

**Notice of Meeting:**

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

**Date:** Thursday 21 September 2017  
**Time:** 9.30am  
**Meeting Room:** Council Chamber  
**Venue:** Municipal Building, Garden Place, Hamilton

Richard Briggs  
Chief Executive

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## Council OPEN LATE AGENDA

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**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 P Southgate Cr G Taylor Cr L Tooman

Leave of Absence Crs P Yeung & R Pascoe

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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Lee-Ann Jordan  
Governance Manager

**19 September 2017**

Telephone: 07 838 6439  
Lee-Ann.Jordan@hcc.govt.nz  
www.hamilton.govt.nz

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# Council Report

Item 25

**Committee:** Council  
**Author:** Blair Bowcott  
**Position:** Executive Director Special Projects

**Date:** 21 September 2017  
**Authoriser:** Blair Bowcott  
**Position:** Executive Director Special Projects

**Report Name:** Waikato Innovation Park Ltd - Update on Sale and Restructure

<b>Report Status</b>	<i>Open</i>
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## Purpose

1. To inform the Council on the restructure and sale of Waikato Innovation Park Ltd.
2. To seek further delegations for the Chief Executive to conclude the restructure and sale process for Waikato Innovation Park Ltd.

## Staff Recommendation

3. That the Council:
  - a) notes the previous delegations provided to the Chief Executive on the 28 July 2016 covering the sale and restructure of Waikato Innovation Park Ltd remain applicable and portions of these delegation have been exercised; and
  - b) approves the sale of Waikato Innovation Park Ltd as recommended by Deloitte; and
  - c) notes the restructure of Waikato Innovation Park Ltd and New Zealand Food Innovation (Waikato) Ltd that is required to enable the sale; and
  - d) approves the capitalisation of a new Council Controlled Organisation (Waikato Innovation Growth Ltd) required to be incorporated by Council in connection with the restructure with share capital of \$4m and a shareholder loan of up to \$200,000;
  - e) notes that all net sale proceeds after costs and the funds required to complete the restructure will be applied to debt reduction and charitable purposes in accordance with Councils shareholding ownership obligations;
  - f) approves that the investment of \$4.2m into the new Council Controlled Organisation will be partially funded from Council working capital (cashflow) until 80.2% of the sale proceeds have been received from the liquidation of Innovation Waikato Ltd;
  - g) delegates to the Chief Executive:
    - i. the authority to appoint the directors of a new Council Controlled Organisation (Waikato Innovation Growth Ltd) required as part of the restructure;
    - ii. the authority to take all necessary actions to liquidate Innovation Waikato Limited;
    - iii. put the share capital and shareholder loan referred to above in place;
    - iv. recapitalise New Zealand Food Innovation (Waikato) Ltd with \$4m to enable the

Transactions to occur.

- h) delegates to the Chief Executive the authority in connection with and in furtherance of the sale, the restructure, the loan and the liquidation (the **Transactions**) to:
  - i. negotiate, approve, make, agree or execute any agreement or document as the Chief Executive deems necessary in order to effect the Transactions (the **Documents**);
  - ii. give any notices and communications under or in connection with the Documents;
  - iii. take any action and make such filings as may be required; and
  - iv. do all other acts and things as the Chief Executive may consider necessary or advisable in connection with the Transactions and the Documents.
- i) authorises any two councillors to sign any Document that is to be executed as a deed (if deemed necessary following legal advice) in relation to the above Transactions; and
- j) that the specific sale terms and purchaser of Waikato Innovation Park Ltd be made public once the sale and purchase agreement is unconditional.

### Executive Summary

4. The Council meeting on 28 July 2016 resolved to sell its shares in Waikato Innovation Park Ltd (WIPL) while retaining its majority ownership of New Zealand Food Innovation (Waikato) Ltd, and provided the Chief Executive with delegations to complete the restructure and sale.
5. A preferred purchaser for WIPL has been identified following a rigorous sale process lead by Deloitte. The identity of the preferred purchaser needs to remain confidential until confirmatory due diligence is completed and the sale is unconditional.
6. All the elements to the proposed restructure of WIPL have been identified and agreed with all relevant stakeholders. The restructuring of WIPL is required to be completed prior to the sale occurring.
7. The complexity of the restructure is such that the delegations already provided by Council to the Chief Executive did not necessarily contemplate all the decisions required. This report seeks to provide the Chief Executive with further delegations to complete the sale process, and also provide certainty to the preferred purchaser prior to the due diligence period concluding on 30 September 2017. Sale settlement is proposed for 30 November 2017 and it is important that an unconditional sale and purchase agreement is finalised as soon as practicable after 30 September 2017.
8. Based on decisions already taken by Council and the public consultation completed for the establishment of the new CCO, staff have assessed that the recommendations in this report have low significance and comply with the Council's legal requirements.

