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# **PALMERSTON NORTH CITY COUNCIL**

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AGENDA

## **COUNCIL**

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**9AM, WEDNESDAY 6 APRIL 2022**

COUNCIL CHAMBER, FIRST FLOOR,  
CIVIC ADMINISTRATION BUILDING  
32 THE SQUARE, PALMERSTON NORTH

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# MEMBERS

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**Grant Smith (Mayor)**

**Aleisha Rutherford (Deputy Mayor)**

**Brent Barrett**

**Patrick Handcock**

**ONZM**

**Susan Baty**

**Leonie Hapeta**

**Rachel Bowen**

**Lorna Johnson**

**Zulfiqar Butt**

**Billy Meehan**

**Vaughan Dennison**

**Orphée Mickalad**

**Renee Dingwall**

**Karen Naylor**

**Lew Findlay QSM**

**Bruno Petrenas**

AGENDA ITEMS, IF NOT ATTACHED, CAN BE VIEWED AT

[pncc.govt.nz](http://pncc.govt.nz) | Civic Administration Building, 32 The Square

City Library | Ashhurst Community Library | Linton Library

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**Chris Dyhrberg**

**Acting Chief Executive | PALMERSTON NORTH CITY COUNCIL**

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## **COUNCIL MEETING**

6 April 2022

## **ORDER OF BUSINESS**

### **1. Apologies**

### **2. Notification of Additional Items**

Pursuant to Sections 46A(7) and 46A(7A) of the Local Government Official Information and Meetings Act 1987, to receive the Chairperson's explanation that specified item(s), which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded, will be discussed.

Any additions in accordance with Section 46A(7) must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

Any additions in accordance with Section 46A(7A) may be received or referred to a subsequent meeting for further discussion. No resolution, decision or recommendation can be made in respect of a minor item.

### **3. Declarations of Interest (if any)**

Members are reminded of their duty to give a general notice of any interest of items to be considered on this agenda and the need to declare these interests.

### **4. Farewell to the Chief Executive Heather Shotter**

Page 7

5. **Confirmation of Minutes** Page 9  
 "That the minutes of the ordinary meeting of 2 March 2022 Part I Public be confirmed as a true and correct record."
  
6. **Confirmation of Minutes** Page 19  
 "That the minutes of the extraordinary meeting of 16 March 2022 Part I Public be confirmed as a true and correct record."

## REPORTS

7. **Draft Signs and Use of Public Places Bylaw Amendment (e-scooters) - Approval for Consultation** Page 29  
 Report, presented by Julie Macdonald, Strategy and Policy Manager.
  
8. **Infrastructure Capital Works Dashboard January 2022** Page 111  
 Memorandum, presented by Sue Kelly, Acting Manager Project Management Office.
  
9. **Deliverability Planning in Response to Covid - Briefing** Page 115  
 Memorandum, presented by Sarah Sinclair, Chief Infrastructure Officer.
  
10. **Update on the Main Street West Cycleway** Page 123  
 Memorandum, presented by Adam Jarvis, Senior Climate Change Advisor and Sarah Sinclair, Chief Infrastructure Officer.
  
11. **Shareholding in FoodHQ Innovation Limited** Page 131  
 Memorandum, presented by Steve Paterson, Strategy Manager - Finance.
  
12. **Trustee for Caccia Birch Trust Board** Page 183  
 Memorandum, presented by Hannah White, Democracy & Governance Manager.



13. **Review of Appointment of Directors & Trustees Policy** Page 187  
Memorandum, presented by Hannah White, Democracy & Governance Manager.
  
14. **Exemption of the Manawatū-Wanganui Disaster Relief Fund from being a Council Controlled Organisation** Page 219  
Memorandum, presented by Hannah White, Democracy & Governance Manager.
  
15. **Work Schedule** Page 223

## RECOMMENDATIONS FROM COMMITTEE MEETINGS

16. **Presentation of the Part I Public Community Development Committee Recommendations from its 9 March 2022 Meeting** Page 227  
"That the Committees recommendations be adopted or otherwise dealt with."
  
17. **Presentation of the Part I Public Planning & Strategy Committee Recommendations from its 9 March 2022 Meeting** Page 229  
"That the Committees recommendations be adopted or otherwise dealt with."
  
18. **Presentation of the Part I Public Finance & Audit Committee Recommendations from its 23 March 2022 Meeting** Page 231  
"That the Committees recommendations be adopted or otherwise dealt with."
  
19. **Presentation of the Part I Public Environmental Sustainability Committee Recommendations from its 30 March 2022 Meeting** Page 235  
"That the Committees recommendations be adopted or otherwise dealt with."

## 20. Exclusion of Public

To be moved:

"That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject 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(1) 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(1) for passing this resolution
21.	Minutes of the ordinary meeting - Part II Confidential - 2 March 2022	For the reasons setout in the ordinary minutes of 2 March 2022, held in public present.	
22.	Minutes of the extraordinary meeting - Part II Confidential - 16 March 2022	For the reasons setout in the extraordinary minutes of 16 March 2022, held in public present.	
23.	Tender Award – Contract 04113 Transport and Three Waters Design Panel	Third Party Commercial and Negotiations	s7(2)(b)(ii) and s7(2)(i)
24.	Minutes of the extraordinary meeting – Part IIB Confidential – 16 March 2022	For the reasons setout in the extraordinary minutes of 16 March 2022, held in public present.	

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Also that the persons listed below be permitted to remain after the public has been excluded for the reasons stated.

*[Add Third Parties]*, because of their knowledge and ability to assist the meeting in speaking to their report/s [or other matters as specified] and answering questions, noting that such person/s will be present at the meeting only for the items that relate to their respective report/s [or matters as specified].

## **PRESENTATION**

**TITLE:** Farewell to the Chief Executive Heather Shotter

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## PALMERSTON NORTH CITY COUNCIL

### Minutes of the Council Meeting Part I Public, held in the Council Chamber, First Floor, Civic Administration Building, 32 The Square, Palmerston North on 02 March 2022, commencing at 9.00am

**Members Present:** The Mayor (Grant Smith) (in the Chair) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

**Apologies:** Councillor Aleisha Rutherford (for lateness).

Councillor Aleisha Rutherford entered the meeting at 9.24am during consideration of clause 4. She left the meeting at 10.08am and entered the meeting again at 10.27am during consideration of clause 4. She was not present for clauses 1 to 4.1 inclusive.

Councillor Rachel Bowen was not present when the meeting resumed at 11.30am. She was not present for clauses 5 to 10 inclusive.

#### 1-22 Apologies

Moved Grant Smith, seconded Leonie Hapeta.

#### RESOLVED

1. That Council receive the apologies.

Clause 1-22 above was carried 15 votes to 0, the voting being as follows:

#### For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

#### 2-22 Presentation - New Year's Honours 2022

Moved Grant Smith, seconded Karen Naylor.

#### RESOLVED

1. That Council note that congratulations have been conveyed on

behalf of the Council to the local recipients of the New Year's Honours 2022.

Clause 2-22 above was carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

**3-22**

**Confirmation of Minutes**

Moved Grant Smith, seconded Brent Barrett.

**RESOLVED**

1. That the minutes of the ordinary meeting of 20 December 2021 Part I Public be confirmed as a true and correct record.

Clause 3-22 above was carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

**REPORTS**

**4-22**

**Ferguson/Pitt Street Intersection Upgrade**

Report, presented by Sandra King, Acting Group Manager Transport and Development.

Councillor Aleisha Rutherford entered the meeting at 9.24am.

Councillor Aleisha Rutherford left the meeting at 10.08am.

Moved Grant Smith, seconded Leonie Hapeta.

**RESOLVED**

1. That Council endorses the modified Ferguson/Pitt Street Intersection Upgrade design (Option 1) and proceeds to tender.

Clause 4.1-22 above was carried 13 votes to 2, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

**Against:**

Councillors Brent Barrett and Lorna Johnson.

Councillor Aleisha Rutherford entered the meeting again at 10.27am.

Moved Karen Naylor, seconded Patrick Handcock ONZM.

### **RESOLVED**

2. That Council directs the Chief Executive to plan and undertake further investigations, to identify additional safety management options and timings. This includes another signalised crossing at Linton Street.

Clause 4.2-22 above was carried 12 votes to 4, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

**Against:**

Councillors Brent Barrett, Lorna Johnson, Billy Meehan and Aleisha Rutherford.

Moved Brent Barrett, seconded Lorna Johnson.

### **RESOLVED**

3. That Council directs the Chief Executive to report to Council with additional safety management options and timings.

Clause 4.3-22 above was carried 15 votes to 1, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

**Against:**

Councillor Lew Findlay QSM.

Moved Brent Barrett, seconded Lorna Johnson.

**Note:**

On a motion 'That Council directs the Chief Executive to report to Council with an option for a temporary cycle lane trial in the additional road space created in Ferguson Street' the motion was lost 5 votes to 11, the voting being as follows:

**For:**

Councillors Brent Barrett, Zulfiqar Butt, Renee Dingwall, Lorna Johnson and Aleisha Rutherford.

**Against:**

The Mayor (Grant Smith) and Councillors Susan Baty, Rachel Bowen, Vaughan Dennison, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Billy Meehan, Orphée Mickalad, Karen Naylor and Bruno Petrenas.

The meeting adjourned at 10.58am.

The meeting resumed at 11.30am.

Councillor Rachel Bowen was not present when the meeting resumed.

## 5-22

### **Update to Delegation Changes for emergency purpose**

Memorandum, presented by Hannah White, Democracy and Governance Manager.

Moved Lorna Johnson, seconded Brent Barrett.

### **RESOLVED**

1. That where the New Zealand government has placed limits on Palmerston North that would require Democracy and Governance staff and/or Elected Members to work from home OR where the Chief Executive (or in their absence Deputy Chief Executive) in concurrence with the Chair (or in their absence Deputy Chair) has determined that staff and/or member capacity limits the holding of meetings in person, then that particular Council/Committee meeting will move online, meeting at their scheduled times via digital means according to LGA Sch.7, s.25B, under the Epidemic Preparedness COVID-19 Notice 2020. In the event that a standing committee or a meeting of Council cannot be serviced, the Chief Executive will advise the Chair of the committee (or in their absence the Deputy Chair or in their absence the Mayor) that the committee or Council meeting will need to be cancelled and any urgent business moved to the next appropriate meeting.
2. That where Palmerston North is under the COVID-19 Protection Framework "Traffic light Orange, or Green," Council and Committees will continue to meet in person following public health guidance, unless Recommendation 1 is in effect.
3. That where Palmerston North is under the COVID-19 Protection Framework "Traffic light Red," Council and Committees will continue to meet in person following public health guidance with those present required to present a New Zealand government regulated Vaccine Pass, unless Recommendation 1 is in effect.
4. That Council note that where the Epidemic Preparedness COVID-19 Notice 2020 remains in force, members, staff and the public may choose to attend meetings remotely or in person, with those present in person required to present a New Zealand government regulated Vaccine Pass. Digital access to the meeting will be provided for members who request to attend remotely.
5. That the delegations relating to the Business Continuity Committee be updated according to Attachment 1.
6. That Council rescind Council resolution 28-20.



Clauses 5.1-22 to 5.6-22 above were carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Moved Lorna Johnson, seconded Brent Barrett.

**RESOLVED**

7. That Council agree that attendance statistics of members will not be recorded, other than to ensure that the Local Government Act (Sch 7, s.5(1)(d)) is met, for the period for which Recommendation 1 is in effect.

Clause 5.7-22 above was carried 8 votes to 7, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Vaughan Dennison, Lew Findlay QSM, Lorna Johnson, Orphée Mickalad and Aleisha Rutherford.

**Against:**

Councillors Zulfiqar Butt, Renee Dingwall, Patrick Handcock ONZM, Leonie Hapeta, Billy Meehan, Karen Naylor and Bruno Petrenas.

**6-22**

**Council Appointments**

Memorandum, presented by Hannah White, Democracy and Governance Manager.

Moved Susan Baty, seconded Orphée Mickalad.

**RESOLVED**

1. That Council appoint Councillor Findlay as the councillor liaison on the Seniors Reference Group for the remainder of the Council term.
2. That Council appoint Councillor Renee Dingwall as the councillor liaison on the Pasifika Reference Group for the remainder of the Council term.
3. That Council appoint Mayor Grant Smith as the elected member on the Design Working Party for Te Motu o Poutoa for the remainder of the Council term.

Clause 6-22 above was carried 12 votes to 0, with 3 abstentions, the voting being as follows:

**For:**

Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

**Abstained:**

The Mayor (Grant Smith) and Councillors Renee Dingwall and Lew Findlay QSM.

**7-22**

**Submission to the Palmerston North Reserves Empowering Amendment Bill (Huia Street Reserve)**

Memorandum, presented by Jono Ferguson-Pye, City Planning Manager.

Moved Grant Smith, seconded Vaughan Dennison.

**RESOLVED**

1. That Council note the Submission to the Palmerston North Reserves Empowering Amendment Bill (Huia Street Reserve).

Clause 7-22 above was carried 14 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

**Note:**

Councillor Brent Barrett declared a conflict of interest on the above item and withdrew from discussion and removed himself from the table.

**8-22**

**Work Schedule**

Moved Grant Smith, seconded Susan Baty.

**RESOLVED**

1. That the Council receive its Work Schedule dated March 2022.

Clause 8-22 above was carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

## **RECOMMENDATIONS FROM COMMITTEE MEETINGS**

**9-22**

**Finance & Audit Committee Part I Public - 23 February 2022**

Consideration was given to Finance & Audit Committee recommendations as appended to these minutes.

Moved Susan Baty, seconded Karen Naylor.

## RESOLVED

### 1. **Quarterly Performance and Financial Report - Quarter Ending 31 December 2021**

1. That the Committee receive the memorandum titled 'Quarterly Performance and Financial Report – Quarter Ending 31 December 2021' presented to the Finance & Audit Committee on 23 February 2022.
2. That Council note and approve that the capital expenditure and associated revenue values in the 2021/22 Long Term Plan Budget relating to Three Water Reform funding will be changed as per the details in Appendix 4 of this report.
3. That the Chief Executive quantify the likely underspend across PN City Council 2021/2022 events and events-related budgets and bring forward a report on options to reallocate funds to provide relief and support to the city's events sector.
4. That a report is presented to the March Finance & Audit Committee meeting outlining 'expected / forecast variations' to operational budgets.
5. That ongoing reporting on variations to operational budgets is included in future quarterly reports, as outlined in clause 210 of the Delegations Manual.

### 2. **Awapuni Park - Proposal to grant a lease on reserve land to Awapuni Park Community and Recreation Centre Incorporated**

1. That Council approves notifying the public of the proposal to grant a lease at Awapuni Park, 22 Newbury Street, Palmerston North to Awapuni Park Community and Recreation Centre Incorporated, in accordance with Section 54 of the Reserves Act 1977.
2. That the Council notes the land area affected by the lease to Awapuni Park Community and Recreation Centre Incorporated is described as part of Lot 97 DP20548. The lease area is shown in Figure One of this report.

### 3. **Bunnythorpe Recreation Ground - Proposal to grant a lease on reserve land to Bunnythorpe Community Centre Association Incorporated**

1. That the Council approves notifying the public of the proposal to grant a lease at Bunnythorpe Recreation Ground, Raymond Street, Palmerston North to Bunnythorpe Community Centre Association Incorporated, in accordance with Section 54 of the Reserves Act 1977.
2. That the Council notes the land area affected by the lease for Bunnythorpe Community Centre Association Incorporated is

described as part of Lot 82 DP217. The lease area is shown in Figure One of this report.

#### 4. Huia Street Reserve - Manawatū Lawn Tennis Club Lease Proposal

1. That Council approves entering a new lease with Manawatū Lawn Tennis Club Incorporated for part of the Huia Street Reserve, Palmerston North for a term of 10 years with a right of renewal for another 10 years.
2. That Council notes the lease will not include an early termination clause.

Clause 9-22 above was carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

## EXCLUSION OF PUBLIC

### 10-22 Recommendation to Exclude Public

Moved Grant Smith, seconded Patrick Handcock ONZM.

**RESOLVED**

"That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject 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(1) 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(1) for passing this resolution
13.	Minutes of the ordinary meeting - Part II Confidential - 20 December 2021	For the reasons set out in the ordinary minutes of 20 December 2021, held in public present.	
14.	PNCC Wastewater Consent Renewal Irrigation requirements - Decision on funding	Third Party Commercial and Negotiations	s7(2)(b)(ii) and s7(2)(i)

	early land negotiation and purchase		
15.	Part IIB - Chief Executive Contract	Privacy	s7(2)(a)
16.	Part IIB - Chief Executive Recruitment	Privacy	s7(2)(a)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Also that the persons listed below be permitted to remain after the public has been excluded for the reasons stated.

Clause 10-22 above was carried 15 votes to 0, the voting being as follows:

**For:**

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

The public part of the meeting finished at 12.03pm

Confirmed 6 April 2022

**Mayor**



# PALMERSTON NORTH CITY COUNCIL

## **Minutes of the Extraordinary Council Meeting Part I Public, held in the Council Chamber, First Floor, Civic Administration Building, 32 The Square, Palmerston North on 16 March 2022, commencing at 11am.**

**Members Present:** The Mayor (Grant Smith) (in the Chair) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

### **13-22 Additional Items**

Moved Grant Smith, seconded Vaughan Dennison.

#### **RESOLVED**

That Council receive the following additional item:

Item 7 - Selecting Consultant for Chief Executive Recruitment

**Reason for Urgency:** To enable Council to start the recruitment of a Chief Executive immediately

**Reason for Lateness:** The deadline for a response from the recruitment companies was on the day of the publication of the agenda.

Clause 13-22 above was carried.

### **14-22 Recommendations from the Committee of Council Part I Public – 2 March 2022**

Consideration was given to the Committee of Council recommendations below.

Moved Vaughan Dennison, seconded Patrick Handcock ONZM.

#### **RESOLVED**

1. That the uniform annual general charge be modelled at \$200, \$100 and \$0 and reported to Council on 16 March 2022.
2. That the draft annual budget include an assumption the differentials for the general rate will be modified as outlined in Table 1 of the report and that the uniform annual general charge will be \$300.

Clauses 14.1-14.2 above were carried 16 votes to 0, the voting being as follows:

## EXTRAORDINARY COUNCIL - PART I - 16 MARCH 2022

### For:

The Mayor (Grant Smith) and Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Lew Findlay QSM, Patrick Handcock ONZM, Leonie Hapeta, Lorna Johnson, Billy Meehan, Orphée Mickalad, Karen Naylor, Bruno Petrenas and Aleisha Rutherford.

Moved Vaughan Dennison, seconded Patrick Handcock ONZM.

### RESOLVED

#### **Clause 1- 22:** Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document

1. That the Chief Executive incorporate the assumptions regarding carry forwards of capital programmes from the 2021/22 year as detailed in Schedule A in the draft of the 2022/23 Annual Budget.
2. That the Chief Executive incorporate the deferrals of capital programmes from 2022/23 to later years as detailed in Schedule B.
3. That a budget of \$65,000 be allocated to programme 2129 to undertake a trial of a free rubbish bag a month to low income households.
4. That the following proposed new Operational programme is removed from the draft 22/23 Annual Budget, and is included in a list titled: "Considered but not included":
  - Programme 2136 – City Marketing Campaigns - \$150,000
5. That the following proposed Operational programme is removed:
  - Programme 2135 - \$21,000 – LGNZ Conference
6. That an additional budget of \$100,000 is allocated to continue that COVID-19 Relief Fund for 2022/23.
7. That the Chief Executive incorporate the variations to operating programmes as detailed in Schedule C in the draft 2022/23 Annual Budget, subject to the resolutions 3 to 6 above.
8. That the Chief Executive incorporate the changes to assumptions and operating income and expenses as summarised in Schedule G in the draft of the 2022/23 Annual Budget.
9. That the following proposed Capital New programme is added to the draft 22/23 Annual Budget:
  - \$300,000 for on-demand crossing Ferguson/Linton Street.
10. That the Chief Executive incorporate the variations to capital renewal programmes as detailed in Schedule D in the draft of the 2022/23 Annual Budget.
11. That the Chief Executive incorporate the variations to capital new programmes as detailed in Schedule E in the draft of the 2022/23 Annual Budget, including resolution 9 above.



## EXTRAORDINARY COUNCIL - PART I - 16 MARCH 2022

12. That the following programme's funding is reduced:

- Programme 86 - \$103,000 – (capital renewal) Furniture replacements – reduce to \$50,000.

13. That the following programme's funding is reduced:

- Programme 2047 - \$154,000 – (capital new) Furniture transformation – reduce to \$75,000.

14. That the Chief Executive incorporate the programmes with no proposed change to the budget shown in year 2 of the 10 year Plan as detailed in Schedule F in the draft of the 2022/23 Annual Budget, incorporating resolutions 12 and 13 above.

### **Clause 3-22: Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document**

1. That the Chief Executive incorporate the outcomes from recommendation 1 into the updated versions of the supporting information and consultation document to be presented for adoption at the Council meeting on 16 March 2022.

Clauses 14.3-14.17 above were carried 10 votes to 6, the voting being as follows:

#### **For:**

Councillors Brent Barrett, Susan Baty, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Patrick Handcock ONZM, Lorna Johnson, Orphée Mickalad and Aleisha Rutherford.

#### **Against:**

The Mayor (Grant Smith) and Councillors Lew Findlay QSM, Leonie Hapeta, Billy Meehan, Karen Naylor and Bruno Petrenas.

## **15-22 Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document**

Memorandum, presented by Cameron Mackay, Acting Chief Financial Officer Steve Paterson, Strategy Manager - Finance.

Councillor Naylor moved an amendment to include the \$ amounts alongside items on page 7 and 8 of the consultation document. This will improve clarity for the reader.

The Mayor thanked the Finance Team for their hard work.

Moved Vaughan Dennison, seconded Grant Smith.

### **RESOLVED**

1. That the Council adopt the Supporting Information (Attachment 1) as the material relied upon to prepare the Consultation Document for

## EXTRAORDINARY COUNCIL - PART I - 16 MARCH 2022

the 2022/23 Annual Budget (Plan).

2. That the Council adopt the Consultation Document (Attachment 2) for the 2022/23 Annual Budget (Plan) "with \$ amounts included alongside items on pages 7 and 8".
3. That the Mayor and Chief Executive be delegated authority to make minor amendments to the Consultation Document prior to publication.

Clauses 15.1-15.3 above were carried.

Moved Karen Naylor, seconded Brent Barrett.

**Amendment:** That the words "with \$ amounts included alongside items on pages 7 and 8" be added to the end of recommendation 2.

The amendment above was carried.

## EXCLUSION OF PUBLIC

### 16-22 Recommendation to Exclude Public

Moved Grant Smith, seconded Leonie Hapeta.

### RESOLVED

That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject 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(1) 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(1) for passing this resolution
7.	Selecting Consultant for Chief Executive Recruitment	Third Party Commercial	s7(2)(b)(ii)
8.	Part IIB - Confirmation of Part IIB Minutes 2 March 2022	Negotiations	s7(2)(i)
9.	Part IIB - Appointment of Acting Chief	Privacy	s7(2)(a)

## EXTRAORDINARY COUNCIL - PART I - 16 MARCH 2022

	Executive		
10.	Part IIB - Chief Executive Contract	Negotiations	s7(2)(i)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Clause 16-22 above was carried.

The public part of the meeting finished at 12.05PM

Confirmed 6 April 2022

**Mayor**



## RECOMMENDATIONS FROM COMMITTEE

**TO:** Council

**MEETING DATE:** 16 March 2022

**TITLE:** Presentation of the Part I Public Committee of Council Recommendations from its 2 March 2022 Meeting

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Set out below are the recommendations only from the Committee of Council meeting Part I Public held on 10 May 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

Set out below are the recommendations only from the Committee of Council meeting Part I Public held on 10 May 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

### **1-22 Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document**

Memorandum, presented by Cameron McKay, Acting Chief Financial Officer and Steve Paterson, Strategy Manager - Finance.

1. That the Chief Executive incorporate the assumptions regarding carry forwards of capital programmes from the 2021/22 year as detailed in Schedule A in the draft of the 2022/23 Annual Budget.
2. That the Chief Executive incorporate the deferrals of capital programmes from 2022/23 to later years as detailed in Schedule B.
3. That a budget of \$65,000 be allocated to programme 2129 to undertake a trial of a free rubbish bag a month to low income households.
4. That the following proposed new Operational programme is removed from the draft 22/23 Annual Budget, and is included in a list titled: "Considered but not included":
  - Programme 2136 – City Marketing Campaigns - \$150,000
5. That the following proposed Operational programme is removed:
  - Programme 2135 - \$21,000 – LGNZ Conference
6. That an additional budget of \$100,000 is allocated to continue that COVID-19 Relief Fund for 2022/23.
7. That the Chief Executive incorporate the variations to operating

programmes as detailed in **Schedule C** in the draft 2022/23 Annual Budget, subject to the resolutions 3 to 6 above.

8. That the Chief Executive incorporate the changes to assumptions and operating income and expenses as summarised in Schedule G in the draft of the 2022/23 Annual Budget.
9. That the following proposed Capital New programme is added to the draft 22/23 Annual Budget:
  - \$300,000 for on-demand crossing Ferguson/Linton Street.
10. That the Chief Executive incorporate the variations to capital renewal programmes as detailed in **Schedule D** in the draft of the 2022/23 Annual Budget.
11. That the Chief Executive incorporate the variations to capital new programmes as detailed in **Schedule E** in the draft of the 2022/23 Annual Budget, including resolution 9 above.
12. That the following programme's funding is reduced:
  - Programme 86 - \$103,000 – (capital renewal) Furniture replacements – reduce to \$50,000.
13. That the following programme's funding is reduced:
  - Programme 2047 - \$154,000 – (capital new) Furniture transformation – reduce to \$75,000.
14. That the Chief Executive incorporate the programmes with no proposed change to the budget shown in year 2 of the 10 year Plan as detailed in **Schedule F** in the draft of the 2022/23 Annual Budget, incorporating resolutions 12 and 13 above.

## 2-22

### **Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document**

Memorandum, presented by Cameron McKay, Acting Chief Financial Officer and Steve Paterson, Strategy Manager - Finance.

1. That the uniform annual general charge be modelled at \$200, \$100 and \$0 and reported to Council on 16 March 2022.
2. That the draft annual budget include an assumption the differentials for the general rate will be modified as outlined in Table 1 of the report and that the uniform annual general charge will be \$300.

**3-22**

**Annual Budget (Plan) 2022/23 - Adopting Supporting Information and the Consultation Document**

Memorandum, presented by Cameron McKay, Acting Chief Financial Officer and Steve Paterson, Strategy Manager - Finance.

1. That the Chief Executive incorporate the outcomes from recommendation 1 into the updated versions of the supporting information and consultation document to be presented for adoption at the Council meeting on 16 March 2022.





## **REPORT**

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Draft Signs and Use of Public Places Bylaw Amendment (e-scooters) - Approval for Consultation

**PRESENTED BY:** Julie Macdonald, Strategy and Policy Manager

**APPROVED BY:** David Murphy, Chief Planning Officer

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### **RECOMMENDATION(S) TO COUNCIL**

1. That the Consultation Document – Signs and Use of Public Places Bylaw Amendment (e-scooters), as attached as Attachment 1, be approved for public consultation.
2. That the Chief Executive be given delegated authority to approve minor changes to the Consultation Document prior to publication.

## SUMMARY OF OPTIONS ANALYSIS

<b>Problem or Opportunity</b>	Limitations with the current approach of issuing e-scooter operators with mobile trading permits under the Signs and Use of Public Places Bylaw provide the opportunity to develop a new regulatory framework. This new framework for public hire and shared micromobility services involves amendments to the Bylaw and development of new processes requiring consultation with the community.
<b>OPTION 1:</b>	<b>Approve the consultation document for public consultation</b>
Community Views	Some initial views have been sought from identified stakeholders on the scope of the proposal. Some suggestions have been incorporated into the draft proposal, but these and other stakeholders may have further suggestions to make through a formal consultation process.
Benefits	Consulting with the community on these proposals gives them the opportunity to provide detailed feedback and suggestions for improvement.
Risks	If extensive feedback is received that warrants a significant revision of the proposal, then further consultation may be required which would not be able to be completed before the election. As a consequence, the existing permits would expire in November 2022 unless the Chief Customer Officer made a decision to extend them.
Financial	No significant financial implications have been identified.
<b>OPTION 2:</b>	<b>Do not approve the consultation document for public consultation</b>
Community Views	Some initial views have been sought from identified stakeholders on the scope of the proposal. Some suggestions have been incorporated into the draft proposal, but not consulting on the proposal would prevent the community from being able to give feedback on the specific details of the proposal.
Benefits	There are no identified benefits of this option.
Risks	The main risk of not consulting on the proposal is that this would limit the Council's ability to regulate the activity of e-scooter operations, which could lead to increased safety risks - such as an unregulated number of operators increasing the overall size of the fleet.
Financial	The Council has no specific fees or charges for e-scooter operators, and therefore no effective way to recover costs related to this activity.

## RATIONALE FOR THE RECOMMENDATIONS

### 1. OVERVIEW OF THE PROBLEM OR OPPORTUNITY

- 1.1 Three e-scooter operators have permits to operate e-scooters for hire from a public place. During the development of the permits in 2021 staff identified that the Council had no legal power to limit the number of e-scooter operators under the current Signs and Use of Public Places Bylaw.
- 1.2 This limitation leads to a potential issue in that the number of operators is uncontrolled. Currently there are four operators permitted to operate e-scooters (the fourth has yet to launch their platform in Palmerston North). If additional operators applied for a permit, and were able to show that they could meet the same conditions that existing operators are meeting, Council would be unable to refuse to issue them a permit.
- 1.3 Council has been able to institute a limit of sorts, by limiting the number of scooters that individual operators can deploy. This is currently set at 200, but if additional operators applied for permits and were granted the same limit, then it could create an overall fleet too large for a city of our size.
- 1.4 This problem could be addressed by either limiting the number of operators, or by setting an overall fleet size that is divided equally by the number of operators. Staff concluded that the latter option was untenable; a large number of operators with very small fleets would likely create additional administrative burdens in managing relationships with a large number of operators, whilst the small size of individual fleets would likely be uneconomic for the operators. On that basis, it was decided that the more favourable option was to limit the number of operators. However, in order to be able to legally limit the number of operators the Signs and Use of Public Places Bylaw needs to be amended.
- 1.5 In addition to this problem, the charge for a mobile trading permit (which is used for a wide range of general activities) does not reflect the true cost of the process to develop and issue the permit, or the ongoing monitoring and enforcement costs. A new structure for fees and charges related to this activity requires an amendment to the Schedule of Fees and Charges and is subject to consultation.
- 1.6 The issues present an opportunity to design a new regulatory framework specific to the activity of public hire and shared micromobility services. A new regulatory framework could include specific rules to address the identified issues, including new fees and charges. The proposal presented in this report includes amendments to the Signs and Use of Public Places Bylaw and the associated Administration Manual to establish a new licensing system, a new Code of Practice for Micromobility, and proposed fees and charges related to the new licensing system.

## **2. BACKGROUND AND PREVIOUS COUNCIL DECISIONS**

- 2.1 Mobile trading permits were issued to three e-scooter operators in October 2021 under the Signs and Use of Public Places Bylaw 2015. These permits contained a comprehensive suite of conditions designed to ensure that e-scooters were deployed by operators safely.
- 2.2 Three operators (Beam, Flamingo and Lime) began operating on 1 November 2021. Each operator can operate up to 200 e-scooters.
- 2.3 The Council has made no decisions about e-scooters previously, as issuing permits is an operational matter under the existing Bylaw.

## **3. DESCRIPTION OF OPTIONS**

- 3.1 There are two key options related to the recommendations. The first is to approve the proposed consultation document for public consultation. This consultation document includes the draft amended Bylaw and Administration Manual, the draft Code of Practice for Micromobility, and the proposed fees and charges. The new fees and charges would be created, following this consultation, by a Council resolution to amend to the Schedule of Fees and Charges.
- 3.2 The second option is to not approve the proposed consultation document for public consultation. The Council may take this course of action either to stop work on the new regulatory framework, or to seek further changes before consultation is undertaken. If significant changes are sought, then further work may be required before a decision to approve the consultation document is made.

## **4. ANALYSIS OF OPTIONS**

- 4.1 Before directly analysing the options, it is helpful to understand the current context. This context includes the feedback from initial engagement with stakeholders, and how e-scooters have performed in the three months since they launched in November 2021.

### Initial stakeholder engagement

- 4.2 A range of stakeholders were identified at the outset of the project for targeted engagement through the development of the proposal. They included the Disability Reference Group, the Safety Advisory Board, Horizons Regional Council, Police, and Public Health, as well as the current e-scooter operators. Workshops were scheduled to be held with these groups in November and December, but various constraints meant that not all groups were able to be involved. Additionally, the scope of work was more complex than anticipated, and the full details of proposals couldn't be shared at those workshops.
- 4.3 A second round of engagement was planned for February. More details of the proposal were available, and this enabled more in-depth engagement.

Some groups were still unavailable, such as the Safety Advisory Board and the Public Health Unit, but the Disability Reference Group and Police were available and participated. Additional groups and representatives were identified and were able to participate, including Chris Teo-Sherrell on behalf of Living Streets Aotearoa, Ros Powell, Russell Powell, and Marian Dean as individual members of their groups (Age Friendly, Grey Power and Age Concern respectively).

