



Meeting of the Hawke's Bay Regional Council

LATE ITEMS

Date: Wednesday 28 March 2018
Time: 10.15am
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

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HAWKE'S BAY REGIONAL COUNCIL

Wednesday 28 March 2018

Subject: HBRC LETTER OF EXPECTATION FOR HBRIC LTD

Item 17

Reason for Report

1. This item seeks direction from the Council on the mandate and governance of the Hawke's Bay Regional Investment Company Limited (HBRIC Ltd) for the coming year in order to inform the content of a Letter of Expectation (LoE), which provides the company with shareholder direction.
2. The LoE is to be provided to HBRIC Ltd by 1 April 2018 to enable the company to consider how those expectations are best incorporated into a Draft Statement of Intent (Sol) for presentation to Hawke's Bay Regional Council (Council) on 24 April 2018.
3. The Council is currently considering the future form of its commercial investment activity and this paper seeks to determine arrangements in the interim until more long-term decisions are made following public consultation on any significant proposals.

Background

4. The Council has recently undertaken a Capital Structure Review which, among other matters, has provided advice on future arrangements for the Council's commercial investment activities. A draft of the Review Panel's final report, with recommendations for the future of HBRIC Ltd including governance arrangements, was considered by the Corporate and Strategic Committee on 14 March 2018, alongside a letter from the Board of HBRIC Ltd. As a consequence of this report being delivered later than anticipated the Council deliberations on the future of its investment activities, including the future role of HBRIC Ltd, have now coincided with the need to prepare an Sol.
5. HBRIC Ltd is required to submit a Draft Sol to Council each year in order to meet legislation, however with the uncertainty arising from the Council's Capital Structure Review, it has been agreed that Council issue HBRIC Ltd with a "Letter of Expectation" (LoE) in order for HBRIC Ltd to draft its Sol for the 2018-19 financial year for Council's consideration at the 24 April Council meeting.
6. This will enable Council to provide feedback on that Draft Sol to HBRIC Ltd by 1 May in order for HBRIC Ltd to make any necessary amendments and submit the final Sol for Council in time to achieve legislative compliance (before 30 June).
7. It is recommended that given the likely changes to the composition of the HBRIC Ltd Board of Directors that new directors commence their appointment on 1 April 2018, with their first act being to draft the Sol for the year commencing 1 July 2018.
8. Following discussions at the Corporate and Strategic meeting on 14 March 2018, the committee resolved:

"1. The Corporate and Strategic Committee recommends that Council:

- 1.1. Receives and notes the "HBRC Letter of Expectation for HBRIC Ltd" staff report.*
- 1.2. Agrees the following recommendations will form the basis for the content of the Letter of Expectation.*
 - 1.2.1 That the HBRIC Ltd reconstituted Board of Directors consists of the HBRC Chairman Rex Graham, Councillor Peter Beaven and the HBRC Chief Executive James Palmer.*
 - 1.2.2 HBRIC Ltd's revised mandate consists of managing the Port investment.*

- 1.2.3 *Council seeks advice from the office of the auditor general on how to organise its future commercial activities and the role of HBRIC Ltd, and seeks advice from HBRC staff on how investigations into commercial investments in forestry could be progressed.*
- 1.2.4 *Extends its complements to the retiring HBRIC Ltd directors on their commitment to the company and for their commitment and hard work on behalf of the region.*
- 2.1. *Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion 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.*
- 2.2. *Confirms the Letter of Expectation for HBRIC Ltd as drafted in accordance with resolution 1.2 above."*
9. Subsequent to the Committee's resolutions of 14 March 2018, the Council Chairman received further correspondence from the Chairman of HBRIC Ltd on 24 March and staff have also received legal advice on the process of making changes to the composition of the HBRIC Ltd Board. This paper provides further advice in relation to this recent information and seeks further consideration of the issues by the Council.

