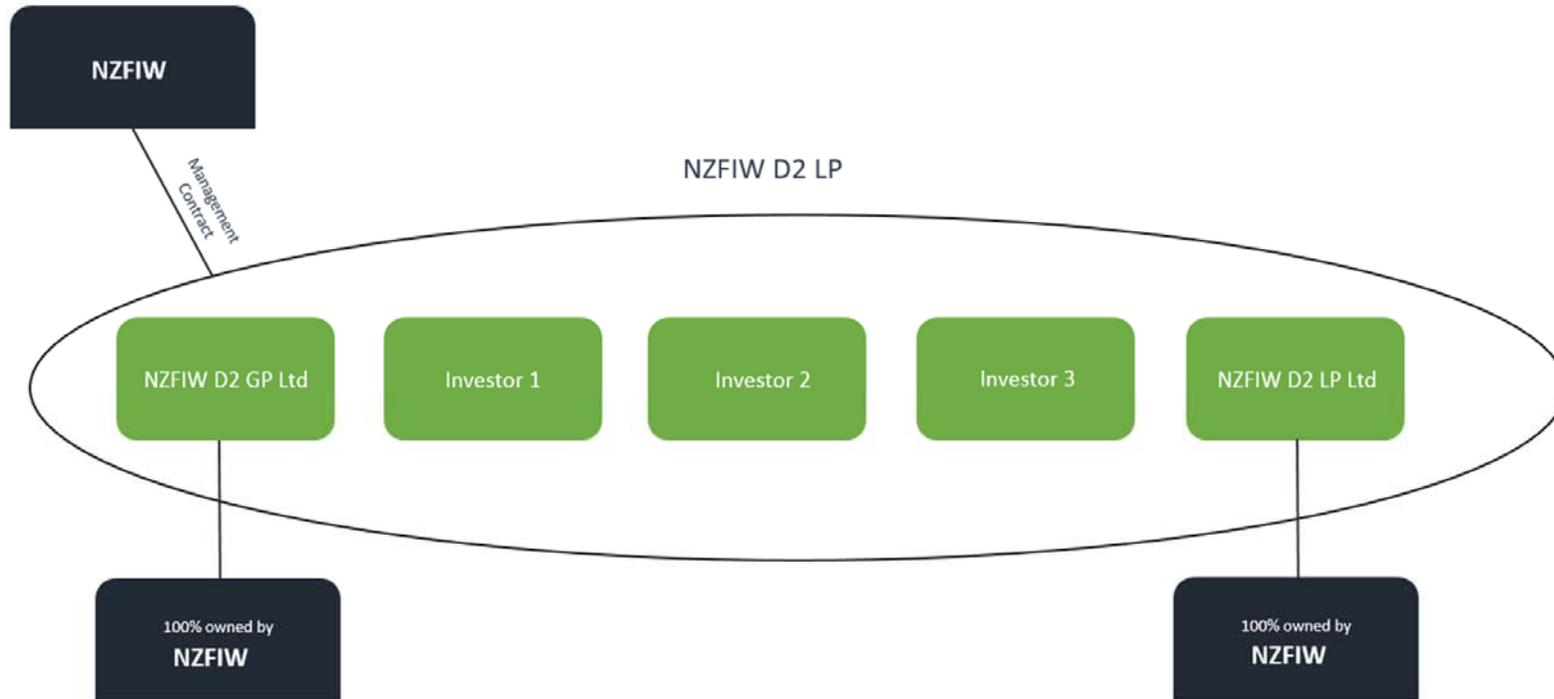
ALTERNATIVE OPTIONS

10. Council has considered the following reasonable practicable alternative options to the incorporation of the 3 CCOs:
 - (a) **Option 1: Not incorporate the CCOs at all:** Council has considered the option of not establishing the 3 CCOs at all. However, Council considers that this may prevent or delay the construction of Dryer 2 or mean that Dryer 2 would be 100% owned by third party investors; or
 - (b) **Option 2: Revisit the structure so as to remove one or more of the CCO's:** Council has considered the option of amending the proposed structure so as to remove 1 or more of the proposed CCO's. However, Council considers that to attract investors and from a liability and management perspective the proposed structure is preferable.
11. Overall, Council's preferred option is to establish the 3 CCOs as set out in this Proposal.

CONSULTATION PLAN AND MAKING SUBMISSIONS

12. Council welcomes your views on the establishment of the 3 CCOs.
13. Anyone can make a submission regarding the proposed incorporation of the 3 CCOs and we encourage you to tell us your views.
14. For information about making a submission, members of the public can visit Council's website (<http://www.hamilton.govt.nz>). Alternatively, simply write us a letter telling us what you agree with, what you don't agree with and why.
15. The period for making written submissions open [**insert start date**] and closes 4.30 pm on [**insert finish date**]. Submissions should be sent to [**insert address**].

Appendix A
Structure



SML-348176-2465-5-7:kl

Council Report

Committee:	Council	Date:	15 March 2018
Author:	Lee-Ann Jordan	Authoriser:	David Bryant
Position:	Governance Manager	Position:	General Manager Corporate
Report Name:	Elected Members Code of Conduct		

Report Status	<i>Open</i>
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Purpose

1. To seek the adoption of a revised code of conduct for elected members, in accordance with the Local Government Act 2002.

Staff Recommendation

2. That the Council:
 - a) adopts the revised Code of Conduct (Attachment 1) in accordance with clause 6, Schedule 7 of the Local Government Act 2002.
 - b) notes that the newly adopted Code of Conduct will replace the current Code of Conduct and take effect immediately.

Discussion

3. The Local Government Act 2002 ('LGA') requires the Council to adopt a code of conduct, to record how Elected Members will conduct themselves while acting in their capacity as members of the Council. All members must comply with the code.
4. A code of conduct can be amended by a resolution of 75% or more of members present at a Council meeting.
5. Staff have reviewed [the Council's current code of conduct](#), adopted in February 2014, to consider 'best practice' as reflected in the 2016 Local Government New Zealand template and other metro councils' respective codes.
6. Elected Members provided feedback on a draft code of conduct presented at an informal update by the Governance team on 12 February 2018.
7. Attachment 1 is a revised code of conduct ('the revised Code'), which incorporates Elected Member feedback, and is presented for the Council's consideration and adoption.
8. The revised Code (as with the current code) is designed to be a self-regulatory instrument. In adopting the revised Code, Elected Members are agreeing to 'own' and demonstrate the principles and standards of behaviour and conduct set out in the revised Code.
9. The key changes from the current code are summarised in Attachment 2. Staff have also taken the opportunity to adopt a plain English approach in the revised Code, and refresh the layout for ease of reading.

