
Council

OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Wednesday 30 November 2016 at 9.45am.

PRESENT

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

In Attendance:

- Chief Executive - Richard Briggs
- Executive Director H3 and Events - Sean Murray
- General Manager Strategy and Communications - Sean Hickey
- General Manager City Infrastructure - Chris Allen
- General Manager Community - Lance Vervoort
- General Manager Corporate – David Bryant
- Group Business Manager - Helen Paki
- Strategic Property Manager - Ken Cunningham
- Strategic Property Manager - Nicolas Wells
- Senior Planner – Jamie Sirl
- City Safe Unit Manager - Kelvin Powell
- City Planning Unit Manager - Luke O’Dwyer
- Acting General Manager, Growth - Debra Stan-Barton
- Strategic Advisor, Arts and Community – Nick Johnston
- Manager Swimming & Recreation - Matthew Bayliss
- Group Business Manager – Karen Saunders
- Governance Manager, Lee-Ann Jordan

CEO Sport Waikato – Matthew Cooper

City Solicitor – Lachlan Muldowney

Governance Advisers: Mr B Stringer, Ms C Guthrie, Mrs E Acraman

1. Apologies

Resolved: (Crs O’Leary/Macpherson)

That the apology from Cr Pascoe (for lateness) be received and accepted.

2. Confirmation of Agenda

Resolved: (Crs Bunting/Casson)

That the Council confirm the agenda, noting the following:

Updated Items

- **Item 8** - Beale Cottage Historic Reserve Management Plan Review – *(Updated attachment tabled at the Meeting showing the track changes between the 2006 and 2016 Beale Cottage Management Plans.)*
- **Item 11** - Land Exchange – 9 Grey Street – *(clearer versions of attachments 1 and 2 tabled at the Meeting.)*

Late Items

- **Item 15** - Final decision on A&A King Family Trust v HCC regarding Partly Operative District Plan Report - *(Report late to allow for the provision of timely advice on the outcome of an ongoing matter which has had strong public interest.)*
- **Item C1** - Final decision on A&A King Family Trust v HCC regarding Partly Operative District Plan – Legal Advice (Public Excluded). - *(Linked to Item 15, Report was late to allow for the provision of timely advice on the outcome of an ongoing matter which has had strong public interest and to allow for a representative from Tompkins Wake to give a verbal report.)*
- **Item 14** - Housing Accord – *(would be taken in the Public Excluded section of the Meeting to enable Council to carry out negotiations with the Ministry of Business, Innovation and Employment.*

Report was late as visibility of the matter ahead of approving a final draft was required. The matter could not be taken later in the Meeting due to external timeframes needing to be met.)

3. Declarations of Interest

Cr Macpherson declared an interest in Item 10 (Rototuna Recreation Centre) as he was a member of the Waikato Volleyball Association.

Mayor King declared a conflict of interest with Item 15 (Final decision on A&A King Family Trust v HCC regarding Partly Operative District Plan Report) in the Open Meeting and Item C1 (Final decision on A&A King Family Trust v HCC regarding Partly Operative District Plan – Legal Advice) in

Public Excluded section of the Meeting. He vacated the Chair and withdrew from the Meeting prior to consideration of Items C1 and 15.

4. Public Forum

Mr Fred Philips from Rotary made a presentation promoting a fountain development for Hamilton Lake Domain based on the Bellagio fountain in Las Vegas. Mr Phillips stated he was looking for an indication of interest in such a development from the Council. In light of the public engagement on the Hamilton Lake Domain Management Plan, it was recommended that Rotary put in a high-level submission to the Hamilton Lake Domain Management Plan with a summary of the concept.

The Chief Executive pointed out that Rotary could also present a submission as part of the 2017 Annual Plan process.

5. **Chair's Report**

The Mayor spoke to his report.

Regulatory Efficiency and Effectiveness Report.

Mayor King advised that the purpose of the project was to make it easier, cheaper, and faster to do business with Council and to provide certainty for Council's customers. To this end it was important that all regulatory functions and processes contributed explicitly to the plans, policies and outcomes they were designed to enable, and that staff were empowered and supported to make common sense decisions. Mayor King advised the meeting that the report as circulated noted that the project would not review existing plans and policies but he had since realised that to streamline regulatory functions and processes, the project would also need to review and identify potential changes to relevant existing plans and policies.