Governance and Administration

10. Council staff note the attached letter received from HBRIC Ltd Chairman Chris Tremain on 27 February 2018 and concur with the recommendation of a reduction in board size, which is fit for purpose to achieve its objectives with a clear revised mandate. The company's constitution requires HBRIC Ltd to have a minimum of 3 directors and this level is considered adequate for HBRIC Ltd until such time as the Council has resolved to proceed with any new investment activity.
11. Consistent with this advice, the Corporate and Strategic Committee resolved a preference to reduce the board size to three members, comprised of HBRC Chairman Rex Graham, Councillor Peter Beaven and the HBRC Chief Executive James Palmer. This board composition would see the retirement of all current independent HBRIC Ltd directors and one councillor director.
12. Further external advice (attached) from the Office of the Auditor-General on governance and accountability of council controlled organisations provides arguments for and against appointing councillor directors and local authority managers as directors of CCOs. However, the advice concludes, "In our view, effective monitoring and oversight, including setting clear expectations about the CCO's purpose and strategic alignment, should obviate any need for councillor-directors to provide an additional layer of oversight".
13. In his letter dated 23 March 2018, the Chairman of HBRIC Ltd states, "In your final deliberations on this matter, we urge you to consider some independent governance representation and any conflicts of interest brought to the table by new directors."
14. Council staff have considered these matters further and recommend that Council reconsiders the retention of at least one independent director to provide independent governance. There may at times be issues on which all of the named HBRC councillor (and any staff) directors will be in a position of conflict, and therefore be required to remove themselves from decision-making. Another consideration is that independent representation provides both diversity and commercial expertise specific to the types of transactions it is anticipated the HBRIC Ltd Board may be required to conduct.
15. If Councillors decide not to appoint or retain a permanent independent director, it is recommended that an independent director is retained via contractual agreement to see through the development and approval of the annual financial statements for 2017-18 (completion anticipated around the end of September 2018). This approach is recommended because it is expected the 2017-18 financial year will likely include the transfer of residual RWSS assets from HBRIC Ltd to another party. This will be a

complex transaction, which will attract significant interest from Audit NZ and Inland Revenue. This proposal aligns with the suggestion made by the Chairman of HBRIC Ltd in his letter of 24 March.

16. The Chief Executive further recommends that he is not appointed as a Director of HBRIC Ltd and an independent director is appointed instead, which will ensure there are no conflicts of interest with the Chief Executive's role as both a regulator and advisor to the Council. As such, if an independent director is not appointed then it is recommended that a third councillor director be appointed.
17. Council will also need to determine a Chairperson for the Board of HBRIC Ltd and any remuneration for directors. It is proposed that the Chairman of the Regional Council be appointed as Chairman of HBRIC Ltd. In light of the limited proposed activity for HBRIC Ltd at this time it is recommended that councillor directors not receive any additional remuneration over and above their councillor remuneration. It is recommended that remuneration for any independent directors be set at \$20,000 per annum in recognition of the nature of HBRIC Ltd's revised mandate and related activities.
18. As required by s.57(1) of the Local Government Act, the Council has a Policy on Appointment and Remuneration of Directors, which states that "The HBRIC Ltd Constitution provides that any director of HBRIC Ltd may be removed from office at any time by notice in writing from the majority shareholder (Council)". However, the Policy also has processes for the appointment of new directors, including the requirement to appoint a Council Appointments Committee.
19. HBRC staff have sought legal advice regarding whether Council is able to deviate from its existing policy on appointment and remuneration of directors, and is able to bypass appointing a Council Appointments Committee to appoint any new directors by simple council resolution. This advice concludes that the Council could modify the existing Policy first by way of a separate Council decision and then adopt this new approach to any new appointment. An alternative would be to resolve to depart from the existing policy if good reason exists, and while unorthodox such an approach is likely to be defensible.
20. Staff recommend that any new directors should commence their appointment on 1 April 2018, with their first act being to draft the SOI for the year commencing 1 July 2018 to Council. This approach is also consistent with that recommended by the Chair of HBRIC Ltd in his letter dated 23 March 2018.
21. Each member of the HBRIC Ltd Board is a respected director and member of the Hawke's Bay community. It is advised that the current directors of HBRIC Ltd be notified, in writing, of the shareholders wish to change the size and configuration of the Board and invite the directors to resign from their governance obligations effective from 13 April 2018. Directors should also be formally thanked for their service and support, and requested to provide a handover and transition to incoming directors.
22. It is recommended the administrative functions of the day-to-day operation of HBRIC Ltd, including financial and governance admin (EA), be brought in-house to HBRC. There is existing and/or planned capacity within HBRC to accommodate this and it will reduce costs in administering the company. It would be preferable to retain the services of the HBRIC Ltd accountant until 30 September 2018 or until the financial statements for the 2017-18 year have been approved, and to provide a subsequent handover to HBRC staff. The transition of the governance administration (EA) functions should occur as early as practically possible during April 2018, with the current HBRIC Ltd staff member concluding employment on 30 April 2018.
23. It is proposed that the services of the Chief Executive of HBRIC Ltd are retained, in order to support the Board in undertaking the revised mandate, at least until the long-term future of HBRIC Ltd has been determined by Council.