- 4.4 The workshops outlined the scope of the proposed changes and offered an opportunity for those groups and individuals to provide feedback and suggestions as part of the development process.
- 4.5 Most of those spoken to about e-scooters observed that generally they were being used safely and responsibly, although all had observed or been advised of situations where e-scooters had been used in an unsafe way or in some cases caused accidents.
- 4.6 The common themes that emerged were to do with parking and riding. Parking of e-scooters was found to be generally good, though again some instances of e-scooters blocking footpath access were reported. One suggestion was to develop a cascading set of conditions for parking—wherever possible park on the grass berm, and if not possible on the footpath closest to the roadside edge, and always with a minimum 1.5m of clear unobstructed footpath width. A variation of this suggestion has been incorporated into the proposal.
- 4.7 A further suggestion was that the minimum unobstructed footpath width should be greater inside the CBD. One approach would be to set the minimum unobstructed footpath width by reference to zones, with wider allowances in the inner city, and zones in the suburbs requiring a smaller allowance. This approach has not been incorporated in the proposal, as staff consider the cascading parking rules approach described above is a more effective tool to regulate the way e-scooters are parked. However, this could be considered further through the formal consultation process.
- 4.8 The presence of a double-kickstand on some e-scooters was noted as being more stable and less likely to topple and present a hazard on the footpath. It was suggested that this should be made a minimum licence condition. This condition is included in the draft Code of Practice.
- 4.9 Stakeholders expressed concerns about rider behaviour, especially the impact of such behaviour on vulnerable footpath users. One example of these concerns is intimidation (whether deliberate or accidental) where the rider of an e-scooter may startle other footpath users. Where the footpath is used by those with vision or hearing impairments inconsiderate behaviour by other users can have a significantly detrimental impact and may discourage them from using the footpaths. While this issue predates e-scooters, the increase in the number of people riding on the footpath will undoubtedly have exacerbated the issue. All e-scooters are fitted with a bell, but this is not always used, and is not always effective.

- 4.10 Another example of rider behaviour that is of concern to some of the stakeholders is the risk of collision, especially when scooters are travelling at speed. Within the city centre the speed is automatically limited to 15 km/h; outside the city centre the maximum speed is 25 km/h. Some stakeholders felt that even 15 km/h was too fast to be used on footpath, and suggested it should be as low as 12 km/h or even 10 km/h. Another suggestion was that there should be slower speed zones (10km/h or lower) around some areas more likely to be used by vulnerable footpath users, such as elder-care facilities and schools.
- 4.11 E-scooter operators argued against a reduction in speed limits, countering that at lower speeds it can be harder to maintain balance on the scooter and can make riding more dangerous. Reducing speeds could also potentially reduce their usefulness, if riding an e-scooter is not noticeably faster than walking.
- 4.12 The existing speed limits have not been changed in the proposal. As with roading speed limits, they are not a 'target' and users are able to adjust their speed up to the maximum limit. Also, as has already been noted, rider behaviour has been generally good. The issue of speed is likely to be a significant question during the consultation, and this will be an element on which feedback will be specifically sought – including whether to add new slower speed zones around places such as elder-care facilities and schools, and what the speed limit should be.
- 4.13 There are also regulatory changes coming soon which may impact on the issue; the Government is expected to adopt the Accessible Streets package in coming months, which is widely expected to make it legal to ride an e-scooter in cycle lanes. This change would enable the Council and operators to actively encourage users to ride e-scooters in cycle lanes wherever possible, rather than on footpaths.
- 4.14 Beyond speed, concern was also expressed about rider behaviour when passing other footpath users. It was suggested that more could be done to require particular manoeuvres when passing another footpath user to improve safety, reduce the risk of collision, and minimise the potential for intimidation of other users. However, the Council is unable to directly regulate the behaviour of users; Council's regulatory role is limited to the operators who are being licensed to place e-scooters on the footpath and other public places for hire. The strongest action that the Council could take regarding rider behaviour is to promote safe use and behaviour. The conditions of the licence also include a requirement for the licence-holder to conduct regular user education and public safety campaigns.
- 4.15 In general terms, the stakeholders spoken to did not identify any significant gaps in the proposal, or major concerns with the proposed regulatory approach. More specific comment is likely to be received through the formal consultation process.

Assessment of current e-scooter operations (November – January)

- 4.16 Supporting the anecdotal feedback about the first three months of e-scooter operations, the available data shows relatively few issues or concerns. Where minor issues have been identified, they have been resolved quickly by the current operators.
- 4.17 In the three-month period between November 2021 and January 2022 there were 101,396 trips taken, with a median of 1093 trips taken daily over that period. The peak was 1,969 trips taken on a single day, and the lowest was 358. Usage was notably higher in November and December, perhaps as users were becoming accustomed to a new transport choice. Usage has become more settled through January. It should also be noted that a range of factors will affect usage including weather, COVID-19 restrictions, and public holidays.
- 4.18 The number of formal complaints or requests for service has been relatively small. For the initial six weeks of e-scooter operations, the public was encouraged to make direct calls to the Council's call centre. Our call centre then triaged calls, sending the information to the operators to resolve as appropriate. From mid-December, staff transitioned to directing complaints about scooters (such as dangerous parking) to the operators so that requests could be dealt with more efficiently.
- 4.19 For the first two months the Council received 96 e-scooter related requests for services, with about three-quarters of those calls received in the first month. The initially high number of requests for service was to be expected, given the unfamiliarity of e-scooters in those initial weeks.
- 4.20 E-scooter operators have supplied data on the performance measures included in their permit, such as complaints. These were broken down into: e-scooters parked in a hazardous way; e-scooters parked incorrectly but not causing a hazard; and e-scooters reported as unsafe or faulty. The tables below show these numbers aggregated for all three operators, for the first two months of operation.

	Reported to operator	Responded to within 60 minutes
Number of e-scooters parked or left to cause a hazard or nuisance	71	66

	Reported to operator <sup>1</sup>	Responded to within two hours
Number of e-scooters parked incorrectly (not causing a hazard)	8	8

	Reported to operator	Number immediately deactivated
Number of e-scooters reported as unsafe or faulty	139	139

- 4.21 In addition to these internal measures, we also sought data from the public health unit on the number of e-scooter-related admissions to the emergency department over that three-month period. However, with public health resources prioritised towards the pandemic response, only limited data for the first five weeks is available.

1 November – 6 December	2020		2021	
	Under 15	Over 15	Under 15	Over 15
<b>E-scooter</b>	n/a	n/a	1	14
<b>Scooter</b>	10	2	6	10
<b>Total</b>	10	2	7	24
<b>Grand total</b>	12		31	

- 4.22 The data has some limitations – such as the short period of time it covers, and the limited breakdown of age. Furthermore, the data for the same period in 2020 does not make a distinction between e-scooters and push scooters, though it is possible some privately-owned e-scooters could have been involved in the data recorded for “scooters”. Similarly, the Public Health Unit has inferred that some of the data recorded as “Scooter” in 2021 for those over 15 years may actually be “e-scooter”.

<sup>1</sup> One operator was unable to separate reported numbers of scooters parked causing a hazard or parked incorrectly and treated all parking complaints as if they were parked hazardously and responded accordingly.



- 4.23 Nevertheless, there is an increase in the number of people presenting to the Emergency Department with injuries related to scooters, including e-scooters. During this period, the highest number of presentations in a single day was two, and the mean for the period was less than one presentation per day. None required hospitalisation. A breakdown of the number of each type of injury is not available due to privacy concerns, but typically included bone, joint and laceration injuries.
- 4.24 To support the data on emergency department admissions, we also sought data from ACC on claims related to e-scooters. ACC has supplied data for the three-month period from 1 November to 31 January. In November ACC accepted 21 claims in Palmerston North related to e-scooter accidents. In December this number fell to 11, whilst in January the number of accepted claims rose to 22.
- 4.25 ACC has also supplied data showing claims for e-scooter injuries for all local authorities from 2018 until January 2022. This has enabled us to identify trends where e-scooters have been introduced elsewhere, and to infer some possible projections. For example, in Auckland (the first city where e-scooters were introduced) there was a substantial increase in injury claims in the months following the introduction of e-scooters, reaching a peak of 192 claims in November 2018. However, the three-month rolling average of claims has trending downwards ever since. Claims in Auckland have begun to rise again since November 2021, which could be attributed to changes in the alert level and traffic light status during the pandemic.
- 4.26 Dunedin and Hamilton further illustrate this trend, with both cities introducing a fleet similar in size to Palmerston North. After e-scooters were introduced in late 2018, Dunedin saw a sharp increase in the number of ACC claims to a peak of 75 in January 2019. As with Auckland the three-month rolling average of claims has consistently trended downwards since then. The average for the previous three months is 5.67. Similarly, in Hamilton, when e-scooters were introduced in mid-2019, the number of e-scooter injury claims sharply peaked at 37. The subsequent trend was downwards, though the trend has been slightly upwards again since May 2020. The average number of claims for the previous three months is 14.
- 4.27 Palmerston North is relatively early in the operation of e-scooters in the city, so there is less data on which to base any projections. However, the data from other cities show a sharp decline in ACC claims for e-scooter related injuries a few months after their introduction. The general trend is an overall decline in the number of injury claims. This is to be expected, as users become more familiar with the devices and become more confident using them to travel safely around our city.
- 4.28 Taken together, the data we have been able to acquire supports the general views shared anecdotally, that e-scooters are being used safely by the overwhelming majority of the users. While there will undoubtedly be a proportion of unreported incidents, we have a reasonably high level of

confidence that the current approach has been undertaken as safely as possible.

- 4.29 There are opportunities to improve the data we hold about e-scooter operations in the future. For instance, measuring compliance is currently limited to data reported by the operators. However, this could be supplemented by a program of observational studies: counts at specific sites for numbers of e-scooters being ridden safely, numbers parked dangerously or in a hazardous way, near misses/collisions, etc. This data, collected as part of a robust methodology, could be used to assess operator compliance and to inform changes in operations.

Option one – approve the consultation document for public consultation

- 4.30 The consultation document includes the following components:

- Introductory text that summarises the proposal, the reason for the proposal, and a summary of the options analysis formed while developing the proposal.
- The draft amended Signs and Use of Public Places Bylaw. The significant amendment is the addition of a new clause 18, which gives Council the authority to set the licensing period, the maximum number of licences to be issued, and the size of the fleet. The new clause 18 also gives Council the power to adopt a Code of Practice for Micromobility and set the fees and charges for licences. These are matters which would be set by the Council by resolution.
- The Administration Manual. This would include a new part 5 that records the key licensing terms, including those set by resolution of the Council such as the licensing term, the number of operators and the size of the fleet. We have recommended that the licensing term be set at three years; the maximum number of licences at two; and the maximum size of the fleet as 400 for an individual operator and 800 for the city-wide fleet. The Administration Manual would also record the process for evaluating and selecting licence applicants to be issued with a licence, and the process for suspending or terminating a licence.
- The Code of Practice for Micromobility. This is a new document that sets out the expectations for holders of a licence to operate a public hire and shared micromobility service. It includes guiding principles derived from Council's strategic direction set in a wellbeing framework; assessment criteria informed by those guiding principles, which are used for the evaluation and selection process for assessing licence applicants; and the licensing conditions. The licensing conditions are closely aligned to the existing permit conditions and include specific requirements around speed limits set by zone, parking and operation restrictions set by zone, and conditions for safe deployment and parking. Staff propose that the Code of Practice for Micromobility is

adopted by resolution of Council at the same time as the Bylaw, as the basis for operational enforcement of the licences once issued.

- An explanatory document setting out the proposed fees and charges for the licence. There are three components to this structure: an application fee payable by all applicants regardless of whether a licence is issued; an annual fee reflecting the costs of ongoing monitoring and enforcement; and a recovery charge payable when the Council is required to intervene when an operator fails to comply with the terms and conditions of the licence (for instance, removing a scooter that is dangerously parked). Following consultation, the fees and charges would be set by a resolution of Council to amend the existing Schedule of Fees and Charges by inserting the new charges. Any subsequent changes to the fees and charges would be made through the usual review of the Schedule of Fees and Charges.
- An explanatory document setting out the process for evaluating licence applications and selecting which should be issued with licences. The overall process is summarised in the Administration Manual, while the criteria and the score weightings are contained in the Code of Practice. This part of the Consultation Document brings this information together and explains how the process will work in practice.

- 4.31 Consulting on this document gives the community and identified stakeholders the opportunity to make submissions on the Council's proposal. While initial engagement has been carried out with some stakeholders, the formal consultation process provides an opportunity for the community to comment on the package as a whole and identify if there are any specific details that need to be changed or problems that need to be resolved.
- 4.32 There are no significant risks associated with consulting on the proposal. However, the scope of the proposal is substantial, with a significant level of detail and many aspects that could be shaped differently depending on the perspective being applied. Consequently, there is a good possibility that submitters on the proposal may suggest different policy settings. Depending on the significance of those suggested changes, further consultation could be required. If that situation arises, the overall project could be delayed, with local authority elections being held in October preventing a second consultation process from being completed in time for new licences to be issued before the current permits expire in November.
- 4.33 If Council wishes to progress the development of a new regulatory framework for public hire and shared micromobility services with amendments to the Bylaw, then consultation is needed and option one is the recommended course of action. However, the Council may wish to revise the specific details set out in the proposal before consultation with the community. In that event, the recommended course of action would instead be to present a revised draft consultation document to a later Council or Committee meeting and begin consultation at a later date.

### Option two – do not consult

- 4.34 If Council is not satisfied that a new regulatory framework is required, then it could decide not to approve the consultation document for public consultation, and work on this project would end. The current approach would continue, with operators able to apply for a mobile trading permit. Permits can be issued as they currently are, with safety conditions set as appropriate.
  
- 4.35 The main benefit of this option is that further consultation is not required. The current approach is working relatively well, with operators showing a high degree of compliance and working well with staff to address issues and concerns as they arise.
  
- 4.36 The main risk to this option is that the limitations that have been identified would not be addressed. For instance, Council would have no ability to restrict the number of permits issued. While the current operators may remain and no new applications be received, it is also possible that additional operators could apply for a permit. If the current fleet size of 200 per operator is retained, and we received applications from four or five operators, then the total fleet size would be 800-1000 scooters. For comparison, in 2021 Wellington City Council issued permits to two operators for 400 e-scooters each for a total fleet size of 800. The number of operators would create administrative complexities and add complication for the public in having to use a larger number of different apps to access a more fragmented e-scooter fleet. The greatest concern is that it potentially creates an unmanageably large fleet that could lead to more cluttered footpaths and potentially create more safety risks.
  
- 4.37 It is possible that market forces would naturally regulate the number of operators and consequently the size of the fleet over time. A large number of operators could lead to an unsustainably large overall fleet, which could in turn lead to some operators seeing lower usage. Lower usage would likely translate to a poor economic return, and some operators may leave the market. In this situation, the remaining operators would likely seek an increase to their individual fleet size, to maintain an appropriately sized fleet for the city.
  
- 4.38 However, there is a degree of uncertainty about how such scenarios would play out, with the time it would take for an equilibrium to be established unknown. The impacts on safety over the short or medium term are also potentially volatile, with a risk that significant harm could be experienced as the right number of operators and scooters is established.
  
- 4.39 The degree of uncertainty is the key risk with option two. While there is a possibility for a good outcome, there is at least the same or greater possibility for unsafe outcomes to arise in the short to medium term.

## 5. CONCLUSION

- 5.1 The recommendation is to approve the proposal for public consultation. The new regulatory framework set out in the proposal gives Council power to limit the number of operators, and to be more transparent in setting the rules that will govern how e-scooter operators make their devices available to the public. This framework will contribute to public safety by ensuring that the overall fleet size is manageable for a city of our size and limit the number of operators that the Council needs to interact with to ensure good safety outcomes. Setting new fees and charges for operators under the new licensing system will also ensure that Council will be able to recover a greater portion of the costs it incurs in regulating the activity.
- 5.2 There may be scope to modify the proposal before public consultation. If those changes are minor then they could be incorporated by way of an additional resolution from the Council. If the changes are more substantial, then a revised consultation document could be considered by the Council before a decision is made to go out for public consultation.

## 6. NEXT ACTIONS

- 6.1 If the Council approves the consultation document for public consultation, then the consultation period will start on 9 April. The written submission period will close on 10 May 2022. Hearings will be scheduled for the Planning and Strategy Committee meeting on 8 June. A deliberations report with recommendations for the Committee on the points raised by the written and oral submissions will be presented to the August meeting of the Planning and Strategy Committee. If that Committee recommends adopting the amendments to the Signs and Use of Public Places Bylaw and the Administration Manual, then this will be referred to the Council for adoption on 7 September.

## 7. OUTLINE OF COMMUNITY ENGAGEMENT PROCESS

- 7.1 The following stakeholders have been identified as having a specific interest in the regulation of e-scooters. These stakeholders will be directly contacted at the start of the consultation period and provided with a copy of the consultation document and invited to make a submission. We will also offer groups the opportunity to meet and discuss details of the Council's proposal:

- Disability Reference Group
- Blind Low Vision NZ
- Deaf Aotearoa
- Safety Advisory Board
- Public Health Unit
- NZ Police
- Current e-scooter operators

- Horizons Regional Council
- Rangitāne
- Environment Network Manawatū
- Living Streets Aotearoa
- PN Neighbourhood Support
- Chamber of Commerce
- CEDA
- Palmy BID

7.2 The consultation document will be made available at the Council's customer service centre, libraries, and on the Council website. A submission form will be included with the printed consultation document, and an online form will also be available on the Council website. The form will seek feedback on specific elements of the proposal such as the proposed fees and charges; the evaluation and selection process, and the minimum licensing conditions contained in the draft Code of Practice. These conditions include specific details such as the zones and speed limits, requirements for parking, and hours of operation.

7.3 The consultation process will be promoted through a range of channels. This includes radio and print advertising, interview opportunities, social media posts, and the strategic distribution of posters and flyers. Drop-in sessions where the public can ask questions about the proposal are being considered, either in person or through digital means.

## COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?	<b>No</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>Yes</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 1: An Innovative and Growing City	
The recommendations contribute to the achievement of action/actions in Transport	

The action is: No specific action, but contributes to the Transport Plan's objective of encouraging "more people to choose modes of transport other than motor vehicles."

The recommendations also contribute to the identified priority in the Safe Communities Plan, "a city where people feel safe and are safe."

Contribution to strategic direction and to social, economic, environmental and cultural well-being

The proposed new regulatory framework for licensing e-scooters in our city will contribute to both strategic transport and safety goals.

The arrival of e-scooters expands transport choices in our city and encourages people to consider alternatives to owning and driving a car.

It also contributes to our safe city goals, by ensuring that e-scooters are provided and operated in the safest way possible. The needs of all users of the footpath, especially vulnerable footpath users, have been considered, and conditions are imposed that protect the rights of footpath users to have unobstructed access.

## ATTACHMENTS

1. Consultation Document - Signs and Use of Public Places Bylaw Amendment (e-scooters) [↓](#) 





**Palmerston North City Council**  
**Draft Amendment to the Signs and Use of Public Places**  
**Bylaw 2015**  
**(E-scooters)**

**Consultation Document**  
**April 2022**

## Introduction

We're proposing to make a series of amendments to the Signs and Use of Public Places Bylaw and the associated Administration Manual, to create a licensing system for the operation of public hire and shared micromobility services. Alongside those changes we're also proposing to adopt a Code of Practice for micromobility, and setting new fees and charges related to the licensing system.

The purpose of these changes is to set out a new regulatory framework that will support the licensing of micromobility services for hire, such as e-scooters. The operators of e-scooter hire services in Palmerston North will be licensed under this new framework, replacing the current permit system for e-scooter operators.

## The Proposal

There are several components to the proposal:

1. Insert new clause 18 into the Signs and Use of Public Places Bylaw 2015. This new clause sets out the key rules for the licensing system for public hire and shared micromobility services such as e-scooters. In addition to these key rules some consequential amendments are required, such as the definition of new terms such as "licence" (to distinguish this specific licensing system from the general permit system in the Bylaw), "e-scooter", "Code of Practice for Micromobility", and "public hire and shared micromobility services".
2. Insert new part 5 into the Signs and Use of Public Places Bylaw 2015 Administration Manual. This contains the key licensing terms proposed to be adopted by the Council such as the maximum licensing period (three years), the maximum number of licences to be issued within the licensing period (two licences), the maximum size of the fleet to be operated by a single licence holder (400), and the maximum total fleet size (800). The Administration Manual also sets out the process for evaluating and selecting applicants to be given a licence, and the basis for suspending or revoking a licence.
3. Adopt a Code of Practice for Micromobility. This is a new document developed in support of the licensing system. It sets out the guiding principles that will be used when evaluating applications for a licence, as well as specific criteria against which applications will be assessed. A panel of Council officers will assess these applications and use a weighted scoring system to determine which applicants are most aligned to Council's strategic outcomes. The Code of Practice also contains the licence conditions that apply to all licences issued under this system. By containing the licensing conditions in the Code of Practice they are transparent and open to the public. The Code of Practice can be amended by the Council, which means that the Council retains the ability to adjust licence conditions in response to new or emerging issues.
4. Introduce new fees and charges related to the new licensing system. This proposal includes a structure of three new charges: an application fee, an annual fee, and a breach fee.
  - a. The application fee covers the costs of assessing and evaluating applications for a licence. The proposed fee is \$2,000 per application.

- b. The annual fee is comprised of a fixed and a variable component. The fixed component is \$500 and covers basic monitoring and enforcement costs. The variable component is charged six-monthly in arrears based on the average number of e-scooters each operator has made available over the previous six months. The charge is set at \$1.14 per e-scooter per month, and is intended to recover costs related to responding to complaints and resolving issues of non-compliance. The variable component is expected to vary depending on the number of e-scooters deployed, up to a maximum of \$456/month per operator.
- c. The breach fee is charged when the Council retrieves an e-scooter that an operator has failed to collect or rectify within the stated performance target. This charge is variable, and is charged as a recovery of staff time per hour. The staff charge-out rates will be those for the Environmental Health Services team, and currently range from \$169/hr for an Environmental Health Officer Cadet up to \$209/hr for the Principal Environmental Health Officer.

The purpose of these new charges is to recover a greater proportion of the costs incurred by the Council as a result of the operation of e-scooters and the licensing system required to ensure that they are operated safely in our City. The charges as proposed are estimated based on assumptions about the number of complaints or issues that need to be resolved, the time taken to resolve those complaints, and are intended to recover the full amount of those costs from operators.

5. Establish a process for the evaluation and selection of licence applicants. The process is set out in the Administration Manual, while the criteria and the scoring system is contained in the Code of Practice. The process comprises:
  - a public call for applications for a licence to operate a public hire and shared micromobility service;
  - evaluation of those applications by a panel of Council officers;
  - scoring of those applications according to the criteria set out in section 4 of the Code of Practice for Micromobility, using a weighted scoring system.

The highest scoring applicants will be offered a licence to operate a public hire and shared micromobility service in accordance with the terms and conditions set out in section 5 of the Code of Practice for Micromobility. The licences will be issued by the Chief Customer Officer.

### **Reasons for the proposal**

E-scooters for hire in Palmerston North represent an innovative addition to the transport options in our city. Residents and visitors alike can hire an e-scooter at many places around the city, using them to shorten trips that would otherwise be undertaken on foot, and provide a way to explore more of the city and its attractions. E-scooters can be used for commuting, potentially reducing the number of short trips taken by car. E-scooters can also be used to complement existing public transport services, by addressing the “first/last mile” issue. The provision of e-scooters for hire by the public

is therefore consistent with one of Council's strategic priorities to encourage more people to choose modes of transport other than motor vehicles.

The arrival of e-scooters in our city potentially raises questions of safety, especially where they are placed on the footpaths and other public places for hire. The Council has a responsibility to protect public health and safety and has identified as a strategic priority that the city is a place where people feel safe and are safe.

E-scooter hire operators are currently regulated by the Council using mobile trading permits issued under the Signs and Use of Public Places Bylaw. These permits include a range of safety conditions that are designed to protect public health and safety. However, this current approach is not designed for regulating e-scooters and other micromobility services and has some limitations. For instance, there is no provision to limit the number of operators; there is also a lack of an appropriate fees and charges structure that recognises the cost to Council of monitoring and enforcing regulations related to e-scooters.

The reason for this proposal is to address these issues. While e-scooters present a valuable opportunity to extend the available transport choices they also introduce some additional safety concerns that need to be addressed. Developing a new regulatory framework specific to micromobility services such as e-scooters enables the Council to implement appropriate regulatory controls, while allowing the new services to realise benefits for the city.

### Options analysis

In developing this proposal, the Council considered the following options:

1. Do nothing. The Council could choose to leave e-scooter operators unregulated. In this option, e-scooters could be operated by any person or business, and would be subject to no specific rules about where they could be placed, how fast they could go, and where they could be parked or operated.
2. Continue to regulate via the current mobile trading permits (status quo). In this option, Council would be able to set a number of safety conditions, but would have no ability to limit the number of operators. If additional operators applied for a permit, and were able to show that they could meet the same conditions that existing operators are meeting, Council would be unable to refuse to issue them a permit. If Council permitted each operator to have up to 200 scooters, then the total fleet of scooters could be untenably large for a city of our size.
3. Prohibit e-scooters being made available for hire in public places. In this option, Council could refuse to issue any permits for e-scooter operators. This could be done if Council believed that e-scooters could not be operated in any safe manner regardless of the conditions that could be imposed.
4. Develop a new regulatory framework specifically for public hire and rideshare schemes such as e-scooters. In this option, specific rules could be created to regulate the operation of public hire and rideshare schemes. Such a framework could be extended to include a more comprehensive set of conditions and

expectations for operators and would also provide Council with the opportunity to develop fees and charges specific to this new framework.

The table below sets out a summary of the main advantages and disadvantages of the identified options:

	Advantages	Disadvantages
Option 1 – do nothing	<p>Operators would be free to introduce a range of micromobility services such as e-scooters and other such devices. There would be plenty of choice for residents and visitors.</p> <p>Council would incur very little cost as there would be no monitoring or enforcement.</p>	<p>The absence of any regulation could see a proliferation of providers, and no limits on the number of devices placed on the footpath. This approach would be inconsistent with other Bylaw provisions placing limits on what can be placed on the footpath. The absence of any regulations would also see scooters and similar devices travelling at faster speeds, used in potentially inappropriate locations, and the Council would have little authority to intervene.</p> <p>There is the greater potential for costs to arise from damage to public places caused by a large fleet of unregulated scooters.</p>
Option 2 – status quo	<p>Operators of e-scooters would be subject to a range of specific safety conditions, and ongoing monitoring and enforcement.</p>	<p>Council would have no ability to limit the number of operators, meaning if new operators applied for a permit and could meet the safety conditions applied to other operators, Council would have no legal basis for refusing a permit. This could lead to an unwieldy number of operators increasing the administrative burden for the Council in monitoring and enforcing safety conditions across a larger number of operators.</p> <p>There would be no way to recover the costs to the Council of monitoring and enforcement, and the cost of a permit would be minimal and not reflect the true cost to Council.</p>

Option 3 – prohibit e-scooters	<p>Council would not be required to undertake any monitoring or enforcement, and so would incur no additional cost.</p>	<p>A decision to refuse to issue a permit under the current Signs and Use of Public Places Bylaw for e-scooters to be placed on the footpath for hire could be legally challenged as being unreasonable, if the applicant could show that the safety issues could be mitigated and addressed.</p> <p>The city would lose the opportunity for an additional mode of transport that could encourage fewer trips to be taken in motor vehicles.</p> <p>Privately-owned e-scooters would not be affected, and in the absence of devices available to hire more people may purchase their own e-scooters, which are not subject to any speed controls or restrictions on parking or operation.</p>
Option 4 – develop a new regulatory framework	<p>A new regulatory framework focussed on public hire and rideshare schemes such as e-scooters allows for the limitations of the current approach to be addressed. The Council can impose a limit on the number of licences that can be issued, and introduce new fees and charges specific to the licensed activity that will allow it to recover a greater portion of the costs it has and will incur.</p> <p>The transparency provided by the new Code of Practice for Micromobility ensures that the community is aware of the safety conditions that operators have to adhere to. Making this document subject to consultation gives the community input into the rules that will govern the</p>	<p>Council will incur additional costs in developing a new regulatory framework, and the proposed process for evaluating licence applications will also add to the costs. While the proposed fee structure does recover a significant portion of those additional costs directly from the applicants and operators, the balance will be met by the Council. This recognises that there is a public benefit to having a system that regulates the operation of public hire and rideshare schemes such as e-scooters, as well as the commercial benefit received by the operators.</p>

	<p>way that e-scooters are made available in public places.</p> <p>The design of the new regulatory framework – with the key rules contained in the Bylaw, licensing terms in the Administration Manual, and the bulk of conditions and assessment criteria in the new Code of Practice for Micromobility – provides flexibility that allows for key provisions to be updated more readily, and reflect changing circumstances as necessary.</p>	
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The Council has concluded that option 4 – develop a new regulatory framework – is the preferred option. While the current approach (option 2) is working reasonably well it has a number of deficiencies that need to be addressed to ensure good outcomes in the longer-term. Doing nothing is not a viable option where Council has already undertaken a regulatory response. Similarly, a prohibition on e-scooters is not viable where the Council has already issued permits and e-scooters have been operated in the city with minimal issues and currently no significant issues. On the basis of this analysis, developing a new regulatory framework represents the best approach.



## Consultation Process

Anyone can make a submission about this proposal. We encourage anyone with an interest in the issues raised in this proposal to make a submission.

This consultation document and the submission form can be found at:

- Palmerston North City Council website  
<https://www.pncc.govt.nz/participate-palmy/have-your-say/>
- Customer Service Centre, Palmerston North City Council, The Square, Palmerston North; and
- City Library, The Square, Palmerston North, and the libraries at Ashhurst, Awapuni, Roslyn, Linton and Te Pātikitiki/Highbury.

You can also appear before the Council and speak to your submission. Please indicate on your submission form whether you wish to do this. The Council intends to hear submissions on this proposal in June 2022. Details of the hearings will be confirmed in the email or letter acknowledging your submission, and will also be advertised in the Guardian newspaper.

To get your submission to us, either:

Mail to: Draft Signs and Use of Public Places Bylaw (e-scooters) Submissions, Governance and Support Team Leader, Palmerston North City Council, Private Bag 11034, Palmerston North 4442

Deliver to: Palmerston North City Council Customer Service Centre, 32 The Square, Palmerston North

Email to: [submission@pncc.govt.nz](mailto:submission@pncc.govt.nz) (write Draft Signs and Use of Public Places Bylaw (e-scooters) Submissions in the subject)

Phone: 06 356 8199

Fax: 06 355 4115

**The submission period runs from 9 April  
until 4pm on Tuesday 10 May 2022**

Please note that all written submissions, including the contact details on the submission, will be made available to the public and media and on the Council's website. If you would prefer to have your contact details kept private, you can request that in your submission. For further information on this consultation please phone the Council on 06 356 8199 or email us at [info@pncc.govt.nz](mailto:info@pncc.govt.nz).



PALMERSTON NORTH CITY

# **PALMERSTON NORTH SIGNS AND USE OF PUBLIC PLACES BYLAW 2015**

(incorporating amendments as at ~~30 April 2018~~  
7 September 2022)

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## Palmerston North Signs and Use of Public Places Bylaw 2015

### 1. TITLE

- 1.1. The title of this Bylaw is "THE PALMERSTON NORTH SIGNS AND USE OF PUBLIC PLACES BYLAW 2015".

### 2. PURPOSE

- 2.1. This Bylaw is made under the Local Government Act 2002, the Prostitution Reform Act 2003, the Land Transport Act 1998 and the Health Act 1956. The purpose of the Bylaw (in conjunction with the methods contained in the Palmerston North District Plan) is to:
- (a) Protect the public from nuisance and maintain the amenity of Palmerston North City
  - (b) Protect, promote, and maintain public health and safety
  - (c) Regulate trading in public places
  - (d) Regulate, control, or prohibit signs in public places and signs advertising commercial sexual services.

### 3. COMMENCEMENT AND APPLICATION

- 3.1. This Bylaw comes into force on 1 October 2015.

### 4. REPEAL

- 4.1. The Palmerston North Signs and Use of Public Places Bylaw 2010 is repealed at midnight 30 September 2015.

### 5. INTERPRETATION

- 5.1. In this Bylaw:

<b>Administration Manual</b>	means the Administration Manual for the Palmerston North Signs and Use of Public Places Bylaw 2015, as approved by the Council when the Palmerston North Signs and Use of Public Places Bylaw 2015 came into force and as amended from time to time by delegated authority under this Bylaw.
<b>Advertising</b>	means using words or any pictorial or other representation to notify the availability of or to promote the sale of an object, a product, a service or a business.
<b>Authorised Officer</b>	means a person appointed or authorised in writing by the Council to act on its behalf in relation to this Bylaw.

<b><u>Code of Practice for Micromobility</u></b>	<u>Means a Code of Practice for the operation of public hire and shared micromobility services, adopted by the Council and amended from time to time.</u>
<b>Commercial Sexual Services</b>	means sexual services that – <ul style="list-style-type: none"> <li>(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and</li> <li>(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)</li> </ul>
<b>Council</b>	means the Palmerston North City Council.
<b>Display</b>	means to place, erect, construct or fix.
<b>District Plan</b>	means the operative Palmerston North City District Plan and includes the operative parts of the Manawātū District Plan that apply to land that is now part of Palmerston North City until such time as that land is incorporated into the Palmerston North City District Plan via a Plan Change.
<b><u>E-Scooter</u></b>	<u>Means a device classified by Waka Kotahi New Zealand Transport Agency as a wheeled recreational device or a low powered vehicle, and which is designed in the style of a traditional push scooter with a footboard, two wheels not exceeding 355mm in diameter, a long steering handle and an electric auxiliary propulsion motor with a maximum power output not exceeding 300 watts.</u>
<b>Election</b>	means an election under the Electoral Act 1993 or the Local Electoral Act 2001.
<b>Election Sign</b>	means a sign or any part of a sign (including the frame and supporting structure) for a public referendum, election, or by-election, that encourages or persuades or appears to encourage or persuade voters to vote for a person or a party or to vote in a particular way on a referendum or election.
<b>Flag Sign</b>	means a flag with advertising on it.

