AGENDA

Ordinary Council meeting
Monday, 19 August 2024

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

Date:	**Monday, 19 August 2024**
Time:	**9.30am**
Location:	**Bay of Plenty 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	Mayor Mahé Drysdale
Deputy Chairperson	Deputy Mayor Jen Scoular
Members	Cr Hautapu Baker Cr Glen Crowther Cr Rick Curach Cr Steve Morris Cr Marten Rozeboom Cr Kevin Schuler Cr Mikaere Sydney Cr Rod Taylor
Quorum	Half of the members physically present, where the number of members (including vacancies) is even; and a majority of the members physically present, where the number of members (including vacancies) is odd.
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).

Order of Business

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 Briefing to Incoming Council - Update

File Number: **A16210521**

Author: **Jeremy Boase, Manager: Strategy & Corporate Planning**

Authoriser: **Christine Jones, General Manager: Strategy, Growth & Governance**

Please note that this report contains confidential attachments.

Public Excluded Attachment	Reason why Public Excluded
Item 11.1 - Briefing to Incoming Council - Update - Attachment 1 - Attachment 1 - Project Funding Updates Council Report 11 July 2024	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities.
Item 11.1 - Briefing to Incoming Council - Update - Attachment 2 - Attachment 2 - Council Resolutions 11 July 2024	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities.

PURPOSE OF THE REPORT

1. To provide an update to the Briefing to Incoming Council adopted by the previous Council, and to advise Council as to the action plan to address matters identified in that update.

RECOMMENDATIONS

That the Council:

(a) Receives the report "Briefing to Incoming Council - Update".

(b) Formally receives the “Briefing to Incoming Council” prepared and adopted by the previous Council.

(c) Transfers Attachments 1 and 2 into the open with immediate effect.

(d) Notes the Action Plan to continue to seek endorsement of a business case and ultimately secure funding for Cameron Road Stage 2, (as outlined in paragraph 16 of the ‘Briefing to Incoming Council – Update’ report).

(e) **Attachment 1** can be transferred into the open when approved by Council resolution (refer (c) above).

(f) **Attachment 2** can be transferred into the open when approved by Council resolution (refer (c) above).

BACKGROUND

Briefing to Incoming Council

2. On 10 June 2024, Council formally approved a document prepared by the commissioners titled ‘Briefing to Incoming Council’. That document was subsequently posted on the Election

2024 page of Council's website where it is still available: brief-incoming-council-2024.pdf. It was also referenced in an email from the Electoral Officer to all candidates on 17 June 2024.

3. The Commissioners prepared the Briefing to Incoming Council to share with the incoming Council their thoughts on the strategic direction and priorities for the city, and the challenges and opportunities that Council faces. Council is invited to formally receive that document.

Matters occurring since

4. Since the Briefing to Incoming Council was written, adopted and published, two matters beyond Council's control have occurred that have a significant impact on elements of that document. One of these matters relates to the financing of the Te Manawataki o Te Papa (the heartbeat of Te Papa) project which is covered in a separate report on this agenda. The other matter of significance relates to funding from New Zealand Transport Agency (NZTA).

5. In response to those matters, the outgoing Council received a confidential report on 11 July 2024 setting out the matters that arose and the potential impacts on Council. That report also outlined an action plan developed by staff to respond to those matters. A copy of that report and its three attachments is included as **confidential Attachment 1** to this report.

6. Having considered the report, Council passed several resolutions. These included endorsing the action plan prepared by staff and the preparation of an addendum to the Briefing to be reported to the incoming Council (this report). The adopted resolutions are included as **confidential Attachment 2** to this report.

Revoking confidentiality

7. The 11 July 2024 report was received in confidential, and the Council resolved to retain it in confidential. At that time, the reasons for this were to enable ongoing discussions and negotiations to continue with commercial partners (Crown Infrastructure Partners and LT McGuiness) and external parties (NZTA and government Ministers) before the issues became public.

8. Those discussions and negotiations have now reached a stage on both topics such that ongoing confidentiality is no longer appropriate. As such, recommended resolution (c) above recommends that the 11 July report 2024 report and its attachments, together with the minutes of that part of the meeting, be released from confidential into the open.

Action taken

9. With regard to the Council-endorsed action plan, progress against the various elements of the action plan is included as **Attachment 3** to this report.

10. As part of the response to the Council-endorsed action plan, letters have been written to the Chair and Chief Executive of NZTA (**Attachment 4**) and to Ministers Bishop, Brown and Willis (**Attachment 5**).

11. A response from NZTA is included as **Attachment 6** to this report.

12. Council sought further information through an Official Information Request to access the minutes of the NZTA Value, Scope and Outcomes Committee which considered the Cameron Road Stage 2 (CRS2) business case and made a recommendation to go through to the NZTA Board. These minutes are included in **Attachment 7.**

13. A further letter has been received from NZTA advising of the indicative funding allocations in advance of the finalisation of the National Land Transport Programme (NTLP) this month **(Attachment 8)**.

14. Informal conversations have been held with NZTA to more fully understand the Board decision and to explore possible pathways forward.

Action Plan – Phase 2

15. Following the execution of the majority of the action plan endorsed by the outgoing Council on 11 July 2024, a phase 2 action plan has been developed.

16. The Action Plan – Phase 2 includes:

- Exploring the opportunity to progress with urban accessibility (including active modes) aspects of the project through retaining future proofed flexibility within the design and reconfiguration of the funding stack.
- Developing a revised CRS2 business case which more strongly aligns with GPS 2024
- Analysis of the individual components of the project to understand the Benefit/Cost ratio of each, and ensuring that the business case funding request has components which individually and collectively exceed 1.

STATUTORY CONTEXT

17. See the report to Council on 11 July 2024 (**confidential Attachment 1**) for full details of the strategic context relating to the matters included in that report.

STRATEGIC ALIGNMENT

18. These matters covered in the 11 July 2024 report contribute to the promotion or achievement of the following strategic community outcome(s):

	Contributes
We are an inclusive city	✓
We value, protect and enhance the environment	✓
We are a well-planned city	✓
We can move around our city easily	✓
We are a city that supports business and education	✓

19. The recommendation in this report to endorse the action plan supports ensuring better outcomes for the city under each of the strategic community outcomes listed above.

OPTIONS ANALYSIS

20. This report is largely for information purposes. Other than the recommendation to release a previous report into the open section of the meeting there are no substantive decisions sought. As such, no options analysis is necessary.

21. There is, though, a recommendation to simply 'note' the action plan endorsed by the previous Council. For the matter relating to Te Manawataki o Te Papa financing, a separate report is on this agenda to further consider that matter. For the transport funding matter, work will continue in accordance with the Action Plan – Phase 2 as per paragraph 16 above.

FINANCIAL CONSIDERATIONS

22. High-level fiscal implications of the matters under consideration are addressed in the 11 July 2024 report to Council (confidential Attachment 1).

LEGAL IMPLICATIONS / RISKS

23. Legal and risk implications of the matters under consideration are addressed in the 11 July 2024 report to Council (confidential Attachment 1).

TE AO MĀORI APPROACH

24. The elements of Council's business that are covered in the 11 July 2024 report have a strong focus on tangata whenua recognition and values. In particular, the Te Manawataki o Te Papa project, and the land it occupies, has very strong importance to tangata whenua. A partnership approach has been taken to land ownership, and the precinct was co-designed with tangata whenua. The museum, exhibition space, and civic whare have particular resonance to tangata whenua.

25. The action plan to address the matters that have arisen since the Briefing to Incoming Council was adopted does not have a specific Māori or tangata whenua perspective.

CLIMATE IMPACT

26. The matters covered in the 11 July 2024 report that remain confidential include elements that have a positive climate mitigation aspect, particularly with respect to increasing use of public and personal transportation. However, the action plan to address the matters that have arisen since the Briefing to Incoming Council was adopted does not have a specific climate impact.

SIGNIFICANCE

27. 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.

28. 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.

29. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the matter is of high significance. However, the decision is of low significance as the decision relates to receiving an update on a previously-resolved action plan in order to understand the matter more fully to enable an informed decision to be made at a later date or under a separate report.

ENGAGEMENT

30. Taking into consideration the above assessment, that the decision is of low significance, and that there will be future decisions to be made by Council, officers are of the opinion that no further engagement is required prior to Council making a decision as per the recommendations of this report.

NEXT STEPS

31. Subject to Council's decision, work will continue as per the Action Plan – Phase 2 and will be reported back to Council in due course.

ATTACHMENTS

1. **Attachment 1 - Project Funding Updates Council Report 11 July 2024 - A16211201 - Public Excluded**
2. **Attachment 2 - Council Resolutions 11 July 2024 - A16217798 - Public Excluded**
3. **Attachment 3 - Action Plan and Progress - A16213690** ⇩
4. **Attachment 4 - 2024 07 16 Letter to NZTA Chair Bridges re project of local significance urban transformation - A16328226** ⇩
5. **Attachment 5 - 2024 07 16 Letter to Ministers update IFF and CRS2 - A16328198** ⇩
6. **Attachment 6 - Response from NZTA to Marty Grenfell Dated 20 July 2024 - A16247096** ⇩
7. **Attachment 7 - Extract Minutes from NZTA Value, Outcome and Scope Committee 18 April 2024 - A16265386** ⇩
8. **Attachment 8 - Letter NZTA to TCC re: Indicative Funding Allocation - A16264466** ⇩

Para in 11 July report	Subject	Action plan item	Status as at 7 August 2024
13	Te Manawataki o Te Papa IFF Levy	Developed, with the support of Crown Infrastructure Partners, an independent consultant brief to support and advise the newly-elected Council on this matter	Completed
		Appointed Kevin Jenkins, a skilled professional with experience in finance, risk and governance, to undertake the consultant brief	Completed – Mr Jenkins' report is on this agenda
		Report to be formally presented to the incoming Council at the earliest appropriate opportunity outlining the matters, providing the independent advice report and seeking a decision as to whether the newly-elected Council endorses proceeding with an IFF levy for Te Manawataki o Te Papa	Completed – report is on this agenda
24	Cameron Road Stage 2	Take steps to understand the reason that CRS2 was assessed by NZTA as being unlikely to be prioritised for inclusion in the NLTP	Completed – feedback from the NZTA team is in line with their preliminary assessments under the refreshed IPM tools https://www.nzta.govt.nz/IPM web page
		Explore whether the CRS2 business case can be re-presented for endorsement, which would then trigger the Letter of Best Endeavours coming into effect	Letter written to Chair and CE of NZTA – see **Attachment 5** to this report. Response received from NZTA is included as **Attachment 6** to this report. Minutes from Value Outcome & Standards Committee requested and received. Informal discussions with NZTA held.

Para in 11 July report	Subject	Action plan item	Status as at 7 August 2024
			TCC advised that the business case can be revised and represented. Action plan being developed on the work required to prepare a revised business case which can be resubmitted to the Board (with a view to that occurring November 2024 at the earliest).
		Seek to understand the criteria for the Roads of Regional Significance (RoRS), and whether CRS2 was assessed as part of the 2024 GPS RoRS process. Explore whether CRS2 could be submitted for consideration as a RoRS	Completed Discussed with NZTA. RoRS are related to State Highways so they will not be a pathway for CRS2 business case approval and funding.
		Consider whether the CRS2 project could be redesigned to align more strongly with the 2024 GPS and have higher likelihood of successfully securing funding in the 2027-2030 NLTP funding process	Completed Considered and concluded that this is the pathway to progress. As noted above work is underway to develop a project plan to revise the design, business case and funding stack to more strongly align with GPS2024.
		Identify pathways which would enable the CRS2 project to proceed in the 2024-2027 period, as per the adopted LTP, including exploring other funding arrangements both internally and with the Crown	Currently still under review.
		Explore options as to how the TSP IFF Order in Council could be changed to still comply with the IFF Act,	Underway – Package of transport projects (including 'low cost / low risk' category that could be replacement projects within an Order in Council to utilise the

Para in 11 July report	Subject	Action plan item	Status as at 7 August 2024
		particularly with respect to beneficiary principles, and deliver meaningful transport outcomes for our community	levy. Further analysis required to ensure beneficiary principles met.
34	Strategic and fiscal consequences	Engaging Mr Steven Joyce as independent advisor as it is considered that he has the relevant skills and experience to provide a valuable contribution to Council	Completed – Mr Joyce engaged.
		Holding a strategic workshop, which senior TCC staff and Mr Joyce will participate in, to consider the future work programme and associated financing / funding strategies given the recent events as outlined in this report	Completed – first workshops held with Mr Joyce on 10 July and 12 July 2024.
		Depending on how matters progress and pathways identified, it is possible Mr Joyce could play a supporting role in future in addressing the challenges and opportunities	Mr Joyce continues to provide strategic advice on a limited basis.

16 July 2024

Tauranga City

Simon Bridges
Chair
New Zealand Transport Agency – Waka Kotahi
By email: Simon.Bridges@nzta.govt.nz

Copied to:
Hon Simeon Brown, Minister of Transport and Local Government
Hon Chris Bishop, Minister of Housing and Infrastructure
Nicole Rosie, Chief Executive

Dear Simon

Project of Local Significance – Urban Transformation – Cameron Road Stage 2

Further to the letter sent to you on 29 April 2024 (attached) by Commission Chair Anne Tolley regarding the funding of Cameron Road Stage 2 (CRS2), I wish to seek further information in relation to the New Zealand Transport Agency (NZTA) Board's consideration of the Business Case for this project on 19 June 2024.

On 25 June 2025, Tauranga City Council (TCC) received notification via email of the Board's decision not to endorse the project and we were provided with minutes of the Board's decision:

The Board:

- *Requests that Management do further work in respect of the proposal, including in light of the wider transport environment in the area.*

- *The Board discussed the paper in respect of the draft GPS 2024 and the 24-27 NLTP.*

Using the "average household income" to "average house price" formula, Tauranga is the least affordable housing market in New Zealand. Recent figures on the issuance of building consents for new dwellings over the past five years show a slump in house construction to levels not seen since the global financial crisis.

Tauranga City New Dwellings

Monitoring Year	New Dwelling Units
Jul 18-June 19	1305
Jul 19-June 20	1294
Jul 20-June 21	1479
Jul 21-June 22	1252
Jul 22-June 23	839
Jul 23-June 24	500

Tauranga City Council Private Bag 12022, Tauranga 3143, New Zealand +64 7 577 7000 info@tauranga.govt.nz www.tauranga.govt.nz

The city has been working with crown agencies and its sub-regional partners for the past five years, culminating in both the Urban Form and Transport Initiative (UFTI) and the Transport System Plan (TSP) being agreed to and adopted by the Urban Growth Partnership. The plan identifies the eastern and western corridors of the city for greenfield development and the Te Papa Peninsula, primarily along the Cameron Road spine, for intensified housing. Plan Change 33, just adopted, provides for housing developments of up to eight stories high along the length of this corridor.

CRS2 is a project of local significance, which enables short-to-medium term delivery of intensified housing in the city. The project is supported by the Ministry of Urban Housing and Development and Kainga Ora and has attracted $68 million in funding through the Infrastructure Acceleration Fund (IAF). This funding, alongside the levy raised against the city's ratepayers through the Infrastructure Funding and Financing Act (IFF Act), is reliant on the project proceeding.

Upgrading Cameron Road plays a pivotal role in connecting the greenfield housing development opportunities in the western area of the city. This western area greenfield opportunity has been assessed through the section of the Urban Development Act (UDA) known as a Specified Development Project and has estimated capacity of up to 25,000 new homes.

Council and our partners have expended considerable time and money in advancing CRS2 and we are confident that construction could commence mid-2025, subject to endorsement from NZTA and funding availability.

The implications of CRS2 not proceeding are far-reaching. To adequately brief and seek direction from the incoming Council, it is important Council has the relevant information and recommendations of the Value, Outcome and Standards Committee (VOSC) to the Board and the analysis that guided the Board's decision. We are advised that VOSC's recommendation was supportive of endorsement:

In particular, the information sought:

- details on how the Business Case is considered to be aligned or otherwise with the Government Policy Statement (GPS)
- details of why the business case is not considered to reflect the most appropriate transport solution for the network given the planned increased density in the Te Papa Corridor and the planned greenfields development in the wider Western Corridor
- the scope of the further work that the Board has requested from management
- what if any opportunities there are to have a revised Business Case reconsidered with a view to endorsement
- what if any are the funding pathways through the 2024 – 2027 National Land Transport Planning and Funding process.

With Council elections on 20 July, this information is sought with urgency, so that the newly elected members can consider the merits of further investing in this project, or conversely, the implications for our 2024-2034 Long Term Plan and/or the need for an amendment.