Revised Mandate - SOI

24. The 14 March 2018 Corporate and Strategic Committee resolved that HBRIC Ltd's revised mandate for the year 1 July 2018 to 30 June 2019 will consist solely of managing the Port of Napier Limited investment. The existing mandate for HBRIC Ltd was established during a special consultative procedure under the Local Government Act and the Council will need to determine whether any modification of this mandate triggers Council's Significance and Engagement Policy.
25. Council has previously expressed its interest in exploring commercial forestry joint venture investment opportunities with Tangata Whenua, the Crown and private investors. These opportunities would need to meet Council's minimum expected rate of return, while also delivering on Council's strategic environmental objectives. To progress this opportunity further approximately \$200k of expenditure is required for due diligence and development of an initial business case. The options available to fund this piece of work are:
 - 25.1. Council undertakes this work directly in this 2017-18 financial year. This unbudgeted expenditure would need to be included in the reforecast currently being undertaken. Given budgets are already under pressure, including from expenditure on the Water Conservation Order, this additional expenditure is likely to result in borrowing for a significant deficit. Given the materiality of the unplanned expenditure it could be considered poor financial management to approve the expenditure, and there is a risk Audit NZ could highlight this in an unfavourable audit report. On the other hand, given the potential to secure significant external funding from other partners it could be argued as a prudent and appropriate use of ratepayer funds.
 - 25.2. Development of a forestry investment business case is deferred and considered for inclusion by way of staff submission to the 2018-2028 Long Term Plan for Council expenditure in the 2018-19 financial year. Given the availability of Crown funding and the interest in this activity by potential co-investors a deferral is not recommended. It is further not advised that this expense is incurred by Council due to the expenditure not being tax deductible.
 - 25.3. A new CCO is created to pursue the Council's interest in commercial forestry investment. Creating a new CCO requires public consultation and various steps to establish a company, including the appointment of directors. In light of the current LTP consultation underway and the time it would take to create a new CCO this option is not recommended. Council has indicated to the community, via the 2018-2028 LTP Consultation Document that it intends consulting the community on any proposed investment in commercial forestry once a business case has been developed. This consultation could include the creation of a new commercial entity, either as a subsidiary of HBRIC Ltd or a new standalone entity.
 - 25.4. Proceed through HBRIC Ltd in 2018-19. There is no significant 2017-18 operating expenditure budget available, however given the anticipated reduction in governance and administrative related overheads, expenditure could be absorbed in the 2018-19 HBRIC Ltd operating budgets. From a financial and accounting perspective there are benefits to incurring this expenditure through HBRIC Ltd given potential tax deductibility.
 - 25.5. Council advances capital to HBRIC Ltd to enable the work to be completed immediately. The impact to HBRC would be a relatively minor loss of income to the Council on the capital advanced, but would also ensure the benefits of potential tax deductibility are captured.
26. As well as aligning strategically and having clear commercial drivers, it could be advantageous to have commercial forestry investments under the HBRIC Ltd CCO, particularly from a taxation point of view. Forestry investment returns are not immediate, set-up costs are substantial, and cash returns generally delayed and inconsistent in terms of timing. An HBRIC Ltd portfolio that includes the Port of Napier and an investment of this nature could provide a post-tax improvement compared to if those same activities were to be pursued separately. For example, the ability to off-set the

start-up costs and potential early losses from the investment against the profits of Napier Port. Any business plan and proposal for significant future investment requires public consultation with the community and careful financial analysis including tax planning.