<b>Footpath</b>	means a path or way under the control of the Council and principally designed for, and used by, pedestrians, and includes a footbridge.
<b>Footpath sign</b>	means a sign containing advertising displayed on a footpath but does not include a flag sign.
<b>General Authorisation</b>	means permission granted by the Council and recorded in the Administration Manual, permitting the activities specified in the General Authorisation by all persons, provided the conditions identified in the General Authorisation are complied with at all times.
<b><u>Licence</u></b>	<u>Means an authority in writing given by the Council under this bylaw to undertake an activity that may only be undertaken by the licence holder.</u>
<b>Mobile sign</b>	means a sign or signs attached to a vehicle (including trailer).
<b>Mobile trading</b>	means the sale of goods or services in a public place from premises which are not fixed to the public place.
<b>Permit</b>	means any approval or consent required or given by the Council under this Bylaw and includes any approval whether or not on a prescribed form including by electronic communication.
<b><u>Public hire and shared micromobility service</u></b>	<u>means any operation to make low powered vehicles or wheeled recreational devices (including, but not limited to, e-scooters) available in a public place for use by members of the public in exchange for payment.</u>
<b>Public Place</b>	means an area that is open to or used by the public and that is under the control of the Palmerston North City Council, or one of its Council Controlled Organisations.
<b>Real Estate</b>	means land, and buildings on land.
<b>Real estate flag</b>	means a flag advertising real estate or a licensed real estate agency.
<b>Real estate sign</b>	means a sign advertising the sale and purchase of real estate but does not include a

real estate flag whether or not on the property to which it relates.

**Road**

Includes:

- (a) Every road, street or public highway under Council's control;
- (b) Any land that is vested in Council for the purpose of a road as shown on a deposited survey plan;
- (c) Any land that is vested in Council as a road or street pursuant to any other enactment;
- (d) Any access way or service lane;
- (e) Every square or place intended for use of the public generally;
- (f) Every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;
- (g) Any state highway where the Council has the necessary administrative powers to manage signs on that highway.

**Road Reserve**

means land vested in or controlled by the Council for the purpose of a road.

**Sign**

means words or any pictorial or other representation or notice on any material or object.

**Sign Parks**

means any space set out by the Council for the purpose of displaying signs in accordance with this Bylaw.

**Temporary Sign**

means a sign that is portable and not fixed to land or buildings.

**Vehicle**

Means:

- (a) A contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
- (b) Includes a hovercraft, a skateboard, in-line skates, and roller-skates; but

- (c) Does not include –
- i. A perambulator or pushchair
  - ii. A shopping or sporting trundle not propelled by mechanical power
  - iii. A wheelbarrow or hand-trolley
  - iv. A pedestrian-controlled lawnmower
  - v. A pedestrian-controlled agricultural machine not propelled by mechanical power
  - vi. An article of furniture
  - vii. A wheelchair not propelled by mechanical power
  - viii. Any rail vehicle.



## PART 1 – SIGNS

### 6. GENERAL CONTROL ON SIGNS

- 6.1. No person may display a sign in a public place or on or overhanging any land or building owned by the Council without a permit from the Council, unless:
  - (a) The display of the sign is authorised by this Bylaw or a permit issued under this Bylaw; or
  - (b) The display of the sign involves a temporary sign associated with a cultural, social, sporting or educational activity authorised by the Council and is removed after the activity ceases; or
  - (c) The display of the sign is expressly allowed by a resource consent under the Resource Management Act 1991 or a building consent.
- 6.2. No person may display a sign containing material that is offensive, objectionable, or indecent, that is visible from a public place or another person's private residence.
- 6.3. No person may display a mobile sign without a permit issued under this Bylaw unless it complies with the following conditions:
  - (a) The mobile sign must be no larger than 3 square metres. If it is a panel with signs on both sides each can be up to 3 square metres.
  - (b) The mobile sign must not be placed on land zoned Residential or Village in the District Plan or on road reserve adjacent to land zoned Residential or Village in the District Plan.
  - (c) The mobile sign must not be placed outside a business deemed to be in competition with the business or activity advertised by the mobile sign.
  - (d) The top of the mobile sign is to be no more than 4 metres from the ground.
  - (e) The mobile sign must not extend outside the footprint of the vehicle to which it is attached.
  - (f) The mobile sign must be securely fastened to the vehicle.
  - (g) The vehicle must comply with all laws, rules, regulations, and bylaws regarding the position of the vehicle on a roadway, and must be no closer than 25 metres to any intersection.
  - (h) If the mobile sign is attached to a trailer, the tow bar of the trailer must be positioned away from the traffic flow, i.e. next to the curb in angle parking. If the trailer is parked after dark it must display

an illuminated red light to the rear on the side closest to the centre of the road, so that is easily seen by oncoming vehicles.

- (i) The vehicle must be parked so that no street/advisory signage is obscured and that there is clear line of sight for drivers.
- (j) The vehicle is not to be parked on raised or painted medians or any grass berms.

## 7. SIGNS AND FLAGS ON FOOTPATHS

- 7.1. No person may display a footpath sign on a footpath unless it complies with the following specifications:

Maximum height	1.0 metres
Maximum width	0.6 metres
Maximum base spread	0.6 metres.

- 7.2. No person may display a flag sign on a footpath unless it complies with the following specifications:

Maximum height	2.0 metres
Maximum width	0.6 metres
Maximum base spread	0.6 metres
Maximum flagpole height	3.0 metres

- 7.3. No person may display a footpath sign or flag sign on a footpath unless;

- (a) The sign advertises a business or relates to the business activity; and
- (b) The sign is located adjacent to the business to which it relates; and
- (c) The sign is removed when the business is not open to the public; and
- (d) There is not more than one footpath sign or flag sign for the business where the business is located in the area bounded by Ferguson Street, Pitt Street, Bourke Street, Walding Street, Grey Street and

Princess Street, and in all other cases not more than two footpath signs or flag signs for each business; and

- (e) There is a minimum width of footpath free of objects adjacent to the footpath sign or flag sign of 1.5 metres; and
- (f) The footpath sign or flag sign is placed immediately adjacent to the footpath kerb but must not impede access to carparks reserved for Mobility Parking Permit holders, bus stops, or access to existing amenities or infrastructure such as rubbish bins, traffic signals and crossing signals, road crossings, or other permanent features; and
- (g) The footpath sign or flag sign does not protrude on to a road; and
- (h) The footpath sign does not alone or with other footpath signs unreasonably impede safe and efficient pedestrian flow.

7.4. Despite clause 7.3, a flag sign may be fixed to a building if;

- (a) The sign relates to a business in that building;
- (b) The maximum height of the flag sign does not exceed 3 metres;
- (c) The flag sign does not protrude onto a road;
- (d) The flag sign does not protrude into any footpath more than 0.6 metres.
- (e) The lowest edge of the flag sign has a minimum overhead clearance of 2.1 metres.

## **8. SIGNS ADVERTISING COMMERCIAL SEXUAL SERVICES**

8.1. No person may display a sign advertising commercial sexual services unless the following conditions are met:

- (a) The sign is on the premises in which the commercial sexual services are provided; and
- (b) The sign is not located on land zoned Residential, Village, Rural or Institutional in the District Plan; and
- (c) The sign is not visible from a private residence on land zoned Residential, Village, Rural or Institutional zones in the District Plan, or any road adjacent to Residential or Village zoned land in the District Plan.

8.2. No person may distribute in a public place handbills that advertise commercial sexual services.

## **9. REAL ESTATE SIGNS AND FLAGS**

9.1. No person may display a real estate sign in the Residential or Village zone in the District Plan unless:

- (a) The sign has an area less than 1.1 metres<sup>2</sup>; and
  - (b) All parts of the sign do not exceed a vertical height of 1.8 metres above ground level; and
  - (c) The number of signs does not exceed one per licensed real estate agency appointed in writing by the owner of the residential real estate being offered for sale; and
  - (d) The sign is on a property available for sale
  - (e) The total number of signs does not exceed three on any property; and
  - (f) The sign is removed within three weeks of the unconditional sale or lease of the real estate.
- 9.2. No person may display a real estate sign advertising real estate (other than real estate covered by clause 9.1) unless:
- (a) The sign has an area less than 2.9 metres<sup>2</sup>; and
  - (b) The number of signs does not exceed one per licensed real estate agency appointed in writing by the owner of the real estate being offered for sale; and
  - (c) The sign is on a property available for sale
  - (d) The total number of signs does not exceed three; and
  - (e) The sign is removed within three weeks of the unconditional sale or lease of the real estate.
- 9.3. No person may display a real estate flag unless:
- (a) The real estate flag is adjacent to the real estate to which it relates; and
  - (b) The dimensions of the real estate flag do not exceed 2 metres high x 0.6 metres wide; and
  - (c) The flag pole of the real estate flag does not have a vertical height measured from ground level exceeding 3 metres; and
  - (d) The base of the flagpole is positioned on the road not more than 0.5 metres from the face of the kerb, is located alongside and attached to the associated vehicle and is not a freestanding device.
  - (e) Is displayed only when a real estate agent is conducting open days for the public
- 9.4. Clauses 9.1, 9.2 and 9.3 do not apply to signs on the business premises of a licensed real estate agent or real estate agency.

**10. SIGN PARKS**

- 10.1. From time to time the Council (for the principal but not exclusive purpose of providing designated space for election signs) may:
- (a) Identify an area as a sign park.
  - (b) Prescribe fees for the use of the sign park.
- 10.2. No person may display a sign in a sign park without a permit from the Council.
- 10.3. No person may display in a sign park a sign greater than 2.9 metres<sup>2</sup>.

**11. ELECTION SIGNS**

- 11.1. This clause is subject to the Electoral Act 1993 and the Local Electoral Act 2001.

Area

- 11.2. No person may display on any land that is zoned Residential or Village in the District Plan an election sign that is greater than 0.6 metres<sup>2</sup> in area.
- 11.3. No person may display on any land other than land zoned Residential or Village in the District Plan an election sign that is greater than 10 metres<sup>2</sup>.

Height

- 11.4. No person may display any freestanding election sign that is greater in height than 1.8 metres.

Number

- 11.5. No property or sign park may display more than one election sign per candidate.
- 11.6. No property or sign park may display more than one election sign per political party.

Illumination and animation

- 11.7. No person may display in any place visible from a road an election sign that is animated or illuminated or made of any reflective material.

## PART 2 – USE OF FOOTPATHS AND PUBLIC PLACES

### 12. OBJECTS ON FOOTPATHS

- 12.1. No person may place objects on a footpath without a permit from the Council.
- 12.2. If the Council issues a permit to a person to leave tables, chairs or other objects on a footpath then the permit holder must comply with the standard conditions in the Administration Manual together with any other special conditions on the permit. Where the special conditions are inconsistent with the standard conditions, the special conditions prevail.
- 12.3. Clause 12.1 does not apply to any footpath in a locality, or to a type of object or objects, in respect of which the Council has issued a current general authorisation provided that the performance conditions attaching to the authorisation are met. Any authorisation may be revoked or amended by the Council at any time in its entirety, or specifically amended as to whom it applies, where it applies or the conditions to be met.

### 13. DRAWING ON FOOTPATHS

- 13.1. No person may mark any footpath or other public place, unless chalk is the only material applied and it is applied only to a footpath unless given written approval from the Palmerston North City Council.

### 14. REVOKED

### 15. SECURITY FENCES

- 15.1. No person may erect or permit to be erected any barbed wire, razor wire or electrified wire within 1 metre of any boundary adjoining any public place at a height of less than 2 metres above the ground level of the public place unless the property is zoned rural in the District Plan.

### PART 3 – STOCK ON ROAD RESERVES

#### 16. ROADSIDE GRAZING

16.1. No person may graze animals on the grassed part of a road reserve unless the following conditions are met:

- (a) The grassed area is fenced by a temporary electric fence; and
- (b) The land adjacent to the road reserve is zoned rural in the District Plan; and
- (c) The animals belong to the owner of the allotment of land adjacent to the road reserve or the owner of the allotment of land adjacent to the road reserve has given consent to the owner of the animals for them to graze on that land; and
- (d) As soon as the grassed area has been grazed off, the stock and the electric fence are removed; and
- (e) The grassed area is not overgrazed or trampled into mud and all water channels and culverts are kept in good working order.

## PART 4 – TRADING IN PUBLIC PLACES

### 17. MOBILE TRADING PERMITS

- 17.1. No person may engage in mobile trading in a public place without a permit from the Council. This clause does not apply to a person who has a mobile food business registered with the Council.
- 17.2. If the Council issues a permit to a person to engage in mobile trading in a public place then the permit holder must comply with the standard conditions in the Administration Manual together with any other special conditions on the permit. The special conditions prevail where inconsistent with the standard conditions.

### 18. PUBLIC HIRE AND SHARED MICROMOBILITY SERVICES

- 18.1. No person may operate a public hire and shared micromobility service in a public place without a licence from the Council issued under this Bylaw.
- 18.2. The Council will issue licences to operate a public hire and shared micromobility service in accordance with the process set out in the Administration Manual.
- 18.3. Every holder of a licence to operate a public hire and shared micromobility service must comply with the terms and conditions set out in that licence.
- 18.4. The Council must, by resolution and following public consultation that gives effect to section 82 of the Local Government Act 2002, adopt a Code of Practice for Micromobility that sets out the minimum standards for the operation of a public hire and shared micromobility service.
- 18.5. The Council must require, as a condition of any licence to operate a public hire or rideshare scheme that it issues, that the licence holder comply with all minimum standards for the operation of a public hire or rideshare scheme set out in the Code of Practice for Micromobility.
- 18.6. The Council may impose such other terms and conditions on any licence to operate a public hire and shared micromobility service that it considers necessary, at its sole discretion, to give effect to the purpose of this Bylaw.
- 18.7. The Council may revise and update the Code of Practice for Micromobility from time to time, following public consultation that gives effect to section 82 of the Local Government Act 2002.
- 18.8. Any authorised delegate under this Bylaw may alter the Code of Practice for Micromobility without needing to follow the process under clause 18.7, where such an alteration is only of minor effect or corrects minor errors.



18.9. The Council must, by resolution, define limits for the following matters and record them in the Administration Manual:

- (a) The length of the licensing period for which licences will be issued and may be used; and
- (b) The maximum number of licences to be issued in any licensing period; and
- (c) The maximum number of vehicles that may be deployed by an individual licence -holder; and
- (d) The maximum number of vehicles that may be deployed cumulatively by all simultaneous licence -holders.

18.10. The Council may, by resolution and following public consultation that gives effect to section 82 of the Local Government Act 2002, set fees and charges to be charged for a licence to operate a public hire and shared micromobility service, which may include (but are not limited to) fees and charges to recover costs for:

- (a) considering and evaluating applications for a licence; and
- (b) monitoring and enforcement of the operation of a public hire or rideshare scheme, and compliance with the conditions of the licence; and
- (c) remedying non-compliance with the conditions of the licence; and
- (d) provision of infrastructure or other materials reasonably necessary to ensure the safe operation of the public hire or rideshare scheme.

18.11. The Council may suspend or revoke a licence where the licence holder does not comply with the terms and conditions of that licence. Any determination that a licence holder has not complied with the terms and conditions of its licence will be made at Council's sole discretion.

18.12. Where the Council revokes a licence during the licensing period, the Council may issue additional licences to alternative licence applicants at its discretion, provided that the total number of licences issued does not exceed the maximum number of licences specified in the resolution of Council.

## PART 5 – ADMINISTRATION

### ~~18.19.~~ FEES AND CHARGES

~~18.1.19.1.~~ The Council may set fees and charges for any permit or licence granted under the Bylaw.

### ~~19.20.~~ DELEGATIONS

~~19.1.20.1.~~ The following are authorised delegates under this Bylaw:

- (a) The Council by resolution;
- (b) The Chief Executive of the Council;
- (c) The person holding the office identified in Council's Delegations Manual as responsible for the administration of this Bylaw;
- (d) Any other person authorised to exercise a power under the Bylaw, pursuant to the Council's Delegations Manual or resolution of the Council.

~~19.2.20.2.~~ Authorised delegated persons may exercise any power, function or duty under this Bylaw or carry out any act, other than those expressly required to be by Council resolution, in order to achieve its effective administration on behalf of the Council including, without limitation:

- (a) Grant permits or licences;
- (b) Specify the special conditions that apply to a permit or licence;
- (c) Declare General Authorisations;
- (d) Specify forms and procedures for the effective administration of the Bylaw;
- (e) Make any decision or determination required in this Bylaw in order to administer it;
- (f) Decisions regarding suspension, withdrawal or removal of a permit or licence;

~~(f)(g)~~ Revise and update the Code of Practice for Micromobility.

~~19.3.20.3.~~ The Council by resolution may amend the Administration Manual. Before amending the Administration Manual, the Council must consult appropriately with any person that it considers may be affected by the proposed amendments and give those persons a reasonable opportunity to provide feedback on the proposed amendments before they come into effect. The Council must have regard to that feedback before making any final decision on the proposed amendments.

~~19.4.~~20.4. All forms, specifications, standard conditions or methods for this Bylaw must be in writing and kept in the Administration Manual for this Bylaw called the Palmerston North Signs and Use of Public Places Bylaw Administration Manual, and shall be available to the public.

~~19.5.~~20.5. Every exercise of a power of delegation under this clause must be publicly reported at least annually to Council if not exercised by Council by resolution provided that failure to report does not invalidate the exercise of the delegate's power.

## **20.21. PERMITS AND LICENCES**

~~20.1.~~21.1. Where an activity under this Bylaw requires a permit or licence from the Council, the person seeking a permit or licence must:

- (a) Complete the required application form;
- (b) Pay the applicable fee;
- (c) Comply with the conditions of that permit or licence.

~~20.2.~~21.2. A permit or licence may include, in addition to conditions incorporated by this Bylaw, conditions that the Council considers are necessary to manage the effects of the activity, achieve the objectives of this Bylaw and minimise the risk of nuisance.

~~20.3.~~21.3. The Council may grant a permit or licence for any activity that would otherwise contravene this Bylaw.

~~20.4.~~21.4. A permit or licence is personal to the applicant and is not transferable.

~~20.5.~~21.5. An authorised officer may revoke or suspend any permit or licence issued under this Bylaw at any time, or suspend for such periods of time, on such terms and conditions as the authorised officer may consider appropriate in the circumstances to protect Council property, public health and safety or to minimise nuisance.

~~20.6.~~21.6. An authorised officer may revoke any permit or licence issued under this Bylaw where the conditions of that permit or licence are not complied with.

~~20.7.~~21.7. All permits issued under clause 12.1 of the Palmerston North Signs and Use of Public Places Bylaw 2010 or its predecessors that are in effect at the time of the commencement of this Bylaw will expire on 1 May 2016.

## PART 6 – ENFORCEMENT

### **21.22. OFFENCES AND PENALTIES**

**21.1.22.1.** Every person or permit or licence holder who:

- (a) Fails to comply with any provision of this Bylaw; or
- (b) Breaches the conditions of any permit or licence granted pursuant to this Bylaw

commits an offence under section 239 of the LGA 2002 and is liable to a fine as specified in section 242 of the LGA 2002.

**21.2.22.2.** The Council may issue infringement notices, in such forms and for such amounts as are authorised in any regulations made under section 259 of the LGA 2002.



**PALMERSTON NORTH CITY**

# **PALMERSTON NORTH SIGNS AND USE OF PUBLIC PLACES BYLAW 2015**

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## **Administration Manual**

**(incorporating amendments as at 7 September 2022)**

## Document control

Version No.	Reason for amendment	Date
1	Adopted by Council	1 October 2015
2	Correct information requirements for permit application form	3 April 2017
3	Remove references to permits for vehicles parked for sale	30 April 2018
<u>4</u>	<u>Insert provisions relating to e-scooter licensing</u>	<u>September 2022</u>

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## PART ONE – INTRODUCTION

The purpose of this Administration Manual is to support the administration of the Signs and Use of Public Places Bylaw 2015 (the Bylaw), to provide information to the public about making applications for permits under the Bylaw, and to identify the standard conditions that apply to the different activities for which permits may be issued.

The Administration Manual is made under the Bylaw, and it will govern the implementation and operation of the Bylaw. The Administration Manual is a public document, and will be made available on the Council's website alongside the Council's bylaws. A hard copy can be provided on request.

This Administration Manual will be updated from time to time, as necessary, to ensure that it is kept up to date and reflects current practice. ~~Amendments to this document will be authorised by the General Manager for the Customer Services Unit.~~



## PART TWO – FORMS

This section includes the form to be used when applying for a permit under the Signs and Use of Public Places Bylaw. This form applies to the following activities controlled by the bylaw and for which a permit may be issued:

- Displaying a sign in a public place (ref. clauses 6.1 and 6.3)
- Displaying a sign in a sign park (ref. clause 10.2)
- Placing objects on, or use of, the footpath (ref. clause 12.1)
- Mobile trading in a public place (ref. clause 17.1)
- Other (activities which would otherwise contravene the bylaw – ref. clause 20.3)

## Signs and Public Places Permit Application Form

### APPLICANT DETAILS

Applicant Name: \_\_\_\_\_

Trading Name of Business (if applicable) : \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

After hours: \_\_\_\_\_ Mobile: \_\_\_\_\_

### ACTIVITY TYPE

Please indicate the type of activity permit for which you are applying

- ☐ Displaying a sign in a public place
 ☐ Displaying a sign in a sign park  
☐ Placing objects on or use of the footpath
 ☐ Mobile Trading in a Public Place  
☐ Other: \_\_\_\_\_

### PERMIT REQUIREMENTS

I confirm that:

- (a) I have included in this application the required information necessary to enable the Council to consider the application (see overleaf).  
 (b) I have paid the prescribed fee (if applicable)  
 (c) I agree to comply with the times, terms and conditions of the permit if a permit is issued.

Signature: \_\_\_\_\_ (applicant) Date: \_\_\_\_\_

<b>OFFICE USE ONLY</b>	
Application received on: _____	
Recommendation: Approved/Declined (circle one)	Permit number: _____
Applicant advised: Yes/No (circle one)	Date: _____
Notes: _____	
_____	

## PERMIT INFORMATION REQUIREMENTS

The following are the information requirements for each of the different permit activity types. Please ensure that you supply all the required information with your application to enable the Council to consider your application. A failure to supply the required information may delay your permit application.

### Displaying a sign in a public place (clause 6)

1. Identify the location where the sign will be located
2. Provide details of the sign content, and the size and construction of the sign (including whether it is a mobile sign).
3. Provide the date on which the sign is to be erected, and the date on which the sign is to be removed.

### Displaying a sign in a sign park (clause 10)

1. Identify in which sign park(s) the sign will be located:
  - a. Pioneer Highway – heading into the city, green area left hand side, past the Information Board and entrance to the Manawatū Trotting Track
  - b. Fitzherbert Avenue – heading out of the city prior to crossing the Manawatū River and bridge, green area on the left hand side.
2. Supply a sketch plan of the sign, including a description of the sign content, and the size and construction of the sign.
3. Provide the date on which the sign is to be erected, and the date on which the sign is to be removed.

### Placing objects on or use of the footpath (clause 12)

1. Describe the locality where objects are to be placed.
2. Supply a sketch plan that details the location of the objects to be placed on the footpath.
3. Identify the number and type of each object proposed to be placed on the footpath, and the times of the day and the days that the objects will be placed on the footpath.

### Mobile trading in a public place

1. Identify the nature of the mobile trade that will take place.
2. Clearly identify the exact location(s) where the mobile trading will take place. Each site will require a clear map for each proposed location.
3. The dates, times, frequency and duration the mobile trade will take place.

## PART THREE – STANDARD CONDITIONS FOR PERMITS

### All Permits

1. Permits are issued under the Palmerston North Signs and Use of Public Places Bylaw 2015.
2. The permit holder must present the permit if requested by any officer of the Palmerston North City Council.
3. The permit may be reviewed by the Council at any time and may be revoked on 48 hours written notice or earlier if necessary to prevent harm to any person or damage to any private or public property.
4. The permit is only valid if all applicable fees have been paid and funds have cleared.
5. Unless otherwise specified, a permit issued under this bylaw is valid for a maximum of three years. The Council may grant a renewal of the permit on application.

### Displaying a sign in a public place

1. The sign must correspond with the specifications and description in the permit application, including but not limited to the construction and dimensions of the sign.
2. Any sign, including any structure attached to the sign, must be maintained in good repair. If it is damaged for any reason it must be removed, repaired or replaced within 24 hours of sustaining damage if there is a safety issue, and within 72 hours otherwise.
3. The sign must be removed by the date stated in the permit. If no date is stated, then the permit is deemed to terminate within 21 days of the date the permit was issued.
4. The permit holder is responsible for any damage to the public place or any other property of the Palmerston North City Council caused by the sign, the permit holder, the permit holder's contractors or the permit holder's employees.

### Displaying a sign in a sign park

1. The sign must correspond with the specifications and description in the permit application, including but not limited to the construction and dimensions of the sign.
2. The sign must not be erected before a site inspection has been completed by a Council officer.
3. Any sign, including any structure attached to the sign, must be maintained in good repair. If it is damaged for any reason it must be repaired or replaced within 24 hours of sustaining damage.
4. The sign must not exceed 2.9m<sup>2</sup> in area and it must not exceed 1.6m above the ground inclusive of supports (posts).
5. The posts used to support the sign must fit in ground cylinders. The maximum width is 100mm<sup>2</sup> or 4"x4", and the maximum depth into the ground is 800mm.
6. The sign must be removed from the sign park by the date stated in the permit or before the end of eight weeks since the sign was erected, whichever is earlier.

#### Placing objects on or use of the footpath

1. Objects placed on the footpath must be placed outside the premises to which they relate.
2. Objects must not be placed outside adjoining premises without written permission from the adjoining premises.
3. Objects must be placed on the footpath only when the premises to which they relate are open to the public.
4. Pedestrians using the footpath must not be impeded by the objects placed on the footpath.
5. Objects placed on the footpath must be placed to ensure a minimum 1.5 metres continuous, straight-line width of the footpath remains clear for pedestrian access.
6. Objects other than tables and chairs may not occupy more than one quarter of the footpath width or 0.6 metres, whichever is the lesser.
7. Objects including but not limited to umbrellas, canopies or shades must be secured in such a way that they will not fall or be blown over.
8. The lower edge of the canopy of any umbrella or shade must be at least 2.1 metres above the footpath.
9. Access to fire exits, fire hydrants, shop doorways, parking meters, rubbish receptacles, street furniture and bicycle stands must be kept clear at all times.
10. All braziers or heating devices must be securely fixed so as to not fall over.
11. A brazier or heating device must not present a danger to any pedestrian or building.
12. If alcohol is to be consumed in the area to be covered by this permit then it also needs to be licensed for alcohol consumption under the Sale and Supply of Alcohol Act 2012.
13. If tables, chairs, or other seating arrangements are placed on the footpath, then smokefree signage supplied by the Council must be displayed at all times the tables, chairs or other seating arrangements are placed on the footpath, so as to be prominently visible to persons using the tables, chairs or seating. No ashtrays or other devices intended for collecting ash may be placed on the tables or seating arrangements.
14. The permit holder must keep the footpath area where objects are placed clean from litter at all times.

#### Mobile trading in a public place

1. The permit holder must not impede the efficient flow of traffic or pedestrians.
2. The permit holder must not cause damage to the road reserve or any other property of the Palmerston North City Council.
3. The permit holder must cease trading when the permit expires or on revocation of the permit.

## PART FOUR – CURRENT GENERAL AUTHORISATIONS

The following are General Authorisations made under clause 12.3 of the Bylaw, currently in effect:

### General Authorisation #1 - footpaths within the CBD and Local Business Zone

This authorisation, made in accordance with clause 12.3 of the Signs and Use of Public Places Bylaw 2015, authorises the placement of objects (excluding tables, chairs or other seating arrangements) on footpaths within the area bounded by (and including) the following streets: Pitt Street, Bourke Street, Walding Street, Grey Street, Princess Street, and Ferguson Street, and on any footpath adjoining land zoned Local Business in the Palmerston North City District Plan.

The placement of any objects under this general authorisation is subject to the following conditions:

- The person who places the object(s) is the owner or occupier of the premises adjacent to the section of footpath where the objects are to be placed.
- The objects must not impede pedestrians using the footpath.
- A minimum 1.5 metres of continuous, straight-line width of the footpath must remain clear for pedestrian access.
- The lower edge of any object overhanging the footpath must be at least 2.1 metres above the ground.
- The objects must not block access to fire exits, fire hydrants, shop doorways, parking meters, rubbish receptacles, street furniture, or bicycle stands, at any time.

The Council may revoke or amend this general authorisation at any time, and any objects placed on the footpath must comply with any amended conditions or be removed from the footpath.

*Declared by PNCC on 1 October 2015*

## **PART FIVE – PUBLIC HIRE AND SHARED MICROMOBILITY SERVICES LICENCES**

### Licensing terms

1. The licensing period is for three years, with the first licencing period commencing on 1 December 2022.
2. The Council will issue a maximum of two licences for each licensing period.
3. The maximum number of devices that may be deployed by an individual licence-holder is 400.
4. The maximum number of devices that may be deployed by licence-holders collectively is 800.

### Licensing evaluation and selection process

1. Prior to the start of a licensing period, the Council will notify on its website:
  - a. That applications for public hire and shared micromobility service licences can be submitted for consideration.
  - b. The information that applicants are required to provide before their applications can be considered.
  - c. The final date that applications must be submitted by to be considered.
2. Each application will be considered by a panel of Council officers.
  - a. An initial individual assessment will be conducted by each member of the panel, to provide an individual score for each application.
  - b. A joint assessment of each application will then be conducted by the panel, to arrive at a combined score for each application.
  - c. The criteria and the weighted scoring system will be that which is outlined in the Micromobility Code of Practice.
  - d. The panel will prepare a report outlining the panel's assessment of each application, the scores given to each application and the final weighted score for each application.
3. The panel's report will be used by the Chief Customer Officer to make the decision to issue licences.

Licence suspension and termination process

1. Where the Council decides to suspend a licence in accordance with clause 18.11 of the Bylaw, the Council will, subject to clause 3 below, give five working days' notice of that suspension and outline the issues identified by the Council. The suspension will continue in effect until the licence holder has satisfied the Council that all the identified issues have been resolved.
2. Where the Council decides to revoke a licence in accordance with clause 18.11 of the Bylaw the Council will, subject to clause 3 below, give five working days' notice of that revocation. The notice will include a summary of the reasons for the revocation.
3. Notwithstanding clauses 1 and 2 above, where the continued operation of the activity will, at the sole discretion of the Council, pose a significant health or safety risk to any person or to Council property, then the suspension or revocation of the licence will take effect immediately without prior notice and the licence holder will cease the activity and remove all vehicles immediately.





## Code of Practice for Micromobility

### Public Hire and Shared Micromobility Services

Version 1.0

Code of Practice – Public Hire and Shared Micromobility Services, April 2022

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## 1. Introduction

- 1.1 This Code of Practice has been created in the context of Palmerston North City's Strategic Vision, Goals and enabling strategies. The purpose of the Code of Practice is to give effect to the purpose of Palmerston North City Council's Signs and Use of Public Places Bylaw 2015. It also seeks to fulfil obligations under the Local Government Act 2002 requiring Councils to promote cultural, social, environmental and wellbeing of its communities in the present and for the future.
- 1.2 Palmerston North City Council's vision is "He iti rā, he iti pounamu / Small city benefits, big city ambition". The City has five goals and relevant strategies to help achieve its desired outcomes, including aspirations to increase active transport to 15% of all journeys by 2024.
- 1.3 Palmerston North City Council recognises the importance of providing genuine travel choices for city residents. This Code of Practice forms part of the framework that Council will use to regulate new modes of micromobility transport. It describes minimum operational and safety standards that micromobility hire and rideshare operators must commit to if they are issued a licence to operate under the Signs and Use of Public Places Bylaw 2015. Operators are also expected to commit to implementing best practices as part of providing safe hire and share schemes that help deliver improved wellbeing outcomes in Palmerston North.
- 1.4 This Code of Practice ensures that our primary objective of safety is met, so people can continue to use and enjoy the City's public spaces, including roads and walkways. Importantly, streets must remain accessible for people on foot, especially vulnerable users including children, older people and people who are less mobile and/or have a disability. Our aim is for public hire and micromobility services to work for everyone without adversely affecting or causing a danger or nuisance to other people.
- 1.5 This Code of Practice will be reviewed and updated as required no less than once in each licensing period so that it continues to reflect best practice and the interests of the community. Additional guidelines may be developed to respond to changes in consumer demand and the use of new micro-mobility transport options. Licence holders will be advised of any updates and can check the Council's website for the most up-to-date version.
- 1.6 For the purpose of this Code of Practice, Palmerston North City Council refers to the Council and its Council Controlled Organisations, and any person or organisation authorised by the Council to act on its behalf.