In anticipation of the urgent need for continued alignment between Tauranga City Council and NZTA, I propose that we secure an opportunity for the Mayor-elect to meet with you as soon as possible after the election.

In the meantime, I am happy to continue to liaise with your chief executive and officials and/or to meet directly in advance of a meeting with our Mayor.

Yours sincerely

Marty Grenfell
Chief Executive

16 July 2024

Tauranga City

Hon. Simeon Brown, Minister of Transport and Local Government
Hon. Chris Bishop, Minister of Housing and Infrastructure

cc: Hon. Nicola Willis, Minister of Finance

Dear Ministers

I write you in a period of governance transition for Tauranga city, from a Crown-appointed Commission to an elected Council, with the election of a Mayor and Councillors on 20 July 2024.

Further to the correspondence received from your respective offices on 10 June 2024 and 26 June 2024, I wish to update you on the use of the Infrastructure, Funding and Financing Act (IFF Act) for our Urban Growth and Development programmes, namely the city's Transport System Plan (TSP) and our Civic Precinct rebuild, Te Manawataki o Te Papa. It is also prudent to advise you of the implications of a recent decision by the New Zealand Transport Agency (NZTA) not to endorse the Cameron Road Stage 2 (CRS2) Business Case.

These matters were formally reported to the Commission in a Council Meeting on 11 July and a copy of the report is attached for your information. The complexity, interdependencies and implications of the funding mechanisms underpinning these infrastructure programmes are outlined in the Council report. In summary, however, the integrity of the Tauranga City Council 2024–2034 Long-term Plan (LTP), as adopted by Council in April, is reliant on the use of the proposed IFF Act levy for Te Manawataki o Te Papa to part-fund this important programme of works, and likewise, the use of the levy for the TSP is significantly reliant on the endorsement and funding of CRS2.

If either of these projects cannot proceed under the planned funding arrangements, the Council's debt-to-revenue ratio covenant (as determined by the Local Government Funding Agency) would be breached, which is likely to require the initiation of a Long-term Plan Amendment (LTPA), resulting in cancellation and/or delay of projects within these programmes. CRS2 has attracted $68M of Infrastructure Acceleration Funding (IAF), which is also reliant on this project proceeding.

In respect of the Te Manawataki o Te Papa IFF Act proposal, we intend seeking direction from the newly-elected council, as detailed in my letter dated 3 July 2024 (copy attached). With regard to the NZTA decision on CRS2 and its relationship to the TSP levy, we will be seeking further information from NZTA to understand the opportunity for and/or likelihood of this project being reconsidered and funded through the National Land Transport Plan process.

Given the reliance within the LTP on the use of the IFF Act, and the complex interdependencies between projects, funding stacks and critical community outcomes, it is

Tauranga City Council Private Bag 12022, Tauranga 3143, New Zealand +64 7 577 7000 info@tauranga.govt.nz www.tauranga.govt.nz

important that we explore how to advance these matters and we will continue working with the necessary Crown Agencies to find solutions which will enable them to proceed.

Tauranga City Council shares the Government's concern over housing availability and housing affordability. The CRS2 project is critical to unlocking increased housing intensification in the Te Papa peninsular, and to supporting the 'connected centers' philosophy of planned greenfields development in the Western Corridor growth area.

The Government has invested in Cameron Road Stage 1, is currently investing in the Tauriko West Enabling Works to provide sufficient transport capacity to enable 2400 new homes in Tauriko West, and has signalled further investment to upgrade SH29 as one of the Roads of National Significance. The full extent of the local benefits and urban development these investments will enable will not be realised without the CRS2 improvements, which will support high frequency public transport linking this catchment and suburbs further to the west to the city centre, and then on to Mount Maunganui.

I'm conscious that the issues raised in this, and associated letters are of considerable significance to the Commission and the Government, and that it will be important to ensure the newly-elected Council is briefed at the soonest appropriate opportunity.

In that regard, and in anticipation of the urgent need for continued alignment between Tauranga City Council and the Crown, I propose that we secure an opportunity for the Mayor-elect to meet with you as soon as possible after the election.

In the meantime, I am happy to continue to liaise with your officials and/or meet with either or both of you in advance of a meeting with our Mayor.

Yours sincerely

Marty Grenfell
Chief Executive

www.nzta.govt.nz

44 Bowen Street
Private Bag 6995
Wellington 6141
New Zealand
T 64 4 894 5400
F 64 4 894 6100
www.nzta.govt.nz

30 July 2024

Marty Grenfell
Chief Executive
Tauranga City Council
marty.grenfell@tauranga.govt.nz

Ref. NZT-9603

Dear Marty

Thank you for your letter of 16 July 2024 regarding the NZ Transport Agency Waka Kotahi (NZTA) Board's decision on Tauranga City Council's (TCC) Cameron Road Stage 2 (CRS2) business case. The Board Chair has asked me to respond to you as this falls within my area of responsibility.

You have reiterated the background to the CRS2 project, and I can confirm that the Board was made aware of this background when making its decision.

I note that the TCC has separately requested the minutes of the Value Outcome & Standards Committee minutes in which the CRS2 business case was discussed. NZTA is currently progressing that request.

The Board considered the alignment of the CRS2 project to the Government Policy Statement on Land Transport (GPS) 2024. The Board was advised that based on the project's draft Investment Prioritisation Method (IPM) rating, the project was not expected to be prioritised to receive funding under the 2024-27 National Land Transport Programme (NLTP). The Board thought that further consideration should be given to the alignment of the project to the GPS 2024 before the Board would consider endorsement of the business case.

The actions that TCC may wish to take to better align the business case with the GPS 2024 include:

- revising the project objective and proposed solution to better contribute to economic growth and productivity, rather than attempting to achieve multiple objectives and modes at a significant cost

- review the scope in relation to GPS 2024 directions and it's no frills approach

- reduce the cost in order to obtain value for money and affordability.

Jess Andrew, Regional Manager System Design, alongside NZTA's investment advisors in its Local Government Partnership team can assist with this. While no decision has been made, please note that further National Land Transport Fund (NLTF) funding for work on this business case is unlikely to be made available.

The 2024-27 NLTP will be finalised around the end of August 2024 and the decisions on what projects will be included are based on the information that has already been loaded into NZTA's Transport Investment Online database in accordance with the Regional Land Transport Plan / NLTP process.

A revised business case may be submitted and if so will be assessed once the NLTP is adopted. If approved, the project may be included in the NLTP by way of variation. The project will be assessed and prioritised based on the currently available information.

We cannot provide any assurances that an endorsed business case would result in a subsequent phase being included in the NLTP.

If you would like to discuss this matter further with NZTA, you are welcome to contact me by email at david.speirs@nzta.govt.nz and I am happy to arrange a time to meet with you.

Yours sincerely

David Speirs
Director Regional Relationships (Waikato/Bay of Plenty)

2

Extract Minutes NZTA Value, Outcomes & Scope Committee Meeting 18 April 2024

Decisions

20240418 – 2 Cameron Rd Multi-Modal Stage 2 (17th Ave to Barkes Corner)

Region:	Bay of Plenty	**Request type:**	Next phase
Submitter's Name:	Simon Fendall	**Submitter's email:**	simon.fendall@nzta.govt.nz

Decision:

That the National Manager Programme and Standards, Transport Services:

- **Recommends** that the Chief Financial Officer **recommends** to the NZ Transport Agency Waka Kotahi (NZTA) Board to
  - **Endorse** the Cameron Road Stage 2 Detailed Business Case, noting that the cost to implement the project is estimated to be from $164 million (P50) to $198 million (P95).
  - **Note** that a review of the scope of the design is required as part of the pre-implementation phase to ensure value for money before implementation funding is brought forward for consideration.
  - **Approve** the next phase funding request to Tauranga City Council
    - for Cameron Rd Multi-Modal Stage 2 (17th Ave to Barkes Corner)
    - for pre-implementation phase
    - for a total cost of $11,116,000
    - at a FAR rate of 51% ($5,669,160 NLTF Share)
    - from the Local Road Improvement activity class (Work Category – WC324 road improvement).
  - **Note** that approximately $74 million of the cost to implement the project is forecast to be incurred during the 2024-27 NLTP period.
  - **Note** that there is an approved prior agreement to consider retrospective funding. By the time of the Board decision, the retrospective amount would be approximately $2.2 million.

Recommended conditions:

- **This funding approval is subject to a condition precedent** that funding is not released until confirmation of funding priority and availability can be made following the adoption of the 2024-27 NLTP.
- **This funding approval is subject to a condition subsequent** on the pre-implementation phase that the scope of work is refined to reflect affordability and value for money with a focus on essential items.

Reason for recommendation:

- This investment enables Tauranga City to design improvements to Cameron Road that support wider network improvements, increased housing supply through improved access, safer walking and cycling and Public Transport priority.
- The Benefit Cost Ratio (BCR) is estimated to be 0.81 (0.59 to 1.5, the base BCR is 1.05 if wider economic benefits are included).
- The requirements of Section 20 of the Land Transport Management Act 2003 have been met.
- This investment is consistent with the Emissions Reduction Plan.

Key point:

- The new IPM assessment shows a priority order 10 which is unlikely to meet the threshold for inclusion in the NLTP.

- Before any further request comes through, the design needs to be right sized to ensure the alignment with the new GPS. Ideally this would be before going to the Waka Kotahi Board, but if not possible should be noted to the Board.
- The project team will report back to the VOS Committee on the any cost savings and reduction/removal of placemaking and urban design related items (frills).
- Getting the importance for the whole network is about consistent throughput rather than improving travel time. The importance of enabling this route is to keep no freight off the freight route.
- NZTA does not commit to further fund progress on this work until the prioritisation in the next NLTP is clear. Tauranga City Council continues to spend at their own risk in the meantime.

www.nzta.gov.nz

44 Bowen Street
Wellington 6011

2/08/2024

Marty Grenfell
Chief Executive
Tauranga City Council
marty.grenfell@tauranga.govt.nz

cc. mahe.drysdale@tauranga.govt.nz
David.speirs@nzta.govt.nz

Kia ora Marty

The NZ Transport Agency Waka Kotahi (NZTA) Board has endorsed the indicative allocations for the remaining continuous programmes as part of developing the 2024-27 National Land Transport Programme (NLTP). Specifically, this funding is for road safety promotion, and footpath and cycle path maintenance.

We're sharing these indicative allocations ahead of the adoption of the 2024-27 NLTP later this month to assist with your resourcing and budgeting decisions.

Overall, our increased investment in the land transport network during the next three years will focus on delivering on the Government's overarching priority for economic growth and productivity.

With this increased investment comes increased expectations on delivering greater efficiencies across the transport network by better managing existing infrastructure to improve performance and deliver value for money outcomes. We're reducing costs across our business and expect our partners to be adopting a similar approach with their investment in the transport network.

The development of the 2024-27 NLTP is guided by the Government's transport priorities as set out in the Government Policy Statement on land transport 2024 (GPS 2024). In addition to providing strategic direction, the GPS 2024 also sets the funding ranges for each activity class. This guides us on where and how to prioritise investment.

Road safety remains a priority within the Government Policy Statement on land transport (GPS 2024), focused on enforcement and targeting the highest contributing factors in fatal crashes, such as alcohol and drugs. To make our roads safer investment in the 2024-27 NLTP will support:

- the development of the Government's programme of Roads of National and Regional Significance
- an enhanced road policing and enforcement programme, including alcohol and drug testing.
- increased levels of road maintenance, including fixing potholes
- targeted and cost-effective safety interventions in high-risk areas, such as rumble strips; along with
- educating road users through road safety education, with the GPS supporting the use of NLTF funding for councils to run specified education programmes.

Indicative allocations for road safety promotion have been provided to councils to help address priority road safety risks. NLTF funding can no longer be used for regional road safety advertising, however NZTA will continue delivering national advertising campaigns which can be used to support regional education activity.

Co-investment funding for the maintenance of local footpaths, shared paths, and cycle paths was introduced in GPS 2018. In GPS 2024, the maintenance of these facilities is now funded through the Walking and Cycling activity class. Investment through this activity class is expected to contribute to economic growth and productivity.

The Walking and Cycling activity class has a large programme of already committed improvement activities. As a result, the available funding for indicative allocations for footpath, shared path and cycle path maintenance has been pro-rated across councils based on an assessment of estimated funding to maintain levels of service.

The Board will confirm the final investment levels for all continuous programmes when it adopts the NLTP in August 2024.

Developing indicative investment levels for continuous programmes

The indicative allocations for continuous programmes have been set following the NZTA moderation process and with consideration for the limited available funding.

With the change in funding eligibility for regional road safety advertising, our Relationships Road Safety team will be in contact with your staff to share guidance and support them to resubmit their adjusted programmes into TIO.

Your indicative allocations for the 2024-27 NLTP

The NZTA Board has endorsed indicative allocations for your continuous programmes as shown in the table below:

Activity Class	2024-27 indicative funding allocation	2024-27 funding request	2024-27 allocation compared to 2024-27 request (%)
Walking and Cycling	$2,644,000	$11,331,000	-77%
Safety	$1,092,000	$3,653,000	-70%

Ngā mihi

Nicole Rosie

Chief Executive

11.2 Te Manawataki o Te Papa Infrastructure Funding and Financial (IFF) Resubmission and Library / Community Hub Contract

File Number: **A16315533**

Author: **Christine Jones, General Manager: Strategy, Growth & Governance**
Paul Davidson, Chief Financial Officer

Authoriser: **Marty Grenfell, Chief Executive**

Please note that this report contains confidential attachments.

Public Excluded Attachment	Reason why Public Excluded
Item 11.2 - Te Manawataki o Te Papa Infrastructure Funding and Financial (IFF) Resubmission and Library / Community Hub Contract - Attachment 4 - Confidential C1 Twenty Two (David Lambie) advice re Contract Delayed Consequences	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities. s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

PURPOSE OF THE REPORT

1. To decide whether Council continues with the proposed use of the Infrastructure Funding and Financing (IFF) Act to raise a levy to part-fund the Te Manawataki o Te Papa project.
2. To authorise (or otherwise) the Chief Executive to enter into the main construction contract for the Library and Community Hub element of Te Manawataki o Te Papa.

RECOMMENDATIONS

That the Council:

(a) Receives the report "Te Manawataki o Te Papa Infrastructure Funding and Financial (IFF) Resubmission and Library / Community Hub Contract".

Te Manawataki o Te Papa Infrastructure Funding and Financing (IFF) Levy

(a) Confirms that Council will not continue to use an IFF Levy as a financing and funding tool for Te Manawataki o Te Papa at this time.

(b) Proceeds to secure approval through Local Government Funding Agency for increased debt covenants for Tauranga City Council.

(c) Notes that in the absence of an approval for an increase in debt covenants by 30 November 2024 Council will receive a further report on potential financing and funding options within the borrowing limits that are current at that time.

(d) Notes that the IFF levy which was planned to be introduced on 1 July 2025 will no longer occur.

(e) Approves additional borrowing of $54 million, being the amount that was budgeted to be drawn down through the IFF levy and a revision of cash flows in the 2024/25 year, increasing the total borrowing programme for 2024/25 to $445m and increasing gross debt to $1.53 billion from the previously approved amount of $1.47 billion.

(f) Approves a 2024/25 operational budget overspend of up to $1.54 million being the amount of funding required to service additional debt borrowing based on the estimated cash flow.

(g) Notes this overspend will be managed through other operational savings, however in the absence of these being fully achieved, any resulting rating deficit will be debt funded.

(h) Confirms there will be sufficient funds available to fund the capital costs of TMoTP, noting that the Council has the option to achieve this by:

(i) Introduction of a rate (targeted or otherwise) commencing from 1 July 2025; and/or

(ii) Reprioritisation (including changes in scale and timing) of the capital programme from 1 July 2025 onwards.

Construction contract

(i) Authorises the Chief Executive to enter the main construction contract with LT McGuiness Ltd for the Library and Community Hub.

(j) Notes that the next Civic Whare, Exhibition and Museum (CWEM) contract will be presented to council towards the end of 2024, for consideration and approval or otherwise.

Other

(k) Retains Attachment 4 in the public excluded section to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

(a) **Attachment 4** can be transferred into the open on completion of the contract.

EXECUTIVE SUMMARY

3. Tauranga City Council has previously consulted on and approved utilising an Infrastructure Funding and Financing Levy to part fund the Te Manawataki o Te Papa project. The process to put the levy in place subsequently progressed including seeking Ministerial approval as required by legislation.