27. Staff recommend Council requests, through the LoE, the newly appointed HBRIC Ltd Board of Directors considers a revised HBRIC Ltd mandate which is broad enough in its prescription to allow for the exploration of strategic investments including commercial forestry joint ventures should Council wish to do so.

Dividend

28. In order to meet the requirement for the Level of Dividends in the Statement of Intent it is suggested that the LoE should outline the expected levels for years one to three of the 2018-28 LTP. HBRIC Ltd has acknowledged that for planning and consultation purposes Council has assumed the dividend remains at the current level of \$10 million with a conservative 2% inflation adjustment year on year. However, the Port of Napier has agreed a lower dividend within its own Statement of Intent for 2018-19 and 2019-20, which will require reconciliation with the HBRIC Ltd Sol.
29. The Capital Structure Review panel has provided dividend analysis of various capital raising options for Port of Napier, which both support the growth of the Port and also meet Council's objectives. The analysis of these options shows no negative impact to current income levels and supports the LTP budget assumptions.

Providing Direction to HBRIC Ltd on current Sol

30. It is advised Council provides direction to the company regarding its current SOI for the year ending 30 June 2018, given the incoming directors will have three months of the current financial year to govern.
31. The new HBRIC Ltd Board of Directors' priorities for the remainder of the 2017-18 financial year should be:
 - 31.1. development of the 2018-19 draft Sol for presentation to Council by 24 April 2018
 - 31.2. proceeding with next steps for the sale of the residual RWSS assets from HBRIC Ltd to another party
 - 31.3. negotiation and confirmation of the 2017-18 dividend from the PONL, and
 - 31.4. decisions regarding the management of debt on the HBRIC Ltd balance sheet.

RWSS Transfer

32. At the Regional Council Meeting on 30 August 2017 Council resolved "That Council authorises HBRIC Ltd to sell any assets or intellectual property developed to date in connection with the Ruataniwha Water Storage Scheme."
33. Staff recommend that Council, as shareholder, further clarifies its preference and position in regards to the abovementioned sale by instructing the company to engage a third party to facilitate the sale of any assets or intellectual property developed to date in connection with the Ruataniwha Water Storage Scheme, at arms-length and within a specific timeframe. It is recommended that the new HBRIC Ltd board of directors should work with Council on defining the terms and conditions of a probable transaction.
34. It is further recommended that Council confirms it does not intend to submit a bid in this transaction, but reserves the right to transfer the assets back to the Council in the event that no acceptable offer is received. Confirming that the Council does not intend to bid into any competitive process will ensure any prospective purchaser of RWSS assets is not discouraged by the possibility that the Council is bidding into its own process.

Direction Sought for LoE

35. In order to draft the Letter of Expectation for the year commencing 1 July 2018, staff seek the Committee's consideration of:
 - 35.1. HBRIC Ltd's revised mandate consists of managing the Port investment, and also allows for exploration and development of a business case for commercial forestry investment opportunities
 - 35.2. Transitioning to Council staff the governance administration (EA) function as early as practically possible during April 2018, with the current HBRIC Ltd staff member concluding employment on 30 April 2018
 - 35.3. Retaining the services of the HBRIC Ltd accountant until 30 September 2018 or until the financial statements for the 2017-18 year have been approved
 - 35.4. Dividend levels remain at current levels plus inflation for years one to three of the 2018-2028 LTP.