10. If the revised Code (or an amended version) is not adopted by the Council, the current code will continue to operate until it is replaced. Refer to paragraph 20 in relation to the potential risks in maintaining the existing code.
11. **Revised complaints process**
12. The most significant amendment in the revised Code relates to the process for dealing with complaints against Elected Members under the code (refer to section 6 and Schedule 3 of the revised Code, Attachment 1).
13. This process includes the appointment of independent investigators to assess alleged breaches (refer to Schedule 3 of the revised Code, Attachment 1). It is proposed that the Chief Executive, in consultation with the Mayor, will set up a list of investigators for this purpose, which will then be circulated to Elected Members for their information.
14. The advantages of the proposed complaints process include:
 - greater clarity of roles and responsibilities;
 - increased rigour and transparency; and
 - removal of any perceived bias through the appointment of an independent investigator for material breaches or when otherwise requested by the Chief Executive.
15. The disadvantages of this new process are:
 - A complaint assessed by an independent investigator may take longer to resolve. This would depend on the circumstances of the complaint, and will be managed by the timeframes that the Chief Executive proposes to the investigator; and
 - There would potentially be the additional cost of an independent investigator appointed to assess a complaint. This is discussed under Financial Considerations below.

Financial Considerations

16. The financial cost of appointing an independent investigator would depend on the circumstances of the complaint. Based on staff enquiries, an independent investigator's hourly rate is expected to be between \$150 to \$350/hour.
17. This cost should be covered by the existing Mayor and Elected Members' budgets. Staff do not expect this to be a significant amount, if an investigator is required.
18. An independent investigator's cost should be considered in light of the current opportunity cost of time spent by members and staff (including the Chief Executive) in the assessment and determination of complaints under the current code, which will reduce under the revised process.

Legal and Policy Considerations

19. Staff confirm that the staff recommendation complies with the Council's legal and policy requirements.

Risks

20. The current code of conduct does not align with best practice models adopted by other metro councils. In particular, the current process to deal with complaints and alleged breaches of the code may be perceived as lacking independent assessment, transparency and the rigour required for a formal complaints process.
21. Failure by members to comply with the provisions in a code of conduct may have an adverse reputational impact on members and/or the Council, and may also result in personal liability for a member.

Significance & Engagement Policy

Item 12

22. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendations in this report have a low level of significance. No engagement is required.

Attachments

Attachment 1 - Revised Code of Conduct

Attachment 2 - Summary of Key Changes to the Current Code of Conduct .

DRAFT

Code of Conduct for Elected Members

Item 12

Attachment 1



Adopted on:



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1 & 2

Scope & Application

Hamilton City Councillors and the Mayor (“Elected Members”) have an important role representing the people of Hamilton. This Code of Conduct (“the Code”) represents a commitment from all Elected Members to maintain high standards of behaviour, which is important for their credibility as city leaders and for the reputation of Hamilton.

As well as articulating agreed professional and ethical behaviours, encouraging teamwork and facilitating effective local democracy, the Code is of value to the Council as a resource and information guide for existing Elected Members and an aid to the public—enabling the public to evaluate behaviour.

1. Scope

The Council is required to adopt a code of conduct (clause 15 of Schedule 7 of the Local Government Act 2002 (‘LGA’)). Once adopted, all Elected Members are required to comply with the Code.

The Code is designed to deal with the behaviour of Elected Members towards:

- each other;
- the Chief Executive (‘CE’) and staff;
- the media; and
- the public.

It is also concerned with the disclosure of information that Elected Members receive in their capacity as members and information which impacts on the ability of the Council to give effect to its statutory responsibilities.

2. Application

The Code applies to Elected Members at all times.

The LGA requires Elected Members to comply with the provisions of this Code. Members are also bound by the LGA, the Local Authorities (Members’ Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Financial Markets Conduct Act 2013, the Health and Safety at Work Act 2015, and the Protected Disclosures Act 2000. The CE will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of the above Acts are freely available to Elected Members.

Short explanations of the obligations that each of these Acts has with respect to the conduct of Elected Members are set out in Schedule 1 of this Code.

3 Principles of Governance

The Code gives effect to the following general principles of good governance with which Elected Members have agreed to comply:

3.1 Integrity and Honesty

Elected Members will be honest and act with integrity. This includes:

- behaving in accordance with the trust that the public places in them.
- being fair and consistent in dealings with others and following through on commitments.
- not making statements or doing anything that will, or is likely to, mislead or deceive.
- not placing themselves in situations where their honesty and integrity may be questioned.
- being open to constructive feedback.
- complying with relevant legislation and Council policies and procedures.
- making decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

3.2 Accountability

Elected Members will:

- comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public to be responsible for their decisions and actions, and be prepared to justify these.
- act in an open and transparent manner.
- ensure Council resources are used prudently.

3.3 Respect

Elected Members may not always get their own way. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights. This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
- recognising and encouraging ideas and contributions from others.
- being courteous and approachable.
- not engaging in aggressive, offensive, abusive or bullying behaviour.
- not making personal attacks.
- respecting the impartiality and integrity of staff.
- not interrupting when others are expressing their point of view.

3.4 Good Faith

Elected Members will faithfully and impartially perform their powers, authorities and duties in the best interest of the community of Hamilton City.

A breach of this Code could indicate a lack of good faith and could be relevant to assessment of personal liability (see explanation of sections 43 to 47 of the LGA set out in Schedule 1 of the Code).

3.5 Proper Use of Position

Elected Members must not abuse their position, including they must not:

- solicit, demand or request any gift or benefit because of their position.
- claim expenses which are not legitimate.
- fail to declare gifts given to them because of their position (see explanation of declaring gifts set out under Section 5.6 of this Code).
- influence, or attempt to influence, any Council employee, or another member, in order to benefit their own, or family's, personal or business interests.
- use information and/or Council resources for any purpose which is not directly related to Council business, including use of Council resources to promote personal or business interests.
- Use, directly or indirectly, any Council resources and/or branding for the purpose of seeking reelection.

Note: refer to the OAG Guidelines – [“Good Practice for Managing Public Communications by Local Authorities”](#).

3.6 Leadership

Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the city. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council.

These principles complement, and work in conjunction with, the governance principles relating to local authorities (sections 14 and 39 LGA).



4 Roles and Responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of the Council's decisions. This section of the Code describes the roles and responsibilities of Elected Members, the Mayor, Deputy Mayor, Committee Chairpersons, and Chief Executive.

4.1 Elected Members

Elected Members, acting as the Council, are responsible for governance, including:

- the development and approval of Council plans, policies and budgets;
- monitoring the performance of the Council against its stated objectives and policies;
- prudent stewardship of Council resources; and
- employment of the CE.

Elected Members are also responsible for representing the interests of the residents and ratepayers of the city.

Unless otherwise provided in the LGA or in the Council's Standing Orders, the Council can only act by majority decisions at meetings. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless provided for by statute or the Council has expressly delegated such authority.

Elected Members are committed to achieving the highest standards of conduct and behaviour at all times and will carry out their role to the best of their skill and judgment. To achieve this, Elected Members should:

- take responsibility for ensuring that they understand their roles and responsibilities and the Code;

- attend all meetings (including for external organisations to which they are appointed), task force groups (as appropriate) and any appropriate training opportunities provided by Council;
- come to meetings prepared, including having read relevant material;
- seek personal and skill development opportunities to effectively fulfil their statutory declaration of office and contribute to the good governance of Hamilton;
- maintain an appropriate standard of dress at public meetings, events or functions that does not discredit the Council. Generally, the more formal the occasion, the more formal the standard of dress required.