### Background

9. Council has previously determined to restructure and sell WIPL. It has provided extensive delegations to the Chief Executive to complete this transaction.
10. At the Council meeting on 28 July 2016, Council resolved:
 

*That:*

  - a) *The advice provided by Crowe Horwath and PwC on share value is accepted;*
  - b) *Council sells 100% of its shares in Waikato Innovation Park Ltd (after the restructuring as described in (e)) to a purchaser who supports the purpose of the Park and is willing and able to provide funding to deliver the Masterplan dated 13 November 2015;*

- c) *Council retains its shareholding in New Zealand Food Innovation (Waikato) Ltd and, at the appropriate time, Council will obtain advice on how the approximately \$4.0 million that may be required as a further investment in New Zealand Food Innovation (Waikato) Ltd is applied to address any financial obligations that may be required by BNZ and legal obligations;*
  - d) *The sale process is to firstly include discussions with appropriate institutions such as universities and businesses as determined by the Chief Executive, prior to going to open market;*
  - e) *The Chief Executive is delegated authority to appoint an independent qualified person to:*
    - *Manage the sale process;*
    - *Address the outstanding issues identified in the report, including completing the necessary organisation restructure and associated financial requests relating to New Zealand Food Innovation (Waikato) Ltd;*
    - *Conduct the discussions in (d) above; and*
    - *Report to the Chief Executive on progress.*
  - f) *The Chief Executive is to provide regular update reports to the Council through the CCO Subcommittee;*
  - g) *Chief Executive be delegated authority to execute any sale agreement at any sale value at or above the current valuation.*
11. The restructure and sale of WIPL has progressed, with Deloitte appointed to lead the process and make recommendations to Council. All necessary restructure steps have been identified and agreed with relevant stakeholders and legal documentation prepared to complete the restructure pending a sale agreement for WIPL going unconditional. A preferred purchaser for WIPL has been identified following a rigorous sale process, but the identity of the preferred purchaser needs to remain confidential as the sale is still subject to confirmatory due diligence and is not yet unconditional. A non-binding term sheet outlining the terms of a sale has been agreed and signed.
  12. A copy of the non-binding sale term sheet is included for Councillors information in a report in the public excluded agenda.
  13. Also attached to the public excluded report is a Strategic Options discussion paper which outlines the process undertaken to prepare WIPL for sale, the sale process and information on the preferred purchaser. This report also outlines options available to Council should a sale not proceed.
  14. Deloitte recommend a sale to the preferred purchaser (refer their recommendation letter in Attachment 1).
  15. A summary of the restructure of WIPL is included in Attachment 2.

## Discussion

16. Council provided the Chief Executive with extensive delegations to complete the restructure and sale of WIPL. However, the complexity of the restructure and the consequential sale is such that the delegations did not necessarily contemplate all the decisions required and it is prudent to seek further delegations in addition to those provided on 28 July 2016.
17. Further specific delegations are required to address:
  - Approval to complete the sale of WIPL at the purchase price of \$12.25m as recommended by Deloitte noting their commentary on valuation of the company. (Refer to Attachment 1)