In response to questions and concerns raised, Mayor King clarified the following:

- any review would not apply to Council's strategic plans such as the Hamilton East Plan and the River Plan, only those policies and plans that govern regulatory functions and processes;
- he accepted that the District Plan was only just becoming operative after a long process, however it was already out of date in some respects. There was no intention to change zoning but some aspects of the plan were problematic and could be improved;
- he noted that staff would need to be mandated and well supported to make common sense decisions against usual practice or requirements; and
- he noted cautions raised about the potential size and complexity of the project. The terms of reference and project scope that would come back to Council for approval would include indicative costs and timing.

Public Art.

The Mayor noted that MESH and TOTI had had discussions with him to signal an interest in sites for future art projects. This information was provided as an early 'heads-up' for Council and applications would come forward for consideration in due course.

The Chair of Community & Services Community indicated that an update on the Public Art and Development Process would be presented to the 13 December 2016 Council meeting.

Resolved: (Mayor King/Cr Taylor)

That:

- a) the report be received; and
- b) in respect of the Regulatory Effectiveness and Efficiency Project, Council authorise staff to develop a project plan with external expert input for approval by Council by February 2017.

Cr O'Leary dissenting.

6. Council Open Minutes 9 November 2016

The correct wording for Item 6 – Open Council Minutes – 9 November 2016, for the date on page 11 in the fifth paragraph, was to be amended to read “Local Government Act 2002”.

Resolved: (Crs Tooman/Southgate)

That:

- a) Council confirms and adopts as a true and correct record the Open Minutes of the Council Meeting held on 9 November 2016 subject to the above noted amendment.

The Meeting adjourned from 11.15am to 11.30am.

Item 10 (Rototuna Indoor Recreation Centre) was taken early to accommodate the external guests availability.

10. Rototuna Indoor Recreation Centre

The General Manager Community introduced Matthew Cooper, Chief Executive Sport Waikato, and the Manager, Swimming & Recreation. Mr Cooper briefly addressed the meeting to update Council on the Waikato Regional Sports Facility Plan and the cross-boundary funding framework Sport Waikato were developing.

The General Manager Community took the report as read and noted that:

- This project was a ground-breaking partnership with the Ministry of Education that had produced a significant community asset.
- Consultation was conducted with the sporting codes that would predominantly use the indoor centre to get information on the codes' requirements and on the design and function of the facility. Sport Waikato worked with Council and Ministry of Education staff throughout the concept and design phase.
- The project was developed under time pressures that meant the design and consultation were undertaken under tighter deadlines than usual.
- As development proceeded it became apparent that not all of the needs requested by the sport codes could be accommodated, as the area needed to provide for courts as well as associated changing and storage facilities.
- Waikato Volleyball provided feedback that the current construction only provided adequate run-off areas for six competition sized courts and not the eight they had anticipated to enable regional competitions.
- Rototuna High School was supportive of an addition to the Indoor Recreation Centre, however neither they nor the Ministry of Education were able to contribute funding.
- Additional funding of \$3.1 million would allow the floor area to be extended by 721m² to include extra playing space and thus meet Waikato Volleyball's requirements.

Sport Waikato spoke in favour of using any additional funding to construct a second indoor recreation centre rather than to expand the Rototuna facility. A second indoor recreation centre would be consistent with the direction of Sport Waikato's Regional Facilities Plan.

Staff responded to questions in relation to the need for additional funding to increase the facility size. There was considerable discussion on this matter with a high level of concern noted by some Elected Members and a request for the Chief Executive to open an investigation to clearly understand how this had occurred. Staff also responded to a number of questions regarding opportunities for a second indoor recreation centre and on the potential partnerships to support a further facility.

Motion: (Crs Macpherson/Mallett)

That:

- a) the report be received;
- b) Council continues with the current Funding Contribution and Operating Agreement for a four court indoor recreation facility at the Rototuna High Schools site.
- c) Council notes the 2014 Waikato Regional Sports Facilities Plan's recommendation for two indoor recreation centres, with the second being needed from 2018 onwards.

