

Notice of Meeting:

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

Date: Thursday 25 June 2020
Time: 9.30am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Council *Kaunihera* OPEN AGENDA

Membership

Chairperson	Mayor P Southgate
Deputy Chairperson	Deputy Mayor G Taylor
Members	Cr M Bunting
	Cr M Forsyth
	Cr M Gallagher
	Cr R Hamilton
	Cr D Macpherson
	Cr K Naidoo-Rauf
	Cr A O'Leary
	Cr R Pascoe
	Cr S Thomson
	Cr M van Oosten
	Cr E Wilson

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly – or as required

Becca Brooke
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Menetia Mana Whakahaere
17 June 2020

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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.
- i) Approval of all Council and Committee Advisory Groups and their terms of reference.
- j) Appointments to, and removals from, CCO CCTO and CO boards;
- k) Approval of proposed major transactions or constitutional adjustments of CCOs, CCTOs and COs.
- l) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- m) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- n) Approval Activity Management Plans.

Oversight of Policies and Bylaws:

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

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1 Apologies - *Tono aroha*

2 Confirmation of Agenda - *Whakatau raarangi take*

The Council to confirm the agenda.

3 Declaration of Interest - *Tauaakii whaipaaanga*

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 - *AAtea koorero*

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 five 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 6727.

Council Report

Committee: Council **Date:** 25 June 2020
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Governance Team Leader **Position:** Governance Manager
Report Name: Confirmation of the Council Open Minutes of 28 May 2020

Report Status	<i>Open</i>
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Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Minutes of the Council Meeting held on 28 May 2020 as a true and correct record.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Council Open Unconfirmed Minutes of 28 May 2020

Council Kaunhera OPEN MINUTES

Minutes of a meeting of the Council held via an Audio Visual Link on Thursday 28 May 2020 at 10.00am.

PRESENT

Chairperson	Mayor P Southgate
Deputy Chairperson	Deputy Mayor G Taylor
Members	Cr M Bunting
	Cr M Gallagher
	Cr R Hamilton
	Cr D Macpherson
	Cr K Naidoo-Rauf
	Cr A O’Leary
	Cr R Pascoe
	Cr S Thomson
	Cr M van Oosten
	Cr E Wilson

In Attendance:	Richard Briggs – Chief Executive
	David Bryant – General Manager Corporate
	Lance Vervoort – General Manager Community
	Chris Allen – General Manager Development
	Jen Baird – General Manager City Growth
	Sean Hickey – General Manager Strategy and Communications
	Eeva-Liisa Wright – General Manager Infrastructure Operations
	Sean Murray - General Manager Venues, Tourism and Major Events
	Blair Bowcott – Executive Director Special Projects
	Tracey Musty – Financial Controller
	Sandra Murray - Consultant
	Emily Botje – Facilities Unit Manager
	Claire Foster – Property Officer
	Lee-Ann Jordan – Visitor Destinations Manager
	Alice Morris – Principal Planner
	Muna Wharawhara – Amorangi Maaori
	Rebecca Whitehead – Business and Planning Manager
	Natalie Palmer – Unit Manager Communications and Marketing
	Lauradanna Radesic – Team Leader Great River City Communication
	Wendy O’Neil – Strategic Property Team Leader
	Paul Blewman – City Safe Operations Manager

Governance Staff:	Becca Brooke – Governance Manager
	Amy Viggers – Governance Team Leader
	Ian Loiterton and Carmen Fortin - Governance Advisors

The meeting was opened with a karakia by Muna Wharawhara, Amorangi Maaori.

1. Apologies

Resolved: (Deputy Mayor Taylor/Cr Wilson)

That the apologies for lateness from Cr O'Leary, and for partial attendance (due to Council business) from Mayor Southgate are accepted.

2. Confirmation of Agenda

Resolved: (Mayor Southgate/Cr Wilson)

That the agenda is confirmed noting that the order of items is to be flexible to accommodate Elected Members availability.

3. Declarations of Interest

No members of the Council declared a Conflict of Interest.

4. Public Forum

No members of the public wished to speak.

5. Confirmation of the Council Meeting Open Minutes - 30 April 2020

Resolved: (Cr Bunting/Deputy Mayor Taylor)

That the Council confirm the Open Minutes of the Council Meeting held on 30 April 2020 as a true and correct record.

6. Confirmation of the Elected Member Open Briefing Notes - 6 May 2020.

Resolved: (Cr Bunting/Cr Wilson)

That the Council confirm the Open Notes of the Elected Member Briefing held on 6 May 2020 as a true and correct record.

7. Confirmation of the Elected Member Open Briefing Notes - 13 May 2020

Resolved: (Cr Wilson/Cr Bunting)

That the Council confirm the Open Notes of the Elected Member Briefing held on 13 May 2020 as a true and correct record.

8. Chair's Report

The Chair took the report as read.

Resolved: (Deputy Mayor Taylor/Cr Wilson)

That the Council:

- a) receives the report; and
- b) notes that staff have proceeded with developing Electoral System Review engagement material, and that there will be a further opportunity for input from Elected Members into the final material at the appropriate time.

9. Fees and Charges (including GST) Proposed for Year 3 2020 21 of the 2018-28 10-Year Plan

The Financial Controller took the report as read. Staff responded to questions from Elected Members concerning building compliance fees and implications to Council, hireage fees in relation to Hamilton Zoo, wedding fees for the Hamilton Gardens, fines for rubbish dumping, and the removal of the seized skateboard release fee due to the change in the bylaw.

Resolved: (Cr Gallagher/Cr Thomson)

That the Council:

- a) approves the proposed 2020/21 Fees and Charges noting the removal of the new fees in relation to Council facilities and hiring of prams, wheelchairs and electric wheelchair fees
- b) request staff report to a future meeting of the Community Committee concerning all prams, wheelchairs and electric wheel chair fees; and
- c) noting the fees do not apply to structures exempt under schedule 1 of the Building Act.

Cr Forsyth Dissenting.

Cr O'Leary joined the meeting (10.12am) during the discussion of the above item.

Mayor Southgate left the meeting (10.34) during the discussion of the above item. She was not present when the matter was voted on.

Cr O'Leary left the meeting (10.35am) during the discussion of the above item. She was not present when the matter was voted on.

Following item 9 (Fees and Charges (including GST) Proposed for Year 3 2020 21 of the 2018-28 10-Year Plan) item 11 (Open Air Burning Bylaw 2015 review) was taken to accommodate Elected Member availability.

11. Open Air Burning Bylaw 2015 review

The General Manager City Growth took the report as read. Staff responded to questions from Elected Members concerning Incinerator fires within the boundaries of Hamilton City Council, the scope of the bylaw, and the role of District Council.

Resolved: (Cr Hamilton/Cr Wilson)

- a) receives this report; and
- b) defers the decision on the matter of the Open Air Burning Bylaw 2015 to a future meeting of the Council or appropriate Council Committee.

Cr O'Leary joined the meeting (10.57am) during the discussion of the above item. She was present when the matter was voted on.

Following item 11 (Open Air Burning Bylaw 2015 review) item 12 (Municipal Endowment Lease - Freeholding - 258 Fox Street) was taken to accommodate Elected Member availability.

12. Municipal Endowment Lease - Freeholding - 258 Fox Street

The General Manager City Growth took the report as read. Staff responded to questions from Elected Members concerning the Municipal Endowment fund, valuation of the property, and first right of refusal obligations.

Staff Action: Staff undertook to organise a briefing on the Municipal Endowment Fund.

Resolved: (Cr Wilson/Cr Hamilton)

That the Council:

- a) approves the sale of the freehold interest described in the Schedule to the lessee for a price of not less than \$380,000 (Three hundred and Eighty Thousand Dollars) including GST (if any);
- b) authorises the Chief Executive to prepare and execute an Agreement for Sale and Purchase; and any other instruments required to give effect to this resolution; and
- c) all proceeds from the sale will be credited to the Municipal Endowment Fund Cash investment fund.

