



AGENDA

Ordinary Council meeting Monday, 14 November 2022

I hereby give notice that an Ordinary meeting of Council will be held on:

Date: Monday, 14 November 2022

Time: to start at the conclusion of the Strategy,
Finance & Risk Committee meeting

Location: BoP Regional Council Chambers
Regional House
1 Elizabeth Street
Tauranga

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

Marty Grenfell
Chief Executive

Terms of reference – Council

Membership

Chairperson	Commission Chair Anne Tolley
Members	Commissioner Shadrach Rolleston Commissioner Stephen Selwood Commissioner Bill Wasley
Quorum	<u>Half</u> of the members physically present, where the number of members (including vacancies) is <u>even</u> ; and a <u>majority</u> of the members physically present, where the number of members (including vacancies) is <u>odd</u> .
Meeting frequency	As required

Role

- To ensure the effective and efficient governance of the City
- To enable leadership of the City including advocacy and facilitation on behalf of the community.

Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
 - Power to make a rate.
 - Power to make a bylaw.
 - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
 - Power to adopt a long-term plan, annual plan, or annual report
 - Power to appoint a chief executive.
 - Power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
 - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
 - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.
- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the CCO Boards of Directors/Trustees and representatives of Council to external organisations.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.

Procedural matters

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other Delegations of Council's powers, duties and responsibilities.

Regulatory matters

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).

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- 1 OPENING KARAKIA**
- 2 APOLOGIES**
- 3 PUBLIC FORUM**
- 4 ACCEPTANCE OF LATE ITEMS**
- 5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN**
- 6 CHANGE TO THE ORDER OF BUSINESS**
- 7 CONFIRMATION OF MINUTES**
Nil
- 8 DECLARATION OF CONFLICTS OF INTEREST**
- 9 DEPUTATIONS, PRESENTATIONS, PETITIONS**
Nil
- 10 RECOMMENDATIONS FROM OTHER COMMITTEES**
Nil

11 BUSINESS

11.1 Options for delivery of Te Manawataki o Te Papa development project by a council-controlled organisation

File Number: A14170628

Author: Alastair McNeil, **General Manager: Corporate Services**

Authoriser: Marty Grenfell, **Chief Executive**

PURPOSE OF THE REPORT

1. To consider the establishment of a council-controlled organisation to lead delivery of Te Manawataki o Te Papa projects.

RECOMMENDATIONS

That the Council:

- (a) Receives the report "Options for delivery of Te Manawataki o Te Papa development project by a council-controlled organisation".
- (b) Undertakes a consultation process to establish a company structure council-controlled organisation to govern delivery of the civic development projects, 100% owned by Council.
- (c) Subject to final decision-making following the consultation in resolution (b):
 - (i) agrees to include in the 2023/24 Annual Plan a \$700k loan-funded grant and associated ratepayer funded interest and debt retirement charges over a maximum period of ten years.
 - (ii) agrees to include in the 2024-34 Long-term Plan process an annual \$600k loan-funded grant and, for each such annual loan, associated ratepayer funded interest and debt retirement charges over a maximum period of ten years.

EXECUTIVE SUMMARY

2. Following adoption in June 2022 of the Long-term Plan amendment that approved the inclusion of the Te Manawataki o Te Papa civic development projects, consideration has been given to the optimum governance and operational model to ensure delivery of those projects.
3. That consideration, by a consultant supported by senior council staff, assessed various options including status quo and has resulted in a recommendation that a council-controlled organisation be established to govern and lead delivery of the civic development projects.
4. Establishment of a council-controlled organisation requires various legislative steps and considerations, including community consultation. This report recommends commencing that process.

BACKGROUND

Te Manawataki o Te Papa

5. In June 2022, after extensive public engagement and consultation, Council approved an amendment to the Long-term Plan to bring the full vision for our civic precinct, called Te Manawataki o Te Papa, to life in a single-stage, phased development.

6. The programme of work will see a \$303.4 million investment in developing the city centre over the next eight years and includes facilities such as a civic whare (public meeting house), museum, library, an exhibition and events centre, as well as the associated landscaping. It will be subject to achieving 50% of the required funding from sources other than rates.

Delivery review

7. In July 2022, the Chief Executive commissioned a review of potential options for the long-term delivery of the Te Manawataki o Te Papa programme of works. This occurred at the same time as internal staffing structures were increased and strengthened to commence the delivery phase.
8. That commission ultimately resulted in two reports.