4.2 Mayor

The Mayor is elected by the city as a whole. Section 41A of the LGA states that role of a Mayor is to provide leadership to other members of the Council and to the people of Hamilton. The Mayor also has the following roles:

- lead the development of the Council's plans (including long-term plan and annual plan), policies and budgets for consideration by members of the territorial authority;
- appoint the Deputy Mayor;
- establish committees of the Council and appoint the chairperson of each committee established. However, nothing limits or prevents the Council from discharging or reconstituting

- committees or chairpersons of those committees established by the Mayor by way of Council resolution at a later date.
- presiding at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during Council meetings (as determined by Standing Orders);
- advocating on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- ceremonial head of the Council;
- providing leadership and feedback to other Elected Members on teamwork and chairing of committees; and
- keeping the Council informed of matters brought to his/her attention.

4.3 Deputy Mayor

If the Mayor has not appointed the Deputy Mayor as noted above, then the Deputy Mayor must be elected by the members of Council, at the first meeting of the Council.

The Deputy Mayor exercises the same roles as other Elected Members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above).

The Deputy Mayor may be removed from office by resolution of the Council.

4.4 Committee Chairpersons

A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the Council and the orderly conduct of business during committee meetings (as determined by Standing Orders).

Committee chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees.

Chairpersons may be removed from office by resolution of the Council. The Council may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

4.5 Chief Executive

Section 42 of the LGA provides that the CE is the only person directly employed by the Council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the CE.

As the principal administrative officer of the local authority, it is the CE, not the Elected Members, who is responsible for:

- implementing the decisions of the Council;
- providing advice to the Council and its committees;
- ensuring that all responsibilities, duties and powers delegated to him or her, or to any person employed by the local

authority, or imposed or conferred by an Act, regulation or bylaw, are properly performed or exercised;

- managing the Council's activities effectively and efficiently;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Council;
- providing leadership for the staff of the Council;
- employing staff on behalf of the Council (including negotiation of the terms of employment for the staff of the local authority).

While the Council is ultimately accountable, its function is not to make detailed decisions on operational matters. The Council, committee structures and Elected Members day-to-day dealings with the CE should recognise the statutory responsibilities of the CE for the effective management of Council staff and for implementing the decisions of the Council.

5 Relationships and Behaviours

This section of the Code sets out the Council's agreed standards of behaviour between members; members and staff; and members and the public. Any failure by members to meet the standards set out in this section represents a breach of this Code. For clarity, sections 5.1 to 5.3 include (but is not limited to) any written communication between Elected Members, or from an Elected Member, including through social media platforms.

5.1 Relationship with Other Members

Successful teamwork is a critical element in the success of any organisation. No team will be effective unless mutual respect exists between members. Members must conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected;
- are open and honest;
- focus on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- avoids conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behaviour.

5.2 Relationship with the Chief Executive and Staff

Elected Members should be aware that failure to observe the standards in section 5.2 of the Code may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and/or audit sanctions.

Effective performance of the Council requires a high level of cooperation and mutual respect between Elected Members and staff. Members will:

- recognise the CE is the employer (on behalf of the Council) of Council staff and only the CE (or his/her delegate) may hire, dismiss, instruct or discipline an employee;
- make themselves aware of the obligations that the Council and the CE have as employers and observe those requirements at all times;
- treat all Council staff with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees);
- observe any guidelines that the CE puts in place regarding contact with employees;
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
- avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee;
- raise concerns about employees only with the CE, and concerns about the CE only with the Mayor or the CEO Review Committee;
- not seek to improperly influence staff in the normal undertaking of their duties.

5.3 Relationships with the public

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will:

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- act in a way that upholds the reputation of the local authority and values community involvement in local democracy.

5.4 Contact with the Media

The media plays an important part in local democracy. To fulfil this role, the media needs access to accurate and timely information about the affairs of the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an Elected Member in their own right.

The following rules apply for media contact on behalf of the Council:

- the Mayor is the first point of contact for the official view on any issue, unless delegations state otherwise. Where the Mayor is absent, any matters will be referred to the Deputy Mayor or relevant Committee chairperson.
- No other member may comment officially on behalf of the Council without having first obtained the approval of the Mayor or (where delegated) the relevant Committee chairperson.
- Elected Members are free to express a personal view in the media, at any time, provided the following rules are observed:
 - i. media comments must not state or imply that they represent the views of the Council;
 - ii. where an Elected Member is making a statement that is contrary to a Council decision or Council policy, the member must not state or imply that his or her statements represent a majority view;
 - iii. media comments must observe the other requirements of the Code, e.g. not disclose confidential information; compromise the impartiality or integrity of staff; or avoids aggressive, offensive or abusive comments which reflects adversely on the member or the Council; and
 - iv. media comments must not be misleading and should be accurate within the bounds of reasonableness.

5.5 Information available to Elected Members

Any failure by members to act in the manner described in this section 5.5 will be treated seriously and will immediately be referred by the CE to an independent investigator for assessment under section 6.2 and Schedule 3 of this Code.

Confidentiality

To enable Elected Members to properly discharge their duties, members are entitled to, and receive, a broad range of information which is publicly accessible. In the course of their duties, Elected Members will also receive information that may be classified as confidential. This includes information received at meetings which are closed to the public or information that is identified as confidential.

Elected Members may also be provided with, or have the ability to access, confidential information held by Council.

Confidential information includes information that staff have determined there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 ('LGOIMA'). This will often be information that is either commercially sensitive or is personal to a particular individual. The Council's Privacy Officer is responsible for the release of information under LGOIMA.

Elected Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Elected Member. Elected Members should be aware that failure to observe these provisions relating to confidential information will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. They may also expose the Council to prosecution under the Privacy Act 1993 and/or civil litigation.

A breach of confidentiality could also indicate a lack of good faith which may be relevant to the assessment of personal liability (see explanation of sections 43 to 47 of the LGA set out in Schedule 1 of the Code).

Information received in capacity as an Elected Member
Members will disclose to other members and, where appropriate the CE, any information received in their capacity as an Elected Member that concerns the Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that is the member's duty to disclose the information and will decline the offer if that duty is likely to be compromised. Elected Members are accountable to the public.

- All official information held by them personally, whether on Council equipment or their own personal equipment is subject to the LGOIMA.
- Official information, if sought as part of a request, must be made available immediately to the CE (or nominee) so that it can be assessed in terms of the requirements of the LGOIMA.

5.6 Gifts and Hospitality

A person in a position of trust, such as an Elected Member, should not make a profit through his or her office. The Crimes Act 1961 and the Secret Commissions Act 1910 deals with corruption and the obtaining of gifts as an inducement or reward for acts in relation to the Council's affairs (refer to Schedule 1). Gifts can include discounts, commissions, bonus or deductions.

Acceptance of gifts, services or hospitality may be considered as a bribe or perceived as undue influence. Elected Members must notify the Governance Manager (or delegate) if any gifts are accepted for inclusion in the Gifts Register maintained by the Council. Where a gift to the value of \$150 or more is offered to a member, it will also be included in the Register of Members Interests maintained by the Council.

