



Meeting of the Hawke's Bay Regional Council

LATE ITEMS

Date: Wednesday 24 June 2020
Time: 11.00am
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

ITEM	TITLE	PAGE
Decision Items		
24.	HBRIC Ltd Managed Funds Transfer to HBRC	3

HAWKE'S BAY REGIONAL COUNCIL

Wednesday 24 June 2020

Item 24

Subject: HBRIC LTD MANAGED FUNDS TRANSFER TO HBRC

Reason for Report

1. This item updates Council on Napier Port IPO funds held by HBRIC, which were to be returned to HBRC and provides the means for Council to approve an immediate transfer from HBRIC Ltd to HBRC of a portion of the managed funds currently held by HBRIC.

Officers' Recommendation

2. Council officers recommend that councillors confirm and resolve the proposed recommendations in accordance with the information and rationale provided following and with the support of HBRIC Ltd Board of Directors provided on 18 June 2020.

Background /Discussion

3. HBRIC received funds totaling \$107m following the initial public offering of Napier Port on the NZX in 2019. Of this amount:
 - 3.1. \$44m was distributed to HBRC by way of fully imputed dividend - in September 2019. This was subsequently invested in managed funds with HBRC Mercer and Jarden.
 - 3.2. \$1.5m was distributed by way of loan repayment (eliminating a previous loan between Council and HBRIC).
 - 3.3. A further \$35m was to be returned by HBRIC to HBRC by way of a non-taxable share cancellation - following receipt of a binding ruling from the Inland Revenue (IR), which was expected within several months. Unfortunately, the IR has not issued the desired binding ruling. Consequently, the intended share cancellation and transfer of \$35m funds from HBRIC to HBRC has not occurred.
 - 3.4. The remaining funds now with HBRIC have been invested in mirrored managed funds with Jarden and Mercer, governed by the HBRC Statement of Investment Policy and Objectives (SIPO). As at 31 May the value of the funds were \$31m in Jarden and \$30.8m in Mercer.
4. The COVID 19 pandemic has (and continues) to cause significant financial challenges for the Council and the Hawkes Bay region more generally. The HBRIC managed funds initially dropped significantly in value but have now returned to close to pre COVID 19 values and as at 31 May had a closing value of \$61.8m.
5. HBRIC has continued to explore options to pass funds through to Council, and following dialogue with PwC has ascertained that HBRIC could transfer circa \$18m of domestic managed funds held with Jarden (based on May 2020 investment valuations) to HBRC in return for an interest bearing loan from HBRIC to HBRC. PwC has advised that currently there are tax issues associated with transferring the remaining funds to HBRC. It is recommended that Council approve this transaction.
6. The PwC recommended rate of interest for the above mentioned loan is 2%. It is recommended that Council approve this rate for the loan.
7. HBRIC is proposing to develop a longer term approach for investing the managed fund investments. This includes HBRIC having access and full control and accountability to an agreed amount of the managed fund investments, with HBRIC having its own SIPO – intended to include capital base protections such as the existing HBRC SIPO and proposed HBRIC SIPO being subject to Council approval.
8. The remainder of the funds (all the Mercer funds and the foreign component of the Jarden funds) would remain with HBRIC, whilst further work is undertaken to explore options to repatriate funds to Council in an efficient manner.

Proposed Transfer Steps

9. It is proposed that HBRIC Ltd will transfer existing managed fund investments of circa \$18m to Council before the 30 June 2020, with the final amount to be confirmed after taking account of any movements in investment value up to the time of transfer.
10. Staff have connected with the investment managers and confirmed that it should be a simple process for them to transfer the investments from HBRIC Ltd to Council, with no processing costs to HBRIC Ltd or Council. The transfer is not expected to give rise to any material adverse financial reporting or tax implications, based on current investment values.
11. In order to transfer the managed fund investments from HBRIC Ltd to Council, it is proposed that HBRIC Ltd will dispose of (sell) its investments to Council at market value in consideration for a loan receivable from Council, with interest calculated at a market rate. This will be documented in a simple Sale & Purchase Agreement between HBRIC Ltd and Council, including details of the loan.

Options Assessment

12. Options available to Council are to either approve the proposed transfer of funds from HBRIC to HBRC at the stipulated interest rate, or to leave the funds in HBRIC Ltd as they currently stand and not go ahead with the proposed transfer.

Other Considerations

13. A key piece of work that has been held up by the delays in the funds transfer is developing a policy for the management of investment gains and income from the HBRIC managed funds. It was always intended that these benefits would pass to Council. In the coming months Council staff will work with HBRIC Ltd to develop a policy for managed funds gains/income distributions from HBRIC Ltd to HBRC. In parallel Council staff will also work with HBRIC to develop a clear capital structure for HBRIC Ltd to support management of the funds and prospective investments.
14. In the interim, due to Council's shortfall in income resulting from the cancelled interim dividend from Napier Port and other Covid related affects, it is proposed that any capital gains achieved on the managed funds held by HBRIC that are able to be distributed tax free, are liquidated and distributed to Council before June 30. As at 31 May 2020 the funds had a combined gain of approx. \$280k.
15. The HBRIC Ltd Board of Directors supports the recommendations in this report.

Financial and Resource Implications

16. A commitment from HBRC to make annual interest payments of 2% on the outstanding loan balance to HBRIC Ltd.
17. HBRC assumes all risks and rewards of the portion of the managed funds transferred including future earnings and capital gains. The managed funds are forecasted to earn 5% annually.

Decision Making Process

18. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:
 - 18.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 18.2. The use of the special consultative procedure is not prescribed by legislation.
 - 18.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 18.4. 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 Hawke's Bay Regional Council:

1. Receives and considers the "*HBRIC Ltd Managed Funds Transfer to HBRC*" 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 or persons likely to have an interest in the decision.
3. Approves the proposed transfer of managed fund investments totaling circa \$18m from HBRIC Ltd to Hawke's Bay Regional Council, in consideration for the interest bearing loan.
4. Approves the 2% interest rate for the loan between HBRIC Ltd and Hawke's Bay Regional Council
5. Approves HBRIC Ltd liquidating any tax paid capital gains from the HBRIC Ltd held managed funds by June 30, 2020.
6. Delegates authority to the Chief Executive and the Group Manager Corporate Services to formalise and execute the resolutions above.

Authored by:

Kishan Premadasa
MANAGEMENT ACCOUNTANT

Bronda Smith
CHIEF FINANCIAL OFFICER

Approved by:

Jessica Ellerm
GROUP MANAGER CORPORATE
SERVICES

Tom Skerman
GROUP MANAGER STRATEGIC
PLANNING

Attachment/s

There are no attachments for this report.