SCHEDULE

All that piece of land situated in the city of Hamilton containing 558m² (more or less) being Lot 13 DPS 35611 and being all the fee simple land comprised in Certificate of Title SA9D/1231 situated at 258 Fox Street, Hamilton.

The meeting was adjourned 11.44 to 12.01pm.

Mayor Southgate re-joined the meeting during the above adjournment.

10. Contractors Minimum Wage

The Facilities Unit Manager spoke to the report and noted the figure for the cleaning and security contracts was incorrect. The \$213k should be \$107k being the financial impact forecasted for the 2020/21 year. Staff responded to question from Elected Members concerning the tendering process, cost to Council, feedback from stakeholders, the effect of the changes to the minimum wage, and how the Council's minimum wage linked with the living wage.

Motion: (Cr van Oosten/Cr Macpherson)

That the Council approves Council's Minimum Wage be applied to all new contracts and its application is negotiated as part of the procurement process for contracts tendered from 1 July 2020.

Amendment: (Cr Wilson/Mayor Southgate)

That the Council approves Council's Minimum Wage be applied to all new contracts with a term of three years or greater and its application is negotiated as part of the procurement process for contracts tendered from 1 July 2020.

Further Amendment: (Cr Forsyth/Cr Bunting)

That the Council:

- a) receives the report; and
- b) defers the decision on the matter to a future meeting of the Council.

The Amendment was put.

Those for the Amendment:

Mayor Southgate, Councillors Wilson, van Oosten, Thomson, Gallagher, O'Leary and Macpherson.

Those against the Amendment: Deputy Mayor Taylor, Councillors Forsyth, Pascoe, Bunting, Hamilton and Naidoo-Rauf.

The Amendment was declared CARRIED.

The Amendment as a Substantive Motion was then put and declared CARRIED.

Resolved: (Cr Wilson/Mayor Southgate)

That the Council approves Council's Minimum Wage be applied to all new contracts with a term of three years or greater and its application is negotiated as part of the procurement process for contracts tendered from 1 July 2020.

Those for the Substantive Motion: Mayor Southgate, Councillors Wilson, van Oosten, Thomson, Gallagher, O'Leary and Macpherson.

Those against the Substantive Motion: Deputy Mayor Taylor, Councillors Forsyth, Pascoe, Bunting, Hamilton and Naidoo-Rauf.

The meeting adjourned 1.59pm to 2.49pm.

Following the above adjournment item 15 (Review of additional Maangai Maaori Representation on the Strategic Growth Committee) was taken to accommodate availability.

15. Review of additional Maangai Maaori Representation on the Strategic Growth Committee

The Governance Manager and Amorangi Maaori took the report as read and responded to from Elected Members concerning the appointment and engagement. Maanagi Thompson-Evans notes that Waikato Tainui were in full support of the staff recommendation.

Resolved: (Cr Macpherson/Cr Gallagher)

That the Council:

- a) notes that Waikato Tainui, Te Ruunanga o Kirikiriroa (**TROK**, representing Maataawaka) and Maangai Maaori are supportive of the recommendation to extend Maangai Maaori representation on the Strategic Growth Committee to include a Maataawaka representative (in addition to the existing Waikato Tainui representative);
- b) approves Maataawaka Maangai Maaori Olly Te Ua be appointed to the Strategic Growth Committee;
- c) notes the estimated funding implications for the proposed additional member, being an extra \$14,400 per annum will be included as part of the 2020/2021 Annual Plan process; and
- d) delegates the General Manager Corporate to execute variations to the individual kawenata with Maangai Maaori Olly Te Ua to give effect to the proposed change.

13. Hamilton Gardens Draft Management Plan

The General Manager Community spoke to the report and outlined process should the staff recommendation be resolved. Staff responded to questions from Elected Members concerning consultation process, feedback from stakeholders, the focus being specific to the Rhododendron Lawn, and the hearing process and panel.

Resolved: (Cr Bunting/Mayor Southgate)

That the Council:

- a) receives the report;
- b) approves further public consultation on the specific matter of the future of the Rhododendron Lawn as part of the draft Hamilton Gardens Management Plan for a period of one month; and
- c) delegates the Mayor, Deputy Mayor, Chair and Deputy Chair of the Community Committee and General Manager Community to finalise the timing, content and means of public consultation to ensure the best possible reach within the community within constraints determined by any Covid-19 Alert Level in place at the time.

Cr Pascoe Dissenting.

Following item 13 (Hamilton Gardens Draft Management Plan) item 16 (Open Recommendations from Committees to the Council) was taken to accommodate availability.

16. Open Recommendations from Committees to the Council

The report was taken as read.

Resolved: (Cr Bunting/Cr Wilson)

Hamilton-Waikato Metro Area Wastewater Project

That the Council:

- a) delegates authority to the Chief Executive to commit up to \$660,000 (based on 50% contribution) to deliver the detailed business case for the Southern Metro Wastewater solution in partnership with neighbouring local authorities;
- b) notes that operating budget availability in FY19/20 will be used to fund the HCC financial contribution and unspent 2019/20 budget will be transferred across into the FY20/21 Annual Plan using the Chief Executive annual plan submission process;
- c) delegates authority to the Chief Executive to determine the timing of the detailed business case for the Northern Metro Wastewater Solution and a funding plan for that work and report back to the Strategic Growth Committee;
- d) approves the governance structure and roles and responsibilities described in the Hamilton-Waikato Metro Wastewater Project Terms of Reference;
- e) approves the current Future Proof representatives as the governance group representatives for HCC (currently the Mayor and Chair of the Strategic Growth Committee); and
- f) delegates authority to the HCC governance group representatives to approve the terms of reference upon establishment of the governance group and including amendments resulting from feedback from other partners.

Hamilton Safety in Public Places Bylaw 2014

That the Council:

- a) approves that a bylaw is the most appropriate way of addressing the perceived problems in relation to controlling nuisance behaviour in Hamilton; and
- b) approves consultation for one month from 1 June to 30 June 2020 on the proposed Hamilton Safety in Public Places Bylaw and Statement of Proposal.

Council Owned Dwellings

That the Council:

- a) approves the removal of houses at **18A Ruakiwi Road** with funding of \$40,000 per dwelling be provided in the 2020/21 Annual Plan;
- b) approves the removal of the house at **140A Cobham Drive** with funding to be provided through the proposed 10 Year Plan; and
- c) requests staff to carry out investigations on opportunities for future use of **88 Crosby Road** and report back to the Community Committee with recommendation(s), with funding of \$10,000 to be provided through the 2020/21 Annual Plan to enable the investigations.

14. 2019/20 Heritage Fund Extension of payments into 2020/21

The Principal Planner spoke to the report noting the exception to the Historic Heritage Fund Guidelines was in direct response of Covid-19. Staff responded to questions from Elected Members concerning if there were any other heritage related consequences from Covid-19.

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

That the Council:

- a) receives the report; and
- b) approves payment of the 2019/20 Heritage Fund allocations after 30 June 2020, as an exception to the Historic Heritage Fund Guidelines.

17. Resolution to Exclude the Public

Resolved: (Mayor Southgate/Cr Bunting)

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 the Council Meeting Public Excluded Minutes - 30 April 2020) Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
C2. Confirmation of the Elected Member Closed Briefing Notes - 6 May 2020.)	
C3. Confirmation of the Elected Member Closed Briefing Notes - 13 May 2020.		