## 2. Structure of this Code of Practice

- 2.1 Section three of this Code of Practice sets out the guiding principles that Palmerston North City Council use to shape our approach to regulating public hire and shared micromobility services.
- 2.2 Section four sets out the assessment criteria to be applied by Council when considering which applicants to grant licences to. These relate to the guiding principles but are specifically used for assessment purposes and will be used to evaluate and license these services and technologies and shape future policy and programmes.
- 2.3 Minimum licence conditions are outlined in section five of this Code of Practice. Operators must meet these requirements at all times.

### 3. Guiding principles

#### 3.1 Context

- 3.1.1 Transportation options in New Zealand are significantly different today than they were ten years ago. A variety of mobility services and technologies are emerging which presents both opportunities and challenges. Palmerston North City Council is committed to enabling safe, reliable, sustainable, and equitable transportation options for the community, now and into the future.
- 3.1.2 In support of this commitment, Palmerston North City Council has developed this Code of Practice and guiding principles, which inform the regulation and evaluation of micromobility hire and rideshare schemes. As shown in Table 1, the guiding principles directly support Palmerston North City Council's vision, strategic goals and broader wellbeing responsibilities as required by the Local Government Act 2002.

Table 1: Guiding principles

Palmerston North City Council's Strategic Direction		Guiding principles
<b>Vision:</b> <b>He iti rā, he iti pounamu / Small city benefits, big city ambition</b>	<b>Goal: He tāone auaha, he tāone tiputipu / An innovative and growing city</b> Provide infrastructure to enable growth and a transport system that links people and opportunities	<b>Accountability</b> – public hire and shared micromobility service operators share relevant data so that the City and the public can effectively evaluate the services' benefits to and impacts on the transportation system and determine whether the services reflect the goals of Palmerston North.  <b>Fair</b> – public hire and shared micromobility service operators demonstrate support for Palmerston North's local procurement policy, promoting job opportunities and procurement of goods and services from local business enterprises, and show a commitment to ensuring fairness in pay and labour policies and practices
	<b>Goal: He tāone whakaihihi, tapatapahi ana / A creative and exciting city</b> Celebrate the city's history and diversity, and build on the strength of being a city of many cultures and languages	<b>Diversity</b> – public hire and shared micromobility service operators promote equitable access to services and aim to meet the needs of all sectors of the community.
	<b>Goal: He hāpori tūhonohono, he hāpori haumarū / A connected and safe city</b> Be a city where people feel safe and are safe	<b>Equity</b> – public hire and shared micromobility service operators must commit to providing affordable access and improving social connectivity for city residents. Operators must commit to improving safety outcomes for those with disabilities and/or vulnerable footpath users.  <b>Safety</b> – public hire and shared micromobility services are consistent with the City's vision to be a connected and safe

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		city. Operators must ensure devices are safe and reliable for users and placement of e-scooters doesn't obstruct use of the footpath.
	<b>Goal: He tāone tautaiiao / An eco-city</b> Work with the community to reduce carbon emissions	<b>Sustainability</b> – public hire and shared micromobility services operators support sustainability, including helping to meet the city's carbon emission reduction goals and minimising or eliminating the production of waste.

### 3.2 Guiding principles – an innovative and growing city

3.2.1 Palmerston North aspires to be an innovative and growing city, and shared micromobility services contribute to this aspiration by supporting an increasing network of transport choices. Our strategy and plans describe this commitment:

- **Goal 1 - He tāone auaha, he tāone tiputipu / An innovative and growing city.** Palmerston North is growing, and it is important to provide a transport system that links people and opportunities. Our goal is for a productive local economy that supports community wellbeing.
- Ngā aranukuku / Transport plan – active transport increases to 15% of all journeys by 2024.

3.2.2 We want operators to align with our guiding micromobility and economic wellbeing principles. It is important to us that operators promote:

- **Accountability** - providers share relevant data so that the Palmerston North City Council and the public can effectively evaluate the services' benefits to and impacts on the transportation system and determine whether the services reflect the goals of Palmerston North
- **Fair** – public hire and shared micromobility service operators demonstrate support for Palmerston North's local procurement policy, promoting job opportunities and procurement of goods and services from local business enterprises, and show a commitment to ensuring fairness in pay and labour policies and practices.

### 3.3 Guiding principles – a creative and exciting city

3.3.1 Palmerston North aspires to be a creative and exciting city, and shared micromobility services contribute to this aspiration by providing residents and visitors with a fun and effective way to get around and explore our city. Our strategy and plans describe this commitment:

- **Goal 2 - He tāone whakaihihi, tapatapahi ana / A creative and exciting city.** Palmerston North aims to be a creative and exciting place to live, with plenty to do at night and on weekends. The City aims to support people to lead public space projects to develop accessible, active, comfortable and social public places.
- Te hapori hohe / Active communities plan - there is a strong uptake of active modes of travel across the entire city on road-based and off-road networks.

3.3.2 We want operators to align with our guiding principles. It is important to us that operators promote:

- **Diversity** - public hire and shared micromobility service operators support equitable access to services and meet the needs of communities of interest. All people are able to benefit from micromobility hire and rideshare schemes

### 3.4 Guiding principles – a connected and safe city

3.4.1 Palmerston North aspires to be a major urban centre that is both connected and safe. Our strategy and plans describe this commitment:

- **Goal 3 – He hapori tūhonohono, he hapori haumarū / A connected and safe city.** Palmerston North aspires to be a city with an international reputation as a safe city in which to live, work and play.
- **Te hapori haumarū / Safe communities plan** – be a city where people feel safe and are safe.

3.4.2 We want operators to align with our guiding principles. It is important to us that operators promote:

- **Equity** - public hire and shared micromobility service operators can demonstrate commitment to expanding disability-friendly and affordable access and improving social connectivity for city residents
- **Safety** - public hire and shared micromobility services are consistent with the City's vision to be a connected and safe city. Operators must ensure public safety and support city transport outcomes.

### 3.5 Guiding principles – an eco-city

3.5.1 Palmerston North aspires to be an eco-city. Our strategy and plans describe this commitment:

- **Goal 4 - He tāone tautaiāo / An eco-city.** Palmerston North aims to decrease carbon emissions and reduce our ecological footprint
- **Te āhuarangi hurihuri / Climate change plan** – foster sustainable practices and behaviours so that city residents and organisations become more sustainable. Work with stakeholders to achieve reductions in carbon emissions

3.5.2 We want operators to align with our guiding principles. It is important to us that operators promote:

- **Sustainability** – public hire and shared micromobility service operators support sustainability, including helping to meet the city's carbon emission reduction goals and supporting efforts to increase the resiliency of waste and transportation systems.

## 4. Assessment criteria

### 4.1 Introduction

4.1.1 This section sets out the assessment criteria licence applications will be evaluated against, which are grouped under the guiding principles they relate to.

### 4.2 Licence pre-requisites

4.2.1 The licence applicant must include a plan that shows how their proposed scheme will adhere to this Code of Practice. The plan also needs to include how they will close their operation if it no longer meets the code and their licence to operate is revoked.

- 4.2.2 Applications will be screened by the Council to ensure applications meet the following pre-requisites.
- Applicants must hold public liability and professional indemnity insurance to the value of at least NZ \$2,000,000, valid throughout the full period of the licence. A copy of the insurance certificate must be provided as part of a licence application.
  - Applicants must ensure that each e-scooter complies with Waka Kotahi NZ Transport Agency's definition of a low-powered vehicle.
- 4.2.3 Applications that do not meet the pre-requisites will not be assessed by the Council.
- 4.3 [Assessment criteria relating to guiding principles – an innovative and growing city](#)
- 4.3.1 Applicants will be assessed on their ability to demonstrate:
- How the applicant will promote local job opportunities and procurement of goods and services from local business enterprises.
  - The applicant can provide existing plans, or demonstrate the ability, to diversify into other forms of micromobility.
- 4.3.2 The weighting applied to the assessment of the criteria under this section is 10%.
- 4.4 [Assessment criteria relating to guiding principles - a creative and exciting city](#)
- 4.4.1 Applicants will be assessed on their ability to demonstrate:
- How the applicant will promote equitable access to their services and meet the needs of minority communities, and how this has been achieved in other areas, if applicable.
  - How the applicant will involve Rangitāne when providing community engagement and education initiatives which effectively promote safe behaviours when riding or using devices.
  - How the applicant will provide accessible and/or multilingual communication service options for users.
- 4.4.2 The weighting applied to the assessment of the criteria under this section is 20%.
- 4.5 [Assessment criteria relating to guiding principles - a connected and safe city](#)
- 4.5.1 Applicants will be assessed on their ability to demonstrate:
- How the safety features on fleet device hardware meet or exceed applicable safety standards and licence conditions.
  - How the applicant plans to deliver community engagement and education initiatives which effectively promote safe behaviours when riding or using devices.
  - How the applicant will incorporate new methods or technologies that aim to enhance safety in its operations and devices during the licensing period, if they are developed.
  - That the applicant has an understanding of public transport connections in the City, including how they have collaborated with public transport providers in other areas to improve similar connections (including any targeted deployment plans that enabled increased accessibility for specific groups).
  - How the applicant plans to collaborate with public transport providers to ensure that deployment locations contribute to improving broader public transport connections and use.

- How the applicant will provide a range of pricing structures and mechanisms i.e. subscriptions, rewards, plans for a variety of users, with special consideration for enabling access for low-income groups.
  - That the applicant has a health and safety management plan and demonstrates how licence holders will manage risk, fulfil legal obligations, and give operational effect to the requirements of this Code of Practice.
- 4.5.2 The weighting applied to the assessment of the criteria under this section is 50%
- 4.6 **Assessment criteria relating to guiding principles – an eco-city**
- 4.6.1 Applicants will be assessed on their ability to demonstrate:
- How the applicant is committed to operating their business in a sustainable manner that gives effect to Council’s sustainability goals and objectives.
  - That the applicant has a waste minimisation and management plan which includes details of whole-of-life cost for device hardware, waste reduction targets and initiatives.
- 4.6.2 The weighting applied to the assessment of the criteria under this section is 20%.

## 5. Licence conditions for e-scooter operations

### 5.1 Licence applications

- 5.1.1 The following conditions apply to every holder of a licence to operate e-scooters.

### 5.2 Safety and maintenance

- 5.2.1 The operator must indemnify the Council from and against all actions, claims, suits, costs (including legal costs) and demands arising from the use of any public place by the licence holder, or from the licence holder’s breach of, or failure to comply with, the licence holder’s obligations under the licence.
- 5.2.2 The operator must indemnify and hold Council harmless against any claims, damages, liabilities, or expenses made by any user or member of the public in relation to any claim which can be reasonably attributed to the licensed activity.
- 5.2.3 Licence holders must comply with all relevant Acts, Regulations, Bylaws, Policies and Ordinances at all times, including the provisions of the Health and Safety at Work Act 2015.
- 5.2.4 Licence holders must comply with Health and Safety Management Plans provided to Council.
- 5.2.5 Licence holders must ensure that each e-scooter has:
- (a) A working bell;
  - (b) A steady or flashing rear-facing red light(s) that can be seen at night from a distance of 200 metres; and
  - (c) A white or yellow headlight(s) that can be seen at night from a distance of 200 metres;
  - (d) Smart technology with an active Global Positioning System (GPS);
  - (e) A sensor that detects when the e-scooter has tipped over and sends a notification to the operator alerting them.
  - (f) A kickstand on both sides of the footboard to support the e-scooter to remain upright.
- 5.2.6 The design, performance and assembly of each e-scooter must comply with all applicable New Zealand standards.
- 5.2.7 Operators must maintain their devices to comply with legal standards and requirements.



- 5.2.8 Accurate and up to date records of planned and completed e-scooter maintenance and repair schedules must be kept. The Operator must supply these records to the Council within five working days of a written request for the records.
- 5.2.9 Operators must allow Council to inspect their scooter fleet and provide assurances to the Council's satisfaction that the fleets are safe to operate.
- 5.2.10 Operators must remove their fleet from circulation immediately if it is unsafe or if directed to by the Council. Failure to remedy any issue to the Council's satisfaction may result in suspension or cancellation of the licence.

### 5.3 Operations

- 5.3.1 Licence holders must provide Palmerston North City Council with up to date and relevant contact details for the operational points of contact who have responsibility for resolving any issues that arise. Operational contacts must be able to respond within the minimum specified time periods for issue resolution (as outlined in Appendix B)
- 5.3.2 Operators will ensure that e-scooters can only be hired and used between the hours of 5am-11pm.
- 5.3.3 Operations are licenced to be undertaken in accordance with the zones identified below, as shown on maps in Appendix A:
  - (a) No Operation Zone – e-scooters must not be able to be activated or operated within this area.  
Slow Speed Zone – e-scooters must not exceed 15km/h within this area.
  - (b) Open Speed Zone – e-scooters must not exceed 25km/h within any area that is not designated a Slow Speed Zone.
  - (c) No Parking Zones – users must not be able to end their e-scooter ride within these areas.
  - (d) Preferred Parking Zones – operators must incentivise users to park e-scooters in a Preferred Parking Zone when the ride ends within 5 metres of a Preferred Parking Zone.
- 5.3.4 Operators must comply with the relevant requirements for each zones shown on the map attached at Appendix A including the updated versions of those maps published by the Council from time to time. Any such modification to the zones shall be notified to the Operator in writing by Council.
- 5.3.5 The operator must meet the minimum safety, maintenance and operation performance measures set out in Appendix B.
- 5.3.6 Operators must not damage or modify any footpath or any part of any public place, without prior written approval from Council.
- 5.3.7 The operator must reimburse the Council for the costs of repairing any damage caused to a public place either by the operator or by a user of an e-scooter hired by the operator.

### 5.4 Parking

- 5.4.1 Wherever possible, e-scooters should be parked in an identified Preferred Parking Zone, or on a grass berm away from the footpath, provided it is safe to do so.
- 5.4.2 Where it is not possible to park an e-scooter in a Preferred Parking Zone, e-scooters must be parked in accordance with the following requirements:
  - Ensuring a minimum of 1.5m of clear, unobstructed footpath width after the e-scooter is parked.
  - Ensuring that e-scooter does not interfere with pedestrian access or inhibit access to the footpath, including if the e-scooter is tipped over or left on its side.

- Ensuring that the e-scooter is placed upright.
  - 5.4.3 No e-scooter may be parked or allowed to remain in a location where there is less than 1.5m of clear unobstructed footpath width after the e-scooter is parked. Where practical, at least 1.8m of clear unobstructed footpath width should be left available to footpath users.
  - 5.4.4 Operators remain responsible for ensuring that e-scooters are parked with regard to these conditions, whether deployed by the operator or parked by a user.
  - 5.4.5 Damaged e-scooters or e-scooters parked in a manner that does not comply with these conditions that are not removed by the Operator within the timeframes specified in Appendix B may be removed by the Council. The charge for removing the e-scooter will be payable by the operator before the e-scooter is returned.
  - 5.4.6 The Council may identify locations where it is inappropriate for the operator to deploy e-scooters. The operator will ensure that e-scooters are not deployed to any locations identified as inappropriate by the Council.
- 5.5 [Customer experience and education](#)
- 5.5.1 Operators must provide 24-hour communication channels for customers to report safety and maintenance issues. This must include:
    - a telephone number displayed in large characters along the length of the upright stem of the e-scooter, and on their website and associated apps;
    - an email address on their website, apps, and all e-scooter devices.
  - 5.5.2 Operators are required to have a process for dealing with complaints and provide reporting information in compliance with Appendix B.
  - 5.5.3 Users must agree to the operator's terms and conditions for using e-scooters at the point of hire. The terms must promote safe and legal riding, and good parking behaviour.
  - 5.5.4 Operators must have regard to appropriate age restrictions to ensure that its e-scooters are operated safely by its users and that the operation of those e-scooters do not pose a safety risk to non-users.
  - 5.5.5 Operators must provide a public education event within two weeks of the launch of their operation, and thereafter provide a public education event or communications campaign at least once every three months.
  - 5.5.6 The public education event or communications campaign must include (but is not limited to) the following matters:
    - (a) How to safely ride an e-scooter; and
    - (b) How to share the path and road safely with other users.
- 5.6 [Data requirements](#)
- 5.6.1 Operators must share the anonymised data set out in condition 5.6.3 with Council to assist with ongoing network planning and integration of public and shared modes of transport across the city.
  - 5.6.2 All personal information must be collected, processed, and stored in accordance with the requirements of the Privacy Act 1993.
  - 5.6.3 Data provided must be provided in Mobility Data Specification (MDS) format. Operators should also ensure they have the technological capability to integrate their services into the Waka Kotahi Mobility as a Service (MaaS) project.
  - 5.6.4 Operators must provide the council with real-time information on the entire fleet through a documented application programme interface (API). For every parked scooter, the following information is required:

- Scooter identification number
- GPS co-ordinate
- Availability start date
- Availability start time

5.6.5 The following table outlines the usage data to be shared with Council for each trip record, unless agreed otherwise in writing with Council. The usage data is to be provided in MDS format, whenever requested or to an agreed reporting format or schedule.

Field	Comments
Provider_id	A UUID for the Provider, unique within MDS
Provider_name	The public-facing name of the Provider
device_id	A unique device ID in UUID format
vehicle_id	The Vehicle (PHD) Identification Number visible on the vehicle itself
vehicle_type	
propulsion_type	
trip_id	A unique ID for each trip
Trip duration	Time, in Seconds
trip_distance	Trip Distance, in Meters
Route Accuracy	The approximate level of accuracy, in meters, of Points within route
start_time	
end_time	

5.6.6 Operators must consent to Council displaying information about micromobility usage data on the Council's websites and apps.

## 5.7 Communications and reporting

5.7.1 Operators must get approval from the Council for their promotions or media that specifically mention Palmerston North City Council, its Council Controlled Organisations and Council activities.

5.7.2 Operators must notify the Council immediately if they become aware of an accident or any results of incident investigations that indicate potential systemic hardware, software, or firmware issues. Information must be reported to the Council as follows:

- An initial investigation report will be provided to the Council within 48 hours.
- A final investigation report will be provided to the Council within seven days, or an alternative timeframe agreed with the Council. This report must follow the processes outlined within the operator's safety and risk management plan.

5.7.3 Operators must provide the following information in a format specified by the Council on a quarterly basis:

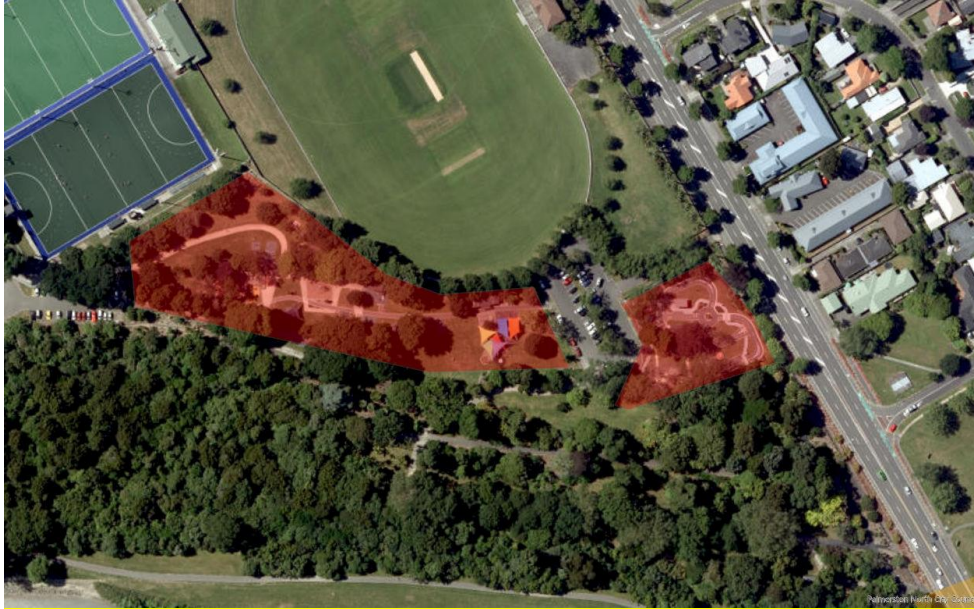
- Reporting of parking and related complaints and response time logs in line with the requirements outlined in Appendix C.
- Analysis of reported incidents and safety related data in Palmerston North and other locations in New Zealand, and how this is informing improved safety performance.

- Maintenance programme and any issues arising, including the number of e-scooters which have not been subject to a full maintenance inspection during the period.
  - User education and safety initiatives undertaken.
- 5.7.4 Operators must provide the Council with up-to-date information within five days when requested to do so by Council.
- 5.7.5 Operators must work collaboratively with Council to undertake user surveys and reporting.
- 5.8 [Suspension, revocation, or expiry of licence](#)
- 5.8.1 Where, in accordance with clause 18.11 of the Signs and Use of Public Places Bylaw, the Council decides to suspend or revoke a licence, or at the ordinary expiry of a licence, the licence holder must remove all e-scooters from all public places within 24 hours of that suspension, revocation or expiry coming into effect.
- 5.8.2 Where the continued operation of the licence will pose a significant health or safety risk to any person, as determined by Council at its sole discretion, the Council will notify the licence holder that they must cease their licensed activity immediately. The operator must comply with any such notice received from the Council and deactivate all their e-scooters and immediately remove all e-scooters from operation.

## Appendix A

### **No Operation Zones**

The following maps show the areas where e-scooters must not be able to be activated or operated.



*Figure 1 - Victoria Esplanade. Areas shaded red include the children's playgrounds and the Junior Road Safety Park*



### No Parking Zones

The following maps show the areas where users must not be able to end their e-scooter rides.



Figure 2 - Fitzherbert Bridge



Figure 3 - He Ara Kotahi Bridge

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### Slow Speed Zones

The following maps show the shaded areas where the maximum operating speed of e-scooters must not exceed 15km/h.



Figure 4 - City Centre. Areas shaded yellow include all roads bounded by Church Street, Princess Street, King Street/Cuba Street, and Bourke Street/Pitt Street (inclusive)



Figure 5 - Memorial Park. Areas shaded includes the children's playground areas and the skating rink

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## Appendix B

**Safety and Operation Performance Measures**

Operation Performance Measures				
Condition	Timeframe	Reporting Measure	Minimum requirement	Target
E-scooter parked or left to cause a hazard or nuisance	Resolved within 60 minutes of notification, 24 hours a day.	Number of reported e-scooters parked or left to cause a hazard or nuisance.  Number of reported incidents resolved within the minimum requirement.	90% of all incidents resolved within timeframe	100% of all incidents responded to within timeframe
E-scooter incorrectly parked but not causing hazard or nuisance.	Resolved within 2 hours of notification, during operating hours.	Number of reported e-scooters incorrectly parked.  Number of reported incidents resolved within the minimum requirement.	90% of all incidents resolved within timeframe	100% of all incidents responded to within timeframe
Unsafe or faulty e-scooter	Immediate deactivation of unsafe or faulty e-scooter upon notification.  Unsafe or faulty e-scooter recovered within 48 hours.	Number of reported unsafe or faulty e-scooters.  Number of reported incidents resolved within the minimum requirement.	100% of incidents resolved within timeframe	n/a
E-scooter found outside the defined area of operation in Appendix A	Relocated within 1 day of being notified	Number of e-scooters located out of the area of operation per month	90% of all incidents responded to within timeframe	100% of all incidents responded to within timeframe



## Appendix C

### **Reporting on compliance with licence conditions**

The following information is required to be reported to the Council quarterly for monitoring and enforcement of compliance with the licence conditions:

Licence condition	Information to be reported
E-scooter parked or left to cause a hazard or nuisance	Number of complaints reported to the licence holder
	Number of complaints resolved within 60 minutes of receiving the complaint
	Number of complaints resolved greater than 60 minutes of receiving the complaint
E-scooter parked incorrectly but not causing a hazard or nuisance	Number of complaints reported to the licence holder
	Number of complaints resolved within two hours of receiving the complaint
	Number of complaints resolved greater than two hours of receiving the complaint
Tipped or fallen e-scooter	Number of tipped/fallen e-scooter notifications received from onboard sensors
	Number of tipped/fallen e-scooter notifications responded to by the licence holder within 60 minutes of receiving the notification
	Number of tipped/fallen e-scooter notifications responded to by the licence holder within two hours of receiving the notification
	Number of tipped/fallen e-scooter notifications responded to by the licence holder greater than two hours of receiving the notification
Unsafe or faulty e-scooter	Number of e-scooters reported to the operator as unsafe or faulty
	Number of e-scooters that were reported as unsafe or faulty that were immediately deactivated after notification
	Number of e-scooters that were reported as unsafe or faulty that were recovered within 48 hours of notification
Other complaints	Number of complaints reported to the licence holder
	Type of complaint
	Nature of resolution

## **Proposed Fees and Charges for Licences for Public Hire and Shared Micromobility Services**

## Introduction

This document sets out:

- The proposed fees and charges for licences for public hire and shared micromobility services
- The justification for the proposed fees and charges, and the alternatives considered by the Council
- How the proposed fees and charges will be implemented, if adopted.

## Proposed fees and charges structure

There are three components to the proposed fees and charges structure – an application fee, which is payable by all licence applicants (regardless of outcome); an annual fee, payable by all licence-holders; and a recovery fee payable in the event of a breach of licence conditions. The table below sets out the different components, the proposed amount, and the frequency of the fee or charge:

Component	Description of charge	Amount	Frequency
Application Fee	Payable on application for a licence, to meet the costs of assessment and evaluation of the licence application.	\$2,000	One off
Annual Fee (fixed)	Payable annually on invoice, to meet the fixed costs of monitoring and enforcement.	\$500	Annual
Annual Fee (variable) \$1.14 per scooter per month	Payable six-monthly, to meet the variable costs of enforcement related to complaints and resolving issues (e.g. parking or footpath obstruction)	Up to \$5,472	Annual, but payable six-monthly.
Remedy breach fee	Payable on invoice, to meet the costs of remedying breaches of the licence conditions where the licence holder fails to comply.	Cost of officer's time per hour (or actual cost whichever is the greatest of the two) and will be charged in arrears	As required

The Council has limited data on the expected costs of the proposed licensing framework, so has estimated likely costs based on the following assumptions:

- There could be between three and five applicants for a licence, with each application taking up to two hours for each panel member to assess. The joint assessment by the panel could take up to six hours. If the time taken to assess and evaluate the applications is less, then the total costs could be lower, and a lower application fee could be set.
- The annual fees are based on the estimated time spent responding to issues and complaints made to the Council, liaising with operators, and reviewing data. If the time taken to complete this work is less than estimated, or if the amount of work declines over time, then the total costs could be lower, and a lower annual fee could be set.
- The variable annual fee is set based on the average number of scooters deployed by the operator. This is calculated by dividing the estimated costs of monitoring and enforcement by the maximum number of scooters that could be deployed by each operator. This is based on an assumption that a greater number of scooters deployed will result in a larger number of complaints to be responded to and resolved.

#### Justification for the proposed fees and charges

In designing the proposed fees and charges structure, the following general principles have been applied:

- Fees should be relevant to the costs incurred;
- Fees should be fair and reasonable;
- Fees should be easy to administer.

The primary justification for the proposed fees and charges is for the Council to recover, as far as practical, the full costs of monitoring and enforcement from the operator. This is consistent with the Council's Revenue and Financing Policy, which sets out that:

- an activity should be collectively funded if the benefits of the activity are largely received by the broader community without differentiation, in equivalent proportions, and the costs of the activity cannot easily be attributed to an individual or group of individuals.
- an activity should be funded on a user-pays basis if an individual or group of individuals directly receives benefits of the activity exclusively, and the costs of the activity can easily be attributed to that individual or group of individuals.

While some benefits accrue to the community generally – through the provision of an alternative transport choice – and specifically – through the monitoring and enforcement of safety conditions, our assessment is that the operators of e-scooters are the primary beneficiaries of the activity. They are operating in a for-profit market and generate revenue from their use of the public space. This indicates that a user-pays basis is appropriate since the providers benefit from the activity almost exclusively, and that the costs can easily be attributed to providers.

### Alternatives considered by the Council

The proposed fees and charges could be set at different levels or, in some cases, in a different way. The following are the key alternatives that were considered, but were not proposed:

- Lower fees via ratepayer subsidy: consideration was given to recovering a portion of the costs from operators via fees and charges, with ratepayers meeting the balance of the costs. This would recognise the partial public benefit derived from a licensing system that is focussed on protecting public health and safety.
- Lower application fee: if the estimate of time and costs for the assessment of licence applications is too high, then it could be possible to lower the application fee. A lower application fee could be set that would not fully recover the estimated costs, but could be revised after the first round of licences are issued, and the Council has better data on the true costs for the application process.
- Different method for variable annual fee: some other Councils have set annual fees as a “per trip” charge, or a “rental charge” for use of the footpath. The Council considered these options but ultimately discounted them. A “per trip” charge does not necessarily reflect the increased cost to Council of monitoring enforcement. However, a charge for using the footpath does potentially correlate to the additional safety risks of placing more e-scooters on the footpath. It also allows for the operator to receive a reduced charge if it reduces the number of e-scooters placed on the footpath during off-peak periods. However, this approach was found to be cumbersome and administratively complex. The proposed charge per scooter represents an adequate compromise between these two alternatives.
- Fixed charge for breach of licence conditions: some Councils charge a fixed fee for remedying a breach of the licence conditions. The Council considered this option but found it to be difficult to estimate the true cost for remedying a breach (such as an e-scooter that is parked in a hazardous manner). A per hour charge is consistent with similar approaches taken within the Environmental Health Services team, and will allow for contractors to be engaged where necessary, and those costs recovered. It is not expected that the recovery fee will be regularly charged, but rather used where compliance is found to be poor, and efforts to get operators to meet licence conditions are not working.

### How the proposed fees and charges will be implemented

Following consultation, the Council will make a resolution to amend the existing Schedule of Fees and Charges to insert these charges as follows:

1. Under Activity Charges for Environmental Health Services Fees and Charges, add
  - a. “Application for a licence for public hire and shared micromobility services - \$2000”
  - b. “Annual fee (fixed) for a licence for public hire and shared micromobility services - \$500”
  - c. “Annual fee (variable) for a licence for public hire and shared micromobility services - \$1.14 per scooter per month”

2. Under Other Fees for Environmental Health Services Fees and Charges, add "Remedy breach of conditions of a licence for public hire and shared micromobility services – at cost of officer's time per hour (or actual cost, whichever is the greatest of the two)"

## **Proposed process for evaluating and selecting licence applications**

## Introduction

This document sets out:

- A summary of the proposed process for evaluating and selecting licence applications.
- The system used for assessing criteria and weighting scores

## Process for evaluating and selecting licence applications

This is set out in part five of the Signs and Use of Public Places Bylaw Administration Manual. The reason for this process is to ensure that applications for a licence are assessed in a fair and transparent manner, against the identified criteria. The criteria have been developed to ensure that applicants are best positioned to provide a safe service that contributes to the Council's strategic outcomes.

A summary of the process is provided below:

1. The Council will publicly call for applications for a licence. This will be notified on our website.
2. Applications will be submitted via GETS – Government Electronic Tender System and will be screened by the Council's Procurement Specialist to ensure that all applications meet the pre-requisites for licence holders.
3. All applications that meet the pre-requisites will be assessed by a panel of Council officers.
4. The initial assessment will be individual, against the criteria set out in the Code of Practice. Each criterion will be scored out of 10.
5. Following the individual assessment, the panel will meet to review the assessment and moderate the final score.
6. The final scores will be weighted using the weightings shown for each criterion in the Code of Practice.
7. The panel will prepare a report that outlines the assessment of each application, with the final weighted scores for all applicants.
8. The Chief Customer Officer will use the report from the panel to make the decision to issue licence.

## Scoring system

The criteria are divided into five key areas: safety and equity (under the Social guiding principles); diversity (under the Cultural guiding principles); sustainability (under the Environmental guiding principles); and fair (under the Economic guiding principles). The table below provides a summary of the criteria under each of these headings, the score range for those criteria, and the weighting that is applied to that group of criteria.



Criterion	Weighting
<b>1. Social</b>	
<b>Safety</b>  E-Scooter Services are consistent with the City's vision to be a connected and safe city. Operators must ensure devices are safe and reliable for users and placement of e-scooters doesn't obstruct use of the footpath.  Operators have a health and safety management plan and demonstrate how licence holders will manage risk, fulfil legal obligations, and give operational effect to the requirements of the Code of Practice  Operators must deliver community engagement and education initiatives which effectively promote safe behaviours when riding or using devices.	30%
<b>Equity</b> Operators must commit to providing affordable access and improving social connectivity for city residents. Operators must commit to improving safety outcomes for those with disabilities and/or vulnerable footpath users.	20%
<b>2. Cultural</b>	
<b>Diversity</b> Operators promote equitable access to services and aim to meet the needs of all sectors of the community.  Operators involve communities of interest through targeted engagement and education promoting safe behaviours when riding or using devices.	20%
<b>3. Environmental</b>	
<b>Sustainability</b> Operators support sustainability, including helping to meet the city's carbon emission reduction goals and minimising or eliminating the production of waste.  Operators have a waste minimisation and management plan which includes details of whole-of-life cost for device hardware, waste reduction targets and initiatives.	20%
<b>4. Economic</b>	
<b>Fair</b> Operators demonstrate support for Palmerston North's local procurement policy, promoting job opportunities and procurement of goods and services from local business enterprises, and show a commitment to ensuring fairness in pay and labor policies and practices.  Operators provide existing plans, or demonstrate the ability, to diversify into other forms of micromobility	10%

The applications will be scored in accordance with the following general scoring criteria.