As guidance:

- The cumulative value of recurring gifts received each financial year from the same donor must be disclosed. For example, if someone provides a member with concert tickets at different times through the year, the total value of those tickets over the relevant financial year is to be disclosed.
- A member is not required to disclose tickets to events for which that member is required to attend as the Council's representative (as recorded in the Council's [Governance Structure](#))
- Working lunches and social occasions should be undertaken with a recognition of the public perception regarding undue influence on Elected Members.

5.7 Conflicts of Interest

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 ('LAMIA') could potentially invalidate a decision made, or action taken, by the Council. Failure to observe these requirements could also leave the Elected Member open to prosecution. In the event of a conviction, Elected Members can be removed from office.

Schedule 2 of this Code sets out the Code's conflict of interest requirements. Elected Members must fully acquaint themselves, and adhere strictly to, these requirements.

Ultimately, it is up to each member's own judgement as to whether they have an interest that needs to be disclosed or declared, and what action they take (if any) as a consequence.

The requirements cover two classes of conflict of interest:

- **A financial conflict of interest:** is one where a decision or act of the governing body could reasonably give rise to an expectation of financial gain or loss to an elected member.

A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in. There are particularly strict provisions (and penalties) relating to dealing with a financial conflict of interest.

- **A non-financial conflict of interest** does not have a personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

Elected Members are required to complete declarations of interest following their inauguration, and to update their declarations as and when required.

5.8 Bankruptcy

Elected Members who are declared an undischarged bankrupt shall notify the CE when elected or as soon as practicable after being so declared. The member will provide the CE with a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.

5.9 Disqualification from Office

The LGA and Standing Orders provide for disqualification of Elected Members from office for example, if they:

- are convicted of a criminal offence punishable by two or more years imprisonment;
- cease to be an elector or become disqualified for registration as an elector under the Electoral Act 1993;
- breach the LAMIA; or
- are absent without leave from the Council for four consecutive ordinary meetings of the Council.



Item 12

Attachment 1

6

Breaches of the Code

Members must comply with the provisions of this Code (clause 15(4), Schedule 7, LGA). The exact nature of the action taken to resolve any allegations relating to misconduct of an Elected Member will depend on the nature of the alleged breach and whether there are statutory provisions dealing with the issue in question.

6.1 Principles

The following principles will guide any processes for investigating and determining whether a breach under this Code has occurred:

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
 - have a right to know that an investigation process is underway;
 - are given due notice and are provided with an opportunity to be heard;
 - have a right to seek appropriate advice and be represented;
 - have their privacy respected.

6.2 Complaints Process

Only an Elected Member, or the Chief Executive (either for him/herself or on behalf of an employee), who believes that the Code has been breached by the behaviour or action of a member, may make a complaint to that effect. A complaint may be made as a result of a single incident or as the culmination of a series of incidents.

Before making a complaint, members are encouraged to resolve the matter by discussion with the member alleged to have committed the breach.

All complaints made under this Code must be made in writing and addressed to the CE, setting out the alleged breach of the Code and providing corroborating evidence. On receipt of a complaint, the CE must follow the process set out in Schedule 3. For the purpose of the Code, (an) Elected Member(s) who is/are the subject of a complaint under the Code is/are 'the respondent'.

Panel of Independent Investigators

On behalf of the Council, the CE will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for the purpose of undertaking an assessment of complaints (when required) and making recommendations to the Council. The CE may prepare a list specifically for the Council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators.

The Panel of Independent Investigators is not a committee of the Council.

Materiality

An alleged breach under this Code is material if, in the reasonable opinion of an independent investigator, it would, if proven, bring an Elected Member or the Council into disrepute or, if not addressed, reflect adversely on another Elected Member of the Council.

An alleged breach of section 5.5 of the Code (Information available to Elected Members) will automatically be considered material and referred to an independent investigator for assessment.

6.3 Penalties and actions

Where a complaint is determined to be a material breach of the Code and referred to the Council for determination, the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of this Code the Council may require one or more of the following:

- a letter of censure to the member;
- a request (made either privately or publicly) for an apology;
- a vote of no confidence in the member;
- removal of certain Council-funded privileges or Council appointments;
- restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- limitation on any dealings with Council staff so that they are confined to the CE only;
- suspension or removal from Committees (including joint committees), task forces or other Council bodies; or
- an invitation for the member to consider resigning from the council.

The Council may decide that a penalty will not be imposed where the respondent agrees to one or more of the following:

- attend a relevant training course; and/or
- work with a mentor for a period; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987(LGOIMA), for not doing so.

Breaches of Legislation

If there are statutory provisions dealing with the issue in question, the issue will not be dealt with as a breach of the Code but may be addressed in accordance with the relevant statutory provisions:

- Issues relating to members' interests may render members liable for prosecution by the Auditor General under the Local Authorities (Member's Interests) Act 1968 and, if convicted, the Member can be removed from office;
- Issues which result in the Council suffering financial loss or damage may be reported on by the Auditor General under the LGA, which may result in the member having to make good the loss or damage;
- Issues relating to the commission of a criminal offence may

leave the Elected Member liable for criminal prosecution.

Council may refer an issue to the relevant body, any member of the public may make a complaint to that body, or the Auditor-General or the Police may take action of their own initiative

Breaches of the Code during meetings

It is expected that compliance with the provisions of this Code during a meeting shall be dealt with by the Chairperson of that meeting, within Standing Orders, at the time the breach arises.

Elected Members should raise alleged breaches of the Code with the Chairperson at the time. If an Elected Member believes that an alleged breach of the Code has not been dealt with adequately by the Chairperson at a meeting, that Elected Member may initiate the procedures set out in Section 6.2 and Schedule 3 in the Code.

7 Review or Changes to the Code

The Council may by resolution of 75 percent or more, change the Code at any time.

The Council will formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be presented to the full Council for its consideration and vote.

The Code should be read in conjunction with the Council's Standing Orders.



Item 12

Attachment 1

Schedule 1

Summary of Legislation

This Schedule is a summary of the legislative requirements that have some bearing on the duties and conduct of Elected Members. Copies of the legislation can be found on www.legislation.govt.nz or requested from the Governance team.

Local Government Act 2002 ('LGA')

Governance Principles

In performing its role the Council must act in accordance with nine broad principles as set out in section 14(1) of the LGA as follows:

- conduct its business in an open, transparent, and democratically accountable manner; and
- give effect to its identified priorities and desired outcomes in an efficient and effective manner;
- make itself aware of and have regard to the views of all its communities;
- when making a decision, take account of the diversity of the community and the various community's interests; the interests of future as well as current communities and the likely impact of any decision on these interests;
- provide opportunities for Maaori to contribute to its decision-making process;
- collaborate and cooperate with other local authorities;
- undertake commercial transactions in accordance with sound business practices and assess periodically the expected returns from investing in or undertaking a commercial activity;
- ensure prudent stewardship and efficient and effective use of its resources in the interests of the district;
- take a sustainable development approach that takes into account the social, economic and cultural interests of people and communities and the need to maintain and enhance the quality of the environment and the reasonably foreseeable needs of future generations.

If any of the principles are in conflict, the Council must resolve that conflict in an open, transparent and democratically accountable manner. These principles are helpful in determining the governance structure as they are indicative of the spirit and intent of the LGA and govern the way in which the Council undertakes decision-making. A Council that is seen to act in conflict with these principles can be subject to judicial review.