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- C4. Wairere to Cobham Drive
Extension Project
- C5. Waikato River Works -
Contract Award

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

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C3.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C4.	to enable Council to carry out commercial activities without disadvantage	Section 7 (2) (h)
Item C5.	to avoid the unreasonably, likely prejudice to the commercial position of a person who supplied or is the subject of the information	Section 7 (2) (b) (ii)

The meeting went into a public excluded session at 4.03pm

During the public excluded session of this meeting the following was resolved:

C3. Confirmation of the Elected Member Closed Briefing Notes - 13 May 2020

Resolved: (Cr Hamilton/Cr Wilson)

That the Council:

- a) confirms the Closed Notes of the Elected Member Briefing held on 13 May 2020 as a true and correct record; and*
- b) notes that the information be released to the public at the appropriate time, to be determined by the Chief Executive.*

The meeting was declared closed at 5.04pm

Appendix 1

Elected Member Briefing Notes – 13 May 2020 – Closed

Time and date:	10.03am, 13 May 2020
Venue:	Via Audio Visual Link
In Attendance:	Mayor Southgate, Crs Bunting, Gallagher, Hamilton, Macpherson, Naidoo-Rauf, van Oosten, Wilson, Pascoe, O’Leary, Thomson.
Apology for Full Session:	Deputy Mayor Taylor, Cr Forsyth, Maangai Hill, Thompson-Evans, Whetu, Te Ua.
Apologies for lateness/early departure:	Cr Gallagher

Discussion

The briefing session covered the following topics in a closed session.

- Financial Strategy

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

1. Financial Strategy
(Presentation was provided)

The General Manager Corporate and the Financial Controller explained that the purpose of the presentation was to provide an overview of the current financial strategy, the 12 guiding financial principals and the process of review.

Members asked questions in relation to the following:

- Current credit agency;
- New LGFA guidelines concerning debt to revenue ratios;
- Risks and investment relating to the climate action plan; and
- Endowment funds.

Council Report

Committee: Council **Date:** 25 June 2020
Author: Amy Viggers **Authoriser:** Becca Brooke
Position: Governance Team Leader **Position:** Governance Manager
Report Name: Confirmation of the Elected Member Briefing Open Notes 27 May 2020

Report Status	<i>Open</i>
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Staff Recommendation - *Tuutohu-aa-kaimahi*

That the Council confirm the Open Notes of the Elected Member Briefing held on 27 May 2020 as a true and correct record.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Elected Member Briefing Open Unconfirmed Briefing Notes

Elected Member Briefing Notes – 27 May 2020 – Open

Item 6

Attachment 1

Time and date:	10.04am, 27 May 2020
Venue:	Audio Visual Link
In Attendance:	Mayor Southgate, Deputy Mayor Taylor, Councillors Hamilton, van Oosten, Thomson, Wilson, Naidoo-Rauf, Forsyth, Bunting, Macpherson, Macpherson, Pascoe, and Gallagher.
Apology for Full Session:	Maangai Hill, Te Ua, Whetu, and Thompson-Evans.
Apologies for lateness/early departure:	Cr Bunting, Cr Macpherson, Cr Pascoe, Deputy Mayor Taylor, Gallagher.

Discussion

The briefing session covered in an open session.

- Infrastructure Funding and Financing (IFF) Model
- Peacocke Structure Plan

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

1. **Infrastructure Funding and Financing (IFF) Model** (Presentation was provided)

The Project Manager of City Growth explained that the purpose of the presentation was to provide Members with the next layer of detail on the IFF model and seek direction on the business case. The Growth, Funding and Analytics Unit Manager further explained the function and purpose of the IFF model and the options Council have through it.

Members asked questions in relation to the following:

- Options in relation to taking advantage of low interest rates, reduction in use of bonds, title levy
- The potential impact the model could have including, increased affordability for end users and developers, reduced the compliance and regulatory risks, the ability to pay full cost upfront, and reduced infrastructure capital spend
- Risk to Council
- Governance Structure and representation
- Influence of SPV governance group on Council infrastructure projects
- Responsibility of defaulted rates through SPV
- Regulators in place to reduce housing purchase prices
- Ensuring that the end user or developers do not get hit twice with DCs and levies
- Collaboration with property council
- Focus of the Wellbeings
- Contribution of new growth cells to biodiversity
- Capability to acquire land for community or environmental facilities

2. Peacocke Structure Plan
(Presentation was provided)

The Growth Programmes Manager and Senior Planner explained that the purpose of the presentation was to get feedback and direction from Elected Members in regards the proposed Peacocke Plan Change process. Staff then provided a brief overview of the investment within the area and the impact of the proposed changes, with a focus on the desired wellbeing outcomes for the future residents.

Members asked questions in relation to the following:

- The impact of density including on cost for developers, public transport, gully sections
- The location of key transport routes, roads near gullies and high-density housing
- Process within District Plan and Structure Plan
- Extent which the Council has a say in permeability
- Mitigation of stormwater runoff from road
- Density of retirement village and differences of zoning and consents
- Development Contributions
- Potential of reducing maintenance costs
- The land within Waipa District Council boundary
- Land owned by Housing NZ
- Opportunities through Council or the Endowment Fund to leverage on uplift opportunities
- Possibility of Council to gift land to Endowment Fund
- Use of Urban Design Panel

Staff action: *Staff undertook to organise the following:*

- *a further discussion in regard to the structure plan for the Peacocke area.*
- *a tour in order to show the Members the plan and locations.*
- *a report to go to the Central City and River Plan Advisory Group in regard to the Peacocke development and available walkways around the river and central city.*

Staff action: *Staff undertook consideration of mixed transport or cycleways in structure plan*

Council Report

Item 7

Committee: Council

Date: 25 June 2020

Author: Amy Viggers

Authoriser: Becca Brooke

Position: Governance Team Leader

Position: Governance Manager

Report Name: Chair's Report

Report Status	<i>Open</i>
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Recommendation - *Tuutohu*

That the Council receives the report.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Chair's Report



Chair's Report

Annual Plan

Thank you Councillors for your hard work through the Annual Plan process. We had some long days and big debates. Now is the time for the public to have a say. The draft Annual Plan *Back on track: Hamilton's COVID-19 response budget* will be published prior to this Council meeting. I urge all of you to engage your networks and encourage as many people, from as wide a range of backgrounds as possible, to give us their views on the consultation. COVID-19 is affecting people right across the community, so it's crucial that everyone who wants to have their say can do so.

RMA Panel Appointments

At its meeting of 30 April 2020, Council considered appointments to the RMA Commissioners Panel. Council resolved to appoint Commissioners for a period of six months, and to revisit the panel at that point with a view to appointing a more diverse panel. At that meeting Council resolved to request that "staff report back as soon as possible to a future Council Meeting on the overall commissioner appointment process and how diversity of the panel can be increased". The draft minutes also contain the following staff action: "Staff undertook to review the procurement process to ensure Elected Member concerns are addressed in relation to diversity".

Staff advise that the approved list of Commissioners have been appointed for six months. The process taken to appoint the panel was as follows:

- A public Request for Expressions of Interest in becoming a panel member was issued, and all accredited commissioners for whom email addresses are held were notified.
- Fifty-two responses were received. A Tender Evaluation Team evaluated the responses using the Mandatory Assessment Criteria (being an accredited hearings commissioner and accepting the Council's proposed contract terms) on a pass or fail basis.
- A quality-based assessment then took place, looking for a broad range of skills and experience in such areas as ecology/environmental science, urban design, heritage, landscape architecture, transportation, local government and property law, social science, Tikanga Maaori, mediation and planning. Experience as a hearings commissioner in different contexts and under different legislative procedures also ranked highly.
- The respondents were separately and independently assessed by each team member for relevant skills (weighted 42.5%), experience (42.5%), Hamilton City knowledge (10%) and local impact (5%). Each respondent's scores were then aggregated (with any outliers moderated) and weighted accordingly.

The process was undertaken in line with Council's standard procurement practices, and good practice and probity advice was provided by Council's barrister.

Staff consider that a project to increase diversity should have wider application than just the RMA Commissioners Panel. Accordingly work is now underway on a broader diversity and inclusion project for application across all of Council's activities as appropriate. This work programme is in its early stages, but the intention is that it will influence the process in the next RMA Commissioners Panel appointments round whether the outputs of the project have been finalised at that point or not. Staff will brief Council ahead of commencing the next RMA Commissioners Panel appointments process to discuss the new approach that will be taken to the appointments process with a view to encouraging a more diverse pool of applicants and appointing a more diverse panel.

