



Meeting of the Corporate and Strategic Committee

Date: Wednesday 11 December 2013
Time: 1.00 pm
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

ITEM	SUBJECT	PAGE
1.	Welcome/Notices/Apologies	
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**HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE**

Wednesday 11 December 2013

**SUBJECT: FOLLOW-UPS FROM PREVIOUS CORPORATE AND STRATEGIC
COMMITTEE MEETINGS**

Reason for Report

1. In order to track items raised at previous meetings that require follow-up, a list of outstanding items is prepared for each meeting. All follow-up items indicate who is responsible for each, when it is expected to be completed and a brief status comment. Once the items have been completed and reported to Council they will be removed from the list.

Decision Making Process

2. Council is required to make a decision in accordance with Part 6 Sub-Part 1, of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained within this section of the Act in relation to this item and have concluded that as this report is for information only and no decision is required in terms of the Local Government Act's provisions, the decision making procedures set out in the Act do not apply.

Recommendation

1. That the Committee receives the report "*Follow-ups from Previous Corporate and Strategic Committee Meetings*".



**Liz Lambert
CHIEF EXECUTIVE**

Attachment/s

- 1 Follow-ups from Previous Corporate & Strategic Committee Meetings

Follow-ups from Corporate and Strategic Committee Meetings

Item 3

4 September 2013

	Agenda Item	Follow-up / Request	Person Responsible	Due Date	Status Comment
1	Action Items	When was the routine Cadmium monitoring programme established by Council?	IM		Information provided via email, and appended.
2	General Business	Request for an update on progress being made by HB LASS	EL		Paper provided to 25 September Council meeting, and excerpt appended.
3	General Business	Request for an analysis of whether the collection of rates arrears could be coordinated regionally to save debt collection costs	PD		<p>There is not a consistent policy for the collection of rate arrears by the councils (TLAs and Regional) within Hawke's Bay. Some employ staff to specifically follow up on outstanding rates, whereas in the case of the Regional Council, rates in excess of \$150 for any ratepayer are outsourced to a debt collector as this is more economic.</p> <p>If an assessment is to be carried out on whether this service should become a shared service (which would require changes in policy covering debt collection thresholds and mode of collection), then such a shared service initiative would be best analysed by the HB LASS.</p>

Attachment 1

From Environment & Services

	Agenda Item	Follow-up / Request	Person Responsible	Status Comment						
4	HB Museum funding figures to be clarified	P Drury	2013	<p>Council funded \$2,500,000 to the Museum Trust over two years (2010/11 & 2011/12)</p> <p>This was funded by:</p> <table><tr><td>Sale of Land (Non-Investment) Reserve</td><td>\$900,000</td></tr><tr><td>Loan (Regional Infrastructure)</td><td>\$1,200,000</td></tr><tr><td>Specific Regional Projects Reserve</td><td>\$400,000</td></tr></table>	Sale of Land (Non-Investment) Reserve	\$900,000	Loan (Regional Infrastructure)	\$1,200,000	Specific Regional Projects Reserve	\$400,000
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Loan (Regional Infrastructure)	\$1,200,000									
Specific Regional Projects Reserve	\$400,000									

Ref Follow-up item 1 above (cadmium monitoring)

From: Barry Lynch
Sent: Wednesday, 4 September 2013 9:44 a.m.
To: Leeanne Hooper
Subject: RE: cadmium monitoring in soils

We have soil quality data going back to about 2000 but the 'new' soil monitoring with lots of added measured parameters including pesticides has only been going since 2010.

We look at different landuses every year and the return to the same sites on a 3-5 year basis depending on landuse so we will start revisiting some of the previous sites soon. This year we are looking at cropping sites. Last year we looked at dairy and intensive beef and the year before that we looked at sheep and beef.

Hope this helps.
 Let me know if there are any other questions.

Barry

DR BARRY LYNCH
Principal Scientist - Land
Hawke's Bay Regional Council

Ref Follow-up item 2 above (HB LASS)

1. HB LASS Ltd was established in December 2012 by the five local authorities within Hawke's Bay. The company was established to investigate, develop and deliver shared services, where and when that can be done more effectively for any combinations of some or all of the shareholding councils.
2. Since the company was established investigation has commenced into four areas of the activities of some or all of the councils to evaluate the potential of shared services initiatives.
3. The Board issued briefs for investigations into Building Control activity, GIS services, and a Regional Call Centre proposal. The Board also issued a brief for an investigation into the potential Regional Fleet Management opportunity. Each of these investigations has been progressed but not concluded.

Building Control Activity

4. Work on the development of a shared services proposal for building control was initially undertaken by an Advisory Group of officers from each of the territorial local authorities together with an independent chairperson. Progress with this investigation was not entirely to the Board's satisfaction and consequently the Board resolved in June to seek external assistance to address the development of an implementation plan for a Regional Building Control service. This work is well underway.
5. HBRC is not a part of this investigation as we do not undertake building consent functions.

GIS Services

6. The Advisory Group of officers established to undertake this investigation recommended to the Board in June that a detailed implementation plan for a Regional GIS Service should be prepared with a view to the implementation of a regional GIS service within the 2013/14 financial year. The implementation plan is in the process of being developed and is expected to be presented to the Board in September this year. The Advisory Group of officers produced a very professional and forward-looking, positive report that indicated in their view that there are advantages to be gained from implementation. The Board expects a positive outcome from this work stream.

Regional Call Centre

7. The Advisory Group of officers reported initially to the Board in June. The Board has instructed the Advisory Group to undertake further work including obtaining additional information before any decision is made on this opportunity.

Fleet Management

8. One of the opportunities considered in the initial raft of potential activities for shared services was a Regional Fleet Management service. In May the Board resolved that an investigation into the potential for a Regional Fleet Management service should be undertaken. The report into the viability of such a service is to be issued and was presented to the Board in August 2013. It identified total savings excess of \$100,000 worth of savings across the councils and recommended collaborative and joint activity structured to achieve these savings.

Further Opportunities

9. The Board has also identified a raft of other opportunities for consideration and more particularly received the report that examined the potential in the asset management area. This is expected to be progressed with some vigour in the next period.
10. Good progress has been made particularly in progressing the GIS opportunities and the Board have gained a greater understanding of the challenges that exist in other areas.
11. The councils had used their combined purchasing power on a number of collaborative and joint activities prior to the establishment of the company; These include:-
- 11.1. Joint Insurance Procurement
 - 11.2. Joint Electricity Procurement
 - 11.3. Joint Valuation Service Procurement
 - 11.4. Joint Solid Waste Management
12. In many regions these activities have been among the first undertaken by shared services organisations and to that extent are 'low hanging fruit' not available to be captured by HB LASS Ltd. Nevertheless, there are many other opportunities available for capture that we will pursue with vigour.

Statement of Intent

13. The Statement of Intent outlines the performance targets against which the company is measured. For the seven month period December 2012 – June 2013 the following targets were set.

<i>Performance Target</i>	<i>December 2012 - June 2013</i>
Initiate at least three shared services in the first full year of operation and at least one shared service each year and no less than two shared services successfully implemented within the following three years;	Four shared services investigations have been initiated as at 30 June 2013
Implement Shared Services demonstrating best practice and added value to participating councils and stakeholders;	No shared services have been implemented in the reporting period. Significant progress has been made in investigations. An outcome of one of these investigations is the proposed establishment of a Hawke's Bay Local Authority Collaborative Fleet Management Group.
Explore Joint Procurement initiatives for goods and services from sources offering best value, service, and or continuity of supply;	No joint procurement initiatives have been initiated under the HB LASS umbrella although joint procurement of insurances, electricity and other services is taking place.
Ensure sufficient income is available from activities to sustain a viable company.	Sufficient income was received from membership fees to sustain the company's overhead costs.
Operate in a manner that conforms with any applicable regulatory requirements	All regulatory requirements have been met.

Attachment 1

Item 3

**HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE**

Wednesday 11 December 2013

SUBJECT: CALL FOR ANY MINOR ITEMS NOT ON THE AGENDA

Item 4

Reason for Report

1. Under standing orders, SO 3.7.6:
"Where an item is not on the agenda for a meeting,
 - (a) That item may be discussed at that meeting if:
 - (i) that item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
 - (b) No resolution, decision, or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion."
2. The Chairman will request any items councillors wish to be added for discussion at today's meeting and these will be duly noted, if accepted by the Chairman, for discussion as Agenda Item 12.

Recommendations

The Corporate and Strategic Committee accepts the following minor items not on the agenda, for discussion as item 12:

- 1.



**Liz Lambert
CHIEF EXECUTIVE**

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Wednesday 11 December 2013

SUBJECT: HBRIC LTD BOARD OF DIRECTORS MEMBERSHIP

Item 5

Reason for Report

1. The purpose of this report is to formalise the membership for the remaining period of the Hawke's Bay Regional Investment Company Limited (HBRIC Ltd) Transition Board following the retirement of Councillor Directors from this Board as required by its Constitution.
2. After considering legal advice at the 28 August 2013 Regional Council meeting on the issue of perceived Councillor Director conflict of interest, Council resolved that it:
 - 2.1. Notes confirmation from legal advice that there is no actual conflict of interest for Councillor Directors on the Board of HBRIC Ltd at present
 - 2.2. Confirms that it has considered the potential solutions for the perceived conflict of interest issue in line with the request made at the July 2013 Council meeting, and recommends that the incoming Council considers the perceived conflict of interest issue during its consideration of the appointment of Councillor Directors for HBRIC Ltd following the local body elections.
3. This report also provides an overview of the perceived conflict of interest issues for Council's consideration as set out in paragraph 2.2 above.

Background on HBRIC Ltd Director Appointments

4. On 23 November 2011 Andrew Newman, the Chief Executive of Council, was appointed as an *ex officio* Director and Managing Director of the HBRIC Ltd Transition Board.
5. On 14 December 2011 Council approved the HBRIC Ltd Constitution, statement of objectives, and the transfer of the Shareholding of the Port of Napier Ltd to HBRIC Ltd. Three Councillors were elected to the HBRIC Ltd Transition Board, being councillors Fenton Wilson, Alan Dick and Christine Scott.
6. On 25 January 2012 Council approved the appointment of Messrs Jim Scotland, Sam Robinson and Dr Andy Pearce as Independent Directors to the HBRIC Ltd Transition Board.
7. The term of the appointments for all seven Directors of the Transition Board was to expire on 31 December 2013.
8. As part of the 2013/14 Statement of Intent approval process Council agreed to change the date in which the Transition Board will be replaced with a permanent Board. This change extended the Transition Board's term to 30 June 2014, ensuring continuity around the final decision making process for the Ruataniwha Water Storage Scheme (RWSS).

Resignation of Councillor Directors

9. As outlined in the HBRIC Ltd Constitution each Councillor Director is required to retire within three months following the triennial local government elections.
10. This is set out in **clause 8.8(g)** of the Constitution which states that:

In relation to Councillor Directors, each Director is required to retire within three months following the triennial local government elections, but is eligible to be reappointed if re-elected to the Council. Appointed Councillor Directors retain their appointment at the pleasure of the Council during their term(s) as Councillor up until three months, or such later date as the incoming Council may decide, to ensure effective transition from one set of Councillor Directors to another, following the triennial local government elections.

Perceived Councillor Director Conflict of Interest

11. Following concerns raised about the appropriateness of Councillor Directors being part of both the HBRIC Ltd recommendation process around the RWSS and the HBRC decision making process on whether or not to invest in the scheme, Council requested that a paper on options for managing conflicts of interest issues be prepared.
12. This paper was subsequently prepared and presented to Council on 31 July 2013.
13. Supporting this paper was a legal opinion prepared by Stuart Webster of Sainsbury Logan and Williams which is appended as Attachment 1.
14. As outlined in the legal advice there do not appear to be any legal reasons to alter the current governance arrangements for the Board of HBRIC Ltd to address conflict of interest issues. Mr Webster still stands by this legal opinion which was prepared in July 2013.
15. On 28 August 2013 a further paper on the issue of perceived conflict of interest of Councillor Directors on the HBRIC Ltd Transition Board was presented to Council. This paper traversed several options to reduce the perception of conflict of interest. A copy of this paper is appended as Attachment 2.
16. Subsequent to the presentation of this 28 August 2013 paper Council has received, from Audit New Zealand, its management report for the year ended 30 June 2013 which provides significant commentary on the conflicts of interest issue. Appended to this paper as Attachment 3 is the relevant commentary from this report for information purposes. Staff provided comments to Audit New Zealand that the issue of perceived conflicts of interest will be addressed by the incoming Council.
17. Despite there being no legal reasons to alter the governance arrangements for the HBRIC Ltd Transition Board, it has been deemed preferable through various Council workshop discussions to address any perceived conflict of interest issues through the removal of Council Directors during the period in which decisions in relation to the RWSS will be undertaken.

Assessment of Options for HBRIC Ltd Transition Board of Directors Membership

18. Various discussions have been undertaken by the incoming Council and the Chairman of the HBRIC Ltd Board on the preferred membership structure of the Transition Board for the remainder of its term to address perceived conflict of interest issues.
19. Following these discussions, and with the requirement that Councillor Directors retire three months following the triennial local government elections, two options have been identified to address these issues. These options are outlined below:

Option 1 - removal of councillor directors and replacement with two subject matter experts

20. This option would involve the appointment of two of the three subject matter experts currently co-opted to the HBRIC Ltd RWSS Board Committee to replace the Councillor Directors on the HBRIC Ltd Transition Board for the remaining period to 30 June 2014.
21. The HBRIC Ltd Board co-opted three subject matter experts in February and March 2013 to assist the Board's governance of the RWSS. It is proposed that two of these advisors, Danelle Dinsdale and David Faulkner, replace the outgoing Councillor Directors.
22. Danelle Dinsdale was co-opted as the commercial legal expert to the HBRIC Ltd RWSS Board Committee. Danelle is a specialist in SPV/PPP/BOOT projects and documentation, having worked in London for 16 years which included time as a partner in DLA Piper – the world's largest law firm.
23. David Faulkner was co-opted to the HBRIC Ltd RWSS Board Committee to provide expertise in the field of large civil works engineering. David is the former Managing Director of Fulton Hogan, with strong experience on complex engineering projects in both New Zealand and Australia.

24. Pros:

- 24.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making on the RWSS.
- 24.2. Is cost neutral.

25. Cons:

- 25.1. No representation by elected representatives in HBRIC Ltd decision making processes, removing the benefits of appointing Councillors to Boards of Directors as identified by the Office of the Auditor General in 1994.
- 25.2. Requires a change to the Constitution of HBRIC Ltd.

Option 2 - Removal of councillor directors and no replacement directors be appointed

- 26. This option would involve the current Councillor Directors retiring from their HBRIC Ltd Directorship, as stipulated in the Constitution, and not being replaced for the remaining period of the HBRIC Ltd Transition Board to 30 June 2014.
- 27. This would result in four Directors remaining on the HBRIC Ltd Transition Board being the three Independent Directors appointed by Council in January 2012 and Andrew Newman, the Chief Executive of HBRC appointed as a Director *ex officio*.

28. Pros:

- 28.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making on the RWSS.
- 28.2. Is cost neutral.

29. Cons:

- 29.1. No representation by elected representatives in HBRIC Ltd decision making processes, removing the benefits of appointing Councillors to Boards of Directors as identified by the Office of the Auditor General in 1994.
- 29.2. Requires a change to the Constitution of HBRIC Ltd.
- 29.3. Workload for remaining Directors commensurately increased.

HBRC Ltd Constitution

- 30. Should Council resolve to adopt one of the two options outlined in this paper then a resolution would need to be adopted to amend the Constitution as it currently stands.
- 31. The relevant clauses of the Constitution that would require amendment **are clause 8.1 and clause 8.3(a)** as set out in a tracked changes version of the Constitution appended as Attachment 4.
- 32. **Clause 8.1** is the relevant clause of the Constitution that stipulates the minimum and maximum number of Directors, and currently reads:
 - 32.1. Unless and until otherwise determined by an ordinary resolution of the Company the maximum number of Directors is seven (7).
- 33. This clause currently refers to the maximum number of Directors to be appointed to the Board but does not refer to the minimum number. As the proposed wording change to **clause 8.3(a)** refers to the appointment of a minimum number of Directors to the Board, it is deemed appropriate for completeness purposes for a resolution to be adopted that amends the wording of **clause 8.1** as set out in a tracked changes version of the Constitution (Attachment 4).
- 34. **Clause 8.3(a)** is the relevant clause of the Constitution which outlines the makeup of the Board and currently reads:
 - 34.1. HBRC shall be entitled to appoint up to seven (7) Directors to the Board of the Company (including the right to appoint and remove and nominate alternates) with three of those Directors being made up of existing Council Members (Councillor Directors), and three Directors who are independent of the Council (Independent

Directors) and the Chief Executive of HBRC from time to time being appointed as a Director *ex officio*;

35. The adoption of either of the two options outlined in this paper would require a wording change to this clause due to the removal of the Councillor Directors for the remaining period of the Transition Board.
36. On the advice of Stuart Webster of Sainsbury Logan and Williams the resolution to be adopted would be to amend the wording of **clause 8.3(a)** as set out in the tracked changes version of the Constitution (Attachment 4).
37. This proposal is based on the aim of allowing Council the flexibility to appoint Councillor Directors and Independent Directors in whichever proportion it sees fit.
38. This proposal also takes away the automatic appointment of the HBRC Chief Executive, which may have been appropriate at the time of incorporation of HBRIC Ltd but is less relevant now. Nothing prevents Council from appointing the HBRC Chief Executive at some point in the future if it is deemed to be beneficial.
39. For the sake of completeness, the appointment by Council of the Chairman of the Board will remove the previous provision which gave that task to the Directors themselves. This will introduce a level of control by Council over the Chairmanship role.
40. A consequential amendment to **clause 2.4** of Schedule 2 of the Constitution (Proceedings of Board Members) is also required to ensure consistency with **clause 8.3(a)** (to be amended as proposed). This amendment is outlined in the tracked changes version of the Constitution (Attachment 4).

Reappointment of Councillor Directors

41. If Council resolves to adopt one of the two options outlined in this paper then there will be no Councillor Director representation for the remaining period of the HBRIC Ltd Transition Board's term through to 30 June 2014. Council will have the opportunity to reappoint Councillor Directors to the HBRIC Ltd Board when it appoints a permanent Board from 1 July 2014.