4. The Minister of Housing wrote to Council in late June 2024 advising that he had "decided *not to recommend establishing a levy order under section 27 of the IFF Act at this time'.* The Minister noted that the incoming Council could resubmit the request for an IFF Levy.

5. On 8 August 2024 the Minister for Local Government announced initiatives impacting on the Local Government Funding Agency (LGFA). These changes will enable borrowing by Water Council Controlled Organisations (CCO's) at a ratio of 500% debt to revenue and provide the potential for some local authorities to increase borrowing limits up to 350% where needed.

6. A decision is sought from Council as to whether to continue to progress an IFF levy for Te Manawakati o Te Papa, or to pursue alternative financing and funding arrangements.

7. Given the recently announced opportunity for increased borrowing through LGFA by both local authorities and Water CCO's, it is recommended that this pathway be pursued as it is likely to offer a lower net cost of borrowing for the community.

8. A decision is also sought as to whether Council enters the main construction contract with LT McGuiness Ltd for the Library and Community Hub. If Council resolves to progress a pathway which will deliver sufficient funding and financing, it is recommended that the contract be entered into.

BACKGROUND

Infrastructure Funding and Financing ("IFF") Act 2020

9. The IFF Act 2020 was enacted to *"provide a funding and financing model for the provision of infrastructure for urban development, that—*

   (a) supports the functioning of urban land markets; and

   (b) reduces the impact of local authority financing and funding constraints; and

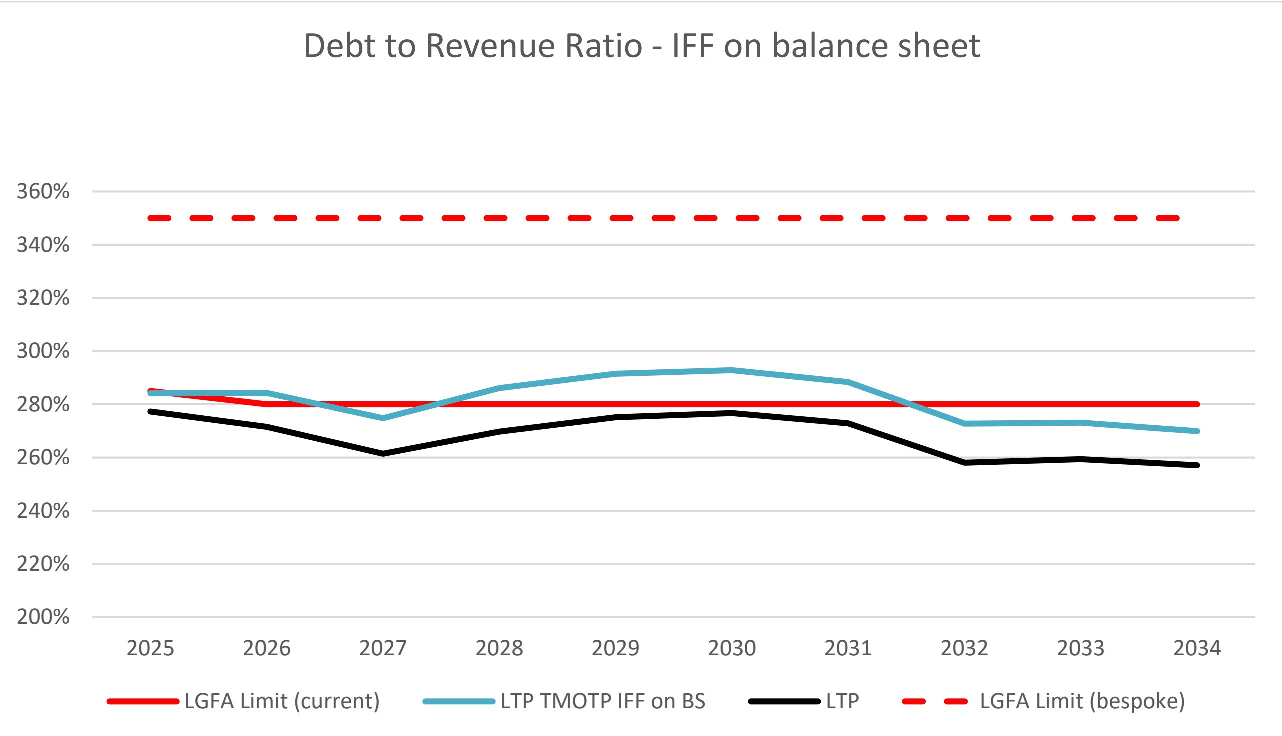
   (c) supports community needs; and

   (d) *appropriately allocates the costs of infrastructure"* (s3, IFF Act 2020).

10. Briefly, the IFF approach enables a third-party entity to finance or part-finance Council infrastructure and to recover that investment over time via a levy on property owners. Council would own and operate the infrastructure paid for through the IFF levy, but the cost of that investment wouldn't impact on Council's balance sheet (or affect its debt-to-revenue ratio).

11. The impact of Council not financing this debt through the use of the IFF are shown in Figure 1 below. It effectively means that Council would exceed its current debt to revenue limitations based on the current LGFA limits. A revised ratio is shown on the graph below which would be the maximum amount of a covenant increase as discussed later in this report.

Figure 1: Impact of not using IFF funding on Council's borrowing position.



12. Tauranga City Council was the first local authority in the country to take advantage of the opportunity provided by the IFF Act 2020, establishing financing and funding (via a property owner levy commencing 1 July 2024) for a portfolio of transport projects.

13. The Te Manawataki o Te Papa IFF would be Tauranga City Council's second project funded through IFF (and the third project across New Zealand).

Te Manawataki o Te Papa and the IFF Act 2020

14. In **May 2022**, after a public consultation process, Council approved an amendment to the Long-term Plan 2021-2031 to include the Te Manawataki o Te Papa project[1]. At that time the ratepayer-funded portion of the total project costs were formally capped at $151.5 million[2].

15. In **July 2023[3]** Council considered a suite of reports on the Te Manawataki o Te Papa project. One of those reports outlined that staff had commenced discussions with Crown Investment Partners (who manage the IFF process on behalf of the Crown) to determine whether the rate-funded portion of Te Manawataki o Te Papa could be funded via an IFF levy on property owners.

16. In **September 2023[4]** Council considered further work done on the IFF proposal by staff and consultants and with Crown Investment Partners. Council approved continuing work on the IFF proposal and for formal community consultation on the IFF proposal to take place. That consultation occurred between 14 September and 6 October 2023.

17. Council received 301 submissions on the proposal. Of these, 63% supported the option of using an IFF approach, 28% preferred the option of using rates-funded loans, and 9% did not express a preference between the options. Five of the submitters also presented a verbal submission to Council in **October 2023[5]**.

18. In **November 2023[6]** Council considered the results of the community consultation together with further work undertaken on the proposed use of the IFF Act 2020 process. Council approved further work on the IFF proposal including the Chief Financial Officer working with Crown Investment Partners and relevant government ministries. That work was to be reported back to a future Council meeting before a final decision about whether to proceed with an IFF agreement and levy could be taken.

19. In **December 2023[7]** the Chief Financial Officer reported back to Council in public excluded session. Council approved continuing work and delegated authority to the Chief Financial Officer to finalise and submit a Levy Proposal to the Ministry of Housing and Urban Development. At the same time, Council noted that Crown Infrastructure Partners would launch a financing process in January and February. Despite the above actions, Council resolved that a final decision would not be made until February 2024 when further information on the expected costs of the proposal would be available.

20. In **February 2024[8]** the Chief Financial Officer presented a comprehensive report back to Council in public excluded session. Council confirmed its intention to submit a Levy Proposal to the Ministry subject to the final levy to property owners not exceeding stated limits (Crown Investment Partners had not completed its financing round at this stage so final levy values were not available). Council also re-delegated responsibility to the Chief Financial Officer to submit the Levy Proposal and also to finalise the Infrastructure Funding, Financing and Administration Agreement with the Crown Investment Partners subsidiary that was responsible for raising the financing.

21. Shortly after the February 2024 meeting, the Levy Proposal was submitted to the Ministry. At that time, financial close was anticipated to be before the end of June 2024.

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[1] 24 May 2022, Long-term Plan Amendment Deliberations – Civic Precinct Issues and Options Report
[2] A range of approaches has been used to fund the balance of the Te Manawataki o Te Papa project. See **Attachment 2** for the current funding arrangements.
[3] 24 July 2023, Financial Strategy – Te Manawataki o Te Papa
[4] 11 Sept 2023, Infrastructure Funding and Financing Act (IFFA) for funding Te Manawataki o Te Papa – Adoption of Consultation Document
[5] 16 Oct 2023, Hearings on the Options to Fund the Civic Precinct – Te Manawataki o Te Papa
[6] 6 Nov 2023, Deliberations on the Options to Fund the ratepayer portion of the Te Manawataki o Te Papa (Civic Precinct)
[7] 11 Dec 2023, Te Manawataki o Te Papa Infrastructure Funding and Financing Levy
[8] 26 Feb 2024, Te Manawataki o Te Papa Infrastructure Funding and Financing Levy

22. In **May 2024**[9] Council considered a further report on Te Manawataki o Te Papa funding, including the IFF proposal. Subject to Ministerial approval of the Levy Proposal, Council confirmed that the levy would commence on 1 July 2025 and that the maximum amounts for the median residential levy would be $128 (including GST) and for the median commercial levy would be $464 (including GST) for the 2025/26 financial year. The final actual levy would be determined at the conclusion of the financing process being run by Crown Investment Partners.

23. Each of the reports referred to in paragraphs 14 to 22 have been made available to elected members prior to this meeting[10].

24. On the **8th of August** the Minister of Local Government announced changes to the LGFA borrowing programme allowing lending to water council-controlled organisations and the potential to increase borrowing covenants for high growth councils.

Ministerial decision

25. On 26 June 2024, the Minister of Housing wrote to Council to state that he considers *'it important that the incoming council has their say on the levy proposal for Te Manawataki o Te Papa'* and that he had *'decided not to recommend establishing a levy order under section 27 of the IFF Act at this time'*. He further stated:

    - *'I must emphasise that this is not to do with the quality of the proposal nor the merits of the project itself. In fact, I am glad you brought this project to my attention – I understand it will be a key driver in encouraging more people to live, work, and play in the Tauranga city centre'* and
    - *'If the new council would like to resubmit the same or similar levy proposal for Te Manawataki o Te Papa, I would be very happy to consider it.'*

26. The full letter from the Minister is included as part of Attachment 1 to the 'Briefing to Incoming Council – Update' report elsewhere on this meeting's agenda.

Council's response to the Ministerial decision

27. On 3 July 2024, the Chief Executive wrote to Minister Bishop, acknowledging receipt of the Minister's letter and advising that a decision would be sought from the incoming Council. A copy of that letter is also included as part of Attachment 1 to another report ('Briefing to Incoming Council – Update') elsewhere on this meeting's agenda.

28. Legal advice was also sought and received regarding 'next steps' particularly given the proximity of the election and Council's imminent change of governance.

29. On 11 July 2024, Council received a report titled 'Project Funding Updates' that addressed, among other things, the Minister's letter. That report is re-published elsewhere on this meeting's agenda.

30. The 11 July report included an action plan for responding to the Minister's letter. Briefly, it was:

    - work with Crown Infrastructure Partners to create a brief for an independent consultant.
    - engage an independent consultant.
    - receive a report from the independent consultant providing advice to the incoming council.

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[9] 10 May 2024, Te Manawataki o Te Papa Financial Strategy including Infrastructure Funding and Financing Levy

[10] These reports, attachments, and adopted resolutions are available in the Stellar folder supporting today's meeting.

31. The independent consultant appointed was Kevin Jenkins, co-founder of MartinJenkins an experienced financial, economic and public policy consulting firm based in Wellington and Auckland. A brief biography of Mr Jenkins is available on the MartinJenkins website: https://www.martinjenkins.co.nz/about-us/board/kevin-jenkins/.

32. Mr Jenkins' independent report has now been received and is included as **Attachment 1** (to this report. It is important to note that Mr Jenkins undertook and concluded his work prior to the government announcement on local government financing (as per paragraphs 39 to 42 of this report).

Consequential implications – contract approval

33. In July 2023, as part of a suite of reports related to Te Manawataki o Te Papa, Council considered a 'Design and Cost Update' report. At that time, Council resolved as follows:

> *Delegates to the Chief Executive authority to enter contracts on behalf of Council for the delivery of the Te Manawataki o Te Papa (Site A) programme of works as further outlined within the Te Manawataki o Te Papa Design and Cost Update Report – July 2023 (attachment 1), subject to:*
>
> *(i) Endorsement by the Te Manawataki o Te Papa Board (Ltd.); and*
>
> *(ii) Sufficient funds being available in accordance with the Te Manawataki o Te Papa Financial Strategy Report resolutions approved by Council at this 24 July 2023 meeting; and*
>
> *(iii) Condition of commercial sensitivity.*

34. Under this delegation, contracts were entered into, and initial work on projects including the Library and Community Hub commenced. The delegation remains in place.

35. The main Library and Community Hub construction contract with LT McGuiness, valued at approximately $71 million ($23 million of which has already been contractually committed to under preliminary arrangements) is now ready to be signed. The contract is under the budgeted value for this part of the work and includes a 10% contingency.

36. After the 11 July 2024 Council meeting, the Chief Executive sought legal advice on the impact of the Minister's decision on the IFF levy proposal on the delegation noted above. In particular, whether the Minister's decision affects the *"subject to … sufficient funds being available"* element of the delegation.

37. The resultant legal advice is included as **Attachment 4** to this report.

38. As a result of the legal advice, the main construction contract for the Library and Community Hub with LT McGuinness remains unsigned.

Government Announcement on Local Government Debt

39. On 8 August 2024 the Minister for Local Government announced initiatives impacting on the Local Government Funding Agency (LGFA) specifically around lending to Water Council Controlled Organisations (CCO's) and the potential to increase borrowing limits for some councils where needed.

40. The proposed changes include:

    (a) LGFA will support leverage for water organisations up to the level equivalent to 500 per cent of operating revenues subject to water organisations meeting prudent credit criteria. LGFA will treat borrowing by water organisations as separate from borrowing by parent council.

    (b) LGFA is also reviewing whether it can prudently provide additional flexibility to councils to meet the future challenges faced by the sector. This includes consideration of increasing debt limits for high growth councils beyond the current ceiling of 285 per cent of operating revenues. It has been indicated this would be up to a ceiling of 350% based on LGFA board approval.

41. It should be noted that (b) above requires the approval by majority of LGFA shareholders which is scheduled for November. Board approval is also required and may require additional scrutiny by the lender which has not been made clear at this point.

42. The impact of these proposed changes is significant to Council. Most notably the debt projections in figure one in paragraph 11 are well within the proposed changed debt covenants if approved. Therefore, this would be the most economical form of borrowing given the lower interest rates offered through the LGFA.

43. It should be noted that there may be flow through implications to Councils credit rating undertaken by Standard and Poors.

STRATEGIC ALIGNMENT

44. The Te Manawataki o Te Papa project contributes to the promotion or achievement of the following strategic community outcome(s):

	Contributes
We are an inclusive city	✓
We value, protect and enhance the environment	☐
We are a well-planned city	✓
We can move around our city easily	☐
We are a city that supports business and education	✓

45. This report focuses only on part of the funding and financing methodology for the Te Manawataki o Te Papa project. There are no significant direct community outcome implications from the funding and financing options.

OPTIONS ANALYSIS

46. There are two distinct issues covered by this report and consequently two decisions to be made. These are:

Issue 1 Whether or not Council wishes to resubmit an IFF levy proposal for Te Manawataki o Te Papa, and

Issue 2 Whether or not Council wishes to enter into the main construction contract for the Library and Community Hub.

47. The financial considerations for the decisions are outlined in paragraphs 81 to 95 of this report.

OPTION ANALYSIS: ISSUE 1 - IFF LEVY

48. There are three main options under this issue.

Option 1A – Resubmit the existing IFF levy proposal

49. Under this option, Council would simply confirm its support for the Levy Proposal submitted to the Ministry in late February 2024.

50. The Minister has stated that he would be ‘very happy’ to consider the resubmitted proposal.

51. The independent report by Kevin Jenkins (see Attachment 1) recommends the use of the IFF Act and levy to part-fund Te Manawataki o Te Papa. However, as noted above this work was concluded prior to the government announcement on local authority debt (as per paragraphs 39 to 42 above).

52. This option confirms and continues the work that has been done to date on the IFF Levy proposal that was consulted on with the community.