In deciding on a governance structure, section 39 is also helpful to consider as it defines the following governance principles:

- a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;
- a local authority should ensure that the governance structures and processes are effective, open and transparent;

- local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities;
- a local authority should be a good employer; and
- a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

Decision-Making Responsibility

Every decision made by a local authority, including a decision not to take any action, must be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA. Specifically, the Council must during the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess the options in terms of their advantages and disadvantages;
- identify those options which involve a significant decision in relation to land or a body of water, take into account the relationship of Maaori and their culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga;
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter;
- determine the matters significance in relation to Council's Significance and Engagement Policy;
- identify whether the proposed decision would be significantly inconsistent with any existing policy or plan;
- establish and maintain processes to provide opportunities for Maaori to contribute to the decision-making process;
- consider ways in which the Council may foster the development of Maaori capacity to contribute to the decision-making process;
- provide relevant information to Maaori;
- undertake consultation in accordance with the principles of consultation as set out in section 82.

Significance and Engagement

A higher standard of compliance with the decision-making process is required when the Council is making a significant decision. The definition of "significance" is defined in the LGA and in the Council's [Significance and Engagement Policy](#).

If the Council determines that the decision or matter is significant in terms of the Council's Policy, then the Council must apply greater diligence in regards to the decision making requirements of the LGA.

This includes the degree to which different options are identified and assessed and the extent to which community views are considered, including whether consultation is required. The more significant a matter, the greater the level, and detail, of analysis is required.

Section 78 alone does not require the Council to undertake a consultation process, provided the Council has sought to make itself aware of the views of those interested or affected. The Council may, for example, have gathered information through a process, formal or informal, which has provided the Council with the information it needs to take community views into account. The Significance and Engagement Policy provides guidance on when consultation will and will not be undertaken.

Personal liability of members

Although having qualified privilege, Elected Members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under section 44 LGA, it is found that one of the following applies:

- money belonging to, or administered by, a local authority has been unlawfully expended; or
- an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- a liability has been unlawfully incurred by the local authority; or
- a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- without the member's knowledge;
- with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- contrary to the manner in which the member voted on the issue; and
- in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (section 47 LGA 2002).

Local Authorities (Members' Interests) Act 1968 ('LAMIA')

LAMIA regulates situations where an Elected Member's personal interests impinge, or could be seen as impinging on their duties as an Elected Member.

Members may contact the Office of the Auditor General ('OAG') for guidance as to whether that member has a pecuniary interest, and if so, may seek (through an application from the Council) an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote¹. The CE must also seek approval from the OAG for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the Elected Member open to prosecution under the LAMIA. In the event of a conviction Elected Members can be removed from office. Further guidance is detailed under Schedule 2 of the Code.

Local Government Official Information and Meetings Act 1987 ('LGOIMA')

The purpose of LGOIMA is to provide for the availability to the public of official information held by local authorities, and to promote the open and public transaction of business in meetings of local authorities.

The general principle is that information held by local authorities is to be made available unless there is good reason for withholding it. The principal grounds for withholding information are set out in sections 6 and 7 of LGOIMA.

LGOIMA sets out a number of statutory procedures and requirements for local authority meetings. Meetings are to be publicly notified, and open to the public unless there is good reason for withholding information and excluding the public.

The Chair has the responsibility to maintain order at meetings, but all Elected Members should accept personal responsibility to maintain acceptable standards of address and debate in line with the principles detailed in section 3 of this Code.

Secret Commissions Act 1910 ('SCA')

It is unlawful for an Elected Member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result. It is also unlawful for an Elected Member (or officer) to present false receipts to the local authority.

If convicted of any offence under the SCA, a person can be imprisoned for up to 7 years. Elected Members convicted of an offence will be removed from office.

1. The Auditor-General can provide retrospective approval for contracts that would otherwise disqualify a member under the Act, in limited circumstances.

Crimes Act 1961

It is a crime for any Elected Member to accept, or solicit for themselves (or anyone else), any gift or reward for acting or not acting in relation to the business of the local authority. It is also a crime for any Elected Member to use information acquired in his or her official capacity for monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected Members convicted of these offences will be removed from office.

Financial Markets Conduct Act 2013 ('FMCA')

The FMCA regulates the offer, issue and re-sale of financial products, which includes shares, debt securities and derivatives.

Council is unable to issue shares, but can issue debt securities and derivatives, and may from time to time sell financial products. If Council does issue financial products or, in certain cases, sells financial products that it holds, members will be potentially subject to personal liability for breaches of the offer and other provisions of the FMCA.

Health & Safety at Work Act 2015 ('HSWA')

HSWA came into force on 4 April 2016. Its focus is the protection of workers and other people against harm to their health, safety and welfare by eliminating or minimising risks at workplaces.

The HSWA places obligations on four duty holders- a person conducting a business or undertaking ('PCBU'); officers of a PCBU; workers; and other people at a workplace. Council as a PCBU holds the primary duty of care under HSWA i.e. to ensure so far as is reasonably practicable, the health and safety of its workers and of other workers whose activities Council influences or directs.

Each elected member is an 'officer' (being a person occupying a position in a body corporate that is comparable with that of a director of a company), responsible under HSWA for exercising due diligence to ensure that the Council is meeting its health and safety responsibilities under HSWA. The CE and Senior Leadership Team are also officers under HSWA.

The due diligence duty of officers supports the primary duty of care owed by a PCBU – placing duties on individuals whose decisions significantly influence the activities of a PCBU, therefore influencing whether the PCBU meets its statutory duties.

Unlike the Chief Executive and Senior Leadership Team, Elected Members are not required to be directly involved in the day-to-day management of health and safety. They are, however, still required to take reasonable steps to understand Council's operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations under the HSWA.

This duty does not extend to ensuring that a council controlled organisation ('CCO') complies with the HSWA, unless the Elected Member is also an 'officer' of that CCO.

Taking 'reasonable steps' requires each Elected Member to exercise the care, diligence and skill a reasonable officer would exercise in the same circumstances, taking into account matters including the nature of Council's business, and the Elected Member's position and nature of his/her responsibilities.

Most officers can be convicted of an offence for failing to meet their due diligence obligations, whether or not a PCBU is convicted of an offence. Elected members, however, when acting in the capacity of an elected member of the Council are expressly exempted from prosecution.

Protected Disclosures Act 2000

Under the PDA, the definition of an employee of a public sector organisation (PSO) includes Elected Members of a local authority. Elected Members (as 'employees') who disclose information about a serious wrongdoing by the Council are protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the Elected Member.

Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources; conduct that risks public health and safety; conduct that risks the maintenance of law; conduct that constitutes an offence; oppressive, improper discriminatory conduct; and gross negligence or gross mismanagement by a public official.

Protection under the PDA applies where the employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and that employee desires protection under the Act.

The Council has a Protected Disclosure Management Policy, which applies to employees. For Elected Members, the default position requires a disclosure to be made to the CE or Deputy CE. If the employee considers the CE or Deputy CE may be involved in serious wrongdoing, the matter can also be escalated to an "appropriate authority". Appropriate authorities are defined in the Act and include the Commissioner of Police, the Controller and Auditor-General and the Parliamentary Ombudsman.

