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## Extraordinary Council

### OPEN MINUTES

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**Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Tuesday 4 July 2017 at 1.05pm.**

#### **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

In Attendance:	Richard Briggs – Chief Executive
	Kelvyn Eglinton – General Manager City Growth
	Blair Bowcott – Executive Director Special Projects
	Chris Allen – General Manager City Infrastructure
	San Murray – General Manager Tourism, Major Events and Venues
	Sean Hickey – General Manager Strategy and Communications
	David Bryant – General Manager Corporate
	Karen Saunders – City Growth Business Manager
	Andrew Parsons – City Development Manager
	Nigel Ward – Communications Team Leader
	Nicola Walsh – Communications Advisor

Governance Advisors:	Lee-Ann Jordan – Governance Manager
	Becca Brooke – Governance Team Leader
	Amy Viggers – Committee Advisor

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1. **Apologies**  
**Resolved:** (Crs Bunting/Taylor)

That the apology from Cr Yeung is accepted.

2. **Confirmation of Agenda**

**Resolved:** (Cr Casson/Mayor King)

That the agenda is confirmed.

3. **Declarations of Interest**

No members of the Council declared a Conflict of Interest.

4. **Public Forum**

There were no public forum speakers

5. **Resolution to Exclude the Public**

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

**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. Growth Update	) 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 to enable Council to carry out negotiations	Section 7 (2) (h) Section 7 (2) (i)
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**The meeting went into public excluded session at 1.05pm.**

*During the Public Excluded session of the meeting, a resolution was passed to make the Growth Update report, and council decisions concerning the report public following the Government HIF announcement made on 11 July 2017. The afore mentioned report and minutes are attached as appendix 1 to these minutes.*

**The meeting was declared closed at 3.30pm.**

**Committee:** Council

**Date:** 04 July 2017

**Report Name:** Growth Update

**Author:** Blair Bowcott

<b>Report Status</b>	<i>This report is taken as a publicly excluded item to enable Council to carry out commercial activities without disadvantage; AND to enable Council to carry out negotiations.</i>
<b>Strategy, Policy or Plan context</b>	<i>Council Financial Strategy          Hamilton Urban Growth Strategy          Future Proof Growth Strategy          Hamilton Plan          Partly Operative District Plan          Growth Funding Policy          2015-2025 Long Term Plan          30 Year Infrastructure Strategy</i>
<b>Financial status</b>	<i>There is budget to continue participating in the Housing Infrastructure Fund (HIF) process.          If Council is successful in its HIF application (the next stage), and accepts an allocation, there will be impacts on Council's current Long Term Plan (LTP) and Financial Strategy, and consultation will be required before any commitments can be agreed.</i>
<b>Assessment of significance</b>	<i>Having regard to the decision making provisions in the LGA 2002 and Council's Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i>

## 1. Purpose of the Report

- To seek Council approval to finalise and execute a **non-binding** Heads of Agreement to develop the Housing Infrastructure Fund (HIF) detailed business case and associated funding agreements for the Peacockes growth area with the Ministry of Business Innovation and Employment (MBIE), New Zealand Transport agency (NZTA) and Council.

### 3. Executive Summary

4. Council submitted three **non-binding** HIF funding proposals in the form of indicative business cases to MBIE on 30 March 2017.
5. The HIF evaluation panel assessed all three Hamilton City Council proposals and has decided to select the Peacocke business case to proceed to the next stage of the HIF process. The Peacocke application is for indicative funding of \$182m net (comprising gross spend \$272m, less assumed NZTA subsidy \$90m).
6. The decision by the HIF evaluation panel to select Peacocke was based on the fact that it was a more transformational project for the city and sub-region that would lead to greater housing delivery outcomes.
7. A public announcement on all successful HIF applications across New Zealand will be made by the Prime Minister and senior Cabinet Ministers in Hamilton on 11 July 2017. This report and the outcome of the HIF applications **need to remain confidential until that date**.
8. Council will be required to finalise and execute a **non-binding** Heads of Agreement (HOA) with MBIE and NZTA. The HOA outlines how Council, MBIE and NZTA will work together over the next phase of the HIF application process. The HOA does **not bind** Council to any funding arrangements. **The HOA is not a HIF agreement**.
9. The purpose of the HOA is to outline what is required to complete a HIF agreement (being a detailed business case focusing primarily on the financial and commercial elements of the funding proposal), along with the milestones and timeframes for the next phase. It will outline the form of any HIF loan agreement and NZTA funding agreement. This is in line with previous reports to Council on the process.
10. It is recommended that delegation be given to the Chief Executive to negotiate and execute the final non-binding Heads of Agreement with MBIE and NZTA, to complete all necessary work in relation the final business case and to negotiate funding agreements with private developers and NZTA.
11. The indicative funding proposal for Peacocke needs to be incorporated into the 2018-28 Long Term Plan.
12. Staff will continue to liaise with Elected Members throughout the HIF process and the detailed business case and funding agreements will come to Council for consideration and approval.

### Recommendations from Management

That Council:

- a) receives the report;
- b) approves a **non-binding** Heads of Agreement to develop the Housing Infrastructure Fund (HIF) detailed business case and associated funding agreements for the Peacockes growth area with the Ministry of Business Innovation and Employment (MBIE), New Zealand Transport agency (NZTA) and Council;
- c) delegates to the Chief Executive authority to work with MBIE and NZTA to refine, then finalise and execute the **non-binding** Heads of Agreement;
- d) notes that the **non-binding** Heads of Agreement will reflect the parameters of the HIF application submitted to MBIE on 31 March 2017 for the Peacockes growth area;

- e) notes that the Chief Executive will prepare as part of the next stage of the HIF application a detailed business case, negotiate funding agreements and prepare any necessary public consultation material for the consideration and approval of Council;
- f) delegates to the Chief Executive authority to conduct any **non-binding** commercial negotiations with Government representatives and private developers in this next phase, consistent with the HIF application submitted to MBIE for the Peacockes growth area;
- g) notes that the growth assumptions in the 2018-28 Long Term Plan will incorporate the HIF funding arrangements for the Peacocke growth area;
- h) requests the Chief Executive report to the 27 July 2017 Council meeting on the opportunities to advance work associated with the Peacocke growth cell ahead of the HIF detailed business case and associated funding agreements being finalised (including proactive land purchase, investigations and design of capital works) subject to any works advanced being retrospectively included in the HIF funding arrangements;
- i) notes that Council will have further opportunities to consider information on the HIF application and its implications for the 2018-28 Long Term Plan; and
- j) makes this report and the Council decisions public following the government HIF announcements on 11 July 2017.

### 13. Attachments

- 14. Attachment 1 - HIF Report to Council 28 March 2017
- 15. Attachment 2 - Draft Heads of Agreement Housing Infrastructure Fund

### 16. Background

- 17. On 28 March 2017 Council approved the submission of applications to the Housing Infrastructure Fund (HIF). The report is [linked here \(and attachments 6-8\)](#) and the application consisted of three business cases as follows:
  - i. Rotokauri application \$91m net HIF funding (Comprising gross spend \$154m, less existing 2015-25 Long Term plan budget \$30m and assumed NZTA subsidy \$33m)
  - ii. Peacocke application \$182m net HIF funding (Comprising gross spend \$272m, less assumed NZTA subsidy \$90m)
  - iii. Combined Rotokauri and Peacocke application \$273m net HIF funding (Comprising gross spend \$426m, less existing 2015-25 Long Term Plan budget \$30m and assumed NZTA subsidy \$123m)
  - iv. Note all amounts are in 2017 dollars
- 18. For ease of reference and to avoid repeating content, the report to 28 March 2017 Council (excluding appendix) is included in Attachment 1.
- 19. The applications were submitted to the Ministry of Business Innovation and Employment (MBIE) on 31 March 2017.
- 20. Subsequent to this date MBIE sought additional information on the applications, and then met with staff to discuss the HIF applications and conduct a site visit to both growth cells.
- 21. The HIF applications have been evaluated by an independent panel and a recommendation made to the appropriate government ministers.

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22. We have been advised by MBIE that the Peacocke HIF application has been selected to proceed to the next stage of the HIF process, while the Rotokauri and Combined Rotokauri/Peacocke HIF applications have been declined.
23. A public announcement on all successful HIF applications across New Zealand will be made by the Prime Minister and senior Cabinet Ministers in Hamilton on 11 July 2017. This report and the outcome of the HIF applications **need to remain confidential until that date**.
24. MBIE have complimented Hamilton on the quality of its HIF bids, citing that all three were compelling and made strong cases to be supported.
25. MBIE have explained the reasons why the Peacocke HIF application was chosen ahead of the Rotokauri and Combined Rotokauri/Peacocke applications were:
  - The opening of the Peacocke cell is a transformational project for the city
  - To open up the Peacocke growth cell requires a substantial amount of lead infrastructure, especially the bridge/roading network, and the HIF funding arrangement is designed exactly for this scenario
  - Peacocke provides a longer term yield of houses
  - Peacocke provides wider sub-regional benefits and advances strategic relationships with regions south of Hamilton (i.e. to a wider area than just to Hamilton, especially once the major transport connections are in place)
  - Growth in the Peacocke area balances the city in terms of growth areas relative distance to the CBD
  - NZTA have indicated that they will advance the timing of the Southern Links transport network by five years (from 2030 to 2025), if the Peacocke growth cell is accelerated under the HIF agreement.
  - MBIE and NZTA staff have indicated that in terms of the transportation elements of the Peacocke proposal it is unlikely that significant amounts of new analysis is needed for the final business case phase.

## 26. Heads of Agreement

27. The initial draft of the **non-binding** Heads of Agreement (HOA) is included at Attachment 2.
28. The HOA outlines how Council, MBIE and NZTA will work together over the next phase of the HIF application process. The HOA does **not bind** Council to any funding arrangements. **The HOA is not a HIF agreement.**
29. The purpose of the HOA is to outline what is required to complete a HIF agreement (being a detailed business case focusing primarily on the financial and commercial elements of the funding proposal), along with the milestones and timeframes for the next phase. It will outline the form of any HIF loan agreement and NZTA funding agreement. This is in line with previous reports to Council on the process.
30. The HOA attached is an early draft document (it was provided on 28 June 2017) and MBIE have indicated they want to work with all Councils that have been selected for the next phase of HIF to refine the document prior to it being executed. The HOA will be **non-binding** on Council and execution of this document does not mean that Council has agreed to finalise a HIF. Council will be required at a later date to consider and approve the final business case and any funding agreements with MBIE and NZTA.

31. It is proposed that the Chief Executive work with MBIE/NZTA and the other councils selected to progress their HIF applications to refine and finalise the MOU. This process may include obtaining the appropriate legal and financial advice.

### **32. Options for further advancement**

33. The intention of the HIF application was to accelerate the delivery of housing land and dwellings in the city to meet the growth projected in the coming years.
34. The time to complete the HIF detailed business case, funding agreements, private developer agreements, any public consultation and ultimately Council and government approval will extend into 2018. There is an opportunity to advance work associated with the Peacocke growth cell in 2017/2018 ahead of the HIF being finalised to ensure that Council will reduce any critical path timeframes in this complicated growth project. This advance work could include proactive land acquisition associated with the critical gateway infrastructure (this is a significant risk to timeframes as it may trigger first rights obligations with Tainui, and there are multiple land owners), investigations such as geotechnical work and detailed design of projects.
35. The areas of work that could be advanced will be identified in a report to the 27 July 2017 Council meeting, along with an estimated financial cost to advance these projects. It will be important to get the approval of MBIE and NZTA that any advanced works related to the HIF application can be retrospectively included in the HIF funding arrangements.