53. The advantages and disadvantages of this option are outlined in Table 1 below.

Table 1: Advantages and Disadvantages of Option 1A

Advantages	Disadvantages
• Option is able to be implemented immediately as this aligns with work to date and has been consulted on with the community. • Greater flexibility to fund future infrastructure projects than would be possible without IFF funding. • By retaining balance sheet capacity this lessens the risk that future additional debt retirement rates charges will be required or delays or removal of Council's investment program. • Enables the cost of infrastructure to be spread over the life of the project enabling intergenerational equity. • A competitive financing process is being undertaken by CIP to ensure competitive rates for project financing. • Providing certainty of project funding and commitment to complete projects. This certainty is likely to be significant to external to council funding agencies and private investors. • Benefit for future funding negotiations by demonstrating, to the Crown and the public, that council is making use of all reasonably available funding sources. • Ensures the amount of the levy is certain over the longer term. • Council has systems and processes already set up for the TSP IFF levy although these will need to be reviewed for this proposal. • Refer also Kevin Jenkins report Attachment 1.	• Higher cost of debt than Council would expect from LGFA while balance sheet capacity remains. • There is a risk that base rates could move significantly prior to Financial Close of the IFF transaction resulting in an increase in the required levy (or, should Council confirm, reduction in the IFF funding provided). However, it is anticipated that levy amounts remain within, or close to, the levels consulted on. • There is a risk that finance costs may move lower after the swap rate for this project financing is fixed, which is a feature of all fixed rate borrowing. • Rating agencies have confirmed that they will consider future levy amounts in their assessments of council's ability to implement future rates increases. Rating agencies have noted that the levy amounts are not material in their assessment at present including this levy. Also, to note that previously rates have been included to fund this project. This proposal replaces these rates with a levy. • May lock in long term financing while other funding and financing solutions that are subsequently offered to the sector may have greater merits than this transaction.

54. This option is not recommended.

Option 1B – Amend the existing IFF Levy proposal and then re-submit

55. Under this option, Council would amend the Levy Proposal in some way and then re-submit. Staff and advisors would work with Council to determine the amendments required.

56. The Minister has stated that he would be 'very happy' to consider a levy proposal for Te Manawataki o Te Papa that is 'similar' to the levy proposal already submitted. Depending on the extent of amendments sought by Council, the Minister's definition of 'similar' may be important to the success of an amended levy proposal.

57. The advantages and disadvantages of this option are outlined in Table 2 below.

Table 2: Advantages and Disadvantages of Option 1B

<table>
<tr><th>Advantages</th><th>Disadvantages</th></tr>
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There may be a reduction in the funding costs if the IFF funding is delayed.
Greater flexibility to fund future infrastructure projects than would be possible without IFF funding.
By retaining balance sheet capacity this lessens the risk that future additional debt retirement rates charges will be required or delays or removal of Council's investment program.
Enables the cost of infrastructure to be spread over the life of the project enabling intergenerational equity.
A competitive financing process is being undertaken by CIP to ensure competitive rates for project financing.
Ensures the amount of the levy is certain over the longer term.
Council has systems and processes already set up for the TSP IFF levy although these will need to be reviewed for this proposal.

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This option would most likely eventuate from a change in the projects being delivered through Te Manawataki o Te Papa project. Implications of this include:

Changing the benefit assessment and therefore putting at risk the ability to access IFF funding at all
Being unable to sign up to the construction contract creating large sunk costs, litigation risk and losing all momentum on the project
Likely to trigger a need to reconsult with the public
Significant loss of credibility for Council with the construction community (wider than just the Te Manawataki o Te Papa project)

Any significant change in the funding (even if not changing the projects) would be likely to require a new consultation process to be undertaken, significantly delaying the construction process already started.
Existing financing offers from the market likely to expire due to the time required to develop the revised proposal, complete the beneficiary analysis and consult.
Reputational risk with investors that fund the IFF project, caused by the delay. This might have an impact on how many financiers continue to engage in the market process and the interest rates they charge (risk premium).
Higher cost of debt than Council would expect from LGFA while balance sheet capacity remains.
Rating agencies have confirmed that they will consider future levy amounts in their assessments of council's ability to implement future rates increases. Rating agencies have noted that the levy amounts are not material in their

</td></tr>
</table>

Advantages	Disadvantages
	assessment at present including this levy. Also, to note that previously rates have been included to fund this project. This proposal replaces these rates with a levy. • May lock in long term financing while other funding and financing solutions that are subsequently offered to the sector which may have greater merits than this transaction.

58. This option will take additional time to implement as an amended levy proposal is prepared and then subsequently reviewed by Crown Investment Partners and the Ministry of Housing and Urban Development.

59. This option is not recommended.

Option 1C – Do not proceed with the IFF Levy proposal at this time, pursue LGFA borrowing and proceed with the project

60. Under this option, Council would:

- Not continue with the IFF levy proposal at this time; and
- Pursue LGFA borrowing to fund TMoTP.

61. Given the requirement for LGFA shareholder approval for the changes to LGFA covenants if these are not forthcoming in November 2023 then the option exists to revisit a IFF levy. This also provides time for proposed amendments to IFF legislation to be understood.

62. In the short-term, a decision not to proceed with the IFF levy proposal would mean Council would need to make a decision on the contract award without having clarity on the funding source and the overall impact of that on Council's fiscal position.

63. This could however be mitigated by the providing direction to the Chief Executive to find savings equivalent to the costs associated with on balance sheet funding in the current financial year through Councils overall rating envelope. This is estimated to be approximately $1.54m and is reflected in recommended resolution (h).

64. Council would also manage within existing borrowing covenants noting that this will need review in the event that the approval for increased covenants is not forthcoming.

65. It should also be recognised that there may be an implication on Councils credit rating through Standard and Poors through an increase in debt to revenue ratios. Further work will be undertaken to assess this risk and potential consequence noting that a one notch downgrade would not impact on Councils ability or cost of borrowing through the LGFA.

66. Under this option Council would need to look to:

- introduce a targeted rate or other rating mechanism through the 2025/26 Annual Plan process; and/or
- reprioritise the capital programme from 2025/26 onwards.

67. The advantages and disadvantages of this option are outlined in Table 3 below.

Table 3: Advantages and Disadvantages of Option 1C

Advantages	Disadvantages
• If Council can remain within its debt limits the borrowing costs on the Te Manawataki o Te Papa project are likely to be lower than under an IFF arrangement. • There may be new funding and financing solutions that are subsequently offered to the sector which may have greater merits than this IFF transaction.	• Savings would need to be achieved in the current financial year to fund costs expected this year that were assumed to be funded through the IFF levy (it was assumed that this funding via IFF would be received in the current year despite the levy not being charged to ratepayers until July 2025). • Requires approval of LGFA shareholders and LGFA board to allow bespoke higher debt to revenue covenants. Indications are that there is a reasonable probability of this being achieved by the end of the calendar year. • Reputational risk with the Crown/ CIP given how far progressed the IFF transaction is and bids have been received by the senior debt panel of CIP. • Council will need to introduce a rate or reprioritise spending in future Annual Plans to accommodate this project which was previously assumed to funded by off balance sheet funding through the IFF levy. • Existing IFF financing offers from the market may expire, which would require another tender round with potential additional costs if Council does subsequently decide to return to an IFF model. • Potential for credit rating downgrade.

68. **This option is recommended** and reflected in proposed resolutions.

OPTION ANALYSIS: ISSUE 2 - CONSTRUCTION CONTRACT

69. There are two options for this issue.

Option 2A – Immediately enter into the main construction contract for the Library and Community Hub

70. The contractor and all sub-contractors had expected the main construction contract for the Library and Community Hub to have been signed by now. If the IFF levy proposal had been approved by the Minister, then the main construction contract would have been approved by the Chief Executive under existing delegated authority from Council.

71. Council could wait until one or more of the following events before entering into a construction contract:

- a rate to fund Te Manawataki o Te Papa is put in place; and/or

- the capital programme for 2025/26 and beyond is reprioritised; and/or
- an IFF levy is fully approved.

However, the associated time delay has significant negative financial, reputational, and delivery impacts on the Library and Community Hub

72. Option 2A allows for Council to make a specific delegation to the Chief Executive to finalise and sign the main construction contract immediately. Such a resolution of Council would over-ride the existing delegation.
73. Clearly there is a risk that, having approved the contract and committed Council expenditure, the ultimate financing/funding stream is not secured or approved by Council.
74. On the other hand, the impacts of not approving the construction contract are not 'high risks' they are certainties.
75. This is the **recommended option** and is reflected in recommended resolution (l).

Option 2B – Do not immediately enter into the main construction contract for the Library and Community Hub

76. Under this option, the main construction contract for the Library and Community Hub would remain unsigned until conditions determined by Council have been met. Currently those conditions include *'sufficient funds being available in accordance with the Te Manawataki o Te Papa Financial Strategy Report resolutions approved by Council'* in July 2023.
77. The consequences of this option are immediate and significant. Any delay in signing the main construction contract is likely to see the contractor demobilise from the site.
78. Significant consequences include:
    (a) Financial consequences: demobilisation costs, re-establishment costs, penalty payments, and programme escalation clauses will have significant negative financial consequences for Council.
    (b) Community outcome consequences: there are also likely to be significant impacts on Council's reputation and on the ultimate delivery of the project and its benefits to the city centre, the city and the wider sub-region.
79. Refer paragraph 96 for more detail.
80. This option is not recommended.

FINANCIAL CONSIDERATIONS

<u>Issue 1 – IFF Levy</u>

81. The 2024/34 Long Term Plan was adopted based on having an IFF levy in place for Te Manawataki o Te Papa (TMOTP). This allowed council to budget for a $4.9b capital programme and remain within its borrowing limits.
82. The IFF levy for TMOTP was based on funding the $151.5m ratepayer portion of the TMOTP programme of works which was the outcome of a separate consultation process where the option of funding TMOTP via rates or IFF ley was consulted on, and the latter option chosen.
83. Council remains within its borrowing limits noting that there is some additional cost using the IFF levy due to the longer-term nature of this borrowing. Whilst the IFF levy does ensure certainty for ratepayers and ensures that the costs of the project are spread over generations through a 30-year payment period the following analysis has been undertaken comparing Councils traditional borrowing through the LGFA with options using IFF.
84. The option of borrowing through the LGFA is restricted by existing borrowing covenants. Whilst it is acknowledged that the LGFA covenants have, and continue to be, the subject of discussions, TCC is currently restricted to borrowing 285% reducing to 280% of its revenue.

85. Therefore, in order to continue with the capital programme, and assuming this is delivered over time, Council would breach its covenants. For the 2025 and 2026 financial years Council is close to its covenants. Whilst the timing of external funding will impact on the amount of additional rating required to remain within limits given the external funding is projected at 50% of the programme an additional $151m of debt capacity would be required over the medium term. Assuming the delivery of the wider capital programme this would require debt retirement in the form of additional rating of up to $54m over the medium term to maintain compliance with current debt to revenue ratios.

86. Another option considered was borrowing outside of the LGFA. This would occur should Council breach its borrowing covenants based on the current ratios allowed. This would require refinancing of all of Council debt and a range of between 25 to 40 basis points additional which may be dependent upon the potential downgrading of Councils credit rating and subsequent implications on its borrowing rates, liquidity requirements, etc. This would result in additional costs over and above unconstrained LGFA borrowing of $60 per annum per median residential ratepayer.

87. Using the IFF and acknowledging an increased borrowing margin of 113 basis points the cost difference of the $151.5m of debt would be approximately $19 per annum per residential ratepayer. This is lower than the other options as it requires only financing of $151.5m at the higher rate and not the full amount of Council debt. This margin is based on the net cost of the IFF borrowing which would be the expected rate noting that there is risk which is capped at the gross amount which would see an additional cost if this were to occur $13 per annum per residential ratepayer in a worst-case scenario.

88. To summarise in an environment constrained by LGFA borrowing limits:

- the **IFF model would expect an additional cost of $19 per annum per residential ratepayer**; compared to
- **refinancing all of Council's debt** which will have a **rate impact of up to $60 per annum per residential ratepayer.**
- **Maintaining the current LTP programme and remaining within LGFA limits would require the introduction of significant debt retirement charges via rates.**

IFF also provides certainty to ratepayers and other funders over long periods of time (30 years).

Updated Financial Considerations based on 8 August waters and LGFA debt announcement

89. On 8 August 2024 the Minister for Local Government announced that the LGFA would be able to lend directly to Water Council Controlled Organisations up to 500% of their revenues without impacting on the financial covenants relating to the Council parent entity.

90. They also announced a review of borrowing covenants the opportunity for high growth councils to increase covenants from the existing 285% up to 350% following LGFA shareholder approval and approval of bespoke arrangements by the board of LGFA. This is expected to be decided in November 2024.

91. Based on these announcements Council staff have modelled the impacts on Councils balance sheet which show that Council will remain well within these updated covenants (figure one above). It should be noted that subject to further modelling it is expected that direct lending to a Waters CCO will further reduce overall Council debt to revenue ratios.

92. The financial impact in the current financial year would be an increase in debt levels of $54m representing the assumed amount of the LTP drawdown this financial year. The expected rating impact of this would be $1.54m noting this would see the removal of the IFF levy previously expected to start on 1 July 2025.

93. Rates would need to be included in the next Annual Plan to fund the expenditure previously assumed to be funded through an IFF levy and this could be in the form of a targeted rate.

94. It should also be noted that in the event of Councils borrowings increase the credit rating of A+ may be impacted, noting that remaining at an A rated credit rating with Standard & Poors is sufficient to be able to continue to utilise LGFA borrowings.

Issue 2: Construction Contract

95. For issue 2 – the financial consequences of signing the main construction contract immediately are as allowed for in the adopted Long-term Plan 2024-2034.

96. If the Library and Community Hub main construction contract is not signed immediately then the consequences will be immediate, significant, and increasing with time. **Confidential attachment 4** provides information on the nature and financial scale of these consequences.

LEGAL IMPLICATIONS / RISKS

97. Refer to the independent consultant's report (Attachment 1) and the legal advice (confidential Attachment 3) for a summary legal implications and risks.

98. It is also important to note that the Local Government Act requires a local authority to "manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community."[11]

TE AO MĀORI APPROACH

99. While the Te Manawataki o Te Papa project has significant elements reflecting Council's approach to Te Ao Māori, the funding and financing matters covered by this report are not directly impacted by that approach.

CLIMATE IMPACT

100. Similarly, the funding and financing matters covered by this report are not directly impacted by Council's approach to climate impact.

CONSULTATION / ENGAGEMENT

101. As noted earlier in this report, the proposal to establish an IFF Levy was subjected to public consultation in September and October 2023.

SIGNIFICANCE

102. 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.

103. 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 decision.

   (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

104. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision to reconfirm a proposal for Te Manawataki o Te Papa is of high significance.

[11] Section 101 Local Government Act 2002

ENGAGEMENT

105. Taking into consideration the above assessment, that the decision is of high significance, and that public consultation has already been undertaken on the substantive matters, officers are of the opinion that no further engagement is required prior to Council making a decision.

NEXT STEPS

106. If the recommended resolutions are adopted, staff will progress seeking approvals to increase the LGFA related debt to revenue ratios. In addition, the Chief Executive will sign the main construction contract for the Library and Community Hub.

ATTACHMENTS

1. **Kevin Jenkins Independant Final Report 7 August 2024 - A16283785** ⇩
2. **TMoTP Funding Stack Updated 2 August 2024 - A16247002** ⇩
3. **Legal Advice re Signing Civic Precinct for Library and Community Hub - A16217785** ⇩
4. **Confidential C1 Twenty Two (David Lambie) advice re Contract Delayed Consequences - A16246580 - Public Excluded**

The case for funding **Te Manawataki o Te Papa** through a levy established under the Infrastructure Funding and Financing Act 2020

Final Report

Kevin Jenkins

7 August 2024

Disclaimer

This Review has not been independently verified or audited. I have made reasonable efforts to ensure the information contained in this report reflects the range of views expressed by the people we spoke with. I do not accept any liability if this report is used for some other purpose for which it was not intended, nor any liability to any third party in respect of this report, nor any liability arising from or otherwise in connection with this report (or any omissions from it), whether in contract, tort (including for negligence, breach of statutory duty, or otherwise), or any other form of legal liability (except for any liability that by law may not be excluded). This note supplements the Terms of Reference for my engagement.