Rototuna Village – Area Q

As Councillors are aware, Council own a plot of land located between the Hamilton Christian School and Korikori Park at Rototuna (referred to here as Area Q). The land was zoned High Density Residential for a number of reasons including supporting the viability of the nearby Rototuna Village and enhancing real and perceived security and safety for the park, village and adjacent school. Hamilton Christian School approached Council to purchase the land to respond to a planned expansion of their school role. In September 2019 Council asked staff to work with Hamilton Christian School to *identify if there are options for the Area Q land that enable the school roll to expand, while retaining positive outcomes for the village and sports park, with staff reporting back to Council before June 2020*. Further background on this topic can be found in the 17 September 2019 Public Excluded Report to Council.

The school has been otherwise focused on responding to their recent Integration as a State School and COVID19. However, they have recently appointed a Business Manager who has undertaken to provide an outline of their plans for Area Q and summary of their timeframes. This will enable conversations to recommence regarding the future use for the area and the mechanisms by which agreement can be achieved. The school is proposing a gymnasium for the site and have signalled an interest in exploring opportunities to partner with Council, in a manner similar to The Peak (which is currently at capacity). Staff will report back in September 2020 at the latest.

Recommendation

That the Council receives the report.

Paula Southgate
Mayor Hamilton City

Council Report

Committee: Council **Date:** 25 June 2020
Author: Paul Ryan **Authoriser:** Jen Baird
Position: Principal Planner **Position:** General Manager City Growth
Report Name: Appeal to the Waikato Regional Council's Decisions Version of Proposed Plan Change 1 - Healthy Rivers/Wai Ora

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

1. To seek the Council's approval of **Draft 2** Notice of Appeal to the Environment Court against the Waikato Regional Council's (WRC's) decisions on *Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments* (PC1 - the Healthy Rivers Plan Change) (**Attachment 1**).

Staff Recommendation - *Tuutohu-aa-kaimahi*

2. That the Council:
 - a) receives the report;
 - b) approves the Draft 2 Notice of Appeal against the Waikato Regional Council's decisions on 7 provisions in Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments and seeking the addition of 2 new definitions (**Attachment 1**);
 - c) notes that, following the Council's approval of the Draft 2 Notice of Appeal, it will be lodged with the Environment Court by the appeal closing date, 8 July 2020;
 - d) approves the Council's becoming a Section 274 party (as per the Resource Management Act 1991) to any other appeals that have the potential to affect the Council's interests; and
 - e) notes that any Section 274 Notices must be lodged by 29 September 2020.

Executive Summary - *Whakaraapopototanga matua*

3. PC1 includes new objectives, policies and rules in the Waikato Regional Plan to improve management of contaminants discharged to land and water in the Waikato and Waipā River catchments. It focuses on managing 4 contaminants: nitrogen, phosphorus, sediment and bacteria. It is WRC's first step towards achieving, over an 80-year period, water quality in the Waikato and Waipā Rivers and their tributaries that is safe for swimming and harvesting food.
4. The Council will face significant technical challenges and significant future costs because of PC1.
5. The Council made submissions and further submissions on PC1, and legal submissions and planning evidence were presented on the Council's behalf at the hearings in 2019.

6. WRC notified its decisions on PC1 on 22 April 2020.
7. The Council's options for responding to the Decisions Version of PC1 are:
 - (1) Do nothing; or
 - (2) Lodge no appeal, but become a Section 274 (s274) party to any other parties' appeals; or
 - (3) Lodge an appeal and become a s274 party to any other parties' appeals.
8. Staff recommend Option 3, because it offers the best opportunity to achieve outcomes that are satisfactory for the Council and ensures the Council's ongoing participation in the process to influence outcomes to promote the social, economic, environmental and cultural wellbeing of its community.
9. Staff have reviewed the decisions and, aligned with its legal advice to date, recommend the Council appeals the decisions on 7 provisions and seeks 2 new definitions to be included in PC1. Draft 2 Notice of Appeal is attached to this report (Attachment 1). It aims to improve the clarity of those provisions and the certainty of their interpretation.
10. All but one of these matters should be able to be resolved in Environment Court mediation, as they are not considered to be controversial in the context of the Decisions Version of PC1.
11. The amendments sought to Policy 13i are more sensitive and may need to be heard in Court. These amendments seek to retain the status quo with respect to mixing zones associated with point source discharges. Anecdotal comments from other stakeholders indicate that this is likely to be the subject of appeal. It is therefore important that the Council sets out its position at the outset.
12. In addition to the Council's appeal, by becoming a party, in accordance with s274 of the Resource Management Act (the RMA), to others' appeals that have the potential to affect the Council's interests, the Council will be able to participate in any mediation or hearing of those appeals.
13. The cost of pursuing an appeal and becoming a s274 party is estimated to range between \$46,000 and \$132,000, including for staff and legal costs. These costs will be met within existing budgets.
14. The Council's involvement in the PC1 appeal process will promote the social, economic, environmental and cultural wellbeing of communities.
15. The recommendations comply with the Council's legal and policy requirements.
16. No public engagement is required regarding the decision to participate in the PC1 appeals.

Background - Kooreo whaimaarama

17. PC1 is the WRC's first step on an 80-year journey to achieve improved water quality that is safe for food gathering and swimming along the entire length of the Waikato and Waipaa Rivers and their tributaries. This is one of the objectives of Te Ture Whaimana o Te Awa o Waikato (Te Ture Whaimana - the Vision and Strategy for the Waikato River), which is the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.
18. The Decisions Version of PC1 also gives effect to the National Policy Statement for Freshwater Management (NPS-FM) (the 2014 version and, in part, the 2017 version. Further reform of the NPS-FM is expected this year.)
19. It introduces to the Waikato Regional Plan new objectives, policies and rules to manage both point source discharges (such as wastewater and stormwater from towns and industries) and diffuse discharges from rural activities. It also includes new rules to manage the latter

discharges; the rules for managing point source discharges are within the operative Regional Plan.

20. PC1 focuses on managing 4 contaminants: nitrogen, phosphorus, sediment and bacteria.

Implications of PC1 for the Council

21. Consultants have advised the Council that it will face significant technical challenges and significant future costs when trying to meet PC1's water quality requirements and accommodate population growth.
22. PC1 will require the Council to design, construct and operate its three waters infrastructure to make an appropriate contribution to achieving short-term and 80-year water quality attribute states. It will also require the Council to ensure that urban growth will improve water quality in the receiving waters – streams, lakes or the Waikato or Waipaa Rivers.

Summary of the Council's Involvement in PC1

23. The Council was involved in the development of PC1. It supported the local government representative on the Collaborative Stakeholder Group, which drafted PC1, and provided feedback on the draft plan change in August 2016. The Council made submissions on PC1 in March 2017 and further submissions in September 2018. The Council presented planning evidence and legal submissions to the hearings in 2019.
24. City Planning and City Waters staff analysed the Decisions Version of PC1 and determined that an appeal was warranted. The results of this analysis were shared with Elected Members and Maangai Maaori on 19 May 2020.
25. A Zoom "drop-in" session was held for Elected Members and Maangai Maaori on 21 May 2020. This session considered the Regional Council's decisions on PC1, their implications for the Council and the matters recommended for appeal.
26. Elected Members and Maangai Maaori who participated in the session generally endorsed the Council's involvement in the PC1 appeal process.
27. Draft 1 was then circulated to Elected Members and Maangai Maaori on 4 June 2020, inviting feedback.
28. No comments were received, so the **Draft 2** Notice of Appeal attached to this report is the same as that circulated previously, except at paragraph 46 (Attachment 1).