Development of Policy on Appointment and Remuneration of Directors

42. As outlined in the proposed wording of **clause 8.3(a)** of the Constitution, the appointment of Directors to the Board of HBRIC Ltd is to be undertaken in accordance with Council's policy regarding Director Appointments.
43. As Council does not currently have a policy in place regarding the appointment of Directors to Council Controlled Organisations (CCOs) or Council Controlled Trading Organisations (CCTOs), it is deemed prudent that prior to the appointment of the permanent HBRIC Ltd Board that Council has a formal policy in place for the appointment of Directors to these organisations.
44. It is proposed that a policy is developed and presented at the next Corporate and Strategic Committee meeting which is set for 12 March 2014. This will provide Councillors with the opportunity to review the policy and provide comment and changes as required in time for the appointment of the permanent HBRIC Ltd Board.
45. Some of the key principles that this proposed policy will cover in relation to CCOs and CCTOs are:
 - 45.1. The appointment process for Councillor and Independent Directors
 - 45.2. The process for the appointment of a Chairman
 - 45.3. Length of tenure for Directors
 - 45.4. Remuneration of Directors.

Decision Making Process

46. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:

- 46.1. The decision does not significantly alter the service provision or affect a strategic asset.
- 46.2. The use of the special consultative procedure is not prescribed by legislation.
- 46.3. The decision does not fall within the definition of Council's policy on significance.
- 46.4. The persons affected by this decision are Councillor Directors on the HBRIC Ltd Transition Board of Directors.
- 46.5. Options that have been considered are outlined in the paper.
- 46.6. The decision is not inconsistent with an existing policy or plan.
- 46.7. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

The Corporate and Strategic Committee recommends that Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Confirms that it has considered the potential solutions for the perceived conflict of interest, and **either**:
 - 2.1. Resolves to appoint Danelle Dinsdale and David Faulkner as Directors to replace the three Councillor Directors on the Transition Board of Hawke's Bay Regional Investment Company Limited for the period to 30 June 2014, noting that the number of Directors will be reduced from seven to six.

Or:

- 2.1 Resolves to not replace the three Councillor Directors on the Transition Board of Hawke's Bay Regional Investment Company Limited for the period to 30 June 2014, noting that the number of Directors will be reduced from seven to four.
3. Agrees that Clauses 8.1 and 8.3(a) of the Constitution be amended to:
 - "8.1 **Minimum and maximum numbers:** *The minimum number of Directors shall be three (3) and the maximum number of Directors shall be seven (7).*
 - 8.3 **Appointment of Directors and Chairperson:**
 - a. *HBRC shall appoint at least three (3) and up to seven (7) Directors to the Board of the company (including the right to appoint and remove and nominate alternates) in accordance with HBRC's Policy concerning Director appointments of existing Council Members (Councillor Directors), and Directors who are independent of the Council (Independent Directors). HBRC shall appoint a Chairperson from amongst the Directors so appointed;*
4. Agrees that Clause 2.4 of Schedule 2 of the Constitution be amended to:
 - "2.4 **Chairperson:** *In accordance with clause 8.3 of the Constitution, HBRC shall appoint a Chairperson of the Board from amongst the Directors.*"
5. Notes that a policy on the appointment and remuneration of Directors is to be developed and presented to the next (12 March 2014) Corporate and Strategic Committee meeting.



Heath Caldwell
MANAGEMENT ACCOUNTANT



Paul Drury
GROUP MANAGER
CORPORATE SERVICES



Liz Lambert
CHIEF EXECUTIVE

Attachment/s

- 1 SLW Legal Opinion
- 2 28 August 2013 Council Briefing Paper re Conflict of Interest Options
- 3 Audit NZ Commentary on Conflict of Interest
- 4 Amended HBRIC Ltd Constitution



SAINSBURY
LOGAN &
WILLIAMS

LAWYERS SINCE 1875

23 July 2013

Acting Chief Executive
Hawke's Bay Regional Council
Private Bag 6006
NAPIER

Attention: Liz Lambert

By email: liz@hbrc.govt.nz

Dear Liz

HAWKE'S BAY REGIONAL INVESTMENT COMPANY LIMITED: CONFLICT OF INTEREST ISSUES

- 1 You have asked us to provide you with an opinion in response to a Paper on Governance Issues and Options which has been presented by the Chairman of Hawke's Bay Regional Investment Company Limited ("HBRIC") and the Chairman of that company's Audit and Risk Committee.

Summary of Advice

- 2 For the reasons set out in this opinion, it is our view that any conflict of interest issues, whether real or perceived, can be adequately managed within the existing governance structure without the need for significant change.

Issue

- 3 The issue is whether there is a conflict of interest (either real or perceived) in having Hawke's Bay Regional Council ("HBRC") councillors sit and determine issues around the HBRIC board table (in their role as "Councillor directors") that might attract criticism when it comes to their participation as councillors of HBRC making decisions in and around Ruataniwha Water Storage Scheme ("RWS Project").
- 4 The issues are set out in the relevant (undated) Additional Item Paper as follows:
 - 1 Conflict of interest for councillors who are councillor directors of HBRIC Limited when decisions are being made in 2014 by Council on an RWS investment recommendation from HBRIC Limited;
 - 2 Predetermination by councillors who are councillor directors of HBRIC Limited when decisions are being made in 2014 by Council on RWS investment recommendation from HBRIC Limited;
 - 3 Conflict of interest for Council's CEO in advising Council in 2014 on a RWS investment recommendation from HBRIC Limited.

61 Tennyson Street, PO Box 41, Napier 4140, New Zealand, DX MP70039

Tel 06 835 3069, Fax 06 835 6746, www.slw.co.nz

SJW-003502-199-54-V1

Partners: Magnus Macfarlane, Gerry Sullivan, Stephen Greer, Stuart Webster, Andrew Wares, Adrian Barclay, Nathan Gray

Lara Blomfield, Lauren Hibberd, Lincoln Reid

5 As noted in the Paper the last issue has been dealt with through the secondment of Andrew Newman to the full-time role as Managing Director of HBRIC Limited.

6 The remaining issues of conflict of interest and pre-determination are the matters to which this opinion responds.

Discussion

7 The main concern is that the decision of Council whether to proceed or not with the RWS project may well be challenged by way of judicial review with the consequent expenditure of money and time delays that result from that.

8 It is our view that the appointment of Councillor directors to the board who are charged with administering and overseeing the management of the water storage scheme, is likely to result in the most experienced and appropriate individuals for the position and the best placed to make quality decisions and bring about enduring solutions.

9 We note that one of the specific exceptions to participation in decision making under the Local Authority (Members' Interests) Act 1968¹ relates to councillors who have been elected by, or are appointed to represent, any activity, industry, business, organisation or group of persons and their pecuniary interest is not different in kind from the interests of others in the activity, industry, business, organisation or group by which the councillor is elected, or in respect of which they are appointed.

10 That point is reinforced in the OAG's Report on governance issues involving subsidiary companies:²

207 Although councillor directors face potential conflicts of interest, they may also provide a useful service by:

- being a council voice;
- providing a local community perspective; and
- ensuring that the objectives of the board are aligned with those of the local authority.

208 The presence of councillor directors also enables the board to explore the likely response of the shareholding local authority to board proposals.
...

229 We recommend, as in our 1994 report, that the boards of holding companies include councillor directors... While the holding company is the legal owner of operating subsidiaries, the local authority is ultimately accountable to the community for the performance of the subsidiaries. Councillor directors on the holding company are a means of ensuring that commercial decisions have appropriate regard to the wider interests of the local authority shareholder.

230 In determining the balance of councillor and external directors on the board of the holding company, the local authority should consider:

- the desired mix of skills and experience for the holding company's role as the local authority's professional investment manager;
- the nature of the local authority's investment portfolio; and

¹ Section 6(1A)

² See *Local Authority Governance of Subsidiary Entities* (Office of the Auditor-General, 23 March 2001).

- the relationship between the holding company and the local authority.
- Council Representatives on Boards of Local Authority-owned Companies...

- 766 In our 1994 report we commented on the roles of councillor directors on the boards of commercial enterprises. In this study we heard a variety of arguments for and against such appointments.
- 767 The benefits of appointing councillor directors include:
- providing a local authority voice on the board; and
 - making the company more sensitive and responsive to community views.
- 768 Concerns about such appointments include:
- councillor directors may face difficulties in reconciling their dual roles as councillor and company director; and
 - local authority representatives may be expected to pass information from the company to the shareholding local authority outside established communication channels, which is inappropriate behaviour.
- 769 Some local authorities have a policy of appointing councillors to the boards of their commercial trading companies. Of the ten companies we reviewed, only three boards did not include a councillor representative.
- 770 Councillor directors need to have the commercial skills, background and experience to make a fully informed contribution to board discussions. A formal process for selecting directors is an effective way to meet this requirement.
- 771 One holding company periodically sought expressions of interest from councillors wishing to be appointed to the boards of local authority owned companies. The skills and experience of those interested can then be assessed against the competencies for appointment to a board. This preserves the transparency of director appointments. It also ensures that all councillor appointees have the necessary competencies to fill director positions and participate fully in governance of the company.

- 11 The issue here is one involving a non-pecuniary interest. There is very little guidance on this issue from the OAG except for some general comments appearing in a Report prepared by that office in 2004:³

Non-pecuniary conflicts of interest: The rule against bias

1.21 If a person challenges a local authority's decision by way of judicial review proceedings, the courts could invalidate the decision because of bias on the part of a member of the decision-making body. The question you need to consider, drawn from case law, is:

Is there a real danger of bias on the part of a member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

1.22 It is the appearance of bias, not proof of actual bias, that is important.

1.23 The law about bias does not put you at risk of personal liability. Instead, the validity of the authority's decision could be at risk.

- 12 We have looked for New Zealand case law on the point but the issue does not appear to have been raised except in the context of pecuniary interests. In 1992⁴ the High Court

³ See *Guidance for members of local authorities about the law on conflicts of interest* (Office of the Auditor-General, 1 June 2007)

⁴ *Calvert & Co v Dunedin City Council* [1993] 2 NZLR 460

was asked to set aside a series of resolutions made by the Dunedin City Council when setting directors fees for Councillor directors on various Council-owned of controlled bodies. Some of those Councillor directors deliberated and voted on those resolutions. Prior to the matter coming before the Court, Dunedin City Council changed its policy and made it clear that Councillor directors were only entitled to meeting fees based on the usual tariff in accordance with their public office. The directors fees were refunded to Council. On that occasion the plaintiffs wanted to pursue a declaration that the Councillor directors had breached natural justice because they were biased in their approach to setting the fees in the first instance. The High Court declined to grant relief. It held that the powers of the Court on judicial review were discretionary and that nothing would be gained, in the face of a change in policy and refund in fees, by having the Court grant relief to the plaintiffs. An attempt to appeal that decision failed for lack of jurisdiction.

- 13 We also observe in the OAG's advice to HBRIC⁵ that Mark Maloney is of the opinion that there is no conflict in Councillor directors making decisions about HBRC's investments.
- 14 We believe there is a strong case for retaining the current governance structure and managing any conflict of interest that might arise.
- 15 That then only leaves the matter of "perception" of a conflict of interest. That is not a legal matter but one of politics and appearance.
- 16 The options for avoiding perceptions of conflict of interest have been set out in the Additional Item Paper.⁶ They include:
 - 16.1 Temporary removal of Councillor directors;
 - 16.2 Delegation of decision-making to a subsidiary entity;
 - 16.3 Appointment of alternate directors.
- 17 A further option might have been to limit the involvement of the Councillor directors at either HBRC council meetings or HBRIC board meetings by regulating their right to attend, right to participate in the deliberation and the right to vote at properly constituted meetings.
- 18 Currently they are able to exercise all three but it is possible for each entity to allow attendance, deliberation but not voting; or allow attendance but not deliberation or voting or not allow attendance, deliberation or voting. All of this would be characterised as management of the conflict or potential conflict.
- 19 Our view is that these options are extreme and likely unnecessary because they each take away from the process the very thing that leads the OAG to encourage councils to appoint councillors to council controlled entities.



⁵ Additional Item Paper, page 1.

⁶ At page 2.

- 20 In 2000, the Court of Appeal in the Hamilton Sky Casino case approved of the words adopted by the High Court Judge at first instance:⁷

Subject to contrary indications in the statute or other empowering document, little or no predisposition or extraneous influence will usually be tolerated where the decision-maker is a court, tribunal or similar body operating in a formal adversarial setting, the determination requires the application of a legally dictated result once facts are found, the decision impacts upon specific individuals rather than the community at large, and the impact upon those individuals is serious, particularly if involving human and civil rights and freedoms.

The reverse will usually be true where the decision-maker is a democratically elected body, the decision-maker is intended to form its own policies, particularly where on-going, the challenged aspect of the decision did not involve the application of closely controlled legal consequences to facts once found, eligibility for appointment, and hearing methodology, suggest that its members were intended to draw upon their own views, experience and expertise, and the opportunity to be heard is limited or informal. In such cases intervention will usually be justified only where the decision-maker entered upon the hearing with a closed mind, that is to say one which was not amenable to proper argument, or was unwilling to consider the case on its individual merits. **[Emphasis added]**

- 21 It is perhaps patronising to suggest that Councillor directors are unable to view the issues from two separate viewpoints: their role as a director of HBRIC voting in the best interests of the company (on the one hand) and a councillor voting in the best interests of the region.
- 22 In some cases those two positions may appear incompatible, but there is the very real prospect that a responsible Councillor director might approve the scheme in his or her capacity as director of HBRIC but vote against it as a Councillor voting around the Council table on the grounds of cost contribution or for some other reason. To some that may appear nonsensical but in our view that situation is completely logical and sustainable and shows a clear delineation between the interests of the two groups.
- 23 For these reasons, the appointment of Councillor directors is not only acceptable, it is positively encouraged by the OAG as a means of producing a better informed decision in the interests of Council.
- 24 The way in which conflicts are identified and managed does not require going to the lengths suggested in the options put up in the Additional Item Paper.
- 25 The perception by the public of potential conflict or predetermination is a political issue upon which we are not qualified to comment. The cost involved in a legal challenge (including delay) is a matter to be carefully considered but our advice is that, properly managed, the status quo can be maintained without taking the artificial and extreme steps suggested in the three options presented in the Additional Item Paper or the conflict management suggestion in paragraph 17.

⁷ *Riverside Casino Ltd v Casino Control Authority & Others*, CA 113/00; 19.12.00 at paragraph [13].

Attachment 1

Item 5

26 We would be happy to clarify or expand on any aspect of this advice.

Yours sincerely



Stuart Webster
Partner

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Direct dial (06) 833 7848

SJW-003502-199-54-V1

HAWKE'S BAY REGIONAL COUNCIL**Wednesday 11 December 2013****SUBJECT: HBRIC LTD BOARD OF DIRECTORS - COUNCILLOR DIRECTORS
PERCEIVED CONFLICT OF INTEREST****Item 5****Reason for Report**

1. At its meeting on 31 July Council considered a paper that it had sought from HBRIC Ltd on options for managing perceived conflict of interest and perceived pre-determination issues that had arisen as a result of three elected councillors being Directors of the HBRIC Ltd Board of Directors.
2. As a consequence of the HBRIC Ltd paper and legal advice from Sainsbury Logan and Williams Council deliberated on this issue. Notwithstanding the recommendations Council:
 - 2.1. Determined that action needs to be taken to reduce the perception of conflict of interest and/or pre-determination by councillor directors on the Board of HBRIC Ltd in relation to HBRC decisions on the Ruataniwha Water Storage Project; and
 - 2.2. Requested that a further report on options to reduce the perception of conflict of interest by councillor directors on the Board of HBRIC Ltd, including costs and implications associated with those options, be brought to the August Regional Council meeting for consideration.
3. The purpose of this report is to meet the requirement set out in paragraph 2.2 above.

HBRIC Ltd Constitution

4. The Company Constitution incorporates matters dealing with both appointment and removal of directors. The relevant excerpts can be summarised as follows.
 - 4.1. The maximum number of Directors is seven.
 - 4.2. HBRC shall be entitled to appoint up to seven directors with three of those Directors being existing Council members ("Councillor directors") and three Directors being independent of the Council ("Independent Directors") and the Managing-Director.
 - 4.3. HBRC can appoint or remove directors or nominate alternates.
 - 4.4. HBRC can appoint any person who is not already a Director and who is approved by the majority of other Directors to act as an alternate for a Councillor Director, either for a specified period or during the absence or inability to act from time to time of the Councillor Director.
 - 4.5. A quorum for a Board meeting is a majority of the Directors who are entitled to vote at that meeting to include not less than two Councillor Directors or their alternates.

Perceived Councillor Director Conflict of Interest and/or Predetermination Issues

5. Council has requested that a range of options for addressing perception issues presented in the July paper, or identified at the July meeting, be assessed in relation to likely costs and other implications.
6. It is worth noting that the legal advice held that there do not appear to be any legal reasons to alter the current governance arrangements for the Board of HBRIC Ltd. However the July paper also noted that the issue of perception of conflict of interest or predetermination needs to be addressed.
7. A range of options have been identified to address the perception of conflict of issue and/or pre-determination by councillor-directors on the Board of HBRIC Ltd in relation to future decisions on any HBRC investment in the Ruataniwha Water Storage Scheme.

Attachment 2

8. After discussion with legal advisers, and taking a pragmatic approach to how this matter may be addressed, there are several principles that are considered fundamental in determining the way forward:
 - 8.1. The avoidance of perception of conflict of interest at a future event (noting that there are no actual conflicts of interest at the present time)
 - 8.2. Maximising the ability for councillors to take part under Local Government Act decision-making processes in decisions regarding whether HBRC should invest in the RWSS, if such investment is recommended by HBRIC Ltd
 - 8.3. In particular in relation to 8.2 ensuring that the Chairman of Council is available to lead the Council through such a significant decision-making process
 - 8.4. The avoidance of risk that councillor-directors of HBRIC Ltd could be deemed to have pre-determined their position on the RWSS.
 - 8.5. Retention of Council oversight and input (as 100% shareholder) into all other decisions of the holding company.
 - 8.6. Establishment of a timetable for managing the role of councillor-directors on the Board of HBRIC Ltd.