Kevin Jenkins

Kevin is a professional director with extensive experience in the public and private sectors. He is the independent Chair of the Real Estate Institute of New Zealand; Chair of NZQA; a member of the Ministry of Health Risk and Assurance Committee and of the Ministry of Defence Risk and Assurance Committee; a Trustee of the Parliamentary Education Trust; a Board member of WorkSafe; and Chair of Iti Kopara, a trust providing professional development for directors of Crown entities among his other roles. Kevin has deep experience in strategy, risk, regulation, public accountability, and public sector governance.

Contents

Executive summary

Recommendation

This paper recommends that you agree to resubmit a proposal to the Ministry of Housing and Urban Development to establish a Levy under the Infrastructure Funding and Financing Act to pay for the rated levy share of a new civic precinct for Tauranga, Te Manawataki o Te Papa.

This paper sets out my independent advice to the newly elected Tauranga City Council to enable it to make an informed decision whether to endorse part-funding Te Manawataki o Te Papa, Tauranga's new civic precinct, through an Infrastructure Funding and Financing (IFF) Levy.

The advice focusses on the proposal to use an IFF Levy to part fund the project in comparison with alternatives. It does not deal with the merits or risks of the civic precinct project itself or with elements of the funding plan other than an IFF levy. It also does not reconsider any specific aspects of the levy proposal, such as the commercial arrangements, the timing, the amount of the levy, or the allocation of Levy amounts to different groups of ratepayers.

A proposal to use an IFF Levy was submitted to the Minister of Housing when the Council was run by Commissioners. The Minister rejected the proposal as he wanted to know the views of the incoming Council before considering the Levy proposal.

Te Manawataki o Te Papa will invigorate central Tauranga

This new-build development in central Tauranga includes a library and community hub, a civic whare, and a museum and exhibition centre, along with a revamped public realm (outdoor space for public and community events) that incorporates Masonic Park. The development pays respect to its historical and present-day environment and has been defined as a "once in a generation opportunity" for the fastest-growing city in New Zealand.

Te Manawataki o Te Papa has clear benefits. Economic benefits include including increased economic activity from visitors attracted to the precinct, increased productivity from business being co-located together, and stimulation of private investment.

The project will also have vital non-economic benefits, including opportunities for Māori cultural expression, enhanced public spaces for present and future generations to enjoy, housing growth with lower emissions because of greater density, lower opportunistic crime, a boost to literacy and other positive education outcomes because of increased library use, and a greater sense of civic pride and social cohesion.

GHD, a consultancy specialising in infrastructure, estimated the value of the benefits that can be quantified had a net present value of $790 million – significantly higher than project's capital costs of $306.3 million. The project had additional benefits that could not be quantified. TMoTP also enjoys proven community support.[1]

The Council's balance sheet limits options for funding Te Manawataki o Te Papa

Councils usually finance their investment in infrastructure by borrowing, which is serviced from revenue collected mainly through rates, user fees, and development contributions. Councils that take advantage of the lower interest rates offered by the Local Government Funding Agency are subject to the LGFA's debt covenants, including the obligation to limit debt to 280% of revenue.[2] TCC, like other growth councils, is close to this debt ceiling already. Adding further debt to the Council's balance sheet would jeopardise the Council's credit rating and so affect its ability to borrow through the LGFA and eliminate any prospect of funding other new initiatives from the balance sheet. It would require the

[1] Te Manawataki o Te Papa Business Case: tmotp-business-case-25july2023.pdf (tauranga.govt.nz)

[2] The 280% debt-to-revenue limit is effective from FY26 onwards.

Council to raise rates to maintain an acceptable debt-to-revenue ratio, or reduce or remove other capital projects from its planned expenditure.

An Infrastructure Funding and Financing Levy is the best option

The Infrastructure Funding and Financing Act 2020 provides a model for funding and financing infrastructure projects that support urban development. For Te Manawataki o Te Papa, the two main components of the model are:

- establishing a new body as a “special purpose vehicle” (SPV), owned and operated by Crown Infrastructure Partners (CIP), to raise finance to fund the project
- creating an Infrastructure Funding and Financing Levy (IFF levy) that the Council would collect and pass on to the SPV to service the debt.

The Levy proposal in a nutshell

Under the proposal, the “special purpose vehicle” would raise $151.5 million to cover the levy share of the capital costs of Te Manawataki o Te Papa.

The Council’s consultation on the use of an Infrastructure Funding and Finance levy to fund the project included the following forecast Levy amounts in 2026 (being the first year of the Levy period):

- For a median residential ratepayer, from $107 to $128 per year
- For a median commercial ratepayer, from $368 to $440 per year.

Updated analysis based on the latest interest rates forecasts Levy amounts that are lower than the estimates above, with the median residential ratepayer paying roughly $2 a week, or $100 a year.

The levy would be collected over 30 years.[3] Total Levy revenue is modelled to increase by 3.5% per year. That annual increase would consist of a forecast 1.5% annual increase in the number of rating units and annual price growth of ~2.0% – that is, an individual levypayer would expect their levy to increase by 2.0% a year. This is the midpoint of the Reserve Bank’s target bracket for inflation. Unlike rates, IFF Levy revenue is capped (by legislation) at amounts consistent with the above.

This approach avoids the disadvantages of other options, including adding further debt to the Council’s balance sheet; delays to the project (and realising its benefits); the need to reprioritise capital expenditure plans; the uncertainties and risks of seeking additional funding through other sources; and the need for further asset realisation.

Ratepayers are protected by safeguards, structures, and partnerships

Tauranga City Council, CIP, and other agencies have taken great care to ensure that ratepayers would benefit from the Levy proposal, aided by institutional safeguards.

Key safeguards provided by the institutions of the public service

- The Ministry of Housing and Urban Development (HUD) assessed the prior levy proposal against the mandatory considerations in the Act and recommended that the proposed levy be authorised. If the elected Council agrees to re-submit the same levy proposal, it is likely that HUD will again recommend authorising the proposed levy.
- The Minister is required under the Act to consider (among other things) the affordability of the levy and the long-term interests of levy payers before recommending it to Cabinet.

[3] Technically, the proposed Levy period for was 33 years. However, no revenue is intended to be collected in the final three years are to accommodate for any bad debts.

- HUD will monitor the SPV. SPVs are subject to ongoing reporting requirements, such as publishing an annual report and financial statements. If there is a significant problem with an SPV, HUD can inquire and direct the SPV to address the problem or present a plan for remedying it.[4]
- CIP is subject to the Public Finance Act 1989, the Crown Entities Act 2004, and the State-Owned Enterprises Act 1986. The CIP board is accountable to the Minister of Finance and Minister for State-Owned Enterprises for CIP's performance and is closely monitored and scrutinised through parliamentary institutions such as select committee.
- The Crown can provide a Government Support Package (GSP) to manage contingent residual risks that would ordinarily, but cannot under the IFF model, sit with local authorities. The Auditor-General can audit Crown agency accounts and long-term plans.

The process, rationale and analysis completed to date should provide comfort

- Public consultation on the development, the use of a levy, and the long-term plan amendment has shown public support for Te Manawataki o Te Papa and the use of a levy.
- A through and credible business case reconfirms the proposed development.
- Beneficiary analysis underpins the levy design and distribution of costs across all TCC ratepayers.
- HKA, a consultancy that advises on infrastructure and capital projects, independently reviewed the proposed Infrastructure Funding and Financing Act transaction on behalf of the Council and found "that the overall funding approach proposed for managing affordability for rate/levy payers and ensuring efficient use of TCC financial resources."
- An assessment of affordability was included in the development of the proposal.
- CIP has run a competitive financing process with trusted financiers and attracted finance on favourable terms that should reduce the impact on ratepayers, with levy levels that are lower than those consulted on.

Structures and partnerships established for delivering the project should provide comfort

- The Council is partnering with leading companies, Willis Bond and LT McGuinness to deliver the project.
- Te Manawataki o Te Papa Ltd – the council-controlled organisation governing and leading the civil precinct development – is governed by a credible Board with specific expertise.
- The Council is in partnership with tangata whenua through Te Manawataki o Te Papa Charitable Trust, the council-controlled organisation that owns the land for this project.
- The Council Executive has over 230 years of combined public service experience and is deeply committed to serving Tauranga's best interests.

Next steps

The Commissioners agreed to pursue the IFF Levy proposal. However, the Minister of Housing wants to know if the newly elected Council supports the proposal before he considers the Government's position.

If you agree to pursue an IFF Levy, the proposal will be resubmitted to HUD. HUD will re-assess the proposal against the mandatory considerations in the Act and provide advice to the Minister of Housing. HUD recommended that the Minister approve the prior IFF levy proposal. They would likely recommend the proposal if it was substantially the same as the previous proposal. If the Minister agrees with the proposal, he will seek Cabinet approval to make an Order in Council to give effect to the Levy. CIP will close a financial deal with the financier offering the most favourable terms.

[4] See section 124 of the Infrastructure Funding and Financing Act 2020: Infrastructure Funding and Financing Act 2020 No 47 (as at 23 December 2023), Public Act 124 Monitor may give direction or request remedial plan – New Zealand Legislation. Under section 125, If a responsible SPV fails to address a significant problem in accordance with section 124, HUD may recommend to Minister Bishop that a Crown Manager be appointed to the SPV.

There are good reasons to move quickly. First, the financiers engaging with CIP will hold the competitive rates they are offering for a limited period only. CIP needs clearance to proceed promptly to enable them to close a deal in this time. Second, work has already started on Te Manawataki o Te Papa, and contractual arrangements are committed. If work cannot proceed, the Council will incur legal penalties, reputational risk, and sunk costs.

The use of a levy would show that the Council is willing to use all available funding and financing tools to achieve positive results for the Tauranga community. It also presents a good chance to show how public and private funding can work together to enable development for the good of the community. This mixed-funding approach should resonate with central government.

A number of other councils facing similar constraints to TCC are considering using an IFF Levy to fund infrastructure. If the Council proceeds with an IFF Levy, it is likely that other councils will follow suit shortly after.

1. Tauranga needs to invest in its city centre

Tauranga is New Zealand's fifth-largest city and is continuing to grow faster than the country as a whole. However, the Tauranga city centre is struggling – it lacks significant community spaces, and businesses are suffering from low foot traffic and negative perceptions related to empty premises. To keep pace with this growth Tauranga needs new civic amenities in its city centre. The whole city will benefit from having a strong centre that attracts high value jobs and increases housing density.

What is Te Manawataki o Te Papa?

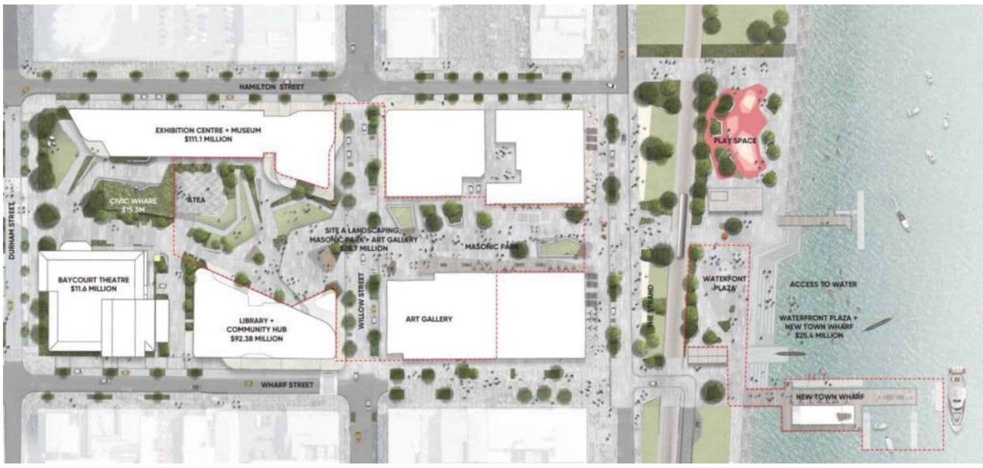
To address these issues, Tauranga City Council has developed a new Civic Masterplan – Te Manawataki o Te Papa, or "the heartbeat of Te Papa – to lift Tauranga into the first rank of cities in Aotearoa New Zealand and the Pacific Rim. This new civic precinct will make the Tauranga city centre a great place to visit and spend time in. The Council sees this work programme as an integral part of the plan to revitalise the city centre.

Core elements of the new development include:

- **Library and community hub** – a multipurpose facility providing a library, an archive, community spaces, customer service functions, a cafe, and an information and ticketing kiosk
- **Museum and exhibition centre** – the vessel for the protection, preservation, care, and enjoyment of Tauranga's Heritage Collection, and an active and social space that celebrates the history of Tauranga and the Bay of Plenty, with the ability to host international high-quality exhibits
- **Civic whare** – a multipurpose facility that will function mainly as a formal community meeting house (for Council meetings for example) and that will also celebrate the culture and heritage of Tauranga
- **Public realm** – a high-amenity outdoor space that will be used for celebration events (such as Matariki and ANZAC day), markets and festivals, public concerts, and other community events.
- **Marine wharf and pavilion** – a new wharf and hospitality structure offering a viewing platform with views across Tauranga's Waterfront; this could include outdoor hospitality, and marine tourism services e.g., craft hire, public (water taxi) and commercial (charters) docking and a waka launching area
- **Baycourt Community and Arts Centre upgrade** – an upgrade of Baycourt that will modernise the facility and reflect the architectural design of other buildings within the civic precinct
- **Art Gallery entrance reorientation** – the creation of an entrance to engage with users of Masonic Park and Te Manawataki o Te Papa, including promoting the art gallery and making it more visible.

A map of the development is shown below.

FIGURE 1. MAP OF TE MANAWATAKI O TE PAPA DEVELOPMENT



Te Manawataki o Te Papa has clear benefits

The new precinct will provide a site that captures Tauranga's unique cultural heritage and will attract private-sector investment to the CBD. In turn, this will generate significant wider benefits and provide the amenities needed to encourage urban intensification in the city centre.

The new precinct has a range of quantifiable economic benefits

GHD, who are specialist infrastructure consultants, assessed the wider economic benefits of the new development. Key benefits that were able to be quantified include:

- **Visitor and tourism contribution to GDP** – The new development will attract more out-of-city visitors and so boost spending on accommodation, transport, hospitality, and retail shopping. This will translate to increased GDP, which is a direct economic benefit to the city.
- **Value of Māori cultural expression** – The use of Māori values in designing and implementing Te Manawataki o Te Papa will create a place that showcases Māori culture and artwork. This will help improve the overall wellbeing by placing appropriate value on Māori culture.
- **Significantly better public facilities** – This will create direct benefits for users. There will also be what economists call "non-use" benefits, including the option value of visiting in future, and the value of knowing that future generations will also be able to enjoy it.
- **Denser housing with lower emissions** – The new civic precinct is expected to encourage more inner-city development. Denser housing development is likely to result in lower emissions compared with less dense development.
- **Higher productivity from concentrating businesses together** – As job density increases, productivity among workers also increases as a result of businesses operating closer to increased customers, suppliers, and competitors.
- **Less opportunistic crime** – Denser city centres tend to have less opportunistic crime.

GHD estimated the value of these quantified benefits to be between $790 million and $1.4 billion over 60 years (net present value).[5] These benefits are significantly higher than the project's capital costs of $306.3 million.

[5] As these figures are presented in net present value the nominal benefits will be significantly higher.

There are also non-quantifiable benefits

GHD also identified non-quantifiable benefits. These included:

- **stimulation of private investment** through confidence in a revitalised downtown area
- **an opportunity to boost literacy and other educational outcomes** among young people through a step-change in library use
- **greater sense of civic pride and improved social cohesion** through creating a vibrant city centre having a catalytic impact on the city.

Although these benefits are not quantified, they are no less real than quantified benefits.

The new development enjoys community support

The Council has done significant work consulting and engaging with the community and with key stakeholder groups over the conceptual and design stages of the project. The most recent engagement with the community was through the Long-Term Plan Amendment (LTPA) process.

The LTPA consultation found that 72% of the submitters (450 out of 628) supported the new development at an estimated capital cost of $303.4 million (subject to achieving 50% of the necessary funding from sources other than rates-funded debt).

The Council recorded a comprehensive breakdown of informal feedback received at community events and through social media through the LTPA engagement. At some events people attending had an opportunity to indicate whether they preferred the project as described above, including with that capital cost, or an alternative option, and 94% of the 203 attendees indicated that they preferred the option described above.

Te Manawataki o Te Papa is progressing

Work has already started on Te Manawataki o Te Papa. Developer, LT McGuiness has 25 staff on site and more planned to arrive soon. The Council has committed to contracts for things like materials. If work cannot proceed, the Council will incur legal penalties, reputational risk, and sunk costs.