Rating	Definition	Score
<b>EXCELLENT</b> significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	<b>9-10</b>
<b>GOOD</b> exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	<b>7-8</b>
<b>ACCEPTABLE</b> meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	<b>5-6</b>
<b>MINOR RESERVATIONS</b> marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>3-4</b>
<b>SERIOUS RESERVATIONS</b> significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>1-2</b>
<b>UNACCEPTABLE</b> significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>0</b>

## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Infrastructure Capital Works Dashboard January 2022

**PRESENTED BY:** Sue Kelly, Acting Manager Project Management Office

**APPROVED BY:** Sarah Sinclair, Chief Infrastructure Officer

### RECOMMENDATION(S) TO COUNCIL

1. That Council receive the memorandum titled 'Infrastructure Capital Works Dashboard January 2022', presented to Council on 6 April 2022.

#### 1. PURPOSE OF REPORT

To provide the January 2022 dashboard update on the delivery of the Infrastructure capital new and capital renewal projects.

#### 2. BACKGROUND

Whilst work is progressing, the combined impacts of Covid and delays with Waka Kotahi funding mean that work is tracking approximately 4 months behind across much of the portfolio. A high level summary of all issues causing programme delay is provided and mitigation strategies being undertaken are noted.

#### 3. NEXT STEPS

Work will continue to mitigate risks and deliver projects.

#### 4. COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>No</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>

The recommendations contribute to Goal 5: A Driven & Enabling Council	
The recommendations contribute to the achievement of action/actions in Governance and Active Citizenship	
The action is: to enable Council to exercise governance by reviewing financial and operating performance of the Infrastructure Unit Capital Works programme	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	The recommendations contribute to the achievement of action/actions in a plan under the Driven and Enabling Council Strategy

## ATTACHMENTS

1. Infrastructure Capital Works Dashboard January 2022 [↓](#) 

# INFRASTRUCTURE CAPITAL WORKS DASHBOARD

JANUARY 2022

Progress with key projects identified in the Summary Financial Year 20/21 Capital Works Dashboard

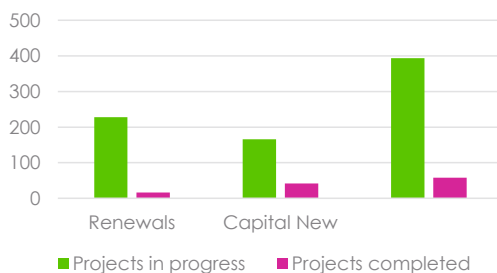
**58** Projects have been completed

**393** Projects are in train comprising;

**228** Capital new

**166** Capital renewal

Projects completed or in progress

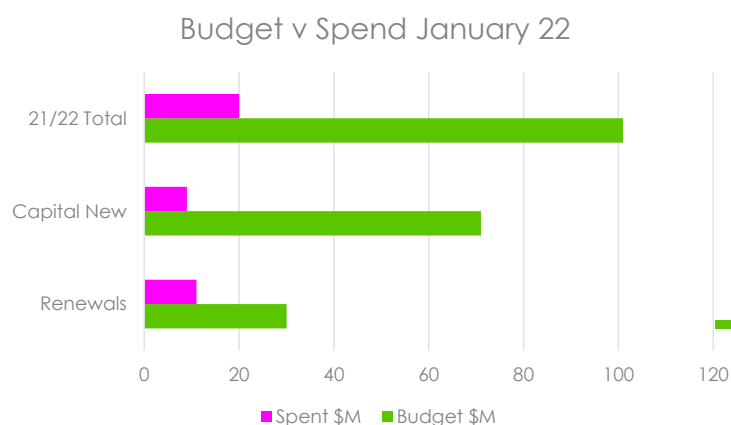


Project	Progress
Esplanade and Park Road intersection	Complete
Bunnythorpe Community Centre	<b>Construction Complete;</b> the community have access to the upgraded facility
Animal Shelter – New Building	Commencing the tender process February
Fitzherbert Women's Changing Room Upgrade	Detailed design underway
Social Housing - Healthy Homes Compliance	Multi year programme. <b>Upgrades commenced</b> n January 2022
Turitea Pa Site	<b>Construction underway</b>
Turitea Duplicate Main	The <b>Duplicate Main is in service</b>
Cloverlea Roundabout Upgrade Railway/ Bunnythorpe Road Intersection Upgrade	Cloverlea due for completion February Bunnythorpe deferred owing to budget constraints
Railway Road Bore – Chemical and Pump Building	Commissioning planned to commence late February
Urban Growth - North East Industrial Zone (NEIZ)	Commencing tender process early March for water, wastewater and roading



# INFRASTRUCTURE CAPITAL WORKS DASHBOARD

JANUARY 2022



**\$20M of capital and capital renewal budget has been spent to date**

## Causes of delay to capital and capital renewal programmes

- **Waka Kotahi** late release of funding confirmation has resulted in an approximately 4 month delay to programmes
- **Covid 19 level 4 lockdown** at the beginning of the financial year slowed early progress and delayed construction start dates
- **Market constraints include consultant availability, supply chain delays and civil and construction contractor capacity** have resulted in delayed delivery in both capital new and renewal programmes of work
- **Infrastructure** staff capacity and capability as a result of **vacancies** across multiple areas exacerbated by a national shortage of skilled workers across many areas

## What we are doing to reduce the impact of delays

- The **Roading Maintenance Contract** with Fulton Hogan is up and running and delivering roading maintenance and some capital renewal works
- Securing suppliers by **bundling contracts** of work across programmes and over **multiple years**. To date contracts are being developed for;
  - Street Trees – split into 2 contracts covering North and South of the city
  - Pipe Supply – pipes used by our in house construction teams
  - Pipe Lining – delivered under DIA funding
  - Mechanical and Electrical work for 3 waters and transport
- A **design panel** is being established for the design of 3 waters and transport projects
- **Earlier contractor** involvement on projects with identified buildability constraints where appropriate
- **Early purchase** of long lead items to mitigate supply chain delays



## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Deliverability Planning in Response to Covid - Briefing

**PRESENTED BY:** Sarah Sinclair, Chief Infrastructure Officer

**APPROVED BY:** Heather Shotter, Chief Executive

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### RECOMMENDATION(S) TO COUNCIL

1. That Council note the update on actions undertaken to date to improve deliverability outcomes due to the impacts of Covid-19 and the resulting increased supply chain risks, particularly focussing on maintaining essential provision of services.
  2. That Council note that should rapid approval of contract awards above the Chief Executive's delegation be needed, then an extraordinary meeting of Finance & Audit Committee or Council (depending on level of financial delegation required) will be called.
- 

### 1. ISSUE

- 1.1 Covid has had some significant impacts on the construction industry across New Zealand. There have been global impacts on production and manufacture of materials and equipment, and the cost and predictability of freight logistics particularly around shipping. There have also been significant constraints on human resources in part because of a major reduction in cross-border travel impacting on the number of migrants with construction and infrastructure related skills. The other reason for constraints in available resources is the high global investment in infrastructure (including NZ) as a recognised economic stimulant as part of COVID recovery. This economic stimulus effect is exacerbated in the Manawātū because of high government investment in infrastructure in the region, coupled with relatively low regional migration.
- 1.2 The various outbreaks of Covid have also led to some unpredictability in the work force and have had impacts on training and on recruitment. In summary, employers are struggling to find and retain skilled staff, there are shortfalls in local material production and there are increasing costs and time delays for materials and equipment from overseas. This makes it very difficult for suppliers to predict commercial outcomes with certainty, especially if there is a supply chain rather than a single supplier.

1.3 At the moment, in our tenders we are seeing:

- an unwillingness to hold prices for some contract elements beyond a few weeks because of the rapid escalation in especially materials and subcontractor rates, e.g. steel reinforcement;
- long lead times for supply and delivery of some materials and equipment, and requests to exclude programme penalties relating to these;
- escalating freight costs and time frames, and requests that the Council takes the cost risk on any escalations, and on any programme risk.

All of these are leading to tender tags seeking to shift pricing and delivery risks onto Council. In addition, we are seeing an unwillingness to bid on competitive tenders, especially those of high complexity or low value.

1.4 This paper identifies actions officers are currently taking to identify and mitigate Covid-related delivery risk, and should be read alongside other Deliverability Review work which reflects the deliverable work programme for 2021-22 and 2022-23

## **APPROACHES UNDER CONSIDERATION**

### **2. DELIVERABILITY REVIEW**

2.1 The Annual Budget process has undertaken a review of project and programme deliverability against planned budget expenditure. Factors considered include staff resourcing, supplier resourcing (from feasibility through to construction), availability of materials and Covid-related lead in times. Whilst the deliverability review is reported elsewhere, it has informed this paper and is referred to within the paper. It is noted that this is based purely on resource availability at this stage, not on any prioritization that may follow through the annual plan process.

### **3. SECURING SUPPLIERS**

3.1 Council already has an in-house delivery team for three waters maintenance and capital renewals. Although wage pressures are consistent with the rest of the market, and wages will need to be raised through the wage review to continue to retain staff, it is noted that maintaining an in-house work force and delivering services in-house provides value and certainty in a highly constrained market.

3.2 Council also employs in-house designers and draughters, project managers and contract managers to help deliver predominantly our capital programme. Whilst the in-house resources are supplemented by external supply chain, and staff salary pressures are also consistent with the rest of the market, this in-house capability provides value and de-risks delivery, at a time when there is a nationwide shortage of these skills.



- 3.3 In order to make working with PNCC more attractive to our suppliers, work commenced some time ago on bundling of projects or contracts. Following the examples of the Arena and the Road Maintenance Contract, the following bundled contracts have been developed:
- Design of 3 waters and transport projects – this bundles all external design work to be delivered by a supplier panel of 2-3 suppliers with a local office but national size to secure appropriate skills. This is currently out to tender, for a 3 year contract.
  - Street trees – all street tree work has been bundled into 2 contracts covering North and South of the city, and is in the process of being awarded. This work covers a 2 year contract period.
  - Mechanical and Electrical – work has been bundled for 3 waters, transport and resource recovery. Tender documents are currently being prepared.
  - Pipe supply – at present this contract is annual, and covers supply of all pipes used by our in-house construction teams.
  - Pipe lining – a contract has just been let with a bundle of pipe lining works to be delivered via DIA funding.
  - Various other material supply contracts have been developed or updated this year.
- 3.4 Staff are consolidating and bundling programmes for several other types of work including seismic building inspections and various types of asset inspections. These bundles of work will go to the market this financial year and early next financial year.
- 3.5 Some work has been identified as suitable for design and build contracts; this is likely to be trialled this year as a form of bundled delivery.
- 3.6 The Road Maintenance Contract has been successful in securing supply of staff and resources from Fulton Hogan, whilst recognizing that their ability to deliver, similar to the rest of the market, is compromised by Covid 19 impacts. Resources are being allocated by Fulton Hogan to deliver the contract, and this contract offers a facility for direct award of other capital works, as well as maintenance and renewals in the roading space.
- 3.7 Other work in this area relates to more focus in our procurement planning on when an approach to the open market is unlikely to achieve the required outcome. Our procurement strategy requires all decisions to approach 'closed lists' of tenders to be approved at manager level, which continues to be a sound approach. Traditionally, work to develop a closed list has tended to follow an approach of:
- enquiries to the open market to identify interest in the contract, (expression of interest);

- require suppliers to undertake some sort of prequalification to establish their suitability to deliver the work;
  - then approach those successfully prequalified to invite them to tender for the work, potentially with a minor reduction in documentation to reflect information received through the prequalification process.
- 3.8 This is time consuming and runs the risk that contractors who are available at time of expression of interest are not available at time of tender. It also adds time and cost to the contractors' work, which they may choose not to participate in, in a busy market.
- 3.9 As noted above, much of the work that is delivered by PNCC is delivered regularly - the complexities tend to be site specific. Therefore, staff are generally aware of who the local suppliers in the market are. It is therefore proposed that, working with procurement, officers will develop short lists of local suppliers to be used for various types of work, based on experience with PNCC to date. These can be published on the internet. By publishing, new entrants to the market (in Palmy) could apply to be put on the list by supplying evidence of experience (including references) in that field. Therefore, work is underway to define and agree this variation to our current procurement approach. This would be implemented next financial year to align with design panel outputs.
- 3.10 Other options currently in use include Direct Award, for example the direct award of Papaeoia Place Stage 3 to the team that had successfully delivered the previous stage.

#### **4. DEALING WITH COST AND DELIVERY RISK UNCERTAINTY**

- 4.1 However, not all work is able to be bundled effectively, to secure supply. In many cases work that cannot be bundled has a higher risk profile due to complexity, unique elements or requirements, or being something that we do infrequently as a Council. These contracts are likely to continue to see cost or risk escalations tagged out by suppliers, or shorter acceptance timeframes.
- 4.2 While our role is to ensure risk for Council is managed appropriately, accepting additional risk on current rapid cost escalations will result in a lower cost to Council than compensating the tenderer to accept the costs of these unknown risks. To facilitate this approach requires some changes to our procurement processes and approaches.
- 4.3 The following changes in approach are being considered, in terms of ease of implementation and impact on deliverability.
- Separating out large 'bespoke' items at procurement planning stage, to specifically plan how to address their sourcing;
  - Separately scheduling 'supply' and 'install' for major work items in our pricing schedules, to allow us to more easily supply some materials as

client, or to bring forward materials ordering easily, for elements with long lead time.

- Accepting offsite materials purchase and storage (with appropriate controls) to allow pre-order and pre-payment. Materials could be stored at Council's depot, provided there were appropriate storage and tracking systems implemented, (e.g. RFID tags to track in / out, etc.).
- Working with other Government / Local Government supply chains, e.g. whether Kainga Ora have stockpiles / secured supply chain for heat pumps.
- Asking in tenders for 'open book' approaches to justifying escalation requests for materials and for subcontractors, where Council is accepting pricing changes from delay risk,
- Identifying suitable alternative materials or equipment (and leaving tenders open to tenderer suggestions for replacements for difficult to source materials or equipment). Work has commenced on this, in terms of investigating local manufacturing options and reviewing 'local' importing options
- Providing more flexibility on programme duration (and associated programme overrun cost recovery), including using more separable portions (which allow for stages to be completed separately), and bundled contracts.

4.4 Splitting contracts to separate out major material supply items to be ordered ahead of construction and installation, similar to our pipe supply contract, is being considered more across the sector. However, there are some complexities to resolve, and lessons learnt from others' experience, including:

- If materials are sourced from off-shore some arrangements for quality assurance to be undertaken prior to shipping.
- Consideration of whether PNCC buy and store materials or require the Contractor to do so, and where materials could be stored securely.
- For install-only contracts, how we manage risk of material damage and guarantee / warranty impacts on final constructed item.
- Contractor expectations of mark-up margins for supplying materials which can be a substantial part of the overall project profit, and how this would affect overall pricing risk.

4.5 This work is ongoing, starting with early consideration of bespoke items. All new procurement plans will review bespoke items, overseas materials and other delivery risks, and greater separation of work stages. Work has also commenced on an overall review of storage capacity at Council facilities such as the Depot. Work will commence in April to review our standard contract specifications and schedules.

- 4.6 The deliverability review of the capital programme has also identified programmes with long lead in times for materials, discussed further in Section 5.

## **5. OTHER WORK UNDERWAY**

- 5.1 Guidance is being developed for staff and suppliers on developing contract documents and for assessing tenders and tags, to ensure we can meet suitable timeframes and allow flexibility. A work programme is being developed, which will be finalised after the April review of our contract specifications and schedules.
- 5.2 As noted in Section 2, the Annual Budget process has resulted in an additional review of our work programme and budget, for the remainder of this financial year and the remaining two until the next LTP process. This has considered what should be moved out in terms of delivery timeframe and market capacity, without compromising our ability to provide services and utilities, and without compromising our Waka Kotahi or DIA funding.
- 5.3 Growth projects (Developer led) have been separated out as timing is affected by developer activity. These projects are seen as good potential candidates for design and build approaches to facilitate timely delivery, and to enable greater cost certainty once triggered, or to design through the design panel to ensure readiness to respond to construction demand early.
- 5.4 The effects of Covid (Delta and Omicron) delayed some of the construction work planned for this year. However, in the main, the delays are a few months and work is likely to be contracted and secured for delivery by the end of the financial year, resulting in carry forwards. The effect of this on market capacity and staff capacity has been considered and some of the FY22-23 work, in capital new, recommended to be deferred to FY23-24.
- 5.5 The bundling of work into delivery contracts will bring increasing certainty about delivery over the next two years. For example, the design panel will ensure that projects are ready for construction tendering, ahead of schedule. This will also help our construction suppliers have more certainty of future work. For that reason, delivery of work in later years is not seen as such a significant risk.
- 5.6 For many renewal budgets, we are likely to see slightly less work delivered for the money spent, because of the cost escalations. Staff have taken a pragmatic view of what can be delivered this year, but moved any delayed delivery budget (approximately 10%) into next year because of the risk of cost escalation, and because renewals are already based on prioritised risk of failure.
- 5.7 Some materials supply, particularly around fleet being purchased from overseas, has been ordered within this financial year.

## **6. OTHER EMERGING ISSUES AND PROPOSED RESOLUTIONS**

- 6.1 At present, our decision making around tenders is long, due in part to the complexity of the work and in part to our processes. At present, tenders are required to remain valid for 3 months, which (as noted above) the industry can be reluctant to do.
- 6.2 The time frame has potential to create issues, if there are time constraints from the tenderers.
- 6.3 Generally, for any reasonably complex contract (generally physical works), post-tender there will be 2-3 weeks of project officer analysis, and queries to tenderers for clarification. Then there will be one or more meetings with the tender evaluation team, potentially followed by more clarification queries to tenderers. Once a preferred tenderer is identified, based on meeting required price and non price attributes, there may be negotiation with the preferred tenderer around price, start date, or any remaining 'tags' which change the specified contractual requirements. We assume a minimum of a month, and ideally 6 weeks, is allowed to identify a recommended contractor.
- 6.4 The holding of prices issue is especially problematic if tenders need to go to Council for approval because of the Chief Executive's level of delegation at \$800,000. For Council approval, after identifying the preferred contractor, the time frame for paper preparation and approval and the timeframe of agenda meetings, committee meetings and Council meetings leaves a lot of time between the required decision being identified and the decision being made – approximately another 6 weeks.
- 6.5 Although the tenders have been written with best knowledge of the supplier at the time, the time taken to approve means that resources may have been allocated to other successful tenders before our decision is made and ratified, resulting in an immediate unanticipated delay in starting work, often with attendant additional costs being identified.
- 6.6 Whilst procuring early to allow time for approvals would also allow the contractor a good lead in time for resourcing, in the current market procuring early will lead to additional cost escalation and hence cost uncertainty.
- 6.7 Therefore, Officers request that Council consider the establishment of a decision-making mechanism for rapid contract awards above the Chief Executive's delegation, such as an extraordinary meeting of the Finance & Audit Committee or Council (depending on level of financial delegation required).

## **7. NEXT STEPS**

- 7.1 Work will continue on deliverability risk mitigations.
- 7.2 A progress report will be presented to the Infrastructure Committee in 6 months.

## 8. COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?	<b>No</b>
Are the decisions significant?	<b>Yes</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
This paper addresses how officers are addressing the changing market conditions by varying our approach to procurement, in line with the procurement policy, which allows Unit Managers to make and document such decisions.	
The recommendations contribute to Goal 1: An Innovative and Growing City	
The recommendations contribute to the achievement of action/actions in Transport	
The action is: Develop, maintain, operate and renew the transport network to deliver on the Council goals, the purpose of this plan, and the Government Policy Statement on Transport.	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	Undertaking a deliverability review has helped Council identify obstacles and consider challenges underpinning economic wellbeing in the current supply and construction environment.

## ATTACHMENTS

Nil

## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Update on the Main Street West Cycleway

**PRESENTED BY:** Adam Jarvis, Senior Climate Change Advisor and Sarah Sinclair, Chief Infrastructure Officer

**APPROVED BY:** David Murphy, Chief Planning Officer  
Sarah Sinclair, Chief Infrastructure Officer

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### RECOMMENDATION(S) TO COUNCIL

1. That the Chief Executive direct Officers to report back to the Infrastructure Committee on community feedback to a permanent design solution, and the final design detail, before implementation.
- 

#### 1. ISSUE

Following public consultation, the Urban Cycle Network Masterplan 2019 confirmed Main Street West/Pioneer Highway as a priority route for the development of a separated cycleway.

In April 2021, Council successfully gained 90% co-funding from Waka Kotahi (NZTA) Innovating Streets programme to deploy a trial version of a cycleway along this route, between the intersection of Pitt Street and Botanical Road, using coloured planter boxes and other materials as separators.

Prior to the deployment of the trial cycleway, extensive engagement was conducted with the community. Officers conducted two public workshops in late 2020 that were promoted on social media, dropped letters to every business and residence within a 100m radius of the site, and visited every adjacent business in person to gain their feedback on the proposed design.

Officers were aware that, given the range of other demands on people's time and attention, proposals often don't 'become real' in the minds of people until they can be seen. Consequently, Officers designed the trial with a high level of flexibility within the design, most notably in the way planter boxes were not fixed to the ground, allowing them to be quickly and easily moved in response to feedback.

Immediately after the implementation of the trial, Officers received a large volume of feedback from the community. Many cyclists were satisfied with the increased safety they enjoyed along the physically separated cycleway, while other road users voiced their concerns about a range of issues, both through social media and the

contact centre. Officers were responsive to the concerns being raised, meeting with numerous people and businesses on-site to discuss the issues further. In most cases, Officers were able to adequately address the issue within 24 hours after it was raised. A fuller examination of these issues is included in the following section.

While the cycleway was initially highly contentious with motorists, negative feedback received reduced with time as users became accustomed to the new road layout and emergent issues were resolved. Conversely, qualitative and quantitative user feedback from cyclists has been extremely positive. Cycle count monitoring showed that user numbers almost tripled within the first month of operation (from 6/hr in November 2020 to 17/hr in May 2021), a notable result given the seasonal differences. Follow up user surveys found that 90% of intercepted cyclists rated it highly positively (overwise neutral), compared with 0% previously (overwise neutral or negative).

A road safety audit conducted by BECA in June 2021 recommended improvements to some moderate and minor issues. This focussed predominantly on risk to life, and found that while the cycleway generally worked well, several issues required resolving. These issues related to intersection conflicts, planter box stability and visibility, narrow cycle lane and on street parking/loading conflicts, drainage maintenance and refuge collection access. To address the issue of planter box stability, Officers tested the fixing of these boxes to the road surface with steel brackets along the stretch of the cycleway adjacent to Railway Reserve. This has proved successful in resolving the issue of planter boxes being tipped into either the traffic lane or cycleway in this locality. However, the visibility issue has not been resolved – driver familiarity has reduced the number of collisions with the planter boxes but not completely eliminated – Officers do not have overall statistics on collisions as they are not always reported to Council.

Overall, a separated cycle facility along Main Street West connecting Pioneer Highway shared path to the city centre, has proven to be successful and confirms this as a strategic priority cycle route as outlined in the Urban Cycle Masterplan. A more permanent design solution will now be considered taking account of the outcomes from the safety review, feedback from both cycle and motor vehicle users, and Officer expertise.

## **2. BACKGROUND**

### *Project Genesis*

During the 2020 lockdown period (March – April 2020), a large increase in the volume of cyclists was noted, including many families out with small children. It was also observed that due to the significantly reduced traffic volumes, vehicle speeds were often significantly greater during this period than pre-Covid. This prompted Council Officers to investigate options to improve safety along this and other key routes within the city that were seeing increased use by active modes.

While still in lockdown, Waka Kotahi NZTA announced its 'Innovating Streets for People' contestable fund, which provided a 90% funding assistance rate for local authorities to trial 'people-friendly' spaces, active transport infrastructure, and



tactical urbanism. Council Officers were able to build upon the safety work already underway (as discussed above) and put forward an application containing a suite of strategically aligned projects. Ultimately, Council was highly successful in its application, receiving funding for five projects throughout the city, of which the Main Street West Cycleway was the largest in scope dollar value (\$300,000).

### *Design & Consultation*

Officers conducted a series of 'intercept surveys' to gauge existing user sentiment and feedback about conflict points or safety concerns about the existing facility (or lack thereof). Generally, users were highly pessimistic about the level of service provided, telling Officers that they avoided the route at night, took detours to avoid conflict points, and would not allow their children to cycle. Observational surveys saw cyclists frequently being forced into the live traffic lane in order to avoid parked cars and trucks.

A high-level concept design was developed during lockdown, in collaboration with Waka Kotahi (NZTA) and based on the Urban Cycle Network Masterplan. Main Street West/Pioneer Highway had the significant advantage of wider than average lanes (4m+ compared with the usual 3-3.5m), and enough space (6m+) to accommodate both a separated cycleway and parking on the southern side between Pitt Street and West Street. While parking on the northern side would have to be removed in order to provide a separated cycleway, parking surveys indicated that the service lanes and side streets had plenty of spare capacity.

The high-level concept design was shared with the community through two open invite workshops in late 2020, and through in person discussions with businesses and other key stakeholders. During that time feedback was highly positive. Of note was the desire of the Pioneer Shopping Centre businesses to see safety improvements at the West Street/Pioneer Highway Intersection. Council had already been planning a safety upgrade of this intersection and had allocated funding from the Minor Transport Improvements programme to address safety issues at the intersection. This intersection improvement work was subsequently completed early in the 2021/22 financial year.

Once the high-level concept was confirmed, a letter was sent to all businesses and residents along Main Street/Pioneer Highway, as well as to all residents within a city block of the area. Officers also visited every business in person to discuss the proposed changes. Throughout this process, Officers continued to refine the detailed design layout to accommodate user needs where these were raised.

### *Deployment*

Rollout of the cycleway began in late March 2021 starting with changes to the road markings. Brightly coloured planter boxes as separators were installed shortly thereafter in early April, beginning with the block alongside Railway Reserve, and installing subsequent sections towards the Botanical Road end over several nights. Substantial communications were also undertaken to make people aware of what was happening.

As stated above, it was anticipated that issues would arise following rollout. Officers paid close attention to feedback via the PNCC Facebook page, which reached over 100,000 views in the first week. Numerous phone calls and correspondence were also received from members of the public during this time. The physical implementation of the cycleway and, particularly how the planter boxes were not fixed to the ground, allowed Officers to respond quickly to issues as they were raised. Adjustments that were made include:

- The installation of a loading zone outside the Pioneer Shops.
- The addition of an extra marked line alongside parallel parking to provide a similar level of service as Featherston Street and other arterial roads in the city.
- Minor changes to the positioning of planter boxes to allow for wider left turns merging with traffic onto Main Street/Pioneer Highway.
- The addition of rumble strips to discourage motorists cutting off cyclists while turning left from Pitt Street into Main Street.
- The trimming of the trees along West Street to improve visibility and personal safety for vehicles displaced from parking along Main Street.
- Swapping out of the darker blue planter boxes for a lighter green colour, and addition of some warning strips to some boxes to improve visibility.

#### *Incidents*

Prior to installation of the separated cycleway, multiple crashes occurred on the section of Main Street West, between Pitt Street and Botanical Road. Based on information recorded in Waka Kotahi NZTA's Crash Analysis System (CAS), 94 crashes were recorded between 2016 and 2020, resulting in 2 serious and 23 minor injuries.

Of the 94 crashes, 4 resulted in minor injuries to cyclists and 2 minor injuries to pedestrians. All crashes involving cyclists and pedestrians resulted in an injury.

In the period 1 April 2021 to 16 February 2022, since installation of the separated cycleway there have been 4 crashes recorded in CAS, 2 serious and 2 non-injury crashes. Of these, only 1 non-injury crash is related to the cycleway where a driver was driving too close to the separators. We note that the 2 serious injury crashes that occurred on the road were a result of unusual behaviour which could not have been reasonably prevented by road infrastructure. These crashes involved driving over the central median resulting in a head-on and a passenger jumping out of a moving vehicle.

Since installation of the separated cycleway, four incidents have been reported to Council for insurance claims:

- One involving a cyclist hitting a planter box that had shifted into the cycle lane
- Two involving motor vehicles hitting planter boxes
- One third party claim from a motorist who scratched their car on a planter box

The two incidents of vehicle hitting planter boxes involved speed at night, where the driver has lost control of their vehicle and deviated from the lane. In both cases, the driver was relatively unharmed, which likely would not have been the case prior to the cycleway installation should these vehicles have deviated into what was previously a parking lane.

There is also anecdotal evidence of a number of other minor incidences between vehicles and planter boxes, particularly during the early stages of the trial with side access turning movements. Since planter boxes were not fixed to the ground, these incidents have typically resulted in shunting of the planter box into either the cycle or vehicle lanes. This required either Council Officers or the road maintenance contractor to subsequently rectify. The majority of these incidents occurred in the period immediately following installation, while the turning radiuses were smaller, and the planter boxes were still unfamiliar for motorists.

As noted, the movability of the planter boxes, previously an asset allowing rapid changes to be made, has become an issue, with occasional theft and vandalism. The fixing bracket test alongside Railway Reserve has shown the system to be effective at resolving this issue.

### *Road Safety Audit*

The project road safety audit took place on 22 June 2021. The audit identified 4 moderate risk issues and 7 minor risk issues. The 4 moderate risks are the main issues to be addressed, outlined as follows:

- 1) Conflict areas at intersections and access along the route
- 2) Narrow on-street parking (Botanical to Shamrock, southern side of the road)
- 3) Planter box visibility and stability as separators between the cycleway and traffic lanes
- 4) Loading zone conflict with the westbound cycleway outside West Street shops

Issues 1) and 2) above were identified previously in the planning stages of the project. These were not addressed as part of the Innovating Streets project as they required significant permanent changes to improve the conflicts, which were considered outside of the project scope. Improvements to these areas will be investigated as a more permanent cycleway solution is formalised.

Regarding issue 3) above, the main issues with the planter boxes were their night-time visibility (particularly the dark blue planter boxes) and the potential for planter boxes to be dislodged. To address this, the audit recommended that:

- The conspicuousness of the dark coloured planter boxes be improved by replacing with lighter coloured planter boxes
- The planter boxes are fixed into position
- Installation of additional warning signs and markings

The audit indicated that planter boxes that are visible and fixed are appropriate between the cycle lane and car park bays. However, where planter boxes are adjacent to live lanes, the audit recommends alternative separators are investigated.

With respect to issue 4) above, parking was initially removed at this locality as part of this trial project. Despite the conflict with the cycleway, parking was replaced with

a loading zone in order to address the following concerns raised by adjacent businesses including:

- The ability for rubbish to be collected from the kerbside
- Customer parking (particularly larger vehicles)

The audit recommends the removal of the loading zone. Kerbside rubbish collection would need to be resolved within the Council organisation to be safe and effective for collections staff and all road users.

The minor issues identified in the road safety audit are not discussed in detail in this report as they are considered low risk. They include cyclists riding in the opposite direction, vegetation removal to improve visibility, infrastructure and utility condition on the cycleway, pedestrian access across the cycleway, width of the eastbound cycleway, advanced signage and cycle box provision. These issues can be addressed in conjunction with design of permanent improvements.

The road safety audit does not identify any significant road safety risks with the project, although Officers acknowledge the significant public feedback relating to the visibility issue associated with the use of planter boxes as cycle lane separators. There are also no recommendations to significantly change the trial layout. The safety issues raised are moderate or minor risks, which can be addressed in conjunction with design of permanent improvements to the cycleway.

#### *Other issues raised*

Operational staff also gave feedback on the utility of the planter boxes, in terms of safe manual handling, operational costs of responding to vandalism, and impact on other activities such as waste collection and road sweeping.

### **3. CONCLUSIONS**

The trial separated cycle facility along Main Street West connecting Pioneer Highway shared path to the city centre has proven to be successful and confirms this as a strategic priority cycle route as outlined in the Urban Cycle Masterplan.

A more permanent design solution, including a more sustainable separator treatment, will now be considered taking account of the outcomes from the safety review, feedback from both cycle and motor vehicle users, and technical expertise of Officers. Overall, given both the wider user/community feedback and outcomes from the safety audit with regard to visibility, Officers consider the plastic planter boxes as separators are not an effective separator solution. The trial has proved very useful in informing development of a risk-based approach to determining suitable materials for cycle lane separation.

Whilst a permanent solution is being designed and implemented, Officers recommend that the cycle lane layout is retained so as to consolidate its location for road users. This means that the plastic planter boxes would be retained and fixed in place as a temporary measure recognising that implementation of a permanent solution should progress at pace. Funds are available this financial year.

Implementation of permanent design solution will enable a connection between the city centre to both the Pioneer Highway and Mangaone Stream shared paths. It will also provide connection to cycling infrastructure improvements along Botanical Road and Cook Street, and other cycleway links, including on Park Road and Featherston Street, scheduled for implementation over the 2022/23 and 2023/24 financial years.

Following preliminary design of a permanent cycle lane solution in this location, feedback will be sought from the community to ensure all issues have been taken account of. Officers will report back to this committee on the community feedback received and final design details.

Improvements for cyclists to the remaining section of Main Street West, from Pitt Street to Te Marae o Hine The Square, will be further investigated, including concepts for lowering vehicle speeds. This will integrate the Main Street West cycleway with other city-centre programmes, including Streets for People.