Conflicts of Interest

General

Elected Members are expected to approach decision making with an open mind- 'faithfully and impartially' and in 'the best interests of Hamilton City'. Elected Members must therefore be careful that they maintain a clear separation between their personal interests and their duties as a member of Council (as governing body, and as a member of a Council committee or other Council body). They must exercise care to avoid situations where they have, or appear to have, a conflict of interest.

Elected Members must carry out their duties free from bias (whether actual or perceived). Bias is the common factor in all conflict of interest situations. The rule about bias applies to both financial and non-financial conflicts of interest and is summed up in the saying 'no one may be judge in their own cause'.

In the local government context, financial conflicts of interest are governed primarily by the Local Authorities' (Members' Interests) Act 1968 ('LAMIA') and non-financial conflicts of interest are governed by the common law rule about bias.

Broadly speaking, a conflict of interest exists when an elected member could use, or uses, their position to further their own interests or those of their partner, or spouse. The various types of conflict of interest include:

- Direct financial interest- where a decision or act of the Council could reasonably give rise to an expectation of financial gain or loss to an elected member.
- Indirect financial interest- where cash doesn't change hands directly but, for example, may influence the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in;
- Non-financial interest- where an elected member's responsibilities as a member of Council could be affected by some other separate interest or duty that he/she may have in relation to a matter as a result of, for example, a personal relationship, or involvement with an external organisation, or from conduct that indicates prejudice or predetermination.

Conflicts of interest can be:

- Actual: where the conflict of interest already exists;
- Potential: where the conflict is about to happen, or reasonably could happen; or
- Perceived: where other people might reasonably think an Elected Member is not being objective or his/her position as an Elected Member has been compromised.

Financial conflicts of interest

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned." (OAG, 2001)

Members should consider the following factors in considering whether they have a financial interest.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision- do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor or another person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek independent legal advice. Where uncertainty exists, members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

The two specific rules in the LAMIA relate to:

1. Contracts

An Elected Member is disqualified from office, or from election to office, if that member is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year (unless there is an exemption granted by the Office of the Controller and Auditor-General ('OAG')).

The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which a member is interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by the member.

It is an offence under LAMIA for a person to act as a member of the Council (or Council committee) while disqualified.

2. Participation in decision-making

Elected Members must not participate in any Council discussion or vote on any matter in which they have a financial interest (either directly or indirectly), other than an interest in common with the public.

Both rules apply in the case of an interest or concern through an Elected Member's spouse or partner, or through a company or trust.

How is bias determined?

Bias is determined by asking the following question:

"Is there, to a reasonable, fair-minded and informed observer, a real danger of bias on the part of a member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"

It is natural to expect that Elected Members will bring their own experience and knowledge to the decision-making process; that members may already have views – even strong or publicly stated views – about the matter; and that political considerations may play a part in the decision.

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members should focus on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether they might be perceived as biased, members must also consider the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

Declarations of interest

To help identify possible conflicts of interest the Council operates a Register of Members' Interests.

Elected Members must make full and complete declarations of interests following the Inaugural Meeting of Council (after local government elections or by-election, as appropriate), and then every six months, using the Register of Members' Interests [Declaration Form](#). These declarations of interests are a key individual responsibility of all Elected Members. They must notify the Council of the nature and extent of any interest as further detailed in the declaration form.

Declarations will be recorded in a Register of Members' Interests maintained by Council's Governance Manager. The Register (or a fair and accurate summary of its contents) will be available for public inspection. A summary will be published on the Council's website.

2. The Auditor General can retrospectively approve contracts that would otherwise disqualify a member under the Act, in limited cases.

The Register does not remove the requirement to disclose conflicts of interest as they arise. Members must therefore advise the Council's Governance Manager, as soon as practicable during the year, if any new interests arise; complete a declaration of interests form every six months and update the Register whenever a member's interest has changed. Members must also declare their interests at meetings where matters in which they have a conflict of interest arise. The Elected Member must:

- declare the existence of a conflict to the meeting (the member does not have to disclose the nature of the interest concerned, though he or she is required if the interest is a financial one);
- abstain from discussion and voting (take no part in the consideration of the matter). Depending on the issue, the member may consider it best to leave the meeting room itself.

General awareness and support

There is no simple binding rule that covers all conflict of interest situations – each situation must be evaluated on its individual merits. If an Elected Member is in any doubt as to whether he/she should declare an interest and stand aside from decision-making (including a decision to take no action), then he/she should seek guidance from the Mayor immediately; seek advice from the OAG (as to whether there is a financial interest) or from his/her own lawyer.

In some situations of pecuniary interest, a member may be able to obtain an exemption from the OAG to allow him/her to participate or vote on a particular issue. Any exemptions must be obtained before the discussion or vote takes place².

In a case of doubt, a member should refrain from discussing or voting on the matter in question and preferably physically withdraw from the meeting. The minutes of the meeting will record the member's declaration of interest and absence from voting.

Relevant guidelines include:

- ['Guidance for Members of Local Authorities about the Local Authorities' \(Members' Interests\) Act 1968'](#) – Office of the Auditor General 2010;
- ['Managing Conflicting Interests in Local Government: The Local Authorities \(Members' Interests\) Act 1968 and Associated Issues'](#) – Department of Internal Affairs August 2011;

Consequences of bias and/or breach of the LAMIA

An Elected Member will be automatically disqualified from office if he/she is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of Council exceed \$25,000 in any financial year.

If an Elected Member has a financial interest in a matter and participates in discussion and voting on it, he/she will have committed an offence under the LAMIA. In the event of a conviction, an Elected Member can be removed from office.

An Elected Member's bias (whether actual or perceived) has the potential to invalidate the particular decision made, or the action taken, by Council (if successfully challenged by way of judicial review).

If an Elected Member's conduct has contributed to Council incurring a loss; that conduct could also result in personal financial liability under section 46 of the LGA (refer to Schedule 1).

Schedule 3

Process for the investigation and determination of complaints

Summary

There is a five-stage process for dealing with complaints under the Code of Conduct:

Stage 1: Acknowledgement of the complaint and the respondent is informed.

Stage 2: Preliminary assessment of the complaint – led by either the CE or an independent investigator.

Stage 3: Informal resolution of complaint (where alleged breach is considered non-material).

Stage 4: Independent investigator assessment where:

- the alleged breach is considered material;
- the complaint has not been able to be resolved informally; or
- the complaint is otherwise referred to an independent investigator by the CE.

Stage 5: The Council's consideration of the investigator's report. A flowchart illustrating the complaints process is attached as an appendix to this Schedule.

Stage 1: Acknowledgment of complaint

1. Within two working days of receipt of a complaint, the CE will:
 - a. acknowledge receipt and refer the complainant to the process for dealing with the complaint under this Code.
 - b. inform the respondent that a complaint has been made against them and refer them to the process for dealing with the complaint under this Code.