### **36. Financial and Resourcing Implications**

37. The financial treatment of the HIF was described in the report to Council on 28 March 2017. In summary the HIF represents a 10 year interest free loan, with the water related debt being “on balance sheet” as a sub-ordinated loan, while the transport related debt is initially “off balance sheet” but progressively is recognised as debt by council over the course of the 10 year period through a transport subsidies funding offset agreement. The 10 year payback period does not commence from the finalisation of the agreement, but is staggered over the phasing and payment for the infrastructure works.
38. The accounting treatment for transport projects has been clarified since the 28 March 2017 report and the financial impact on debt is now more favourable than that modelled in the HIF application, due to the transport debt being initially “off balance sheet.”
39. The HIF application and the previous report to Council both identified a substantial amount of work is required to firm up the financial arrangements of the HIF, and the risks and implications for Council. This includes negotiations with developers over their commitment to a partnership and contribution to growth costs, calculation of development contributions, implications on the 2018-28 Long Term Plan and Financial Strategy, and how Council can mitigate its risks.
40. The next stage of the HIF process (comprising the detailed business case and funding agreements), which the HOA will outline, will specifically focus on:
- The financial terms of the HIF,
  - Financial implications for Council (especially debt, repayment profile, development contributions, debt ratios and any impact on rates),
  - Private developer negotiations, and
  - How Council will mitigate its risks.

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41. Extensive conversations will be required with MBIE and NZTA representatives on the terms of the HIF and content of the detailed business case. Both organisations have requested regular attendance at Council project meetings on the HIF.
42. At the same time as the detailed business case is being developed, commercial negotiations will occur with private developers to achieve a level of financial and new dwelling commitment that meet the requirements sought by the government and Council. This is to ensure that Council's financial risk is mitigated, and that new houses are delivered at an accelerated rate in accordance with the intention of the HIF.
43. The HIF discussions over the next six months align well with the 2018-28 Long Term Plan process and will enable an informed discussion on the HIF and the growth scenarios for Council to consider alongside the other considerations of the Long Term Plan.

#### 44. Timeframe for Next Stage

45. It is our intention to progress the detailed business case, private developer negotiations, private developer agreements and consequential funding agreements with MBIE and NZTA as quickly as possible. Our current target is to have these finalised for consideration by Council in October 2017.
46. Factors that will influence the timeframe include the outcome of the central government elections (and consequential impact on Ministers for HIF), the engagement and agreement with private developers and the financial modelling of the HIF in parallel with the 2018-28 Long Term plan deliberations.
47. The extent and requirements of any public consultation are still to be finalised. The timing of this consultation may depend on the links to the 2018-28 Long Term Plan and to what extent any consultation is reliant on decisions and information from the draft Long Term Plan.

#### 48. Risk

49. The report to Council on 28 March 2017 (paragraphs 154-162) described the non-financial and financial risks associated with the HIF.
50. These risks are unchanged, and it was always the intention of the HIF application process to address and mitigate each of these risks in this next stage. That is the purpose of the detailed business case, developer negotiations and discussion on the funding agreements.

#### Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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**Committee:** Council **Date:** 28 March 2017

**Report Name:** Government's Housing Infrastructure Fund - Final Proposal from Hamilton City Council **Author:** Luke O'Dwyer

<b>Report Status</b>	<i>Open</i>
<b>Strategy, Policy or Plan context</b>	<p><i>Council Financial Strategy</i></p> <p><i>Hamilton Urban Growth Strategy</i></p> <p><i>Future Proof Growth Strategy</i></p> <p><i>Hamilton Plan</i></p> <p><i>Partly Operative District Plan</i></p> <p><i>Growth Funding Policy</i></p> <p><i>2015-2025 Long Term Plan</i></p> <p><i>30 Year Infrastructure Strategy</i></p>
<b>Financial status</b>	<p><i>There is budget to continue participating in the Housing Infrastructure Fund (HIF) process.</i></p> <p><i>If Council is successful in its HIF application, and accepts an allocation, there may be potential impacts on Council's current Long Term Plan (LTP) and Financial Strategy, and consultation will be required before any commitments can be agreed.</i></p>
<b>Assessment of significance</b>	<p><i>Having regard to the decision making provisions in the LGA 2002 and Council's Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i></p>

#### 1. Purpose of the Report

2. To explain recent growth and urban development initiatives (including Government decisions) that have the potential to impact Council functions and finances and how Hamilton grows in the future;
3. To seek Council approval to submit a **non-binding** Housing Infrastructure Fund (HIF) proposal to the Ministry for Business Innovation and Employment (MBIE), consisting of three indicative business cases, to fund new lead strategic infrastructure in the Peacockes and Rotokauri growth areas.

#### 4. Structure of the Report

5. This report is comprised of three parts.
6. The first part is an executive summary.
7. The second part provides a brief overview of recent growth and urban development initiatives potentially impacting Council and the future growth of Hamilton.

8. The third part addresses in detail our participation in one of these initiatives – the HIF. The HIF is a funding tool announced by Government in mid-2016 to accelerate housing delivery in high growth areas. While the HIF is an opportunity, it also presents some challenges for Council.
9. At the time of completing this report, the business cases that need to be submitted to MBIE as part of the HIF proposal had not been fully completed.
10. The three business cases will be circulated to elected members shortly after this report has been issued. Given the extremely tight timeframes associated with the HIF process, the business cases will continue to be refined up until submission. (Attachments 6-8)
11. Nevertheless, the substantive analysis and key results associated with the business cases have been completed and are included in this report for elected member's information to inform and assist with their decision making obligations.
12. Relevant matters of strategic importance from the business cases that are of relevant from a governance perspective are included in this report.
13. The final details in the business cases will be consistent with the content of this report with respect to benefits, costs of risks associated with the HIF proposal and what is being asked for in terms of decision making.
14. The HIF proposal is being conducted under a formal tender/procurement process and must be lodged with MBIE by 31 March 2017.

## 15. Part 1 - Executive Summary

### What is the HIF and what is trying to solve?

16. Recent Government initiatives have been implemented to address growth and funding challenges facing many parts of New Zealand.
17. The HIF is one tool developed by Government to assist local government solve these growth and funding challenges.
18. Hamilton is a high growth area of increasing importance to Government given we are the fourth largest city in New Zealand with a strong economy and a growing population.
19. Hamilton's importance as a major urban centre has been confirmed by being included as a high growth area in the National Policy Statement for Urban Development Capacity (NPS-UDC), and through the recent confirmation of a Housing Accord with the Minister for Building and Construction. The NPS-UDC will require Council to ensure enough zoned land is available to meet demand as our population grows.
20. **Even without access to the HIF, Council will need to fund future growth cells as part of the next Long Term Plan (LTP) to accommodate anticipated future population growth.** This is standard business for Council where Council has previously funded lead strategic infrastructure to facilitate urban development via the opening of new growth cells (such as in Rototuna).

### The HCC HIF application is for \$273 million

21. A **non-binding** HIF proposal is recommended for \$273 million (2017 dollars) for road, water, waste water and stormwater infrastructure for Peacocke and Rotokauri growth areas. Approximately \$182 million is for Peacockes, and \$91 million is for Rotokauri. The proposal consists of three business cases – a joint Peacockes and Rotokauri business case, a business case just for Peacockes, and a business case just for Rotokauri.
22. The previous Council confirmed its participation in the HIF process by endorsing the preparation of an indicative HIF proposal on 25 August 2016.
23. Council submitted an indicative HIF proposal on 2 December 2016 seeking \$240 million (2015 dollars, before inflation, New Zealand Transport Agency (NZTA) subsidy or existing LTP allocations) to fund growth infrastructure in the Peacockes and Rotokauri growth cells.
24. The HIF eligibility criteria specifies that lead in growth strategic infrastructure necessary to enable urban development can only be sought through the HIF process.

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25. Feedback on Council's proposal was received from MBIE on 22 December 2016 and Council was confirmed as being eligible to progress to the final round of the HIF process.
26. A proposal in the form of three indicative business cases has been prepared in accordance with MBIE tender requirements (Attachment 6-8).
27. The proposal seeks funding for a bridge, associated arterial road and water and waste water infrastructure for Peacockes, and a floodway and an arterial road network for Rotokauri.
28. Significant additional consequential capital expenditure for local infrastructure for both growth cells would also be likely required over the full (approximate 20 year) development timeframe estimated to be \$480million (Rotokauri \$80m, Peacocke \$400m). These are **not included** in the HIF proposal.
29. Future estimated operational costs of \$300,000 per annum per growth cell for the HIF funded infrastructure are also **excluded** in the HIF proposal.
30. Further, the HIF proposal does not cover any community infrastructure (such as land for reserves, sports fields, playgrounds, public toilets), and these infrastructure elements and costs for each growth cell will be significant, but are unknown at this time.
31. These important infrastructure elements for each growth cell would need to be factored in as part of the next LTP.
32. Indicative business cases prepared in support of each proposal (as required by MBIE) demonstrate a positive benefit/cost ratio (BCR) of approximately 19 for both Peacockes and Rotokauri over a 30 year period. This means that for every \$1 of funding received under HIF, a wider economic return to the city of approximately \$19 could be achieved.
33. A benefit-cost ratio is one way to summarize the overall value for money of a project or proposal on an economic basis. A BCR is the ratio of the benefits of a project or proposal. The higher the BCR the better the investment from an economic perspective.

**Council should stay involved in the HIF process**

34. The HIF represents a good opportunity for Council to secure advanced funding for important growth infrastructure.
35. The primary benefit to Council and the City of a successful HIF application is that it would bring forward major growth infrastructure to enable new housing construction in two greenfield cells in Hamilton when compared to current Long Term Plan (LTP) settings, funded by interest free loans from the government for a maximum of 10 years.
36. This advanced HIF funding would also create new greenfield land supply and is vital for Hamilton meeting its future National Policy Statement – Urban Development Capacity (NPS-UDC) obligations for residential supply.
37. The HIF presents a formal (yet **non-binding**) mechanism by which Council can directly engage with central Government on addressing growth funding and housing delivery issues through a partnership approach.
38. Even so, there is a degree of uncertainty around the HIF allocation process in terms of refining key information, understanding full financial impacts and economic benefits, mitigating risks and in terms of what form any financial assistance to Council may take.
39. Given the length of time associated with the full HIF process (through to early 2018), Council has an opportunity to assess and model HIF related impacts concurrently during the development of the next LTP, and recommend to government alternatives that would reduce the impact on Council's financial strategy.
40. For these reasons, and noting that submitting a proposal **does not bind** Council to any future commitments, and that irrespective of the HIF framework the challenge of funding growth related infrastructure remains, there is merit in staying involved in the HIF process until its conclusion.

**HIF benefits accrue to Hamilton as a whole, while costs are born by Council.**

41. MBIE have established the tender parameters, assessment criteria and minimum requirements for eligibility for HIF funding assistance.

42. The primary analytical tool set out in the tender process is for eligible councils to undertake indicative business cases to determine benefit cost ratios (BCR) based on existing processes designed and used by NZTA and Treasury. This analysis must be undertaken for Council to apply for HIF funding.
43. The indicative business cases reveal extremely favourable BCR's for both Peacockes and Rotokauri, indicating a positive economic return to Hamilton and the sub-region if HIF funding was received.
44. Despite this economic return, there are a number of risks associated with the HIF process, especially in terms of impacts on Council's financial strategy.
45. Even though the BCR's for both Peacockes and Rotokauri are high and represent a potentially good return on investment, it is important to note that these benefits accrue to Hamilton as a whole and the wider sub-region as opposed to just Council over a 30 year period.
46. The main cost impact associated with the current HIF structure and any potential allocation is a likely breach of our existing Financial Strategy, especially debt to revenue ratios, and the need for increased revenue to fund the capital expenditure programme required to open the new growth cells.
47. Ultimately, any decision made by Council will need to balance and evaluate the differing financial parameters associated with funding growth, with or without the HIF. That is, understanding that receiving a HIF allocation is a short term, interest free loan, to be repaid by Council, after a 10 year period where wider benefits for an investment into growth infrastructure accrue to Hamilton as a whole over a longer time scale.