- d) funding of \$3.1M for a second partnership indoor recreation centre, that provides for a facility that can accommodate at least four netball, basketball and futsal courts, eight volleyball courts and sixteen badminton courts, with surrounding floor areas of a safe and effective size for community sport competition in each code, be considered by Council in the first half of 2017, for inclusion in the first half of the 2018-28 Ten Year Plan.
- e) the Chief Executive issue a Request for Proposal from potential partnership Parties, for the facility outlined in (d) above, to be reported back to the Community & Services Committee no later than June 30, 2017.
- f) Council enter into discussions with the Waikato Regional Council, and other Waikato local authorities, especially neighbouring ones with a view to establishing a regional funding mechanism to support the facility outlined in (d) above.
- g) the Chief Executive undertakes a review and reports to the Audit & Risk Committee, to:
 - 1. identify the causes for Council's contribution to the Rototuna Indoor Recreation Centre needing to be increased by \$3.1 million from \$4.5 million to \$7.6 million, an increase of 69%; and
 - 2. recommend changes so that such failings do not reoccur.

The Meeting adjourned from 11.55am to 12.15pm during the discussion on the Motion (Macpherson/Mallett) and Amendment (Southgate/Yeung).

Amendment: (Crs Southgate/Yeung)

That:

- a) the report be received;
- b) the Council continues with the current Funding Contribution and Operating Agreement for a four court indoor recreation facility at the Rototuna High Schools site;
- c) the development of a second partnership for an indoor recreation centre aligned to the Waikato Regional Sports Facility Plan be considered in the development of the 2018-28 10 year plan; and
- d) That Council works with regional councils to discuss and pursue regional funding options.

Those for the Amendment: Councillors Yeung, Tooman, O'Leary,
Bunting, Henry, Southgate and Taylor

Those against the Amendment: Mayor King, Councillors Gallagher, Mallett,
Macpherson and Casson

The Amendment was declared carried.

The Amendment as the Substantive Motion was put.

Resolved: (Crs Southgate/Yeung)

That:

- a) the report be received;
- b) the Council continues with the current Funding Contribution and Operating Agreement for a four court indoor recreation facility at the Rototuna High Schools site;
- c) the development of a second partnership for an indoor recreation centre aligned to the Waikato Regional Sports Facility Plan be considered in the development of the 2018-28 10 year plan; and
- d) the Council works with regional councils to discuss and pursue regional funding options.

The Meeting adjourned from 1.19pm to 2.00pm.

7. 2017 Schedule of Meetings

Resolved: (Crs O'Leary/Gallagher)

That:

- a) the report be received; and
- b) the proposed 2017 Schedule of Meetings attached to this report as Attachment 1 be approved.

Cr Tooman left the meeting at 2.05 pm during Item 7 and was not present for the voting.

8. Beale Cottage Historic Reserve Management Plan Review

The Strategic Advisor, Arts and Community, supported by the Group Business Manager, noted that Beale Cottage review had been a non-comprehensive review to consider strategy and legal changes that had occurred since the 2006 Management Plan. Changes between the 2006 Management Plan and the proposed update included removing obsolete actions, revising content and moving the vision and objectives to the front of the plan.

In response to questions from Elected Members about the long term intention to have the Cottage open to public use, the Strategic Advisor clarified that the Beale Cottage Working Group, (established by the Strategy and Policy Committee on 22 March 2016), together with the Heritage Advisory Panel, had recommended the cottage remained tenanted until such time as open public access could be achieved.

Public access to Beale Cottage at pre-arranged times and at short notice was possible and was part of the tenancy agreement. The tenant received a reduced rent to ensure visitors could access the cottage for guided tours. The tenant was also responsible for some of the garden maintenance.

Resolved: (Crs O'Leary/Bunting)

That:

- a) the report be received;
- b) Council approves the Beale Cottage Historic Reserve Management Plan; and
- c) staff develop a Beale Cottage Implementation Action List that includes an implementation timeline and funding, and report back to the April 2017 Community and Services Committee for approval.

9. Hamilton Lake Domain Draft Management Plan - Referral of Submissions to Regulatory Hearings Committee

The Senior Planner, Community, gave an overview of the review programme and noted 60 submissions had been received to date through the consultation process required under legislation; seven people had requested to speak to their submissions.

Resolved: (Crs O'Leary/Yeung)

That:

- a) the report be received;
- b) Council's Regulatory and Hearings Committee hear submissions and make determinations on submissions to the Draft Hamilton Lake Domain Management Plan in February 2017;
- c) a Waikato-Tainui representative be appointed to the Regulatory and Hearings Committee for hearings on the Draft Hamilton Lake Domain Management Plan; and
- d) a final plan, incorporating any revisions recommended by the Regulatory and Hearings Committee, be presented to the Community and Services Committee for adoption.

