
Council Kaunihera OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Thursday 4 February 2021 at 9.33am.

PRESENT

Chairperson	Mayor P Southgate
Heamana	
Members	Cr M Bunting Cr M Forsyth (via Audio Visual Link) Cr M Gallagher Cr R Hamilton (via Audio Visual Link) Cr D Macpherson Cr K Naidoo-Rauf (via Audio Visual Link) Cr A O'Leary Cr R Pascoe Cr S Thomson Cr M van Oosten Cr E Wilson (via Audio Visual Link)

In Attendance:	Richard Briggs – Chief Executive Sean Murray – General Manager Venues, Tourism and Major Events Lance Vervoort – General Manager Community Jen Baird – General Manager City Growth David Bryant – General Manager Corporate Kelvin Powell – City Safe Unit Manger Luke O'Dwyer – City Planning Manager Carmen Norris - Programme Manager, Economic Growth & Planning Maire Porter - City Waters Manager James Clarke – Director of the Mayor's Office
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Governance Team:	Becca Brooke – Governance Manager Amy Viggers – Governance Team Leader Tyler Gaukrodger – Governance Advisor
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The meeting was opened with a karakia from Tame Pokaia.

- 1. Apologies – Tono aroha**
Resolved: (Mayor Southgate/Cr Bunting)
That the apologies for absence from Deputy Mayor Taylor are accepted.
- 2. Confirmation of Agenda – Whakatau raarangi take**

Resolved: (Mayor Southgate/Cr Bunting)
That the agenda is confirmed.

3. **Declarations of Interest – *Tauaakii whaipaaanga***
No members of the Council declared a Conflict of Interest.

4. **Public Forum – *AAtea koorero***
No members of the public wished to speak.

5. **Confirmation of the Council Open Minutes of 8 December 2020**

Resolved: (Cr Wilson/Cr van Oosten)

That the Council confirm the Open Minutes of the Council Meeting held on 8 December 2020 as a true and correct record.

6. **Chair's Report**

Mayor Southgate took the report as read and responded to questions from members concerning Maaori representation.

Resolved: (Mayor Southgate/Cr Bunting)

That the Council receives the report.

7. **Waikato Regional Theatre - Funding Deed**

The General Manager Venues, Tourism and Major Events outlined the work undertaken to form the Waikato Regional Theatre Funding Deed with Hamilton City Council. He responded to questions from Elected Members concerning Council representation via an independent observer, risk mitigation, proposed conditions and Council funding.

Item 7 (Waikato Regional Theatre - Funding Deed) was adjourned at the conclusion of the discussion to enable staff time to respond to points raised by Elected Members.

8. **Application for Temporary Extension to Hamilton Alcohol Control Bylaw 2015 (SIX60 Concert - 27 February 2021)**

The City Safe Unit Manger outlined the Hamilton Alcohol Control Bylaw 2015 temporary extension process and introduced Senior Sergeant Simon Cherry. They responded to questions from Elected Members concerning steps to be undertaken to ensure a successful event.

Resolved: (Cr Forsyth/Cr Thompson)

That the Council:

- a) receives the report; and
- b) approves the creation of a Temporary Alcohol Ban Area (the Area) to support the SIX60 Concert, pursuant to clause 8 of the Hamilton Alcohol Control Bylaw 2015 (the Bylaw), to which clause 5.1 of the Bylaw will apply from 12pm until 10pm on Saturday 27 February 2021(inclusive), as if the area were included in Schedule 1 of the Bylaw, and will encompass the areas shaded in green on the map at **Attachment 2** of the staff report.

Cr Gallagher left the meeting (10.04am) during the discussion of the above item. He was not present when the matter was voted on.

9. Making Plan Change 6 - Regulatory Efficiency and Effectiveness Programme Operative

The City Planning Manager took the report as read and responded to questions from Elected Members concerning the plan change process.