Matters Recommended for Appeal

29. The Notice of Appeal is self-explanatory. It identifies deficiencies in the Decisions Version of PC1 and the relief, i.e. the amendments to PC1, the Council seeks to remedy them.
30. All the appeal points seek to improve the clarity and certainty of PC1 on matters relevant to the Council's interests.
31. With one exception, the matters recommended for appeal seek to correct what could be described as minor policy drafting oversights.
32. It is anticipated that that these matters should be able to be resolved through Environment Court-organised mediation and are therefore unlikely to need to progress to a Court hearing.
33. The one exception concerns Policy 13i.

Policy 13i about "Reasonable Mixing"

34. The Hearing Panel's decision on Policy 13i relating to "reasonable mixing" has significant implications for the Council.

35. The Hearing Panel concluded that the concept of “reasonable mixing”, as provided for in Policy 3.2.3.8 of the operative Waikato Regional Plan, is not necessarily consistent with Te Ture Whaimana. They thought that each proposal relying on reasonable mixing needs to be analysed and justified.
36. The Decisions Version of PC1 includes the following new policy, Policy 13i:
The application of reasonable mixing (in accordance with Policy 3.2.3.8) may be acceptable as a transitional measure during the life of this Chapter.
37. Policy 3.2.3.8 of the operative Waikato Regional Plan provides for mixing zones downstream of point source discharges in which the standards specified in the water management class for the receiving water body do not need to be achieved.
38. The Council’s existing point source discharge from the Pukete Wastewater Treatment Plant relies on provision for reasonable mixing. If a mixing zone downstream of this discharge were unacceptable, then additional treatment would be required to meet the specified water quality standards at the point of discharge. For the Wastewater Treatment Plant, the cost of the additional treatment is estimated to be of the order of millions of dollars.
39. Any need to provide additional treatment would occur following a review or renewal of the discharge consent.
40. To the extent that Policy 13i signals that mixing zones “may be acceptable”, it is permissive. It will provide the Council, when applying for a point source discharge consent, policy support for a case that a mixing zone is acceptable for that discharge.
41. However, PC1 provides no guidance or criteria for determining under what conditions a mixing zone would be acceptable. There is no guarantee that the Council could rely on mixing zones being acceptable for its discharge from the Pukete Wastewater Treatment Plant. This is a significant concern for the Council.
42. The Decisions Version of PC1 sets an 80-year timeframe for achieving water quality in the rivers that is safe for swimming and food harvest. Therefore, there should be no requirement to eliminate mixing zones in the early stages of the 80-year period.
43. Accordingly, it is recommended that the Council’s relief seeks retention of the status quo, with respect to mixing zones, for the life of PC1, as follows:
 - i. *The application of **reasonable mixing** (in accordance with Policy 3.2.3.8) ~~may be is~~ acceptable as part of a transitional measure during the life of this Chapter staged approach to implementing Te Ture Whaimana in accordance with Policy 13d.*
44. The Council’s legal advisors have endorsed this wording.
45. Because of the sensitivity of this appeal point, it may need to be heard in the Court.

Becoming a s274 Party to others’ Appeals

46. Section 274 of the RMA provides for the Council to become a party to others’ appeals. It is recommended the Council use this opportunity to ensure it can participate in any mediation or hearing to support or oppose any appeals that have the potential to affect the Council’s interests.
47. Staff will review the appeals lodged to identify those to which the Council should become a party and then prepare and lodge a Section 274 Notice.
48. The Environment Court has extended to 29 September 2020 the period for lodging Section 274 Notices.
49. It is not proposed to involve Elected Members or Maangai Maaori in the s274 process.

Options

50. The Council could respond to the Decisions Version of PC1 in either of the following ways:
- (1) Do nothing; or
 - (2) Lodge no appeal, but become a s274 party to any other parties' appeals; or
 - (3) Lodge an appeal and become a s274 party to any other parties' appeals.

Discussion - *Matapaki*

51. Adopting Option 1 and doing nothing would mean that the Council would have no opportunity to influence the Environment Court's decisions on any other parties' appeals on PC1. If the Council were not represented at the appeal-negotiating table, or in the Court, then there would be a potential risk that others' appeals could unpick some of the gains the Council has made through the submission and hearing process or make PC1 requirements more onerous for the Council. Alternatively, if there were no appeals on the provisions that the Council staff have identified are deficient, then they would remain.
52. Option 2 would provide the Council the opportunity to influence the Environment Court's decisions on other parties' appeals, but only within the scope of those appeals.
53. Option 3 would provide the Council with the greatest potential to influence the Environment Court to make a decision that is more favourable to the Council.
54. The only identified risk of Option 3 is a risk to the Council's reputation because of the amendments recommended to Policy 13i. These may be perceived by others as the Council avoiding its responsibilities to implement Te Ture Whaimana. However, to counter this, these amendments acknowledge that acceptance of mixing zones is part of the staged approach to implementing Te Ture Whaimana. Also, any mixing zones must be minimised, satisfy other Policy 3.2.3.8 considerations, and be the best practicable option for disposing of the associated contaminants, among other things. The Council wishes to retain the ability to use reasonable mixing because it anticipates it will be extremely difficult to do otherwise.
55. Staff recommend Option 3 because it offers the best prospect of achieving outcomes that are satisfactory for the Council. As was succinctly stated during the drop-in session on 21 May 2020: "You have to be in it to win it".

Financial Considerations - *Whaiwhakaaro Puutea*

56. Since the notification of PC1, the Council's direct involvement in the plan change process has cost about \$180,000 in total. This includes for staff, consultants' and legal costs as follows:
- (1) Several staff were involved, equating to about 6-months' fulltime work (1,000 hours) for one staff member over a period of four years. This amounts to about \$100,000.
 - (2) Consultants' costs: \$28,000. Consultants assessed the implications for the Council of the proposed water quality targets in PC1.
 - (3) Legal costs: \$55,000.
57. In addition, the Council contributed about \$45,000 to the Waikato Regional Territorial Authorities' (WARTA's) involvement in the plan change process. WARTA was a group of 10 territorial authorities who jointly funded the preparation of further submissions and the presentation of legal submissions and expert evidence to the hearings to advance matters of mutual interest. The Council joined WARTA to collaborate with the other territorial authorities, ensure alignment between the Council's and WARTA's cases, and to leverage influence through scale.

58. The total estimated costs to pursue an appeal on PC1 range between \$46,000 and \$132,000 and include for staff and legal costs. These costs will be met within existing budgets. This is a regular operating activity funded through the Long-Term and Annual Plans.
59. A provision included in PC1 because of an appeal by another party could make the Council's compliance with PC1 more onerous and expensive. It could potentially add millions of dollars to the cost of treating stormwater or wastewater prior to its discharge to the Waikato or Waipaa Rivers or their tributaries. Alternatively, it could require earlier investment in this infrastructure, rather than allowing a staged approach that spreads these costs over future years.

Legal and Policy Considerations - *Whaiwhakaaro-aa-ture*

60. Staff confirm that the recommendations in this report comply with the Council's legal and policy requirements.

Marianne Mackintosh from Tompkins Wake has provided legal guidance and oversight of all phases of the Council's involvement to date with PC1, including this report and the attached Notice of Appeal.

Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

61. On 14 May 2019, the purpose of Local Government changed to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future.
62. The Council's Notice of Appeal aims to improve the clarity of the provisions that are the subject of the appeal and the certainty of their interpretation. This will help ensure PC1's objectives are achieved.
63. The Council's involvement in the PC1 appeal process as a s274 party will have similar aims as well as aiming to promote the social, economic, environmental and cultural wellbeing of Hamiltonians and other communities in the region.
64. By helping achieve PC1 objectives, the Council's participation in the PC1 appeal process will promote the outcomes and the four wellbeings as set out below.