**Which option is better?**

48. The best option under the MBIE process can only be determined by a benefit cost ratio. Even so, from Council's perspective there are other considerations to determine which option is best.
49. From a benefit cost ratio perspective, all three options are very similar.
50. From a housing delivery perspective, a combined HIF option advancing both Rotokauri and Peacocke growth cells yields more dwellings, while Peacocke by itself delivers more dwellings than Rotokauri.
51. From a Council debt and financial strategy perspective, Rotokauri is more affordable under current LTP parameters.
52. From a Hamilton Urban Growth Strategy perspective, Rotokauri Stage 1 is planned to be developed ahead of Peacockes.

**There are options available – HIF is a long process that needs to be considered in tandem with the next LTP**

53. Despite these potential benefits, there are a number of risks to Council in receiving the HIF allocation being sought.
54. These risks have been identified through standard Council risk management processes and appropriate caveats to mitigate these risks have been included in our funding proposal.
55. Primary risks identified include financial, delivery, development commitment and information certainty risks.
56. Due to the compressed timeframe imposed by MBIE, some aspects of the analysis informing our understanding of costs, benefits, and impacts on the Council's finances arising from the final proposal are likely to alter through more detailed investigations in the next phase of the HIF process.
57. Despite these risks, Council should continue to participate in the HIF process as our final submission is non-binding and Council can withdraw from the HIF process at any time. **Ongoing participation in the HIF process will not result in any immediate impacts on our debt profile nor have any rates implications.**

## Item 5

58. Staying involved in the HIF process enables Council to continue to be formally engaged with MBIE and government ministers exploring alternative financial and delivery arrangements which have the potential to reduce the risks that exist under the current HIF structure including alternative options, such as:
- Crown Owned Special Purpose Vehicle;
  - CCO of Council funded by the Crown on a non-recourse basis to Council (risk sits with Crown);
  - A Crown-funded entity similar to the Crown Fibre Holdings model used for the broadband fibre rollout;
  - Extended repayment periods beyond 10 years to match the actual timing of new dwellings being constructed;
  - A FAR offset model where debt is off balance sheet;
  - Government suspensory loan with debt waived as development expectations achieved.
59. If submitted, a decision on Council's HIF proposal will be made by MBIE before the end of June 2017.
60. **There are a number of additional decision making opportunities for Council before any final acceptance of a funding allocation under HIF needs to be made.** We are currently at stage two of a five stage process.
61. If the current HIF application is accepted by the Government (by June 2017), Council will have until December 2017 to finalise detailed business cases that are required to be completed before any funding can be allocated to Council. At the same time, Council will be required to consult the community on any application to the HIF, given the scale of the change to the current LTP.
62. During this next phase, Council will have sufficient time to complete substantially detailed and robust investigations on the financial and commercial aspects of any HIF allocation, and to better understand, and further mitigate, risks associated with the HIF, including any implications throughout the development of the 2018-2028 LTP.
63. As such, any final decision by Council to accept any HIF allocation can only be made as part of integrating potential HIF impacts during the wider LTP planning process, and after receiving and considering public submissions.
64. The final stage of the process would be for Council to approve a final agreement with the government, expected to be early 2018.
65. Staff will report back to Council on the outcome of MBIE's evaluation and on the next phases of the HIF process later in the year.

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## Attachment 1

## Recommendation from Management

That Council:

- a) receives the report;
- b) approves the submission of a **non-binding** application to the Housing Infrastructure Fund, including approving three business cases, to advance lead strategic infrastructure funding for the Peacocke and Rotokauri growth cells subject to the caveats and alternative funding proposals outlined in this report;
- c) notes that the three business cases will seek Housing Infrastructure Funding as follows:
  - (i) Rotokauri application \$ 91m (net HIF funding)
  - (ii) Peacocke application \$182m (net HIF funding)
  - (iii) Combined Rotokauri and Peacocke application \$273m (net HIF funding)

noting that these applications to the Housing Infrastructure Fund are based on 2017 dollars and are net of assumed NZTA subsidy of \$123m, net of assumed 2015-25 funding allocation of \$30m and exclude inflation;
- d) delegates to the Chief Executive authority to refine and edit the three business cases subject to the parameters outlined in this report, up to formal submission on 31 March 2017;
- e) delegate to the Mayor authority to sign all tender documentation associated with the proposal for formal submission to the Ministry of Business Innovation and Employment (MBIE);
- f) delegates to the Chief Executive authority to conduct any necessary **non-binding** commercial negotiations with government representatives consistent with the HIF proposal submitted to MBIE, including progressing the alternative proposals;
- g) notes that Council will have further opportunities to consider information on the HIF application and its implications for the 2018-28 Long Term Plan.

## 66. Attachments

67. Attachment 1 - Housing Infrastructure Fund Proposal Rotokauri Residential Growth: Business Case Overview
68. Attachment 2 - Housing Infrastructure Fund Proposal Peacocke Residential Growth: Business Case Overview
69. Attachment 3 - Housing Infrastructure Fund Proposal Rotokauri and Peacocke Combined Residential Growth: Business Case Overview
70. Attachment 4 - Capital expenditure associated with the HIF Bid
71. Attachment 5 - Impact on the debt to revenue ratio as a result of the HIF bid
72. Attachment 6 - Government's Housing Infrastructure Fund - Indicative Proposal - Rotokauri **(Under Separate Cover)**
73. Attachment 7 - Government's Housing Infrastructure Fund - Indicative Proposal - Peacocke **(Under Separate Cover)**
74. Attachment 8 - Government's Housing Infrastructure Fund - Indicative Proposal - Rotokauri and Peacocke combined **(Under Separate Cover)**

75. **Part 2 – Recent growth challenges and initiatives impacting Council**
76. **Introduction**
77. Many New Zealand cities and regions have recently experienced accelerated rates of urban growth and house price rises.
78. This growth has also put pressure on infrastructure delivery to ensure there is an adequate supply of serviced land to moderate the rate of house price inflation.
79. Addressing these issues has been a focus of central government policy initiatives since 2012. In summary, the range of policy interventions enacted by Central Government include:
- The Housing Accord and Special Housing Areas Act (allowing for the creation of Special Housing Areas);
  - Reforms to the Resource Management Act to streamline plan making and consenting functions;
  - Investigations by the Productivity Commission into how housing and urban development markets function to better understand the dynamics of housing affordability;
  - The creation of the National Policy Statement on Urban Development Capacity to require Councils in high growth areas to always ensure there is enough feasible, zoned and serviced land for residential and employment uses;
  - The creation of the Housing Infrastructure Fund;
  - Investigating the formation of Urban Development Authorities
80. Throughout these reforms, the local government sector has been in close dialogue with central government around infrastructure affordability and the extent to which the current regulatory frameworks assist in expediting growth.
81. The creation of the HIF is one policy initiative by Central Government that acknowledges it needs to do more to work in partnership with local government by assisting in the financing of growth infrastructure to accelerate housing delivery.
- 82. Why is funding infrastructure important?**
83. One of the biggest challenges facing local government is the timely funding and delivery of infrastructure needed to support urban development.
84. This challenge also applies to Hamilton where we have zoned and structured planned most of the urban areas of the City, but under current LTP settings, are unable to fund all of these areas to unlock their full growth potential.
85. The challenge of ensuring that an adequate land supply is maintained has been re-enforced by the release of the National Policy Statement on Urban Development Capacity (NPS-UDC) by Government requiring Council to ensure there is enough feasible, zoned and serviced land for residential and employment uses.
86. The NPS UDC is requiring Council to have a sufficient supply of development capacity to meet the demand in the short (1-3 years), medium (10 years) and long term (30 years).
87. A comprehensive report outlining Council's residential supply and related growth challenges under the new NPS UDC was tabled on [30 August 2016](#).
88. In that report it was outlined how Council has invested sufficiently in zoning and strategic infrastructure to enable developer ready land to be brought to the market in the short and medium term to meet the growth requirements for new dwellings.
89. For the short to medium term 10 year period this means that the Hamilton Urban Area must have development capacity of 20% over the Statistics NZ medium projections to take account of the likelihood of higher than anticipated growth and that not all capacity will be developed in to sections.
90. When applying the 20% contingency this equates to 11,638 dwellings over the remaining 9 years of the 2015-25 10-Year Plan or 1,293 dwellings per year. **These dwelling estimates were revised upwards subsequent to the report presented on 30 August 2016 to reflect the latest growth trends to reflect forecasting changes made by Statistics NZ in December 2016.**

91. Council investment to date meant at the time of that report there was 4 years of greenfield development capacity remaining. Council has approved budget investments in the 2015-25 LTP to add a further 7 years of developer ready land in greenfield areas by 2025. **Given the recent revision in growth projections, the remaining development capacity will be less than these numbers.**
92. In addition, the August 2016 report found that there is also 16 years of developer ready land in infill areas (supported by the capital investments approved in the existing 2015-25 LTP).
93. Council has invested in the priority growth cells (Rototuna, Peacockes Stage 1, Rotokauri Stage 1 Industrial) taking a just in time investment approach to make efficient use of previous infrastructure investments. Further, Council has invested in land use (zoning) and infrastructure planning for the next priority growth cells (Rotokauri Stage 1 residential, Peacockes Stage 2) and worked with developers wishing to develop in advance of Councils infrastructure timing.
94. The demands of the NPS-UDC mean that significant lead strategic infrastructure funding decisions are likely to be required for Rotokauri stage 1 and Peacockes Stage 2 during the preparation of the next LTP to ensure enough residential land can continue to be brought on line to accommodate anticipated future growth in Hamilton.
95. These funding decisions will need to be made, irrespective of whether or not Council participates in the HIF process.
96. Funding infrastructure to enable the development of future growth cells is a core business for Council.
97. Past funding decisions by previous Council administrations enabled the opening of and development of new growth cells across the City, including Rototuna, Western Heights and parts of Ruakura and Peacockes.
98. Accordingly, any future decision to fund undeveloped areas of Hamilton is consistent with the City building function and responsibilities that sit with Council.
99. The risks of not funding new growth cells that have been identified in the Hamilton Urban Growth Strategy, and structure planned and zoned through the Partly Operative District Plan, in a timely and strategic way, include:
  - potential increases in house prices through limited supply of dwellings to meet demand;
  - reduced economic growth resulting from a potential erosion of Hamilton's competitive advantages in the availability and affordability of residential land for dwellings;
  - the loss of control around the pace and scale of urban growth resulting from having to address unforeseen plan changes and any consequential litigation arising from these processes;
  - private developer provided infrastructure that does not provide capacity beyond that of the individual development, subsequently vested in Council and potentially costing more to the city in the longer term to operate and maintain.

### 100. Part 3 – the Housing Infrastructure Fund

101. Background
102. On 3 July 2016 the Government announced a new \$1 billion HIF for local government. The fund is available to areas that are classified as "high-growth" under the National Policy Statement on Urban Development Capacity (NPS-UDC), which includes Hamilton.
103. The outcome sought by the government via the fund is to increase the pace at which housing supply is made available and to increase housing yield beyond what is otherwise planned.
104. The HIF is a one-off contestable interim fund to bring forward the transportation, water and other strategic infrastructure required for new housing.
105. The previous Council resolved on 25 August 2016 to prepare and submit an indicative proposal to the HIF based on advancing the Peacockes growth cell.