Cr Mallett left the meeting at 2.51 pm during the Item 9 and was not present for the voting.

11. Land Exchange - 9 Grey St

The Strategic Land Manager, outlined the issues for the land exchange, the need for which arose from the proposed Cobham Drive Pedestrian underpass. In response to questions about costs to the other party of the process for the land exchange, he confirmed that Council would cover all costs and that this had been verbally advised to the other party.

Resolved: (Crs O'Leary/Yeung)

That:

- a) the report be received;
- b) approximately 18.30m² of Grey St, identified as Area C on Attachment 2, is stopped;
- c) the area of stopped road be exchanged for approximately 17.70m² of land from 9 Grey Street, identified as Areas A & B on Attachment 2, at no cost to either party, subject to:
 - i. Survey plans, for the land being exchanged, being approved by Land Information NZ,
 - ii. The road stopping being completed,
 - iii. The area of stopped road being amalgamated with the title for 9 Grey Street;
- d) Council cover all costs related to the land exchange; and
- e) the Chief Executive be delegated authority to:
 - i. Sign all documentation relating to the road stopping process;
 - ii. Sign all documentation relating to the land exchange.

Cr Mallett returned to the meeting at 3.00 pm during Item 11 and was present for the vote.

12. Development Contributions Funding Model, Assessment Tool and Growth Model

The Group Business Manager, and the Economic Growth & Planning Unit Manager, gave an overview of the Development Contributions Funding Model, Assessment Tool and Growth Models and the need to fund a technology solution for what was presently a largely manual system.

Staff answered questions on the following:

- Confirmed that the current models were a system of Excel spread sheets which contained important data and information on such things as population, economic forecast, transportation movement etc. It gave a view of growth over time and assisted with infrastructure planning and fed into the DC model. This informed Council how much additional land was needed and what infrastructure would be required to enable staff to make informed decisions.
- The combination of the manual nature of the system, its importance and complexity and the reliance on an experienced staff member who was leaving Council shortly created a high level of risk to Council. A solution needs to be in place by 30 June 2017 to meet legislative and organisational requirements.
- Authority was the core regulatory system for property information. It was also an information management system for building consents, resource consents, parking and rates. Funding for a new technology solution could be diverted from funding approved for the Authority Replacement.
- The risk of deferring the replacement of Authority was low as the Council had confidence in the new provider and a series of recent upgrades had provided a more stable platform.
- Discussions had been held with other Territorial Authorities who used Authority (eg Auckland and Tauranga) about sharing information.
- \$150,000 sought for a feasibility study for the replacement for Authority was required to ensure that any new solution was future-proofed and to leverage existing functionality.

Resolved: (Mayor King/Cr Bunting)

That:

- a) the report be received;
- b) funding of \$1.515m is approved to implement the Growth Model and DC Funding Model and DC Assessment Tool projects;
- c) the 2016/17 capital budget for the Authority Replacement is reallocated to fund the Growth Model and DC Funding Model and DC Assessment Tool Projects; and
- d) funding of \$150,000 operating expenditure is approved via Risks and Opportunities, to prepare an 'Authority Replacement Feasibility Study' in 2017.

Cr Tooman returned to the meeting at 3.25 pm during Item 12 and was present for the voting.

13. Domain Endowment Lease - Freeholding - 225 Dey Street

The Strategic Property Manager, took his report as read. He noted, that the Domain Endowment Fund was used for the enhancement and development of parks and reserves. The properties of the Domain Endowment Fund were given to the city as an enduring source of income for parks and reserves and the funds of the sale would go into the Domain Endowment Fund for this purpose.

In response to questions, the Chief Executive stated that it would be possible to show how the funds were used for parks and reserves development if desired.

Resolved: (Mayor King/Cr Tooman)

That:

- a) the report be received;
- b) Council sells the freehold interest in the land described in the Schedule to the lessee for a price of \$290,000 (Two hundred and Ninety Thousand Dollars) including GST (if any) plus all Council's costs associated with the sale.
- c) Council authorises the Chief Executive Officer to:
 - i. prepare and execute an Agreement for Sale and Purchase; and
 - ii. any other instruments required to give effect to this resolution

SCHEDULE

ALL THAT LAND described as an Estate in Fee Simple comprising Lot 10 Deposited Plan 35144 contained in Computer Freehold Register Identifier SA7B/9 of 812 square meters more or less and physically located at 225 Dey Street, Hamilton

Cr Pascoe joined the meeting at 3.32 pm during Item 13 and was present for the voting.