Environmental

65. PC1 aims to restore and protect the health and wellbeing of the Waikato and Waipaa Rivers and their tributaries. Healthy waterways will improve indigenous biodiversity, promote an abundance of aquatic and terrestrial life along waterways and enhance their amenity.

Social

66. Healthy waterways will enable, encourage and sustain water-related social, cultural and spiritual activities, including active and passive recreation – walking and cycling waterside paths, picnicking, swimming, boating, fishing and gathering natural resources.
67. These activities, undertaken with whaanau or friends, have the potential to strengthen relationships within groups and the relationships with the waterbodies and their environs. These relationships foster a sense of identity, inclusion and belonging.

Economic

68. The vision of Te Ture Whaimana, which PC1 aims to achieve, is that a healthy Waikato River sustains abundant life and prosperous communities.
69. The amendment the appeal seeks to be made to Policy 13i aims to achieve a policy framework that would enable the Council, if necessary, to present a case in support of a discharge consent

application that relies on a mixing zone. That same case would also have to demonstrate that use of a mixing zone is the best practicable option. As defined in the RMA, the best practicable option means, in relation to a discharge of a contaminant, the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to the financial implications and the effects on the environment of that option when compared with other options. The amendment to Policy 13i would enable costs to improve point source discharges to be spread over future years.

Cultural

70. The restoration and protection of the Waikato and Waipaa Rivers and their tributaries will protect and enhance the mana of the rivers and river iwi. It will enable the cultural and spiritual activities and practices associated with the rivers to be sustained, thereby sustaining the culture that is unique to this region.

Risks - *Tuuraru*

71. Risks associated with Option 1 (no involvement in PC1 appeals), Option 2 (involvement as a s274 party only) and Option 3 (involvement as both an appellant and a s274 party) are set out in paragraphs 51, 52 and 54 above respectively.

Significance & Engagement Policy - *Kaupapa here whakahira/anganui*

Significance

72. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendation(s) in this report has/have a medium level of significance.

Engagement

73. The power to participate in the PC1 appeal process is within the scope of the Chief Executive's delegations under the Council's Delegations to Positions Policy. Therefore, it is not a matter that requires engagement with the community.
74. The delegation does not preclude the Chief Executive from referring any matter to the Council or a Committee for decision, if the matter is politically sensitive.
75. The New Zealand Parliament intends Te Ture Whaimana to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River (the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s5(1)).
76. "The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations" (Ibid, s3).
77. Accordingly, the restoration and protection of the health and wellbeing of the Waikato River is a fixed objective, regardless of community views and preferences. Therefore, as PC1 seeks to implement this objective, community engagement regarding whether the Council should participate in the PC1 appeal process is unnecessary.
78. Given the medium level of significance determined, the engagement level is medium. No engagement is required.

Attachments - *Ngaa taapirihanga*

Attachment 1 - Healthy Rivers Plan Change - Notice of appeal by Hamilton City Council - Draft 2

BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY

ENV-2020-

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of an appeal under Clause 14 of Schedule 1 of the Act
against the decision of the Waikato Regional Council on
Proposed Plan Change 1 to the Waikato Regional Plan

BETWEEN **HAMILTON CITY COUNCIL**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL BY HAMILTON CITY COUNCIL

[XX] 2020

TOMPKINS | WAKE

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MM-348176-2155-819-1:pr

TO: The Registrar
Environment Court
AUCKLAND

1. **HAMILTON CITY COUNCIL** ("HCC") appeals against parts of a decision of Waikato Regional Council ("WRC") on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments ("PC1"), "the Decision".
2. HCC has a right to appeal the Decision to the Environment Court under clause 14 of Schedule 1 to the Resource Management Act 1991 ("RMA") because HCC made submissions on PC1 seeking relief, including consequential relief, in relation to the matters which are now being appealed, being:
 - (a) Objective 1, regarding its application to infrastructure wetlands;
 - (b) Policy 13 d, in relation to staging offset measures;
 - (c) Policy 13 i concerning reasonable mixing;
 - (d) Policy 17, regarding its application to infrastructure wetlands;
 - (e) Implementation Method 3.11.3.2, about implementing sub-catchment scale planning;
 - (f) Schedule C - Minimum farming standards, Exclusion II, in relation to pig and deer wallows; and
 - (g) Additions to the Glossary of Terms – "Point source discharge".
3. Through this appeal, HCC seeks the addition of 2 new definitions to PC1, i.e. for:
 - (a) "Infrastructure wetland"; and
 - (b) "Overland flow path".
4. HCC supports the achievement of Te Ture Whaimana (the Vision and Strategy for the Waikato River) and the basis for PC1. The amendments to PC1 that HCC seeks through this appeal aim to make the affected provisions clear and thereby enhance the certainty of their interpretation and application.

5. HCC provides further details for its appeal below.
6. HCC is not a trade competitor for the purposes of s 308D of the RMA. In any event, HCC is directly affected by the subject of the appeal that:
 - (a) Adversely affects the environment; and
 - (b) Does not relate to trade competition or the effects of trade competition.
7. HCC received notice of the Decision on 22 April 2020.
8. On 15 May 2020, the Environment Court granted waivers¹ of the requirements to provide the following with a Notice of Appeal, when it is lodged with the Environment Court:
 - (a) A copy of the appellant's submission and/or further submissions;
 - (b) A copy of the Decision; and
 - (c) A list of the parties to be served with a copy of this Appeal.
9. Accordingly, this information is not included with this Notice of Appeal.

REASONS FOR THE APPEAL

Provisions relating to wetlands

10. PC1 has multiple provisions relating to "wetlands" or "constructed wetlands".
11. "Constructed wetlands" can be divided into two groups that could be characterised as "infrastructure wetlands" and "enhancement wetlands".

¹ Decision No. [2020] NZEnvC 063

12. Infrastructure wetlands are artificial, constructed wetlands, but are not part of the receiving environment. In accordance with technical guidelines, they are located “off line” but close to the receiving environment - land, stream, river or coast. They are built to treat stormwater or wastewater before it is discharged to land or water. Typically, they are planted. The plants provide water treatment, shading and habitat. An established infrastructure wetland appears natural and adds amenity to its surroundings. Sometimes, infrastructure wetlands will support aquatic species that are contaminant-tolerant.
13. Enhancement wetlands are also artificial, constructed wetlands, but, unlike infrastructure wetlands, they will be part of the receiving environment. The purpose of these wetlands is to improve biodiversity and surface water quality within the receiving environment. They have the potential to be used as an offset measure.
14. A third type of wetlands are naturally occurring wetlands.
15. The Operative Regional Plan includes the following definition of wetland:

Wetland*: *Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.*
16. This definition does not distinguish between the three different types of wetland discussed above.
17. HCC expects that extensive use will be made of infrastructure wetlands in the future to treat stormwater runoff from urban and rural development and land use prior to the treated stormwater being discharged from the constructed wetland to the Waikato or Waipā Rivers or one of their tributaries. Infrastructure wetlands will be an important method for reducing contaminants discharged to the rivers and helping

achieve the water quality attribute states identified in PC1 and Te Ture Whaimana.

18. While infrastructure wetlands are built to mimic natural wetlands and rely on natural processes to function, they will need to be actively managed from time-to-time and maintained. Maintenance and operation could include, for example, accessing all parts of the wetland for inspection and maintenance, including with earth-moving and other equipment, removing material or vegetation from inlets and outlets, remedying any slope instability or scour, periodically removing accumulated sediments from the forebay, removal of gross pollutants², pest management (including weed control) and vegetation control and replacement. Occasionally, reconstruction of the entire wetland may be necessary.
19. Relevantly, the ongoing maintenance of infrastructure wetlands for treating stormwater is ordinarily required through conditions of resource consent for stormwater discharge, issued by WRC, or are controlled by permitted activity standards in the Waikato Regional Plan³.
20. Two PC1 provisions have the potential to adversely affect the operation of infrastructure wetlands:
 - (a) Objective 1; and
 - (b) Policy 17.