Stage 2: Preliminary assessment of complaint

2. The CE, with the Mayor (or Deputy Mayor if the complaint involves the Mayor) will assess whether:
 - a. the complaint is frivolous or without substance and should be dismissed;
 - b. the complaint is outside the scope of the Code and should be redirected to another agency or process;
 - c. the subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the complaint;
 - d. the complaint is not material and should progress to informal resolution (refer to Stage 3); or
 - e. the complaint is material and a full investigation is required by an independent investigator (refer to Stage 4). An alleged breach of section 5.5 of the Code is deemed to be material.
3. The CE may request further information/evidence from the complainant in support of the complaint and, if considered appropriate, may also request a preliminary statement in response from the respondent.

4. Where the CE and the Mayor (or Deputy Mayor) determines the complaint falls under paragraphs 2(a) or (c) above, the CE will inform the complainant and the respondent directly. The CE will also inform other Elected Members of the decision, unless there are grounds for the matter to remain confidential.

5. If it is determined that the complaint involves a potential legislative breach and is outside the scope of the Code, the CE will forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

6. Where the CE and Mayor (or Deputy Mayor) determine the complaint is material, the matter must immediately be referred to an individual investigator for assessment (Stage 4).

7. The CE has full discretion to refer any complaint to an independent investigator at any stage, even if it is considered not material.

8. The preliminary assessment of a complaint under Stage 2 will be completed within seven working days of receipt of the complaint. If additional time is required to complete the assessment, the CE must notify the complainant and respondent with the date when the preliminary assessment is expected to be completed.

Stage 3: Informal Resolution

9. Where the CE and the Mayor (or Deputy Mayor) determine the complaint falls under paragraph 2(d) (refer to Stage 2), they will endeavour to settle the matter informally between the parties within 10 working days from the completion of Stage 2. The process for informal resolution must be fair to, and include, the affected parties.

10. The outcome of this initial process may be that the parties reach an informal agreement to resolve the complaint, in which case no further action is required. A written record of the informal agreement must be kept by the CE's office.

11. If agreement is not possible between the parties under Stage 3, the CE will refer the complaint to an independent investigator for full investigation.

12. For clarity, Stage 3 is not available if the complaint has been assessed as material under Stage 2 or referred to an independent investigator under paragraph 7 above.

Stage 4: Independent Investigator Assessment

13. Where the CE and the Mayor (or Deputy Mayor) determines the complaint falls under paragraph 2(e) in Stage 2, or the complaint is not otherwise resolved, the CE will refer the complaint to an independent investigator selected from the approved Panel of Independent Investigators.

14. On receipt of a complaint the investigator will, if appropriate, assess whether:

- a. the complaint is frivolous or without substance and should be dismissed;

- b. the complaint is outside the scope of the Code and should be redirected to another agency or process;
- c. the subject of the complaint has previously been assessed and actions have been completed in accordance with the Code to address the complaint;
- d. the complaint is non-material; or
- e. the complaint is material and a full investigation is required.

15. The investigator must carry out their assessment in accordance with the principles in section 6.1 and within the terms of engagement provided by the CE. The assessment must be completed and sent to the CE as soon as possible, no later than 20 working days from the date the complaint is referred to the investigator (unless otherwise agreed with the CE).

16. In making the assessment, the investigator may make whatever initial inquiry is necessary to determine the materiality of an alleged breach and to recommend the appropriate course of action. The investigator has full discretion to recommend any complaint is dismissed which, in their view, fails to meet the test of materiality.

17. On receiving the investigator's assessment, the CE will:
- a. where an investigator determines that a complaint is frivolous or without substance or previously been assessed and actioned under the Code, inform the complainant and the respondent directly and inform other Elected Members (if there are no grounds for confidentiality) of the investigator's decision; or
 - b. in cases where the investigator finds that the complaint involves a potential legislative breach and is outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

Stage 4A: Actions where a breach is found to be non-material

18. The investigator will inform the CE if they find the breach is non-material as part of their assessment (under Stage 4), and, if they choose, recommend a course of action appropriate to the breach, such as the respondent:

- a. receiving direction from the Mayor (or Deputy Mayor, as appropriate) regarding behaviour or conduct expected from Elected Members;
- b. attending appropriate training or counselling to better understand the behaviour or conduct that is expected from Elected Members in circumstances that led to the complaint.

19. The CE, in consultation with the Mayor (or Deputy Mayor, as appropriate) may determine which recommendation, if any, from the independent investigator's assessment should be actioned. The CE will advise both the complainant and the respondent of the investigator's findings, which are not open to challenge, and any recommendations to be actioned. The CE will also notify other Elected Members, unless there are grounds of confidentiality. A written record must be kept by the CE's office.

20. If the CE and Mayor (or Deputy Mayor) do not agree on the investigator's recommendations to be actioned, the CE must report the investigator's assessment to the Council for determination (refer to Stage 5).

Stage 4B: Actions where a breach is found to be material

21. The investigator will inform the CE if they find that the breach is material as part of their assessment (Stage 4). The CE will then inform the complainant and respondent. The investigator will then prepare a report for the Council on the seriousness of the breach.

22. In preparing that report the investigator must:
- a. consult with the complainant, respondent and any affected parties; and
 - b. refer to any relevant documents or information provided by the CE, and may undertake a hearing with relevant parties.
23. On receipt of the investigator's report, the CE will prepare a report for the Council, which will meet within a month of the CE receiving the investigator's report, to:
- a. consider the findings of the investigator's report; and
 - b. determine whether a penalty, or some other form of action, will be imposed.

The CE's report will include the full report prepared by the investigator, including any recommendations.

24. The CE will share the investigator's report with the complainant and respondent under strict confidentiality inviting them to reply in writing as to whether they agree to the findings and whether they wish to make a written submission for consideration by the Council. The complainant and respondent must not disclose or discuss the investigator's report with any person other than the CE and/or the Mayor (or Deputy Mayor, as appropriate) prior to the Council meeting being held to determine the complaint.

Stage 5: The Council's consideration of an investigator's report

25. The CE's report (with the investigator's full report or assessment, and any submissions from the complainant or respondent, attached) will be considered by the full Council, excluding any interested members (including the complainant (if relevant) and respondent), only if:

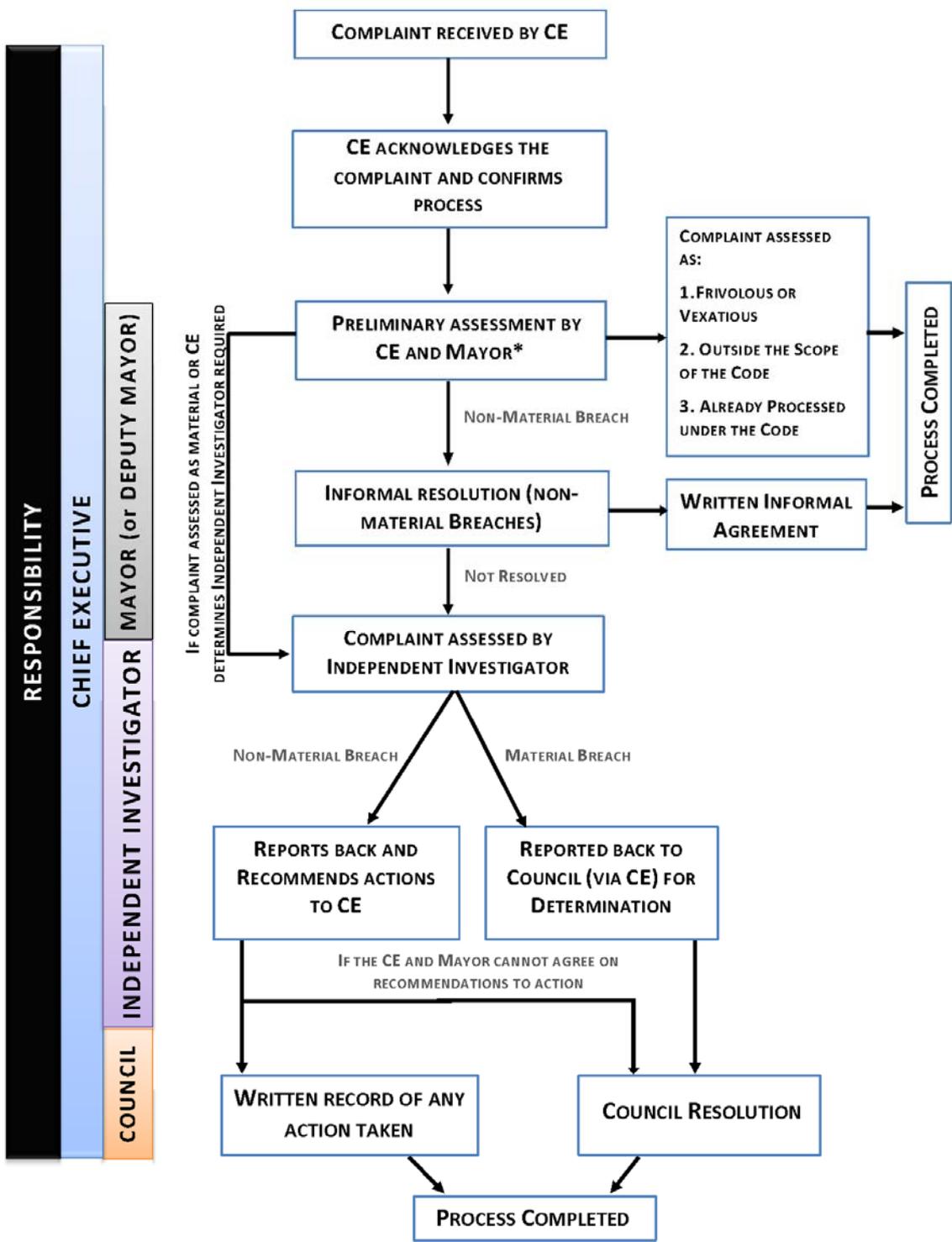
- a. the CE and Mayor do not agree on which recommendations from the investigator, if any, are to be actioned for a non-material breach (refer Stage 4A); or
- b. the breach is found to be material (refer Stage 4B).

26. The Council will consider the CE's report in an open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under section 48 of the LGOIMA, in which case it will be a Public Excluded meeting.

27. Before making any decision in respect of the investigator's report the Council will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings may not otherwise take part in these proceedings.

28. The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 6.3 of this Code.

Schedule 3 Appendix - Flowchart of Complaints Process



* OR THE DEPUTY MAYOR IF COMPLAINT IS AGAINST THE MAYOR

Code of Conduct – Summary of Key Changes from the Current Code

Section in the Draft Code	Proposed Change from Current Code
1. Scope	<ul style="list-style-type: none"> • Plain English
2. Application	<ul style="list-style-type: none"> • Summary of legislation relating to Elected Member conduct added. Detail set out in Schedule 1 still.
3. Principles of Governance	<ul style="list-style-type: none"> • Minor amendments to reflect sector practice.
4. Roles and Responsibilities	<ul style="list-style-type: none"> • New: Section sets out the roles and responsibilities of Elected Members, the Mayor, Deputy Mayor, Committee Chairpersons and Chief Executive. • Reflects sector practice.
5. Relationships and Behaviours	<ul style="list-style-type: none"> • New: Now covers behaviour expected between members, as required under the LGA (see section 5.1). • Minor amendments to reflect sector practice. • Clarity as to members’ obligations under LGOIMA in relation to Council information, as required under the LGA (refer to section 5.5). • Amendment to requirement for notification of gifts received (refer to section 5.6): <ul style="list-style-type: none"> - To be reported directly to the Governance Manager. - Gifts with a value of \$150 (currently \$300) to be included in the member’s register of interests. - Additional guidance on valuing recurring gifts from the same donor and the exclusion of event fees when acting as the Council’s appointed representative. • Clarity on financial and non-financial conflicts of interest (refer to section 5.7). More detail on Elected Members’ requirements in relation to conflicts is now set out in Schedule 2. • New: An Elected Member must notify the CE if they are declared an undischarged bankrupt, which will be recorded on the Register of Interests. Reflects sector practice (refer section 5.8). • New: Clarity on grounds that may result in an Elected Member being disqualified from holding office (refer section 5.9).

Section in the Draft Code	Proposed Change from Current Code
<p>6. Breach of the Code</p> <p>Schedule 3 – Process for the investigation and determination of complaints.</p>	<p>Revised process for dealing with complaints on breaches of the Code.</p> <ul style="list-style-type: none"> • New: Introduce underlying principles to guide the process for assessing and determining complaints made under the Code. Reflects sector practice (refer section 6.1). • New: Only Elected Members or the Chief Executive can formally lodge a complaint under the Code. Reflects sector practice (refer section 6.2). • Clarity on what is considered a material breach under the Code (refer to section 6.2). • New: Panel of independent investigators introduced to assess and provide recommendations on complaints. An investigator will be appointed if the alleged breach is material, a non-material breach is not resolved informally, or if the CE refers a complaint directly to an investigator. An independent investigator effectively replaces the current Complaints Committee; enhancing the objectivity and rigour of the process. • An increased list of penalties and actions available for the Council to consider in determining a member’s material breach of the Code (refer to section 6.3). • New: Clarity on process where the alleged breach relates to a breach of legislation, and where a breach of the Code occurs during a public meeting (refer to section 6.3). • New: Flowchart of the process to deal with complaints under the Code is added as an appendix to Schedule 3, for ease of reference.
<p>7. Review or changes to the Code</p>	<p>No changes.</p>
<p>Schedule 1 – Summary of Legislation</p>	<ul style="list-style-type: none"> • Updated content on applicable legislation relating to Elected Members’ conduct and obligations.
<p>Schedule 2 – Conflicts of Interest</p>	<ul style="list-style-type: none"> • New: More detailed explanation of conflicts of interests and Elected Members’ obligations. This includes clarity on what are financial and non-financial conflicts, as well as actual, potential and perceived conflicts, as required by Audit NZ.

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.

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. Confirmation of Council Minutes - Public Excluded - 8 February 2018) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Provisional Local Alcohol Policy - Options)	

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 enable Council to carry out commercial activities without disadvantage	Section 7 (2) (h) Section 7 (2) (i)
Item C2.	to enable Council to carry out negotiations	
	to maintain legal professional privilege	Section 7 (2) (g)
	to enable Council to carry out negotiations	Section 7 (2) (i)