Decision Making Process

36. The Statement of Intent for HBRIC Ltd is required to be prepared under section 64 of the Local Government Act 2002 (the Act). This is a statutory requirement and is not subject to consultation under the provisions of the Act.

HBRC Commercial Investment Decisions

37. Contact has been made with the Office of the Auditor-General regarding advice on Council's commercial activities and this will be brought back to Council in due course. Staff intend to provide Councillors with more information and guidance in a proposed 9 May workshop, with likely attendance from the Office of the Auditor-General. The purpose of this workshop will be setting the framework and context in which Council needs to consider the investment and asset type decisions for its investment portfolio including:
 - 37.1. Re-affirming Council's investment objectives (both statutory and Council specific), intergenerational equity considerations and risk appetite including such matters as capital protection, liquidity, acceptable returns and volatility of returns.
 - 37.2. Identifying suitable treasury investment asset types that align with Council's investment management objectives and risk appetite as outlined in the Investment Policy.
 - 37.3. Providing analysis of sector peers in terms of investment types and portfolio allocations.
 - 37.4. Providing historical information on the investment returns and volatility of investment returns for each identified asset investment type (e.g. cash, fixed interest, equity, property). Pros and cons will be outlined for each investment asset type and be bench-marked to the target yield of 4.5%.
 - 37.5. Further exploring options for addressing the capital needs of the Port of Napier Limited and identifying a preferred option for deeper analysis ahead of any Council decision to proceed to public consultation.

Recommendations

That the Hawke's Bay Regional Council:

1. Receives and notes the "HBRC Letter of Expectation for HBRIC Ltd" staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion 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.
3. Notes the correspondence received from the Chairman of HBRIC Ltd, dated 27 February and 23 March 2018.

4. Notes the Policy on Appointment and Remuneration of Directors and resolves to depart from the Policy in light of the imminent resignation of a majority of HBRIC directors and the need to make new appointments quickly in order for the company to have three directors as required by the HBRIC Constitution.
5. Agrees the HBRIC Ltd Board of Directors is comprised of three directors, including the retention of the following directors and the appointment of the Chairman of the Hawke's Bay Regional Council, effective from 1 April 2018.
6. Agrees to appoint the HBRC Chairman, Rex Graham, as the Chairman of HBRIC Ltd.
7. Agrees the proposed directors have the necessary skills, knowledge and experience to guide HBRIC Ltd and contribute to HBRIC Ltd achieving the objectives set for it by the Council.
8. Agrees that councillor directors receive no additional remuneration beyond their councillor remuneration and remuneration for any independent directors be set at \$20,000 per annum.
9. Agrees to advise all sitting directors not appointed in recommendation 5 that their services as directors are not required from 14 April 2018 and to thank them for their service.
10. Agrees that the Council will not submit a bid in an HBRIC-led transaction to sell down the Ruataniwha Water Storage Scheme assets, but reserves the right to transfer the assets back to the Council in the event that no acceptable offer is received.
11. Confirms that the Letter of Expectation for HBRIC Ltd will be drafted in accordance with:
 - 11.1. The mandate of HBRIC Ltd is to continue to manage the ownership of the Port of Napier on the Council's behalf, to sell any or all Ruataniwha Water Storage Scheme assets held by the company, and to develop business cases for commercial investment activities that support the Council's objectives for natural resource management, including forestry.
 - 11.2. Directs the Board of HBRIC Ltd to engage a suitably qualified third party to sell the Ruataniwha Water Storage Scheme assets on the Company's behalf, and to work with the Council to finalise the conditions and timing of any sale.
 - 11.3. The Finance and Administration functions of HBRIC Ltd are transferred to Hawke's Bay Regional Council but the services of the Accountant are retained until 30 September 2018 and the services of the Chief Executive are retained until the long-term future of HBRIC Ltd is determined.
 - 11.4. The Dividend Levels provided by HBRIC Ltd to Council remain at current levels plus inflation for years one to three of the 2018-2028 Long Term Plan and this to be reconciled with the Statement of Intent for the Port of Napier in the 2018-19 and 2019-20 years.
 - 11.5. Delegates the final approval and signing of the Letter of Expectation for HBRIC Ltd to the HBRC Chairman Rex Graham and Chief Executive James Palmer.

Authored by:

Jessica Ellerm
GROUP MANAGER
CORPORATE SERVICES

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

- [1](#) 27 February 2018 HBRIC Ltd letter to HBRC
- [2](#) 23 March 2018 HBRIC Ltd letter to HBRC

HAWKE'S BAY REGIONAL
INVESTMENT COMPANY LTD

159 Dalton Street
Private Bag 6006
Napier, New Zealand
Telephone: (06) 835 9200

27 February 2018

Rex Graeme
Chairman
Hawke's Bay Regional Council
159 Dalton Street
Private Bag 6006
Napier

Dear Rex

HBRIC Board of Directors

I write following our most recent HBRIC Board meeting. At the meeting a core topic of discussion was the organisational structure of HBRIC.

We are, of course, the servants of the Hawke's Bay Regional Council, but we agreed that at this pivotal time in the genesis of HBRIC that we needed to make some recommendations about the future structure of the company and its governance.

Overall we believe there are too many directors along with an unnecessary requirement for council directors. We think that the Board can be run with a smaller governance team, and with good reporting systems back to HBRC, can remove the requirement for Councillor directors.

We understand that a range of discussions are being undertaken at present in regards to the future of HBRIC. The Capital Structure Review Panel will make recommendations to HBRC. Councillors will consider those recommendations and arrive at their own conclusions.

The following recommendations consider a range of options that Council may take based upon wider structural changes currently being considered. Over-riding each solution is a smaller Board and a tighter reporting structure back to Council.



Hawke's Bay Regional Investment Company Ltd is a
Council Controlled Trading Organisation of Hawke's Bay Regional Council

1. HBRC retains HBRIC and increases its mandate to become a full regional investment company with responsibility for the Port Transaction;

- Immediate Board: Reduced to 3 Board members & no Council representatives;
- Board scope: Ability to recommend to HBRC the appointment of 2 or more additional board members and/or advisors with specialty skills for the Port transaction;
- Reporting: Formal quarterly reporting at council meetings (additional as requested by Council), ½ yearly by PON.

2. HBRC retains HBRIC but reduces its mandate to become a holding company, responsible in the interim only for the PON, and with responsibility for oversight of any Port transaction;

Option A:

- Immediate Board: Reduced to 3 Board members & no council representatives;
- Board scope: Ability to recommend to HBRC the appointment of 2 or more additional board members and/or advisors with specialty skills for the Port transaction;
- Reporting: Formal quarterly reporting at council meetings (additional as requested by Council), ½ yearly by PON.

Option B:

- Immediate Board: Reduced to 3 Council representatives (2 Councillors and Council CEO);
- Board scope: Ability to recommend to HBRC the appointment of 2 or more additional board members and/or advisors with specialty skills for the Port transaction;
- Reporting: Formal quarterly reporting at Council meetings (additional as requested by Council), ½ yearly by PON.

3. HBRC closes HBRIC and returns investments to HBRC balance sheet.

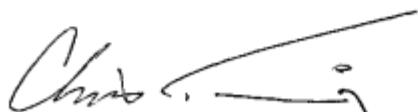
All of the above options assume a same or similar management structure with a part time CEO and Administration function. A further alternative may be for Council to assume responsibility for the management function of HBRIC within its own resources.

We believe that for a range of reasons HBRC, as the 100% owner of HBRIC, needs to take immediate action to decide the organisational direction of its investment company. This will inevitably involve a reduction of directors. At this juncture it will be important for HBRC to reconsider the skillset of directors.

Given that we have contracted staff members at HBRIC we would request your early attention to this letter so that we can advise team members quickly in regard to their future position.

The HBRIC Board wishes to work constructively with HBRC on this reorganisation but notes that the decisions regarding any change rests with HBRC. I am happy to attend a Council workshop or meeting to discuss this matter in person. We await your instruction.

Yours sincerely,



Chris Tremain
Chairman
Hawkes Bay Regional Investment Company

Item 17

Attachment 1

HAWKE'S BAY REGIONAL
INVESTMENT COMPANY LTD

159 Dalton Street
Private Bag 6006
Napier, New Zealand
Telephone: (06) 835 9200

23 March 2018

Rex Graham
Chairman
Hawke's Bay Regional Council
159 Dalton Street
Private Bag 6006
Napier

Dear Rex

HBRIC Board of Directors

I write following the letter from HBRIC to Council dated 27 February, our recent phone conversation, and the Corporate and Strategic Committee meeting of 14 March.

In our letter to you, the HBRIC Board outlined its recommendations about the future structure of the company and its governance.

The essence of our letter was that we think the Board can be run with a smaller governance team. I quote from that letter:

"Overall we believe there are too many Directors along with an unnecessary requirement for Council directors. We think that the board can be run with a smaller governance team, and with good reporting systems back to HBRC, can remove the requirement for Councillor directors."

Although we have not received direct follow-up advice from Council, we understand that at the Corporate and Strategic Committee, Council resolved to recommend to its meeting on 28 March, that HBRIC implement a smaller board of three Directors, with the proposed directors being yourself (as Council Chair), Councillor Peter Beaven and the Council CEO. This meeting was held in public and was reported by *Hawke's Bay Today* on Wednesday 21 March.

It is our opinion that at the point in time this matter became public, the current group of Directors lost their mandate to remain as HBRIC Directors and to make significant decisions on behalf of the company.



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As a result of this, our interpretation is that, at a time to be agreed, the current Directors will be released from their governance obligations. On this matter we seek your written confirmation by 4 April.

As the servants of the Hawke's Bay Regional Council, we respect our shareholder's position.

However, we do note that Council intends to discount the preferred options on the mandate and governance for HBRIC presented separately by HBRIC in our letter of 27th February, and by the Council appointed independent Capital Structure Review Panel. Both recommended a smaller board with independent governance.

In your final deliberations on this matter, we urge you to consider some independent governance representation and any conflicts of interest brought to the table by new directors.

The Board and Management of HBRIC is committed to providing an orderly transition.

In the next three months there are four material financial decisions to be made by HBRIC, which the current Directors believe are best overseen by any new Board, given their impact on the future of HBRIC and Council.

These items are:

- Determining the next steps for the RWSS and managing any financial matters associated with this
- The final dividend payment for the 2017/18 financial year
- Decisions pertaining to the existing loans held by HBRIC
- Developing the Statement of Intent for HBRIC

We propose the following transition plan:

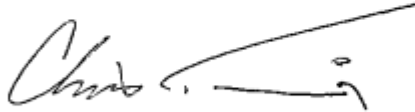
1. Any new HBRIC Directors are appointed or reconfirmed with effect 1 April 2018
2. All other current HBRIC Directors (including any Councillor Directors not continuing) resign with effect from 13 April 2018
3. The current Directors wish to ensure a seamless transition and to this end welcome any individual proposals from Council to remain available as an Advisor (i.e. not a Director) for a short period of time to support the transfer of knowledge and handover. We believe this provides clear and immediate accountability for the future and allows Council to swiftly manage the transition, whilst retaining the right balance of skills or experience it believes are required for the short term
4. The new Directors engage with HBRIC Management as soon as possible to develop a management transition plan, noting the need to provide clarity to our staff about the need for their services

Each member of the HBRIC Board is a respected Director and member of the Hawke's Bay community. The Board of HBRIC has at all times operated in the best interests of the company and in keeping with the mandate and delegations set by Council. As such, it is important that any comment from Council reflects in a fair and respectful way the reasons behind the changes to HBRIC governance, and that these in no way reflect negatively on any of the Directors.

If there is anything further we can do to assist Council, please let me know.

We await your further advice and instructions.

Yours sincerely,



Chris Tremain
Chairman
Hawkes Bay Regional Investment Company

Item 17

Attachment 2