- The \$200,000 working capital required by a new Council Controlled Organisation (CCO) (Waikato Innovation Growth Ltd) to support the economic development and business growth activities transferred from WIPL as part of the restructure. This activity is completely self-funded by Callaghan and MBIE grants, but requires working capital to address the timing of funding grants. It is proposed this funding is provided by way of a temporary shareholder loan from Council, recognising that this activity is likely to transfer to a new entity by the end of this financial year. A separate report on this Council agenda titled “Waikato Means Business contribution to Economic Development” outlines this proposed transfer. There is no equity value for WIPL or the new CCO associated with this activity, and the restructure contemplates that this activity may transfer to a new entity at nil value in the future.
- The requirement to invest \$4m into New Zealand Food Innovation (Waikato) Ltd (NZ Food) via the new CCO, as a result of the restructure agreement and legal obligations required by Callaghan and MBIE and the need to release financial obligations with the BNZ and intercompany guarantees from WIPL. The \$4m represents the value of grants previously made by MBIE (and associated entities) and was a condition required by MBIE to approve the WIPL restructure. The \$4m will strengthen the balance sheet equity position of NZ Food. Councils shareholding in NZ Food will remain unchanged at 70% with the remaining 30% held by Callaghan. It should be noted that NZ Food is planning to invest in a further new spray drier (through a minority interest), and the combination of strong financial results and this new equity will allow the company to progress this proposal. A report on the proposed new spray drier opportunity is planned to come to the 7 November 2017 Finance Committee for consideration, noting this is not a major transaction for the company.
- The timing of the restructure transactions and cash required to capitalise the new CCO means that Council will need to temporarily cashflow a portion of the \$4.2m WIPL restructure payments until the sale proceeds are released. This situation arises because 80.2% of WIPL is owned through Innovation Waikato Ltd (IWL), and there will be a delay for the sale proceeds (80.2%) to be released from IWL to Council. This is only a short term timing adjustment, expected to be resolved within 30-60 days of settlement, once IWL has been liquidated.
- The requirement to appoint directors of the new CCO (Waikato Innovation Growth Ltd) which are proposed to be the directors of New Zealand Food Innovation (Waikato) Ltd for ease of governance and to avoid duplication of roles. It should be noted this reflects the current arrangements where the directors of IWL are the same directors as WIPL.
- Once the sale has been completed, it will be necessary to liquidate Innovation Waikato Ltd as soon as possible, as this CCO is no longer required and has historical “charitable origins.” The liquidation is necessary to release the WIPL sale proceeds back to Council, as noted above.
- The legal documentation required to give effect to the complex restructure of WIPL may require formal deeds to be signed with MBIE or Callaghan, so it is necessary to have delegation arranged for this possibility.
- The Chief Executive needs a comprehensive delegation to complete all transactions and documents associated with the restructure and sale.
- The WIPL AGM is scheduled for 10 October 2017 and it is important for Council to be able to give clear direction to the Board on the proposed sale and its acceptance of the sale terms, noting the WIPL Board have had no role in the restructure and sale process.

## Financial Considerations

18. The proposed net sale proceeds (after the deduction of an existing \$2.161m intercompany loan between WIPL and Innovation Waikato Ltd, costs incurred for the restructure and sale process and adjustments for expected WIPL profits to 30 November 2017 and interest) is expected to be \$10.0m.
19. The estimated costs to complete the restructure and sale of WIPL (included above) is estimated to be \$550,000, reflecting the complexity of the commercial and legal arrangements in place with WIPL and the necessary steps required to restructure WIPL to enable a sale to occur.
20. The costs have been expensed to date but if the proposed sale is completed, these will be offset against the sale proceeds received.
21. Any net sale proceeds will be applied to both debt reduction (19.8% of proceeds) and charitable purposes (80.2% of proceeds) in accordance with the shareholding ownership obligations.

## Legal and Policy Considerations

22. Tompkins Wake lawyers are part of the project team advising on the restructure and sale of WIPL, and endorse all the recommendations in this report.

## Risks

23. The restructure and proposed sale must adhere to the requirements of Council, MBIE and Callaghan. All necessary legal arrangements have been prepared and agreed to address this.
24. The proposed sale of WIPL is still subject to the completion of confirmatory due diligence by the proposed purchaser by 30 September 2017. Should a sale not be completed, Council will need to reconsider its position with regards to the future ownership of WIPL. Options are outlined in the separate public excluded report if a sale is not completed.

## Significance & Engagement Policy

### Significance

25. Staff considered the following factors under the Significance and Engagement Policy:  
The level of financial consequences of the proposal or decision required.  
Based on decisions already taken by Council and the public consultation completed for the establishment of the new CCO, staff have assessed that the recommendations in this report have low significance.

## Attachments

Attachment 1 - Summary of recommendations for proposed transaction

Attachment 2 - Restructure of Waikato Innovation Park Ltd



Deloitte  
24 Anzac Parade  
Hamilton East  
Hamilton 3216

PO Box 17  
Waikato Mail Centre  
Hamilton 3240  
New Zealand

Tel: +64 7 838 4800  
Fax: +64 7 838 4810  
[www.deloitte.co.nz](http://www.deloitte.co.nz)

## Memo

**Date:** 5 September 2017  
**To:** Blair Bowcott (Hamilton City Council)  
**From:** Deloitte  
**Subject:** Summary of recommendation for proposed transaction

### Recommendation regarding non-binding term sheet

The proposed purchase price of \$12.25m reflected in the non-binding term sheet implies a value for the properties of \$23.9m, which represents a 9.5% Net Rental Income yield, using income and cost assumptions provided by WIPL management, which take account of expected cost savings as a result of the transaction.