Resolved: (Cr Macpherson/Cr Pascoe)

That the Council

- a) receives the report; and
- b) approves Plan Change 6 – Regulatory Efficiency and Effectiveness Plan Change to be made operative on 19 February 2021, in accordance with clauses 17 and 20 of the First Schedule of the Resource Management Act 1991 (RMA).

Cr Gallagher re-joined the meeting (10.06am) during the discussion of the above item. He was present when the matter was voted on.

10. District Plan Amendments Committee Draft Terms of Reference

The City Planning Manager took the report as read and responded to questions from Elected Members concerning the scope of the District Plan project, the proposed terms of reference, Elected Member involvement and expectations, funding, and Maangai Maaori involvement.

Resolved: (Cr Pascoe/Cr Macpherson)

That the Council approves the Draft District Plan Committee Terms of Reference (**attachment 1** of the staff report).

11. Draft Schedule of Reports for Council and Committees – 2021

The Governance Manager took the report as read and responded to question from Members concerning the draft Schedule of Reports for Council and Committees – 2021.

Resolved: (Mayor Southgate/Cr van Oosten)

That the Council:

- a) receives the draft Schedule of Reports for Council and Committees - 2021
- b) notes that the Schedule of Reports for Council and Committees - 2021 will be updated regularly and will be available to Members via Diligent.

12. Waikato Regional Theatre - Funding Deed - Continued

The General Manager Venues, Tourism and Major Events confirmed that the proposed funding deed conditions include the previous contribution from Council.

Resolved: (Cr Wilson/Cr Gallagher)

That the Council:

- a) receives the report;
- b) requests the proposed Funding Deed be amended to include reference to the previous

contribution of Council and be reported to the next meeting of the Council for approval.

13. Resolution to Exclude the Public

Resolved: (Cr Macpherson/Cr Thomson)

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 8 December 2020) Good reason to withhold) information exists under	Section 48(1)(a)
C2. Legal Claim - Regency House) Section 7 Local Government) Official Information and	
C3. Watercare Water Allocation Application - Board of Inquiry) Meetings Act 1987)	
C4. Release of a Public Excluded report considered at a meeting of the Audit and Risk Committee on 17 March 2017.		

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

Item C1.	to prevent the disclosure or use of official information for improper gain or improper advantage	Section 7 (2) (j)
Item C2.	to protect the privacy of natural persons	Section 7 (2) (a)
	to maintain the effective conduct of public affairs	Section 7 (2) (f) (ii)
	through protecting persons from improper pressure or harassment	Section 7 (2) (g)
	to maintain legal professional privilege	Section 7 (2) (i)
	to enable Council to carry out negotiations	Section 7 (2) (j)
	to prevent the disclosure or use of official information for improper gain or improper advantage	
Item C3.	to maintain legal professional privilege	Section 7 (2) (g)
	to enable Council to carry out commercial activities without disadvantage	Section 7 (2) (h)

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| Item C4. | to maintain legal professional privilege | Section 7 (2) (g) |
| | to prevent the disclosure or use of official information | Section 7 (2) (j) |
| | for improper gain or improper advantage | |

The meeting moved into a public excluded session at 10.45am

The meeting was declared closed at 1.48pm.

On 8th March 2021 the following was released to the public.

Item C3: Watercare Water Allocation Application - Board of Inquiry

That the Council:

- a) approves Hamilton City Council's participation on the Board of Inquiry appointed to hear the Watercare water allocation application from the Waikato River;
- b) approves an initial position of opposition to the Watercare water allocation application;
- c) requests the Chief Executive to prepare and lodge the necessary documentation to effect the above (a) and (b);
- d) notes that the initial position of opposition may be reviewed as the Board of Inquiry process proceeds, alongside a collaborative approach with the applicant, Auckland Council and other submitters;
- e) notes an initial unbudgeted cost estimate of \$200,000 this financial year to cover preparation and lodgement of the HCC submission, and to undertake any initial discussion/mediation;
- f) notes that the decision and information in relation to this matter be released at the appropriate time, to be determined by the Chief Executive; and
- g) that the proposed Hamilton City Council submission to the Board of Inquiry hearing on the water application be reported to Council for approval prior to lodgement.

The report "Watercare Water Allocation Application - Board of Inquiry" is attached to these minutes as **appendix 1**.

Appendix 1:

Council Report

Committee: Council

Date: 04 February 2021

Author: Andrew Parsons

Authoriser: Blair Bowcott

Position: Strategic Development
Manager

Position: Executive Director Special
Projects

Report Name: Watercare Water Allocation Application - Board of Inquiry

Report Status	<i>This report is taken as a publicly excluded item to maintain legal professional privilege; AND to enable Council to carry out commercial activities without disadvantage.</i>
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Purpose - Take

1. To seek approval from the Council for Hamilton City Council's participation in the government appointed Board of Inquiry which has been appointed to hear the Watercare water allocation application from the Waikato River.
2. To seek approval from the Council for the initial Hamilton City Council position of opposition of the water allocation application, should Council choose to participate in the Board of Inquiry process.

Staff Recommendation - *Tuutohu-aa-kaimahi*

3. That the Council:
 - a) approves Hamilton City Council's participation on the Board of Inquiry appointed to hear the Watercare water allocation application from the Waikato River;
 - b) approves an initial position of opposition to the Watercare water allocation application;
 - c) requests the Chief Executive to prepare and lodge the necessary documentation to effect the above (a) and (b);
 - d) notes that the initial position of opposition may be reviewed as the Board of Inquiry process proceeds, alongside a collaborative approach with the applicant, Auckland Council and other submitters;
 - e) notes an initial unbudgeted cost estimate of \$200,000 this financial year to cover preparation and lodgement of the HCC submission, and to undertake any initial discussion/mediation; and
 - f) notes that the decision and information in relation to this matter be released at the appropriate time, to be determined by the Chief Executive.

Executive Summary - Whakaraapopototanga matua

4. An application for 200 Million litres per Day (MLD) was submitted by Watercare to Waikato Regional Council (WRC) in 2013, with the expectation that Auckland would need the additional water from about 2030. The application has yet to be formally considered (note: we understand that application has been modified to 150MLD in December 2020).
5. In June 2020, the Minister for Environment under section 142(2) of the Resource Management Act 1992 (RMA), issued a direction to call in Watercare's 2013 Resource Consent application and refer the matter to a Board of Inquiry (BOI).
6. After the expiry of Hamilton City Council's (HCC) current resource consent in 2044 and/or when Hamilton requires further water, based on current allocations, there will be very limited potential for HCC to seek an increased water take from the Waikato River catchment. If Watercare's application is granted by the BOI, what limited potential there is will reduce substantially.
7. Access to potable water supply is critical to the ongoing growth of Hamilton. If that supply is not available from the Waikato River, the other supply options (if any), will be inferior and expensive. Accordingly, preserving long term allocable flow within the Waikato River is a matter of great strategic importance to HCC.
8. Staff recommend that HCC be a participant in the Board of Inquiry process and that HCC's initial position should be to oppose the Watercare water allocation application based on the potential impacts for HCC, noting that that this position may be reviewed as the Board of Inquiry and any associated mediation process proceeds.
9. Staff will also explore opportunities for collaboration/alignment with others such as Future Proof, Waikato-Tainui, River Iwi, Local Authorities along the Waikato River, and the River Authority. Staff also propose that HCC will work collaboratively with the applicant and Auckland Council as part of the BOI process to explore mutually beneficial solutions.
10. Staff consider the decisions in this report have a low significance and that the recommendations comply with the Council's legal requirements.

Background - Koorero whaimaarama

11. Auckland City's municipal water is managed by its council-controlled organisation, Watercare Services Limited (Watercare).
12. Watercare supplies an annual average of approximately 440 million litres of water a day (MLD), derived from a range of sources. Currently Watercare's three main water supply sources are:
 - Water storage lakes in the Hūnua and Waitākere ranges;
 - A groundwater aquifer in Onehunga; and
 - The Waikato River.
13. Watercare have had a consent to take 150 MLD from the Waikato River since 1998 at their Water Treatment Plant site in Tuakau.
14. An application for a further 200 MLD was submitted by Watercare to Waikato Regional Council (WRC) in 2013, with the expectation that Auckland would need the additional water from about 2030.
15. Water allocation within the Waikato River is managed by Waikato Regional Council. The key document which provides for the allocation of water is the Waikato Regional Plan (WRP), more specifically Variation 6 – Water Allocation.

16. Variation 6 to the Waikato Regional Plan was released in 2012 and has rules for managing the allocation of water in the Waikato region in a way that achieved national policy expectations at that time. (Note: a new tougher National Policy Statement for Freshwater Management 2020 has been introduced to restore and preserve the balance between the water, the wider environment, and the community).
17. The rules are aimed at ensuring there is enough water to protect aquatic life and provide for recreation and electricity generation, while also meeting domestic, municipal, agricultural, cultural and industrial needs as far as possible.
18. Since 2013, Watercare's water take application (and the associated applications) have been on hold while WRC processes and determines other applications to take water from the Waikato River Catchment that were lodged before Watercare's application.
19. In June 2020, after considering the advice provided by the Environmental Protection Authority, the Minister for Environment under section 142(2) of the Resource Management Act 1992, issued a direction to call in Watercare's 2013 Resource Consent application and refer the matter to a BOI.
20. The Minister's direction recognised Watercare's application to be of national significance.
21. The Minister has since appointed a Board to consider the proposal. Chief Environment Court Judge David Kirkpatrick will chair the Board. Other members appointed to the Board are Waikato University Law Professor Linda Te Aho and infrastructure specialist consultant Anthony Wilson. Linda Te Aho was nominated by the Waikato River Authority as required under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.
22. All decisions by a BOI are required to be made within nine months of the date of public notification of the matter. This means a board must consider an application, hold hearings, consider the matter and make a decision within nine months. The Minister does have power to extend this timeframe under the Resource Management Act 1991 in special circumstances.
23. There is no general right of appeal against a BOI's overall decision to approve or decline the matter. It is only where the board's process or decision is legally deficient that it may be appealed.

Discussion - Matapaki

Potential Impact of Watercare Water Take Application on Hamilton

24. HCC has a Resource Consent to take water from the Waikato River. The consent provides for a stepped take, with the volume increasing incrementally to a total of 146 MLD when the consent expires in June 2044. The consented volumes and allocation steps were determined based on the city's projected growth demands at the time of consent application in 2009.
25. If Watercare's application for an extra 200MLD (along with all other water allocation applications that are ahead of Watercare in the consent queue) is granted the allocatable flow within the Waikato river will be considered "over allocated". The most likely scenario is that consent applications will be scaled back slightly by the regulator to "fully allocate" the Waikato River flow rather than over allocate it. Staff understand that the notified Watercare application will be for 150MLD, not 200MLD and that a modified application for 150MLD was lodged in December 2020.
26. When the allocatable flow within the river is fully allocated municipal suppliers may be able to renew existing allocation consents however, any new or additional water takes will be very difficult to secure. Other users, such as industry, may also be able to renew existing consents; however, they will also struggle to secure new or additional water take consents.
27. After the expiry of HCC's current resource consent in 2044 and/or when Hamilton requires further water, based on current allocations, there will be very limited potential for HCC to seek an increased water take from the Waikato River catchment. If Watercare's application is granted by the BOI, what limited potential there is will reduce substantially.

28. Access to potable water supply is critical to the ongoing growth of Hamilton. If that supply is not available from the Waikato River, the other supply options (if any), will be inferior and expensive.
29. In the future after the expiry of HCC's current resource consent and/or when Hamilton requires further water, there will be limited or potentially no options available for increased water take from the Waikato River catchment (ruling out water from the Waipa River and/or potentially ground water extraction options).
30. Accordingly, preservation of the allocable flow within the Waikato River is of strategic significance to HCC. Without ready access to a reliable and economically efficient potable water source, HCC's long term growth aspirations will be frustrated.

Involvement in BOI

31. The BOI application is likely to be notified on 8 February 2021 for at least a 30-day period (more likely to be 60 days but this is not confirmed).
32. If HCC wants to participate then it needs to undertake the technical assessments to support its position and submit to the Board within the notification period.
33. Staff recommend that HCC be a participant in the Board of Inquiry process and that HCC's initial position should be to oppose the Watercare water allocation application based on potential future impacts on HCC relating to access to water, noting that that this position may be reviewed as the Board of Inquiry and any associated mediation process proceeds.

Collaboration

34. There are potential opportunities for collaboration/alignment with others that staff will explore. These are:
 - **Future Proof:** Staff have raised the question of potential collaboration with Future Proof Chief Executives. There is only partial collaboration possible within Future Proof due to the vested interests of individual members e.g. Auckland Council etc
 - **River Iwi:** There is potential collaboration opportunities with all river Iwi (i.e. Waikato Tainui, Maniapoto, Raukawa) beyond the HCC - Waikato Tainui Co-Governance Forum.
 - **Other Councils:** There is a potential to collaborate with other "river" Councils (i.e. Waikato District Council, Waipa District Council, Taupo District Council, etc).
 - **Waikato River Authority**
35. Staff also intend to work collaboratively with the applicant (Watercare) and Auckland Council as part of the BOI process to ensure the HCC position is understood and that mutually beneficial solutions can be explored. This intention to maintain open dialogue and a collaborative working model was discussed at a meeting of Mayor Southgate and Auckland Mayor Goff on 21 January 2021.

Options

36. No other reasonable options are available for Council to consider in the context of HCC being a growth Council with increasing population.
37. The recommendations support Council's long-term growth strategy in relation to urban growth and population increase e.g. Hamilton Urban Growth Strategy, Strategic boundary agreement, Metro Spatial Plan outcomes, District Plan.

Financial Considerations - *Whaiwhakaaro Puutea*

38. The initial estimated total cost for HCC to participate in the Board of Inquiry is \$500,000 over 2020/21 and 2021/22 financial years. This estimate can only be confirmed as the BOI process proceeds.

39. The initial estimate to cover preparation and lodgement of the HCC submission, and undertake any initial discussion/mediation is \$200,000 in 2020/21. Council can review its position or continuation in the BOI process once the nature of the other submission and the formal BOI gets underway.
40. The cost of participation in the BOI is not currently funded in the 2020/21 Annual Plan or proposed within the 2021-31 Long Term Plan.

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

41. Staff confirm that the staff recommendations comply with the Council's legal and policy requirements.

Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga*

42. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
43. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
44. The recommendations set out in this report are consistent with that purpose.

Risks - *Tuuraru*

45. Assuming all (or a reduction to 150MLD) of the Watercare 200MLD application is approved and the Waikato River becomes fully allocated:
 - The principal risk to HCC up to 2044 is access to water over and above the city's current consented limits. This is particularly relevant for new wet industry or higher than expected growth.
 - Beyond 2044 there is likely to be a risk to HCC's ability to re-consent its current water allocation (both volume of water and increased compliance obligations) and, any new or increased water allocation request would likely be extremely challenging to secure (if it can be secured at all). This is particularly relevant for any new growth (i.e. all industry and all residential infill, intensification and greenfields) including water requirements for city expansion area and the Future Proof Metro Spatial Plan outcomes.

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

Significance

46. 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 low level of significance.

Engagement

47. Given the low level of significance determined, the engagement level is low. No engagement is required.

Attachments - *Ngaa taapirihanga*

There are no attachments for this report.