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106. Council submitted its indicative proposal to the Ministry of Business Innovation and Employment (MBIE) on 2 December 2016. A copy of the indicative proposal was tabled at the Growth and Infrastructure Committee meeting held on 14 February 2017.
107. The total funding sought in the indicative proposal was \$240 million for lead strategic infrastructure (2015 dollars before inflation and net of NZTA subsidy and LTP funding) for transport and three waters infrastructure in the Peacockes and Rotokauri areas.
108. These areas were selected as they have been identified as strategic growth areas under the Hamilton Urban Growth Strategy and are structure planned and zoned and have, in some instances, infrastructure corridors or features consented and / or designated.
109. Further, these areas provide the best opportunity to unlock significant housing development to satisfy the key criteria associated with the HIF assessment framework, and were also areas of the City where key landowners and developers were able to provide written support to actually construct new housing should HIF funding be secured.
110. What problem is HIF is trying to solve?
111. The HIF was established to accelerate housing supply in growth Councils over and above business as usual settings under existing LTP funding arrangements.
112. Previous investigations by the Productivity Commission in to land and housing markets have indicated that supply side zoning measures on their own may not be sufficient to ensure houses can be delivered in a timely way, and that adequate and timely funding for new growth infrastructure is a key issue that growth council's need assistance.
113. The creation of the HIF is a tacit acknowledgement by Government that a partnership is required to assist local authorities in the urban development process to ensure housing markets function efficiently and timely as possible. Specifically the HIF was developed to mitigate the financial barriers for councils to fund lead strategic infrastructure development necessary for urban growth.
114. The HIF is only one tool to assist with addressing the growth issues facing Council.
- 115. Overview of the HIF process**
116. The HIF process has been structured by MBIE as a standard commercial tender.
117. All tender timeframes, requirements and conditions have been issued by MBIE and these tender parameters have defined the deliverables that Council staff has been working towards completing and are the subject of this report.
118. The tender requirements stipulate that each participating Council must submit indicative business cases in accordance with the NZTA business case model, along with a summary table, before the final tender submission date of 31 March 2017.
119. Council has complied with these tender requirements, and the findings of the business cases are documented in this report.
- 120. Benefits of the Housing Infrastructure Fund**
121. The HIF process represents a unique opportunity for Council to obtain one off advance funding for growth related infrastructure when compared to existing LTP funding arrangements.
122. The benefits of this advance funding largely accrue to Hamilton and the sub-region as a whole from additional housing and new urban growth.
123. The direct costs of any funding allocation would be carried primarily by Council, with the biggest cost being a potential breach in our Financial Strategy, depending on any financial mitigation that could be deployed throughout the development of the next LTP.
124. From a purely financial perspective the HIF is an interest free loan to Council over a 10 year period.
125. The interest free component of the HIF will to generate significant interest savings when compared to normal banking/financial arrangements for a similar amount of money that would be allocated under normal LTP settings.

126. The funding received under the HIF would create the potential for Council to;
- stimulate new greenfield housing development,
  - facilitate more housing choice in terms of greenfield options,
  - enable future economic and population growth, and
  - bring forward the economic benefits of infrastructure investment where those benefits could be realized over a longer time period.
127. Further, any HIF allocation would assist Council satisfying its NPS-UDC obligations relating to residential land supply.
128. The HIF opportunity also enables Council to work towards achieving some Hamilton Plan community outcomes - namely the goals of becoming New Zealand's third city economy, providing outstanding infrastructure, and access to affordable housing.
129. The Government acknowledges there is problem with growth funding and is interested in working in partnership with local government in resolving ongoing infrastructure funding issues in New Zealand. Staying involved in the HIF process enables Council to continue to be at the forefront of working to solve these issues.

### 130. Overview of the final proposal documents

131. The final proposal being submitted to MBIE (in accordance with their tender requirements) consists of the following three elements:
- One indicative business case and summary table for funding infrastructure in the Peacockes and Rotokauri growth cells (that is, a combined case);
  - One indicative business case and summary table for funding infrastructure in Peacockes only;
  - One indicative business case and summary table for funding infrastructure in Rotokauri only.
132. A summary of each business case was ready at the completion of this report and has been included as Attachments 1 – 3.
133. Each indicative business case prepared must follow the NZTA standard business case approach.
134. A business case is a standard appraisal methodology established by Government to assist decision making for large scale procurement and funding projects that have a value greater than \$10 million. It is typically used by a number of agencies (such as NZTA, MBIE, DHB's, Defence) for significant projects to understand not only accounting and financial costs but the wider economic costs and benefits arising from investment.
135. HCC also has its own business case methodology to understand investment and procurement value prior to committing funding of large capital projects, which is similar to the NZTA approach.
136. The indicative business cases prepared as part of our tender submission address five distinct elements of decision making. These include strategic, economic, financial, commercial and management aspects. Each business case looks at the potential impacts of the HIF allocation when compared to the status quo (that is, current LTP settings) to understand if the potential investment and financial allocation made by Government represents value for money. Broadly, each element of the business cases prepared for our HIF submission address the following areas:
- The strategic case examines if the investment is optimised against the strategic business needs and existing arrangements of Council;
  - The economic elements examine the investment options from a purely wider economic benefits perspective beyond the investment needs of the organisation;
  - Financial and commercial elements help to determine the feasibility of the investment and the Management case outlines how the project will be delivered and managed in a practical sense.
137. For the HIF process MBIE have made it clear that a high degree of detail was expected for the Economic and Strategic elements of the each business case, and our business case preparation

has ensured this is the case. Greater detail on the financial and commercial elements will be required in the next stage of the process. Further, MBIE also require additional, specific HIF criteria related to be addressed in the business cases to demonstrate if a return on investment to Government can be achieved.

**138. Benefit cost ratio results**

139. The combined output of the business cases is what is referred to as Benefit Cost Ratio (BCR).
140. A BCR is a proxy that enables investment decision makers to determine whether an investment represents value for money across broad economic measures and enables a standard way to assess tenders by MBIE.
141. The higher the BCR, the better the investment from a wider societal and economic perspective. Our analysis indicate that the benefits of any HIF investment accrue to Hamilton as a whole but the costs are born by Council in terms of debt impacts. In summary, the BCR results indicate:
- A BCR for Rotokauri Stage 1 of 18.91
  - A BCR for Peacocke Stage 2 of 18.80
  - For both scenarios (that is, a combination of both), a BCR of 18.83.
142. For each option, the BCR's reveal that large one off capital investments represent the bulk of the costs (e.g., a floodway in Rotokauri and a bridge for Peacockes). The benefits are largely derived from the economic activity generated by housing construction and subsequent household expenditure. There are also transport benefits network wide.
143. These transport benefits have been noted by NZTA during the formation of our final HIF proposal where NZTA have confirmed Point of Entry status for Peacocke and Rotokauri transport elements. This is significant and indicates clearly that our projects are strongly endorsed by the NZTA as being projects worthy of NZTA funding assistance.
144. Despite the above, the benefits that would accrue to Council in terms of rates revenue and development contributions are less substantive.
145. The BCR numbers indicate that for every \$1 invested an economic return of approximately \$19 could be anticipated over a 30 year period. Anything over a BCR of 1 indicates that an investment can be considered on an economic basis.

**146. Housing delivery results**

147. For Rotokauri HIF single proposal, the programme of works outlined in the HIF proposal will accelerate growth in the development of Stage 1 of Rotokauri, which will yield 1,610 dwellings within 10 years and 2,787 dwellings within 30 years. The 1,610 dwellings built in Rotokauri within 10 years will meet 13% of the projected future demand for housing in Hamilton in 2025.
148. For Peacocke the HIF single proposal programme of works will accelerate growth which will yield 3,153 dwellings within 10 years and 8,103 dwellings within 30 years. This will provide 26% of projected future housing demand in Hamilton by 2025.
149. A status quo scenario under existing LTP settings for Rotokauri and Peacocke would deliver 1440 dwellings over 10 years which is 13% of projected future demand for dwellings in 2025.
150. Under the combined HIF proposal for both Peacockes and Rotokauri, approximately 4,700 dwellings will be built within 10 years which represent 39% of new housing demand.
151. In addition, the average infrastructure spend per dwelling built in both growth cells is estimated to be approximately \$58,780 within 10 years, and approximately \$25,700 within 30 years. These figures do not represent indicative development contributions, and are just aggregated costs divided by dwelling yields across both growth cells.
152. The best option in terms of accelerating future housing delivery to accommodate anticipated population growth is to fund both proposals.
153. The next best option, in terms of meeting the demand for dwellings is Peacockes as HIF funding essentially opens up the whole growth cell, whereas Rotokauri funding only opens Stage 1 and delivers a smaller yield.

**154. Non-financial risks**

155. Non-financial risks associated with the HIF are identified in the table below with proposed bid mitigations.
156. These mitigations will be included as HIF conditional acceptance conditions for Council.

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<b><i>Non-financial risk</i></b>	<b><i>Proposed mitigation / acceptance condition</i></b>
Securing developer commitment and resultant housing construction	Proposal submitted on the basis that final funding is subject to an agreed Private Developer Agreement (PDA) between Council and development partners addressing the following: <ul style="list-style-type: none"> <li>• Confirmation of clear housing construction targets,</li> <li>• contributions are known,</li> <li>• caveats and appropriate payment clauses are included to allow for any substantial downturn in economic circumstances,</li> <li>• Letters of Intent to be provided by development partners.</li> </ul>
Aligning HIF allocation with Local Government Act (LGA) and Land Transport Management Act (LTMA) processes	Final proposal submitted on the basis that it is subject to consultation with the community over the priority of advancing other capital projects in the LTP, including any consequential impact on debt and rates. Final proposal submitted on the basis that any changes to the Regional Land Transport Plan need to occur before funding is received.
Delivery risk	Creation of a new standalone HIF delivery team within Council and the formation of tailored industry best practice contractual and delivery arrangements.
Information	Due to the compressed timeframe imposed by MBIE, some aspects of the analysis informing our understanding of costs, benefits, and impacts on the Council's finances arising from the final proposal are likely to alter through more detailed investigations in the next phase of the HIF process. Mitigated through the additional time and investigation phase of the next stage of the HIF process.

**157. Financial risks**

158. While there are financial benefits from receiving a HIF allocation (primarily in terms of interest payments saved from the fact the HIF would be interest free), there are potential issues with how any HIF allocation may impact Council's current Financial Strategy.
159. The specific issue arising from receiving any HIF allocation relates to how any HIF debt will be treated both on the balance sheet and in terms of financial debt ratios, the level of increased revenue received by Council, the repayment arrangements and future commitments (especially for the transport activity) and how development contributions will be levied.
160. Any funds advanced under the HIF will be repaid through a combination of development contributions, private developer agreements, rates and refinancing to debt raised through current funding mechanisms (predominantly via the Local Government Funding Agency).
161. The table below includes the main financial risks and the proposed mitigation/bid acceptance conditions relating to them, which will be included in the final bid documentation:

<b><i>Financial risk</i></b>	<b><i>Proposed mitigation / acceptance condition</i></b>
Contingency costing	Project costs to be reviewed every 3 years to enable project updates for better project information (e.g. design, geotechnical conditions, inflation assumptions, changes in land value).
Lack of consequential and necessary infrastructure funding	The HIF proposal does not include any allowance for consequential upside and operating expenditure for local infrastructure, no ongoing operating expenditure, and no allowance for community

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	infrastructure. Mitigation measures include the use of alternative funding arrangements, changes to service delivery and / or increased revenue as part of any future LTP considerations.
Financial reporting of HIF in Council accounts	Bid acceptance conditional on final accounting treatment of HIF fund to be agreed by all local sector stakeholders. Currently, there are different views on accounting treatment from the Local Government Funding Agency, credit rating agencies, NZTA and the Office of the Auditor General.
Development Contribution (DC) funding uncertainty	Final bid acceptance based on receiving confirmation that DC's can be legally collected under the HIF structure.
Impacts on financial strategy	HIF allocation would potentially result in a breach of the financial strategy with regard to debt to revenue ratios. Mitigation measures include the use of alternative funding arrangements, changes to service delivery and/or increased revenue.

162. In terms of the development contribution (DC) modeling undertaken at this stage of the HIF process it is worth noting there were significant limitations on understanding future cash flows from expected new urban development. Nevertheless, an estimate of increased DC revenue is included in the business case and there is a high level of risk associated with this assumption. This risk will be managed through the detailed business case preparation, LTP development, DC modelling and private development agreements.