Objective 1

21. Objective 1 includes to restore and protect wetlands so that they will be safe for people to swim in and take food from.

² Gross pollutants include litter such as plastics, paper, cans, pieces of wood and other detritus that gets dropped or discarded in road corridors or carparks and becomes entrained in the stormwater runoff from these areas.

³ Rules 3.2.4.2 and 4.2.5.1

22. Because of the risks to human health, wetlands constructed to treat contaminated stormwater or wastewater should not be expected to be places suitable for swimming or collecting food.
23. Amendments are required to ensure this objective is not applied to infrastructure wetlands constructed to manage or treat stormwater or wastewater.

Relief sought

24. HCC seeks the following:

- (a) Inclusion in PC1 of a new definition as follows:

Infrastructure wetland: means a wetland that is built to treat stormwater or wastewater before it is discharged to land or water.

- (b) Amendment of Objective 1 as follows:

Objective 1

In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens on water quality, the health and wellbeing of the Waikato and Waipā Rivers, including all springs, lakes and wetlands, other than infrastructure wetlands, within their catchments, is are both restored over time and protected, with the result that, in particular, they are safe for people to swim in and take food from at the latest by 2096.

Policy 17

25. This policy is to take actions to help restore and protect the significant values and uses of wetlands and their ecosystems. The actions intended are those that will maintain “the values of wetlands in relation to the effects of nitrogen, phosphorus, sediment or microbial pathogen

discharges”, or, if those values are degraded, actions that will improve them. The policy does not apply to the Whangamarino Wetland.

26. The meaning of “the values of wetlands in relation to the effects of nitrogen, phosphorus, sediment or microbial pathogen discharges” is unclear; the policy should be amended to clarify its meaning.
27. This policy could be applied in a manner that could undermine the efficient and effective management and operation of infrastructure wetlands. This could happen, for example, if the policy’s direction to restore and protect values of a wetland’s ecosystems should prevent or make more difficult necessary maintenance of the wetland.
28. HCC seeks for infrastructure wetlands to be excluded from Policy 17.

Relief sought

29. In addition to the new definition for infrastructure wetland that is discussed above in paragraph 24, HCC seeks amendment of Policy 17 as follows:

Policy 17

Contribute to restoration and protection of the significant values and uses of wetlands, other than Whangamarino and infrastructure wetlands, and their ecosystems by maintaining, and where degraded, improving the values of wetlands in relation to the-their effects of-on nitrogen, phosphorus, sediment or microbial pathogen discharges.

Policy 13d – staging offset measures

30. Policy 13 d states:

When considering a resource consent application for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipā

River catchments, and subject to Policy 12, consider the contribution made to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads in the Waikato River or Waipā River catchments and the impact of that contribution on the achievement of the short-term numeric water quality values in Table 3.11-1 and, where applicable, the steady progression towards the 80-year water quality attribute states in Table 3.11-1, taking into account the following:

d. Whether it is appropriate to stage future mitigation actions to allow investment costs to be spread over time to contribute to the achievement of the water quality attribute values and states specified above;

31. It is neither clear nor certain that “offset measures” are included within the term “mitigation actions”.
32. HCC is faced with managing urban growth and intensification and their effects on the environment. This growth will result in an increasing load of some contaminants that will need to be managed over the life of the relevant point source discharge consent.
33. In addition, it is expected that future plan-changes will require further contaminant reductions to meet the 80-year water quality attribute states.
34. In some circumstances, it may be possible to postpone investment in mitigation or offset measures until just before the predicted contaminant load increases, or the required water quality standards change, to the extent that additional contaminant reduction capacity is needed.
35. Policy 13 d provides for staging future mitigation actions to allow investment costs to be spread over time to contribute to water quality

improvement. An amendment is required to the policy to make it clear and certain that offset measures can be staged as well.

Relief sought

36. To provide such clarity and certainty, HCC seeks for Policy 13d to be amended as follows:

- d. *Whether it is appropriate to stage future mitigation actions or offsets to allow investment costs to be spread over time to contribute to the achievement of the water quality attribute values and states specified above;*

Policy 13i

37. Policy 13 i states [emphasis added]:

When considering a resource consent application for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipā River catchments, and subject to Policy 12, consider the contribution made to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads in the Waikato River or Waipā River catchments and the impact of that contribution on the achievement of the short-term numeric water quality values in Table 3.11-1 and, where applicable, the steady progression towards the 80-year water quality attribute states in Table 3.11-1, taking into account the following:

- i. *The application of **reasonable mixing** (in accordance with Policy 3.2.3.8) may be acceptable as a transitional measure during the life of this Chapter;*

38. The Hearing Panel concluded that the concept of “reasonable mixing”, as provided for in Policy 3.2.3.8 of the operative Waikato Regional Plan, is

not necessarily consistent with Te Ture Whaimana.⁴ Consistency may depend, for example, on whether water quality within the mixing zone is safe for swimming or food gathering⁵. The Commissioners thought that each proposal relying on reasonable mixing needs to be analysed and justified.⁶

39. However, PC1 provides no guidance or criteria for determining under what conditions a mixing zone would be acceptable.
40. While the use of the word “may” implies a degree of flexibility, the lack of certainty as to when this will be appropriate has implications for reconsenting, or review of, existing resource consents for critical municipal discharges. In that regard, there is no guarantee that HCC could rely on mixing zones being acceptable for its discharge from the Pukete Wastewater Treatment Plant.
41. Currently, HCC’s existing point source discharge from the Pukete Wastewater Treatment Plant relies on the provision in the Operative Regional Plan for reasonable mixing. If a mixing zone downstream of this discharge were unacceptable in the future, then additional treatment would be required to achieve the required water quality at the point of discharge. Any need to provide additional treatment would occur following a review or renewal of the discharge consent. For the Pukete Wastewater Treatment Plant, the cost of the additional treatment is estimated to be of the order of millions of dollars.
42. Policy 13i has introduced significant uncertainty regarding the management of the discharge from HCC’s Pukete Wastewater Treatment Plant.

⁴ Waikato Regional Council, 2020. *Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments: The Hearing Panel’s Recommendation Report* (p290, para 1362).

⁵ Ibid (p65, para 245).

⁶ Ibid (p290, para 1362).

43. The second half of Policy 13i, “as a transitional measure during the life of this Chapter”, is unnecessary and has no effect.
44. All provisions in PC1 apply during the life of the Chapter 13.1, that is, until Chapter 13.1 is reviewed or changed. This does not need to be stated in the plan.
45. Furthermore, a provision in an operative plan cannot predetermine the outcome of a plan review or plan change.

Relief sought

46. To provide clarity and certainty as to how the acceptability of a proposed mixing zone would be assessed, HCC seeks for Policy 13i to be amended as follows:

When considering a resource consent application for point source discharges ..., consider ... taking into account the following:

- i. The application of **reasonable mixing** (in accordance with Policy 3.2.3.8) ~~may be is~~ acceptable as part of a transitional measure during the life of this Chapter staged approach to implementing Te Ture Whaimana in accordance with Policy 13d.*

Implementation Method 3.11.3.2 – Sub-catchment scale planning

47. This method states:

Waikato Regional Council will work with relevant stakeholders to develop sub-catchment scale plans (where a catchment plan does not already exist) where it has been shown to be required. Sub-catchment scale planning will:
48. Sub-catchment scale plans will achieve nothing if the plans, themselves, are not implemented. The method should be amended to require the

WRC to work with relevant stakeholders to “develop **and implement**” sub-catchment scale plans.