#### 4. COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 1: An Innovative and Growing City	
The recommendations contribute to the achievement of action/actions in Transport	
The actions are:	
<ul style="list-style-type: none"> <li>• Deliver the Urban Cycle Network Masterplan</li> <li>• Develop, maintain, operate and renew the active and public transport network to deliver on Council goals, the purpose of this plan, and the Government Policy Statement on Transport</li> <li>• Prioritise active transport programmes that deliver on Council goals, the purpose of this plan, and the Government Policy Statement on Transport</li> </ul>	
Contribution to strategic direction and to social, economic, environmental	The Main St Separated Cycleway was identified in the Urban Cycle Network Masterplan as a high-priority route for a separated facility. This facility delivers not only on that outcome and the general direction of the Transport Plan, but also given the partnership with Waka Kotahi, directly to the GPS Transport

and cultural well-being	as well.
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**ATTACHMENTS**

Nil

## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Shareholding in FoodHQ Innovation Limited

**PRESENTED BY:** Steve Paterson, Strategy Manager - Finance

**APPROVED BY:** Cameron McKay, Acting Chief Financial Officer  
David Murphy, Chief Planning Officer

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### RECOMMENDATION(S) TO COUNCIL

1. That the Council make application to be a shareholder of FoodHQ Innovation Limited as contemplated in the Memorandum of Understanding attached to the report "Shareholding in FoodHQ Innovation Limited" considered at the meeting of the Council on 6 April 2022.
2. That the Chief Executive be authorised to take all steps necessary to facilitate this including signing appropriate documentation.
3. That the Chief Executive be appointed on an interim basis for a period of twelve months as the Council's nominated director for FoodHQ Innovation Limited with the position to be reviewed prior to the expiration of that period.

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### 1. ISSUE

The Council contributes to the operation of FoodHQ financially and through Board representation. To enable it to continue to operate FoodHQ's organisational structure needs to be changed and the parties involved have determined a limited liability company would be most appropriate.

The report seeks approval for the Council to become a shareholder in the new entity - FoodHQ Innovation Limited and to appoint a director to represent the Council.

### 2. BACKGROUND

#### 2.1 Introduction

Palmerston North City Council's research into the city's strategic position has shown us that to stand out from the crowd a "centre of industry" approach is the best fit for Palmy, through growing a food innovation capital in New Zealand. This positioning sits alongside and complements our Small City Benefits, Big City Ambition vision.

Palmy has an extensive and well-established food innovation ecosystem – from farming and agriculture to transport, distribution and logistics; food resilience to food rescue; education and training to waste management and sustainability; and much more. This, paired with our unique geographic location, enables our city to lead and enable the future growth of a range of industries that follow the food innovation spearhead.

The Council, in conjunction with other stakeholders (NZ Institute for Plant and Food Research Ltd, Agresearch Ltd, Fonterra Ltd and Massey University), has contributed to the establishment and on-going operation of the unincorporated joint venture known as FoodHQ.

The key objectives are to:

- Maintain and further develop, a collaborative partnership with New Zealand's public and private sector capability in food science and innovation for the benefit of New Zealand
- Work nationally and internationally to support both its partner organisations and the broader New Zealand food sector.

The entity has been operated under the umbrella of The Factory but this arrangement has no longer become acceptable to the Board of The Factory, as they have no control over FoodHQ's operations. FoodHQ have therefore needed to implement a new operating structure before 31 March 2022.

The Board of FoodHQ representing the parties have agreed that FoodHQ should transition from an unincorporated joint venture to a limited liability company.

The parties have entered a **Memorandum of Understanding** (copy attached) which outlines this good faith understanding.

Recognising that some of the parties would not be in a position to formalise the commitment to becoming a shareholder within the timeframe required, one of the parties (NZ Institute for Plant and Food Research Ltd), agreed to become the sole shareholder in the interim to enable the Company to be incorporated and assume the business of FoodHQ.

These preliminary arrangements will mean that once formal arrangements are completed by each of the parties they will apply to be allocated 24 shares of the total of 120 shares in the Company.

The Memorandum of Understanding signed by the parties indicates it is the intention the **Shareholders' Agreement** (copy attached) will regulate the Company and that the **Constitution** (attached) will initially be the current Auckland District Law Society form amended as necessary to be consistent with the Shareholders' Agreement.

FoodHQ Innovation Ltd has now been incorporated.



## 2.2 Rationale for shareholding

Council's economic development actions include support for initiatives that promote the region's strengths (in particular research/agri-food/business/land/horticulture). The Council has determined it wishes to support FoodHQ as it represents a key strength of the City in the food science and innovation sector. The Council currently exercises this support through annual operational funding and Board representation.

For practical reasons it has become necessary for FoodHQ to be structured more formally as a separate legal entity and to enable the Council to maintain its past level of involvement it is appropriate for the Council to become a shareholder in the newly incorporated company.

Council's Board representative and Council staff have been involved in the development of the corporatisation proposals including the Shareholders' Agreement. To demonstrate good faith with the other partners in the present arrangement Council representatives have signed the Memorandum of Understanding which signals it is intended the Council will most likely wish to become a shareholder, although it is not a binding commitment for the Council to do so.

## 2.3 Investment Policy considerations

Council's Investment Policy (as required under s 105 of the Local Government Act) is incorporated within its Treasury Policy. The policy contemplates the possibility of investing in equity shareholdings to enable the Council to participate in central government or regional initiatives associated with the provision of a key infrastructural activity. This investment in FoodHQ is not quite the same nevertheless the same principles apply. The Policy indicates the Council will assess risks associated with each investment and monitor these. The management of the shareholding will be dependent on the size and nature of the shareholding and where it is not the 100% shareholding will seek to do so in conjunction with other shareholders. It will do this by:

- Participating in the appointment of directors
- Monitoring the developments in the particular industry
- Monitoring company performance
- Acting to preserve the value of the Council's investment
- Monitoring the impact of the Company's operation on the people of Palmerston North

The new company will have no significantly different risk to the Council than the present unincorporated joint venture. It is not intended the Company will have any material assets. The level of the Council's operating financial contribution will not be

impacted to any material degree by the new structure although as a separate entity there will be some compliance and accountability costs.

## 2.4 Appointment of a Director

Council's Chief Executive has represented the Council on the Board of the unincorporated entity FoodHQ alongside the Chief Executives of the other stakeholders. Once the Council becomes a shareholder of the new company it needs to exercise its rights to appoint a director to represent the City's interests.

As there are a series of meetings during April to plan the way forward for the Company it is desirable for the Council's appointment to be confirmed at this meeting.

At this stage there has been no detailed assessment of the skills and experience required of any Council appointed director. However as the science interests will be represented well by the directors representing other shareholders it is believed the key role to be played by the Council's representative is to ensure the Company's direction is consistent with the City's strategic positioning building its reputation as a food innovation hub.

Appointments to positions representing the Council are normally governed by the Appointment of Directors and Trustees Policy. An updated version of this policy is being considered at the 6 April meeting. The new Company is a Council Organisation but not a Council Controlled Organisation or Council Controlled Trading Organisation. As a company director it is appropriate to consider the principles outlined in the Policy that relate to CCOs and CCTOs.

The appointee therefore:

- Should have appropriate skills, knowledge or experience
- Normally not be an elected member (due to potential conflict in monitoring performance)
- Normally not be a Council officer unless the nature of the appointment requires this.

In this instance given the nature of the representative role being expected the appointee should desirably be locally based and familiar with the thrust of the Council's marketing efforts and strategic direction.

With the above in mind it is considered the most appropriate approach in the interim would be to appoint the Council's Chief Executive while the Board is in its early stages of establishment and once established the skill sets will be more clearly defined.

### 3. NEXT STEPS

Council's application to become a shareholder will be lodged and any consequential actions will be undertaken.

### 4. COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
<p>The recommendations contribute to the achievement of action/actions in Economic Development</p> <p>The action is: Support initiatives that promote the region's strengths (in particular research/agri-food/business/land/horticulture).</p>	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	Becoming a shareholder in FoodHQ demonstrates Council's commitment to its strategic positioning of the city as a food innovation capital of New Zealand and enables it to take a leadership role in realising the city's strength in food innovation

### ATTACHMENTS

1. Memorandum of Understanding [↓](#) 
2. Food HQ Shareholders' Agreement [↓](#) 
3. Food HQ Innovation Ltd - Constitution [↓](#) 



## MEMORANDUM OF UNDERSTANDING

### PARTIES

**The New Zealand Institute for Plant and Food Research Limited**, a duly incorporated company, company number 547965 ("PFR")

And

**Agresearch Limited**, a duly incorporated company, company number 552736 ("AGR")

And **Palmerston North City Council** ("PNCC")

And **Fonterra Limited**, a duly incorporated company, company number 920718 ("Fonterra")

And **Massey University**

### BACKGROUND

- A. FoodHQ (FHQ) is an unincorporated joint venture established by the Parties:
  - i. To maintain and further develop, a collaborative partnership with New Zealand's public and private sector capability in food science and innovation for the benefit of New Zealand.
  - ii. To work nationally and internationally to support both its partner organisations and the broader New Zealand food sector.
- B. The Parties each contribute to the operating expenses of FHQ.
- C. The Parties have agreed that FHQ should transition from an unincorporated joint venture to a limited liability company ("the Company"), to be formed prior to 31<sup>st</sup> March 2022.
- D. Each of the Parties has formal approval processes which must be undertaken prior to taking a shareholding in the Company.

### UNDERSTANDING

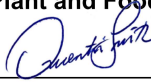
- 1. The Parties will cause the Company to be incorporated in accordance with this Memorandum of Understanding. Following incorporation of the Company, the Parties will cause the Company to assume the business of FHQ, including by the Company entering into such contracts and acquiring such assets as are currently held by the Parties for FHQ.
- 2. The following persons will be appointed as initial directors of the Company:
  - a. David Hughes (PFR)
  - b. Mark Piper
  - c. Ariana Estoria
  - d. Gil Meron

3. The Parties have agreed that PFR will initially hold all 120 shares in the Company, pending completion of necessary internal and external approvals for the other Parties. On notification by each other Party of completion of its approvals to PFR and the Company, PFR will cause the transfer of the number of shares specified in clause 4 below to that Party.
4. The final allocation of shares in the Company between the Parties is intended to be as follows:
  - a. PFR – 24 shares
  - b. AGR – 24 shares
  - c. PNCC – 24 shares
  - d. Fonterra - 24 shares
  - e. Massey University – 24 shares
5. The Parties intend that the Shareholders' Agreement attached will regulate the Company. PFR and the Company will execute the Shareholders' Agreement on incorporation of the Company. Each other Party will execute a Deed of Accession to the Shareholders' Agreement on becoming a shareholder. Pending transfer of the shares to the other Parties in accordance with clauses 2 and 3, PFR will exercise its rights and obligations as shareholder in a manner consistent with the Shareholders' Agreement
6. The constitution of the Company on incorporation will be the current Auckland District Law Society form of company constitution, with any changes necessary to ensure consistency with the Shareholders' Agreement.

#### GENERAL

7. This Memorandum of Understanding is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
8. This Memorandum of Understanding may be signed in counterparts, including by facsimile or email, all of which when read together shall constitute one and the same document.
9. The date of this Memorandum of Understanding shall be the date that the last person signed it.

**Signed by**  
**The New Zealand Institute for**  
**Plant and Food Research Limited by**

  
 \_\_\_\_\_  
 Director/Authorised Signatory

Quentin Smith  
 \_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Director/Authorised Signatory

\_\_\_\_\_  
 Print Name

**Signed by  
Agresearch Limited**\_\_\_\_\_  
Director/Authorised Signatory\_\_\_\_\_  
Print Name Sue Bidrose\_\_\_\_\_  
Director/Authorised Signatory\_\_\_\_\_  
Print Name**Signed by  
Palmerston North City Council**\_\_\_\_\_  
Director/Authorised Signatory\_\_\_\_\_  
Print Name\_\_\_\_\_  
Director/Authorised Signatory\_\_\_\_\_  
Print Name**Signed by  
Fonterra Limited**\_\_\_\_\_  
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Print Name**Signed by  
Massey University**\_\_\_\_\_  
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Agresearch Limited

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Director/Authorised Signatory

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Director/Authorised Signatory

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Print Name

Signed by  
Palmerston North City Council



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Director/Authorised Signatory

David Murphy  
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Print Name  
Deputy Chief Executive  
2/3/2022

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Director/Authorised Signatory

\_\_\_\_\_  
Print Name

Signed by  
Fonterra Limited

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Director/Authorised Signatory

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Massey University

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Agresearch Limited**

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Palmerston North City Council**

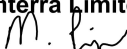
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Fonterra Limited**

  
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Director/Authorised Signatory

Mark Piper  
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Print Name

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**Signed by  
Massey University**

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Authorised Signatory

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**Signed by  
Agresearch Limited**

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Palmerston North City Council**

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Fonterra Limited**

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Director/Authorised Signatory

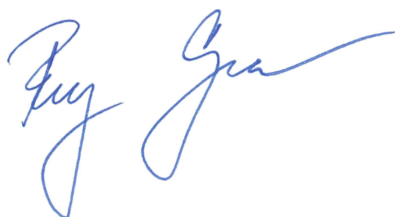
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Director/Authorised Signatory

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Print Name

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Print Name**Signed by  
Massey University**

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Authorised Signatory

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Raymond Geor

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Print Name

THE NEW ZEALAND INSTITUTE FOR PLANT AND FOOD RESEARCH LIMITED

FOODHQ INNOVATION LIMITED

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SHAREHOLDERS' AGREEMENT

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**AGREEMENT** dated the                      day of                      2022

## **PARTIES**

**The New Zealand Institute for Plant and Food Research Limited**, a duly incorporated company, company number 547965 ("PFR")

and

**FoodHQ Innovation Limited**, a duly incorporated company, company number 8316183, ("the Company")

## **BACKGROUND**

- A. The Company has been incorporated to establish and thereafter operate a business on the terms set out herein.
- B. The Company was incorporated with an initial share issue of one hundred and twenty (120) shares, at a total value of \$1 each.
- C. The Company will be operated in accordance with this Agreement.

## **TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 Definitions.** In this Agreement the following terms shall have the meanings specified:

**Accession Deed** means a deed in the form set out in Schedule 1.

**Act** means the Companies Act 1993.

**Background Intellectual Property** means in relation to a Party, Intellectual Property owned by, or licensed to, the Party on terms which allow it to be made available to the Company, which is made available by that Party.

**Board** means directors of the Company who number not less than the required quorum, acting together as a board of directors.

**Business** means the business of the Company and any other business at any time carried on by the Company during the term of this Agreement.

**Business Day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Wellington.

**Chair** means the chairperson of the Board from time to time appointed in accordance with clause 5.5

**Company** means FoodHQ Innovation Limited company number 8316183

**Constitution** means any constitution adopted by the Company.

**Confidential Information** means, in respect of each Party and any Associated Person of each Party (each such person being the **Disclosing Party**), all

information regarding the current or future business interests, methodology, technology or affairs of the Disclosing Party which:

- a) another party (the **Receiving Party**) may be given and/or have access to; or
- b) may come to the knowledge of the Receiving Party,

as a result of the arrangements contemplated in this Agreement and which the Receiving Party is told is, or which from its nature and content is or would reasonably be expected to be, confidential; and includes all intellectual property (whether registered, in the process of registration, unregistered or un-registrable) of the Disclosing Party;

**Deputy Chair** means the deputy chairperson of the Board from time to time appointed in accordance with clause 5.5;

**Director** means a person appointed as a director of the Company

**Financial Contributions** means the financial contributions for the conduct of the company's activities payable by the Shareholders and referred to in clause 8.1.

**Financial Year** means the financial year of the Company, as initially adopted or as subsequently changed in accordance with this Agreement;

**Holding Company** has the meaning given to it in section 5 of the Companies Act;

**Interest Rate** means the commercial overdraft interest rate charged from time to time by the trading bank of the Company.

**Party**, references to **a Party** and **the Parties** shall be references to a party or the parties to this Agreement for the time being (including the Company and any party who has executed an Accession Deed).

**Share** means a share in the Company.

**Shareholder** means any Party other than the Company and any person or persons to whom they may properly transfer their Shares pursuant to the provisions of this Agreement and who has executed an Accession Deed.

**Subsidiary** has the meaning given to it in section 5 of the Companies Act.

**Term** means the period from the date of this Agreement until the date this Agreement terminates in accordance with clause 13.

**1.2 Interpretation.** In the interpretation of this Agreement, unless the context otherwise requires or specifically otherwise stated:

- a) references to the Parties include their respective, successors and permitted assigns;
- b) a reference to one person **controlling** another means where the first person directly or indirectly, whether by the legal or beneficial ownership of share capital, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) is in a position to derive more than 50% of the benefit of the existence or activities of the other person;
- (b) has, or may have, the power to appoint or remove the majority of the members of the governing body of the other person;
- (c) has the power to appoint a member or members of the governing body of that person who is or are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body of that person; or
- (d) otherwise controls or has the power, or may have the power, to control the affairs or policies of the other person;

and *ceasing to control* shall be construed accordingly.

## **2. SHAREHOLDING OF THE COMPANY**

- 2.1** Upon the date of this Agreement the Company shall have 120 ordinary fully paid up Shares, which shall all be held by PFR.
- 2.2** Subject to clause 7.1(i) new Shareholders may be admitted at any time provided that any new Shareholder will be required to pay annual Financial Contributions in sums equal to the amount of the annual Financial Contribution payable by each existing Shareholder subject to any proportionate adjustment for the year in which they become a Shareholder where it is for a period of less than a full year.

## **3. PURPOSE AND OBJECTIVES OF THE COMPANY**

- 3.1** The Company shall be operated in accordance with the following objectives:
  - a) To maintain and further develop, a collaborative partnership with New Zealand's public and private sector capability in food science and innovation for the benefit of New Zealand.
  - b) To work nationally and internationally to support both its partner organisations and the broader New Zealand food sector.
- 3.2** The Company is not expected to own or develop commercialisable Intellectual Property.

## **4. CONSTITUTION**

- 4.1 Exercise of Rights** The Shareholders will exercise all voting rights and other powers of control available to them in relation to the Company in their capacity as Shareholders, or through any Directors they may appoint, to ensure (as far as they are able by the exercise of such rights and powers) that:
  - a) the Company complies with the provisions of the Constitution (except to the extent that they are inconsistent with this Agreement); and
  - b) the Board or the Shareholders, as the case may be, pass such resolutions and take such actions including entering into any contracts or deeds or covenants or agreements as may be necessary to give effect to the provisions and intentions of this Agreement.

- 4.2 Inconsistency** Where there is any inconsistency between the terms of this Agreement and the Constitution the provisions of this Agreement shall prevail.

## **5 BOARD AND GOVERNANCE**

- 5.1 Initial Directors** Until determined otherwise in terms of this Agreement the Company shall be controlled and managed by a board of 4 initial directors ("Board"). The initial Directors are:

- a) David Hughes (PFR)
- b) Mark Piper
- c) Ariana Estoras
- d) Gil Meron

- 5.2 Subsequent Director Appointment** A Shareholder may appoint one Director for each 20% of the voting Shares it holds, provided its Shares are fully paid-up, by notice to the Company. For example, if a Shareholder holds 40% of voting Shares in the Company, it may appoint two Directors. A Shareholder may also remove and replace its appointed Directors by notice to the Company.

- 5.3 Independent Director** The Board may from time to time appoint up to three people as Independent Directors on such terms, including as to remuneration, as determined by the Board. In making appointments of Independent Directors, the Board should consider appointing persons who represent complementary sectors to the Shareholders represented by the other Directors, including the food industry and iwi. The Board may also remove or replace any Independent Director it has appointed under this clause.

- 5.4 Quorum** Unless otherwise agreed by all the Directors, the quorum for transacting business at any Board meeting shall be a 75% majority of the Directors entitled to vote.

- a) A Director shall be regarded as present for the purposes of a quorum if he or she attends by telephone or by video conference or similar telecommunication device allowing persons participating in the meeting to hear each other at the same time.
- b) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

### **5.5 Chair and Deputy Chair**

- a) The Board shall determine from their number the Chair and the Deputy Chair of the Board by unanimous resolution.
- b) Neither the Chair nor the Deputy Chair shall have a second or casting vote.

- 5.6 Voting rights** on a resolution or other matter to be decided at any Board meeting each Director present shall have one vote.

- 5.7 Deadlock.** If a resolution of the Board or Shareholders is not passed, and an equal number of votes of Directors or Shareholders (as the case may be) is cast for and against that resolution, then if any Shareholder so requires by notice to the other Shareholders, Schedule 2 shall apply.

### **5.8 Meeting timing and procedure**

- a) Unless otherwise agreed by all the Directors, Board meetings shall be convened and held at least four times a year.
- b) A notice convening the meeting together with a written agenda specifying the matters to be raised at any Board meeting shall be sent by the Company to each Director, at the address specified by the Director to the Board from time to time, not less than ten Business Days prior to the meeting. Notice need not be given to any Director who signs a waiver of notice (whether before, at or after the meeting) or who attends the meeting without protesting in writing the lack of notice prior to its commencement. Any notice to be given under this clause may be given by email to such email address as notified in writing from time to time by the Director to the Board. Unless, in any particular case, all the Directors of the Company shall otherwise agree (which agreement shall be evidenced in the minutes or otherwise in writing), no resolution relating to any business may be proposed or passed at any Board meeting if the nature of the business is not specified in the requisite agenda.
- c) Board meetings may be convened by any Director at any time and shall be validly convened when the requisite notice is sent to all Directors ten Business Days or more (or such lesser time as all the Directors may agree) before the proposed date for the meeting provided that such meeting shall be quorate in accordance with clause 5.4.
- d) Except as specified elsewhere in this Agreement and in the Constitution, the Board will otherwise regulate its own procedure.

**5.9 Decisions of the Board.** Decisions of the Board shall be made by a majority of the vote of the Board entitled to vote and voting on the matter.

**5.10 Duty to act in the best interests of the Company.** The Parties acknowledge and agree that the provisions of section 131(1) of the Companies Act apply to the Directors of the Company and the Directors therefore each have a statutory duty when exercising powers or performing duties to act in good faith and in which he or she believes to be in the best interests of the Company. The Parties further acknowledge and agree that section 131(4) of the Companies Act shall not apply to the Company.

## **6 CONDUCT OF THE COMPANY'S AFFAIRS**

**6.1 Accounts.** The Board shall procure that:

- a) the Company shall maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in New Zealand;
- b) quarterly reports shall be prepared in relation to the Company containing such information as the Shareholders shall reasonably require.
- c) annual reports of the activities and financial position of the Company shall be prepared and distributed to the Shareholders.
- d) The Shareholders and their respective authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss their affairs with their Directors and the Chief Executive Officer.

**6.2 Business Plans.** The Company shall prepare and adopt a Business Plan for each Financial Year.



**6.3 Financial Contributions:** The Board shall set Financial Contributions to be payable by each and every Shareholder in equal amounts for each Financial year.

## **7 SHAREHOLDER MEETINGS**

**7.1 Resolutions requiring a 75% majority.** The following resolutions must be approved by a majority of 75% of the votes of those shareholders entitled to vote and voting on the resolution, unless the matter is required under the terms of this Agreement (in which case no further Board or Shareholder approval or consent is required).

- (a) any change to the Constitution;
- (b) any change to the name or trading style of the Company;
- (c) any changes to the classes of Shares or the rights attached to any class of Shares;
- (d) a decision to wind up the Company;
- (e) a decision to change the status of the Company to a listed company;
- (f) a decision to issue new Shares;
- (g) a decision to remunerate any of the Directors;
- (h) the formation of any subsidiary, or the formation of a joint venture or other profit sharing arrangement with a third party;
- (i) the decision to admit any new shareholder, and the terms and conditions of the entry of any such new shareholders;
- (j) a decision to allow the Company to enter into any business venture that is in competition with a shareholder;
- (k) a decision to open physical business premises or offices outside New Zealand; and
- (l) a material change in the nature or scope of the business of the Company not consistent with the objectives of the Company as set out in clause 3.
- (m) a decision to incur debt requiring security
- (n) a decision to accept an offer to purchase the Company and furthermore should an offer be made the shareholders shall be informed.

**7.2 Majority resolutions.** Subject to clause 7.1, all matters requiring shareholder approval may be made by a majority of the votes of the shareholders entitled to vote and voting on the matter (or if required by the Companies Act or Constitution, by Special Resolution).

### **7.3 Quorum**

- A) The quorum for transacting business at any Shareholder meeting shall be a Shareholder or Shareholders holding 75% or more, in aggregate of the issued shares of the Company.

- B) A Shareholder shall be regarded as present for the purposes of a quorum if the Shareholder or the Shareholder's representative (as defined in the constitution) attends by telephone or by video conference or similar telecommunication device allowing persons participating in the meeting to hear each other at the same time.
- C) If a quorum is not present within 30 minutes after the time appointed for the meeting the meeting is dissolved.

## 8 FUNDING

- 8.1 Funding for the Company's activities shall be by way of Financial Contributions payable for each Financial year in accordance with clause 6.3. Each Shareholder shall pay its Financial Contribution within 60 calendar days of receipt of notice thereof.
- 8.2 If, from time to time, the Company requires further funds, the Parties shall use reasonable endeavours to obtain for the Company such finance by way of shareholder loans, bank accommodation, licensing of intellectual property owned by the Company, or otherwise as the Parties consider prudent. Any security provided by the Parties in connection with finance for the Company shall be provided at the cost of the Company and shall be provided by the Parties proportionately to their respective shareholdings in the Company at the relevant time.

## 9 CONFIDENTIALITY

- 9.1 **Provision of confidential information.** Each Party understands and acknowledges that all Confidential Information provided to it under this Agreement is provided solely for the purposes contemplated under this Agreement.
- 9.2 **Maintain confidentiality.** Each Party receiving Confidential Information (**Receiving Party**) from another Party (**Disclosing Party**) undertakes for the benefit of the Disclosing Party that, both during the term of this Agreement and at all times thereafter, it will:
  - a) not disclose the Confidential Information, or the fact that it has the Confidential Information, to any other person, other than its directors, officers, employees, agents, Affiliates and sub-contractors on a strictly Need to Know Basis;
  - b) be responsible for maintaining the secrecy and confidentiality of the Confidential Information;
  - c) not use the Confidential Information or any part of it for any purpose other than the matters contemplated by this Agreement or as needed for the operation of the Company and not use the Confidential Information or any part of it for the purpose of any other person; and
  - D) indemnify the Disclosing Party against all loss, damage or expense which the Disclosing Party may incur as a result of any unauthorised disclosure or use of the Confidential Information by it or any other person to whom it disclosed the Confidential Information.
- 9.3 **Exclusions.** The obligations of confidentiality of each Party set out in clauses 9.1 and 9.2 will not restrict the use or disclosure of Confidential Information by a Receiving Party to the extent that the Confidential Information:
  - a) is or becomes publicly available other than by reason of the Receiving Party acting contrary to the terms of this clause 9 (and for the avoidance of doubt,

information possessed by some, but not all Competitors of a Party, which continues to convey a competitive advantage, will not be "publicly available");

- b) can be established by written record to have been in the Receiving Party's possession at the time of disclosure to the Receiving Party and was not acquired (directly or indirectly) from the Disclosing Party, or from any third party in breach of its obligations of confidentiality to the Disclosing Party;
- c) can be established by written record to have been received by the Receiving Party from a third party who is not in breach of that third party's obligations of confidentiality to the Disclosing Party;
- d) can be established by written record to have been independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information; or
- E) is required to be disclosed by any applicable law or regulation or authority, provided the Receiving Party will give the Disclosing Party prompt written notice of the disclosure, where practicable before it occurs so that the Disclosing Party has sufficient opportunity to prevent the disclosure through appropriate legal means.

**9.4** The obligations set out in this clause 9 will survive termination of this Agreement.

## **10 SHARE ISSUES AND SHARE TRANSFERS**

**10.1 Share issues.** There shall be no issue of new Shares other than in accordance with Clause 7.1. All issues of new Shares shall be made in accordance with the provisions of the Constitution.

**10.2 Share transfers.** The provisions of Schedule 3 apply to Transfers of Shares.

**10.3 Accession Deed:** Any issue, transfer or assignment of shares to a new Shareholder will not be effective until the new Shareholder has signed an Accession Deed in the form attached in Schedule 1 or any other approved form reasonably acceptable to the Company, agreeing to be bound by this agreement.

**10.4 Benefit:** Where a person accedes to this agreement, then the Company, Shareholders and other parties to this agreement agree and covenant for the benefit of the relevant third party that from the date that the proposed accession, this agreement will be read as if that person was a party to this agreement, having all of the rights and obligations of a party under this Agreement.

## **11 INTELLECTUAL PROPERTY RIGHTS**

**11.1** The Parties will not directly or indirectly contest any of the rights of the Company in respect of any trademark, copyright or other right forming part of or relating to the Company's Confidential Information.

**11.2 Background Intellectual Property:** At any time, a Party may make its Background Intellectual Property available to the Company for a Company project at its sole discretion provided however that such a Party shall retain ownership of and be free to use its Background Intellectual Property outside the scope of that project.

## 12 ACKNOWLEDGEMENT

- 12.1** The Parties acknowledge that the covenants set forth in clause 11.1 above are necessary in order to protect and maintain the proprietary interests and other legitimate business interests of the Company.

## 13 TERMINATION

- 13.1 Term** This Agreement continues until termination by agreement between the Parties or unless earlier terminated by operation of any of the provisions of clause 13.2 provided that any such termination shall not affect any subsisting rights under this Agreement.

- 13.2 Termination in respect of a Shareholder** Notwithstanding any delay or previous neglect or waiver of the right to exercise such election and without prejudice to any of the rights of the Parties this Agreement will also terminate in respect of a relevant Shareholder ("Relevant Shareholder") (but not the remaining Parties) at the election of the majority of the other Shareholders if any of the events set forth below occur respectively in relation to a Relevant Shareholder:

- a) Default is made by a Relevant Shareholder in performance or observance of any obligation on its part arising under this Agreement and such default is incapable of being remedied, or, if capable of being remedied, such default continues unremedied at least 20 Business Days after written notice of such default has been given to the defaulting party by another party;
- b) If a Relevant Shareholder commits an act of bankruptcy or makes any assignment, arrangement or composition with its creditors (including entry by the party into a deed of company arrangement under Part 15A of the Companies Act 1993);
- c) Any of the conditions necessary to render a Relevant Shareholder liable to be wound up exists;
- d) A Relevant Shareholder is or becomes unable to pay its debts as they fall due or is deemed or is unable to pay such debts as that term is defined in section 287 of the Companies Act 1993 or suspends payment to its creditors or ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors;
- e) If a petition for the winding up of a Relevant Shareholder is presented or advertised or a resolution is passed or purports to be passed for the winding up of a party;
- f) A Relevant Shareholder has a receiver or manager or statutory manager or administrator appointed;
- g) A Relevant Shareholder transfers or disposes of or threatens to transfer or dispose of a substantial part of its assets for inadequate consideration;
- h) Distress or execution for an amount in excess of \$50,000.00 is levied or issued upon or against any of the property or assets of a Relevant Shareholder;

- i) If a final judgment for the payment of an amount in excess of \$50,000.00 is obtained against a Relevant Shareholder and remains unsatisfied for a period of twenty (20) Business Days;
- j) If without the prior consent in writing of another party a Relevant Shareholder reduces its share capital or convenes a meeting of its members for the purpose of passing a resolution reducing its share capital.

**13.3** On termination under clause 13.2 the provisions of Schedule 3 shall apply in respect of the Relevant Shareholder's shares, subject to the following:

- a) Paragraph 3 of Schedule 3 shall not apply;
- b) the shares shall be offered at fair market value as reasonably determined by the Board.

#### **14 FORCE MAJEURE**

**14.1** No Party is in breach of this Agreement if its breach is caused by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of that Party.

#### **15 SEVERENCE**

**15.1** If the implementation of this Agreement or any provision or term of this Agreement or any part of it is illegal, invalid or unenforceable for any reason whatsoever including but without limitation legislation or other provisions having the force of law, any decision of any Court or other body or authority having jurisdiction, such terms or provisions will be deemed to be deleted from this Agreement on condition that if a Party considers that any such deletion substantially affects or alters the commercial basis of this Agreement it may give notice in writing to the other to terminate this Agreement immediately.

#### **16 NOTICES**

**16.1** Any notice, document, request, demand or other communication ("Notice") to be given for the purposes of this Agreement must be in writing and may be served personally or sent by security or registered mail to the address of the Party specified below or such other address as that Party may notify the others of them in writing, from time to time, or by facsimile to the facsimile number of that Party specified below or such other facsimile number, or by email to the email address of that party specified below or such other email address, as that Party may notify the others of them, in writing, from time to time.

**16.2** Notice given:

- a) Personally are served upon delivery;
- b) By post or document exchange are served five (5) Business Days after posting;
- c) By email or facsimile are served upon receipt of the notice.

**16.3** Any Notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Business Day after such day at the place of receipt.

**16.4** A Notice may be given by an authorised officer, employee or agent of the Party giving the Notice.

**16.5** Notice may be given personally to a director, employee or agent of the Party at that Party's address or to a person who appears to be in charge of that place at the time of delivery or, if such delivery is not practicable at that time, in the case of a company, to any person who is named as a director of the company on the New Zealand Register of Companies at that time. If the Party is a natural person, partnership or association delivery may be made by handing the Notice to that person or any partner or responsible person or, if acceptance is refused, by bringing the Notice to the attention of, and leaving it in a place accessible to, the person, partner or responsible person.

**16.6** Time is of the essence.

**16.7** The addresses for the Parties for a Notice shall be:

**PFR**

Attention: David Hughes  
 Email address: david.hughes@plantandfood.co.nz  
 Postal address: Private Bag 92169, Auckland 1142  
 Delivery Address: 120 Mount Albert Road, Auckland

**The Company**

Attention: Abby Thompson  
 Email address: abby@foodhq.com  
 Postal address: 31 Dairy Farm Road, Turitea, Palmerston North 4410  
 Delivery Address: 31 Dairy Farm Road, Turitea, Palmerston North 4410

**17 ASSIGNMENT**

**17.1** No Party may sell, transfer, assign, license, franchise, perform on behalf of a third party or otherwise part with possession of, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the other Parties.