### 163. Impacts on current Financial Strategy

164. A summary of the financial amounts included in the HIF application is as follows:

Peacocke	Total 2017 Dollars
Gross Capital Spend for HIF Capital Expenditure	\$272m
NZTA Subsidy Assumed	(\$90m)
Existing 2015-25 LTP Budget	(\$0)
HIF Application	\$182m

Rotokauri	Total 2017 Dollars
Gross Capital Spend for HIF Capital Expenditure	\$154m
NZTA Subsidy Assumed	(\$33m)
Existing 2015-25 LTP Budget	(\$30m)
HIF Application	\$91m

Combined Peacocke and Rotokauri	Total 2017 Dollars
Gross Capital Spend for HIF Capital Expenditure	\$426m
NZTA Subsidy Assumed	(\$123m)
Existing 2015-25 LTP Budget	(\$30m)
HIF Application	\$273m

165. Staff analysis indicates that the current proposal under the existing HIF structure would result in a substantial impact on the debt profile and financial strategy for Council.
166. Attachment 4 to this report indicates the analysis done to date of impacts arising from any HIF allocation on capital expenditure.
167. Attachment 5 also indicates the analysis done to date of impacts arising from any HIF allocation on our debt to revenue profile which is a core part of the current Financial Strategy.
168. The assumptions behind this analysis are also included in the attached graphs.
169. In summary, Rotokauri on its own has less impact on the financial strategy with respect to debt to revenue profile.

170. Even so, it is worth noting that that these assessment are based on existing LTP and annual plan settings and do not reflect any of the matters to be considered as part of the 2018-28 LTP (e.g. additional revenue, levels in service changes in and timing around expenditure or new services, such as Founders Theatre).
171. If HIF debt exceeds Council's existing debt to revenue ratio policy, and assuming rates remain as projected in the LTP, Council will exceed financial covenants and limits imposed by the Local Government Funding Agency and the Local Government (Financial Reporting and Prudence) Regulations 2014 (2014 Regulations).
172. The Local Government Funding Agency (LGFA) has formally advised Council that if it breaches the financial covenants applicable to Council in the LGFA documents, then it is likely that Council would be required to repay all debt owed to LGFA. The impact of exceeding the debt-to-revenue ratio could see a downgrading of the Hamilton City Council's credit rating and an associated increase in borrowing costs. This cost increase would affect not only any new debt, but also the cost of any debt that was refinanced.
173. While the LGFA debt could well be refinanced by Council, it will inevitably come at a higher cost.
174. To maintain a prudent Financial Strategy, under a successful HIF bid Council will need to consider balancing, reducing or delaying all forms of expenditure, raise additional revenue or alter maximum debt ratios.
175. The key financial ratios for Hamilton City Council show that the organisation (in providing for its community and growth) is already at the high end for debt. Bringing the identified package of works for Peacockes and Rotokauri forward from the HIF will change this debt profile.
176. This situation is exacerbated because Council would need to bring these projects forward in order to satisfy our obligations for land supply under the NPS-UDC.
177. Progressing discussions with MBIE on alternative funding structures to fund lead strategic infrastructure instead of the current HIF model could result in financial solutions to mitigate this risk.

#### **178. Financial treatment of projects relating to water supply, wastewater and stormwater**

179. The HIF proposal as it currently stands indicates that any allocation would be treated as subordinated debt (repaid after other debt) repayable within 10 years.
180. Council and the Local Government Funding Agency (LGFA) and the rating agencies look at total debt and do not differentiate between classes of debt.

#### **181. Future HIF Repayment (Transport)**

182. The HIF proposal is that the projects would be funded by NZTA as subsidised projects at HCC's current Funding Assistance Rate (FAR) of 51%. In the future, HCC's repayment obligation to government will be equal to the total value of the HIF application less any subsidy approved by NZTA. The repayment mechanism would be via NZTA subsidy on future subsidized works from future years until the total foregone subsidy is equal to the HIF.
183. There are differing views as to whether any HIF funding would be treated as a debt in Council's books and therefore retain the existing debt issues. Nonetheless, a future reduction in FAR subsidy will need to be reflected in Council's books.
184. Of concern under this arrangement is that Council may not receive enough FAR subsidy in 10 years to offset the initial receipt
185. There is also uncertainty as to whether this funding structure provides a lawful mechanism to levy development contributions.

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**186. Alternative funding proposals**

187. Over the last six months discussions among high growth councils have been progressing concepts of alternative financial arrangements and structures that would allow accelerated delivery of waters and transport infrastructure for new housing development without undue impact on balance sheets.
188. A range of different options have been considered, with the preferred outcome revolving around the creation of a Crown-owned Special Purpose Vehicle (SPV). As part of the process, engagement occurred with Treasury and other Government officials.
189. In summary, a SPV would result in new infrastructure constructed and managed by a crown entity with Council effectively buying shares in the entity, and thus, the infrastructure, as development rolled out in each of growth cells over time.
190. HCC staff see merit in the SPV proposal and it is a viable financial delivery alternative that senior staff will continue to explore with MBIE officials throughout the HIF process.
191. If the HIF fund is established on a basis consistent with the SPV concept then it has the ability to transform HCC's financial situation. Unfortunately, in its current format it is likely to compound them.
192. Other alternative funding proposals worthy of consideration, and which will be put forward in our final proposal include the following:
- The Crown debt funding a CCO of Council on a non-recourse basis to Council, and the CCO owning the infrastructure assets that enable the HIF goals to be achieved (other than roads that would ordinarily vest in the Crown). The debt would be repaid with development contributions, payments from developers and rates, but the Crown would take the risk that timing of those payments was not sufficient to repay the debt at the end of the 10 year period. The debt and assets could be brought onto Council's balance sheet if financial ratios could be met on a pro forma basis. The debt of the CCO would need to be excluded from the LGFA financial covenants;
  - A Crown equity funding a vehicle that is owned by either the Crown or Council and otherwise on the same terms as above. The repayment mechanism would be akin to the government's Crown Fibre Holdings model, which would mean that government would take the risk that housing sales did not meet expectations and therefore funding was not available to purchase all of the government's shares.
  - A combination of the two options above, that permits private funding and allows charges for use of the relevant assets (e.g. toll roads/bridges or charges for availability).
  - All parties satisfying themselves that the FAR funding and offset is not accounted for as debt to Council. In addition, FAR eligible works (transport operating and maintenance, renewals, capital projects) for which the offset applies could occur as early as year 2 of the 10 year payback period. Council would debt fund these projects, undoing much of the benefit of the FAR funding from the perspective of Council's financial position and so some consideration of delaying these offsets until or beyond the end of the 10 year period should be considered.
  - Extended payment periods and cashflows tied to related cashflows being received by Council (e.g. developer contributions for sections sold in the growth cells being used to repay the government).
  - The creation of a suspensory loan whereby the Government loans Council the necessary funds and waives loan conditions if development expectations are realised.

**193. Legal issues**

194. Preliminary legal advice indicates that the Local Government Act (LGA) requires local authorities to manage their "revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community." (Section 101 LGA).

195. Local authorities are free to decide what this means. However, the Local Government (Financial Reporting and Prudence) Regulations 2014 (the 2014 Regulations) require reporting against various benchmarks; and failure to achieve these measures indicates to central government that the local authority may not be financially prudent. As a result, central government may exercise its powers of intervention contained in Part 10 of the LGA.
196. However, these regulations only require disclosure of Council's performance against these benchmarks - there are no direct (legal) consequences for breaching the benchmarks.
197. The Resource Management Act 1991 requires that district plans give effect to any national policy statement, in this case the NPS-UDC.
198. However, for the purposes of the HIF, there is no link between the NPS-UDC/District Plan and Council's operations. Therefore, Council's district plan could give effect to the NPS-UDC but not enable the growth to be carried out by not building infrastructure to those growth cells. While this leaves Council open to criticism, there does not appear to be a clear legal link between the two.
199. This is consistent with Council's current practice not to commit to expand its infrastructure network simply at the request of developers.
200. Accordingly, there is no conflict between the two pieces of legislation, and neither will be breached by HCC whether HCC chooses to participate in the HIF, or whether it does not.
201. However, there is a greater risk that the Crown will exercise its Part 10 rights if participation in the HIF causes breaches of the financial prudence benchmarks in the 2014 Regulations.
- 202. Proposed caveats/bid acceptance conditions**
203. The terms and conditions included in the MBIE tender documentation do not prevent councils from withdrawing their proposals at any time up to the point that legally binding funding or loan agreements have been signed (expected to be early 2018).
204. Accordingly, while Council should take the process seriously, the Council will not be bound until formal legal agreements are signed.
205. While this is an important safeguard for Council, a list of caveats and bid acceptance conditions will be included in our HIF submission to MBIE that outlines and dimensions the key concepts around risk and alternatives identified in this report (such as financial and non-financial mitigation risks, and alternatives funding proposals).
- 206. Alternative proposal options**
207. Alternative proposal options that were considered included making a single HIF submission for either just Rotokauri, or just Peacockes.
208. However, there is strategic merit in submitting a final, non-binding proposal for both areas. Importantly, Council's proposal seeking funding for both growth cells is non-binding.
209. Further, the benefit cost ratios results from the business cases indicate there is significant benefit in seeking funding for both projects as opposed to seeking funding for just one project.
210. Submitting a proposal that covers both Rotokauri and Peacocke leaves Council in a better negotiating position should HIF financial arrangements change, or for Council to make a final decision, if needed, on funding a single growth cell especially since the relationship between any HIF funding and how it can be integrated in the next LTP is not fully understood at this time.
- 211. Next steps in the HIF process**
212. The HIF proposals will be evaluated from April 2017 and a final decision on funding is likely to be made by the end of June 2017.
213. If our proposal is successful, funding will be confirmed in principle and Council will need to develop detailed business cases before December 2017.
214. Final funding will only be released to Council once this work is completed and final agreements entered into, and would not be received until early 2018.

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**215. Conclusion**

216. Considering and prioritizing the costs to Council and the community associated with opening new growth cells and providing lead strategic infrastructure is a significant decision.
217. Council will hold many discussions to debate the provision of infrastructure and funding of growth cells as part of the wider 2018-28 LTP deliberations. Council will also debate levels of service, community infrastructure provision and asset management plan recommendations during the LTP development process. Nonetheless, Council needs to investigate all options presented to it to meet the challenges and opportunities associated with supporting growth and the provision of land for dwellings supported by lead strategic infrastructure.
218. The submission of a proposal to HIF **does not bind** Council to any future commitments, and irrespective of the HIF framework the challenge of funding growth related infrastructure remains. As a consequence there is merit in staying involved in the process until its conclusion and continue discussions with the government on new partnership models to fund growth infrastructure.
219. Ultimately, any decision made by Council will need to balance and evaluate the differing financial parameters associated with funding growth, with or without the HIF. That is, understanding that receiving a HIF allocation is a short term, interest free loan, to be repaid by Council, after a 10 year period where wider benefits for an investment into growth infrastructure accrue to Hamilton as a whole over a longer time scale.

**Signatory**

Authoriser	Kelvyn Eglinton, General Manager City Growth
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## HEADS OF AGREEMENT

### Housing Infrastructure Fund:

[xxxxx] (the 'Proposal')

#### Parties

Between: **Ministry of Business, Innovation and Employment ('MBIE')**  
 And: **New Zealand Transport Agency ('NZTA')**  
 And: **[xxxxx] Council (the 'Council')**

#### Background:

- A. The Housing Infrastructure Fund (HIF) has the overall objective of accelerating short- and medium-term supply of new housing in high-growth urban areas. The HIF provides short to medium-term funding whilst territorial authorities work on finding more suitable and sustainable long-term models for financing and funding infrastructure. The HIF is not intended to function as a funding or financing mechanism for a future or potential urban development authority.
- B. The HIF is also designed to assist high-growth territorial authorities to meet their targets under the National Policy Statement on Urban Development Capacity (NPS-UDC). However, the HIF does not form part of the NPS-UDC and is not dependent on it, nor does it form part of any possible or proposed urban development legislation.
- C. Territorial authorities have applied for funding to bring forward specific transport and water infrastructure projects that will enable land to be used for new housing.
- D. It is the intention that HIF funding for transport infrastructure projects will be managed by the New Zealand Transport Agency (NZTA) through the National Land Transport Fund (NLTF). Having the transport infrastructure managed this way maintains the integrity of the National Land Transport Programme and meets Land Transport Management Act 2003 requirements. It also makes best use of transport expertise within government, ensuring integration in the planning and construction of transport infrastructure in a way that takes into account network effects.
- E. It is the intention that projects for water supply, wastewater and stormwater ('three waters') infrastructure will be funded through interest-free subordinated loans, which will be repayable to the Crown within ten years.
- F. The HIF allocation process was set out in the Housing Infrastructure Fund Call for Final Proposals (February 2017).
- G. In a contestable process, the Council submitted an Indicative Business Case, which was accepted as part of an *in-principle* HIF portfolio by the Minister of Finance, the Minister of Transport and the Minister for Building and Construction (the 'Ministers') on [Date].
- H. This document sets out the process and key principles for implementation phase of the process, in which MBIE and the NZTA will work with Council to finalise a Detailed Business Case (DBC) and the terms and conditions of the interest-free loan facility agreement and the bilateral funding agreement for frontloading through the

National Land Transport Fund (the 'Funding Agreements'). Upon completing a DBC to the satisfaction of Ministers, the parties may enter into the Funding Agreements.

#### Key milestones



#### 1 Interactions with other agreements

1.1 This HoA recognises that there are existing relationships between the parties. This HoA seeks to build on and leverage existing relationships and formal agreements, not to replace them.

1.2 The following formal relationship agreements are noted:

1.2.1 [TBC]

#### 2 Roles

2.1 The Council as applicant will prepare the DBC. Support and guidance will be provided by MBIE and NZTA.

2.2 MBIE will prepare the loan facility agreement for the three waters infrastructure for agreement with the Council.

2.3 NZTA will prepare the funding agreement for the transportation infrastructure for agreement with the Council.

2.4 **MBIE representatives** covering this agreement are:

2.4.1 Leigh Halstead, Manager of HIF Commercial Unit.  
Mob: 021 835 776  
Email: [Leigh.Halstead@mbie.govt.nz](mailto:Leigh.Halstead@mbie.govt.nz)

2.5 **NZTA representatives** covering this agreement are:

2.5.1 [TBC]

2.6 The **Council representatives** covering this agreement are:

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2.6.1 [TBC]

### 3 Requirements for Parties

- 3.1 All parties to agree the scope, content level of detail and the timeframe for preparation of the DBC and Funding Agreements, as set out in Clause Five of this agreement, for the MBIE and NZTA evaluation and approval processes.
- 3.2 All parties to together in accordance with the principles set out in Clause Four this agreement.
- 3.3 The Council will meet its own costs for preparing the DBC, unless:
- 3.3.1 in the case of the three waters component, if the DBC is accepted by MBIE and a loan signed the Council may use part of this funding to recover the costs of completing the DBC.
- 3.3.2 in the case of the transport component, NZTA may provide funding for the development of the transport component of the DBC.

### 4 Principles

- 4.1 The parties agree to work together and communicate to prepare the DBC and Funding Agreements, in a manner that reflects the following principles:
- 4.1.1 *Work collaboratively* - Each party will endeavour to work together willingly and cooperatively for the preparation of a high quality fit for purpose DBC and Funding Agreements to meet the objective of the HIF.
- 4.1.2 *Communication, openness, inclusiveness, information sharing and no surprises* - Each party will endeavour to keep the others advised of issues that may affect one party as a result of activities by the other, share information that will assist the preparation of a high quality and fit for purpose DBC, and work to meet the objective of the HIF.
- 4.1.3 *Acting in good faith*- Every effort will be made by the parties to achieve the implementation of this Agreement and the objectives of the HIF and that each party will act in good faith in meeting its responsibilities under this Agreement.

### 5 Deliverables and Timeline

- 5.1 The key deliverables under this agreement are:
- 5.1.1 An agreed DBC scope by xxx
- 5.1.2 An agreed DBC by xxx
- 5.1.3 An agreed loan facility agreement – Housing Infrastructure Fund by xxx
- 5.1.4 An agreed bilateral funding agreement – Frontloading through the National Land Transport Fund by xxx

#### 5.2 The DBC Scope

- 5.2.1 The parties note that the DBC will have multiple audiences and be used for several purposes, internal and external to the Parties.
- 5.2.2 The parties will agree the DBC's scope, point of entry, content, and level of detail.

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### 5.3 The Detailed Business Case

- 5.3.1 The parties agree that the DBC be prepared in accordance with the agreed DBC scope, varied by agreement.
- 5.3.2 The parties agree that the DBC prepared using established Treasury and NZTE methodologies.
- 5.3.3 The parties agree that the DBC will address the expected impact of housing development of the transport system, Council's progress and expectations in securing development agreements, how and when the investment in infrastructure will result in the supply of houses, and how Council intends to fund repayment of the interest-free loans and reduced future FAR contributions.
- 5.3.4 Final DBC to be approved by MBIE and NZTA.

### 5.4 Loan Facility Agreement – Housing Infrastructure Fund

- 5.4.1 The **Loan Facility Terms Sheet** is contained in **Schedule One** to this Agreement.
- 5.4.2 Final agreement to be approved by Ministers.

### 5.5 Funding Agreement – Frontloading through the National Land Transport Fund

- 5.5.1 The draft **Bilateral Funding Agreement** is in **Schedule Two** to this Agreement.
- 5.5.2 Final agreement to be approved by NZTA Board or delegate.

## 6 Key Features of the Implementation Process

- 6.1 **Inputs.** The inputs from parties to assist the Council with the development of the DBC and funding agreements are:
- 6.1.1 MBIE [TBC with each council]
- 6.1.2 NZTA [TBC with each council]
- 6.2 **Tracking Progress.** The parties agree that MBIE and NZTA be invited to attend all meetings of the [project steering group] in an advisory capacity in order to discuss progress towards completion of the DBC and funding agreements as set out in this Agreement. MBIE and NZTA will receive copies of all papers for the meeting.
- 6.3 **Phased review.** The parties agree an intent that the Detailed Business Case will be reviewed as each section is materially completed.

## 7 Organisation Structure

- 7.1 Organisational Structure

Role	Council	MBIE	NZTA
Team Leader:	TBC	Leigh Halstead	TBC
Funding Agreement:	TBC	Leigh Halstead	TBC
DBC Preparation	TBC	Leigh Halstead	TBC

## 8 Communications

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- 8.1.1 Communication on all matters outside the parties and their Ministers relating to this Agreement, to performance and to activities undertaken in terms thereof, shall be by agreement of the parties.
- 8.1.2 No party gives any representation or warranty with respect to any information other than that it has the right to disclose such information.

## 9 Confidentiality

### 9.1 Confidential Information means:

- 9.1.1 all information and materials relating to or arising from this Agreement in any form whatsoever,
- 9.1.2 information which is by its nature confidential or which the discloser advises the recipient is confidential and includes the terms of this Agreement, and
- 9.1.3 includes anything disclosed before the date of this Agreement.

### 9.2 Confidential Information does not include:

- 9.2.1 information which at the date of this Agreement is in the public domain or subsequently enters the public domain without fault on the part of the recipient,
- 9.2.2 information that is received in good faith by the recipient from a third party,
- 9.2.3 information which is at the date of this Agreement, independently developed by, or already properly in the possession of, the recipient and which the recipient can demonstrate by written record to be previously known to the recipient.

### 9.3 The recipient of Confidential Information shall:

- 9.3.1 keep it in the recipient's possession and treat it as confidential regardless of when disclosed,
- 9.3.2 not use any Confidential Information belonging to the other party for any purpose other than as required in terms of this Agreement,
- 9.3.3 only disclose Confidential Information to employees, officers or professional advisers on a need to know basis and shall be liable to the discloser for any breach by those persons of these confidentiality obligations.

### 9.4 The restrictions in this paragraph do not apply where disclosure is required by law or by a government agency or governmental authority.

### 9.5 The parties acknowledge that any breach of this confidentiality obligation may result in damages for which monetary compensation would not be an adequate remedy and that the affected party is entitled to specific performance or injunctive relief in addition to any other remedies at law or in equity.

## 10 Liability

- 10.1 Neither party shall be liable to the other for any costs, liability, damages, loss, claims or proceedings of whatever nature arising out of this Agreement other than those strictly specified within this Agreement.

## 11 Disputes

- 11.1 If a dispute arising out of this Agreement occurs between the parties, then the parties will in good faith try to resolve that dispute.

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**12 General**

- 12.1 This Agreement is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 12.2 This Agreement may be signed in counterparts, including by facsimile or email, all of which when read together shall constitute one and the same document.
- 12.3 Only clauses nine, ten, eleven, twelve and thirteen in this Agreement are legally binding on the parties and those paragraphs shall survive termination of this Agreement.
- 12.4 The date of this Agreement shall be the date that the last person signed.
- 12.5 No variation to this Agreement shall be effective unless it is in writing and signed by all the parties to this Agreement.

**13 Termination**

- 13.1 This Agreement shall terminate once the DBC and funding agreements has been approved and finalised by the parties.

Signed by xxxxxxxx	Signed by xxxxxx	Signed by xxxxxxxx
_____ Signature	_____ Signature	_____ Signature
_____ Name of authorised signatory	_____ Name of authorised signatory	_____ Name of authorised signatory
_____ Position	_____ Position	_____ Position
_____ Date	_____ Date	_____ Date

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## Schedule One: Housing Infrastructure Fund Facility Term Sheet

### Housing Infrastructure Fund Facility Term Sheet

*The terms set out in this term sheet are indicative only and do not constitute an offer to arrange, or a commitment to finance, the Facility. The provision of the Facility is subject to due diligence and satisfactory documentation.*

#### PARTIES

<b>Borrower:</b>	[Council]
<b>Financier:</b>	Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance and the Minister for Building and Construction

#### FACILITY

<b>Facility Limit:</b>	[\$#]
<b>Purpose:</b>	To fund in [full][part] projects for water supply, waste water and storm water to be undertaken by the Borrower that have been approved by the Financier.
<b>Availability Period:</b>	[#]
<b>Repayment:</b>	Each Drawing must be repaid according to an agreed repayment schedule and must be fully repaid on its Termination Date. The repayment schedule will take into account the expected cash receipts from any development contributions, targeted rates and portion of general rates that the Borrower can expect from the project.
<b>Termination Date:</b>	10 years from the date of each Drawing.
<b>Drawings:</b>	Drawings will be made not more frequently than quarterly and the minimum Drawing will be \$[figure commensurate with the project budget].