Report 1

9. In August 2022, Council received a report (“the August 2022 Pedersen report”) against the original brief, the objective of which was:
 - *To investigate the use of council-controlled organisations (“CCOs”) or other subsidiary entities for the purpose of developing significant community facilities, by other councils within New Zealand, and*
 - *To identify whether or not there could be potential advantages or benefits for Tauranga City Council in applying a CCO or other subsidiary entity model to the redevelopment of the Tauranga civic precinct and other major community facilities.*
10. The August 2022 Pedersen report is included as [Attachment 1](#) to this report. That report considered the merits of:
 - a CCO model to lead the delivery of the civic development, and
 - a modified status quo of in-house delivery with a delegated ‘project board’.
11. The August 2022 Pedersen report concluded that:

“There is a good case for considering the creation of a company structure CCO to manage the redevelopment of the Tauranga civic precinct. The potential benefits of a more commercial approach to project governance and management, greater confidence from potential funders and other stakeholders, and the ability to structure a CCO to enhance project certainty, lead me to that conclusion.”
12. The August 2022 Pedersen report also recommended that council proceed to a detailed implementation investigation into the establishment of a company structure CCO.

Report 2

13. Consistent with the recommendation above, further work was undertaken to consider different potential CCO models for the delivery of the civic development.
14. That work was underpinned by an assumption that the key drivers for establishing a CCO for the civic development project are:
 - *To establish a capable delivery vehicle for large scale TCC community facilities*
 - *To create greater confidence amongst the community, funders and other stakeholders in TCC’s ability to successfully deliver large scale community facilities.*
15. Following collaborative work between senior council staff and the consultant, a second report (“the November 2022 Pedersen report”) was received and is included as [Attachment 2](#) to this report.
16. The November 2022 Pedersen report evaluated three CCO models in terms of their appropriateness for implementation as a delivery vehicle for the civic development. These included one that was purely a governance model and two that were governance and delivery models with varying degrees of separation from Council. That report also evaluated

both the status quo approach and a modified status quo approach against the same 13 criteria.

17. The November 2022 Pedersen report recommends the governance-only CCO model as that option *“was considered to be superior to the other CCO options and also superior to the status quo or any other internal TCC structure that could be created in terms of project outcomes that could be achieved.”*

STRATEGIC / STATUTORY CONTEXT

18. Te Manawataki o Te Papa – the heartbeat of Te Papa – is a blueprint for the transformation of the city centre into a place where people will want to live, work, play and visit – a place where we can tell the amazing stories of our city’s heritage and culture.

19. Te Manawataki o Te Papa strongly promotes that part of the recently adopted vision for Tauranga that speaks of fuelling possibility:

Tauranga is a city where we foster creativity and innovation, celebrate our arts and culture, and empower our changemakers to create a vibrant city into the future.

20. Te Manawataki o Te Papa helps, strongly or partially, to advance each of council’s community outcomes:

- An inclusive city
- A well-planned city
- A city that supports business and education
- A city that values, protects and enhances our environment
- A city we can move around easily.

21. As a masterplan, Te Manawataki o Te Papa links to all of the above strategic aims. However, until the masterplan is delivered, and delivered well, the strategic benefits will not be realised. This paper, and the proposed establishment of a CCO to drive the project implementation, is intended to ensure that delivery of the Te Manawataki o Te Papa projects is exemplary and for the ultimate benefit of all Tauranga’s residents and visitors.

OPTIONS ANALYSIS

22. As noted above, the November 2022 Pedersen report (at Attachment 2) assessed three CCO models against 13 criteria, as well as assessing both the status quo and a modified status quo approach. A summary of that assessment can be found at paragraph 26 of that report.

23. The November 2022 Pedersen report makes a clear recommendation – for a governance-only CCO to lead the delivery of the civic development projects (option 1 per that report). Paragraph 27 of that report provides extensive reasoning behind that recommendation.

24. As such, there are now three options for Council to consider:

Option 1 – accept the Pedersen recommendation and move to establish a company structure CCO responsible for delivery of the civic development per the report

Option 2 – accept the principle of establishing a CCO but modify the model

Option 3 – reject the Pedersen recommendation and retain a status quo (or modified status quo) approach to governing and delivering the civic redevelopment projects

25. The advantages and disadvantages, including an indication of additional costs, of these options are covered in the November 2022 Pedersen report and are not repeated here.

