



MINUTES OF A MEETING OF THE REGIONAL COUNCIL

Date: Wednesday 30 January 2019

Time: 10.15am

Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Present: R Graham - Chairman
P Bailey
R Barker
P Beaven
T Belford
A J Dick
D Hewitt
N Kirton
F Wilson

In Attendance: J Palmer – Chief Executive
T Skerman – Group Manager Strategic Planning
P Munro – Group Manager Maori Partnerships
J Ellerm – Group Manager Corporate Services
C Dolley – Group Manager Asset Management
L Hooper – Principal Advisor Governance
J Lawrence – Group Manager Office of the CE & Chair
B O'Keeffe – CE HBRIC Ltd
A Nunns – Bell Gully
P Boyce – PWC

1. Welcome/Prayer/Apologies/Notices

The Chairman welcomed everyone to the meeting, and Pieri Munro offered a karakia.

RC1/19 Resolution

That the apologies for absence from Mr Mohi be accepted.

**Beaven/Wilson
CARRIED**

The Chairman addressed the late provision of the Agenda documents for items 12, 13, and 14 for today's meeting outside of the Council's Standing Orders which state (9.10) "The chief executive will provide the agenda, and other materials relating to the meeting ... to members by electronic means at least 3 clear working days before the meeting ..."

The late items were provided by electronic means via email late in the afternoon of Friday 25 January 2019 which is 2 clear working days before the meeting in accordance with LGOIMA, however falls outside the standing orders requirement.

Resolution

RC2/19 That Hawke's Bay Regional Council waives the standing order 9.10 requirement for provision of the agenda, including supporting documents, to members by electronic means at least 3 clear working days before the meeting and agrees to consider all the items of business as listed on the **Late Items** and **Public Excluded Late Items** agendas.

**Barker/Beaven
CARRIED**

2. Conflict of Interest Declarations

There were no conflict of interest declarations.

3. Confirmation of Minutes of the Regional Council Meeting held on 19 December 2018

Clarification was sought in relation to the motions and amendments to waive standing orders requirements, completion of the division called for on page 11, correct spelling of the word 'fulsome', a statement in relation to James Hunter's non attendance at the meeting and the wording of item 11, resolution 5.

RC3/19 Resolution

Minutes of the Regional Council Meeting held on Wednesday, 19 December 2018, a copy having been circulated prior to the meeting, were taken as read and confirmed as a true and correct record as amended.

**Belford/Beaven
CARRIED**

4. Follow-up Items from Previous Regional Council Meetings

The item was taken as read, with one query in relation to the making public of the 28 November 2019 public excluded Regional Council meeting minutes and agenda. In relation to a declared interest in the Kahutia agenda item by Councillor Belford, the Chairman clarified that, in his view, Councillor Belford was not required to recuse himself from the debate because his declared interest was not in conflict with the issue being considered on the day. In response to a query, it was advised that emails and letters were sent to all those who submitted on "Our Port – have your say" on 21 December advising of Council's decisions, and a copy of the content will be provided to councillors.

Resolution

That the Council receives and notes the “Follow-up Items from Previous Meetings” staff report.

**Bailey/Barker
CARRIED**

5. Call for Minor Items of Business Not on the Agenda**Recommendations**

That Hawke’s Bay Regional Council accepts the following “Minor Items of Business Not on the Agenda” for discussion as Item 10:

Item	Topic	Raised by
1.	Tukituki minimum flow regime	Cr Belford
2.	Mohaka consents	Cr Belford
3.	Regional parks	Cr Graham
4.	Mahia beach	Cr Wilson

12. Napier Port IPO Transaction Project Update

Blair O’Keeffe, HBRIC Ltd Chief Executive, introduced Amon Nunns of Bell Gully (legal) and Peter Boyce from PWC (tax) before covering several activities under way to progress Council’s 19 December 2018 decisions. Highlights of the update and discussions included:

- Flagstaff appointed as Independent Commercial advisor following a competitive tender process – to lead the process
- Competitive process has been conducted for investment banks to support potential IPO design, and interviews and negotiations with preferred providers are under way
- Communications and stakeholder advisor RFPs are out now
- the IPO transaction design will be initiated shortly
- Clarification of rights of shareholders to offer advice and influence Company decisions including strategic operational matters such as employment conditions, pay and health and safety – how Council will be able to exercise its rights as majority shareholder in a publicly listed company, and the Port Companies Act
- information such as corporate responsibility can be articulated through the product disclosure statement required as part of the listing process
- Operational decisions will continue to sit with the Port’s Board of Directors, as they do now, and the Board may consider shareholder views when making strategic operational decisions but is not bound to agree or implement those wishes or views
- Board of Directors is responsible to all shareholders for compliance with the Statement of Corporate Intent
- HBRIC Ltd councillor directors and potential conflict of interest issues relating to decisions made by Council and/or decisions that HBRIC directors are required to make in the “best interests of the company” in accordance with the Companies Act
- Port Companies Act is the prevailing legislation that the Port Board of directors is required to act in accordance with
- Council cannot ‘direct’ the Board currently, and will not be able to do so in future, however is able to influence the Board through director appointments

Recommendation (*not resolved*)

That Hawke's Bay Regional Council receives and notes the "***Napier Port IPO Transaction Project Update***" staff report.

6. CCO Corporate Structure to Support Proposed Napier Port IPO Transaction

Blair O'Keeffe introduced the item, outlining the options presented as developed by Bel Gully and PWC as advisors to HBRIC Ltd. Queries and discussions covered:

- Seeking guidance and feedback ahead of a final Council decision as a lot more work to be done in relation to legal and taxation considerations for different models
- One objective of this company to support the listing exercise itself and take it to market
- Advisors reviewed an extensive range of available options in terms of taxation and legal aspects, as well as reviewing liability implications and regime for HBRIC and Port directors, and ensuring that there are no adverse tax implications
- Principle of HoldCo is that it operates as a single entity (HoldCo & PortCo with a shared Board of Directors) rather than two separate companies, to list/sell and issue shares for simplicity
- How the mechanics of appointment of directors to HBRIC Ltd, HoldCo and the Port would be transacted, in accordance with the company's constitution
- HoldCo would report to the market, and the shareholders, as the listed company
- Councillors did not agree to undertake investigations into listing shares on the Australian Stock Exchange, as there's been no prior mention made of that possibility and because consultation was solely based on NZX listing so re-consulting with the public would be required – and no investigations have been undertaken into doing that
- Requirements for consultation and communications with the public in relation to the corporate structure
- Rights of Council as shareholder and company accountability and how those might potentially be changed through the corporate structure that supports an IPO transaction
- Napier Port continues to operate as the operational company, required to have a Board and HoldCo would be the administrative company
- Keep in mind that not solely commercial environment, and consider political and public environment of local government
- Current structure of Council as 100% owner of HBRIC, and the necessity (or not) for HBRIC in relation to potential tax implications and HBRIC being able to undertake other activities, for example commercial forestry investment
- Only Napier Port can create new shares

RC5/19 Resolutions

That Hawke's Bay Regional Council:

1. Receives and notes the "***CCO Corporate Structure to Support Proposed Napier Port IPO Transaction***" staff report, and the attached Bell Gully - PWC memorandum dated 22 January 2019.
2. Agrees in principle to the proposed HoldCo structure on the basis that it is simple, tax efficient and provides a suitable and appropriate liability regime for the listing process, with primary accountability and liability for the listing compliance and aftermarket performance of the listed company resting with the Napier Port directors.
3. Notes that a detailed tax, legal and corporate structuring recommendation will follow after further work has been completed.
4. Notes that the establishment of a new company (being a 100% owned

subsidiary of HBRIC pre-listing and majority owned subsidiary of HBRIC post listing) will result in the establishment of a new Council Controlled Organisation under the Local Government Act.

5. Notes that the establishment of a new Council Controlled Organisation requires public consultation under section 56 of the Local Government Act.
6. Agrees to proceed with public consultation, in accordance with with sections 56 and 82 of the Local Government Act, on the establishment of one additional Council-controlled trading organisation to be formed as a subsidiary of HBRIC Ltd for the purposes of listing Napier Port.
7. Notes that the formal establishment of the Council Controlled Organisation is subject to the consultation process and a further Council decision to proceed.