**18 GENERAL PROVISIONS**

**18.1 No Waiver** No failure or delay on the part of any Party to exercise any right or remedy under this Agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

**18.2 Counterparts** This Agreement may be executed in counterpart copies (including by digital signature) and all counterpart copies when taken together will constitute one Agreement.

## **19 GOVERNING LAW**

**19.1** This Agreement is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

## **20 COSTS**

**20.1** Each of the Parties is responsible for its own respective legal and other costs incurred in relation to the execution of this Agreement.

## **21 DISPUTE RESOLUTION**

**21.1 Mediation** Any dispute arising out of or relating to this Agreement may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the Parties. Mediation may be initiated by any Party by writing to the other Parties and identifying the dispute which is being suggested for mediation. The other Parties will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The Parties will agree on a suitable person to act as a mediator or ask the Chairperson for the time being of the Resolution Institute or his or her nominee. The mediation will be in accordance with the terms of the Resolution Institute's Standard Mediation Agreement.

### **21.2 Arbitration**

- a) In the event that the Parties do not resolve the dispute in accordance with clause 21.1 within 10 Business Days after appointment of the mediator pursuant to that clause, then any Party may by notice in writing to the other Parties refer the Dispute to be determined by arbitration in accordance with this clause 21.2.
- b) Any Disputes which have been referred to arbitration in accordance with clause 21.2 will be finally settled by arbitration in Auckland, New Zealand by one arbitrator who, for purposes of the arbitration, will apply substantive New Zealand law and who will proceed in accordance with the Arbitration Act 1996 of New Zealand as the exclusive means of resolving such disputes. The Parties will endeavour to agree the arbitrator or, failing agreement within 30 Business Days after the notice referred to in clause 21.2, in accordance with the Arbitration Act 1996 of New Zealand.
- c) Any award will be final and not subject to appeal and the Parties hereby waive all challenge to any award by the arbitrators under clause 21.2.

**21.3 Urgent relief** Nothing in this clause 21 will prevent a Party from seeking urgent interlocutory relief from the Courts of New Zealand.

**SCHEDULE 1**  
**FORM OF ACCESSION DEED**

DEED dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**PARTIES**

1. \_\_\_\_\_ ("Other Shareholders")
2. \_\_\_\_\_ ("Transferor")
3. \_\_\_\_\_ ("Transferee")

**INTRODUCTION**

- A. The Other Shareholder(s) and the Transferor are the parties to a shareholders' agreement dated \_\_\_\_\_ ("Agreement") relating to \_\_\_\_\_ Limited ("the Company").
- B. The Transferor wishes to transfer to the Transferee \_\_\_\_\_ shares in the Company.
- C. Under the Agreement the parties are required to execute this deed.

**OPERATIVE PROVISIONS**

1. With effect from \_\_\_\_\_ **[date of this deed]**:
  - a) The Transferee becomes a party to the Agreement as if it had been named as an original party to the Agreement and had executed it.
  - b) **[The Transferor ceases to be a Shareholder.]**
  - c) **[..... is deemed a Director appointed by the Transferee for the purposes of clause 5.2 of the Agreement.]**
  - d) The addresses for notices of the Transferee under the Agreement are:
 

Attention:

Email address:

Postal address:

Delivery Address:
2. The Transferor is not released from any obligation to the Remaining Shareholders and the Company existing as at \_\_\_\_\_ **[the date of this deed]**.
3. The Other Shareholders consent to the transfer of shares described in this deed, and waive all rights of pre-emption in respect of those shares whether arising under



the Agreement, the constitution of the Company, the Companies Act 1993 or otherwise.

4. New Zealand law governs this deed and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
5. This deed may be executed in counterpart copies (including by digital signature) and all counterpart copies when taken together will constitute one deed.

**SIGNED** as a Deed

## SCHEDULE 2

### DEADLOCK PROCEDURE

1. **Application.** The provisions of this Schedule apply to the issue which is the subject of a resolution submitted to the Board or the Shareholders (as the case may be) and referred to in clause 5.7 (**Issue**).
2. **Mediation.**
  - (a) The Issue shall be referred to the mediation of the single mediator.
  - (b) The referral to mediation shall be commenced by a Shareholder serving written notice on the other Shareholders and the Company requiring the Issue to be referred to a mediator to be appointed by the Shareholders. Failing agreement within 10 Business Days after the date of service of the notice, the mediator shall be appointed at the request of a Shareholder by the chairperson or any other office holder for the time being of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson or other office holder.
  - (c) The guidelines to govern the mediation shall be set by the Shareholders. Failing agreement within 10 Business Days after the appointment of the mediator, a Shareholder may request the mediator to set the guidelines (whether or not in conjunction with such Shareholder) which shall govern the mediation.
3. **Status Quo Remains.** If the Issue is not resolved by mediation in accordance with clause 2 of this Schedule within 40 Business Days of the referral of the Issue to mediation, the mediation shall terminate, and the Company shall continue on the basis that the resolution submitted to the Board or the Shareholder (as the case may be) which gave rise to the Issue has not been passed.

**SCHEDULE 3**  
**PRE-EMPTIVE RIGHTS**

**1. Transfer Notice**

- 1.1 A Shareholder intending to transfer any shares must give a Transfer Notice in writing to the Company. The Transfer Notice shall state the number, and asking price of the shares to be offered for sale.
- 1.2 The Board shall be the agent of the transferor (to the exclusion of the transferor) for the sale of the shares specified in a Transfer Notice. A Transfer Notice may not be withdrawn except with the sanction of the Board or as provided in this Schedule.
- 1.3 The transferor shall be under no obligation to sell or transfer part only of the shares specified in a Transfer Notice.

**2. Offer and Allocation of Shares**

- 2.1 The shares specified in a Transfer Notice must be offered for sale by the Board in priority as follows:
  - 2.1.1. First, to Shareholders (other than the transferor); and
  - 2.1.2. Secondly, to any other person or persons whom the Board is prepared to register as a holder or holders of the shares.
- 2.2 An offer to holders of shares already issued must:
  - 2.2.1. Be in writing;
  - 2.2.2. Be pro rata according to the number of shares held by them;
  - 2.2.3. Remain open for acceptance for a reasonable time, not being less than 10 Business Days; and
  - 2.2.4. State the number of shares on offer, the transferor's asking price and the time period for acceptance.
- 2.3 Shareholders of the shares shall be entitled to purchase additional shares to the extent that Shareholders do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 2.4 An acceptance by holders of shares already issued:
  - 2.4.1. Must be in writing;
  - 2.4.2. May relate to all or only part of the shares offered for sale;
  - 2.4.3. May state the number of additional shares to be purchased from declined offers (if any); and
  - 2.4.4. May be made conditional on a fair market value for the shares being determined.

- 2.5 Offers for the sale of shares which have not been accepted in the time and manner set out in the preceding clauses shall be deemed to have been declined.
- 2.6 On expiry of the time period for acceptance of all offers, the Board shall allocate the shares offered for sale according to acceptances received (including the allocation of additional shares from declined offers). The Board shall give notice in writing of the share allocation to all persons who have been allocated shares aforesaid, within 10 Business Days from the expiry of the time period for acceptance of all offers.
- 2.7 Except as provided in this Schedule, the procedure for the offer, acceptance and allocation of shares shall be determined by the Board. No irregularity in such process shall affect the validity of the allocation and sale of shares.
3. **Transferor's Right to Withdraw**
- 3.1 The transferor may withdraw the Transfer Notice in respect of all or any shares offered for sale if:
- 3.1.1. Any share remaining unallocated 3 months after issue of the Transfer Notice; or
- 3.1.2. The fair market value is determined to be less than the transferor's asking price, and written notice of withdrawal is given to the Board within 10 Business Days from determination of fair value.
4. **Settlement**
- 4.1 The sale of the shares which are the subject of the Transfer Notice shall be settled on the later of the following dates:
- 4.1.1. If all of the shares offered for sale have been unconditionally accepted, 20 Business Days after the date of the notice of allocation of shares referred to in clause 2.6 of this Schedule.
- 4.1.2. If any of the shares offered for sale have been accepted subject to determination of fair market value, 20 Business Days after determination of such fair market value.
- 4.2 The sale price shall be:
- 4.2.1. For offerees who have unconditionally accepted the offer for sale, the transferor's asking price; or
- 4.2.2. For offerees who have accepted the offer for sale subject to determination of fair market value, the fair market value so determined.
- 4.3 At settlement, the offerees who have been allocated shares for sale shall be bound to pay the sale price and the transferor shall be bound to transfer the allocated share or shares to such persons.
- 4.4 Nothing herein shall prevent the transferor from settling the sale of the shares with one or more offerees who have been allocated shares before the settlement date provided above. If the transferor so elects the right to withdraw the Transfer Notice shall be deemed waived as to those shares.

**5. Company May Effect Transfer**

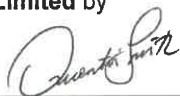
- 5.1 If a Shareholder fails to give a Transfer Notice in accordance with clause 1.1 of this schedule, the Board may give a Transfer Notice on behalf of that Shareholder, which may not be withdrawn except with the consent of the Board. In such circumstances the asking price shall be the fair market value of the shares determined in accordance with clause 1.3 of this schedule.
- 5.2 If the transferor, after becoming bound in accordance with this Schedule does not transfer the shares on the settlement date, then the Company may receive the sale price and cause the names of the offerees to be entered in the share register as the holder of the shares and shall hold the sale price in trust for the transferor (subject to any lien in favour of the Company).
- 5.3 The Board's receipt will be a good discharge to the offerees for the sale price and after the shares are registered in the name of the offerees the validity of the proceedings may not be questioned by any person.

**6. Sale to Third Parties**

- 6.1 To the extent that a Transfer Notice has not been withdrawn, any share which remains unallocated 3 months after the Board has received a Transfer Notice may be sold by the transferor (at any time within the following 6 months) to any person at a price which is not lower than the asking price specified in the Transfer Notice.
- 6.2 Any sale to a third party must be to any person or persons whom the Board is prepared to register as a holder or holders of the shares.

EXECUTED as an Agreement.

**SIGNED by**  
**The New Zealand Institute for**  
**Plant and Food Research**  
**Limited by**



Director/Authorised Signatory

Quentin Smith

Print Name



Witness to both signatures  
(if not signed by two directors)

DONALD MAC SCHWELL

Print Name

SOLICITOR

Occupation

Address

AUCKLAND

Director/Authorised Signatory

Print Name

**SIGNED by**  
**FoodHQ Innovation Limited**  
**By**



Director/Authorised Signatory

David Hughes

Print Name

Director/Authorised Signatory

Print Name

Witness to both signatures  
(if not signed by two directors)

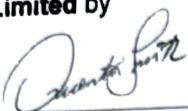
Print Name

Occupation

Address

EXECUTED as an Agreement.


**SIGNED by**  
**The New Zealand Institute for**  
**Plant and Food Research**  
**Limited by**



Director/Authorised Signatory

Quentin Smith

Print Name

  
 Witness to both signatures  
 (if not signed by two directors)

DONALD PAUL SCHNELL

Print Name

SOLICITOR

Occupation

AUCKLAND

Address

Director/Authorised Signatory

Print Name

**SIGNED by**  
**FoodHQ Innovation Limited**  
**By**



Director/Authorised Signatory

David Hughes

Print Name

Witness to both signatures  
 (if not signed by two directors)

Print Name

Occupation

Address

  
 Director/Authorised Signatory

Gil Meron

Print Name

The Companies Act 1993

## Constitution

of

FoodHQ Innovation  
Limited

**Certified true copy of the Constitution**

☐ Adopted by the shareholders by special resolution, or

☒ Adopted by the company on registration.  
(tick one)

Director



## SCHEDULE

1. **Rights attaching to, consideration for and terms on which shares are to be issued:** (clause 1.2)

*(Default: All shares are standard shares with a nil consideration unless otherwise specified)*

*Here specify and define variations to the standard share including consideration and terms of issue, and special voting, quorum, distribution and other class rights*

2. **Other Provisions:**  
*(Add other provisions and clauses as may be required)*

An additional clause 37 is added as follows:

**37 CROWN ENTITY**

- 37.1 The Company is a Crown Entity for the purposes of the Crown Entities Act 2004.



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## INTERPRETATION

In this constitution, unless the context otherwise requires:

“**Act**” refers to a New Zealand Act of Parliament and any reference to an Act (but only where the context permits) is, where the relevant Act has been replaced or amended, to the replacement or amended Act.

“**Companies Act**” means the Companies Act 1993 and its amendments.

“**s**” means section references in an Act.

“**[§]**” refers to comparable sections and **[§§]** refers to the comparable subsections of the Companies Act.

“**Schedule**” means the Schedule to this constitution.

“**Solvency test**” means the solvency test in s4 of the Companies Act, as may be modified in accordance with the Companies Act.

**Definitions in the Companies Act** - Words or expressions used in this constitution bear the same meaning as in the Companies Act.

**Masculine, feminine, and neuter** - Words which import any gender include the other genders.

**Singular and plural** - Words which import the singular and plural number include the plural and singular number respectively.

**No limitation** - the words “include”, “including” or similar do not imply any limitation.

**Conflict** - If there is a conflict between the provisions of this constitution and a mandatory provision of an Act, the Act shall prevail, and if there is a conflict between any provision set out in the Schedule and any other provision in this constitution, the Schedule shall prevail.

## PART I - SHARES

### 1 RIGHTS AND POWERS ATTACHING TO SHARES

#### Standard Shares

1.1 Unless otherwise provided by the terms of issue or by this constitution, a share confers on the holder [§36]:

- 1.1.1 The right to one vote on a poll at a meeting of the company on any resolution.
- 1.1.2 The right to an equal share in dividends authorised by the board.
- 1.1.3 The right to an equal share in the distribution of the surplus assets of the company.

#### Specified Shares

1.2 The rights conferred on the holder of a share or any class of share, and the consideration for and terms on which the share or any class of share will be issued, may be specified in the Schedule.

#### Other Classes

1.3 Any class of share may be issued by the company at any time including those which [§37]:

- 1.3.1 are convertible; or
- 1.3.2 are redeemable; or
- 1.3.3 are restricted or limited as to transfer; or
- 1.3.4 differentiate as to liability; or
- 1.3.5 confer preferential rights to distributions of capital or income; or
- 1.3.6 confer special quorum rights; or
- 1.3.7 confer special, limited or conditional voting rights; or
- 1.3.8 do not confer voting rights; or

1.3.9 confer the right to appoint or remove a number of directors; or

1.3.10 possess any combination of two or more of the foregoing characteristics.

### 2 ISSUE OF SHARES

#### Initial Share Issue

2.1 The company must issue the number and class of shares specified in the application for registration to the person or persons named therein [§41].

#### Subsequent Share Issues

2.2 The board may issue shares, securities that are convertible into shares or options to acquire shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit subject to the provisions of the Act and this constitution.

2.3 The issue of further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing shares of that class.

#### Consideration for Share Issues

2.4 The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company [§46].

2.5 The persons named in the application for registration shall not be required to pay any consideration for the issue of a share on registration unless the consideration and terms of issue are fixed in the Schedule, or in any subscription application for the share or in any contract for the issue of the share.

2.6 Before the board issues shares (not being the issue of shares on registration of the company or to which subclause 14.6.7 applies) the board must [§§47(1)]:

- 2.6.1 decide the consideration for which the shares will be issued and the terms on which they will be issued; and
- 2.6.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- 2.6.3 resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing shareholders; and
- 2.6.4 if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.

2.7 Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must [§§47(3)]:

- 2.7.1 determine the reasonable present cash value of the consideration; and
- 2.7.2 resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders;
- 2.7.3 and is not less than the amount to be credited in respect of the shares.

2.8 Before the board issues securities that are convertible into shares or any option to acquire shares the board must [§§49(1)]:

- 2.8.1 decide the consideration for which the convertible securities or options and, in either case, the shares will be issued and the terms on which they will be issued; and
- 2.8.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

- 2.8.3 resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- 2.8.4 if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.
- 2.9 The board must deliver notice of subsequent share issues to the Registrar of Companies within 10 working days of such issue. Directors who vote in favour of the resolutions required by subclauses 2.6, 2.7 or 2.8 must sign a certificate as to the matters set out in those clauses and deliver the same to the Registrar of Companies within 10 working days after it is given, as required by the Act [§§43, 47(5) & 49(3)].
- Pre-emptive Rights - New Issues**
- 2.10 Any shares, securities that are convertible into shares or options to acquire shares proposed to be issued by the company, must be offered for acquisition (in priority) as follows:
- 2.10.1 first, to the holders of the same class of share (which, in the case of a security that is convertible into a share or an option to acquire any share, shall be the class of share to which the security or option relates); and
- 2.10.2 secondly, to the holders of other classes of share (if any); and
- 2.10.3 thirdly, to any person or persons whom the board is prepared to register as a holder or holders of those shares, securities or options.
- 2.11 An offer to holders of shares already issued must be pro rata according to the number of shares held by them of the relevant class or classes and must remain open for acceptance for a reasonable time, not being less than 10 working days.
- 2.12 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 2.13 Except as provided in subclauses 2.10 to 2.13 and the Act, the procedure for the offer, acceptance and issue of shares shall be determined by the board. No irregularity in such process shall affect the validity of the allocation and issue of shares.
- 2.14 A shareholder may waive its rights under subclauses 2.10 to 2.12 on written notice to the company.
- Consolidation and Subdivision of Shares**
- 2.15 The board may consolidate, divide or subdivide the shares or any class of shares in the company into a lesser or greater number of shares.
- 2.16 Subclauses 2.6 to 2.8 shall not apply to the consolidation, division or subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class [§48].
- 3 ALTERATION OF SHAREHOLDER RIGHTS**
- 3.1 The company may not take action that affects rights attached to shares unless that action has been approved by a special resolution of each interest group of shareholders (being a resolution approved by 75% of the votes of those shareholders entitled to vote and voting on that resolution), including the following rights [§117]:
- 3.1.1 the rights, privileges, limitations and conditions attached to the share by the Act or this constitution, including voting rights and rights to distributions; and
- 3.1.2 pre-emptive rights arising under subclauses 2.10 to 2.14; and
- 3.1.3 the right to have the procedure set out in §117 of the Companies Act and any further procedure required by this constitution for the amendment or alteration of rights, observed by the company; and
- 3.1.4 the right to have that a procedure required by this constitution for the amendment or alteration of rights not amended or altered.
- 4 LIABILITY OF SHAREHOLDERS**
- Limited Liability**
- 4.1 The liability of a shareholder to the company is limited to any amount unpaid on a share held by the shareholder [§97].
- 4.2 An amount unpaid on a share may comprise all or part of the consideration payable in respect of the issue of the share, or any other liability imposed on its holder by its terms of issue.
- Calls**
- 4.3 The board may make calls on the holder of a share, for any amount unpaid on the share, and not by the terms of issue made payable on a fixed date.
- 4.4 An amount which, by the terms of issue of a share, is payable on allotment or at a fixed date is deemed for the purposes of this constitution to be a call duly made and payable on the date on which the amount is payable.
- 4.5 The board must give the shareholder not less than 10 working days notice of a call specifying the amount, date and place of payment. A call may be revoked or postponed as the board may determine.
- 4.6 The joint holders of a share shall be jointly and severally liable to pay all calls.
- 4.7 Amounts unpaid on a share shall bear interest from the due date for payment to the date of actual payment at a rate to be determined by the board but not exceeding 4% per annum above the company's bank's prime overdraft rate; but the board shall be at liberty to waive payment of that interest wholly or in part.
- 4.8 In any proceedings for recovery of a call:
- 4.8.1 it is sufficient to prove that:
- 4.8.1.1 the name of the relevant shareholder is entered in the share register as the holder, or one of the holders, of the shares to which the call relates; and
- 4.8.1.2 except in relation to any amount which, by the terms of issue of a share, is payable on allotment or at a fixed date, the resolution making the call is entered in the records and notice of the call has been duly given.
- 4.8.2 Proof of the matters mentioned in subclause 4.8.1 is conclusive evidence of the debt and it is not necessary to prove the appointment or qualification of any member of the board which made the call nor any other matter.
- 4.9 The company may receive from any shareholder in advance any amount uncalled and unpaid upon any shares held by that shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the board and the shareholder agree.
- Application of Distributions**
- 4.10 Any dividend or distribution due to the holder of a share may be applied in reduction or satisfaction of any amount unpaid on that share or any other amount presently payable by the shareholder to the company.
- 5 LIEN ON SHARES**
- Existence and Subject Matter of Lien**

- 5.1 The company shall have a first and continuing lien on its shares for:
- 5.1.1 amounts unpaid (whether presently payable or not) on those shares; or
- 5.1.2 other amounts presently payable by the then holder of those shares to the company on any account whatsoever.
- 5.2 The lien shall extend to all dividends and distributions from time to time declared in respect of those shares and all proceeds of sale of those shares.
- Power of Sale**
- 5.3 The company shall have power to sell, in a manner determined by the board, any share on which the company has a lien if:
- 5.3.1 an amount is presently payable to the company on that share or by the holder of that share; and
- 5.3.2 the company has demanded the amount in writing, and payment has not been made within 20 working days after the demand.
- Transfer of Shares**
- 5.4 To give effect to the power of sale, the company may:
- 5.4.1 receive the proceeds of sale; and
- 5.4.2 execute a share transfer in favour of the purchaser; and
- 5.4.3 enter the purchaser's name in the share register.
- 5.5 Any shares offered for sale in accordance with this clause 5 must be first offered by the board to existing shareholders in priority as set out in subclause 8.4.
- Proceeds of Sale**
- 5.6 The proceeds of sale must be applied first, in payment of costs and expenses incurred in enforcing the lien; and second in payment of the amount secured by the lien.
- 5.7 The balance, if any, shall be paid to the former shareholder provided however, if any consideration is payable at a future date in respect of the issue of the share over which the lien existed, the balance may be held in suspense by the company to the extent of any such consideration (without any obligation to account for interest), and applied in payment when such consideration is due.
- 5.8 The purchaser need not see to the application of the sale proceeds, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the enforcement of the lien.
- Forfeiture of Shares**
- 5.9 If a shareholder fails to pay any call on the due date, the company may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the company by reason of such non-payment.
- 5.10 The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call is due is liable to be forfeited.
- 5.11 If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any share in respect of which the notice has been given may be forfeited by a resolution of the board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited share and not paid before the forfeiture.
- 5.12 When a share has been forfeited, the company shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture, and shall enter in the share register details of the forfeiture.
- 5.13 A forfeiture may be cancelled at any time before the forfeiture comes into effect, on such terms as the board thinks fit.
- 5.14 The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share, but remains liable to the company for all money payable in respect of the forfeited share.
- 6 SHARE REGISTER**
- Company to Maintain Share Register**
- 6.1 The company must maintain a share register that records the shares issued by the company [§87(1)].
- 6.2 The share register must state, with respect to each class of shares [§87(2)] the following details for the last decade of:
- 6.2.1 the names, alphabetically arranged, and the latest known address of each person who is a shareholder; and
- 6.2.2 the number of shares of that class held by each shareholder; and
- 6.2.3 the date of any:
- 6.2.3.1 issue of shares to; or
- 6.2.3.2 repurchase or redemption of shares from; or
- 6.2.3.3 transfer of shares by or to,
- each shareholder and the name of the person to or from whom the shares were transferred.
- 6.3 An agent may maintain the share register of the company [§87(3)].
- Share Register as Evidence of Legal Title**
- 6.4 The entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person [§89].
- 6.5 The company may treat the registered holder of a share as the only person entitled to [§89(2)]:
- 6.5.1 exercise the right to vote attaching to the share; and
- 6.5.2 receive notices; and
- 6.5.3 receive a distribution in respect of the share; and
- 6.5.4 exercise the other rights and powers attaching to the share.
- Trusts not to be Entered on Register**
- 6.6 No notice of a trust, whether express, implied, or constructive, may be entered on the share register [§92].
- Personal Representative may be Registered**
- 6.7 A personal representative of a deceased person whose name is registered in the share register of the company as the holder of a share in the company is entitled to be registered as the holder of that share as personal representative [§93].
- 6.8 The registration of a trustee, executor, or administrator pursuant to this clause does not constitute notice of a trust.
- 7 TRANSFER OF SHARES**
- Entry on the Register**
- 7.1 A share may be transferred by entry of the name of the transferee on the share register [§84].

**Form of Transfer**

- 7.2 For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by its personal representative must be delivered to:
- 7.2.1 the company; or
- 7.2.2 an agent of the company who maintains the share register.
- 7.3 The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.
- 7.4 A transfer shall be an instrument in writing:
- 7.4.1 in any form required by an Act; or
- 7.4.2 otherwise in any form required or approved by the Board.
- 7.5 On receipt of a form of transfer, the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless [§84(4)]:
- 7.5.1 the board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
- 7.5.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
- 7.5.3 the board is permitted by subclause 7.6 to refuse or delay registration.

**Rights to Refuse Transfer**

- 7.6 The board may refuse to register the transfer of any share if [§84(4)(c)]:
- 7.6.1 the company has a lien on the share; or
- 7.6.2 the share is not fully paid; or
- 7.6.3 the holder of the share has failed to comply with the terms of any contract with the company; or
- 7.6.4 the rights of pre-emption contained in clause 8 have not been exhausted; or
- 7.6.5 the board considers that it would not be in the interests of the company to do so; or
- 7.6.6 the board believes effecting the transfer would be a breach of the law.

**Where Share Certificate Issued**

- 7.7 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board [§95(5)].

**8 PRE-EMPTIVE RIGHTS - SHARE TRANSFERS****Transfer Notice**

- 8.1 A shareholder intending to transfer any shares must give a transfer notice in writing to the company. The transfer notice shall state the number, class and asking price of the shares to be offered for sale.
- 8.2 The board shall be the agent of the transferor (to the exclusion of the transferor) for the sale of the shares specified in a transfer notice. A transfer notice may not be withdrawn except with the sanction of the board or as provided in this clause 8.
- 8.3 The transferor shall be under no obligation to sell or transfer part only of the shares specified in a transfer notice.

**Offer and Allocation of Shares**

- 8.4 The shares specified in a transfer notice must be offered for sale by the board in priority as follows:
- 8.4.1 first, to the holders of the same class of share (other than the transferor); and
- 8.4.2 secondly, to the holders of other classes of share (if any); and
- 8.4.3 thirdly, to any other person or persons whom the board is prepared to register as a holder or holders of that class of share.
- 8.5 An offer to holders of shares already issued must:
- 8.5.1 be in writing; and
- 8.5.2 be pro rata according to the number of shares held by them; and
- 8.5.3 remain open for acceptance for a reasonable time as determined by the board, not being less than 10 working days; and
- 8.5.4 state the number and class of share on offer, the transferor's asking price and the time period for acceptance.
- 8.6 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class (or classes, if subclause 8.4.2 applies and there is more than one other class of share) do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 8.7 An acceptance by holders of shares already issued:
- 8.7.1 must be in writing; and
- 8.7.2 may relate to all or only part of the shares offered for sale; and
- 8.7.3 may state the number of additional shares to be purchased from declined offers (if any); and
- 8.7.4 may be made conditional on a fair value for the shares being determined.
- 8.8 Offers for the sale of shares which have not been accepted in the time and manner set out in the preceding clauses shall be deemed to have been declined.
- 8.9 On expiry of the time period for acceptance of all offers, the board shall allocate the shares offered for sale according to acceptances received (including the allocation of additional shares from declined offers). The board shall give notice in writing of the share allocation to all persons who have been allocated shares aforesaid, within 10 working days from the expiry of the time for acceptance of all offers.
- 8.10 Except as provided in this clause 8, the procedure for the offer, acceptance and allocation of shares shall be determined by the board. No irregularity in such process shall affect the validity of the allocation and sale of shares.

**Determination of "Fair Value"**

- 8.11 If any acceptance is conditional on a fair value for the shares being determined, such fair value shall be determined by a single arbitrator, appointed by agreement between the transferor and the relevant transferee (or transferees, if more than one transferee has made an acceptance conditional on fair value being determined) or, if they fail to agree, by the current President of the Chartered Accountants Australia and New Zealand ("CA ANZ") (or any replacement organisation) on the application of the transferor or a relevant transferee.

8.12 The arbitration shall be conducted under the provisions of the Arbitration Act 1996. The provisions of the Second Schedule of the Arbitration Act 1996 shall apply to the arbitration only to the extent that the parties expressly agree. One half of the costs of the arbitration shall be borne by the transferor and the other half by the transferee (equally between or among them, if more than one transferee has made an acceptance conditional on fair value being determined), unless the arbitrator determines otherwise. The company shall promptly give a copy of the arbitration award to the transferor and the relevant transferee once the costs of the arbitration have been paid in full.

8.13 Except with the consent of the transferor, there shall be no determination of fair value until all shares offered for sale in a transfer notice have been accepted (either unconditionally or subject only to the determination of fair value) and allocated by the board.

8.14 The transferor shall not be bound to enter into more than one arbitration for the determination of fair value and every offeree who has conditionally accepted an offer to sell shares subject to determination of fair value shall be deemed a party thereto.

#### **Transferor's Right to Withdraw**

8.15 The transferor may withdraw the transfer notice in respect of all or any shares offered for sale if any share remains unallocated 3 months after issue of the transfer notice.

#### **Settlement**

8.16 The sale of the shares which are the subject of the transfer notice shall be settled on the later of the following dates:

8.16.1 If all of the shares offered for sale have been unconditionally accepted, 20 working days after the date of the notice of allocation of shares referred to in subclause 8.9; or

8.16.2 If any of the shares offered for sale have been accepted subject to determination of fair value, 20 working days after determination of such fair value.

8.17 The sale price shall be:

8.17.1 For offerees who have unconditionally accepted the offer for sale, the transferor's asking price; or

8.17.2 For offerees who have accepted the offer for sale subject to determination of fair value, the fair value so determined.

8.18 At settlement, the offerees who have been allocated shares for sale shall be bound to pay the sale price and the transferor shall be bound to transfer the allocated share or shares to such persons.

8.19 Nothing herein shall prevent the transferor from settling the sale of shares with one or more offerees who have been allocated shares, before the settlement date provided above. If the transferor so elects, the right to withdraw the transfer notice shall be deemed waived as to those shares.

#### **Company May Effect Transfer**

8.20 If a shareholder fails to give a transfer notice in accordance with this clause 8, the board may give a transfer notice on behalf of that shareholder, which may not be withdrawn except with the consent of the board. In such circumstances, the asking price shall be the fair value of the shares to be determined in accordance with this clause 8.

8.21 If the transferor, after becoming bound in accordance with this clause 8 does not transfer the shares on the settlement date, then the company may receive the sale price and cause the name of the offeree to be entered in the share register as the holders of the shares and shall hold the sale price in trust for the transferor (subject to any lien in favour of the company).

8.22 The board's receipt will be a good discharge to the offerees for the sale price and after the shares are registered in the names of the offerees, the validity of the proceedings may not be questioned by any person.

#### **Sale to Third Parties**

8.23 To the extent that a transfer notice has not been withdrawn, any shares which remain unallocated 3 months after the board has received a transfer notice may be sold by the transferor (at any time within the following 6 months) to any person at a price which is not lower than the asking price specified in the transfer notice.

#### **Pre-emptive Rights Not to Apply**

8.24 This clause 8 shall not apply to the transfer of shares:

8.24.1 to a parent, spouse, child, adopted child, stepchild, or grandchild of a shareholder, or to a spouse of such persons; or

8.24.2 to a trustee or trustees of a trust which is, in the opinion of the board, exclusively or principally for the benefit of one or more of the persons referred to in subclause 8.24.1; or to the subsequent transfer of such shares to one or more beneficiaries of the trust, being a person or persons in one of the relationships referred to in subclause 8.24.1, with the former shareholder; or

8.24.3 to a company which is, in the opinion of the board, exclusively or principally owned and effectively controlled by one or more of the persons referred to in subclause 8.24.1; or

8.24.4 to the personal representative of a deceased shareholder; or to a beneficiary of such deceased shareholder's estate; or

8.24.5 if all shareholders have agreed or concur in writing.

#### **Company Shareholders**

8.25 A transfer notice must be given by a company shareholder in respect of its shares in the company if, in the opinion of the board, ownership or effective control of the company shareholder is to be or has been transferred otherwise than to the persons or as referred to in subclause 8.24.

## **PART II - DISTRIBUTIONS**

### **9 DISTRIBUTIONS TO SHAREHOLDERS**

#### **Board May Authorise Distributions if Company is Solvent**

9.1 The board may, if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and subject to any restrictions in this constitution, authorise a distribution by the company at a time and of an amount and to any shareholders it thinks fit [§52].

9.2 A distribution may be any one or more of the following:

9.2.1 the payment of a dividend; and

9.2.2 the issue of shares in lieu of a proposed dividend; and

9.2.3 the offer of shareholder discounts in respect of some or all of the goods and services provided by the company; and

9.2.4 the cancellation or reduction of a shareholder's liability in relation to a share to be acquired or redeemed by the company, or as a result of a proposed alteration to this constitution; and

9.2.5 the purchase or acquisition by the company of its own shares; and

9.2.6 the redemption by the company of its shares; and

9.2.7 the giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.