This compares to a yield range of 8.83% to 9.25% suggested by WIPL's independent valuers. The difference between 9.25% (at the upper end of the range) and the proposed 9.5% on offer translates to a discount of \$0.6m on the value of the properties.

The \$0.6m can be attributed to the higher risk profile the market associates with the Park which arise from its own peculiarities, including:

- The relatively short WALT;
- The encumbrance and restrictions it places on the tenancy profile;
- Leasehold (rather than freehold) tenure;
- Key person risk in respect of the management team, given that the management team's roles and responsibilities extend beyond what would ordinarily be expected for operating a vanilla commercial property; and
- Perceived complexity arising from WIPL's relationship with NZ Food and the Business Growth contracts, which will continue to some extent post the sale.

In our view the purchase price of \$12.25m outlined in the non-binding term sheet is a fair reflection of the market value of the Park under non-Council ownership. This is based on the extensive sale process undertaken and feedback received as part of that process, where over 60 interested parties were approached.

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Regarding Council's two other primary objectives from the sale:

- The encumbrance registered over the leasehold title is expected to provide suitable protection for preserving the purpose of the Park; and
- Through the evaluation process undertaken, nothing has come to our attention to cause doubt over the proposed purchaser's ability to fund the purchase price and provide further funding to continue developing the Park in line with the Master Plan.

Yours sincerely



**Doug Wilson**  
Partner

for Deloitte Limited (as trustee for the Deloitte Trading Trust)

## Restructure of Waikato Innovation Park Ltd

### BACKGROUND TO WAIKATO INNOVATION PARK LTD

1. Waikato Innovation Park ("Park") is an innovation hub consisting of three core buildings, situated off Ruakura Road, Hamilton. The Park currently houses more than 40 businesses focussing on the agritechology, food and beverage and technology sectors. The Park has certain community objectives (the "**Community Objectives**"), including:
  - (a) to promote research, development, commercialisation and marketing of new products; and
  - (b) to house businesses that contribute to New Zealand's export economy and focus on innovation and technology.
2. The future of the Park has been mapped and is the subject of a master plan prepared by BECA Consultants (the "**Master Plan**").
3. The Park is owned and operated by Waikato Innovation Park Limited ("**WIPL**"). WIPL is directly and indirectly wholly-owned by Council as follows:

Shareholder	Number of Shares	%
Council	247	19.81%
Innovation Waikato Limited (" <b>IWL</b> "), an existing CCO of Council	1000	81.19%
<b>Total</b>	<b>1247</b>	<b>100%</b>