Key points

- Te Manawataki o Te Papa is effectively “locked in”: it has clear benefits, enjoys strong community support, contracts have been awarded and work has begun. It is not practicable to revisit the decision to proceed with the project in the form that has been decided without significant consequence.
- As the newly elected council, you need to decide how to proceed with funding this new development. This paper concludes that the best approach is an Infrastructure Funding and Financing Levy. Other approaches involve significant disadvantages, as set out below.

2. The Council’s balance sheet limits its options for funding Te Manawataki o Te Papa

The Council is subject to a debt ceiling

Councils typically fund their larger infrastructure projects through borrowing, which they repay over time from revenue collected mainly from rates. Councils usually borrow from the Local Government

Funding Agency (LGFA), which offers more favourable interest rates than other lenders.[6] However, councils that borrow from the LGFA are bound by covenants that require them to keep their debt under 280% of revenue.[7] For Tauranga City Council, that limit therefore acts as a significant and inflexible constraint on the level of debt it can incur.

Like other high-growth councils in New Zealand Tauranga City Council has a relatively high level of debt, but the Council currently has an A+ credit rating from Standard and Poor's. Increasing its debt could lower this rating, which would require the Council to adopt a lower debt ceiling (as a percentage of revenue) and incur higher borrowing costs.

Key points

- The Council is subject to the Local Government Funding Agency's debt covenants, including the obligation to limit debt to 280% of revenue.
- The Council will need to borrow to fund the new development (with substantial funding from other sources having been committed), and the question is how to service the component of the cost financed by debt.
- This paper does not recommend using the standard rating method to service the debt. This approach:
    - may exceed the debt ceiling created by the debt-to-revenue ratio limit
    - would remove any prospect of paying for other initiatives through the standard rating method.
- Therefore, to fund Te Manawataki o Te Papa, the Council needs to access debt finance without compromising its balance sheet.

3. An Infrastructure Funding and Financing Levy is the best option

What is an Infrastructure Funding and Financing Levy?

The Infrastructure Funding and Financing Act 2020 provides a model for funding and financing infrastructure projects that support urban development. It is targeted at exactly the type of situation the Council now faces – that is, there is an urgent need to develop key infrastructure, and the Council would be able to fund this through rates if it were not for the constraints on its balance sheet.

For Te Manawataki o Te Papa, the two main components of this new model are:

- establishing a body as a "special purpose vehicle" (SPV), owned and operated by Crown Infrastructure Partners (CIP), to raise finance to fund the project
- creating an Infrastructure Funding and Financing (IFF) Levy that is passed on to the SPV to service the debt.

The special purpose vehicle would keep the financing of the new development off the Council's balance sheet

Some of the cost of the project needs to be financed through borrowing and there are serious disadvantages if the Council uses traditional funding approaches. Creating a special purpose vehicle

6 Appendix 1 contains slides provided CIP that compare options for borrowing, including through the LGFA.

7 The 280% debt-to-revenue limit is effective from FY26 onwards. The debt-to-revenue limit is currently 285%.

allows finance to be raised by CIP, who are experts in partnering with local government and the private sector to deliver infrastructure.

For Te Manawataki o Te Papa, the SPV would be responsible for funding and financing approximately half the capital cost of the development. The Council would continue to own the assets and continue to be responsible for the construction.

A diagram showing the high-level contractual and financing structure for IFF is in Appendix 2.

The debt would be serviced through a levy

SPVs repay any finance raised by charging a levy to those who benefit from the infrastructure (for example, landowners in the area that the new infrastructure services). Councils collect the levies from beneficial property owners and pass them on to the SPV. The ratepayer experience in paying an IFF levy is no different to paying rates – the Levy appears as a separate line on the existing Council rates invoice. However, the debt financed by the levies does not appear on the Council balance sheet.

The proposed levy would have a minor impact on residents and businesses

Under the proposal, the SPV would raise $151.5 million[8] to cover the rated levy share of Te Manawataki o Te Papa.

The Council's consultation on the use of IFF for the new development included the following forecast levy amounts in 2026 (as the first year of the levy period):

- For a median residential ratepayer, from $107 to $128
- For a median commercial ratepayer, from $368 to $440.

Updated analysis completed based on recent interest rates forecasts actual levy amounts that are near the bottom end of, or even below, those levy ranges that were consulted on, with the median residential ratepayer paying roughly $2 per week to unlock the benefits of the project.

The levy would be collected over 30 years.[9] Levy revenue is modelled to increase by 3.5% per year. That annual increase would consist of a forecast 1.5% annual increase in the number of rating units and annual price growth of ~2.0% – that is, an individual levypayer would expect their levy to increase by 2.0% a year. This is the midpoint of the Reserve Bank's target bracket for inflation. Unlike rates, IFF levy revenue is capped (by legislation) at amounts consistent with the above.

The levy is linked to a property owners' Capital Value (CV), and therefore reflects the value of the property and the property owner's capacity to pay.

What are the advantages of an IFF levy?

Of the $306.3 million total cost of the project, $151.5 million needs to be ratepayer funded. An IFF levy is the most practicable way to service this debt. This section sets out the advantages of using an IFF levy and the disadvantages that make other options unfeasible.

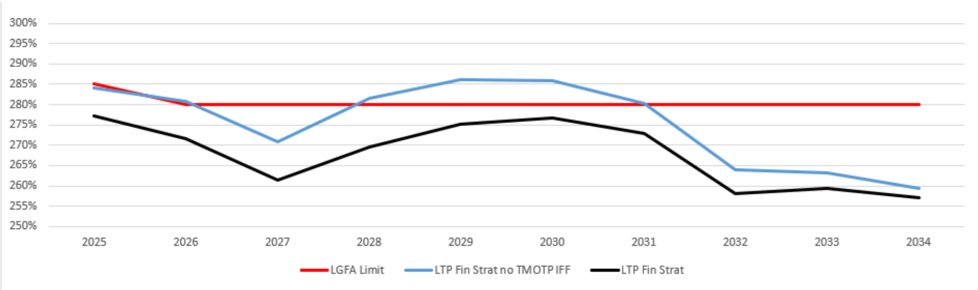
An IFF levy has advantages

The main advantage of an IFF levy is that it allows the Council to retain some debt headroom on its balance sheet. This means the new Council can potentially implement some measures it campaigned on. The figure below shows the Council's debt-to-revenue forecast with and without an IFF levy for Te Manawataki o Te Papa.

[8] The actual amount of debt and equity raised is greater than $151.5m to cover transaction costs and capitalised interest.

[9] The Levy Period is proposed to start on 1 July 2025 and run for 33 years until 30 June 2058 (noting the intended Annual Levy Revenue for the last three years of the Levy Period is nil, this essentially provides a 'buffer' period to collect any non-payment).

FIGURE 2. TAURANGA CITY COUNCIL DEBT-TO-REVENUE FORECAST



As the figure shows, without an IFF levy the Council would need to materially raise rates (beyond planned increases) to maintain an acceptable debt-to-revenue ratio or else significantly amend the capital programme as detailed in the LTP 2024–34.

Second, the adopted 2024–34 LTP assumes an IFF levy will be used to service the capital cost of the project. As the 2024-34 LTP assumes the levy will be in place, if it is not approved and the project proceeds, an LTP amendment would be required.

Third, the use of an IFF levy has a reasonable amount of community support. The Council consulted specifically on the use of IFF to fund Te Manawataki o Te Papa, and 63% of the 301 submissions it received were in favour of using IFF to fund the project.

Other options for accessing debt finance are more expensive

As noted, the 2024-34 LTP assumes an IFF levy will be in place. The Council's constrained ability to borrow on its balance sheet is a key driver for this. If the rated levy cost of the project remains on the Council balance sheet and the remainder of the LTP capital programme is delivered as budgeted, Council will breach its existing debt-to-revenue obligation. There is an additional risk around the uncertainty of some Council income streams.

A number of options have been considered in order to continue the funding of this project. These options assume the delivery of the capital programme consistent with the budget and do not consider project delays, potential cost increases or reduced income streams. The impacts on residential ratepayers are described below. There would also be impacts on commercial ratepayers. There are three main options for accessing debt finance.[10]

1. **Establishing an IFF Levy from 1 July 2025**. The borrowing cost for this debt would be higher than if issued through the LGFA. The Council would incur an additional annual cost of $1.4 million when compared to borrowing through the LGFA (if balance sheet capacity was available). This equates to $24 per median residential ratepayer and does not consider any of the benefits attached to the long-term tenure of IFF lending.
2. **Continue borrowing through the LGFA and use debt retirement rates to ensure Council remains within its borrowing covenants**. This would see the need for a debt retirement rate sized to provide debt capacity of $40 million in year one of the LTP. This would see the need to generate approximately $14 million in new total revenue or $160 per residential ratepayer each year. This would need to continue throughout the course of the project until such time as Council's covenants are met. Additional debt retirement levies would be required as borrowing increases.
3. **Refinance Council debt outside of the LGFA**. This would be required if existing covenants are breached and would result in increases in the cost of borrowing. It is estimated at present that an increase of 25 basis points would result in an additional annual cost of $2.275 million as the increased cost would be incurred on the full amount of Council's debt – forecast to be $1.4 billion. This would equate to approximately $40 per residential ratepayer per year. It should also

[10] The figures used in this section are indicative. Interest rates move regularly and any deal would be subject to the terms at finalisation.

be noted that this may lead to a rating downgrade and/or additional costs relating to liquidity requirements and debt issuance and administration costs. This is estimated at 15 basis points resulting in a further cost of $1.365 million or $23 per residential ratepayer. Any borrowing above the current LTP projections, including the issuance of bonds or borrowing from a bank, would result in a breach of LGFA limits and therefore these costs would be applicable.

In summary, if TCC was not balance sheet constrained the cheapest option would be borrowing through the LGFA. Given balance sheet constraints, using an IFF Levy is the best option to fund the rated levy share of Te Manawataki o Te Papa. This option (Option 1) would result in a further cost of up to $24 per median residential ratepayer above the costs that would have been incurred from LGFA borrowing. Refinancing Council debt outside the LGFA (Option 3) would result in additional costs of $40 to $63 per residential ratepayer. The highest cost option (in the short term) would be introducing a debt retirement charge (Option 2). Of the debt financing options available to Council, an IFF Levy has the lowest cost impact on ratepayers.

Other options have significant disadvantages

The table below sets out the significant downsides of alternative options.

TABLE 1. DISADVANTAGES OF ALTERNATIVE OPTIONS

Option	Assessment
Fund the rateable share on the Council balance sheet	This is not viable because of the Council's debt constraints, unless rates are increased materially beyond increases already planned.
Fund the rateable share on the Council balance sheet and defer or rephase the project	Variations of this option were considered through the business case and were not preferred. This option delays the benefits of the project and is unlikely to be feasible in any event given the limited headroom for additional debt on the Council balance sheet. The costs of the project would almost certainly increase if deferred.
Seek additional external funding to meet the costs of the project, as a substitute for the rateable share	The Council would do this if it were practicable. At best, this option would introduce significant uncertainty as to the timing and feasibility of the project. It is unlikely that significant new funding could be found.
Defer or stop other capital investment priorities to create headroom to fund Te Manawataki o Te Papa on the balance sheet, as a substitute for rateable share.	The capital pipeline was rigorously assessed during the LTP planning process. There is limited ability for further reprioritisation without significant consequences for services and amenities.
Realise unutilised or surplus assets to provide funding for the project, as a substitute for rateable share.	This approach is already part-funding the project. TCC officers indicate there is limited capacity for generating additional funding.

Key point

- An IFF Levy is the only viable option for funding the rateable share of Te Manawataki o Te Papa and thus unlocking the new development's benefits. All other options involve significant risks and disadvantages such as deferring or rescoping the project.

The IFF levy framework includes significant checks and balances

The Infrastructure Funding and Financing Act creates a system of checks and balances. Te Manawataki o Te Papa has been thoroughly tested by these checks and balances and is supported by central government agencies.

HUD has a role in recommending a levy proposal

First, the Ministry of Housing and Urban Development (HUD) has a role as “the recommender”. The Council and Crown Infrastructure Partners (CIP) delivered a levy proposal to HUD. As recommender, HUD must:

- notify the Minister of Housing of the proposal, and
- decide whether to recommend the levy proposal and prepare a report for the Minister with its recommendation.

HUD recommended that the Minister approve the prior IFF levy proposal. This means HUD believes authorising the levy is appropriate taking into account the mandatory considerations in the Infrastructure Funding and Financing Act. These mandatory considerations include measures to protect levypayers, such as considering affordability and fairness (as to where costs and benefits accrue).

The Minister must support the levy proposal and obtain Cabinet approval

This leads to the second “gate” in the system. The Minister must support the proposal and obtain Cabinet approval to make an Order in Council to implement the levy.

As set out earlier in this paper, the Minister of Housing has indicated that due to the change in governance, he has invited the newly elected Council to resubmit the proposal for an IFF levy to be the mechanism to part fund the project.

HUD has a role in monitoring the SPV

The third check in the system is that the Act creates a monitoring, reporting, and disclosure regime to make sure SPVs act appropriately. This includes ongoing reporting requirements for SPVs, such as publishing an annual report every levy year. HUD has the role of monitor. If there is a significant problem with an SPV, HUD can inquire and direct an SPV to address the problem or present a plan for doing so.

An SPV must produce audited financial statements

An SPV must ensure that its financial statements are audited by a qualified auditor, who must comply with all applicable auditing and assurance standards. An SPV must also provide the monitor with an annual report, which is then published.

CIP is subject to further accountability measures

Crown Infrastructure Partners is subject to the Public Finance Act 1989, the Crown Entities Act 2004, and the State-Owned Enterprises Act 1986. The CIP board is accountable to the Minister of Finance and Minister for State-Owned Enterprises for CIP’s performance, and is closely monitored and scrutinised through parliamentary institutions such as select committee.

The Crown will provide a Government Support Package to manage risk

The fourth check in the system is the Government Support Package (GSP), which would be in the form of an agreement between the Crown and the SPV. It is proposed that this GSP would cover losses to the SPV or its financiers caused by:

- an amendment or termination of the proposed Levy Order
- certain kinds of law changes, including those that impose a tax or levy (or similar) exclusively on IFF Act projects, SPVs, or financiers
- successful judicial review proceedings that have the effect of reducing the revenue from the levy.

The Treasury is responsible for negotiating a Government Support Package with CIP and financiers. If the Council chooses to recommend approving the Te Manawataki o Te Papa levy, the Treasury will advise the Minister of Finance about a potential GSP for the SPV.

If granted, the GSP will be an indemnity issued by the Minister of Finance under section 65ZD of the Public Finance Act 1989.

Some usual checks and balances on lawmaking apply

Some of the usual checks and balances apply too. For example, the Infrastructure Funding and Financing Act was passed by Parliament following a standard process including Select Committee scrutiny. The Bill passed with broad cross-party support.

The Auditor-General can audit Crown agency accounts and long-term plans.

Actors throughout the system support the proposal

Because of that system of checks and balances, Tauranga City Council officials and CIP agree that the IFF levy proposal is the best way to fund Te Manawataki o Te Papa.

As noted, HUD assessed the prior levy proposal against the mandatory considerations in the Act and recommended that the proposed levy be authorised. If the elected Council agrees to re-submit the same levy proposal, it is likely that HUD will again recommend authorising the proposed levy.

Key points

- The legislation provides a system of checks and balances that should give assurance that a levy will be implemented only if ratepayers are appropriately protected.
- In particular, HUD has an important role in advising the Minister of Housing on whether a levy proposal is appropriate, taking into account the mandatory considerations in the Infrastructure Funding and Financing Act. HUD also has an important role in monitoring the SPV, and the SPV is subject to reporting requirements.
- All the key agencies involved in the levy proposal for Te Manawataki o Te Papa support the proposal.

4. Effective partnerships and governance structures have been established

As well as the checks described above and the support from government agencies for the levy proposal, effective structures have been established to deliver the proposal as described below.

The Te Manawataki o Te Papa project is supported by major investors and leading developers including $21 million from TECT (the Tauranga Energy Consumer Trust).

Under the proposed levy arrangement, the Council would continue to own the assets and manage the construction of the project.

The Council is partnering with market-leading companies to deliver the transformation

In 2018, Tauranga City Council entered into a 12-year partnering agreement with property development and investment company Willis Bond, to design and develop the buildings and grounds for Te Manawataki o Te Papa. Supporting the delivery of these developments is construction partner LT McGuinness. Willis Bond and LT McGuiness are leading companies in their fields.

Te Manawataki o Te Papa Ltd is governed by a credible board

Te Manawataki o Te Papa Ltd (TMoTPL) governs and leads the delivery of the civic precinct development. TMoTPL is a council-controlled organisation that is fully owned by Tauranga City Council, and the Council appoints its board of directors. TMoTPL draws on a wide range of industry and commercial expertise, and has strong governance. Profiles of the TMoTPL Board members are in Appendix 3.

As a council-controlled organisation, Te Manawataki o Te Papa Ltd ensures there is a structure in place that gives everyone confidence that the project will be delivered effectively and in a cost-efficient way. TMoTPL also gives those involved in the project access to a wide range of industry and commercial expertise.

The Council partners with tangata whenua through Te Manawataki o Te Papa Charitable Trust

Te Manawataki o Te Papa Charitable Trust is jointly governed by Tauranga City Council and the Otamataha Trust. Otamataha Trust represents mana whenua from Ngāi Tamarāwaho, Ngāti Tapu, and Te Materāwaho – direct descendants of those who originally released the land to the Church Missionary Society in 1838.

The Charitable Trust was established in October 2022 to own the land referred to as “Site A” of the new civic precinct, following consultation with mana whenua partners and the community.

Te Manawataki o Te Papa Charitable Trust signifies a unique pathway forward in partnership with the Otamataha Trust, to help reconcile past events and restore mana to hapū and iwi. It means that the Council and tangata whenua can move ahead together with exciting plans for this area with certainty about how the land will be owned and used in the future, so that everyone in the community benefits.

Tauranga City Council was acknowledged at the 2023 LGFA Taituarā Local Government Excellence Awards for this mahi, winning the Te Tohu Waka Hourua – The Buddle Findlay Award for Māori-Council Partnerships.

Te Manawataki o Te Papa is supported by tangata whenua in the co-design of this development.

The Tauranga City Council executive has vast experience

The eight members of the Tauranga City Council executive have a combined 230 years of public service experience. They are committed to serving the ratepayers of Tauranga.

Key points

- Effective partnerships and governance structures have been established to deliver Te Manawataki o Te Papa.

5. Extensive consultation and analysis has been done

This paper endorses the IFF levy proposal. It reaches this conclusion having considered the issues discussed in the previous sections of the paper, as well as the vast body of analysis that has been completed to date. This is described below. These documents informed:

- the levy proposal that Tauranga City Council and CIP submitted to HUD
- HUD’s recommendation to the Minister of Housing that an IFF Levy be established for Te Manawataki o Te Papa.

Three rounds of public consultation – 2022 to 2023

The public has been consulted on:

- **the proposed design of Te Manawataki o Te Papa**.
- **the proposal to use an IFF Levy to fund the new development**. The Council consulted specifically on the use of IFF to fund Te Manawataki o Te Papa, and 63% of the 301 submissions it received were in favour of using IFF to fund the project.
- **the amendment to the long-term plan**. The LTPA consultation found that 72% of the submitters (450 out of 628) supported the new development at an estimated capital cost of $303.4 million (subject to achieving 50% of the necessary funding from sources other than rates-funded debt).

In all cases, support for the direction of travel was strong.

The Manawataki o Te Papa Business Case – Rationale Ltd, July 2023

Rationale Ltd is a consultancy that specialises in advising public-service clients on investment decisions. Rationale worked with TCC to produce the business case for the new civic precinct.

Guided by the Treasury's five-case model and building on GHD's work quantifying the benefits of the development, this business case reconfirmed the single-staged Te Manawataki o Te Papa project as the preferred option (as outlined in the refreshed Te Manawataki o Te Papa masterplan) and recommends proceeding with the delivery of the programme of works.

IFF Beneficiary & Levy Assessment for Te Manawataki o Te Papa – Insight Economics, February 2024

When the Minister of Housing considers a proposal to create an IFF levy, the Minister is required by the Infrastructure Funding and Financing Act to consider the expected benefits of a proposal and the likely distribution of those benefits.

As part of the levy proposal Insight Economics developed an independent economic analysis of the likely beneficiaries of the new development and considered the implications of those for the design of an appropriate IFF levy.[11] Insight Economics concluded that:

- the Council should contribute up to 90% of the project's cost, to reflect its estimated share of the project's benefits
- residential ratepayers should contribute 70% of the IFF levy amount, with commercial ratepayers funding the other 30%[12]
- commercial ratepayers should not be split into sub-groups, such as commercial versus industrial
- the levy should be set based on Capital Value (CV) because many benefits will be capitalised in property values, so there is a clear link between CV and benefits received, plus higher-value properties generally indicate a greater ability to pay overall
- there is no need to set a levy with differential charges by location within the city
- the levy should apply for approximately 30 years (+/- 5 years).

This analysis underpins the levy design and ensures a reasonable degree of fairness in that costs accrue to parties in a way that is proportional to benefits.

Insight Economics' analysis draws on visitation projections for each component of the project produced by Rationale.

[11] Insight Economics is an economics consultancy with particular expertise in resource management, property development, and local infrastructure.

[12] This is slightly different to general rates – residential ratepayers contribute 65% of general rates and commercial ratepayers 35%.

Review of Tauranga City Council's proposed Infrastructure Funding and Financing Act transaction – HKA, February 2024

Tauranga City Council engaged HKA[13] to review its proposed Infrastructure Funding and Financing Act transaction to fund a portion of Te Manawataki o Te Papa. The HKA report supports the funding proposal, noting: "The reviewer notes that the overall funding approach proposed for the project strikes a good balance between allowing the delivery of a priority project for TCC whilst managing affordability for rate/levy payers and ensuring efficient use of TCC financial resources."

Crown Infrastructure Partners finance acquisition process – April 2024

As discussed above, CIP will establish, own, and operate the special purpose vehicle (SPV) that raises funds to finance the new development. CIP has run a competitive financing process with a large pool of lenders and has achieved favourable financing terms for the transaction.

CIP released a request for proposals (RFP) in April, seeking financing proposals. This process was run in accordance with the Government Procurement Rules. Proposals were received from 11 members of the CIP Senior Debt Panel, which is a vetted panel of leading domestic and global financiers.

The RFP received more than the eight proposals received for the previous Wellington Sludge Facility IFF transaction. This reflects continued development and education of the market and highlights the ongoing attractiveness of the IFF product to lenders. Global and domestic financiers continue to be very keen to participate in IFF transactions, resulting in heightened competition between lenders for the IFF transaction for Te Manawataki o Te Papa.

The pricing received for the project is an improvement on assumptions made for the purposes of consultation in developing the levy proposal (which were informed by prior transactions). Combining this with recent downward movements in swap rates results in forecast levy amounts (at 18 July) that are below the range TCC consulted on: those new forecast amounts are currently $98 for a median residential levy payer and $320 for a median commercial levy payer respectively.

This is a very positive outcome for TCC, although final levy amounts will be subject to any further swap rate movements before the financial close.

The HKA report endorsed the analysis done by CIP.

Key points

- The levy proposal and the Te Manawataki o Te Papa project are supported by extensive analysis carried out by credible organisations.
- Public consultation shows support for the project and the use of an IFF Levy.
- Analysis provides a strong understanding of the benefits of the project and of who will benefit. This beneficiary analysis underpins the levy design and ensures that it is fair.
- Independent analysis also supports the process CIP has followed to secure the best finance deal for Tauranga ratepayers.

[13] HKA is a consultancy that advises on infrastructure and capital projects, amongst other things.

6. The process from here

A competitive financing solution has been committed to and is available for a limited period. CIP supports the levy proposal and is ready to close a contract with the preferred financier that will secure the best financial deal for Tauranga over a 30-year term.

The Minister of Housing has asked the incoming Council to consider the use of an IFF Levy as a funding tool and to inform the Minister whether the Council supports it. If the Council does confirm that it supports the IFF proposal, the following steps will need to happen:

- The Levy Proposal and Endorsements will need to be resubmitted to HUD. The levy proposal that was submitted by the Commissioners could be resubmitted immediately to instigate the government approval process.
- This will trigger the restarting of the IFF Act approval process:
    - HUD will reassess the levy proposal and submit its recommendation to the Minister of Housing. As noted, HUD supported the earlier levy proposal, and it is unlikely that its position would change unless the new levy proposed is significantly different.
    - The Minister will consider the proposal and consult with other Ministers (at a minimum, the Minister of Finance, Minister of Local Government, and Minister of Commerce and Consumer Affairs) and coalition partners.
    - If the Minister of Housing approves the proposed levy, it will then be considered by Cabinet.
    - If Cabinet supports the proposal, the Governor-General will approve an Order-in-Council authorising the levy.

If the Council can move quickly to instigate this process, CIP will be able to achieve financial close by the end of 2024, thus obtaining the favourable rates financiers are offering.

Key points

- Finalising an IFF levy requires two processes:
    - the process for creating an Order in Council to give effect to the levy
    - the process that CIP must run to finalise a financial deal.
- To finalise an IFF Levy, Cabinet agreement is needed to make an Order in Council. The Minister of Housing would seek Cabinet approval after considering advice from HUD and the views of his Ministerial colleagues.
- Your agreement to use the Infrastructure Funding and Financing Act is needed promptly to give CIP the best chance of achieving a financial deal by the end of 2024. This would provide certainty to all parties and give the best chance of CIP locking in the favourable rates offered by financiers.

Appendix 1: CIP slides on funding options

TMOTP funding options

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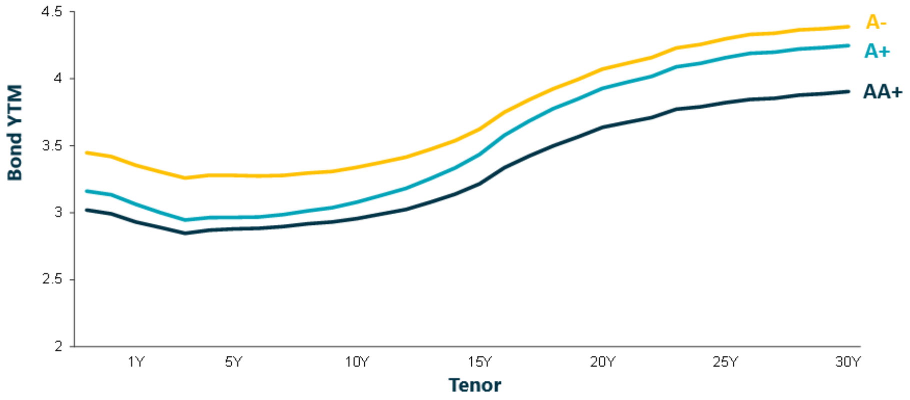
Option	Description	Pros	Cons
1 **Borrow through LGFA**	TCC borrows additional debt through LGFA to fund TMOTP	✓ Cheapest cost of debt, due to LGFA's AA+ credit rating ✓ Well-known process	X Ability to raise additional debt is capped due to LGFA covenants, therefore **not feasible**
2 **Borrow through private markets**	TCC raises ~$1.0bn in private markets to refinance existing LGFA borrowing and fund TMOTP	✓ Provides additional debt headroom as no longer required to meet LGFA covenants	X **Higher cost of debt** due to TCC's lower credit rating (A+) X **Impacts all TCC's debt**, not just additional debt for TMOTP X **More debt will result in a downgrade** in TCC's credit rating, further increasing cost of debt (& negative public perception)
3 **IFF**	Leave existing debt with LGFA and use IFF to fund TMOTP	✓ **IFF debt is not repayable by TCC** – all financing risk sits with CIP ✓ TMOTP funded outside of LGFA caps ✓ Cost over LGFA only on TMOTP debt ✓ Long term certainty for ratepayers ✓ Other qualitive benefits of IFF	X Small premium in cost of debt over LGFA (likely cheaper than TCC borrowing directly, but for longer tenor)

- **Borrowing for TMOTP through LGFA is not feasible.**
- **TCC borrowing directly will increase cost on <u>ALL</u> TCC's existing debt.**
- **Using IFF is only viable and economic option available.**

Greater cost of borrowing directly

TCC benefits from LGFA's better credit rating (example suggests 40 – 50bps between AA+ and A- issuances)

Example Bond Yield Curve*



** We've shown US municipal bond yields to illustrate the impact of credit rating on cities' cost of debt as there is limited comparable data in the NZ market, particularly for longer tenor debt. While the relative differences between credit ratings are a useful guide, the absolute interest rates are not comparable to NZ.*

- **Borrowing directly likely to cost more due to TCC's lower credit rating**
- **Will result in credit downgrade, further exacerbating cost premium**
- **Complexity / cost of raising debt as a new issuer**

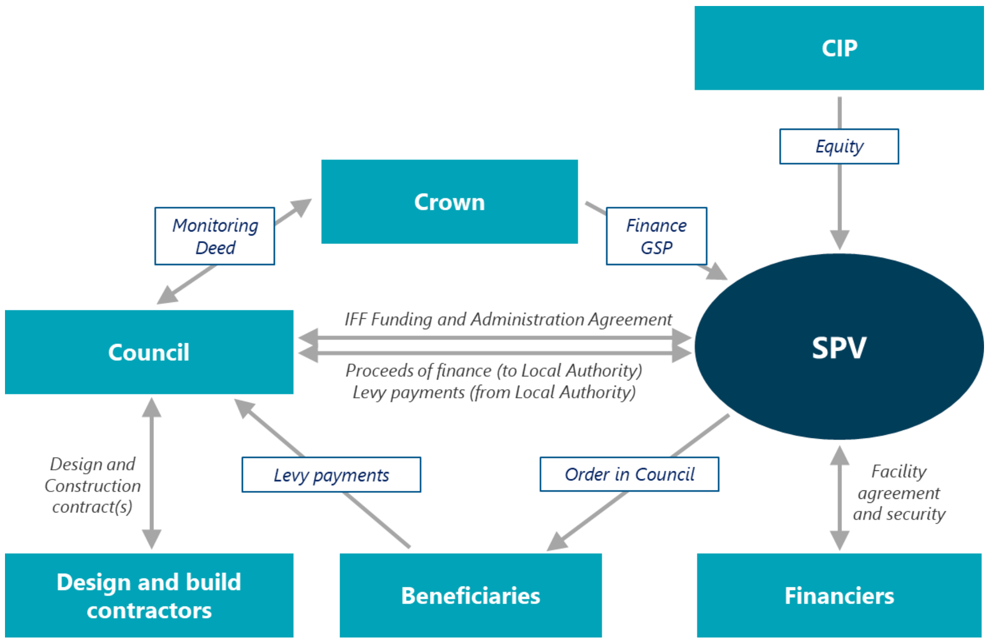
Other costs of TCC borrowing directly

1. In addition to the cost associated with a lower rating, as a new issuer to the market TCC will face a further premium.
2. A lack of scale in future issues will mean TCC faces an additional liquidity premium.
3. TCC would have to raise and administer its own debt process, which comes at a further cost.
4. **These costs would be incurred on ALL of TCC's debt. Not just the TMOTP portion.**

LGFA's primary purpose is to lower Council's borrowing costs.

The Infrastructure Commission's recent report into Local government financing tools notes a disadvantage of exiting LGFA is "Higher borrowing and administrative costs". "We are not aware of any councils considering exiting LGFA to increase their debt capacity."

Appendix 2: High level contractual and financing structure for IFF



Appendix 3: Profiles of Te Manawataki o Te Papa Limited Board Members

Kim Wallace, Chair

Kim Wallace is a resident of Tauranga Moana. She has had an executive career in finance, complemented with full time governance appointments over the past 10 years. Since 2018 Kim has been the Independent Chair of the Audit and Risk Management Committee for Christchurch City Council. She is also currently Deputy Chair of AgResearch Limited and an Independent Director of Port Nelson Limited and Origin Capital Partners.

In addition, Kim is Chair of several Project Steering Committees charged with the oversight of significantly large and complex Crown-funded construction projects such as the $1 billion State Highway 2 projects between Waihi and Tauranga.

Barry Bragg, Director

Barry Bragg is currently Chair of Te Kaha Project Delivery Limited, a council-controlled organisation set up to independently govern the design and construction of the $683 million Te Kaha multi-use arena in Christchurch, reporting to Treasury under the Crown funding agreement.

Barry is also current Chair of Pegasus Health Limited, the largest Primary Health Network in the South Island, and current Chair of Paenga Kupenga Limited, a subsidiary of Ngāi Tahu’s investment arm Te Ngāi Tūāhuriri Rūnanga, supporting the delivery of social outcomes. Of Ngāi Tahu, Whānau a Apanui and Whakatōhea descent, Barry has previous executive experience working for various energy and telecommunications organisations across New Zealand.

Peter Neven, Director

Peter Neven has extensive experience in the New Zealand Construction Industry, including 33 years at Fletcher Construction, responsible for all commercial projects in New Zealand such as Auckland Hospital, Wellington Hospital, the Sky City complex including Sky Tower, the PWC office complex, Eden Park development, AMI Stadium in Christchurch and ASB headquarter building in Auckland.

Peter is currently involved in various governance roles some of which include, the Wellington City Council Te Matapihi Project Library seismic upgrade, Te Kaha stadium in Christchurch and is an Independent Director for Master Build Services Ltd.

Nathan Speir, Director

Nathan Speir is a director of Rice Speir and a local government law specialist, acting for some of Aotearoa’s largest local authorities. Innovation is at the heart of Nathan’s practice, always looking for better ways to do things with a forward-thinking approach to delivery.

Nathan has a Master of Law with Honours from the University of Auckland and is a trusted advisor to local authorities across New Zealand.

25 of 25

Te Manawataki o Te Papa – Updated Funding stack at July 2024

(Based on that reported to Council on 20 May 2024 and updated on 02 August 2024)

	Funding source	Banked/ Committed	Further Expected	Risk/ opportunity	Total
External funding					
	Water Reform "Better Off" funding	$12.1m			
	Other Government Grants[1]		$0m	$13m	
	TECT Partnership	$21.0m			
	Local and Community Grants including corporate sponsorship and philanthropy[1]		$10.0m		
	Growth funding (development contributions)		$0.7m		
	Total external funding				**$43.8m**
Other funding					
	Asset realisation reserve[2]	$37.0m	$45.4m	-$4.2m	
	Airport activity funding	$13.0m			
	Parking activity funding (debt raised against the activity)[3]		$46.0m	-$8.8m	
	Total other funding				**$141.4m**
Total non-property owner funding available		**$83.1m**	**$102.1m**		**$185.2m**
Property owner funded debt (via proposed IFF Levy)					**$151.5m**
Total funding available					**$336.7m**
Total approved budget for programme of works					**$306.0m**

Asset realisation reserve as at July 2024	
Estimated realisable value of identified assets	$82.4m
Estimated realisable value, net of debt repayments on those identified assets	$55.0m
Asset realisation proceeds needed to balance TMoTP funding stack	$31.9m

[1] Independent advice was sought on the level of Government, Local and Community Grants that we could expect for a project of this nature. Those advisors were: Jenni Giblin of Funding HQ, Dominique Paduch, and John Leuthart of Leuthart Limited and New Plymouth City Partners.

[2] The report to Council on 24 July 2023 on Asset Realisation noted:
"(c) Approves that on sale of assets managed through the Asset Realisation Reserve approach, any debt associated with that asset will be not repaid unless Council, by further resolution, determines full or partial debt repayment shall occur."

[3] The 20 May 2024 report on the TMoTP Financial Strategy recognised the decision during Long-term Plan deliberations not to sell Council's parking buildings (and use the proceeds as part of the asset realisation

reserve to fund TMoTP) but to instead retain ownership of the parking buildings and use ongoing parking activity surpluses to fund the financing costs of an equivalent amount of debt. However, this use of the ongoing surpluses was omitted from the tables in the 20 May 2024 report. We have valuations from PRP amounting to $44m based on sale with leaseback. Should the forecast surpluses not occur to the level required to raise sufficient debt, we can take steps to divest those assets. The parking buildings remain within the Asset Realisation Reserve for this reason.

Additional considerations

Three Waters Better Off funding

Originally, $48.4m was committed to Council as part of the Three Waters Better Off Funding package. Tranche 1 comprised $12.1m, with the balance to be paid in Tranche 2. With subsequent changes to the Three Waters proposal by the previous government and a complete reversal of the proposal by the new government, Tranche 2 funding has now been withdrawn. A funding agreement for Tranche 1 is currently in place and approximately two thirds of the $12.1m has already been paid to Council, with the balance of Tranche 1 funds forecast to be spent in the next three months.

Several months ago, central Government approached Council with a view to wanting to ensure all Three Waters Better Off Funding was being spent on water-related projects. If not, there was a possibility that funds may need to be returned, or re-allocated to waters-specific projects. TCC was able to demonstrate that all funds spent to date, and the majority of the balance of the funding, have and will indeed be committed to waters-related parts of the TMOTP project. TCC has advised central Government as such.

Based on the recent moves of central Government to validate the appropriateness of Three Waters Better Off Funding expenditure, there exists a risk that if the TMOTP projects do not go ahead, they will move to ensure all monies committed to and spent on the project to date are returned. For obvious reasons, this assumption hasn’t been formally tested with central Government yet.

TECT

With the 2022 restructure of TECT, the amount of grant funding available to contribute to community projects of significance has increased on a per annum basis, from ~$8m to up to $20m, depending on TECT’s return on investments. Council worked very closely with TECT over an 18-month period to establish a relationship, and to build trust and confidence in council’s ability to realise excellent community outcomes through the delivery of community amenity projects.

These extended conversations resulted in TECT making the largest ever grant to a community project, with $21m committed to the delivery of a museum as part of the TMOTP suite of projects. If the project does not proceed as planned the TECT funding of $21m will likely not be available to Council for this or other Council projects.

TOMPKINS | WAKE

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Shortland & Fort Building
Level 17
88 Shortland Street
PO Box 2543
Auckland 1140
New Zealand
Ph: +64 9 558 0699
DDI: +64 9 558 0601
linda.oreilly@tompkinswake.co.nz

Partner: Mark Renner

File Ref: 228211

16 July 2024

SUBJECT TO LEGAL PRIVILEGE

Marty Grenfell
Chief Executive
TAURANGA CITY COUNCIL

Email: Marty.Grenfell@tauranga.govt.nz

Dear Marty

Te Papa o Manataki - Contracts – TW Ref 228211

1. We refer to our discussion this afternoon and to our letter of 4 July 2024 concerning the decision of the Minister of Local Government not to recommend the IFF levy for Te Manawataki o Te Papa (**the Civic Precinct**) at this time. The Minister's decision and his proposal that the case for the levy be re-submitted if approved by the incoming Council gives rise to contractual complications that he may not have foreseen.

2. We understand that since our advice was received a report on the funding status of the Civic Precinct has been made to the Commission, which has endorsed the interim response of Council officers, and directed that the incoming Council be briefed on the matter at the first possible opportunity.

Background

3. Council has incorporated a council-controlled organisation, Te Manawataki o Te Papa Limited (**TMoTPL**), in relation to the Civic Precinct. While TMoTPL seems to have a governance role over the Civic Precinct, the contracts entered into to effect the construction of the Civic Precinct are entered into by Council itself.

4. On 17 July 2024 TMoTPL will consider a report from the Director: Civic Development for the purpose of endorsing a recommendation that the Chief Executive of Council award the main construction contract for the Library and Community Hub to L T McGuinness Ltd at a cost of approximately \$71 million, \$23,412,776 of which has already been contractually committed to under preliminary arrangements (the **Library Contract**). This endorsement is intended to enable the Chief Executive to enter into that contract on behalf of Council, in accordance with the authority delegated to him by the Commission on 24 July 2023.

5. You have asked us to address whether it would be appropriate to proceed to commit Council to that contract knowing that in the IFF levy will not be approved without the endorsement of

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the incoming Council. And further, that until and unless that levy application is endorsed, re-submitted, and approved, there is no immediately available source of funds to meet the contractual obligations that would be incurred.

Existing and proposed contractual obligations

6. In order to advance the Civic Precinct, we understand that Council has already entered into a range of contracts:

   (a) a development management agreement with Willis Bond;

   (b) a master preconstruction services agreement with LT McGuinness Auckland Limited, under which $23,412,77 of works in respect of the library and community hub have been awarded; and

   (c) an NZS 3910 contract for the civic whare, exhibition, and museum facilities, of which only the early works package has been currently advanced.

7. The Library Contract is the next contract that we understand will be recommended to be awarded, which is a fixed price lump sum contract using the NZS 3910 standard.

Exercise of delegated authority

8. The delegation from the Commission to the Chief Executive reads as follows:

> "Delegates to the Chief Executive authority to enter contracts on behalf of Council for the delivery of the Te Manawataki o Te Papa (Site A) programme of works as further outlined within the Te Manawataki o Te Papa Design and Cost Update Report – July 2023 (attachment 1), subject to:
>
> (i) Endorsement by the Te Manawataki o Te Papa Board (Ltd.); and
>
> (ii) Sufficient funds being available in accordance with the Te Manawataki o Te Papa Financial Strategy Report resolutions approved by Council at this 24 July 2023 meeting; and
>
> (iii) Condition of commercial sensitivity (as per attachment 2 confidential resolution)."

9. Paragraph (ii) makes it clear that the delegation is subject to the availability of funds "in accordance with the Te Manawataki o Te Papa Financial Strategy Report resolutions." It was suggested in our meeting that the reference in the delegation resolution to the availability of funds was intended to refer to the contribution from external funding sources, but we are unable to read that interpretation into the resolution. The Strategy Report resolutions address both a ratepayer funded loan to a maximum of $151.5 million (subsequently confirmed to be raised by the IFF levy) and the balance to be funded from external sources, together with Airport Activity funding and asset realisation if required. It does not seem reasonable to suggest that the intent of this resolution was to allow contracts to be entered into under delegated authority if the ratepayer funded portion of the funding was unavailable or in serious doubt. Since the availability of IFF funding cannot be confirmed, and in the absence of any approved alternative funding, the current situation falls outside the scope of the delegation.

10. In fact we would have reached this conclusion even without the express limitation in the delegation resolution based on the change of circumstances that has occurred. A financial delegation of this type is given primarily as a matter of convenience and assumes that finances are available to meet the obligations created by the contract. The delegation allows the Council (in this case the Commission) to rely on the expertise and diligence of the Chief Executive when entering a contract for a supply or service that it has already approved,

without the need to address the detail of that contract. Without such financial delegations the administration of Council's financial affairs would be impossible in any medium or large sized local authority.

11. However, in the present case the funding availability for the proposed contract cannot be guaranteed and there has been a significant change in circumstances. The financial terms of the contract can only be met if either:

    (a) the incoming Council both commits to the continuation of the Civic Precinct project and endorses the proposal to re-submit the IFF levy proposal, and this is approved by the Minister; or

    (b) Council fundamentally reassesses the projects and services to be funded as set out in its long-term plan and reallocates funding to pay for the Civic Precinct project, which may require a long-term plan amendment and significant rates rises in subsequent years.

    In these circumstances it is incumbent on the Chief Executive to submit any recommendation/s from TMoTPL about finalising the Library and Community Hub to the Commission for directions, or to the incoming Council for determination.

Financial prudence

12. The consequences of Council entering into a contract without the funding that has been planned, consulted upon, and allocated for that activity (whether executed on its behalf under delegation or on the direct authority of the Commission) are discussed above. In short, if Council cannot meet its financial obligations under the contract, the contractor will seek to enforce the contract and if it should default legal proceedings are highly likely.

13. Council is required by section 14(1) of the Local Government Act 2002 (**the LGA**) to act in accordance with certain principles, including at section 14(1)(f) that it "should undertake any commercial transactions in accordance with sound business practices". In addition, pursuant to section 101(1) LGA:

    > "A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community."

14. It would not be in accordance with either sound business practice or financial prudence for the Council to enter into a contract with a very significant tender price while it has no certainty that it can meet the payment schedule embedded in the contract, and indeed no certainty that the principal portion of the contract price will be available. We suggest it would also be financially imprudent for the Commission to commit the incoming Council to the contract when the Minister has specified that the application for the IFF levy has been turned down unless and until the incoming Council endorses it.

15. We point out that the Council currently has awarded a number of contracts to advance the Civic Precinct project and there may be consequences under those contracts of not proceeding. For example, the Library Contract has a lump sum fixed price, and a delay in awarding it may put the fixed price in jeopardy. However, it is expected that any damages or costs that might arise from those contracts would be much smaller in quantum than the amount of the IFF Funding, but Council might need to investigate the claims it could be exposed to.

Next steps

16. Having said this, we are aware that it the incoming Council will be briefed on the situation and asked to decide whether to re-submit the IFF levy application at the earliest opportunity. We understand that although the briefing will be sooner, the first opportunity to make a decision is likely to be at the initial Council meeting on 20 August 2024. Assuming the incoming Council endorse the application, this means a delay of over a month until that decision is taken, and a further delay while the application is re-submitted to the Minister and passed through Cabinet for what will hopefully be approval. We understand that there is some expectation from the lead contractor that the contract will be signed under delegated authority this week, after the TMoTPL meeting and before the election or at least before the incoming Council takes office.

17. As noted above, any delay that extends much beyond this point may have adverse effects on pricing and expose Council to risk in relation to works that have already been undertaken and the security of the tender price. In order to limit this exposure, it may be possible to include a clause in the Library Contract that enables Council to terminate should the IFF or similar funding not be secured. Council would expect to have to pay costs incurred under the contract, and “demobilisation” costs as the consequence of obtaining this termination right. However, we understand that most of the costs under the Library Contract will not be incurred until 2025, so Council may not incur material costs before either the funding is secured, or, if the funding is not secured, choosing to exercise its termination right or pursuing an alternative. This is not as prudent a course as simply not awarding the Library Contract, as costs would still be incurred.

18. If the incoming Council do not agree to re-submit the IFF levy application, it may consider alternative arrangements to fund the ratepayer portion of the contract. This might variously include:

- A targeted rate;
- Increasing the general rate;
- Re-prioritisation of other capital projects;
- Re-scheduling the works to extend over a longer period.

19. These options would need to be considered in light of Council’s debt caps because, in the case of rates, generally Council would be required to incur the costs of the Civic Precinct through debt and recover the costs from rates over time.

20. Council should also consider its next steps if funding is not obtained, and the likely cost of those steps (for example stopping work entirely on the Civic Precinct, and the cost of taking that action, including through breach of contract claims and potential long term plan amendments).

21. Any of these alternatives would delay finalisation of the contract, may need to be negotiated with the lead contractor, and would be likely to increase costs.

At what point in time can incoming councillors be briefed on the situation?

22. Pursuant to section 115 of the Local Electoral Act 2001 a candidate who is declared to be elected comes into office on the day after the day of the public notice of the official declaration of the election result. This will usually be within a week of the election day. However, a person may not “act as a member of a local authority” until they have taken the

oath of office provided for in clause 14 of Schedule 7 LGA. The making and attesting of those declarations must be conducted at the first meeting of Council following the election: clause 21(5) Sch 7 LGA.

23. The combination of these provisions means that there is a period of time between a member coming into office immediately after the declaration of the official result, and the point at which they can act as a member (e.g. take part in decision-making and act on behalf of Council). Typically new members will receive some form of briefing and orientation during this interim period, unless the first meeting of Council follows very quickly on from the official declaration. This gives rise to a question about providing confidential information to elected members during this interim period.

24. In the absence of any statutory direction this is a matter for the discretion of the Chief Executive, but in the current situation where the incoming Council is to be asked to make a decision based on complex facts in a short space of time it would seem advisable to brief them on the situation as early as possible. The concern when supplying confidential information, especially relating to commercial contractual opportunities and risks, is that the information may be leaked to the detriment of Council's position. However as members are deemed to have come into office once the official declaration is made, they are subject to the obligations of confidentiality set out in the Code of Conduct and any briefing ought to be preceded by advice that the information to be disclosed to them is confidential. They should be advised that as elected members they are required to comply with the Code of Conduct[1] and their attention should be drawn to paragraph 7.1 of the Code of Conduct, which states:

> "7.1 Confidential information
>
> In the course of their duties members will receive information, whether in reports or through briefings or debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member."

25. At the very least we would advise briefing the Mayor and addressing the timing of the briefing to councillors with them.

Yours faithfully
TOMPKINS WAKE

Mark Renner / Linda O'Reilly
Partner / Special Counsel

[1] Clause 15(4) Sch 7 LGA applies.

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12 DISCUSSION OF LATE ITEMS

13 PUBLIC EXCLUDED SESSION

Resolution to exclude the public

RECOMMENDATIONS

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
Confidential Attachment 1 - 11.1 - Briefing to Incoming Council - Update	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
Confidential Attachment 2 - 11.1 - Briefing to Incoming Council - Update	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
Confidential Attachment 4 - 11.2 - Te Manawataki o Te Papa Infrastructure Funding and Financial (IFF) Resubmission and Library / Community Hub Contract	s7(2)(h) - The withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

14 CLOSING KARAKIA