14. Housing Accord

The requirement for this item to be heard in Public Excluded was queried. The Chief Executive confirmed his earlier advice that the item should be dealt with in Public Excluded to enable Council and the Ministry of Business, Innovation and Employment (MBIE), to continue to carry out discussions on the matter.

Resolution to Exclude the Public

Resolved: (Mayor King/Cr Gallagher)

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
14. Housing Accord (LATE ITEM)	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 14 (LATE ITEM)	to carry out, without prejudice or disadvantage, negotiations, (Including commercial and industrial negotiations)	Section 7 (2) (i)
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The Meeting went into a Public Excluded session at 3.44pm.

The Meeting returned to Open session at 4.38pm.

Extension of Time

Resolved: (Mayor King/Cr Mallett)

That the Meeting be extended in accordance with Standing Order 3.2.7.

- Item 15. Final Decision on A&A King Family Trust v HCC Partly Operative District Plan and**
- Item C1. A&A King Family Trust v HCC Partly Operative District Plan – Legal Advice**

Mayor King declared a conflict of interest with the Agenda Item 15. Final Decision on the A&A King Family Trust v HCC Partly Operative District Plan and Item C.1. Final Decision on A&A King Family Trust v HCC regarding Partly Operative District Plan. The Mayor vacated the Chair and Deputy Mayor Gallagher replaced the Mayor as Chair for the remainder of the Meeting. The Mayor was not present for any of the discussion or voting for either of these Items.

Elected Members queried the requirement to go into Public Excluded for Item C1 which was to receive legal advice in relation to pursuing costs for the Environment Court decision.

The Chief Executive outlined the reasons for this item to be heard in Public Excluded. Legal advice was always treated confidentially to preserve and protect legal options for Council.

Resolution to Exclude the Public

Resolved: (Crs Gallagher/Taylor)

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 the passing of this resolution
C1. A&A King Family Trust v HCC regarding Partly Operative District Plan - Legal Advice (LATE ITEM)	Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)

And that Lachlan Muldowney, Tompkins Wake, remains for Item C1 to provide legal advice to the Council.

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 maintain legal professional privilege Section 7 (2) (g)

Cr Macpherson dissenting.

The Meeting returned to a Public Excluded session at 4.48pm.

The Meeting returned to Open session at 5.48pm.

15. Final Decision on A&A King Family Trust v HCC Partly Operative District Plan

The Chief Executive invited the City Solicitor, as agreed in the Public Excluded Session, to provide an outline of his advice regarding the option to pursue costs.

The City Solicitor stated he would give independent legal advice on the merits of pursuing costs, regardless of the nature of the appellant, based purely on the prospects of success. Firstly, for appeals of District Plans under the Environment Court appeal process it was not the practice to award costs, regardless of the outcome as there was a clear public interest component to appeals.

There were a number of factors that did not encourage the pursuit of costs, such as:

- the court would need to be shown that actions of the appellant were vexatious, abusive of court processes or so poorly run as to incur extra costs;
- there was one criticism evident in the decision but this would not reach the threshold of vexatious, abusive of court process or unnecessary changes that would have caused extra expense;
- this was a case that very clearly involved the public interest particularly as the Council's District Plan would materially impact the city for a long period of time. This would count against awarding of costs as the process of developing a District Plan was a public participatory process; if every unsuccessful appellant in the Environment Court were subject to significant costs that would have a chilling effect on appeals;
- the Court Decision stated that seeking of costs was not encouraged; and
- the expenses involved in making a costs application were likely to be offset by the amount awarded even if the application was successful, and success was not guaranteed.

15. Final Decision on A&A King Family Trust v HCC Partly Operative District Plan

Resolved: (Crs Gallagher/Casson)

That:

- a) the report be received; and
- b) Council confirm the resolution passed in the Public Excluded Meeting and formally note the advice received from the City Solicitor

Minute Note: The Public Excluded Resolution

Resolved: (Crs Mallett/Casson)

That:

- a) the Council resolves not to pursue costs in relation to the decision; and
- b) Council releases the reasons for this decision in the Open Meeting.

The Meeting was declared closed at 6.09pm.