**Graham/Beaven
CARRIED**

11. Port Development Project Executive Steering Committee Update

RC6/19

Resolutions

1. That Council excludes the public from this section of the meeting, being Agenda Item 11 Port Development Project Executive Steering Committee Update with the general subject of the item to be considered while the public is excluded; the reasons for passing the resolution and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution being:

GENERAL SUBJECT OF THE ITEM TO BE CONSIDERED	REASON FOR PASSING THIS RESOLUTION	GROUNDS UNDER SECTION 48(1) FOR THE PASSING OF THE RESOLUTION
Port Development Project Executive Steering Committee Update	<p>7(2)(b)(ii) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of that information is necessary to protect information which otherwise would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.</p> <p>7(2)(j) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage.</p>	The Council is specified, in the First Schedule to this Act, as a body to which the Act applies.

2. That Blair O’Keeffe (HBRIC Ltd Chief Executive) remains in attendance as a member of the Executive Steering Committee and subject matter expert.
3. That Amon Nunns (Bell Gully) remains in attendance as a subject matter expert and Council and HBRIC Ltd advisor.

**Barker/Beaven
CARRIED**

13. Napier Port Director Appointments

RC7/19

Resolutions

1. That Council excludes the public from this section of the meeting, being Agenda Item 13 Napier Port Director Appointments with the general subject of the item to be considered while the public is excluded; the reasons for passing the resolution and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution being:

GENERAL SUBJECT OF THE ITEM TO BE CONSIDERED	REASON FOR PASSING THIS RESOLUTION	FOUNDATIONS UNDER SECTION 48(1) FOR THE PASSING OF THE RESOLUTION
Napier Port Director Appointments	7(2)(a) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of the information is necessary to protect the privacy of natural persons.	The Council is specified, in the First Schedule to this Act, as a body to which the Act applies.

- That Blair O’Keeffe (HBRIC Ltd Chief Executive) remains in attendance as a subject matter expert.

**Barker/Beaven
CARRIED**

The meeting went into public excluded session at 11.50am and out of public excluded session at 1.38pm

Councillor Kirton left the meeting at 12.30pm

7. Affixing of Common Seal

Reason for Report

- The Common Seal of the Council has been affixed to the following documents and signed by the Chairman or Deputy Chairman and Chief Executive or a Group Manager.

		Seal No.	Date
1.1	Leasehold Land Sales		
1.1.1	Lot 46 DP 12517 CT D4/978 - Agreement for Sale and Purchase	4288	14 January 2019
1.1.2	Lot 150 DP 12780 CT E1/751 - Agreement for Sale and Purchase	4289	14 January 2019
1.1.3	Lot 33 DP 9653 CT C2/437 - Agreement for Sale and Purchase - Transfer	4291 4294	21 January 2019 23 January 2019
1.1.4	Lot 71 DP 6598 CT C2/301 - Agreement for Sale and Purchase	4292	21 January 2019
1.2	Staff Warrants		
1.2.1	G. Morton S. Grant P. Davis <i>(Delegations under Resource Management Act 1991; Soil Conservation and Rivers Control Act 1941; Land Drainage Act 1908 and Civil Defence Act 1983 (s.60-64); Civil Defence Emergency Management Act 2002 (s.86-91) and Local Government Act 2002 (s.174))</i>	4284 4285 4287	17 December 2018 17 December 2018 18 December 2018

	1.2.2 T. Edwards (Delegations under Resource Management Act 1991; Civil Defence Act 1983 (s.60-64); Civil Defence Emergency Management Act 2002 (s.86-91) and Local Government Act 2002 (s.174))	4286	17 December 2018
	1.2.3. M. Adye (Delegations under the Civil Defence Emergency Management Act 2002 (s.86-92 inclusive) and Clause 32B Schedule 7 of the Local Government Act 2002)	4293	16 January 2019
1.3	Regional Pest Management Plan 2018-2038	4290	21 January 2019

RC8/19

Resolutions

That Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy 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.
2. Confirms the action to affix the Common Seal.

**Barker/Bailey
CARRIED**

8.

Clifton to Tangoio Coastal Hazards Strategy Joint Committee Meeting Summary

Mr Chris Dolley introduced the item, which is a regular update as provided to each of the participating councils following each Joint Committee meeting, before Councillor Beaven as Chair covered some issues that arose through the process to develop the strategy to date. Discussions covered:

- Amended Terms of Reference including additional member for each participating Council approved
- Funding issues including who should pay rates, at what level, to which council and why
- Insurance companies withdrew offers for new insurance cover for some coastal communities after the Kaikoura earthquake

RC9/19

Resolution

That the Hawke's Bay Regional Council receives and notes the "Clifton to Tangoio Coastal Hazards Strategy Joint Committee Meeting Summary" report.

