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## Extraordinary Finance Committee

### OPEN MINUTES

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**Minutes of an Extraordinary Meeting of the Finance Committee held in the Council Chambers, Municipal Building, Garden Place, Hamilton on Tuesday 7 July 2015 at 1:00pm.**

#### PRESENT

Chairperson	Cr G Mallett
Members	Her Worship the Mayor J Hardaker Cr G Chesterman Cr M Forsyth Cr M Gallagher Cr K Green Cr A King Cr D Macpherson Cr A O’Leary Cr L Tooman Cr E Wilson Cr P Yeung
In Attendance	Richard Briggs - Chief Executive Paul Conder - Chief Financial Officer Sean Murray - General Manager Events and Economic Development Olly Te Ua - General Manager Organisational Development.  Stuart Gordon – CEO Waikato Innovation Park Limited
Committee Advisors	Mrs J Pani and Mrs M Birch

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Councillor Mallett, Deputy Chair, assumed the Chair, in the absence of Councillor Pascoe who was away.

It was explained that the Extraordinary Finance Committee meeting was necessary as Council approval was required for Waikato Innovation Park Limited’s (“WIPL”) loan from the BNZ of \$9.4 million for the construction of the Tetra Pak building. Construction had commenced and the funding was required prior to the next CCO Subcommittee Meeting on 21 October 2015. The Chair advised that he had provided Members with additional background information to provide some further context.

**1. Apologies**

**Resolved:** (Crs Mallett/Chesterman)

That the apologies from Councillor Pascoe be received and accepted.

**2. Confirmation of Agenda**

**Resolved:** (Crs Mallett/Chesterman)

That the Agenda be confirmed.

**3. Declarations of Interest**

No members of the Council declared a Conflict of Interest.

**4. Public Forum**

Not required.

## 5. Shareholder Approval Required - Waikato Innovation Park Funding Contract

General Manager Events and Economic Development (“the GM”) introduced Mr Stuart Gordon, CEO Waikato Innovation Park Limited (“CEO WIPL”). The GM highlighted the following:

- **Loan Agreement** - The CEO WIPL had negotiated the loan of \$9.4 million for the construction of the Tetra Pak building from BNZ;
- **Underwriting** - No underwrite or guarantee of the BNZ loan was required from Hamilton City Council (“HCC”);
- **Major Transactions** – The Companies Act 1993 had a threshold of 50% of the value of the company’s assets for a transaction to be classified as a ‘Major Transaction’. However, the Shareholders Agreement had a threshold of 25% of the company’s net assets. In this instance, the Shareholders Agreement threshold would be triggered and therefore, as 100% shareholder of WIPL, it was necessary for HCC to formalise its approval of the BNZ loan; and
- **Legal Advice** - Pursuant to signing the loan agreement WIPL had sought legal advice and this had raised the issue of shareholder approval.

The Chair tabled the additional documents, highlighting some further key issues as follows:

- **Shareholder Approval Factsheet** (Tabled) - This included background information on the shareholder approval required for the BNZ Loan Funding Agreement;
- **Statement of Intent (“SOI”)** - The new building had been disclosed to Council in the Statements of Intent from WIPL for the years ending 30 June 2015 and 30 June 2016;
- **Liability** - It had always been confirmed that HCC had no liability or underwriting responsibilities with regards to the BNZ loan, funding the construction of the Tetra Pak building;
- **Urgency** - Construction had already started and the BNZ loan was required before the next CCO Subcommittee Meeting in October 2015. Consequently, the Extraordinary Finance Committee Meeting had been scheduled to request shareholder approval of the Major Transaction;
- **Staff Report** (Tabled) – The staff report to the CCO Subcommittee Meeting of 22 April 2015 *“Innovation Waikato Ltd & Group – Draft Statement of Intent 2015/16 & Half Year Report to December 2014”* provided further background information; and
- **Email Correspondence** (Tabled) - Email correspondence between the CCO WIPL, the GM, the Chair of the CCO Subcommittee and Democracy staff discussing whether shareholder approval was required for the BNZ loan.

Concerns were expressed regarding the process, delayed timeframes for identifying whether the loan constituted a major transaction and consequently, whether Council approval was required. Staff confirmed that HCC had not sought legal advice.

It was confirmed that under the new Local Government Act, the Mayor had the authority to establish committees and appoint the chairperson of each established committee; Council had approved the delegations to these Committees in November 2013. It was noted that under its Terms of Reference, the CCO Subcommittee had the power to approve the SOIs, consider any proposed major transactions and make recommendations to the Finance Committee in relation to

those major transactions.

It was acknowledged that had this issue been picked up at an earlier stage, this item would have been referred to a scheduled Finance Committee Meeting. Staff knowledge of the foundation documents, staff turnover and late intervention by WIPL were all noted as factors in the delay.

**Resolved:** (Crs Chesterman/Mallett)

That:

- a) the report be received;
- b) the Committee authorise Waikato Innovation Park Limited (WIPL) to sign the Funding contract with the Bank of New Zealand for \$9,435,618 to fund the build of a 3,487 square metre building for Tetra Pak New Zealand (and all associated project documentation to which the funding will be applied (including the construction contract)); and
- c) no underwrite or guarantee of the BNZ loan is offered or implied by HCC.

**The Meeting closed at 2.00pm**