#### FINANCE DOCUMENTS

<b>Finance Documents:</b>	Finance Documents include: <ol style="list-style-type: none"> <li>(a) facility agreement between the Borrower and the Financier; and</li> <li>(b) security documents (including intercreditor arrangements with LGFA).</li> </ol>
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#### SECURITY

<b>Security:</b>	<p>The Borrower will grant security over rates set or assessed by the Borrower under the Local Government (Rating) Act 2002 and any rate arising under section 115 of the Local Government Act 2002. That security may take the form of security stock issued under an applicable and acceptable Debenture Trust Deed.</p> <p>This security will be subordinated to the security held by the LGFA and other senior security holders in respect of the Borrower.</p>
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#### OTHER TERMS

<b>Initial conditions precedent:</b>	<p>The conditions precedent to the first Drawing will include, without limitation:</p> <ul style="list-style-type: none"> <li>• execution of the Finance Documents;</li> <li>• an officer's certificate from the Chief Executive of the Borrower;</li> <li>• legal opinion;</li> <li>• [evidence of the purpose to which the proceeds of the first Drawing will be applied;]</li> <li>• approved Detailed Business Case;</li> <li>• where relevant project is being part-funded by the Borrower, evidence of availability of that funding;</li> <li>• a copy of the development budget consistent with the Detailed Business Case;</li> <li>• a copy of the construction contract;</li> <li>• a quantity surveyor's/consultant engineer's report in respect of the development, the development budget, the construction contract and the construction contractor;</li> <li>• [other;]</li> <li>• no Material Adverse Effect;</li> <li>• payment of the legal costs;</li> <li>• searches and enquiries; and</li> <li>• other information and documents.</li> </ul>
<b>Conditions precedent to each Drawing:</b>	For each Drawing, the Borrower must be in compliance with the conditions precedent described in Schedule 1.
<b>Representations and warranties:</b>	The Borrower will make representations and warranties in respect of the matters described in Schedule 2.
<b>General, negative and information undertakings:</b>	The Borrower will give undertakings consistent in respect of the matters described in Schedule 3.
<b>Events of Default and Events of Review:</b>	The Finance Documents will contain events of default and events of review in respect of the matters described in Schedule 4. Occurrence of an Event of Default will result in a default fee of an amount equal to 5% of the amount in default being payable to the Financier, and will be payable within 30 days of the occurrence of the Event of Default. Failure to repay a Drawing on its Termination Date will result in that Drawing accruing interest at a rate equal to the applicable interest rate under the Borrower's LGFA funding arrangements plus a margin of 3.50% per annum.
<b>Other standard provisions:</b>	The Finance Documents will contain the standard provisions relating to, amongst other things, GST, illegality, indemnities, set off, etc.
<b>Legal fees:</b>	The Borrower will pay its own costs in connection with the negotiation, preparation and execution of the Finance Documents.
<b>Assignment:</b>	<p>The Borrower may not assign its rights under the Finance Documents without the prior written consent of the Financier.</p> <p>The Financier may assign its rights under the Finance Documents, at its sole discretion.</p>
<b>Confidentiality:</b>	Each party agrees not to disclose to any other person the existence or contents of any Finance Document, or any information provided by another party in connection with a Finance Document which is not publicly

Item C1

(2)

available, subject to agreed exceptions (including *Official Information Act 1982* requests or *Local Government Official Information and Meetings Act 1987* requests.

**Governing law:** New Zealand law.

Attachment 2

EARLY DRAFT as at 28 June 2017

(3)

**Schedule 1: Drawdown conditions precedent**

1. Receipt of drawdown notice.
2. Drawdown date is during the Availability Period.
3. The amount of the Drawing, when added to all outstanding Drawings, does not exceed the Facility Limit.
4. No Event of Review, Event of Default or potential Event of Default.
5. Representations and warranties correct and not misleading.
6. The Financier is satisfied that all authorisations necessary for the Drawing have been obtained.
7. Drawing complies with any restrictions in Finance Documents.
8. Receipt of quantity surveyor certificate confirming, amongst other things:
  - (a) the cost to complete;
  - (b) that all invoices to be paid from the Drawing are validly payable and are provided for in the approved budget;
  - (c) the estimate completion date;
  - (d) that all previous Drawings have been applied in connection with the approved budget; and
  - (e) where relevant project is being part-funded by the Borrower, availability of the Borrower's share of relevant costs.
9. Receipt of all other information and documents requested by the Financier.

EARLY DRAFT as at 28 June 2017

HIF - DRAFT Heads of Agreement 2017-06-28 (Word Version)

**Schedule 2: Representations and warranties**

1. Status.
2. Capacity.
3. Power and authority.
4. Enforceability of Finance Documents.
5. Priority of security.
6. No conflict with laws or other documents.
7. Accounts comply with the *Local Government Act 2002*.
8. No event of default or event of review.
9. [Certificate of exemption from resident withholding tax].
10. Compliance with the *Local Government Act 2002*.

EARLY DRAFT as at 28 June 2017

(5)

**Schedule 3: Undertakings****General covenants**

1. Apply all Drawings for the Purpose.
2. Notify the Financier of:
  - (a) an event of default or event of review;
  - (b) each change to an authorised representative;
  - (c) invalidity or unenforceability of a Finance Document;
  - (d) any Material Adverse Effect; and
  - (e) any event of default, event of review or breach of financial covenant (however described) in respect of any other funding arrangements of the Borrower (including those with the LGFA).
3. Performance of obligations under Finance Documents.
4. Provide information relating to Financial Statements and financial position.
5. Provide the Financier with all information provided to the Trustee.
6. Keep proper accounts.
7. No change to Detailed Business Case without the Financier's prior written consent.

**Information undertakings**

8. Provide audited annual Financial Statements.
9. Provide unaudited half-yearly Financial Statements.

HIF - DRAFT Heads of Agreement 2017-06-28 (Word Version)

EARLY DRAFT as at 28 June 2017

**Schedule 4: Events of Default and Events of Review****Events of Default**

1. Failure to pay.
2. Breach of undertaking.
3. A receiver or statutory manager is appointed.
4. An Enforcement Event occurs.
5. Finance Document becomes void, invalid or unenforceable.

**Events of Review**

6. The occurrence of any event of default, event of review or breach of financial covenant (however described) in respect of any other funding arrangements of the Borrower (including those with the LGFA).

EARLY DRAFT as at 28 June 2017

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**Schedule 5: Definitions**

In this document:

**Debenture Trust Deed** means the debenture trust deed made by the Borrower, under which certain of the Borrower's indebtedness may, from time to time, be secured by the issuing of security stock.

**Detailed Business Case** means the detailed business case for the project prepared by the Borrower using Treasury and NZTA methodologies and approved by the Financier.

**Enforcement Event** has the meaning given to it in the Debenture Trust Deed.

**Financial Statements** means the audited financial statements the Borrower is required to produce pursuant to sections 98 and 99 of the *Local Government Act 2002*.

**LGFA** means the Local Government Funding Authority.

**Material Adverse Effect** means a material adverse effect on:

- (a) the validity or enforceability of all or a provision of a Finance Document; or
- (b) the Financier's rights or remedies under any Finance Document; or
- (c) the ability of the Borrower to observe or perform its obligations under a Finance Document; or
- (d) the assets, operations, condition (financial or otherwise), business or prospects of the Borrower.

**Trustee** means the trustee under the Debenture Trust Deed.

EARLY DRAFT as at 20 June 2017

HIF - DRAFT Heads of Agreement 2017-06-28 (Word Version)

**Schedule Two: Housing Infrastructure Fund NZTA NLTF advance**

[INSERT COUNCIL]

NEW ZEALAND TRANSPORT AGENCY

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**BILATERAL FUNDING AGREEMENT IN  
RESPECT OF**

**PROJECT XXX**

**AS PART OF THE HOUSING  
INFRASTRUCTURE FUND / NATIONAL  
LAND TRANSPORT FUND  
FRONTLOADING INITIATIVE**

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EARLY DRAFT as at 28 June 2017



(2)

**Accelerated Funding** means that the Agency funds the Council's Local Share of Project XXX in addition to the Financial Assistance Rate for Project XXX. The result is that the Transport Agency will fund the entire Total Capital Cost of Project XXX.

**Commencement Date** means the date of execution of this agreement.

**Confidential Information** means information that:

- a. is by its nature confidential;
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- c. is provided by either Party or a third party 'in confidence';
- d. either Party knows or ought to know is confidential; or
- e. is of a sensitive nature or commercially sensitive to either Party.

**Cost Scope Adjustment** means a permanent change in cash-flow for a project. A cost scope adjustment can be either an increase in cost, or a reduction.

**National Land Transport Programme/NLTP** means the national land transport programme adopted under section 19A of the Land Transport Management Act 2003.

**National Land Transport Fund/NLTF** means the national land transport fund established under section 10 of the Land Transport Management Act 2003.

**Total Capital Cost** means the total cost of developing and completing an infrastructure project, including design, construction and property acquisition components. For the avoidance of doubt, costs must relate to the building or improvement of a transport asset, therefore costs associated with operating the asset are not included.

**Local Share** means the funding that the Council must contribute towards the Project.

**Delegation** means that the decision-maker(s) for each of the respective Parties has the appropriate authority to make a decision on behalf of the Party they represent.

**Housing Infrastructure Fund/HIF** means the fund established by Cabinet to assist high-growth councils facing financial constraints to finance infrastructure needed to unlock residential development.

**High Growth Urban Area** as defined in the National Policy Statement on Urban Development Capacity.

**Funding Agreement/Agreement** means this Funding Agreement between the Parties.

**Funding Assistance Rate/FAR** means Funding Assistance Rate as set under s 20C of the Land Transport Management Act 2003.

**Funding Period** means the period of time specified in clause 5 of this agreement, within which the Transport Agency will provide NLTF funding (at the usual agreed upon Financial Assistance Rate) for the Total Package of Works, including Project XXX.

**Total Package of Works** means the Package of Works and Project XXX.

(3)

**Package of Works** means the NLTF activities nominated by the Council, and specified in **Schedule 1** of this Agreement, for which the Council will make reduced financial claims to balance the Accelerated Funding of Project XXX.

**Representative** means the nominated representative of a party.

**1.2 Interpretation:** In this agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the Introduction;
- (b) **Headings:** section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- (c) **Negative Obligations:** an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (d) **Parties:** references to parties are references to parties to this agreement;
- (e) **Plural and Singular:** the singular includes the plural and vice versa;
- (f) **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- (g) **Notices etc:** references to one party notifying another, or agreeing or objecting to any matter, means such party notifying, agreeing or objecting in writing;
- (h) **Payment:** references to, or obligations in this agreement which require, payment of money will be a reference to, or deemed to be an obligation requiring, payment of money in immediately available cleared funds;
- (i) **Dollars and \$:** references to **dollars** and **\$** are references to New Zealand dollars and all amounts payable under this agreement are payable in New Zealand dollars;
- (j) **Monetary Amounts:** all monetary amounts are stated exclusive of GST and in New Zealand currency, and all amounts payable by a party under this agreement are to be paid in that currency;
- (k) **Schedules:** the schedules to this agreement and anything in those schedules have the same effect as if set out in the body of this agreement;
- (l) **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this agreement's sections, clauses and schedules; and
- (m) **Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

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## 2. PURPOSE OF AGREEMENT

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- 2.1 The purpose of this Agreement is to record the Parties' agreement in relation to:
- (a) The funding arrangements necessary to enable Accelerated Funding of Project XXX ; and
  - (b) The timeframes within which the arrangements set out in this Agreement are expected to operate.

## 3. PARTIES' RESPONSIBILITIES

- 3.1 The Transport Agency will provide to the Council, the Local Share of the agreed Total Capital Cost of Project XXX, in addition to Financial Assistance Rate level of subsidy.
- 3.2 The Council will, over the Funding Period, reduce its financial claims from the NLTF in respect of the Package of Works specified in **Schedule 1**, by a monetary amount equal to the Local Share of the agreed Total Capital Cost of Project XXX.
- 3.3 The Parties will review, and where necessary amend, the Package of Works specified in **Schedule 1** from time to time, to ensure that within the Funding Period, the reduced claims in respect of the Package of Works equals the Local Share of the agreed Total Capital Cost of Project XXX.