**Beaven/Bailey
CARRIED**

9.

Significant HBRC Activities through February 2019

The item was taken as read with some discussion around:

- staff to avoid the use of acronyms
- HBRC and others' expert evidence lodged with the tribunal considering the Ngaruroro water conservation order application, and available on the Tribunal website

- Science investigations into ecological effects of herbicides
- guidance sought in relation to science reporting to Council including the suggestion that regular summary of reports coming out of the Science sections of Council be provided to the Environment and Services Committee, and presentations provided where relevant to specific work programmes
- the ColiMinder machine borrowed from NIWA to be installed in Pandora Pond to monitor E.coli
- the Outdoor Burning application for orchardists and other to check best time for burning
- flood control schemes
- development of an updated Tukituki groundwater model in terms of potential future plan change and Tukituki Taskforce overseeing work under way
- Lake Tutira air curtain
- Whakaki stakeholder engagement around consents
- Nuhaka river realignment
- Lake Mangapoike being made more stable through lowering the lake level by about 1 metre and Gisborne District Council investigating recreational opportunities
- Phosphate levels in Lake Whatuma inflows and outflows.

RC10/19 **Resolution**

That the Hawke's Bay Regional Council receives and notes the ***Significant HBRC Activities through February 2019*** report.

**Beaven/Bailey
CARRIED**

14. Pan Pac Forest Products Ltd Whirinaki Wastewater Discharge

James Palmer introduced the item, which outlined the chronology of events up to Friday 25 January. Discussions and queries covered:

- Complaints received, and how those were followed up on or actioned depending on circumstances, observations of the level of contamination and assumptions of the Pollution Response duty officer at the time
- The leak was identified by the Pollution Response duty officer upon investigating a complaint on 16 September 2018
- Confirmation of staff's view that Pan Pac is doing everything possible to find a long term solution and to repair the leaking pipe (after lag period over the Christmas break) and communicating with residents
- The new resource consent for the Pan Pac discharge comes into effect once all Environment Court appeals are resolved – and will include conditions enabled by technology advances previously unavailable
- contingency plans, when Plant shutdown can be done, and investigations into the alternative of discharging the wastewater to land were undertaken through the most recent consent application process
- Pan Pac has been undertaking dive assessments of the outfall diffuser and underwater pipeline, and fixing/ maintaining that infrastructure at least 4 times per year. Previously no conditions relating to maintenance of the buried sections of pipe.
- New consent requires in-pipe inspections of the entire length of pipeline and reporting to Council
- Diffuser is 400 metres long and sits on the seabed, and 400 metres of the pipe is under the seabed and end to end the pipeline is about 2km long
- Tracking monitoring and reporting will be much simpler with IRIS
- Staff agree that the level of detail contained in HBRC public communications about what Council is doing needs improvement

RC11/19 **Resolution**

That Hawke’s Bay Regional Council receives and notes the “Pan Pac Forest Products Ltd Whirinaki Wastewater Discharge” staff report.

**Dick/Hewitt
CARRIED**

10. Discussion of Minor Items Not on the Agenda

Item	Topic	Raised by
1.	Mohaka consents Query about resource consent applications received for dairy related resource consents in relation to the timelines for the Mohaka Plan Change	Cr Belford
2.	Tukituki minimum flow regime 1 February deadline for feedback to Policy team in relation to a potential plan change, will be reported to the Regional Planning Committee	Cr Belford
4.	Mahia beach Mokotahi Hill has a newly developed pathway and is under QEII covenant so has real potential as a regional park	Cr Wilson
3.	Regional parks Pakowhai and Hawea parks very visible and looking stunning Waitangi Park – and the extension with a second wetland Discussions about potential Ahuriri Regional Park	Cr Graham

Item - 12. Napier Port IPO Transaction Project Update – was considered as the first item of business for decision.

Item - 14. Pan Pac Forest Products Ltd Whirinaki Wastewater Discharge - was considered as the last item of business on the agenda and immediately before discussion of minor items not on the agenda.

Item - 11. Port Development Project Executive Steering Committee Update - was considered in public excluded session as the first item of business.

Item - 13. Napier Port Director Appointments - was considered in public excluded session as the second item of business, for decision.

Closure:

There being no further business the Chairman declared the meeting closed at 2.48pm on Wednesday 30 January 2019.

Signed as a true and correct record.

DATE:

CHAIRMAN: