

Committee: Business and Investment
Subcommittee

Date: 02 August 2016

Report Name: Policy Review - Municipal and
Domain Endowment Fund
Policy

Author: Nicolas Wells

Report Status	<i>Open</i>
Strategy, Policy or Plan context	<i>Hamilton Plan Economic Development Agenda</i>
Financial status	<i>There is \$60,000 budget allocated - \$42,072 spent</i>
Assessment of significance	<i>Having regard to the decision making provisions in the LGA 2002 and Council's Significance Policy, a decision in accordance with the recommendations is not considered to have a high degree of significance</i>

1. Purpose of the Report

- To (1) approve the reviewed Municipal and Domain Endowment Fund Policy and (2) approve in principle the transfer of the Endowment Funds to a Council Controlled Trading Organisation (CCTO) – Hamilton Properties Limited (HPL).

3. Executive Summary

- On 29 June 2016 the Business and Investment Subcommittee recommended changes to the Municipal Endowment Fund Policy and the Hamilton Properties Limited constitution. The recommendation set the intent, following the PWC report that the Municipal Endowment Fund should be more actively managed.
- This report responds to the recommendations from the 29th June 2016 meeting in particular it includes an updated policy and constitution for Hamilton properties Limited and a timeline to effect the transition of management and ownership of both the Municipal Endowment Fund and Domain Endowment Fund to Hamilton Properties Limited.
- This report also responds to specific questions raised at the 29th June 2016 meeting.
- The policy requires approval by the Business and Investment Subcommittee for recommendation to the Strategy and Policy Committee for adoption.

Recommendations from Management

- That the report be received.
- That the Business and Investment Subcommittee agree in principle to transfer the assets of the Municipal and Domain Endowment Funds to a Council Controlled Trading

Organisation (CCTO), Hamilton Properties Limited.

- c) That the Business and Investment Subcommittee approves the draft Municipal and Domain Endowment Fund Policy and constitution for Hamilton Properties Limited and recommends adoption at the next Strategy and Policy Committee meeting.
- d) That the Business and Investment Subcommittee approves the timeline for activation and operation of Hamilton Properties Limited and recommends adoption of this timeline at the next Strategy and Policy Committee meeting.
- e) That the Business and Investment Subcommittee recommends that the Chief Executive is delegated the necessary authority to implement this decision.

8. Attachments

9. Attachment 1 - Hamilton Properties Limited - Existing Constitution
10. Attachment 2 - Hamilton Properties Limited - Revised Draft Constitution
11. Attachment 3 - PricewaterhouseCoopers - Municipal Endowment Fund - Final Report
12. Attachment 4 - PricewaterhouseCoopers - Hamilton Properties Limited - Overheads Analysis
13. Attachment 5 - Municipal and Domain Endowment Fund Policy - TRACKED CHANGES
14. Attachment 6 - Municipal and Domain Endowment Fund Policy - FINAL
15. Attachment 7 - Appointment of Remuneration of Board Members of COs, CCOs, and CTOs Policy
16. Attachment 8 - Hamilton Properties Limited - Tompkins Wake Advice
17. Attachment 9 - Hamilton Properties Limited - Revised Process Timeline

18. Key Issues

19. Background
20. The history and background information on the Endowment Funds is detailed in a report to the Business and Investment Subcommittee on 29 June 2016 linked [here](#).
21. PricewaterhouseCoopers (PWC) has reviewed deployment of the Municipal Endowment Fund and provided options to maximise the fund's benefit to the city. The PWC final report is Attachment 3.
22. On 29 June 2016 the Business and Investment Subcommittee resolved that:
 - a) *The report ("Policy Review – Municipal Endowment Fund Policy") be received;*
 - b) *The Business and Investment Subcommittee recommend that the management of the Municipal Endowment Fund be transferred to Hamilton Properties Limited to be managed in terms of the Municipal Endowment Fund Policy and the Hamilton Properties Limited constitution;*
 - c) *The General Manager report back to the 2 August 2016 Business and Investment Subcommittee Meeting on the following:*
 - *Recommended changes to Hamilton Properties Limited Constitution;*

- *Recommended changes to the first draft Municipal Endowment Fund Policy;*
 - *Hamilton Properties Limited's investment objectives, flexibility in its return to the Council, board structure and overheads; and*
 - *An update on the tax status of Hamilton Properties Limited.*
- d) *The General Manager report back to the 2 August 2016 Business and Investment Subcommittee Meeting on the Domain Endowment Property Policy review.*

23. Policy Review

24. The policy has been reviewed following feedback from the previous Business and Investment Subcommittee and the update policy is attached. The key change is that it includes the domain endowment fund and it sets up the objects to be achieved in managing the fund regardless of the vehicle. The policy also sets a minimum return.

25. Domain Endowment

26. There is currently no specific Council policy governing deployment of the Domain Endowment Fund.
27. The Domain Endowment functions differently from the Municipal Endowment in that it was established and operates under a unique legislative framework and the money from sale of Domain Endowment land is utilised for different purposes, specifically:
- To meet the cost of improvement or development of recreation reserves;
 - To purchase land as recreation reserve subject to the Reserves Act.
28. In the past Council has used money from sale of Domain Endowment land to develop commercial premises (such as *The Verandah* at Hamilton Lake Domain), on the basis that they enhance the amenity of the reserve land on which they sit, and the income they generate is used to benefit reserves within the city.
29. The fundamental obligation on Council regarding the Domain Endowment is to ensure that it is held to enhance existing reserves or to acquire new land for reserve. Domain Endowment assets (land, buildings and cash) must retain a separate identity.
30. When HPL was trading it managed both Domain and Municipal Endowments.

31. Hamilton Properties Limited (HPL)

32. Constitution

33. HPL's constitution has been revised by Tomkins Wake to:
- Increase the number of directors;
 - Ensure consistency with Council's policy governing appointment and remuneration of board members of CCTOs (Attachment 7);
 - Include specific provisions to ensure compliance with the Statement of Intent.
34. Attachment 1 is HPL's existing Constitution and Attachment 2 is the revised Draft Constitution.
- ### 35. Investment Objectives
36. Council's objectives for investment of the Endowment Funds are set out in the Municipal and Domain Endowment Fund Policy (Attachment 6).

37. HPL's Statement of Intent will be prepared with reference to these objectives – and will contain the specific actions that HPL will undertake to ensure that it meets the objectives that Council has set out in the Municipal and Domain Endowment Fund Policy.
38. Returns to Council
39. The Municipal and Domain Endowment Fund Policy (Attachment 6) requires HPL to pay Council an annual minimum return equivalent to the Council's prevailing cost of debt. Any annual income generated above the minimum return will be available for;
- Reinvestment, or,
 - Alternative purposes approved by Council, or,
 - Payment of a dividend to Council.
40. The policy sets a minimum distribution in order to allow flexibility. Council's expectation is that HPL will distribute average annual returns consistent with returns from equivalent market sectors. The specific distribution made by HPL to Council will be agreed annually between the two parties and captured in HPL's Statement of Intent, as either:
- Budgeted transfer of an agreed sum, or
 - Payment of a dividend (based on an agreed percentage return), or
 - Combination of both.
41. The Statement of Intent will contain the specific annual financial performance measures that HPL must achieve.
42. Board Structure
43. Council can appoint additional or new directors (Mr Richard Briggs is currently HPL's sole director) in accordance with its policy for appointment of directors to CCTOs (Attachment 7).
44. It may be prudent to consider appointing directors at an early stage so that they can be actively involved in development of HPL's Statement of Intent.
45. Overheads
46. PWC has provided analysis on HPL's overheads while it traded between 1991 and 1998 (Attachment 4).
47. In summary annual overheads fluctuated between \$488,000 and \$611,000 across the nine year period. The majority of the overhead cost (66%) was administration which included staff wages and salaries. The other overheads were a mixture of audit fees, depreciation, directors' fees and lease and rental expenses.
48. Over the nine year period annual overheads ranged between 4% - 9% as a percentage of revenue.
49. Tax Status
50. HPL is a limited liability company and a taxable entity with the CCO exemption described below.
51. HPL has ceased trading and has losses carried forward (as at 31 March 2016) of \$130,606.
52. HPL remains a 100% owned Council-controlled company of Hamilton City Council and therefore any tax losses available to HPL can be offset against current or future taxable income of Hamilton City Council (or relevant group entities – subject to a "commonality" of shareholding).

53. In practice this means that if HPL is trading and making taxable income it will not be required to pay tax on the first \$130,606 of its profit (for example tax payable at 28% on \$130,606 = \$36,569 tax credit).
54. Currently Council does not pay tax on income derived from the Endowment Fund assets.

55. Other Considerations

56. CCO Exemption

57. All HPL's shares are held by Council and it therefore falls within the statutory definition of a CCO. However while HPL ceased trading Council claimed an exemption under section 7 of the LGA 2002 in order to preserve tax losses attributable to HPL, and remove the need to comply with annual reporting requirements while the company remained dormant.
58. At present HPL is not a CCO for the purposes of the LGA. Council must resolve to revoke that exemption as part of the process to revive HPL. The sequencing of that decision is shown on the timeline (Attachment 9).

59. Statement of Intent

60. The Statement of Intent should be prepared by HPL and needs to show how they intend to meet the objectives that Council has set for them. The Statement of Intent is a complex and detailed document which will take some time to prepare and which the directors of HPL will need to approve.
61. The statutory requirements for the contents of the Statement of Intent are set out in paragraph 10 of Attachment 8.

62. Contractual Arrangements between Council and HPL

63. Council's policy objectives define the outcomes that the Council seeks from HPL. The Statement of Intent sets out how HPL will achieve those objectives.
64. Tompkins Wake advise that there is merit in having, in addition, a formal contract between Council and HPL to deal with matters including the following:
 - The term of the arrangement
 - Initial funding obligations and expectations, including:
 - Staff and management
 - Premises
 - Other costs
 - The extent to which Council staff or resources might be seconded
 - Prioritisation of properties or activities if required
 - Reporting arrangements (over and above statutory requirements) if any.

65. Many of these items will be contained in the Statement of Intent. However Council's ability to require variation of the provisions of the Statement of Intent is limited by the current statutory regime. This contract would necessarily guide HPL in the preparation of its Statement of Intent, and would be enforceable.

66. Consultation

67. Tompkins Wake has provided advice on the requirement for consultation (paragraphs 18 – 26 in Attachment 8). In summary the high value of the endowment assets involved increases the degree of significance and the need for consultation.

68. The terms of any contract between Council and HPL will substantially determine whether or not consultation is required and consequently what form that consultation should take.
69. There is a positive correlation between the amount of independence that is granted to HPL to determine how assets are managed (particularly if they are sold by HPL without reference back to the Council) and the need for, and extent of, consultation around the terms of the contract.
70. Tompkins Wake advise that delegating the power to sell endowment assets and purchase replacement assets to HPL without reference back to Council is significant and some form of formal consultation is required.
71. The ultimate form and extent of consultation required will become clearer once Council has determined the nature and extent of the control HPL will have over the endowment assets.
72. It is recommended that focused engagement is undertaken prior to the draft policy being adopted by the Strategy and Policy Committee.
73. Local Government Act 2002 Amendment Bill
74. Tompkins Wake has provided advice on the impact of the Local Government Act 2002 Amendment Bill on CCOs (paragraphs 27 - 31 in Attachment 8).
75. In summary Council's ability to modify HPL's Statement of Intent will be enhanced by the new Local Government Amendment Bill if it becomes law.

76. Business Case

77. It is recommended that a full business case is prepared prior to the activation of, and transfer of assets to, HPL. This business case will ensure a full budget is prepared and that the necessary information is available for the Statement of Intent and any Strategic Planning undertaken by the Board.

78. Timeline

79. The following outlines a draft timeline for the activation of HPL and the management of the MEF fund. Please note that recommendations to the Strategy and Policy Committee will need to go to the full Council for approval.

Date	Action	Owner
2 August 2016	Draft Municipal and Endowment Fund Policy Adopted	Business and Investment Subcommittee
August 2016	Focused Engagement Undertaken	GM City Growth
30 August 2016	Municipal and Endowment Fund Policy Adopted	Strategy and Policy Committee
2 August 2016/ 30 August 2016	HPL constitution adopted	Business and Investment Subcommittee/ Strategy and Policy Committee
September 2016	Commission report into Director Remuneration	General Manager City Growth

March 2017	Approve Director Remuneration	CCO Subcommittee (or equivalent)
September 2016	Commence recruitment of Directors	General Manager City Growth
March 2017	Appointment Directors	CCO Subcommittee (or equivalent)
September 2016	Commence Business Case for transfer of assets to HPL <i>To ultimately be owned by Board but will inform Strategic Planning and Statement of Intent process.</i>	GM City Growth
March 2017	Receive the Business Case for the transfer of assets to HPL	CCO Subcommittee (or equivalent)
March 2017	Activate HPL and revocation of CCO exemption	CCO Subcommittee (or equivalent)
1 April 2017	Hamilton Properties Limited operational in transitional mode	
April 2017	1 st Board meeting	Board
	Strategy prepared by Board	Board
	Statement of Intent prepared in draft	Board/CCO Subcommittee (or equivalent)
1 July 2017 (effective)	Establish delegated authority to manage assets not transferred	Council
1 July 2017 (effective)	Transfer of Cash and Assets	Council
1 July 2017	Hamilton Properties Limited fully operational	

80. Financial and Resourcing Implications

81. \$42,072 has been spent to date on the project for consultant support from a budget of \$60,000.

82. Risk

83. Making no changes to the policy risks leaving Council with a policy that is not written in plain english and is more complicated than it needs to be. The reviewed policy has been re-written to eliminate the risk of confusion and to provide clarity.
84. If no policy was approved Council would be unable to alter how the Endowment Funds are managed and deployed.

Signatory

Authoriser	Kelvyn Eglinton, General Manager City Growth
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