## 4. FUNDING

- 4.1 Under normal circumstances if the Transport Agency agrees that an activity qualifies for NLTP funding, the Transport Agency will fund the project's Total Capital Cost at an agreed upon Financial Assistance Rate. The residual amount is paid by the Council and is called Local Share.
- 4.2 In this case, to give effect to the purpose of the HIF to accelerate key infrastructure projects, the Transport Agency agrees to fund the Council's Local Share in addition to the Financial Assistance Rate for Project XXX, which means the Transport Agency will fund the entire Total Capital Cost of Project XXX. This is specified as follows:
- Total Capital Cost = Total Capital Cost\*FAR+ Local Share.**
- 4.3 For avoidance of doubt, the Transport Agency will approve Cost Scope Adjustments as per normal procedure. A Cost Scope Adjustment may increase or decrease Local Share.
- 4.4 In return, the Council agrees to reduce its financial claims in respect of the Package of Works during the Funding Period by a monetary amount equivalent to the Local Share of Project XXX. This is specified as follows:

**For any given financial year throughout the Funding Period:**

- A =** agreed Council funding in the NLTP.  
**B =** Reduced financial claims for Package of Works.  
**C =** actual funding paid out to the Council.

**C = A - B**

- 4.5 The reduced financial claims for the Council's Package of Works may occur over one or more years throughout the Funding Period. This is subject to the condition that the Local Share of the Total Capital Cost of Project XXX and the reduced amount of funding for the

(5)

Package of Works must balance each other out, before the conclusion of the Funding Period. This is specified as follows:

- B =** reduction in claims for the Package of Works that Council will make in any given year.  
**E =** Cumulative reduction in funding for Package of Works, that Council will make over the Funding Period.

So that:

**E=B(1)+B(2).....B(n) where n< funding period.**

- 4.6 The Local Share of the Total Capital Cost of Project XXX should be equal to the total reduction in claims for the Package of Works over the Funding Period.

**Local Share of Project XXX = E**

- 4.7 For the avoidance of doubt, this agreement concerns financial grants, which require no repayment. Therefore interest costs are not applicable to this agreement.

## 5. FUNDING PERIOD

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- 5.1 The Parties agree that the Funding Period for the Total Package of Works will be [XX years] from the Commencement Date of this Agreement.
- 5.2 The Funding Period may only be amended with the mutual agreement of both Parties. The Agency may be required to seek Transport Agency Board and/or Cabinet approval before agreeing to amend the Funding Period.

## 6. PACKAGE OF WORKS

- 6.1 Project XXX is one component of the Total Package of Works nominated by the Council to balance the Accelerated Funding of Project XXX.
- 6.2 At the conclusion of the Funding Period, the Transport Agency will be in the same financial position in regards to NLTF funding of Council activities as it would have been had it not provided Accelerated Funding for Project XXX.
- 6.3 The Package of Works is specified in **Schedule 1** to this Agreement.
- 6.4 The Package of Works may be amended from time to time, with the mutual agreement of both Parties, to ensure that within the Funding Period of the Total Package of Works, the reduced claims for projects within the Package of Works equals the Local Share of the agreed Total Capital Cost of Project XXX. The Parties agree to negotiate in good faith any necessary variations to this Agreement in order to update **Schedule 1**.

## 7. FUNDING AGREEMENT CONDITIONAL

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- 7.1 This Funding Agreement is conditional on:
- (a) the Transport Agency Board approving NLTF funding for Project XXX; and
- (b) the Ministers of Finance and Transport approving Project XXX for inclusion in the final programme of HIF proposals; and

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- (c) the Council fulfilling any conditions placed on it by the Transport Agency Board or the Ministers of Finance and Transport; and
- (d) the drawdown of HIF funds into the NLTF for Project XXX.

- 7.2 The Transport Agency will provide written confirmation to the Council once the conditions in 7.1(a), (b) and (d) have been fulfilled.
- 7.3 Nothing in this Funding Agreement shall be taken as an undertaking that NTLF funding for Project XXX will be provided or in any way bind the Transport Agency Board to approve NTLF funding for Project XXX.
- 7.4 The Council will provide the Transport Agency with written confirmation that it has fulfilled any conditions in accordance with 7.1(c), and approved Project XXX with the appropriate level of delegation by *[insert date]*.
- 7.5 Upon receipt of the written confirmations required under clauses 7.1 and 7.3 by the Parties, this Funding Agreement shall becoming binding on the Parties.
- 7.6 If the written confirmation in clause 7.1 is not received on or before *[insert date]* this Funding Agreement shall terminate, unless it is otherwise extended.
- 7.7 If the written confirmation in clause 7.3 is not received on or before *[insert date]* this Funding Agreement shall terminate, unless otherwise extended.
- 7.8 In the event of termination under clause 7.5 or 7.6 the Parties will bear their own costs of this Funding Agreement. For the avoidance of doubt, this clause 7.7 shall survive the termination of this Funding Agreement.

## 8. REPRESENTATIVES

- 8.1 Each party will appoint and notify the other party in writing of its Representative, and of any change in its Representative.
- 8.2 The role of a Representative will include:
- (a) To represent the interests of its party under the Funding Agreement and deal with the other party in respect of all matters arising out of this Agreement;
  - (b) To act as a single channel for all communications with the other parties in relation to this Agreement.

## 9. TERMINATION OF AGREEMENT

- 9.1 Once confirmation has been received under clauses 7.1 and 7.3 and this Funding Agreement has become binding under clause 7.4 this Agreement may only be terminated by agreement between the parties or by contract completion, as specified in this Agreement.
- 9.2 Contract completion will be the conclusion of the Funding Period, at which point the cumulative reduction in financial claims for the Package of Works will equal the Council's Local Share of the Total Capital Cost of Project XXX.

(7)

**10. DISPUTE RESOLUTION**

- 10.1 The Parties will endeavour to resolve any disputes by full and frank discussion in good faith.
- 10.2 If there is any dispute between the Parties as to the application of this Agreement to any situation, or actions that ought to be taken under it, that is not able to be resolved at the operational level, then the matter will be elevated to the appropriate Tier 2 Managers in the Parties' organisations.
- 10.3 If the Tier 2 Managers are unable to resolve the matter that has been elevated to them within a reasonable period as agreed by the Parties, the matter will be elevated to the Parties' Chief Executives.
- 10.4 If a resolution cannot be agreed within a reasonable period of referral to the Chief Executives then the matter may be referred to an independent expert appropriately qualified for the matter in dispute and who is agreeable to both parties, setting out the details of the matter to be referred for determination and the reasons the parties do not agree.
- 10.5 The expert shall, as soon as possible, issue his or her decision on the matter. In making the decision, the expert shall be entitled to seek further information and hear from the parties as he or she sees fit. The determination of the independent appropriately qualified expert shall be final.

**11. CONFIDENTIAL INFORMATION**

- 11.1 The parties acknowledge that, while this agreement is in force, they may acquire Confidential Information regarding the other party. Where a party to this agreement comes into possession of Confidential Information, that party and its officers, employees, agents and contractors:
- (a) Will only be permitted to use the Confidential Information to the extent necessary to enable the party to carry out its obligations under this agreement; and
  - (b) Will not disclose the Confidential Information to any third party without the prior written consent of the relevant party, unless required by law to do so.

**12. MEDIA RELEASES AND PUBLIC ANNOUNCEMENTS**

- 12.1 Notwithstanding the right for the media to report on any public meeting, both parties, prior to release, will agree to any media release in relation to the works covered by this Funding Agreement.
- 12.2 The Transport Agency shall identify the Council as a contributing partner in relation to any public statements and in written publications relating to the project.
- 12.3 The Council shall identify the Transport Agency as a contributing partner in any public statements and in written publications relating to the project and will comply with the Transport Agency's branding requirements.

**13. GENERAL**

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- 13.1 Severance:** If at any time any provision of this agreement is or becomes unenforceable, illegal or invalid for any reason whatsoever, such provision will not affect the enforceability, legality, validity or application of any other provision of this agreement and any such provision will be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement.
- 13.2 Assignment:** Neither party may assign any of its rights or obligations under this agreement without the prior written consent of the other party, whose consent may be withheld in the absolute discretion of that party, and granted on such reasonable terms and conditions as it sees fit.
- 13.3 Variations:** Amendments to this agreement will not be effective unless they are in writing and are signed by a duly authorised representative of each party.
- 13.4 Further Assurances:** Each party will make all applications and execute all applications, notices, agreements, deeds and other documents and do all other acts and things as may be necessary to implement and to carry out, its obligations under and, the intent of, this agreement.
- 13.5 Counterparts:** This agreement may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterparts shall be effective until each party has executed at least one counterpart.

**SIGNATURES**

(9)

**SIGNED** for and on behalf of **NEW ZEALAND  
TRANSPORT AGENCY** under delegated  
authority:

\_\_\_\_\_

XXX

Transport Agency Tier 2 Manager

**SIGNED** for and on behalf of **[THE COUNCIL]**  
under delegated authority:

\_\_\_\_\_

XXX

Chief Executive

EARLY DRAFT as at 28 June 2017

Item C1

Attachment 2

## Extraordinary Council

### PUBLIC EXCLUDED MINUTES

**Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Tuesday 4 July 2017 at 1.05pm.**

#### 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

In Attendance:	Richard Briggs – Chief Executive
	Kelvyn Eglinton – General Manager City Growth
	Blair Bowcott – Executive Director Special Projects
	Chris Allen – General Manager City Infrastructure
	San Murray – General Manager Tourism, Major Events and Venues
	Sean Hickey – General Manager Strategy and Communications
	David Bryant – General Manager Corporate
	Karen Saunders – City Growth Business Manager
	Andrew Parsons – City Development Manager
	Nigel Ward – Communications Team Leader
	Nicola Walsh – Communications Advisor

Governance Advisors:	Lee-Ann Jordan – Governance Manager
	Becca Brooke – Governance Team Leader
	Amy Viggers – Committee Advisor

## C1. Government's Housing Infrastructure Fund

The General Manager City Growth and Executive Director Special Projects advised Council that the business case concerning the Peacocke's area, put forward by Hamilton City Council for funding to the Housing Infrastructure Fund (HIF) panel, had been selected due to the transformational effect it would have on Hamilton City. The Rotokauri proposal was not selected by the panel for funding.

The next step was for Council to execute a non-binding Heads of Agreement with MBIE and NZTA which would provide clarity on the financial aspects of the HIF. Staff responded to questions from Elected Members concerning the financial terms of the HIF and implications/risk for Council.

**Resolved:** (Mayor King/Cr Macpherson)

That Council:

- a) receives the report;
- b) approves a **non-binding** Heads of Agreement to develop the Housing Infrastructure Fund (HIF) detailed business case and associated funding agreements for the Peacockes growth area with the Ministry of Business Innovation and Employment (MBIE), New Zealand Transport agency (NZTA) and Council;
- c) delegates to the Chief Executive authority to work with MBIE and NZTA to refine, then finalise and execute the **non-binding** Heads of Agreement;
- d) notes that the **non-binding** Heads of Agreement will reflect the parameters of the HIF application submitted to MBIE on 31 March 2017 for the Peacockes growth area;
- e) notes that the Chief Executive will prepare as part of the next stage of the HIF application a detailed business case, negotiate funding agreements and prepare any necessary public consultation material for the consideration and approval of Council;
- f) delegates to the Chief Executive authority to conduct any **non-binding** commercial negotiations with Government representatives and private developers in this next phase, consistent with the HIF application submitted to MBIE for the Peacockes growth area;
- g) notes that the growth assumptions in the 2018-28 Long Term Plan will incorporate the HIF funding arrangements for the Peacocke growth area;
- h) requests the Chief Executive report to the 27 July 2017 Council meeting on the opportunities to advance work associated with the Peacocke growth cell ahead of the HIF detailed business case and associated funding agreements being finalised (including proactive land purchase, investigations and design of capital works) subject to any works advanced being retrospectively included in the HIF funding arrangements;
- i) notes that Council will have further opportunities to consider information on the HIF application and its implications for the 2018-28 Long Term Plan; and
- j) makes this report and the Council decisions public following the government HIF announcements on 11 July 2017.

*A copy of the report and minutes concerning the above item would be made available as Appendix 1 of the open minutes for this meeting.*

*The meeting adjourned 2.33pm – 2.46pm prior to the debate on the above matter.*

**The meeting was declared closed at 3.30pm.**