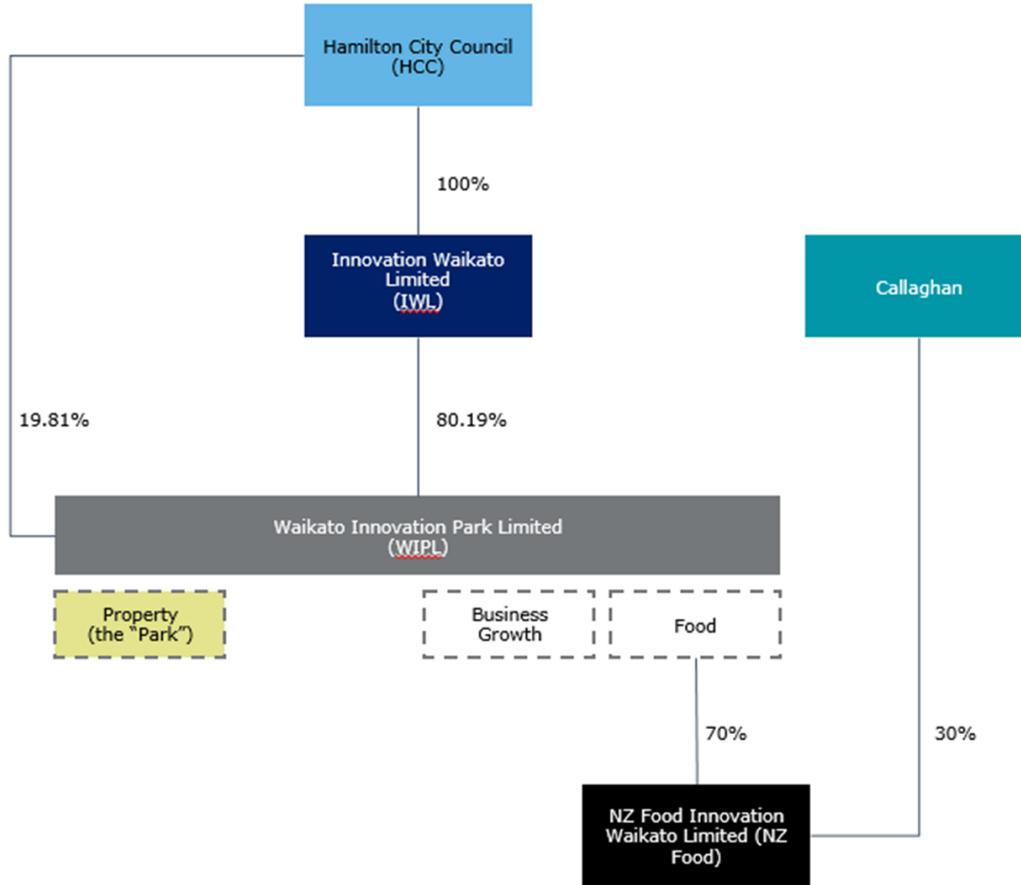
4. In addition to the Park, WIPL owns 70% of the shares of New Zealand Food Innovation (Waikato) Limited ("**NZ Food**"). The remaining 30% shareholding of NZ Food is owned by Callaghan Innovation ("**Callaghan**"), a government agency supporting hi-tech businesses in New Zealand. NZ Food owns an independent spray drying plant situated at the Park, which offers open access to New Zealand producers and product developers.
5. A diagram showing the current structure and ownership of WIPL and NZ Food is set out in Appendix A.

### THE RESTRUCTURE AND SALE OF WIPL

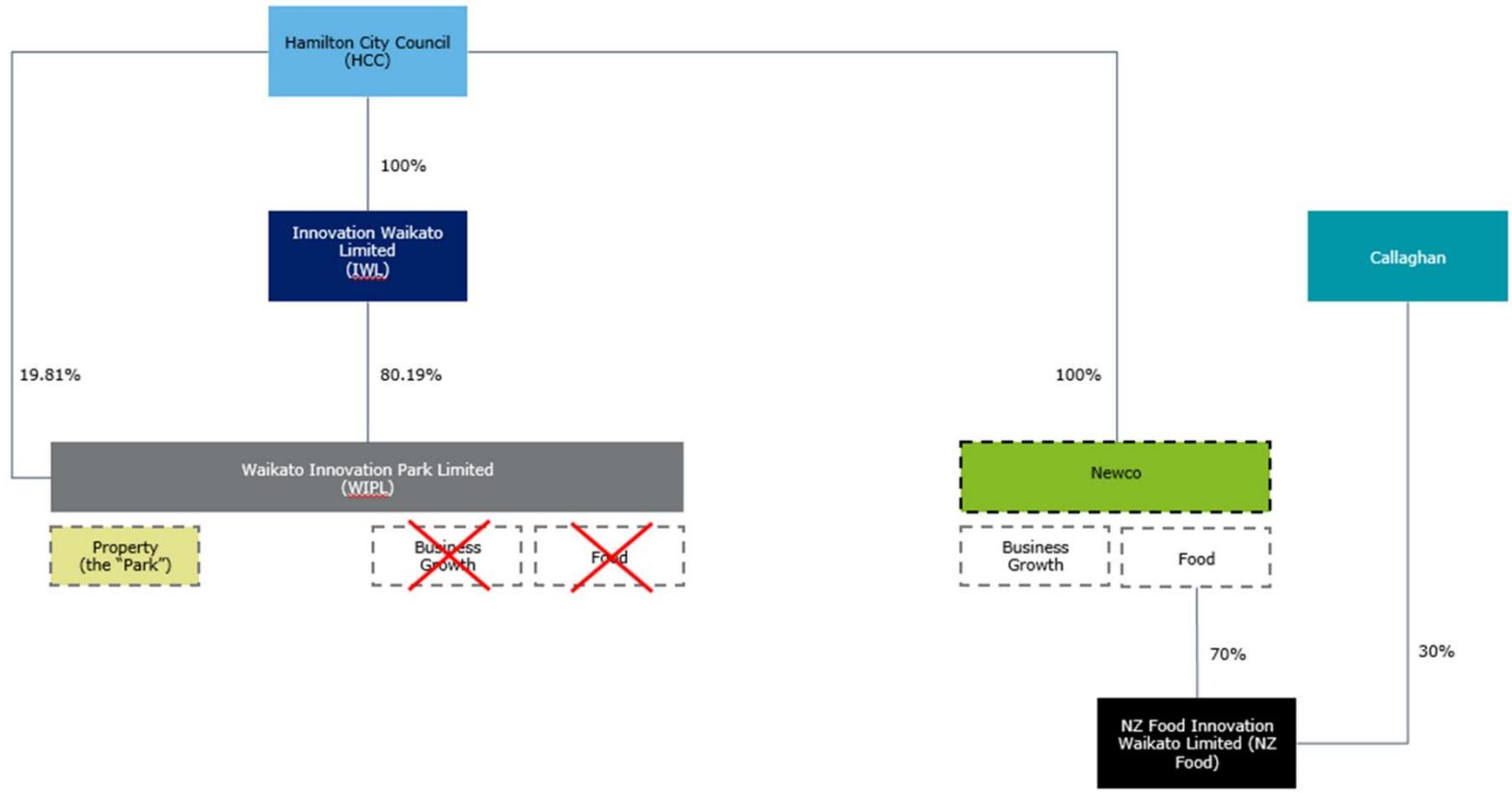
6. Council has previously resolved to sell 100% of its interests in WIPL to a third party purchaser (the "**Sale**"). A preferred purchaser has been identified.
7. The reasons for the Sale are that:
  - (a) third party funding is necessary for the Park to fully achieve the Master Plan and realise its full potential;
  - (b) Council's role as funder of the Park is no longer required in order for the Park to achieve its Community Objectives, which can now be more effectively achieved through private sector funding; and
  - (c) the Community Objectives of the Park are important to Council, but are able to be maintained and protected even without Council ownership of the Park by a protective covenant legally registered against the Park's lease. This protective covenant will bind any third party purchaser to continue to comply with the Community Objectives.
8. The Sale requires the Park's ownership to be restructured (the "**Restructure**") in order to:

- (a) prepare WIPL for sale;
  - (b) separate NZ Food from WIPL;
  - (c) provide funding to NZ Food to reduce its bank facilities such that, post the Sale, NZ Food can stand alone with reduced Council involvement; and
  - (d) achieve maximum value for Council and its stakeholders under the Sale.
9. A diagram showing the Restructure is set out in Appendix B.
10. The Restructure has been approved by the original third party funders of WIPL including the relevant government agencies and Crown Ministers.
11. As part of the Restructure, Council will incorporate a new CCO, referred to in Appendix B as "Newco." Public consultation has been completed on the establishment of the new CCO with no submissions received. The Chief Executive (under delegation) has approved the creation of the new CCO subject to the sale agreement becoming unconditional. The new CCO is proposed to be called Waikato Innovation Growth Ltd.
12. The CCO would hold a 70% shareholding in NZ Food and would undertake the economic development function under contract from Callaghan and New Zealand Trade and Enterprise. There is a proposal for the economic development function to transfer to a new Waikato Regional Economic Development Agency. This transfer can occur at any time after the restructure is completed. Both of these roles are currently being undertaken by WIPL, and indirectly by IWL through its ownership stake in WIPL.
13. The new CCO will only be established if the WIPL sale and purchase agreement with the preferred purchaser becomes unconditional.
14. If WIPL is sold under the Sale process, all sale proceeds will be passed back to Council to reduce debt and apply to charitable purposes (dependent on original funding sources). A sale of WIPL will mean that IWL is no longer required, and given that IWL has undesirable legal and constitutional charitable origins, IWL will be wound up.

APPENDIX A  
EXISTING OWNERSHIP STRUCTURE



**APPENDIX B  
RESTRUCTURE OF WIPL**



**Attachment 2**

**Item 25**

## 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. Waikato Innovation Park Ltd - Update on Sale and Restructure	) Good reason to withhold ) information exists under ) Section 7 Local Government ) Official Information and ) Meetings Act 1987 )	Section 48(1)(a)

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)
	to enable Council to carry out negotiations	Section 7 (2) (i)