26. Staff recommend that *Option 1 – accept the Pedersen recommendation and move to establish a company structure CCO* is approved by Council.

FINANCIAL CONSIDERATIONS

27. The estimated costs for the establishment of this CCO are \$100k. This will include costs of establishment, board set up and recruitment costs, and legal costs. Given there is no asset ownership within the proposed CCO, minimum equity will be used to establish the CCO.
28. Annual costs of the proposed CCO have not been fully costed but are expected to be approximately \$600k. These costs will be predominately for the costs of the board and senior executive.
29. These costs will be funded by a loan funded grant from Council to the CCO. It is recommended to loan fund this grant given the nature of this CCO and its sole focus on the governance of delivery of long-term capital expenditure. This has not been included in the overall budget of Te Manawataki o Te Papa and would therefore be additional budget which would be funded through a ratepayer funded charge over a maximum ten year time period.
30. Existing governance costs are approximately \$130k per annum, plus internal staff costs, which will not be incurred once this CCO is established and operating.
31. Any current year costs are estimated to fall within Chief Executive delegated authority consistent with the funding methodology proposed above.

LEGAL IMPLICATIONS / RISKS

32. The establishment and operation of a CCO is subject to a number of provisions in the Local Government Act 2002 (“the Act”). These provisions predominantly relate to the governance of the CCO and the accountability of the CCO and its directors back to council and ultimately the community.
33. Key among the provisions in the Act are that:
 - (a) Directors of the CCO need to be appointed in accordance with council’s Appointment of Directors to Council Organisations policy¹
 - (b) Council may prepare a ‘statement of expectations’ outlining its expectations of the CCO
 - (c) The CCO must prepare and adopt an annual statement of intent (following council input) the purpose of which *is to*:
 - (i) *state publicly the activities and intentions of the CCO for the year and the objectives to which those activities will contribute; and*
 - (ii) *provide an opportunity for shareholders to influence the direction of the organisation; and*
 - (iii) *provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.*²
 - (d) The CCO must prepare, and provide to council, six-monthly and annual reports on its operations.

CONSULTATION / ENGAGEMENT

34. Under Section 56 of the Act council must consult with the community before establishing a CCO. While that consultation needs to meet the principles of consultation set out in section 82 of the Act, the way that those principles are met is at council’s discretion.
35. Key within the principles of consultation are that persons who are affected by, or interested in, the matter should be:
 - given clear information about the purpose of the consultation
 - provided with reasonable access to relevant information

¹ https://www.tauranga.govt.nz/appointment_directors_council_organisations.pdf

² Section 64(2), Local Government Act 2002

- encouraged to provide and present their views

... and that council should receive those views with an open mind.

36. Given the nature of the matter for consultation – the establishment of a CCO structure to guide delivery of an already-agreed programme of works – staff consider that a consultation process that meets the statutory requirements should be:
- widely available (advertised through council’s digital channels and print media)
 - relatively brief
 - focused on the single key decision to be made (to establish, or not, a CCO)
 - supported by links to this report, the August 2022 Pedersen report and the November 2022 Pedersen report.
37. Appropriate communications material will be prepared to support the consultation.
38. The substance of the Te Manawataki o Te Papa masterplan and the delivery of that masterplan through the amended Long-term Plan has been extensively consulted on previously. There is no need or intention to re-consult on those matters.

SIGNIFICANCE

39. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals, and decisions in this report against Council’s Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
40. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
- (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the matter.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
41. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the proposal is of medium significance.

ENGAGEMENT

42. Taking into consideration the above assessment, that the proposal is of medium significance, and the legal requirement to consult on the establishment of a CCO, staff are of the opinion that consultation under section 82 of the Local Government Act 2002 (‘principles of consultation’) should occur prior to Council making a final decision.

Click here to view the [TCC Significance and Engagement Policy](#)

NEXT STEPS

43. If the above recommendation is adopted, consultation is proposed to commence on 21 November, closing on 2 December. Depending on the extent of feedback received and the issues covered in that feedback, it is expected that a further report will be presented to Council on 12 December.
44. If, following consultation, Council determines to proceed with the creation of a CCO for the purpose of governing the delivery of civic development projects, the following steps will be required:
- (a) incorporate the CCO company and adopt a constitution (this may have one initial director for the purposes of establishment)

- (b) identify the skills required for the Board and prepare an information pack for potential directors including a briefing on the objectives and status of the project, the role of the CCO and relationship with Council, other parties and organisations involved, funding streams, time commitment, remuneration, directors' and officers' insurance cover etc
- (c) seek and engage directors in accordance with Council's Appointment of Directors to Council Organisations policy
- (d) issue a Statement of Expectations to the CCO
- (e) delegate powers and functions to the CCO and identify reporting requirements of the CCO back to Council
- (f) receive and consider the draft Statement of Intent produced by the CCO.