Assessment of Options

Temporary Removal of councillor directors

9. Assumption/Description: Councillor Directors would remain as directors of HBRIC Ltd but would abstain from receiving papers, attending, deliberating or voting on matters relating to the RWSS.
10. Pros:
 - 10.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making
 - 10.2. Is a temporary measure and allows other matters of HBRIC Board business to be conducted using full Board
 - 10.3. Is cost neutral
11. Cons:
 - 11.1. No representation by elected representatives in HBRIC Ltd decision making processes, removing the benefits of appointing councillors to boards of directors as identified by the Office of the Auditor General in 1994
 - 11.2. Requires a change to the Constitution of HBRIC Ltd in relation to the quorum for a Board meeting
 - 11.3. Workload for remaining directors commensurately increased
 - 11.4. Councillor directors would still have liability for any decisions made by the Board in their absence.

Delegate decision making on RWSS to new subsidiary company

12. Assumption/Description: Establishment of a subsidiary entity comprising external independent directors only to undertake the assessment of the RWSS project.
13. Pros:
 - 13.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making but only if subsidiary company reports directly to Council
 - 13.2. Subsidiary company could comprise completely commercially-focussed directors
 - 13.3. Subsidiary company would be a wholly owned subsidiary company of HBRIC so under direct control of holding company

14. Cons:

- 14.1. The Holding Company Board has a decreased workload and activity and is not directly involved in the preparation of a recommendation to HBRC
- 14.2. It will require the re-write of the Statement of Intent for Hawke's Bay Regional Investment Company Ltd
- 14.3. It is a very short-term measure for a very high cost – extra layers of costs would include: additional directors, administration, and establishment costs including professional advice. The estimated cost for establishing the subsidiary for an 8 month period is \$196,000.
- 14.4. Time delays while subsidiary company is established
- 14.5. Loss of benefit of setting up a new Special Purpose Vehicle if and when the RWSS is approved.

Appoint three alternate directors to replace councillor directors

15. Assumption/Description: Appointment of three alternate directors for a specified period – until such time as a recommendation is made by HBRIC Ltd to HBRC on whether or not to invest in the RWSS. It is assumed that the three alternate directors would be independent.

16. Pros:

- 16.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making on the RWSS
- 16.2. Can be flexible and allow for separate Board meetings – (i) those dealing with RWS (in which alternate directors would take part) and (ii) those dealing with other Board matters (in which councillor directors would take part)
- 16.3. Could be cost neutral if three current Board advisers – Danelle Dinsdale, David Faulkner, Roger Maaka - replaced councillor directors as alternate directors
- 16.4. Can be done without changing Company Constitution on assumption that, for quorum purposes, alternates are deemed to be councillor directors.

17. Cons:

- 17.1. No representation by elected representatives in HBRIC Ltd decision making processes, removing the benefits of appointing councillors to boards of directors as identified by the Office of the Auditor General in 1994
- 17.2. Can enhance complexity of Board processes if separate meetings required with separate groups of directors for separate matters
- 17.3. Additional costs possible if alternate directors are not current Board advisers

Appoint two alternate directors and retain one councillor director

18. Assumption/Description: Appointment of two alternate directors for a specified period – until such time as a recommendation is made by HBRIC Ltd to HBRC on whether or not to invest in the RWSS. One councillor director would remain on the Board and would receive papers, attend and deliberate BUT abstain from voting on the RWSS at any HBRC meeting.

19. Pros:

- 19.1. Retains some Council oversight /input/control into the decision making processes by the holding company
- 19.2. More cost effective than replacement of all three councillor directors, as only two alternate directors would need to be paid
- 19.3. The one remaining councillor director can take part in deliberations at Council meetings, while abstaining from voting

- 19.4. Can be done without changing Company Constitution on assumption that, for quorum purposes, alternates are deemed to be councillor directors.

20. Cons:

- 20.1. Reduction in representation by elected representatives in HBRIC Ltd decision making processes, reducing the benefits of appointing councillors to boards of directors as identified by the Office of the Auditor General in 1994
- 20.2. Additional costs possible if alternate directors are not current Board advisers.

Total abstention of councillor directors at Council meetings

21. Assumption/Description: Councillor directors would remain on the Board but they would all abstain from attending, deliberating or voting (or any combination of these) at any Council meeting when the RWSS is being considered.

22. Pros:

- 22.1. Addresses the perception of conflict of interest and pre-determination for HBRC decision making on the RWSS
- 22.2. Would be cost neutral
- 22.3. No changes required to Company Constitution

23. Cons:

- 23.1. Only six people would be able to vote through the HBRC decision making process for the RWSS and electors would expect that all elected representatives could vote on significant decisions.

Retain status quo until after local body elections

24. Assumption/Description: Retain Board as currently identified in Company Constitution. Review this when considering appointment of councillor-directors to HBRIC Ltd for the new term of Council.

25. Pros:

- 25.1. Cost neutral
- 25.2. Retains Council oversight for the appointment of new Napier Port directors
- 25.3. Ensures Council input into final process for confirmation of investor consortium
- 25.4. Ensures Council input into ensuring that the final design and construction bid meets criteria important to the values of HBRC
- 25.5. Representation by elected representatives in HBRIC Ltd decision making processes, removing the benefits of appointing councillors to boards of directors as identified by the Office of the Auditor General in 1994.

26. Cons:

- 26.1. Perception of conflict of interest and pre-determination for HBRC decision making on the RWSS remains, although with a clear pathway to resolution

Discussion

27. If Council considers that it needs to address the perceived conflict of interest issue now, then it is considered that the most pragmatic approach is to appoint two alternate directors and the retention of one councillor-director for a period until the recommendation is made by HBRIC Ltd on either to invest or not invest in the RWSS. The benefits of this option outweigh the negatives especially if two existing board advisers are appointed as alternate directors.
28. Alternatively Council may be of a mind to acknowledge that the management of perception of conflict of interest issues should be the prerogative of the incoming Council. The Company Constitution requires that Council determined the appointments

for councillor-directors on HBRIC Ltd within a 3 month period from the date of the local body elections. If it would be of assistance to Council a timetable to manage the role of councillor-directors could be prepared and recommended to the incoming Council.

Decision Making Process

29. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:
 - 29.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 29.2. The use of the special consultative procedure is not prescribed by legislation.
 - 29.3. The decision does not fall within the definition of Council's policy on significance.
 - 29.4. The persons affected by this decision are Councillor and Independent Directors on the HBRIC Ltd *Transition* Board of Directors.
 - 29.5. Options that have been considered are outlined in the paper.
 - 29.6. The decision is not inconsistent with an existing policy or plan.
 - 29.7. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

That Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Notes confirmation from legal advice that there is no actual conflict of interest for councillor-directors on the Board of HBRIC Ltd at present.
3. Confirms that it has considered the potential solutions for the perceived conflict of interest issue in line with the request made at the July 2013 Council meeting, and **either**:
 - 3.1. Resolves to appoint two alternate directors to replace two councillor directors on the Board of Hawke's Bay Regional Investment Company Ltd for a period until such time as a recommendation is made by Hawke's Bay Regional Investment Company Ltd to the Hawke's Bay Regional Council on whether or not to invest in the Ruataniwha Water Storage Scheme

or:

 - 3.2. Resolves to recommend that the incoming Council consider the perceived conflict of interest issue during its consideration of the appointment of councillor directors for HBRIC Ltd following the local body elections.

Attachment 2



Paul Drury
GROUP MANAGER
CORPORATE SERVICES



Liz Lambert
INTERIM CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

Item 5

needed to include appropriate internal controls to provide assurance over the integrity of this information. We also expected an appropriate standard of supporting documentation being retained to provide a robust audit trail.

Our audit work focused on the quality of the overall "story" the performance reporting tells, the reliability/accuracy of the reporting, the completeness of the reporting against the performance framework as outlined in the LTP, and compliance with relevant legislation (in particular the Local Government Act 2002, Schedule 10).

3.3 Conflicts of interest

It is the responsibility of the Council to identify and manage conflicts of interest. Conflicts by their nature can be either real conflicts or "perceived" conflicts – the fact that a conflict is one of perception does not abrogate an entity from their responsibility to manage the conflict. Perceived conflicts, which are unmanaged, can create reputational and credibility risks for an entity.

Conflicts of Interest are a particular area of focus given the work being performed by the company on the Ruataniwha Water Scheme.(RWS). This has given rise to two particular potential conflicts

- The regional council's CEO who is a company board member
- 3 regional councillors who also sit as Council appointees on the board.

It is clear that the Council, together with the company has taken ownership of this issue and recognises that potential conflicts, irrespective of whether they are real or perceived create risk for the company and need to be managed. We have been in discussion with the board of the company as to the appropriate management of these conflicts.

The first of the potential conflicts has been addressed – the CEO has stepped down temporarily from his role as HBRC CEO – delegations have been passed to an Acting CEO until 1 July 2014 (expiration of HBRC transitional board).

The second potential conflict requires careful consideration. The newly elected Council will shortly investigate and then make a decision, on how this potential conflict can be addressed. As we are not legal experts, we believe it is imperative that the Council and the company take their own independent legal advice on this matter.

Having said that we do have the following observations to make on the issues at hand:

- The ability of decision makers to wear "two hats" – and "switching" those hats – depending on the decision being made – is actually hard to achieve in practice. There are a number of factors to consider.
- We understand that Council intends to appoint an independent reviewer to consider the recommendation and will independently assess the recommendation from the perspective of Councils interest – this will assist in demonstrating that in

Report to the Council on the audit of Hawkes Bay Regional Council
for the year ended 30 June 2013

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voting on the matter at hand, the 3 Councillors are appropriately discharging their obligation as Councillors.

- * Public entity decision making is subject to a level of public scrutiny and legal risk that doesn't apply to private sector entities;
 - o The decisions of public entities are subject to the risk of judicial review. This means they can be challenged through legal proceedings if the decision making process does not meet the standards required by the principles of administrative law. In particular Council will need to demonstrate that the 3 Councillors have considered all the relevant information, have considered matters with an open mind, and the decision is not tainted by bias;
 - o The concept of conflict of interest is potentially broader in the public sector as opposed to the private sector. Non- financial conflicts of interest for Councils are governed by common law – an interest in common law includes any interest, which might give rise to a bias, or a “reasonable perception of bias”.
 - o The meaning of “reasonable perception of bias” is important - a claimant in judicial review proceedings does not necessarily have to prove actual bias. It may be enough to prove a reasonable perception of bias;
 - o Importantly, from a legal perspective, the views of the decision maker themselves are largely irrelevant. It does not matter that the person with the potential conflict is confident that they can be objective or put aside other considerations. The legal test is what a “reasonable outsider” might think –i.e. would a reasonable person looking at the situation think the person might be biased?
 - o As such Council needs to consider the judicial review risk, even if the councillor concerned is confident they can bring an open mind to the matter;
 - o Perception is often not reality, but nonetheless it is important that Council consider, as part of its risk management strategy, not only whether the councillors can be fair and impartial, but whether they will be seen to be so.
- * The issue of “Duty of Confidentiality” also needs to be considered. This may present itself as a practical barrier to the 3 Councillors being able to participate and vote on the Council decision. The 3 Councillors have a duty of confidentiality to HBRIC – in relation to information obtained in their capacity as HBRIC directors. There is a similar duty to Council with respect to information obtained in their capacity as Councillors. The practical concern for each entity is how they can participate fully in decision making if they need to withhold certain information in order to protect its confidentiality.

Management Comment

1. *The issues raised under Conflict of Interest – Appointment of Councillors to Hawke's Bay Regional Investment Company Limited (HBRIC Ltd) were presented in two papers to Council – the first on 31 July 2013 and the second on 28 August 2013. Attached to the first paper was a legal opinion dated 23 July 2013 from Council's Lawyers, Sainsbury Logan and Williams.*
2. *At its meeting on 28 August 2013 Council resolved to recommend that the incoming Council consider the perceived conflict of interest issue during its consideration of the appointment of Councillor Directors for HBRIC Ltd following the 2013 Local Government elections.*
3. *The incoming Council has three months from the date of election to confirm appointments of Councillor Directors to HBRIC Ltd and the papers provided to the previous Council will be provided to the current Council for its information.*
4. *Your comments also need to be included as part of the paper to go to Council when they make a decision on Councillor representation on HBRIC Ltd.*

3.4 Control environment – operation of internal control

We have reported separately on the Council's control environment in our interim management letter of 11 July. In summary we are satisfied that the control environment is effective – such that there are appropriate controls that will either detect or prevent an material error in the Councils financial statements.

However we do continue to emphasise, as we have done in previous years, that with the small size of the finance team at the Council the need for continued management overview of the functions of the team and the financial results.

3.5 Property, plant and equipment

The Council's periodically revalues its assets. NZ IAS 16, Property, Plant and Equipment, requires that valuations are carried out with enough regularity to ensure that the carrying amount does not differ materially from fair value. The Council needs to formally review whether a revaluation is needed each year.

The Council revalued their infrastructure assets as at 30 June 2011. Council have assessed that there are no indicators of impairment to assets. Land and Buildings have been revalued in the current year.

We agree with the Council's assessment and are satisfied that there are no impairment indicators that would suggest the carrying amount of these assets differ materially from fair value.

3.6 Forestry valuation

The Regional Council revalues its Forestry Assets on an annual basis in accordance with NZ IAS 41, Agriculture.

**Constitution of
HAWKE'S BAY REGIONAL
INVESTMENT COMPANY LIMITED**

Company number: 3727789

Adopted by resolution of HBRC on 28 August 2013 as sole shareholder of Hawke's Bay Regional Investment Company Limited.

Fenton Wilson
Chairman
Hawke's Bay Regional Council



**SAINSBURY
LOGAN &
WILLIAMS**
LAWYERS SINCE 1875

SJW-003502-199-66-V1

1

Constitution of Hawke's Bay Regional Investment Company Limited
Company number: 3727789

1 CAPACITY AND EFFECT

- 1.1 Rights, powers and duties:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act, except to the extent they are negated or modified, in accordance with the Act, by this constitution.
- 1.2 Full capacity:** Subject to this constitution, the Act, any other enactment and the general law, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter any transaction.
- 1.3 Limited Nature and Scope of Activities:** Notwithstanding clauses 1.1 and 1.2, and pursuant to Section 16(2) of the Act, and in accordance with Council's Investment Policy from time to time and recorded in its current Long Term Plan ("LTP") under the Local Government Act 2002, the nature and scope of activities of the Company shall be limited to:
- a. Owning and managing the investment assets and liabilities transferred to it by the Council from time to time;
 - b. Making new investments and disposing of current investments in pursuit of the Company's objectives;
 - c. Investing in, and managing, a range of financial and physical assets including, but not limited to, property and infrastructure in the Hawke's Bay Region (as defined in the Local Government Act 2002) and elsewhere in New Zealand, shares and equity investments in public listed and unlisted companies; equity in, and loans to, joint ventures; bonds, term deposits, mortgages and other fixed interest securities; and other financial instruments;
 - d. Raising funds for investment by selling bonds, mortgages, preference shares and other debt instruments or by reducing its holdings in equity investments, (for example by way of part sales of shares in Port of Napier Limited), its subsidiary or associated companies;
 - e. Assisting its subsidiary and associated companies to increase shareholder value and regional prosperity through growth and investment;
 - f. Applying best practice governance procedures within the Company and its subsidiaries and other investments;
 - g. Enhancing the Council's capability to manage an active investment policy;
 - h. Providing flexibility of operation and access to financial tools not otherwise available to Council directly;
 - i. Helping achieve the Council's regional strategic economic development objectives by investing in assets that will benefit the Hawke's Bay Region as a whole, namely that, the Company will use all investments and use all income derived from these investments, for Regional Council purposes and functions as defined in statute, that is, they must generate financial and

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Constitution of Hawke's Bay Regional Investment Company Limited

Company number: 3727789

economic and, where appropriate, environmental, social and cultural benefits for the Hawke's Bay Region.

2 RIGHTS ATTACHING TO SHARES

2.1 Shares: Subject to clause 2.2, a Share is an ordinary share in the Company and confers on the holder:

- a. the right to 1 vote on a poll at a meeting of the Company on any resolution, including any resolution:
 - i. to appoint or remove a Director;
 - ii. to alter the constitution;
 - iii. to approve a Major Transaction;
 - iv. to approve an amalgamation of the Company under section 221 of the Act; and
 - v. to put the Company into liquidation;
- b. the right to an equal share in dividends authorised by the Board;
- c. the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis; and
- d. the right to receive notice of and attend every meeting of Shareholders.

2.2 Changes via terms of issue: Subject to section 53 of the Act, the rights specified in clause 2.1 may be negated, altered, or added to by the terms on which the Share is issued.

3 ISSUE OF SHARES

3.1 Board may issue Shares: Subject to the provisions of the Act and this constitution, the Board may issue additional Shares (and rights or options to acquire Shares) of any class (including redeemable Shares) at any time, to any person and in such numbers as the Board thinks fit.

3.2 Section 45 of the Act: Section 45 of the Act shall not apply so that the Company may issue Shares so as to alter the voting and distribution rights as between Shareholders without first offering those Shares to existing Shareholders.