49. Such an amendment would make Method 3.11.3.2 consistent with Method 3.11.3.1, which states [emphasis added]:

3.11.3.1 Lakes and Whangamarino Wetland

Waikato Regional Council, working with others, will:

- b. Prepare **and implement** Lake Catchment Plans ...*

Relief sought

50. HCC seeks for Implementation Method 3.11.3.2 to be amended as follows:

*Waikato Regional Council will work with relevant stakeholders to develop **and implement** sub-catchment scale plans (where a catchment plan does not already exist) where it has been shown to be required. Sub-catchment scale planning will:*

Schedule C – Minimum farming standards, Exclusion II

51. This provision is as follows:

Exclusions:

The following situations are excluded from Clauses 1, 2 and 3:

- II. Deer or pig wallows in constructed ponds or constructed wetlands that are located at least 10 metres away from the bed of a water body and which are not connected by an overland flow path to a water body.*

52. The Block 2 s42A Report recommended the addition of this exclusion, and this was addressed in HCC’s evidence to the Block 2 hearing.

53. There are several problems with this provision.

54. Problems arise from the definition of “water body” in the operative Waikato Regional Plan, namely:

Water body*: *Fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area*

55. Therefore, a constructed pond, or a constructed wetland, in which a deer or pig wallow is located is itself a “water body”, as is any aquifer underlying it.
56. It is understood the conditions on the exclusion relate to protecting surface water, not ground water. For clarity, the provision should clarify this.
57. Another problem with this provision is the second condition for this exclusion, namely, that the wallows “are not connected by an overland flow path to a water body”. As the term “overland flow path” is not defined in PC1 or the Operative Waikato Regional Plan, there is a risk that it could be interpreted in a way that nullifies the exclusion. This could occur, for example, if it were considered that every point in a catchment is connected by an overland flow path to a water body.
58. A further deficiency with the provision is that, provided the stated conditions are satisfied, Exclusion II would apply, even if a pipe or channel (other than an “overland flow path”) connected the constructed ponds or constructed wetland containing a wallow to another surface water body that does not include a wallow.

Relief sought

59. To provide clarity and certainty, HCC seeks the following:
- (a) Amendment to Exclusion II as follows:

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Exclusions:

The following situations are excluded from Clauses 1, 2 and 3: ...

- II. *Deer or pig wallows in constructed ponds or constructed wetlands that are located at least 10 metres away from the bed of any other surface water body that does not include a wallow, and which are not connected to the latter by an overland flow path, pipe or channel to a water body.*

- (b) Inclusion of the following definition in PC1:

Overland flow path: For the purposes of Chapter 3.11, is a succession of localised low points on land that form a path along which stormwater concentrates and flows downhill during and after a rainfall event. Unlike a stream or an ephemeral stream, the flow in an overland flow path is temporary and will cease after it has stopped raining and the accumulated surface water has drained away.

Additions to the Glossary of Terms – “Point source discharge”

60. WRC has decided that the definition of “point source discharge” in the Operative Waikato Regional Plan will apply to PC1, that is:

Point source discharges: *A stationary or fixed facility from which contaminants are discharged or emitted.*

61. The Operative Waikato Regional Plan includes the following definitions:

“Culvert#: *Channel or conduit carrying water across or under a road, canal etc.”;*

“Surface water: *Water in all its physical forms which is over the ground, whether flowing or not, including water within cave systems, but excludes coastal water and geothermal water”.*

62. Any culvert conveying surface water is not a source of contaminants; it is merely conveying and discharging contaminants that are already within the water.
63. However, as a culvert is “a stationary or fixed facility” and will discharge contaminants, it falls within the definition of “point source discharge”.
64. Consequently, PC1 would require HCC and other road controlling authorities to treat culvert discharges to help achieve the relevant water quality attribute states listed in the tables in section 3.11.6 of PC1.
65. This would be an unreasonable requirement as these authorities are unlikely to be the source of the contaminants discharged from the culverts.
66. To avoid this unreasonable and unacceptable outcome, the definition of point source discharge needs to be amended.

Relief sought

67. To provide clarity that culverts are not point source discharges, HCC seeks for the definition of “point source discharges” to be amended as follows:

***Point source discharges:** A stationary or fixed facility from which contaminants are discharged or emitted. For the purpose of Chapter 3.11, excludes culverts.*

RELIEF SOUGHT

68. Unless and until the PC1 provisions listed in paragraph 2 above are amended in accordance with the relief sought by HCC above, they will not:
 - (a) Promote the sustainable management of resources;
 - (b) Otherwise be consistent with Part 2 of the RMA;

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(c) Be appropriate in terms of s 32 of the RMA.

69. HCC seeks the relief set out above and such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal.

DATED at Hamilton this [XX] day of June 2020

M Mackintosh

HCC reference: D-3317391

DRAFT

MM-348176-2155-819-1:pr

Council Report

Item 9

Committee: Council
Author: Rebecca Watson
Position: Governance Advisor
Date: 25 June 2020
Authoriser: Amy Viggers
Position: Governance Team Leader
Report Name: Open Recommendations from Committees to the Council

Report Status	<i>Open</i>
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Purpose – Take

1. To seek the Council's approval of the recommendation from the Finance Committee meeting on 16 June 2020, in respect of the Financial Strategy Monitoring Report and Local Government Funding Authority Notice of Special General Meeting
 - The Agenda of the Finance Committee meeting on 16 June 2020 is available [here](#).
 - The Minutes of the Finance Committee meeting on 16 June 2020 is available [here](#).
2. To seek the Council's approval of the recommendation from the Strategic Risk and Assurance Committee meeting of 23 June 2020, in respect of the Risk Management Policy Review and Audit Proposal Letter for 2020, 2021, and 2022.
3. To seek the Council's approval of the recommendation from the Community Committee meeting of 24 June 2020, in respect of the Te Inuwai Park Naming.

Recommendation from the Finance Committee:

Financial Strategy Monitoring Report

4. That the Council:
 - a) approves the capital movement in expenditure of (\$2m) and in revenue \$0.1m from the 2019/20 Financial Year to future years as identified in the 16 June 2020 Capital Portfolio Monitoring Report;
 - b) approves the significant forecast adjustments as set out in paragraphs 19 to 24 of this report;
 - c) approves the revised forecast Financial Strategy position for Debt to Revenue, Net Debt and Balancing the Books as set out in paragraphs 25 to 32 of this report; and
 - d) approves an increase in the Te Awa Path budget by \$1.6m (\$784,000 local share) from \$4.2m to \$5.8m subject to Waka Kotahi NZ Transport Agency approving a minimum 51% subsidy, with the local share for the full project being promoted by Council as a contribution towards any transport related economic stimulus packages currently being considered by the Government.

Local Government Funding Authority Notice of Special General Meeting

5. That the Council:
 - a) receive the Local Government Funding Authority Notice of Special General Meeting report;

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- b) approve the amendments to the foundation policies of the Local Government Funding Authority.
- c) approve by way of proxy, a nominated member of staff to attend the Special General Meeting as shareholder representative of Hamilton City Council
- d) approve the amendment of Council's Investment and Liability Management Policy to align with the Local Government Funding Authority foundation policy change to the net debt to revenue covenant, subject to shareholders' approval of (b) above.

Recommendation from the Strategic Risk and Assurance Committee

To be circulated following the Strategic Risk and Assurance Committee meeting of 23 June 2020

Recommendation from the Community Committee

To be circulated following the Community Committee meeting of 24 June 2020

Attachments - Ngaa taapirihanga

There are no attachments for this report.

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 the Council Public Excluded Minutes of 28 May 2020) Good reason to withhold) information exists under) Section 7 Local Government) Official Information and) Meetings Act 1987	Section 48(1)(a)
C2. Appointment of Maangai Maaori to the Finance and Strategic Risk and Assurance Committees		
C3. Ruakura Road West realignment		
C4. Confirmation of the Council Unconfirmed Minutes 30 April 2020 - CE Review Committee Matters		
C5. Recommendation from the CE Review Committee		

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)
Item C3.	To enable Council to carry out negotiations	Section 7 (2) (i)
Item C4.	to protect the privacy of natural persons	Section 7 (2) (a)
Item C5.	to protect the privacy of natural persons	Section 7 (2) (a)