ATTACHMENTS

1. **Final civic precinct report 200822 - A14174289** [↓](#) 
2. **Final CCO report 041122 - A14174291** [↓](#) 



7 Pateke Way, Paraparaumu 5032
maxpconz@gmail.com 027 8119922

Marty Grenfell
Chief Executive
Tauranga City Council.

Te Manawataki o Te Papa – The potential role of a CCO or other subsidiary entity in the redevelopment of the Tauranga civic precinct

Introduction

1. The objectives of this investigation are:
 - to investigate the use of Council Controlled Organisations (CCOs) or other subsidiary entities for the purpose of developing significant community facilities, by other Councils within New Zealand; and
 - to identify whether or not there could be potential advantages or benefits for Tauranga City Council (TCC) in applying a CCO or other subsidiary entity model to the redevelopment of the Tauranga civic precinct and other major community facilities
2. The full terms of reference for the investigation are attached as Appendix 1.
3. A list of the people interviewed in the course of this investigation, is attached as Appendix 2.

Summary and recommendations

4. There is a good case for considering the creation of a company structure CCO to manage the redevelopment of the Tauranga civic precinct. The potential benefits of a more commercial approach to project governance and management, greater confidence from potential funders and other stakeholders, and the ability to structure a CCO to enhance project certainty, lead me to that conclusion.
5. The case for considering a CCO is even stronger, if the CCO is not set up solely for the civic precinct project but rather continues to exist beyond that time to deliver other significant TCC projects.
6. However, the potential benefits of a CCO structure can only be realised if the CCO is established in a manner that empowers it to deliver them. Great care will need to be taken in the design of the constitution of the CCO and the structure of the relationship between it and TCC, if a decision is made to proceed, to ensure that the CCO can deliver to its potential.

7. Recommendations

1. That TCC proceed to a detailed implementation investigation into the establishment of a company structure CCO to deliver the civic precinct redevelopment project and other major TCC sponsored community amenity projects.
2. That TCC make a final decision on the establishment of a CCO following consideration of the detailed implementation investigation.

Project background information

8. I have not included extensive background information about the project in this report as that is already known by you. It is however useful to provide a brief outline which can serve as a reference point to matters raised later in the report.

The scope of the redevelopment

9. The proposed redevelopment is described in the document "*Te Manawataki O Te Papa (Civic Precinct) Masterplan (Refreshed 2021)*". A plan showing the masterplan site layout is attached at Appendix 3.
10. The Council will be responsible for developing the portion of the masterplan site bounded by Willow, Durham, Wharf and Hamilton Streets, as well as Masonic Park and the sections of Willow Street, The Strand and the Waterfront Reserve shown on the site plan (sites A and C).
11. The portion of the site that is the former TV3 property in Durham Street (site B), is intended to be predominantly privately developed. Projects on this portion of the site are concept only at this stage.

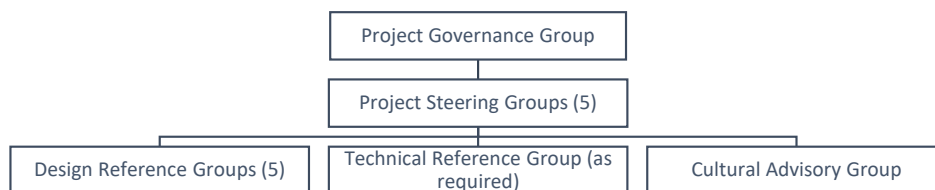
Funding

12. Total capital funding of \$303M has been provided for this project within the TCC 2021 – 2031 Long Term Plan. The approved funding is subject to achieving 50% of the funding from sources other than rates funded debt.
13. The funding approval provides for decision gateways for each key facility that forms part of the overall development. Consideration of cost to complete and funding mix would be reviewed as part of that decision gateway process.