4 OTHER MATTERS RELATING TO SHARES

4.1 Consolidation and subdivision of Shares: The Board may, with the approval of the Shareholders:

- a. consolidate and divide the Shares in proportion to those Shares; or

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Constitution of Hawke's Bay Regional Investment Company Limited
Company number: 3727789

- b. subdivide the Shares in proportion to those Shares.
- 4.2 **Company may purchase Shares:** The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders in accordance with, and subject to, sections 59 to 65, 107, 108 and 110 to 112 of the Act, and may hold the acquired Shares in accordance with sections 67A to 67C of the Act.
- 4.3 **Call on Shares:** The Board may, following consultation with the Shareholders, make calls as it thinks fit in respect of all moneys unpaid on Shares that are not, by the terms applicable to the Shares, payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for issue of those Shares. The Board may revoke or postpone a call before payment is received. Schedule 1 governs calls on Shares that are not fully paid Shares.
- 4.4 **Forfeiture of Shares where calls or other amounts unpaid:** The Board may commence procedures in accordance with Schedule 1 for forfeiture of any Shares if the holder of those Shares fails to pay:
 - a. a call, or an instalment of a call, on those Shares; or
 - b. any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares.
- 4.5 **Company's lien:** The Company has a lien on Shares that are not fully paid Shares and the proceeds of sale of such Shares on the terms set out in Schedule 1.
- 5 TRANSFER OF SHARES**
- 5.1 **Transfer of Shares:** Subject to any restriction contained in this constitution and to the terms on which the Share is issued, a Shareholder may transfer any Share to another person by an instrument of transfer.
- 5.2 **Restriction on transfer:** Except as provided in clause 5.10, no Shares may be sold or transferred by any Shareholder, liquidator, official assignee or personal representative of any Shareholder, unless and until the rights of pre-emption set out in Schedule 3 have been exhausted.
- 5.3 **No undermining:** A Shareholder must not do anything that has the purpose or effect of undermining or circumventing the restriction on the transfer of Shares set out in clause 5.2.
- 5.4 **Transferor to remain holder until registration:** The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the share register of the Company.
- 5.5 **Form of transfer:** Every instrument of transfer of Shares must comply with all of the following provisions:

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- a. the form of the instrument of transfer must be any usual or common form or any other form approved by the Board;
 - b. the instrument of transfer must be signed or executed by or on behalf of the transferor; and
 - c. where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.
- 5.6 Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the share register of the Company, together with the share certificate (if any) relating to the Shares to be transferred. The transferee must provide such evidence as the Board or the agent reasonably requires proving the title of the transferor to, or right of the transferor to transfer, the Shares.
- 5.7 Registration of transfer:** On receipt of a form of transfer in accordance with clause 5.6, the Company must as soon as practicable enter the name of the transferee on the share register as holder of the Shares, unless:
- a. the Board resolves within 10 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
 - b. notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and
 - c. the refusal or delay in the registration is permitted or required (as the case may be) by clause 5.8 or 5.9.
- 5.8 Power of Board to refuse or delay registration:** The Board may refuse or delay the registration of a transfer of any Share for any of the reasons set out below:
- a. the Company has a lien on the Share;
 - b. the Share is not fully paid up;
 - c. the form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) and such other evidence as the Directors may reasonably require of the right of the transferor to make the transfer;
 - d. the holder of the Share has failed to comply with the terms of any contract with the Company relating to the Share; or
 - e. the Board considers that it would not be in the best interests of the Company to do so.

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- 5.9 Requirement to refuse registration:** The Board must refuse the registration of a transfer of any Share if clause 5.2 has not been complied with.
- 5.10 Transfers Approved by All Shareholders:** The restrictions in clause 5.2 do not apply to any Shares that are transferred by a Shareholder to any person if the transfer is approved, in writing, by all Shareholders.
- 5.11 Change of control:** Where a company is a Shareholder (whether solely or jointly with others) and its Shares in the Company comprise the majority of its assets then, unless clause 5.10 applies, a transfer of a controlling interest in that Shareholder (whether by one or by a series of transactions) will constitute a deemed transfer of the Shareholders' Shares and the Shareholder shall be required to give the Directors a Transfer Notice (as that term is defined in clause 1 of Schedule 3) at the effective indirect consideration paid (or to be paid) for the Shareholder's Shares, or, if that cannot be readily assessed and evidenced to the Board's satisfaction, the Board may substitute "fair value" for the Shareholders' Shares as assessed by a suitably qualified independent valuer appointed by the Board.

6 TRANSMISSION OF SHARES

- 6.1** In the event of death, bankruptcy or winding up of a Shareholder, the personal representative, trustee, liquidator or receiver as the case may be shall give to the Board a Transfer Notice (as that term is defined in clause 1 of Schedule 3) in respect of all Shares registered in the name of the Shareholder at "fair value" for the Shares as assessed by a suitably qualified independent valuer appointed by the Board.

7 MEETINGS OF SHAREHOLDERS

- 7.1 Annual general meetings:** An annual general meeting of Shareholders is to be held:
- a. not later than 6 months after the balance date of the Company; and
 - b. not later than 15 months after the previous annual meeting.
- 7.2 Resolution in lieu of AGM:** It will not be necessary for the Company to hold an annual general meeting of Shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 7.4.
- 7.3 Special meetings:** A special meeting of Shareholders may be called at any time by the Board and must be called by the Board if requested by Shareholders holding Shares carrying together not less than 10% of the voting rights entitled to be

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exercised in any of the questions to be considered at the meeting of the Shareholders.

7.4 Resolution in lieu of meeting: A resolution in writing signed in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Shareholders.

7.5 Procedure at meetings: The provisions of the First Schedule to the Act govern proceedings at all meetings of Shareholders.

8 APPOINTMENT AND REMOVAL OF DIRECTORS

8.1 Minimum and maximum numbers: ~~The minimum number of Directors shall be three (3) and Unless and until otherwise determined by an ordinary resolution of the Company~~ the maximum number of Directors ~~is shall be~~ seven (7).

8.2 Directors: On the adoption of this constitution, the Directors are those persons named as Directors on the Company's register of directors.

8.3 Appointment of Directors and Chairperson:

- a. HBRC shall ~~be entitled to appoint at least three (3) and~~ up to seven (7) Directors to the Board of the Company (including the right to appoint and remove and nominate alternates) ~~in accordance with HBRC's Policy concerning Director appointments of with three of those Directors being made up of~~ existing Council Members ("Councillor Directors"), and ~~three~~ Directors who are independent of the Council ("Independent Directors"). ~~HBRC shall appoint a Chairperson from amongst the Directors so appointed and the Chief Executive of HBRC from time to time being appointed as a Director ex-officio;~~
- b. If a Council Member ceases to hold office during the tenure of their appointment as a Councillor Director then that person shall immediately resign and the Council shall appoint another Council Member to take his or her place.
- c. All the Directors of the Company and its subsidiary companies will be required to follow best practice governance, abide by the Institute of Directors Code of Conduct and comply with relevant legislation, including the Companies Act 1993, the Financial Reporting Act 1993, the Port Companies Act 1988 and the Local Government Act 2002.
- d. The Company shall not, without the written consent of the Council (through its Chief Executive) do any of the following things:
 - i. Alter the Constitution of the Company;
 - ii. Alter the shareholding so as to change the effective control of the Company;
 - iii. Change the name of the Company;

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- iv. Assign the intellectual property or any interest in the intellectual property of the Company to a third party;
 - v. Sell the undertaking of the Company or otherwise enter into a major transaction as defined in the Companies Act 1993.
 - vi. Pass a resolution with the effect of voluntarily liquidating the Company.
- 8.4 Shareholders may appoint Directors:** Subject to clause 8.3, any person who is not disqualified under the Act may be appointed as a Director by:
- a. a written notice to the Company signed by Shareholders holding Shares carrying together more than 50 percent of the voting rights entitled to be exercised on any resolution to appoint a Director; or
 - b. an Ordinary Resolution.
- 8.5 Term of appointment:** A Director holds office until his or her resignation, disqualification or removal in accordance with this constitution and the Act.
- 8.6 Shareholders may remove Directors:** Save in respect of any Director appointed under clause 8.3, any Director may be removed from office by:
- a. a written notice to the Company signed by Shareholders holding Shares carrying together more than 50 percent of the voting rights entitled to be exercised on any resolution to remove a Director; or
 - b. an Ordinary Resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.
- 8.7 Notices of appointment or removal of Directors:** Any notice of appointment or removal of a Director may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act or from such later time as the notice states that it is to take effect.
- 8.8 Vacation of office:** A Director vacates office if any of the following occurs:
- a. the Director resigns by notice in writing to the Company. The notice is effective when it is received by the Company or at a later time specified in the notice;
 - b. the Director is removed from office in accordance with clause 8.6 or 8.7 or, if appointed in his or her capacity as a Council Member, ceases to hold office;
 - c. the Director becomes disqualified from being a Director under section 151 of the Act;

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- d. the Director becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
- e. the Director dies; or
- f. the Director has for more than 3 months been absent without permission of the Directors from meetings of the Directors held during that period and the other Directors resolve that his or her office be vacated by reason of that absence.
- g. In relation to Councillor Directors, each Director is required to retire within three months following the triennial local government elections, but is eligible to be re-appointed if re-elected to the Council. Appointed Councillor-Directors retain their appointment at the pleasure of the Council during their term(s) as councillor up until three months, or such later date as the incoming Council may decide, to ensure effective transition from one set of councillor-directors to another, following the triennial local government elections;
- h. In relation to Independent Directors each Director holds their appointment for a period of three years, retiring by rotation at the Annual General Meeting of the investment company. The initial rotation at the 2013 Annual General Meeting requiring one director to retire shall be decided by lot amongst the three independent directors appointed in 2012. Subsequently, as determined again by lot, one of two original independent directors who were first appointed in 2012 will retire at the 2014 Annual General Meeting and the remaining originally appointed director will retire at the 2015 Annual General Meeting. All independent directors may be re-appointed for one further three year term or such longer term as the Council may decide.

8.9 Shareholder notice: The Board must notify the Shareholders when a Director vacates office.

8.10 Alternate Directors (Councillor Directors): The Council may, at any time by written notice to the Company, appoint any person who is not already a Director, and who is approved by the majority of the other Directors, to act as an alternate for the Director, either for a specified period, or generally during the absence or inability to act from time to time of the Director. The following provisions will apply to an Alternate Director:

- a. the appointment may at any time be revoked by written notice of the Council, and is automatically revoked when the Director in whose place the Alternate Director acts vacates office;
- b. unless otherwise provided by the terms of the appointment, the Alternate Director:

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- i. has the same rights, powers and privileges (including the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company); and
- ii. must discharge all the duties and obligations, of the Director in whose place he or she acts; and
- c. every person acting as an Alternate Director shall alone be responsible to the Company for the Alternate Director's own acts and defaults and the Alternate Director shall not be deemed to be the agent of the Director in whose place the Alternate Director acts.

8.11 Alternate Directors (Independent Directors): Any Independent Director may, at any time by written notice to the Company, appoint any person who is not already a Director, and who is approved by the majority of the other Directors, to act as an alternate for the Director, either for a specified period, or generally during the absence or inability to act from time to time of the Director. The following provisions will apply to an Alternate Director:

- a. the appointment may at any time be revoked by written notice of the Director, and is automatically revoked when the Director in whose place the Alternate Director acts vacates office;
- b. unless otherwise provided by the terms of the appointment, the Alternate Director:
 - i. has the same rights, powers and privileges (including the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company); and
 - ii. must discharge all the duties and obligations, of the Director in whose place he or she acts; and
- c. every person acting as an Alternate Director shall alone be responsible to the Company for the Alternate Director's own acts and defaults and the Alternate Director shall not be deemed to be the agent of the Director in whose place the Alternate Director acts.

8.12 Remuneration for Alternative Directors: Each Alternate Director:

- a. shall not, except by virtue of an agreement with the Director whom he or she represents entitling him or her to part of the remuneration which would otherwise be payable to such Director, be entitled to receive any remuneration from the Company; and

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- b. shall be entitled to have expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties reimbursed by the Company.

9 DIRECTORS' MEETINGS

- 9.1 The Third Schedule to the Act relating to the proceedings of a Board does not apply to the Company. Schedule 2 of this constitution governs those proceedings.

10 POWERS AND DUTIES OF DIRECTORS

- 10.1 **Management of Company:** The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.
- 10.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company that are not required, either by the Act or this constitution, to be exercised by the Shareholders or any other person.
- 10.3 **Compliance with constitution:** Despite clauses 10.1 and 10.2, the business and affairs of the Company must be managed in accordance with the applicable provisions of this constitution.
- 10.4 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act. In exercising the Board's delegated powers, a delegate must comply with any requirement imposed on the delegate by the Board.
- 10.5 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. A power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 10.6 **Ratification by Shareholder:** Subject to section 177 of the Act, the Shareholders, or any other person in whom a power is vested by this constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.
- 10.7 **Directors to act in good faith:** A Director, when exercising powers or performing duties must act in good faith and in what the Director believes to be the best interests of the Company.

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11 INTERESTED DIRECTORS AND CONFLICTS OF INTEREST

- 11.1 Disclosure of interests:** A Director must comply with the disclosure of interest requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.
- 11.2 Interested Directors may vote:** A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any of the following:
- a. Vote on any matter relating to the transaction.
 - b. Attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum.
 - c. Sign a document relating to the transaction on behalf of the Company.
 - d. Do any other thing in his or her capacity as a Director in relation to the transaction.
 - e. To avoid doubt:
 - i. The Company will maintain a Register of Interests where the respective interests of each and every Director in other companies or business activities (whether publicly or privately owned), family trusts or public bodies as elected representative, director, owner, manager, trustee or appointed representative or agent will be recorded.
 - ii. Directors are required to disclose all such interests and all changes in such interests whenever they may occur, to the Company.
 - iii. Directors are required to declare their interests to the Board during the course of the Board's deliberations when a director knows or believes his or her interests in other business and public activities could or would conflict with the interests of the Company.

12 DIRECTORS' REMUNERATION AND OTHER BENEFITS

- 12.1 Authorisation of payment or other benefit:** The remuneration of Independent Directors will be set by the Council triennially (or such other times as the Council may, in its absolute discretion, resolve) on the recommendation of the Board based on market rates. No Directors Fees will be payable to any Councillor Directors.
- 12.2 Expenses:** All Directors will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the

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Company's business and the Board may authorise such payments without Shareholder approval.

13 INDEMNITY AND INSURANCE

13.1 Indemnity for Directors: Every Director will be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

13.2 Indemnities and insurance: In addition to the indemnity set out in clause 14.1, the Company may with the approval of Shareholders and, in the case of clause 13.2(c), with the prior approval of the Board, do any of the following:

- a. indemnify an employee of the Company for any costs referred to in section 162(3) of the Act;
- b. indemnify an employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act; or
- c. effect insurance for a Director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.

13.3 Duty to certify: The Directors who vote in favour of authorising insurance under clause 13.2(c) shall sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

13.4 Interests Register: The Directors shall ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company, are promptly entered in the Interest Register.

13.5 Definitions: Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 13.

14 REPORTING

14.1 Annual report: Within 5 months after the end of each financial year, the Board must deliver to the Shareholders a report on the Company's operations during that year. That report must include the information required to be included by section 211 of the Act.

14.2 Statement of Intent: The Company will prepare and make available in accordance with the provisions of the Local Government Act 2002 a Statement of Intent that complies with the provisions of that Act and any regulations relevant to its preparation, content and time of filing.

14.3 Independent Audit: The Company shall be independently audited by the Office of the Auditor-General in accordance with the provisions of the Financial Reporting Act 1993.

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15 METHOD OF CONTRACTING

15.1 Deeds: A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:

- a. two or more Directors of the Company;
- b. a Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed; or
- c. one or more attorneys appointed by the Company in accordance with section 181 of the Act.

15.2 Written contracts: An obligation or contract, which is required by law to be in writing and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the Company's express or implied authority.

15.3 Other contracts: An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

16 LIQUIDATION

16.1 Distribution of surplus: Subject to the rights of any Shareholders and to the terms on which their Shares are issued and to clauses 16.3 to 16.5 (inclusive), upon the liquidation of the Company the surplus assets of the Company (if any) are to be distributed among the Shareholders entitled to those assets in proportion to their shareholding.

16.2 Requiring payment on Shares: If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

16.3 Distribution in kind: With the approval of the Shareholders, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind).

16.4 Process for distribution in kind: For that purpose, the liquidator may:

- a. attribute values to assets as the liquidator considers appropriate; and
- b. determine how the division will be carried out as between Shareholders.

16.5 Trusts: With the approval of Shareholders, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

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17 NOTICES

17.1 Manner of sending: Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Act.

17.2 Notices to joint holders: A notice may be given by the Company to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.

18 DEFINITIONS

18.1 Definitions: In this constitution:

Term	Meaning
Act	the Companies Act 1993.
Alternate Director	a person appointed in accordance with this constitution to act in place of a Director.
Board	the Directors who number not less than the required quorum, acting together as a board of Directors.
Company	Hawke's Bay Regional Investment Company Limited.
Council	Hawke's Bay Regional Council
Councillor Director	a Director appointed by Council under clause 8.3(a) who holds office as a Council Member
Director	a person appointed as a director of the Company in accordance with clause 8 of this constitution.
Disposal	includes any sale, assignment, exchange, transfer, loan, lease, surrender of lease, licence or parting with possession of, or the granting of any option, right or interest, or any agreement for any of the above (but excludes any such transaction which arises in relation to a Security Interest).
HBRC	Hawke's Bay Regional Council

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Independent Director	a Director appointed by Council under clause 8.3(a) who is independent of Council
Security Interest	has the meaning set out in section 17 of the Personal Properties Securities Act 1999.
Share	a share issued, or to be issued, by the Company.
Shareholders	those persons whose names are entered in the share register of the Company as the holder of Shares.

18.2 Terms defined in Act: Terms defined in the Act have the same meaning when used in this constitution.

18.3 Interpretation: In this constitution, unless the context otherwise requires:

- a. an expression referring to writing includes facsimile and electronic communications resulting in permanent visible reproduction;
- b. a reference to a "*person*" includes any company, trust, partnership, joint venture, association, body corporate or public authority;
- c. a reference to any legislation or to any provision of any legislation includes:
 - i. that legislation or provision as from time to time amended, re-enacted or substituted; and
 - ii. any statutory instruments, regulations, rules and orders issued under that legislation or provision from time to time;
- d. a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution;
- e. a reference to "*include*" or similar words does not imply any limitation;
- f. a word that denotes the singular also denotes the plural, a word that denotes the plural also denotes the singular; and
- g. the expression "*with the approval of the Shareholders*" means with the approval of the Shareholders by Ordinary Resolution.

18.4 Conflicts between the Act and this constitution: If there is any conflict between a provision in this constitution and a mandatory provision in the Act, the provision, word or expression in the Act prevails.

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SCHEDULE 1

CALLS, FORFEITURE AND LIENS

1 CALLS ON SHARES

- 1.1 Shareholders must pay calls:** Subject to this constitution, the terms of issue of any Shares or the terms of the contract for the issue of any Shares, every Shareholder on receiving at least 48 hours' written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that are not fully paid Shares and that he or she holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.
- 1.2 Calls to apply equally:** Subject to the terms of issue of any Shares and to clause 1.7, unless all the holders of a class of Shares subject to a call unanimously agree, a call (or the postponement or revocation of a call) will apply to all the holders of Shares of the class equally.
- 1.3 Calls made when Board resolution passed:** A call is regarded as having been made at the time when the Board resolution authorising the call was passed.
- 1.4 Joint holders are jointly and severally liable:** The joint holders of a Share that is not a fully paid Share are jointly and severally liable to pay all calls for that Share.
- 1.5 Unpaid calls will accrue interest:** If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.
- 1.6 Amounts payable under terms of issue treated as calls:** Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of a Share or under a contract for the issue of a Share, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.
- 1.7 Board may differentiate between holders as to calls:** On the issue of Shares, the Board may differentiate between the holders of Shares as to the amount of calls to be paid and the times of payments.

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- 1.8 Board may accept payment in advance for calls:** Where a Shareholder is willing to advance some or all of the money unpaid and uncalled on any Share or Shares of that Shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and the Shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable under a call or the date specified for its payment.
- 2 FORFEITURE OF SHARES**
- 2.1 Directors may by notice require forfeiture of Shares if calls unpaid:** The Directors may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the Shareholder requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest.
- 2.2 Notice of forfeiture must satisfy certain requirements:** The notice served on a Shareholder under paragraph 2.1 of this Schedule must specify a date not earlier than 10 working days after the date the notice is served by which payment is to be made. The notice must also state that, in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the Shareholder.
- 2.3 Failure to comply with notice may lead to forfeiture:** Where a valid notice under paragraph 2.1 of this Schedule is served on a Shareholder and the Shareholder fails to comply with the notice, then the Board:
- a. may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited; and
 - b. may cancel any share certificate relating to any Share which has been forfeited under any such resolution.
- 2.4 Board may deal with forfeited Share:** The Board must first offer forfeited Shares to existing Shareholders, other than the Shareholder holding the forfeited Shares at the time of forfeiture, as if they were new Shares about to be issued by the Company. Subject to this new requirement, a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid.
- 2.5 Shareholder whose Shares are forfeited loses rights:** A person whose Shares have been forfeited immediately ceases to be a Shareholder in respect of those Shares notwithstanding any other provision of this constitution. Such forfeiture shall include all dividends and any other distribution in respect of the forfeited

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Shares announced but not actually paid before the forfeiture. A person whose Shares have been forfeited remains liable to pay the unpaid amount he or she owes the Company, but that liability ceases if the Company receives payment in full of all money owing for those Shares.

- 2.6 Surrender of Shares:** The Directors may, at their discretion, accept from any Shareholder a surrender of his or her Shares which are liable to forfeiture upon terms that may be agreed upon between the Shareholder and the Company.
- 2.7 Director's statutory declaration is conclusive:** A statutory declaration given by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that Share.
- 2.8 Company may sell forfeited Share:** The Company may receive consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or Disposal of that Share.
- 2.9 Sale proceeds:** The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, must be paid to the former holder of the Share.

3 LIENS

- 3.1 Company's lien:** The Company has a lien, ranking in priority over all other equities, on:
- a. all Shares that are not fully paid shares (and any dividends or other distributions in respect of those shares) registered in the name of a Shareholder (whether solely or jointly with others); and
 - b. the proceeds of sale of such Shares.
- for:
- c. unpaid calls and instalments payable in respect of any such Shares;
 - d. interest on any such calls or instalments;
 - e. sale expenses owing to the Company in respect of any such Shares; and
 - f. any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of such Shares of a Shareholder, whether the period for payment has arrived or not.

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- 3.2 Waiver of lien:** Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.
- 3.3 Company may sell Share on which it has a lien:** The Company may sell a Share on which it has a lien in such manner as the Board thinks fit, where:
- the lien on the Share is for a sum which is presently payable; and
 - the registered holder of the Share has failed to pay that sum within 10 working days after the Company has served him or her with written notice demanding payment of that sum.
- 3.4 The Company may transfer Share and apply proceeds:** The Company may receive consideration given for a Share sold under paragraph 3.3, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase. The purchaser must not be bound to see to the application of the purchase money, and its title to the Shares is not affected by any irregularity or invalidity in the proceedings relating to the sale.
- 3.5 Proceeds application:** The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, must be paid to the former holder of the Shares.
- 3.6 PPSA Provisions:** Sections 108, 109, 116, 120(2), 132 and 133 of the Personal Property Securities Act 1999 will not apply to the extent they are inconsistent with this clause 3.

Constitution of Hawke's Bay Regional Investment Company Limited
Company number: 3727789

SCHEDULE 2

PROCEEDINGS OF BOARD MEMBERS

1 NOTICES

- 1.1 Notice of meeting:** A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with paragraph 1.2 of this Schedule.
- 1.2 Board meetings:** The following provisions apply in relation to meetings of the Board:
- a. Not less than 3 working days' notice of a meeting of the Board is to be sent to each Director, unless the Director waives that right.
 - b. Notice to a Director of a meeting of the Board may be:
 - i. delivered to the Director;
 - ii. posted to the address given by the Director to the Company for that purpose;
 - iii. sent by facsimile transmission to the facsimile number given by the Director to the Company for that purpose; or
 - iv. sent by electronic means in accordance with any request made by the Director from time to time for that purpose.
 - c. It is not necessary to give notice of a meeting to an Alternate Director, unless the Director for whom the Alternate Director is alternate is known to be either outside of New Zealand or otherwise unavailable to attend meetings.
 - d. A notice of meeting must specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.
 - e. A notice given to a Director under this paragraph 1.2 is deemed to be given:
 - i. in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - ii. in the case of posting, 3 days after it is posted;

Constitution of Hawke's Bay Regional Investment Company Limited
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- iii. in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number given by the Director; or
 - iv. in the case of electronic means, at the time of transmission.
- 1.3 **Irregularity in notice:** An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.
- 2 **MEETING PROCEDURE**
- 2.1 **Methods of holding meetings:** A meeting of the Board may be held by any of the following means:
 - a. by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - b. by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.
- 2.2 **Quorum:** A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors who are entitled to vote at that meeting to include not less than two (2) Councillor Directors.
- 2.3 **No business if no quorum:** No business may be transacted at a meeting of the Board if a quorum is not present.
- 2.4 **Chairperson:** ~~The Directors may~~ In accordance with clause 8.3 of the Constitution, HBRC elect 1 of their number as shall appoint a Chairperson of the Board from amongst the Directors.
- 2.5 **Chairperson not present:** If, at a meeting of the Board, the Chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose 1 of their number to be chairperson of the meeting.
- 2.6 **Voting:** Every Director has 1 vote. An Alternate Director may not vote at a meeting if the person for whom he or she is an Alternate Director also attends.
- 2.7 **Casting vote:** The chairperson shall have a deliberative as well as a casting vote.
- 2.8 **Resolutions:** A resolution of the Board is passed if a majority of the votes cast on it is in favour of it.

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2.9 Voting presumption: A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:

- a. expressly abstains from voting; or
- b. dissents from or votes against the resolution.

2.10 Minutes: The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

3 RESOLUTIONS

3.1 Written resolution: A resolution in writing, signed or assented to in written form by all the Directors entitled to vote on the resolution (including Alternate Directors when the Director for whom he or she is appointed is unable to act), is as valid as if it had been passed at a meeting of the Board duly convened and held.

3.2 Counterparts: A resolution under paragraph 3.1 of this Schedule may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by 1 or more Directors.

3.3 Administration: A copy of any such resolution must be entered in the minute book of Board proceedings.

4 COMMITTEES

A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply to meetings of a committee of Directors.

5 VALIDITY OF ACTIONS

The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

6 OTHER PROCEEDINGS

Except as provided in this constitution, the Board may regulate its own procedure.

Constitution of Hawke's Bay Regional Investment Company Limited
Company number: 3727789

SCHEDULE 3

PRE-EMPTIVE RIGHTS

- 1 **Transfer Notice:** A Shareholder proposing to sell or otherwise transfer any Shares ("**Proposing Transferor**") must first give written notice to the Board specifying the Shares to be sold and a price at which the Shares are for sale ("**Transfer Notice**"). The Transfer Notice shall constitute an offer to sell the Proposing Transferor's Shares to the other Shareholders in accordance with this Schedule.
- 2 **Contents of Transfer Notice:** A Transfer Notice shall specify:
 - a the number of Shares the Proposing Transferor intends to sell or transfer ("**Specified Shares**"); and
 - b the proposed sale price and terms of sale including payment terms ("**Proposed Sale Price**").
- 3 **Notice:** within 5 Business Days of receipt of a Transfer Notice the Board must send to each other Shareholder ("**offeree**") a notice stating:
 - a the number of Specified Shares to which the offeree is entitled, which will be in proportion to that Shareholder's existing shareholding;
 - b the Proposed Sale Price; and
 - c the date (being not less than 20 Business Days and not more than 30 Business Days after the date of receipt by the Company of the Transfer Notice) by which the offeree must give an acceptance notice in writing containing the details set out in clause 4 below.
- 4 **Acceptance notices:** Each acceptance notice must state whether or not the offeree:
 - a wishes to purchase the offeree's entitlement on the terms specified in the Transfer Notice; and
 - b wishes to purchase any additional Specified Shares on the terms specified in the Transfer Notice which have been offered to, but declined by, other offerees ("**Declined Shares**") and if so, what number.
- 5 **Notice to Proposing Transferor:** After receipt of acceptance notices from all offerees or after the expiry of the date specified in the Board's notice given under clause 3(c) (whichever is the earlier), the Board must within 5 Business Days send to the Proposing Transferor copies of all acceptance notices received or notify the Proposing Transferor that no acceptance notices have been received.

Constitution of Hawke's Bay Regional Investment Company Limited
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- 6 **Sale and Purchase:** If the acceptance notices received contain sufficient acceptances to enable the purchase of all of the Specified Shares, the Proposing Transferor shall be bound to sell the Specified Shares to the accepting offerees in accordance with clauses 7, 8 and 9 upon receipt of notice under clause 5. If the acceptance notices received do not contain sufficient acceptances to enable the purchase of all of the Specified Shares (or if no acceptance notices are received), the Proposing Transferor shall not be bound to sell any of the Specified Shares to the offerees, and clause 10 of this Schedule will apply.
- 7 **Purchasers:** The purchasers of the Specified Shares will be determined as follows:
 - a if all offerees have accepted their entitlements then each offeree shall become bound to purchase the number of Specified Shares equivalent to that offeree's entitlement; or
 - b if not all offerees accept their entitlement, but there are still sufficient acceptances to purchase all of the Specified Shares, each accepting offeree will become bound to purchase that number of Shares equal to the offeree's entitlement plus the number of any Declined Shares that offeree agreed to accept in the offeree's acceptance notice (or if there are not enough Declined Shares to satisfy all acceptances from offerees under clause 4b of this Schedule, the Declined Shares shall be allocated to those offerees pro-rata to their respective shareholdings).
- 8 **Settlement:** Settlement of the sale and purchase of the Specified Shares shall take place within 20 Business Days after the Proposing Transferor becomes bound to sell the Specified Shares under clause 6 (or on such other date agreed by the parties).
- 9 **Payment:** On settlement:
 - a each accepting offeree must pay the price for the Shares purchased by them to the Proposing Transferor in immediately available, same day cleared funds; and
 - b the Proposing Transferor must deliver to each offeree a signed Share transfer form and relevant Share certificate (if any) for those Shares.
- 10 **Proposing Transferor's right to sell:** If no acceptance notices are received, or if acceptance notices are received which do not contain acceptances for all of the Specified Shares, the Proposing Transferor may, within 60 Business Days of the date specified by the Board in its notice under clause 3(c), sell or transfer all of the Specified Shares (but not part only) to a third party at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to that third party than the terms offered to the Shareholders.

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Item 6

Wednesday 11 December 2013

**SUBJECT: HBRC STAFF ACCOMMODATION - GUPPY ROAD OPERATIONS AND
WAIROA**

Reason for Report

1. At the 10 June 2013 meeting, Council resolved to carry forward the budgeted \$630,000 for the Operations Group office refurbishment to the 2013/2014 financial year, subject to a business case at the appropriate time.
2. In 2011 HBRC entered into an agreement with Department of Conservation (DoC) for the sharing of the HBRC Wairoa office and associated storage and yard space. In 2013 DoC increased the number of staff operating from their Wairoa office from 2 to 3. This increase has been unable to be accommodated within the current building. A proposal to increase the size of the office accommodation by utilising one bay of the garage attached to the office has been investigated and priced. This option includes provision of a meeting room which will increase the flexibility of the current office as well as providing additional office space.
3. This report presents:
 - 3.1. Options for refurbishment work of the Guppy Road office accommodation.
 - 3.2. A proposal for the expansion of the Wairoa office accommodation.

Background

Guppy Road Office Accommodation

4. The Operations Group Office has operated out of the current office space since 1991. This office was relocated onto the site at that time. The building was originally constructed in the 1970s. The building has had little improvement (other than 2 extensions) since it was relocated. The office houses ten Operations and Works Group staff.
5. The office is regularly visited by ratepayers, Iwi, contractors, white baiters and general public to meet with staff to discuss matters dealt with by staff based in this office. The office serves as an alternate civil defence centre for the management of flood events. It also houses monitoring equipment which enhances the management of the 24 HBRC pump stations.
6. In 2010/11 architectural drawings were obtained for additions and alterations to the Operations office with the expectation that ten extra staff would be relocated to the Guppy Road site from Council's Dalton Street offices. At that time it was noted that the existing building required significant investment to bring it up to current building code requirements and to provide reasonable accommodation for staff.
7. Extra accommodation is now no longer needed as HBRC's office building at 159 Dalton Street continues to provide sufficient capacity for current staff numbers.
8. In September Koru VSL was engaged to assess the building and report on the current condition, and provide recommendations and estimates for work necessary to bring the office up to current Building Code requirements and provide appropriate accommodation for the services delivered from the office.
9. Koru VSL has provided a report which states:
 - 9.1. *"The overall internal condition of the building is dated and the building suffers from lack of meeting rooms, storage and sufficient toilet facilities. This, together with the lack of any accessibility for people with disabilities, means that works are required*

not only to maintain the structural integrity of the building, but also its functionality as an office space to provide suitable accommodation for employed staff.”

- 9.2. *“Our site inspection confirmed that the building has been maintained, but has over time been affected by moisture penetration, particularly through the roof, which has affected its use. Cracking to both the internal and external wall linings has also occurred and overall the building is in need of refurbishment to bring it in line with the current recommended standards for accessibility and usability.”*
10. A copy of the report will be provided on request.
11. Four options for improvement are set out in the report. The conclusions and recommendations provided in the Koru VSL report dated 6 November 2013 are provided as **Attachment 1** for Council’s reference. A 15% allowance has been provided for professional fees and building consent costs in the estimates presented in this briefing.

Option	Description	Estimated cost
1	Retains separate offices but includes bare minimum to comply with the current building code requirements. Works proposed are renewal of the main roof and guttering, added insulation, replacement of cracked exterior panels, removal of damaged ceiling panels, fitting of a plasterboard ceiling, provision of appropriate access for disabled persons including widening all corridors and enlarging existing toilet, and the creation of a ramp leading into the entrance of the building. 2 of the existing offices, the store room and the utility room would reduce in area under this option as a result of the need to widen the corridors.	\$315,000
2	Includes the majority of option 1 works plus alterations suggested by the Works Group Business Development Manager that he considers necessary to make a fit for purpose office. The number of individual offices will reduce from 10 to 8. Alterations proposed include an extension to the rear of the building to increase the size of the existing store room, creation of a meeting room, extension of the reception area, and additional toilet block and shower facilities.	\$410,000
3	Includes all works proposed in option 2 plus the addition of 2 offices. The additional two offices are not required for the current staffing numbers based in this office.	\$540,000
4	Demolition of the existing building and the construction of a new office on the current site. (Note: The estimate is based on architectural drawings prepared in 2011 when Council had planned to relocate ten Dalton Street staff to the Guppy Road Office.)	\$975,000

12. Note that the above estimates exclude GST.
13. The reduction in size of 2 offices, store room and utility room which would result if option 1 were pursued will result in those spaces being too small to provide effective office and storage facilities to meet the needs of that office.
14. Staff believe that the work to the Guppy Road office building is required to prevent its deterioration in the future, and therefore recommend that Option 2 is approved by Council.

Wairoa Office

15. HBRC’s Wairoa office was purpose built for the Catchment Board in the 1980s. It includes 2 separate offices, a common open space area, and a substantial area for garaging machinery. The garage space has not been fully utilised since the HB Catchment Board reduced the size of its staff presence in the area in the late 1980s and HBRC withdrew from animal pest control service delivery work in the mid 1990s.

16. The office currently houses 3 HBRC staff (1 Hill Country Land Management Advisor, a Plant Pest Officer and a Roadsafte Coordinator), a Forestry Consultant, 2 Department of Conservation (DoC) staff, and an ex HBRC staff member who currently operates as a consultant involved in the HBRC initiated and supported Whangawehi Catchment Group.
17. DoC commenced sharing the office in September 2012. The arrangement was ideal because at the time the lease on their Wairoa accommodation was expiring and the HBRC office offered considerable space for safe storage of equipment associated with DoC's operation. In addition the arrangement was a practical example of increased collaboration with HBRC through the Nature Central initiative.
18. DoC and the consultants pay a total annual rental of approx \$23,325. (DoC rental is \$17,700 annually). HBRC Wairoa staff report significant operational benefits of the current office sharing arrangement with DoC and the consultants. A number of joint projects have been initiated between HBRC and DoC particularly since the current arrangement commenced in September 2012.
19. The arrangement does however mean that the small tea room which is part of the office is too small to enable all staff to be comfortably seated, and it is now the only space available as a meeting room.
20. As a result of the recent DoC restructuring they now wish to increase the number of staff in Wairoa from 2 to 3. Two of the Wairoa staff are managed from Gisborne and 1 from Napier.
21. While DoC would like to commit to continuing this lease arrangement long term, they will only do this if HBRC agree to extend the building to accommodate an additional staff member, and provide a meeting room.
22. Options staff have considered are set out in the table following.