Governance of the project

14. Current arrangements are that ultimate governance of the project is provided by the TCC Commissioners and will default to provision by the elected TCC when the term of the Commission ends in 2024.

15. Project governance arrangements that are subordinate to the formal deliberations by the Commission, are currently structured as follows:



A team consisting of the Steering Group Chairs, the Chief Executive and selected executive staff support this structure by performing a “clearing house” role.

16. The Project Governance Group consists of nine members including an independent chair. The remaining membership consists of: TCC executive members (3); TCC Programme Director; Mana whenua representative; TCC’s Property development consultant; Willis Bond representative; Independent Tauranga based accountant.

The relationship with Willis Bond

17. In 2018, TCC appointed Willis Bond and Co (Tauranga) Ltd (WB) as the preferred development partner to deliver the civic precinct development.
18. In 2021, TCC adopted the current version of the development masterplan that had been prepared by WB.
19. In 2021, TCC appointed WB as development manager for sites A and C. At the same time TCC confirmed the preferred supplier status of contractors and consultants that were listed in the 2018 partnering agreement for the delivery of the development. The Council retains the right to review preferred supplier proposals for cost competitiveness.
20. WB has been engaged by TCC to undertake preliminary design of all the facilities on site A.

TCC will be the principal to contracts with suppliers for the development of sites A and C.

Council Controlled Organisations

21. TCC already has a number of CCOs in place and accordingly is not a stranger to this form of governance structure and how it operates. However, it is still useful to set out some information about CCOs to provide context to this report.
22. A CCO is an entity in which one or more local authorities control 50% or more of the voting rights or appoint 50% or more of the members of the governing body. A CCO can be a company, trust, partnership, incorporated society, joint venture, or other similar profit-sharing arrangement.

23. The 2015 report of the Controller and Auditor General (OAG) "*Governance and accountability of Council Controlled Organisations*" identified the following reasons that had been given by councils for establishing CCOs:
- *improved commercial focus – that is, operating a company with a professional board of directors with the objective of achieving greater operating efficiency;*
 - *ring-fencing financial risk, by using an incorporated structure to insulate a local authority from financial liability for an activity or venture involving other parties;*
 - *empowering local communities – that is, creating a trust with a set budget funded by a local authority but managed by members of the community for a specific purpose such as maintaining a community centre;*
 - *tax-effectiveness – local authorities can derive tax credits from commercial subsidiaries that pay dividends;*
 - *independence – separation from political direction;*
 - *streamlining bureaucracy, enabling nimbleness and agility – CCOs have less "process" to follow in making decisions than local authorities;*
 - *economies of scale, where shared services CCOs combine several local authorities' similar activities;*
 - *the ability to recruit and retain high-quality board members and staff who might not be available to be members or employees of a local authority;*
 - *access to a wider range of funding sources – a trust or similar entity with community representatives can get donations and contributions for significant community projects and may be eligible for funding that local authorities are not.*

Not all of these are relevant to the scenario that is the subject matter of this report.

24. The OAG report also identifies some possible disadvantages of CCOs. These include:
- *the local authority's lack of direct accountability to the community for the services the CCO delivers;*
 - *tensions between the objectives of pursuing profit and delivering community outcomes;*
 - *additional ongoing costs – the costs incurred by the local authority in monitoring the performance of the CCO, and the CCO's own costs, can increase overall service delivery costs;*
 - *reduced ability to manage risk – arm's-length delivery can make managing risks to the reputation of the local authority more difficult.*

Again, not all of these are relevant to the scenario that is the subject matter of this report.

25. A key point to remember is that while a CCO is an arms-length organisation, the council remains accountable to the community for the CCO's performance.

Other potential project delivery vehicles (non-CCO)

26. By definition, any arms-length entity that is established by TCC will be a CCO if it controls 50% or more of the voting rights or appoints 50% or more of the members of the governing body. Because of this, other potential project delivery vehicles are likely to be limited to either a subsidiary "council organisation" or some form of internal structure within the TCC organisation.
27. A "council organisation", as referred to in the preceding paragraph, is an entity in which a local authority has an ownership interest that does not meet the threshold to be a CCO. It seems so improbable that TCC would establish an organisation in which it held only a minority shareholding to develop the civic precinct, that I have not considered it further in this report. I

12 DISCUSSION OF LATE ITEMS

13 PUBLIC EXCLUDED SESSION

Nil

14 CLOSING KARAKIA