	Description of option	Discussion
1	HBRC staff and consultants only	Total staff numbers would be 5. Current office accommodation and storage space is adequate. No capital expenditure required. Annual rental income \$5,625. Little requirement for separate meeting room.
2	HBRC and DoC staff only	Staff (including DoC) numbers would be 6. Current storage space is adequate, however DoC require a meeting room as they have frequent visits from managerial staff from Napier and Gisborne and need space for team discussions and for dealing with individual staff issues. Current tea room facilities are too small to house all staff and visitors. An estimated capital expenditure of \$285,000 is required to meet these needs. Annual rental will increase to approx \$23,000.
3	HBRC, DoC staff and consultants	Total staff (including DoC and consultants) would be 8. Current storage space is adequate, however DoC require a meeting room as they have frequent visits from managerial staff from Napier and Gisborne and need space for team discussions and for dealing with individual staff issues. Current tea room facilities too small to house office occupants and visitors. Capital expenditure as for option 2 is required to meet these needs. Annual rental will increase to approx \$28,500.

23. The estimated capital expenditure for options 2 and 3 is \$285,000 excluding GST. There is no change in the estimated capital expenditure because the proposed alteration would be the same for both options (i.e. provision of an enlarged tea room and a separate meeting room)
24. DoC has agreed to an increased rental if the alterations are undertaken. The increased rental would be negotiated with DoC on the basis of a valuation report which would be obtained were Council to agree to proceed with the work. Staff expect that annual rental would increase by approx \$5,000.

25. DoC has indicated that if the accommodation at the Wairoa office was not expanded to meet their requirements then they would need to seek alternative accommodation that provided them with the space required for their operations. In this case Council would be foregoing rental revenues of approximately \$23- 25,000 per annum. On the other hand if Council did not proceed with the renovation estimated to cost \$285,000 then the costs related to this extension of the Wairoa office which would cover funding costs, depreciation, additional power etc estimated to total between \$28- 30,000 per annum would not be incurred by Council.
26. Staff have discussed the possibility of DoC meeting a portion of the capital cost. DoC has advised that they would be unwilling to commit expenditure to development on land that was not owned by DoC.
27. If the Local Government Commission's proposal for reorganisation of local government in Hawke's Bay released on 26 November 2013 becomes effective, then this reorganisation may result in a change in staffing numbers accommodated in the HBRC Wairoa office. However there will be short term operational and strategic benefits of sharing office space with DoC, and a long term tenancy arrangement with DoC in the Wairoa office will enhance its value should it become surplus to local government requirements.
28. While the financial case for the expansion of the Wairoa office is not strong there are other short and long term benefits if the work is done. This briefing paper therefore presents two options for the Committee's consideration.

Financial and Resource Implications

29. If Council agrees to proceed with both projects, staff expect that the total cost, including professional fees and building consent costs will exceed the financial provision of \$630,000 included in the 2013/14 annual plan budget. If both projects are approved then the cost is estimated at \$695,000.
30. The provision of \$630,000 is sourced from Asset Replacement Reserves built up from annual depreciation provisions for assets. Current reserves are adequate to meet this provision and the increase of that provision, should Council agree that both projects should proceed.

Decision Making Process

31. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:
 - 31.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 31.2. The use of the special consultative procedure is not prescribed by legislation.
 - 31.3. The decision does not fall within the definition of Council's policy on significance.
 - 31.4. The persons affected by this decision are HBRC staff.
 - 31.5. Options that have been considered are set out in the briefing paper.
 - 31.6. The decision is not inconsistent with an existing policy or plan.
 - 31.7. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

The Corporate and Strategic Committee recommends that Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Agrees to proceed with refurbishments to the office accommodation building at HBRC's Guppy Road site as outlined in Option 2 of this briefing paper at an estimated cost of \$410,000 plus GST, building consent cost and professional fees.

Either

3. Agrees to proceed with improvements of the HBRC Wairoa office to satisfactorily accommodate DoC Wairoa staff at an estimated cost of \$285,000 plus GST, subject to agreement being reached with DoC prior to committing to the commencement of work for a 10 year lease with the annual lease amount being based on the advice of a professional valuer.

Or

3. Does not proceed with improvements of the HBRC Wairoa office.



Stacey Rakiraki
FACILITIES ADMINISTRATION
COORDINATOR



Paul Drury
GROUP MANAGER
CORPORATE SERVICES



Mike Adye
GROUP MANAGER
ASSET MANAGEMENT

Attachment/s

- 1 Conclusions and Recommendations from Koru VSL Report

Koru V.S.L.

Report No. BC017/002 – 6 November 2013

7.00 CONCLUSIONS AND RECOMMENDATIONS

7.01 In order to maintain the property and prevent further ongoing deterioration a substantial amount of works are recommended, which includes the renewal of the existing roof coverings and the provision of alterations to provide accessibility for persons with disabilities.

7.02 It is considered that the initial option to solely undertake remedial maintenance is not an effective option due to the extent of works found to be necessary during our inspection and that therefore the Regional Council should undertake one of the other options referred to at paragraph 2.03 to either maintain and extend or rebuild the existing building.

7.03 The cost estimates obtained from a local building contractor confirmed that the cost of any works to be undertaken to the building will be substantial and were as follows:

Option 1	Refurbish Existing Building	\$261,456.70 plus GST, Building Consent and Professional Fees.
Option 2	Refurbish to accommodate Business Development Manager's requirements	\$346,155.45 plus GST, Building Consents and Professional Fees
Option 3	Refurbish and Extend	\$464,050.70 plus GST, Building Consents and Professional Fees
Option 4	Demolish and Rebuild	\$836,000.00 plus GST, Building Consents and Professional Fees

7.04 The least costly approach for the Regional Council would be to refurbish the existing building to repair the issues identified during our inspection, as reported upon in our Condition Report No. BC017/001 dated 11 September 2013, and also to undertake the works required to provide accessibility for persons with disabilities. This however, would not resolve the issues relating to the lack of storage or meeting rooms identified by the Business Development Manager.

Koru V.S.L.

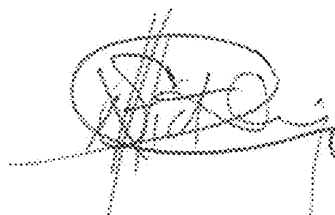
Report No. BC017/002 – 6 November 2013

- 7.05 Therefore, in order to accommodate the identified requirements for the current staff at the Operations Office the minimum work necessary to be undertaken would be to complete those highlighted by the Business Development Manager and covered under Option 2 above. This however, would reduce the number of offices at the property at present and although the current staff numbers should be able to manage with the adjustments made to their accommodation it does restrict the future use of the building should more staff be employed.
- 7.06 To accommodate the possibility of an increase in staff at these offices Option 3 provides an additional 54m² of accommodation, whilst maintaining the increase in size of several of the rooms to create a meeting room and additional storage and the provision of accessibility for persons with disabilities. This would allow for future proofing the offices in relation to size and meeting rooms and is considered the best overall option for refurbishing the current building.
- 7.07 The alternative to this latter option would be Option 4, with either the demolition or removal of the existing office building (which may be sold on and moved) and construction of a new office building. As advised under paragraphs 6.02 and 6.03 above, this would be the most expensive solution, although the costs may be lowered if the size of the accommodation to be provided were reduced in size. If this were undertaken, the cost difference between Option 3 – Refurbish and Extend and Option 4 – Demolish and Rebuild may be only \$145,849.30 or \$43,249.30 between Option 2 and Option 4.
- 7.08 Whichever Option is chosen, further more detailed drawings will need to be prepared together with a detailed specification to allow the true cost to be confirmed, either by way of tender to recognised contractors or by negotiation with a preferred contractor.

Koru V.S.L

Report No. BC017/002 – 6 November 2013

- 7.09 We trust that this Addendum Report clearly outlines the Options available to the Regional Council in maintaining and refurbishing their Operations Group Offices at 280 Guppy Road, Taradale and the likely costs to undertake each. Should you require any further information or wish to discuss the extent of works considered necessary to remediate the issues found during our inspection, please do not hesitate to contact us.



NICK HICKLING
MNZIBS, AAMINZ
REGISTERED BUILDING SURVEYOR
LICENSED BUILDING PRACTITIONER
CERTIFIED WEATHERTIGHTNESS INSPECTOR
WEATHERTIGHTNESS REMEDIATION SPECIALIST

For and on behalf of



This Addendum Report has been prepared solely for the party to whom it is addressed with respect to the particular brief given to us. No responsibility is accepted for the use of any information or advice contained in it in any other context or for any other purpose without Koru V.S.L's prior written agreement.

This disclaimer shall apply notwithstanding that this report may be made available to other Third parties.

This Addendum Report should be read in conjunction with our Condition Report No. BC017/001 dated 11 September 2013. This Addendum Report assumes that all local authority building codes, regulations and by-laws have been complied with, including all matters relevant to the Resource Management Act 1991 and the Building Act 2004, unless otherwise noted in the report.

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Wednesday 11 December 2013

Item 7

**SUBJECT: HAWKE'S BAY LOCAL GOVERNMENT REORGANISATION DRAFT
PROPOSAL**

Reason for Report

1. The Local Government Commission has presented a draft proposal for reorganisation of local authorities within Hawke's Bay. It is calling for submissions on the draft proposal and submissions close on 7 March 2014.
2. The purpose of this report is for Council to consider if it wishes to make a formal submission to the Draft Proposal and, if so, to consider the content of that submission.

Discussion

3. On 26 November 2013 the Local Government Commission presented a Draft Proposal for the reorganisation of local government in Hawke's Bay. The key point of the draft proposal is the creation of a single unitary authority replacing Wairoa, Hastings and Central Hawke's Bay districts, Napier City and the Hawke's Bay Regional Council.
4. Prior to the issuing of the Draft Proposal the Local Government Commission had sought Alternative Proposals to consider alongside its assessment of the proposal from Better Hawke's Bay.
5. In submitting an alternative proposal for an East Coast Regional Council, the Hawke's Bay Regional Council's underlying rationale was to ensure that the functions of regional councils retain a similar focus and priority in any new local government entity to that which currently exist. The principal reasons for this are that such an option would provide:
 - 5.1. A focus on regional council functions, including catchment management, resource management and natural hazards management, at economies of scale that will achieve enhanced efficiencies
 - 5.2. Stronger, more effective leadership across natural resource management functions
 - 5.3. Better representation across communities of interest, including Māori;
 - 5.4. Simplified planning processes;
 - 5.5. Appropriate and affordable infrastructure and services;
 - 5.6. Improved regulatory efficiencies;
 - 5.7. Specialist expertise to focus on economic development opportunities based upon maximisation of primary production outputs;
 - 5.8. More integrated economic development based upon natural resource and primary production.
6. The Draft Proposal for a single unitary authority has been released and is now available for submissions. Without doubt there will be strong representations from a wide range of views around the structure and the adequacy of representation of communities of interest in the Draft Proposal.
7. It is not the intention of staff to recommend that Hawke's Bay Regional Council attempts to agree an approach around the future structure of local government. Instead we will suggest that any submission from the Hawke's Bay Regional Council clearly reinforces the important role of natural resource management, in particular, in any local government structure given the underlying drivers of the Hawke's Bay economy both now and in the foreseeable future.

8. It is noted that in its discussions on good quality services, etc, the Draft Proposal focuses on a range of functions traditionally carried out by territorial authorities. It is less specific about functions carried out by the regional council.
9. For reference the following table sets out the range of activities a unitary authority should reasonably expect to have to deal with.

Activity
Air quality control (environmental and health)
Animal control, impounding, welfare
Art Galleries
Arts and Culture
Asset and liability management
Regional investments
Beach control
Beautification
Biosecurity
Broadband
Brothels – control of location and signage
Building consents processing, advice and compliance
Business support
By-laws (wide variety) and enforcement
Cemeteries
Citizen and customer contact
Citizen Advice Bureaux
Citizen services
Civil defence emergency management
Climate change
Coastal environment dev. Control
Coastal planning and management
Community centres, halls and facilities
Community development, partnerships, services and support
Community grants and levies
Community notice boards
Community planning
Corporate services
Council-controlled organisations
Crematoria
Crime prevention
Cultural heritage conservation
Democracy services
District Planning
District promotion
Natural heritage conservation
Noise control
Parking control
Parking places
Parks and reserves
Passenger transport policy and facilities
Pensioner housing
Planning
Playgrounds
Pollution response
Pounds
Property information memoranda (PIMs)
Property Management
Public Information
Public transport planning
Quarries
Rating
Recreation and sport programmes
Recreation centres
Recycling
Refuse transfer stations
Regional and district leadership
Regional growth planning
Regional parks

Activity
Dog control
Economic development
Education and employment advocacy
Entertainment and cultural venues
Environmental health control
Environmental monitoring
Events promotion
Farming in parks
Film facilitation
Fire protection
Flood protection
Food premises licensing
Forests
Gambling and gaming machine policy
Gardens
Graffiti control and removal
Grants
Harbourmaster
Hazard Register
Hazardous substances controls
Hazards management
Health – advocacy and programmes
Holiday parks
Land development
Land drainage
Land Information Memoranda(LIMs)
Land management
Land use planning
Landfills
Libraries
Liquor licensing
Māori relations
Marina operations
Migrant settlement facilitation
Museums
Safety in public places
Shareholdings and investments
Sister city programmes
Sports grounds and venues
Stormwater management
Street furniture and trees
Swimming pools
Toilets – public
Tourist facilities and information
Town centre and business precincts promotion
Transport network management
Transport policy and planning
Treasury and debt management
Urban and rural design
Vehicle testing station
Visitor services
Walking and cycling strategy
Walkways/cycleways
War memorials
Waste management
Wastewater
Water quality monitoring
Water supply
Wharf management

Activity
Regional Planning
Regional Social development strategy
Resource consents processing and monitoring
Road construction
Road asset management

Activity
Council owned housing
Revenue collection and management
Road maintenance
Road safety

10. Natural resource knowledge and management, providing an integrated approach and specialist expertise to natural resource management is a core function of the regional council. This is particularly essential given the region's significant natural resource base including large areas of land suitable for intensive agriculture or horticulture and given that the region's economy is driven by primary production.
11. The region needs to retain a core focus on ensuring the investment funds deliver intergenerational work in the complex natural resource areas and the investment capital is used for critical regional scale infrastructure which unlocks sustainable economic opportunities. A dedicated focus on assisting the primary sector to build resilience, and if possible to expand, also needs to be retained in any future structure.

Potential Submission

12. The Local Government Commission is accepting submissions on its draft proposal for Hawke's Bay up until 7 March 2014. The Commission will be expecting to receive a large number of submissions expressing a wide range of views. Many of these will be on the local government structure proposed by the Commission for Hawke's Bay.
13. It has been the previously expressed view of the regional council, through its alternate proposal, that the form or structure of local government is secondary to the functions carried out. The preferred form from the Local Government Commission is now out in the public arena but it is very light on the detail of the functions of a regional authority. This council should give serious consideration to preparing a submission that seeks continuity of the importance of managing natural resources given the region's strong linkages to the primary production sector.
14. While it is accepted that any regional council regulatory functions would need to continue irrespective of structure the arguably more important contribution of the regional council is in undertaking scientific investigations of natural resources, particularly freshwater, and in adding value through the use of investment capital for critical regional scale infrastructure which unlocks sustainable economic opportunities.

Decision Making Process

15. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:
 - 15.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 15.2. The use of the special consultative procedure is not prescribed by legislation.
 - 15.3. The decision does not fall within the definition of Council's policy on significance.
 - 15.4. The persons affected by this decision are the ratepayers in the region.
 - 15.5. Options that have been considered are canvassed in the paper.
 - 15.6. The decision is not inconsistent with an existing policy or plan.
 - 15.7. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision. Those with an interest in this decision have the opportunity also to lodge an alternative proposal with the Local Government Commission.

Recommendations

The Corporate and Strategic Committee recommends that Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.

Either:

2. Decides to lodge a submission to the Local Government Commission on its Draft proposal for the reorganisation of local government in Hawkes Bay, based upon reinforcing the need for any local government structure within Hawke's Bay to have a specific focus on the management of natural resources in recognition of the region's strong linkages to its primary production sector

or

2. Decides not to lodge a submission to the Local Government Commission on its Draft proposal for the reorganisation of local government within Hawke's Bay.
3. If Council resolves to lodge a submission, Council will consider the final submission for lodging with the LGC at the Regional Council meeting on 26 February 2014.



Liz Lambert
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Wednesday 11 December 2013

Item 8

SUBJECT: APPOINTMENT TO THE HB TOURISM BOARD

Reason for Report

1. Hawke's Bay Tourism is the official Regional Tourism organisation (RTO) for Hawke's Bay.
2. Hawke's Bay Tourism is governed by a Board, which includes a representative from the Hawke's Bay Regional Council. A Council appointment to the Board is now required and the making of this appointment is the reason for this paper.

Financial and Resource Implications

3. Hawke's Bay Tourism is jointly funded by the Hawke's Bay Regional Council and the local tourism industry through the Hawke's Bay Tourism Industry Association.
4. Hawke's Bay Regional Council contributes \$850,000 (excl GST) per annum to HBT. This is funded by a targeted economic development rate totalling \$1.284M (2013/14 Annual Plan). This targeted rate is a fixed amount for residential properties (\$16.64) and for commercial/industrial properties is based upon capital value.

Discussion

5. Hawke's Bay Tourism Industry Association is the sole shareholder of Hawke's Bay Tourism Limited. It is a membership based organisation and offers two partnership programme models.
 - 5.1. Industry Partner – for businesses with a direct relationship to the visitor industry e.g. accommodation, transport operators, attractions, retailers, hospitality industry and wineries.
 - 5.2. Support Partner – for support service businesses, industry and sector associations and those with a genuine desire to support economic development in Hawke's Bay through tourism initiatives.
6. The Board of HB Tourism meets approximately every six weeks and undertakes the following principal tasks:
 - 6.1. Governance of HB Tourism, including progress towards achieving key performance indicators
 - 6.2. Extensive stakeholder engagement with tourism operators, central and local government and other agencies
 - 6.3. Consideration of new initiatives for tourism in Hawke's Bay (for example, F.A.W.C! Food and Wine Classic)

Decision Making Process

7. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:
 - 7.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 7.2. The use of the special consultative procedure is not prescribed by legislation.
 - 7.3. The decision does not fall within the definition of Council's policy on significance.
 - 7.4. The persons affected by this decision are all persons with an interest in the Council's governance of tourism.

- 7.5. Options that have been considered include not making any appointment to the Board of Hawke's Bay Tourism.
- 7.6. The decision is not inconsistent with an existing policy or plan.

Recommendations

The Corporate and Strategic Committee recommends that Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Appoints a representative to the Board of Hawke's Bay Tourism; being Councillor



Liz Lambert
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Item 9

Wednesday 11 December 2013

SUBJECT: OIL AND GAS EXPLORATION POLICY DEVELOPMENT (3.15PM)

Reason for Report

1. At its meeting on 6 November 2013, Council considered its draft submission to the Government's 2014 Block Offer identifying areas to be made available by the government for oil and gas exploration. During discussion on this item a request was made that staff *"present a report outlining possible processes that Council might undertake to engage with the public on the development of policy for petroleum exploration in the Region"*.
2. This report presents a proposal for Council to consider and to then provide direction to staff on its possible implementation.

Discussion

3. Council's existing work programme (as adopted in the 2012-22 Long Term Plan and 2013/14 Annual Plan) does not currently provide budgets for the establishment and servicing of a new stakeholder engagement process to consider oil and gas policy development. Designing any such initiative for stakeholder engagement requires consideration of a number of matters, including:
 - 3.1. considering and confirming the precise nature of the Council's role in the process
 - 3.2. capacity, resourcing and relative priorities (of the 'sponsor' agency/agencies)
 - 3.3. capacity and availability of stakeholders to participate and contribute in a meaningful manner
 - 3.4. deliverables/desired outputs
 - 3.5. timeframes for deliverables.
4. The notion of forming a multi-stakeholder group to explore issues regarding the petroleum and mineral industry in Hawke's Bay is not new. The idea of such a group had its origins during preparation of the 'East Coast Oil and Gas Development Study'¹ (published in March 2013). The notion also emerged in New Zealand Petroleum and Minerals' (NZP&M) preliminary discussions during August-September 2013 involving over twenty Hawke's Bay stakeholder organisations, and again more recently at the one-day Oil and Gas Symposium hosted by Hastings District Council.
5. The Chief Executive has recently been liaising with NZP&M officials who have previously expressed a willingness to partner the Council in a multi-stakeholder process (not too dissimilar from the process to develop the region's Land and Water Management Strategy). NZP&M are also willing to contribute some of their own staff time, expertise and resource for a group facilitator. Based on NZP&M's recent discussions with 20+ stakeholders, NZP&M officials have prepared draft versions of the following documents as set out in Attachment 1.
 - 5.1. A draft public engagement proposal
 - 5.2. A draft memorandum of understanding (MOU)
 - 5.3. Draft Terms of Reference for a multi-stakeholder group (MSG)

¹ A Study intended to support informed dialogue between councils, communities and iwi about the potential benefits, impacts and risks of petroleum (oil and gas) development across the East Coast of the North Island, if such a development were to eventuate. The Study partners were Ministry of Business, Innovation and Employment; Gisborne District Council; Tararua District Council; Central Hawke's Bay District Council; Hastings District Council; Wairoa District Council; Napier City Council; Horizons Regional Council; Hawke's Bay Regional Council; and support from Business Hawke's Bay.

6. ***NZP&M officials will be in attendance at the 11 December 2013 Committee meeting.***
7. The draft 'public engagement proposal' provides some background to the matters and outlines a recommended two-step approach for oil and gas matters and also renewable energy resources.
8. Other possible processes that Council could undertake to engage with the public on petroleum exploration include:
 - 8.1. Council drafts a document, releases it for general public comment and then Council finalises it
 - 8.2. Several councils jointly prepare a draft document (involving relevant government agencies), then release document for general public comment (as in 7.1 above), and then councils finalise and each adopt the document
 - 8.3. 'Sponsoring' agencies assemble a group of stakeholders (as representatives of diverse interests or as participants and contributors to group's discussions and outputs); group's outputs are then presented to sponsoring agencies for endorsement or similar
 - 8.4. The multi-stakeholder group's outputs (as in 7.3 above) are published and wider public feedback is invited before the group finalises its report(s) and presentation to sponsor agencies.
9. At this stage, it is recommended that the Committee consider endorsing in-principle the public engagement proposal set out in Attachment 1, plus the associated draft MOU and draft terms of reference for a multi-stakeholder group (MSG). If the public engagement proposal were to be endorsed in-principle then Council staff, along with NZP&M officials, could progress discussions with other would-be project sponsors and participants before any formal steps are taken to make appointments to the MSG, finalising timeframes and confirming outputs/deliverables from the MSG.
10. A further report could be presented to the Corporate and Strategic Committee meeting in March 2014 which would provide greater details about the group's make-up, timeframes and deliverables, as well as further details on resourcing and budget implications and potential impacts on existing programmes.

Financial and Resource Implications

11. As noted above, Council's existing commitments in the 2012-22 Long Term Plan and 2013/14 Annual Plan do not currently provide budgets for the establishment and servicing of a new stakeholder engagement process for oil, gas and renewable energy issues. The draft proposal, MOU and terms of reference set out in Attachment 1 clearly anticipate some resources will be provided by the Hawke's Bay Regional Council. These include:
 - 11.1. Staff time for:
 - 11.1.1. establishing the MSG
 - 11.1.2. convening and administration of the MSG
 - 11.1.3. reporting to the MSG (including potential commissioning of relevant information requested by the MSG)
 - 11.1.4. assisting the MSG prepare report and publication/publicity costs
 - 11.2. HBRC nominee membership on the MSG (1 councillor)
 - 11.3. MSG meeting expenses (venue, catering, travel reimbursement, Chair remuneration)
 - 11.4. MSG expenses for site visit to 'live' operation (if deemed necessary)
 - 11.5. MSG facilitation for Phase 2 - renewable energy resources (Phase 1 facilitation expenses proposed to be covered by NZP&M contribution).

12. Furthermore, in relation to HBRC's capacity and ability to contribute resources to a new stakeholder group, prioritisation would be required having regard to the number of existing stakeholder engagement processes currently underway, which include the Greater Heretaunga/Ahuriri Catchment Plan Change collaborative stakeholder group (TANK Group), the Taharua and Mohaka Stakeholder Group, the Biodiversity Strategy Steering Group, the Pan Sector Group, and the Upper Tukituki Facilitation Group.
13. Ultimately, the Council will need to decide if a process for developing policy for the region on petroleum exploration and renewable energy resources is indeed a priority and how that 'fits' with its existing programmes, other priorities and resource constraints.

Decision Making Process

14. Council is required to make a decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained in Part 6 Sub Part 1 of the Act in relation to this item and have concluded the following:
 - 14.1. The decision does not significantly alter the service provision or affect a strategic asset.
 - 14.2. The use of the special consultative procedure is not prescribed by legislation.
 - 14.3. The decision does not fall within the definition of Council's policy on significance.
 - 14.4. The persons affected by this decision are all persons with an interest in the region's management of natural and physical resources.
 - 14.5. Options that have been considered include doing nothing, and a variety of different process designs for engaging the public on petroleum exploration policy development for the Hawke's Bay region.
 - 14.6. The decision is not inconsistent with an existing policy or plan, although the Council's existing commitments in the 2012-22 Long Term Plan and 2013/14 Annual Plan do not currently cater for the establishment and servicing of a new stakeholder engagement process for oil, gas and renewable energy issues and therefore provisions for a 'new programme of work' will be subject to the 2014-15 Annual Plan public consultation process.
 - 14.7. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

The Corporate and Strategic Committee recommends that Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Endorses, in-principle, the draft public engagement proposal for oil, gas and energy policy development set out in Attachment 1, including any amendments arising at the Committee meeting.
3. Notes that staff will present a further report to the Corporate and Strategic Committee meeting in March 2014 (including a revised memorandum of understanding; revised terms of reference for multi-stakeholder group; stakeholder group composition; and details of resourcing and budget implications) about a public engagement proposal for oil, gas and energy policy development in Hawke's Bay.



Gavin Ide
TEAM LEADER POLICY



Tom Skerman
ECONOMIC DEVELOPMENT MANAGER



Liz Lambert
CHIEF EXECUTIVE

Attachment/s

- 1 Draft Public Engagement Proposal for Oil, Gas & Renewable Energy Policy

DRAFT Public Engagement Proposal

Oil, Gas & Energy

Hawke's Bay Regional Council

NZ Petroleum and Minerals

28 November 2013

Background

- NZP&M and the HB Regional Council have been in discussion for some time on the matter of public and stakeholder engagement related to oil and gas exploration and development in the region.
- Several initiatives have been taken, principally formal discussions with a wide variety of stakeholders in the region to test out the idea of substantive engagement to understand the need and the focus of such engagement. The stakeholders have strongly supported it on the understanding that it will be focused and productive.
- This work was done jointly by representatives from NZP&M and Michael Bassett Foss the then economic development advisor within the HB Regional Council. From these discussions expectations have been created around such an activity.
- In addition, consultation has been undertaken with local authorities, notably Hasting District Council where the mayor, Lawrence Yule strongly supports the idea and acknowledges the role of the regional council in leading it with NZP&M. He views this activity as a welcome addition to the symposium he initiated on the subject in October.
- The former regional councillors had been appraised of the proposal and were broadly in support. The new council has discussed the proposal and council staff have been asked to give consideration to a broader approach which not only considers exploration and development of fossil fuels but the development of renewables (presumably such energy sources as hydro associated with irrigation, wind, biofuels and micro-generation).

Recommended Approach

- The concerns and interests of HB Regional Council and NZP&M converge specifically on oil and gas (and to an extent with regard to minerals). They diverge a little when it comes to renewables simply because these are of interest to other branches of MBIE, but are outside the remit of NZP&M.
- It is recommended that a two step approach is taken. This involves the establishment of a multi-stakeholder group as originally proposed.
 - **Step one – oil and gas**
The initial focus of the group is on oil and gas. The justification for this is that exploration in and around the region is happening now and so there is a level of urgency to move forward on these matters. The group would complete its recommendations on these matters and they would be considered by the regional council as proposed.
 - **Step two – renewables**
Once the work on oil and gas is complete, the group would then turn its attention to the broader question of renewables. This may involve partnership with other interests in MBIE or not (this is outside the influence of NZP&M). As above, the

group would work through its recommendations and present them to the regional council

- It is envisaged that NZP&M would be actively involved with the regional council in establishing the group and would provide its expertise in the operation and facilitation of the group in partnership with the regional council. However, once the Step One task is completed NZP&M would retire from the process and it would be handed over to the regional council to manage Stage Two.
- The advantages of this approach are:
 - Both subjects are dealt with
 - Skill and capability is developed through both processes
 - The profile of the process will grow which would help with public confidence
 - The renewables discussion would need significant pre-work for a stakeholder process to be effective. That can be done whilst the stakeholder group is working on Step One. Whereas much of the pre-work is completed for the oil and gas work.
 - The oil and gas work will help upskill the group to deal with a subject – renewables – that is potentially more complex and conceptual.

Procedures

The following pages present two procedural matters to enable this programme. They are a Memorandum of Understanding between NZP&M and HB Regional Council and draft Terms of Reference for the stakeholder group.

It should be noted that the MOU refers to Step One – the oil and gas consultation, the Terms of Reference are more broadly applicable.

DRAFT: Memorandum of Understanding

Between: Hawke's Bay Regional Council
 Horizons Regional Council
 Hawke's Bay territorial local authorities
 New Zealand Petroleum and Minerals

For: Operation of a Multi-Stakeholder Group on oil, gas and minerals exploration and development in the Hawke's Bay

Version Date: 21 November 2013

The Hawke's Bay Regional Council (HBRC), Horizons Regional Council (Horizons) and New Zealand Petroleum and Minerals (NZP&M) have agreed to form a multi-stakeholder group to advise them, regional stakeholders and the broader community on how best to ensure that the interests of all parties are met regarding oil and gas exploration and subsequent development of the resources, should that come about.

The multi-stakeholder group was proposed by NZP&M in 2012 but has also emerged in discussions with local stakeholders. These preliminary discussions involved in excess of 20 stakeholder organisations in the Hawke's Bay region and were conducted through the latter part of 2013.

The stakeholder response was overwhelmingly positive to the idea of a stakeholder group and helpful information was gained about how best to conduct such an exercise. In particular, it was seen as a useful adjunct to the symposium on the subject which took place at Hastings in October 2013 and was referred to on this occasion.

The main concern of stakeholders was to ensure that the multi-stakeholder group is well established and has a clear purpose and agenda because many of the stakeholders in the region are busy people involved in a range of other important projects. There was a strong consensus that the subject matter is important and would benefit from such treatment.

Agreement between the HBRC, Horizons and NZP&M

That:

- The Multi-stakeholder Group (MSG) would be presented as a joint venture between the HBRC, Horizons Regional Council, other district and city councils in the region, local iwi and NZP&M on behalf of the Crown.
- HBRC and Horizons would act as the primary sponsors (together with NZP&M) for the MSG because of their regional focus and their statutory responsibilities regarding environmental matters.
- These sponsors, once agreed, would engage the other TLAs in the region and iwi to be parties to this Memorandum of Understanding.
- Part of the MoU and attached as an addendum is a Terms of Reference for the MSG. This includes the approach taken and operational details. In agreeing the MoU the parties also agree the ToR.
- Any changes to the ToR once finalised, could be made by agreement between the sponsors and in consultation with the members of the MSG (once established). It is agreed, however, that change to the ToR once the MSG is underway is generally undesirable unless essential.

- For convenience the ToR would be based on the meeting rules for council committees contained in LGOIMA which include such matters as public included and excluded provisions.
- HBRC, Horizons and NZP&M would use their influence to involve other TLAs with an interest in the process, particularly district councils. They would similarly assist in the involvement of iwi. The involvement of other Crown agencies and Ministers would be undertaken as required.
- HBRC, Horizons and NZP&M would provide between them the resources for the MSG to operate. This could include staff time (specialist and support), information and facilities for meetings, demonstrations and presentations. In practical terms it is envisaged that HBRC would provide meeting facilities, administrative support for meetings and meet immediate meeting costs which it might share as appropriate with Horizons. NZP&M would provide group facilitation services, specialist information and advice.
- While the HBRC would accept responsibility for providing local resources it may well call on other TLAs for advice or assistance.
- HBRC, Horizons and NZP&M would provide liaison persons of sufficient seniority to ensure the continuity of the group and its connection within each of the respective organisations.
- The HBRC, the TLAs and NZP&M would undertake to fully consider the recommendations of the MSG once completed and, where appropriate, refer recommendations to other bodies for their consideration, whether national or local.
- Through this MoU the participating parties have undertaken to establish and support the work of the MSG. In so doing, they do not necessarily agree with the findings of the MSG.
- The HBRC, Horizons and NZP&M will make available a person from their respective organization to be a participant in the MSG. Those persons would be of sufficient seniority to reflect the importance the organisations place on the MSG and sufficiently knowledgeable to interpret the information and positions held by the respective organisations. The regional councils would work with the other TLAs to select two participants from the group between them. Membership of the group is covered in more detail in the attached ToR.
- HBRC, Horizons and NZP&M would be responsible for the costs associated with the promulgation of the report of the MSG including editing, design and publication.

DRAFT Addendum: Terms of Reference for the Multi-Stakeholder Group**Description**

A regional multi-stakeholder group (MSG) would be a group tasked with considering matters related to prospecting, exploration and development of petroleum and gas resources in Hawke's Bay and peripheral areas. In so doing it would prepare recommendations on approaches and procedures for such activity in this region for consideration by the regional and local councils and the Crown.

A mixture of professional, community, expert and lay people, it would provide its views and recommendations on all matters pertinent to the oil and gas exploration and development process. It is designed to reflect the spectrum of local opinion. It is intended to provide the opportunity for deep consideration and analysis of the issues in light of that opinion and in so doing reach considered conclusions. It is intended to be a group in which the community could have trust.

The focus of this Terms of Reference is on this stakeholder group but it is envisaged that there would be other information, communication and stakeholder activity taking place around it managed by the parties to the MoU between those parties.

The recommendations will be primarily for the sponsors, the HB Regional Council, Horizons Regional Council, local TLAs and NZP&M, and may, in some form, be included in council practices and regulations, both statutory and non-statutory.

Stakeholders

In forming the multi-stakeholder group the focus is on participation and contribution rather than representation per se. Personnel from the sponsor organisations - the Regional Councils and District/City Councils, iwi and NZP&M – would be on the group. The remainder of the stakeholders would arise from the community, selected to ensure that there is a wide range of relevant experience and participation reflected in the group. Such areas of experience and participation would include:

- Farming and agricultural interests – including non-pastoral farming such as fruit and viticulture
- Indigenous biodiversity/environmental interests
- Oil and gas industry interests
- Wider economic and regional development interests
- Urban and rural interests
- Infrastructure interests – including such interests as roading, port, health and similar services
- Iwi interests
- Recreational user interests
- General community interests

Subject Matter

The group would be seeking to address two broad subjects outlined as Steps One and Two. The first step would focus on oil and gas, the second step on renewables.

Step One: Oil and Gas

There would be no limit on the range of subject matter the stakeholder group may wish to cover, although clearly the group would be expected to apply a relevance test. The chair and the group itself would be the judges of relevance. The group would also have freedom to source information

from wherever they saw fit although they are encouraged to favour credible and evidential sources and financial resources available to source information would be a factor in their selection.

NZP&M has significant sources of information including:

- fact sheets
- taxpayer-funded reports (e.g. East Coast Oil and Gas Development, 2012)
- subject matter experts in oil and gas
- access to international sources.

There is also published material available from industry players, independent institutes and environmental NGOs.

Such information would be made available to the stakeholder group which would include not only written material but presentations by acknowledged and independent experts.

Exploration in Hawke's Bay is both on-shore and offshore. This will influence the selection of informational material. Areas of subject matter could include the following:

- **geology** – as it is relevant to oil, gas and minerals
- **environment** – protection of landscape, water, vegetation, etc
- **technical** – exploration and development methodologies including conventional drilling and fracking, well design and integrity, deep water drilling
- **Infrastructure and design** – operations related to different requirements, roading and carriage, port facilities, etc
- **economic** – local and national impacts
- **regulation** – local, regional and national regulation and compliance requirements, community and environmental protection regulations and regulators
- **risk management** – protection, spill risk and recovery, potential hazards and mitigation
- **Restoration** – decommissioning, site restoration and protection
- **Land access** – rights and expectations
- **Costs and payments** – royalties and payments

The output of the multi-stakeholder group would be a document entitled Regional Implementation Guidelines for oil, gas and minerals.

The NZP&M facilitator would assist the chairperson plan the meeting programme based on the resources that are available. Where possible arrangements will be made for at least one on-site visit for members of the group to see "live" and understand the material they are talking about. The extent to which these arrangements can be made will be governed by the availability of funds from local councils and NZP&M.

Step Two: Renewables

Step Two would follow in a very similar format to Step One except with a different subject matter. Work would be done prior to the commencement of Step Two on the subject matter to define and clarify the breadth of the discussion the MSG would undertake. A paper would be prepared prior canvassing the range of subject matter and defining the scope of the activity. That scope is not covered in this paper. It is anticipated that there may be minor changes to the personnel of the MSG for Step Two to ensure the right mix of knowledge and expertise. For example, industry participants

from an oil and gas background would likely have little relevance for a discussion on renewables and NZP&M would retire in favour of a more suitable Government agency.

Timetable

Accordingly, the following schedule was developed to reflect the response from the stakeholders:

Step One:

2013

Oct-Nov: Discussion of Terms of Reference with selected stakeholder interests to achieve consensus on the approach
Formal commitment to proceed from all parties

2014

Jan-Feb: Nomination of selection panel
Call for nominations
Selection and orientation
March: Commence meetings
August: Complete report
September: Public consultation
November: Finalise report. Received by the Hawke's Bay Regional Council on behalf of the regional community – leading on to an assessment of how it is applied.

Step Two:

2014

May: Completion of the scoping paper and consultation with interested parties
September: Commencement of the consideration of the subject of renewables by the MSG
2015: It is envisaged that the process would follow an almost identical pathway to the Step One programme although this would be ratified closer to the time and after the scoping had been undertaken and all issues considered.

Sponsors: The group is formed under the auspices of the HB Regional Council and Horizons Regional Council in association with local Iwi, the district/city councils and NZP&M.

Legal status: The MSG's status would arise from the fact that it is a joint committee established by the local authorities of the region. Each of those local and regional authorities would be parties to a MoU on the matter.

The operation and recommendations of the group would be non-statutory. Any recommendations would only gain statutory power if they were adopted by a statutory agency such as the regional council or TLAs, which would have no obligation to do so.

The MSG would, in the first instance, report to the planning committees of the two regional councils.

Procedures: The MSG would operate under LGOIMA rules for convenience.
Proceedings of the group would take place in public except where it is decided by the group to have public excluded sessions. These would be guided by the LGOIMA

rules. Public excluded sessions would take place when there were confidential matters for discussion such as commercially sensitive information.

The news media would be able to attend public sessions.

Membership: The multi-stakeholder group would be a “participation” not a “representation” group. However, the selection panel would be encouraged to ensure there is representation across the main interests in the region including farming and environment.

Although members of the group will not be there representing any particular sectional interest, they themselves may have specific interests. The expectation is that that will have regard for their own interests and can speak for them but are bound to act in the collective interest of the community.

Automatic selections to the MSG will be:

- One person from each of the HBRC and HRC
- Two persons selected by the remaining local authorities
- Two persons selected by local iwi
- One person selected by NZP&M (other department of Government for the renewables Step Two process)

The balance of the membership, which will total no more than 15, would be made up of local stakeholders from a wide range of relevant local interests including: oil and mineral industry, impacted industries, environment groups, farming groups, urban/rural, infrastructure (such as the Port) and any other interests that are deemed by the sponsors to be relevant.

Selection: Selection of the non-appointed stakeholders (up to eight) would be open to public nomination. The selection of the members would be undertaken by a selection panel set up by the TLAs facilitated by the regional councils in association with Iwi. The selection panel would comprise trusted public figures:

- One from each of the two regional councils
- One from local TLAs
- Two from iwi.

Members of the selection panel could involve those nominated for membership on the MSG by their sponsoring organisations such as the HBRC or iwi.

The selection decisions of the panel are final.

Chairing: The group would select its own chair from amongst its number. The sponsors would not necessarily act in the role of chair, in fact, this is generally not regarded as desirable. It is hoped that the group would select a chair who could generate a high level of confidence from the group and also has the time to commit to the task.

Output: The group would produce a document to be called Regional Implementation Guidelines (for Oil and Gas Exploration and Development and the same for Renewables). These documents, once completed, would be presented to the Councils and Iwi. Both would be expected to consider the document and adopt its recommendations in principle and possibly in practice such as through policy and planning documents (eg RPS) where appropriate. The sponsors would likely present the document to the Crown for its consideration.

Duration:	<p>The group is expected to meet between 8-10 times over a 6-8 month period for each of the two Steps. This extended period is intentional to ensure that a quality product is produced and there is adequate time for consideration and discussion on what are likely to be challenging issues.</p> <p>The sponsors may decide to keep the group active after it has completed its report.</p>
Facilitation:	<p>A facilitator will be supplied to assist the oil and gas process by NZP&M. Other support would be provided by the regional council. The facilitator would act purely in an assistant/support role. The facilitator would be responsible for ensuring the smooth running of the group working closely with the chair and the regional councils and other sponsors for orientation, resourcing and support. The work of the facilitator would be subject to a MOU between the Regional Councils (acting on behalf of the TLAs) and NZP&M.</p> <p>The regional council would provide its own facilitation for the renewables discussion or engage the same independent facilitator separately.</p>
Resourcing:	<p>The group will require information resources to undertake its brief. These could come from a wide range of sources:</p> <ul style="list-style-type: none"> • public documents and reports • briefings or personal representations from experts or advocates • confidential information could be shared in public-excluded sessions. Members will undertake to respect confidentiality where such arrangements are entered into by the group.
Payment:	<p>Members will not receive any payment for participation except for reasonable travel costs. Catering may be arranged by the regional council to help the group for long meetings. It may be decided that the chair should receive some small payment in recognition of the extra work required in that role. The responsibility for this would fall on the TLAs facilitated by the regional councils.</p>
News Media:	<p>No members of the group, in their role as a group member, may make statements to the news media without the agreement of the group. All statements on behalf of the group would be made by the chair with the agreement of the group. It is expected that there will be significant media interest.</p>
Ownership:	<p>The report of the group and its copyright is the property of the sponsors once the group has completed its work and is disbanded.</p>
Deviation:	<p>In the event that the group deviates from the brief in a manner that raises serious concerns with the sponsors (collectively), is assessed as having been irrevocably captured by minority interests or is unable to arrive at collective decisions, the group will be declared by the sponsors as a “hung jury” and a new group would be formed. New members would not be added to the group during its process except in exceptional circumstances such as death or total unavailability.</p>

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE
Wednesday 11 December 2013

Item 10

SUBJECT: APPROACH/TIMELINES FOR ANNUAL PLAN 2014/15

Reason for Report

1. This report outlines the approach to be taken to the development of the Annual Plan 2014/15, the recommended timelines for the development of the Plan, Council workshops and some of the major issues that need to be addressed in the Plan.

Comment

2. Significant work was undertaken for the Long Term Plan (LTP) 2012-22 to include strategies and projects, including both financial and performance management information, therefore it is proposed to use the third year of the LTP (2014/15) as the basis for the development of the Annual Plan 2014/15.
3. There are a number of additional issues that may require reconsideration by Council and these issues will either be the subject of separate papers to Council over the next few months or as part of the Council workshop on the Annual Plan which is scheduled for 11 February 2014. Some of the more important issues that are known at this time are:
 - 3.1. The current year 2013/14 Annual Plan deficit of \$864,000 needs to be addressed. If the carried forward items of \$633,000 are adjusted from the \$864,000 deficit, Council is still left with \$230,000 to be funded if it is to achieve a break even for the 2014/15 year. It is worth noting that the draft Annual Plan for 2013/14 proposed a 4.6% rate increase, however this was reduced to 2.8% by Council when it adopted the final Plan in June 2013. This rate decrease required \$258,000 to be reduced from the budget.
 - 3.2. During the 2013/14 Annual Plan development Council approved a reduction in overhead and consultancy costs of \$1 million (summarised details of these reductions will be included in the Annual Plan workshop in February 2014). This large increase in costs which have been permanently deleted from Council budgets has resulted in very tight cost structures going forward into 2014/15.
 - 3.3. A 4% increase in rates was proposed in the LTP for the 2014/15 year.
 - 3.4. Cost of inflation pressures need to be calculated and provided for where appropriate as part of this Annual Plan exercise.
 - 3.5. Interest rates need to be estimated for the 2014/15 financial year. The LTP stated that the interest rate would be an average of 5.25%, however interest rates have been slow to recover from their current lows of between 4% - 4.2% (based on a 12 month investment term) and there is uncertainty over when these interest rates will rise and to what extent they will rise.
 - 3.6. At the commencement of the Annual Plan year Council will have approximately \$73 million in the Sale of Land Investment reserves, therefore the interest rate used for projection purposes will be of major importance to the Plan.
 - 3.7. There will be a need to model scenarios for the proposed investment in the Ruataniwha Water Storage Scheme (RWSS) if approved by Council. Council will need funding to replace the interest earned on these investment funds. Therefore if funds are paid to Hawke's Bay Regional Investment Company Limited (HBRIC Ltd) for an equity stake in the RWSS, these scenarios will need to include an increase in dividends from HBRIC Ltd.

- 3.8. Over the next month the Executive will be analysing programmes and policies of Council which could give rise to pressure points in increased costs. An example here is the resourcing required to deliver Plan Change 6 implementation. There is a possibility that most of these cost pressures resulting from Plan Change 6 will affect the next LTP as these costs could commence during 2015/16.

Proposed Timelines

Task	Timing
Annual Plan compilation/scrutiny by Executive	December 2013/January 2014
Workshop papers to be distributed to Council	Wednesday 5 February 2014
Summary of Annual Plan proposals and strategy to be submitted to Council workshop	Tuesday 11 February 2014
Any follow up issues required by Council	Wednesday 12 March 2014 - Corporate & Strategic Meeting
Adoption of Draft Annual Plan	Wednesday 26 March 2014 (<i>papers out Thursday 20 March 2014</i>).
Special consultative period of five weeks' duration	Monday 7 April 2014 – 12 May 2014
Staff responses and submissions to be sent to Council	Wednesday 28 May 2014
Council hears submissions	Wednesday 4 & Thursday 5 June 2014
Council adoption of final Plan	Wednesday 25 June 2014 (<i>papers out 19 June 2014</i>)

Decision Making Process

4. Council is required to make a decision in accordance with Part 6 Sub-Part 1, of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained within this section of the Act in relation to this item and have concluded that, as this report is for information only and no decision is to be made, the decision making provisions of the Local Government Act 2002 do not apply.

Recommendations

1. The Corporate and Strategic Committee receives this **Approach/Timelines for Annual Plan 2014/15** report and notes the relevant Council meeting dates for the Annual Plan 2014/15 process.



Paul Drury
GROUP MANAGER
CORPORATE SERVICES



Liz Lambert
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE

Wednesday 11 December 2013

Item 11

SUBJECT: PUBLIC TRANSPORT UPDATE

Reason for Report

1. This agenda item provides the Committee with an update on Council's public transport services, including trends since the previous update in September 2013. The report contains patronage and other relevant public transport graphs which are provided to this Committee and the Regional Transport Committee.

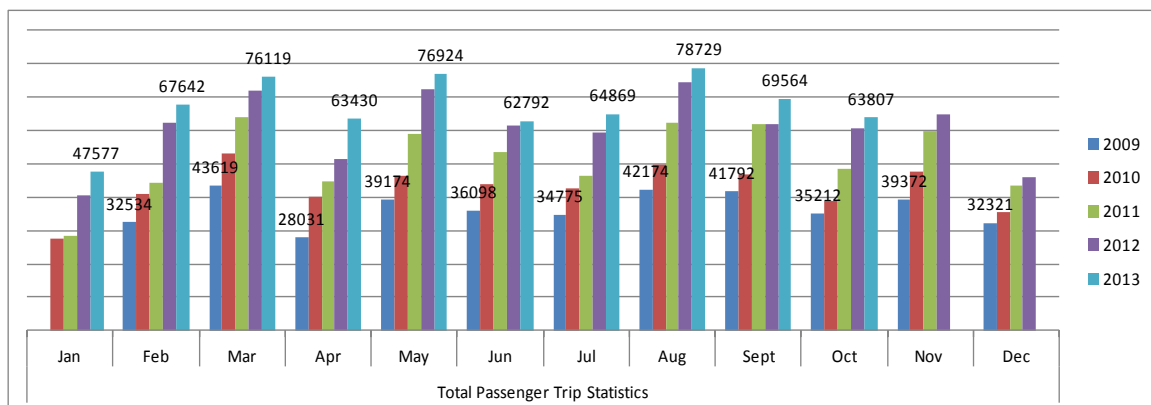
General Information

2. Public transport is administered by the regional council. Services are jointly funded by fare paying passengers, regional ratepayers (through a targeted rate) and the New Zealand Transport Agency (NZTA).
3. The Hawke's Bay goBay network consists of 12 routes, providing 950 trips a week across Napier and Hastings. Currently the fleet consists of 28 vehicles.
4. The bus service is run under contract by Go Bus (Go Bus) Transport Ltd. In July 2013 NZTA approved a 30 month contract extension which means Go Bus will continue to operate the urban bus contract until 30 June 2016. It is anticipated that the contract for the urban bus services will be released for tender in July 2015. The contract extension was necessary to ensure that new legislative requirements are able to be met – these include producing a new Regional Public Transport Plan and Procurement Strategy by 30 June 2015.

Total Passenger Trips

5. The following graph shows total passenger trips from February 2009 to October 2013. Passenger trips from January to October were approx 9% higher than during the same period last year.

Diagram 1 – Total Passenger Trips – February 2009 – October 2013



6. Since 2009 the total numbers of trips per year and monthly averages have steadily trended upwards, as follows.

	Total Yearly Trips	Monthly Average
2009	434,231	36,186
2010	512,657	42,721
2011	616,198	51,350
2012	726,373	60,531
2013 (Jan-Oct)	671,453	67,145

SuperGold Card Trips

7. SuperGold cardholders, who travel free of charge between 9am and 3pm on weekdays and anytime at weekends/public holidays, continue to make very good use of this scheme. The graph below shows the number of SuperGold cardholder trips made from October 2012 to October 2013.

Diagram 2 – SuperGold Card Trips – October 2012 - October 2013



Infrastructure

Bus Stops

8. Unique goBay bus stop signage has been installed at all Hastings bus stops and feedback from passengers and drivers has been very positive. Regional Council staff will work with Napier City Council roading staff to implement a staged programme of signage installation at Napier bus stops.

Bikes on Buses

9. The uptake of bikes on buses continues to increase, with over 2400 bikes carried this year.

Other

10. In line with the three-year fare increase programme the Regional Council approved last year, the second stage of increases was introduced on 1 September. The increase was widely publicised and as a result it was readily accepted by passengers, with no negative feedback.
11. A bus service review is currently underway. Ratepayers in Napier and Hastings were invited to '*Have Your Say*' on public transport through the Regional Council "Our Place" publication as well as local media. Around 200 people responded and feedback from this review will be considered and form part of the new Regional Public Transport Plan which must be adopted by the end of June 2015.
12. The mobile bus timetable application for smartphone users and the on-line bus timetable continues to be very popular, making up approximately 22% of all hits on the HBRC website.

Total Mobility Update

13. The Total Mobility Scheme, which is funded by regional council, local councils and the NZTA, provides subsidised taxi transport for people who have a permanent illness or disability which prevents them from using their own or public transport.
14. The following table shows the Total Mobility Scheme statistics and expenditure since October last year.

Diagram 3 – Total Mobility Statistics – October 2012 – September 2013

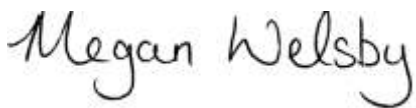
Month	Amount	Trips	Passengers	Wheelchair Passengers	New Clients	Total Clients	Av. Fare Subsidy Per Trip
Oct-12	\$ 46,217	7,256	7,735	1,591	45	2,730	\$ 7.32
Nov-12	\$ 45,383	6,925	7,776	1,734	46	2,742	\$ 7.54
Dec-12	\$ 39,881	6,447	7,202	1,403	13	2,750	\$ 7.11
Jan-13	\$ 37,347	6,022	6,610	1,118	73	2,820	\$ 7.13
Feb-13	\$ 40,682	6,320	6,837	1,393	53	2,868	\$ 7.40
Mar-13	\$ 44,382	6,614	7,479	1,487	33	2,894	\$ 7.72
Apr-13	\$ 43,926	6,850	7,624	1,484	30	2,924	\$ 7.37
May-13	\$ 47,612	7,106	7,952	1,604	95	3,020	\$ 7.71
Jun-13	\$ 43,394	6,382	6,910	1,429	44	3,064	\$ 7.82
Jul-13	\$ 49,273	7,401	8,317	1,630	52	3,080	\$ 7.66
Aug-13	\$ 46,152	6,804	7,662	1,612	48	3,122	\$ 7.80
Sep-13	\$ 43,964	6,611	7,348	1,454	52	3,141	\$ 7.65

Decision Making Process

15. Council is required to make a decision in accordance with Part 6 Sub-Part 1, of the Local Government Act 2002 (the Act). Staff have assessed the requirements contained within this section of the Act in relation to this item and have concluded that, as this report is for information only and no decision is to be made, the decision making provisions of the Local Government Act 2002 do not apply.

Recommendation

1. That the Corporate and Strategic Committee receives the Public Transport Update.



Megan Welsby
SUSTAINABLE TRANSPORT
COORDINATOR



Carol Gilbertson
TRANSPORT MANAGER

Attachment/s

There are no attachments for this report.

**HAWKE'S BAY REGIONAL COUNCIL
CORPORATE AND STRATEGIC COMMITTEE**

Wednesday 11 December 2013

Item 12

SUBJECT: MINOR ITEMS NOT ON THE AGENDA

Reason for Report

This document has been prepared to assist Councillors note the Minor Items Not on the Agenda to be discussed as determined earlier in Agenda Item 4.

ITEM	TOPIC	COUNCILLOR / STAFF
1.		
2.		
3.		
4.		
5.		