<b>Directors' Certificate</b>		10.1.2.1	all shareholders have consented in writing; or
9.3	The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion [§52(2)].	10.1.2.2	the offer is special and the resolutions and disclosure document referred to in subclauses 10.3 and 10.4 have been passed and given respectively [§60(1)(b)].
9.4	The board must not make a distribution if, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test [§52(3)].	<b>Resolutions Required for Offers</b>	
<b>Dividends</b>		10.2	The board may make an offer to acquire shares issued by the company only if it has previously resolved that [§52 & §60(3)]:
9.5	A dividend is a distribution other than the purchase or acquisition by the company of its own shares, or the giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company [§53(1)].	10.2.1	it is satisfied on reasonable grounds that immediately after the purchase or acquisition, the company will satisfy the solvency test; and
9.6	The board must not authorise a dividend [§53(2)]:	10.2.2	the acquisition in question is in the best interests of the company; and
9.6.1	in respect of some but not all the shares in a class; or	10.2.3	the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; and
9.6.2	that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class,	10.2.4	it is not aware of any information that will not be disclosed to shareholders:
	unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2007.	10.2.4.1	which is material to an assessment of the value of the shares; and
9.7	A shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder [§53(3)].	10.2.4.2	as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.
<b>Bonus Shares in lieu of Dividend</b>		<b>Further Resolutions Required for Special Offers</b>	
9.8	The board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if [§54]:	10.3	Where the board makes a special offer to acquire shares to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve [§61(1)]:
9.8.1	the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms; and	10.3.1	that the acquisition is of benefit to the remaining shareholders; and
9.8.2	if all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and	10.3.2	that the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.
9.8.3	the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and	<b>Disclosure Document for Special Offers</b>	
9.8.4	the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agreed to receive the shares; and	10.4	Before an offer is made pursuant to a resolution under subclause 10.3, the company must send to each shareholder a disclosure document that sets out [§61(5)]:
9.8.5	the consideration for the shares has been determined in accordance with this constitution and [§47].	10.4.1	the nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and
<b>10 COMPANY MAY ACQUIRE ITS OWN SHARES</b>		10.4.2	the nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and
<b>Right to Acquire</b>		10.4.3	the text of the resolutions required by subclause 10.3, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.
10.1	The company may purchase or otherwise acquire its own shares if the board makes an offer to acquire such shares and [§59]:	10.5	The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder [§61(6)].
10.1.1	the offer is to all shareholders to acquire a proportion of their shares that:	<b>Resolutions and Certificate</b>	
10.1.1.1	would, if accepted, leave unaffected relative voting and distribution rights within each class, and	10.6	The resolutions referred to in this clause 10 must set out in full the reasons for the directors' conclusions [§60(4) & 61(2)].
10.1.1.2	affords a reasonable opportunity to accept the offer [§60(1)(a)]; or	10.7	The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§52, §60(5) & 61(3)].
10.1.2	the offer is to one or more shareholders, and:		



- 10.8 The board must not make an offer to acquire shares issued by the company if, after the passing of the resolutions and before the making of the offer the board ceases to be satisfied as to the matters resolved [§§60(6) & 61(4)].
- 11 COMPANY MAY HOLD TREASURY STOCK**
- 11.1 Shares issued by the company which are purchased or acquired by it shall be deemed cancelled immediately on acquisition unless [§67A]:
- 11.1.1 the board resolves that the shares concerned shall be retained as treasury stock; and
- 11.1.2 the number of shares acquired, when aggregated with shares of the same class held by the company at the time of acquisition, does not exceed 5% of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled.
- 11.2 The rights and obligations attaching to any treasury stock owned by the company shall be suspended during any such period of ownership [§67B].
- 11.3 Transfer of treasury stock held by the company is deemed to be an issue of new shares and the provisions of subclauses 2.10 to 2.14 will apply accordingly.
- 12 COMPANY REDEMPTION OF SHARES**
- Right to Issue Redeemable Shares**
- 12.1 The company may issue shares which are redeemable [§68]:
- 12.1.1 at the option of the company; or
- 12.1.2 at the option of the holder of the shares; or
- 12.1.3 on a date specified by their terms of issue, for a consideration that is:
- 12.1.4 specified; or
- 12.1.5 to be calculated by reference to a formula; or
- 12.1.6 required to be fixed by a suitably qualified person who is not associated with or interested in the company.
- Redemption at Option of Company**
- 12.2 Shares may be redeemed at the option of the company only if [§§69(1)]:
- 12.2.1 the option is exercised in relation to all shareholders of the same class and in a manner that will leave unaffected relative voting and distribution rights; or
- 12.2.2 the option is exercised in relation to one or more shareholders, and:
- 12.2.2.1 all shareholders have consented in writing; or
- 12.2.2.2 the redemption is special and the resolutions and disclosure document referred to in subclauses 12.4 and 12.5 have been passed and given respectively.
- Resolutions Required for Redemptions at Option of Company**
- 12.3 The company may exercise an option to redeem shares only if the board has previously resolved that [§§69(2) & 70]:
- 12.3.1 it is satisfied on reasonable grounds that immediately after the shares have been redeemed, the company will satisfy the solvency test; and
- 12.3.2 the redemption of the shares is in the best interests of the company; and
- 12.3.3 the consideration for the redemption of the shares is fair and reasonable to the company.
- Further Resolutions Required for Special Redemptions**
- 12.4 Where the company exercises a special option to redeem shares in relation to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve [§§71(1)]:
- 12.4.1 that the redemption is of benefit to the remaining shareholders; and
- 12.4.2 that the consideration for the redemption is fair and reasonable to the remaining shareholders.
- Disclosure Document for Special Redemptions**
- 12.5 Before the exercise of an option to redeem shares pursuant to a resolution under subclause 12.4, the company must send to each shareholder a disclosure document that sets out [§§71(5) & 72]:
- 12.5.1 the nature and terms of the redemption of the shares, and if the option to redeem the shares is to be exercised in relation to specified shareholders, the names of those shareholders; and
- 12.5.2 the text of the resolutions required by subclause 12.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed redemption.
- 12.6 The option must be exercised not less than 10 and not more than 30 working days after the disclosure document has been sent to each shareholder [§§71(6)].
- Resolutions and Certificate**
- 12.7 The resolutions referred to in this clause 12 must set out in full the reasons for the directors' conclusions [§§69(3) & 71(2)].
- 12.8 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§69(4), 70(2) & 71(3)].
- 12.9 The company must not exercise an option to redeem shares if, after the passing of the resolutions and before the option is exercised, the board ceases to be satisfied as to the matters resolved [§§69(5); 70(3) & 71(4)].
- 13 FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES**
- Right to Give Financial Assistance**
- 13.1 The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly if [§76]:
- 13.1.1 all shareholders have consented in writing; or
- 13.1.2 the financial assistance is special and the resolutions and disclosure document referred to in subclauses 13.4 and 13.5 have been passed and given respectively; or
- 13.1.3 the financial assistance is limited and is given in accordance with subclause 13.7.
- 13.2 For the purposes of this clause, "financial assistance" includes a loan, a guarantee, and the provision of a security.
- Resolutions Required for Financial Assistance**
- 13.3 The company may give financial assistance to purchase shares issued by the company only if the board has previously resolved that [§§76(2) & 77(1)]:
- 13.3.1 it is satisfied on reasonable grounds that the company will, immediately after the giving of financial assistance, satisfy the solvency test; and
- 13.3.2 the company should provide the assistance; and

13.3.3 giving the assistance is in the best interests of the company; and

13.3.4 the terms and conditions under which the assistance is given are fair and reasonable to the company.

**Further Resolutions Required for Special Financial Assistance**

13.4 Where the company gives special financial assistance of the nature contemplated by s78 of the Companies Act without the consent in writing of all shareholders or in accordance with subclause 13.7, then the board must also resolve [§78]:

13.4.1 that giving the assistance in question is of benefit to those shareholders not receiving the assistance; and

13.4.2 that the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.

**Disclosure Document for Special Financial Assistance**

13.5 Before financial assistance is given pursuant to a resolution under subclause 13.4, the company must send to each shareholder a disclosure document that sets out [§§78(5) & 79]:

13.5.1 the nature and terms of the financial assistance to be given, and to whom it will be given; and

13.5.2 if the financial assistance is to be given to a nominee for another person, the name of that other person; and

13.5.3 the text of the resolutions required by subclause 13.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.

13.6 The financial assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder [§§78(6)].

**Limited Financial Assistance**

13.7 Where the financial assistance is given without the consent in writing of all shareholders or is not of benefit to and fair and reasonable to those shareholders not receiving the assistance, the company may give financial assistance only if [§80]:

13.7.1 the amount of the financial assistance, together with any other financial assistance given by the company pursuant to this subclause 13.7, repayment of which remains outstanding, would not exceed 5% of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with the Financial Reporting Act 2013; and

13.7.2 the company receives fair value in connection with the assistance; and

13.7.3 within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:

13.7.3.1 the class and number of shares in respect of which the financial assistance has been provided; and

13.7.3.2 the consideration paid or payable for the shares in respect of which the financial assistance has been provided; and

13.7.3.3 the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner; and

13.7.3.4 the nature and, if quantifiable, the amount of the financial assistance.

**Resolutions and Certificate**

13.8 The resolutions referred to in this clause 13 must set out in full the reasons for the directors' conclusions [§§76(3) & 78(2)].

13.9 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§76(4), 77(2) & 78(3)].

13.10 The company must not give financial assistance if, after the passing of the resolutions and before the assistance is given, the board ceases to be satisfied as to the matters resolved [§§76(5), 77(3) & 78(4)].

## PART III - SHAREHOLDERS

### 14 POWERS OF SHAREHOLDERS

**Powers Reserved to Shareholders**

14.1 Powers reserved to the shareholders by the Companies Act or this constitution may be exercised only [§104]:

14.1.1 at an annual or special meeting of shareholders; or

14.1.2 by a resolution in lieu of a meeting.

**Ordinary Resolutions**

14.2 An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question [§105].

14.3 Unless otherwise specified in the Companies Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

**Special Resolutions**

14.4 A special resolution is a resolution approved by a majority of 75% of the votes of those shareholders entitled to vote and voting on the question [§2].

14.5 The shareholders must exercise the following powers by special resolution, namely to:

14.5.1 adopt a constitution, or alter or revoke the constitution [§32 & 106]; or

14.5.2 approve a major transaction [§106]; or

14.5.3 approve an amalgamation of the company [§106]; or

14.5.4 put the company into liquidation [§106]; or

14.5.5 appoint a liquidator [§241]; or

14.5.6 remove the company from the register [§318]; or

14.5.7 transfer the place of incorporation [§351].

**Unanimous Shareholder Agreement**

14.6 With the unanimous agreement of all shareholders the following actions may be undertaken (references are to sections of the Companies Act):

14.6.1 a dividend may be authorised otherwise than in accordance with §53; and

14.6.2 a discount scheme may be approved otherwise than in accordance with §55; and

14.6.3 shares in the company may be acquired otherwise than in accordance with §59 to §65; and

14.6.4 shares in the company may be redeemed otherwise than in accordance with §69 to §72; and

14.6.5 financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with §76 to §80; and

- 14.6.6 the provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with §161(1); and
- 14.6.7 shares may be issued otherwise than in accordance with §42, 44 or 45; and
- 14.6.8 on the company entering into a transaction in which a director is interested, nothing in §140 and §141 shall apply to that transaction.
- 14.7 A power referred to in subclause 14.6.1 to 14.6.6 must not be exercised unless the board is satisfied on reasonable grounds that the company will, immediately after the exercise, satisfy the solvency test [§§108(1)].
- 14.8 The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, immediately after the exercise of the power, satisfy the solvency test [§§108(2)].
- 14.9 If, after a resolution is passed under subclause 14.7 and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised [§§108(3)].

#### Management Review by Shareholders

- 14.10 The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management [§§109(1)].
- 14.11 A meeting of shareholders may pass a resolution relating to the management of the company but this shall not be binding on the board [§§109(2) & 109(3)].
- 14.12 The provisions of clause 16 govern proceedings at meetings of shareholders at which a resolution under subclause 14.11 is passed [§§109(2A)].

### 15 MEETINGS AND RESOLUTIONS

#### Annual Meeting of Shareholders

- 15 The board of a company must call an annual meeting of shareholders to be held [§120]:
- 15.1.1 either:
- 15.1.1.1 in the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company; or
- 15.1.1.2 in any other case, not later than 6 months after the balance date of the company; and
- 15.1.2 not later than 15 months after the previous annual meeting; and
- 15.1.3 at such time and place as the board may appoint.
- 15.2 The company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- 15.3 The company must hold the meeting on the date on which it is called to be held.
- Special Meetings of the Shareholders**
- 15.4 A special meeting of shareholders entitled to vote on an issue [§121]:
- 15.4.1 may be called at any time by the board; and

- 15.4.2 must be called by the board on the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

#### Resolution in Lieu of Meeting

- 15.5 Except as required by in s122(3)(a), 207I and 207J of the Companies Act a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.
- 15.6 The company need not hold an annual meeting of shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in lieu of a meeting in accordance with subclause 15.5 [§§122(4)].
- 15.7 Within 5 working days of a resolution in lieu of a meeting being passed, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed [§§122(5)].
- 15.8 A resolution in lieu of a meeting may be signed without any prior notice being given to shareholders [§§122(6)].
- 15.9 A resolution in writing in lieu of a meeting may consist of several documents (including letters, facsimiles electronic mail or other similar means of communication) in like form each signed or assented to by one or more shareholders [§§122(3A)].

### 16 PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

#### Chairperson

- 16.1 If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of the shareholders, he or she must chair the meeting.
- 16.2 If no chairperson of the board has been elected or if, at any meeting of shareholders, the chairperson of the board is not present within 15 minutes of the time appointed for the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.
- 16.3 The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting except the business which was left unfinished at the meeting which was adjourned.

#### Notice of Meetings

- 16.4 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.
- 16.5 The notice must state:
- 16.5.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 16.5.2 the text of any special resolution to be submitted to the meeting.
- 16.6 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 16.7 The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.
- 16.8 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

**Entitlement to Notice of Meetings**

- 16.9 The shareholders who are entitled to receive notice of a meeting of shareholders are [§§125(3)]:
- 16.9.1 if the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date; or
- 16.9.2 if the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 16.10 A date must not be fixed under the preceding clause that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

**Methods of Holding Meetings**

- 16.11 A meeting of shareholders may be held either:
- 16.11.1 by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 16.11.2 by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

**Quorum**

- 16.12 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 16.13 In the absence of any special quorum rights attaching to shares or any class of shares, a quorum for a meeting of shareholders is present if shareholders or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted at the meeting.
- 16.14 if a quorum is not present within 30 minutes after the time appointed for the meeting:
- 16.14.1 in the case of a meeting called by the board on the written request of shareholders under [§121(b)], the meeting is dissolved; and
- 16.14.2 in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

**Voting**

- 16.15 In the case of a meeting of shareholders assembled together, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- 16.15.1 voting by voice; or
- 16.15.2 voting by show of hands.
- 16.16 In the case of a meeting of shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 16.17 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded.
- 16.18 At a meeting of shareholders a poll may be demanded by:
- 16.18.1 not less than 5 shareholders having the right to vote at the meeting; or

16.18.2 a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or

16.18.3 a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right; or

16.18.4 The chairperson of the meeting.

16.19 A poll may be demanded either before or after the vote is taken on a resolution.

16.20 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

16.21 The chairperson of a shareholders' meeting is not entitled to a casting vote.

16.22 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

**Proxies**

16.23 A shareholder may exercise the right to vote either by being present in person or by proxy.

16.24 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

16.25 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

16.26 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

**Vote Before Notice of Revocation**

16.27 A vote given in accordance with the terms of a notice of appointment of proxy is valid notwithstanding:

16.27.1 the previous death or insanity of the shareholder; or

16.27.2 revocation of the notice or of the authority under which the notice was executed; or

16.27.3 transfer of the share in respect of which the notice is given,

if no notice in writing of the death, insanity, revocation, or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the notice is used, or presented at the meeting or adjourned meeting before the vote is given.

**Postal Votes**

16.28 A shareholder may not exercise the right to vote at a meeting by casting a postal vote unless the board determines prior to the meeting that the postal voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.

16.29 If the board determines that the postal voting procedure will be available for a meeting (but not otherwise), such postal votes shall be cast and counted in accordance with the following provisions:

16.29.1 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.

16.29.2 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

16.29.3 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholder's shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

16.29.4 It is the duty of a person authorised to receive and count postal votes at a meeting:

16.29.4.1 to collect together all postal votes received by it, or by the company; and

16.29.4.2 in relation to each resolution to be voted on at the meeting, to count:

16.29.4.2.1 the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

16.29.4.2.2 The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

16.29.4.3 to sign a certificate that it has carried out the duties set out in subclauses 16.29.4.1 and 16.29.4.2 and which sets out the results of the counts required by subclause 16.29.4.2; and

16.29.4.4 to ensure that the certificate required by subclause 16.29.4.3 is presented to the chairperson of the meeting.

16.29.5 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

16.29.5.1 on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; or

16.29.5.2 on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

16.29.6 The chairperson of a meeting must call for a poll on a resolution on which it holds sufficient postal votes that it believes that if a poll is taken the result may differ from that obtained on a show of hands.

16.29.7 The chairperson of a meeting must ensure that a certificate of postal votes held by it is annexed to the minutes of the meeting.

#### Minutes

16.30 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.

16.31 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

#### Shareholder Proposals

16.32 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.

16.33 If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

16.34 If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the

shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

16.35 If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

16.36 If the directors intend that the shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

16.37 The board is not required to include in or with the notice given by the board:

16.37.1 any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or

16.37.2 any part of a proposal or resolution by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

16.38 Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

#### Corporations May Act by Representatives

16.39 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

#### Votes of Joint Holders

16.40 Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

#### Loss of Voting Rights if Calls Unpaid

16.41 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

#### Other Proceedings

16.42 Except as provided in this constitution and the Companies Act, a meeting of shareholders may regulate its own procedure.

## PART IV - DIRECTORS

### 17 APPOINTMENT AND REMOVAL OF DIRECTORS

#### First Directors

17.1 A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with the Companies Act or this constitution [§§153(1)].

#### Subsequent Directors

17.2 Subsequent directors of the company must be appointed by ordinary resolution [§§153(2)].

17.3 Two or more directors may be appointed by a single resolution [§§155(1)].

- Consent Required**
- 17.4 A person must not be appointed a director of the company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the company [§152].
- Removal**
- 17.5 A director of the company may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director [§156(1)].
- 17.6 The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director [§156(2)].
- Vacation of Office**
- 17.7 The office of director of the company is vacated if the person holding that office [§157]:
- 17.7.1 resigns by signing a written notice of resignation and delivering it to the address for service of the company, such notice to be effective when it is received at that address or at such later time specified in the notice; or
- 17.7.2 is removed from office in accordance with subclauses 17.5 or 17.8.3; or
- 17.7.3 becomes disqualified from being a director pursuant to s151 of the Companies Act; or
- 17.7.4 dies.
- Class Directors**
- 17.8 If the holders of any class of share are entitled to exclusively appoint one or more of directors of the company, then notwithstanding subclauses 17.2 and 17.5:
- 17.8.1 a person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company who is intended to represent such holders shall be deemed to be a class director appointed by such holders; and
- 17.8.2 subsequent class directors may be appointed by ordinary resolution of those holders, provided that the number of class directors appointed by such holders and holding office at any time shall not exceed the number of directors which such holders are entitled to appoint; and
- 17.8.3 class directors appointed by such holders may only be removed from office by an ordinary resolution of those holders, passed at a meeting of those holders called for the purpose or for purposes that include the removal of the director.
- Additional Directors**
- 17.9 The directors may from time to time appoint any person to be an additional director, either to fill a casual vacancy or as an addition to the existing directors, who shall hold office only until the next annual meeting.
- Alternate Directors**
- 17.10 A director may from time to time appoint any person (except an existing director) to be his or her alternate director. An alternate director's appointment may be cancelled at any time by the director who made the appointment.
- 17.11 An alternate director may only attend meetings, vote and sign resolutions in the absence of the director who appointed him or her.
- 18 POWERS OF DIRECTORS**
- Management of Company**
- 18.1 The business and affairs of the company must be managed by, or under the direction or supervision of, the board [§128(1)].
- 18.2 The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company [§128(2)].
- 19 MANAGING DIRECTOR**
- Appointment**
- 19.1 The board may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as the board thinks fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.
- 19.2 The appointment of a managing director is automatically terminated if he or she ceases to be a director.
- Powers**
- 19.3 Subject to s130 of the Companies Act, the board may entrust to and confer on a managing director any of the powers exercisable by the board on such terms and conditions and with such restrictions as the board may think fit, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.
- 20 DUTIES OF DIRECTORS**
- Duty to Act in Good Faith and in Best Interests**
- 20.1 Subject to subclauses 20.2 to 20.4, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company [§131(1)].
- Subsidiary**
- 20.2 If the company is a wholly-owned subsidiary, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company [§131(2)].
- 20.3 If the company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which it believes is in the best interests of the company's holding company even though it may not be in the best interests of the company [§131(3)].
- Joint Venture**
- 20.4 If the company is carrying on a joint venture between its shareholders, a director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company [§131(4)].
- Exercise of Powers in Relation to Employees**
- 20.5 Nothing in subclause 20.1 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business [§132].
- Powers to be Exercised for Proper Purpose**
- 20.6 A director must exercise a power for a proper purpose [§133].
- Directors to Comply with Act and Constitution**
- 20.7 A director must not act, or agree to the company acting, in a manner that contravenes the Companies Act or this constitution [§134].

- Reckless Trading**
- 20.8 A director must not [§135]:
- 20.8.1 cause or allow or agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.
- Duty in Relation to Obligations**
- 20.9 A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so [§136].
- Director's Duty of Care**
- 20.10 A director when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation [§137]:
- 20.10.1 the nature of the company; and
- 20.10.2 the nature of the decision; and
- 20.10.3 the position of the director and the nature of the responsibilities undertaken by it.
- 21 RELIANCE ON INFORMATION AND ADVICE**
- 21.1 A director of the company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons [§138]:
- 21.1.1 an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; and
- 21.1.2 a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
- 21.1.3 any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- 21.2 Subclause 21.1 applies to a director only if the director:
- 21.2.1 acts in good faith; and
- 21.2.2 makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- 21.2.3 has no knowledge that such reliance is unwarranted.
- 22 SELF INTEREST TRANSACTIONS**
- Interests Register**
- 22.1 A director must, forthwith after becoming aware of the fact that it is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board the nature and extent of the directors interest and the monetary value of it if the monetary value of the directors interest is able to be quantified. [§§140(1)]:
- 22.2 A general notice entered in the interests register and, if the company has more than one director, disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or trustee for another named person or company and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction [§§140(2)].
- 22.3 A director of the company is not required to comply with subclause 22.1 if [§§140(1A)]:
- 22.3.1 the transaction or proposed transaction is between the director and the company; and
- 22.3.2 the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- 22.4 A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the company's annual report or otherwise) [§§141(1)].
- 22.5 A transaction cannot be avoided if the company receives fair value under it [§§141(2)].
- 22.6 Nothing in subclauses 22.1 to 22.5 applies in relation to an indemnity given, insurance provided, or remuneration or any other benefit given to a director in accordance with this constitution [§143].
- Interested Directors May Vote**
- 22.7 A director of the company who is interested in a transaction entered into, or to be entered into, by the company, may [§144]:
- 22.7.1 vote on a matter relating to the transaction; and
- 22.7.2 attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- 22.7.3 sign a document relating to the transaction on behalf of the company; and
- 22.7.4 do any other thing in his or her capacity as a director in relation to the transaction, as if the director were not interested in the transaction.
- 23 USE OF COMPANY INFORMATION**
- 23.1 A director of the company who has information in its capacity as a director or employee of the company, being information that would not otherwise be available to it, must not disclose that information to any person, or make use of or act on the information, except [§§145(1)]:
- 23.1.1 for the purposes of the company; or
- 23.1.2 as required by law; or
- 23.1.3 in accordance with subclauses 23.2 or 23.3; or
- 23.1.4 in complying with s140 of the Companies Act.
- Disclosure - Nominee Director to Appointor**
- 23.2 A director of the company may, unless prohibited by the board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register [§§145(2)].
- Disclosure and Use of Information Generally**
- 23.3 A director of the company may disclose, make use of, or act on the information if [§§145(3)]:
- 23.3.1 particulars of the disclosure, use, or the act in question are entered in the interests register; and
- 23.3.2 the director is first authorised to do so by the board; and
- 23.3.3 the disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

**24 SHARE DEALING BY DIRECTORS****Disclosure**

- 24.1 A director of the company who acquires or disposes of a relevant interest in shares issued by the company must forthwith after the acquisition or disposition [§§148(2)]:

- 24.1.1 disclose to the board:

24.1.1.1 the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be; and

24.1.1.2 the nature of the relevant interest; and

24.1.1.3 the consideration paid or received; and

24.1.1.4 the date of acquisition or disposition; and

- 24.1.2 ensure that particulars disclosed to the board under subclause 24.1 are entered in the interests register.

**Restrictions**

- 24.2 If a director of the company has information in its capacity as a director or employee of the company or a related company, being information that would not otherwise be available to it, but which is information material to an assessment of the value of shares or other securities issued by the company or a related company, the director may acquire or dispose of those shares or securities only if [§149]:

24.2.1 in the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or

24.2.2 in the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.

**25 PROCEEDINGS OF DIRECTORS****Chairperson**

- 25.1 The directors may elect one of their number as a chairperson of the board to hold office until they die or resign or until the directors elect a chairperson in its place.

- 25.2 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 10 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

**Notice of Meeting**

- 25.3 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with subclause 25.4.

- 25.4 Not less than 2 working days' notice of a meeting of the board must be sent to every director, whether or not it is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

- 25.5 An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

**Methods of Holding Meetings**

- 25.6 A meeting of the board may be held either:

25.6.1 by a number of the directors, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

25.6.2 by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

**Quorum**

- 25.7 No business may be transacted at a meeting of the board if a quorum is not present.

- 25.8 In the absence of any special quorum rights affecting class directors, a quorum for a meeting of the board is a majority of the directors.

**Voting**

- 25.9 In the absence of any special voting rights affecting class directors, every director has one vote.

- 25.10 The chairperson shall not have a casting vote.

- 25.11 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

- 25.12 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless it abstains from or votes against the resolution at the meeting.

**Minutes**

- 25.13 The board must ensure that minutes are kept of all proceedings of the board.

**Unanimous Resolution**

- 25.14 A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

- 25.15 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

- 25.16 A copy of any such resolution must be entered in the minute book of board proceedings.

**Other Proceedings**

- 25.17 Except as provided in this constitution and the Companies Act, the board may regulate its own procedure.

**26 REMUNERATION AND OTHER BENEFITS**

- 26.1 The board may authorise the following if the board is satisfied that to do so is fair to the company [§§161(1)]:

26.1.1 payment of remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity; and

26.1.2 payment by the company to a director or former director of compensation for loss of office; and

26.1.3 making of loans by the company to a director; and

26.1.4 giving of guarantees by the company for debts incurred by a director; and

26.1.5 entering into of a contract to do any of the things permitted by this subclause 26.1.

- 26.2 If a payment, benefit, loan, guarantee or contract is authorised under subclause 26.1:

26.2.1 the board must ensure that particulars thereof are forthwith entered in the interests register [§§161(2)]; and

26.2.2 directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the company, and the grounds for that opinion [§§161(4)].



**27 INDEMNITY, AND INSURANCE****Company may Indemnify a Director or Employee**

- 27.1 The company may indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding [§§162(3)]:

- 27.1.1 that relates to liability for any act or omission in its capacity as a director or employee; and
- 27.1.2 in which judgment is given in its favour, or in which it is acquitted, or which is discontinued.

- 27.2 The company may indemnify a director or employee of the company or a related company in respect of [§§162(4)]:

- 27.2.1 liability to any person other than the company or a related company for any act or omission in its capacity as a director or employee; or
- 27.2.2 costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,

not being a breach of duty of the nature contemplated by s138A of the Companies Act, or otherwise any criminal liability in respect of a breach in the case of a director, of the duty specified in s131 of the Companies Act or, in the case of an employee, of any fiduciary duty owed to the company or a related company.

**28 INSURANCE FOR A DIRECTOR OR EMPLOYEE**

- 28.1 The company may, with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of [§§162(5)]:

- 28.1.1 liability, not being criminal liability, for any act or omission in its capacity as a director or employee; or
- 28.1.2 costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- 28.1.3 costs incurred by that director or employee in defending any criminal proceedings:
- 28.1.3.1 that have been brought against the director or employee in relation to any act or omission in its capacity as a director or employee; and
- 28.1.3.2 in which it is acquitted.

- 28.1.4 The directors who vote in favour of authorising insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company [§§162(6)].

- 28.1.5 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or a related company, are entered in the interests register [§§162(7)].

**PART V - OTHER PROVISIONS****29 AMENDMENT OF CONSTITUTION**

- 29.1 The shareholders of the company may, by special resolution, alter or revoke this constitution [§32].

**30 METHOD OF CONTRACTING**

- 30.1 A contract or other enforceable obligation may be entered into by the company as follows [§180]:

- 30.1.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:

- 30.1.1.1 two or more directors of the company; or
- 30.1.1.2 if there is only one director, by that director whose signature must be witnessed; or
- 30.1.1.3 a director, and another person or persons authorised to do so by the board whose signature or signatures must be witnessed; or
- 30.1.1.4 one or more attorneys appointed by the company in accordance with s181 of the Companies Act.

- 30.1.2 An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority.

- 30.1.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.

**31 COMPANY RECORDS**

- 31.1 The company must keep the following documents at its registered office [§189]:

- 31.1.1 this constitution; and
- 31.1.2 minutes of all meetings and resolutions of shareholders within the last 7 years; and
- 31.1.3 an interests register; and
- 31.1.4 minutes of all meetings and resolutions of directors and directors' committees within the last 7 years; and
- 31.1.5 certificates given by directors under the Companies Act within the last 7 years; and
- 31.1.6 the full names and addresses of the current directors; and
- 31.1.7 copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports; and
- 31.1.8 copies of all financial statements and group financial statements required to be completed by the Companies Act or the Financial Reporting Act 2013 for the last 7 completed accounting periods of the company; and
- 31.1.9 the accounting records required by s194 for the current accounting period and for the last 7 completed accounting periods of the company; and
- 31.1.10 the share register.

**32 ACCOUNTS**

- 32.1 The board of the company must cause accounting records to be kept that [§194]:

- 32.1.1 correctly record and explain the transactions of the company; and
- 32.1.2 will at any time enable the financial position of the company to be determined with reasonable accuracy; and

- 32.1.3 will enable the directors to ensure that financial statements are prepared for the Company (and if required by the Act group financial statements) that meet the requirements of Part 11 of the Act. (Refer clause 33 and s200, s201, s202); and
- 32.1.4 will enable financial statements (and any group financial statements) to be audited if that is required by the Act. (Refer clause 34 and s206, s207).
- 33 FINANCIAL STATEMENTS**
- 33.1 The Board must ensure that, if under Part 11 of the Act the Company is required to do so, financial statements (and if required group financial statements) are:
- 33.1.1 prepared within 5 months after the Company's balance date, for that balance date,
- 33.1.2 prepared in accordance with required accounting standards,
- 33.1.3 presented to the Registrar of Companies within 5 months after the Company's balance date (s207D, 207E), and/or
- 33.1.4 provided to any shareholder if requested to do so in accordance with s207F of the Act
- 33.2 Additionally the Board will ensure the Company's financial statements and reporting meet any other statutory obligation applying. (Consider Financial Reporting Act 2013, Part7 Financial Markets Conduct Act 2013).
- 34 AUDITOR**
- 34.1 The Board must, if in accordance with sections 206 and 207 of the Act the Company is required to do so, ensure that its financial statements or any group financial statements audited by a qualified auditor.
- 34.2 The auditor will be required to conduct the audit in compliance with applicable auditing and assurance standards, and must provide a report to the shareholders on the financial statements or group financial statements audited.
- 35 NOTICES**
- 35.1 Notices, statements, reports, accounts, or other documents must be served in accordance with Part 22 of the Companies Act.
- 36 OTHER PROVISIONS**
- 36.1 Any other provisions set out in the Schedule shall form part of this constitution.



## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Trustee for Caccia Birch Trust Board

**PRESENTED BY:** Hannah White, Democracy & Governance Manager

**APPROVED BY:** Sheryl Bryant, Assistant Chief Executive

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### RECOMMENDATIONS TO COUNCIL

1. That the Council resolve to appoint one councillor onto the Caccia Birch Trust Board for a term ending 1 August 2022.
  2. That expressions of interests from councillors interested in being appointed to the Caccia Birch Trust Board be sought, and recommendations be brought to Council on 4 May 2022.
- 

#### 1. ISSUE

- 1.1 The Caccia Birch Trust Board has received a resignation from one of Council's appointed trustees. This vacancy leaves the Board with four trustees. Caccia Birch's Trust Deed requires a minimum of five Council-appointed trustees on the Trust Board.

#### 2. BACKGROUND

- 2.1 On 2 June 2021, the Council resolved to bring the delivery of Caccia Birch House and Gardens in-house by July 2022.
- 2.2 On 1 September 2021, the Council appointed two councillors to positions on the Trust Board to replace the two Council appointed community trustees who had notified Council of their intention to retire at the Board's November 2021 Annual General Meeting.
- 2.3 Council's Policy states that all vacancies will be advertised unless there are exceptional circumstances as accepted by Council.
- 2.4 Officers accept that exceptional circumstances currently exist with the Caccia Birch Trust Board. With the move to in-house delivery and imminent changes to the Trust, officers recommend that a short transition position may be best held by a councillor.

### 3. APPOINTMENT OPTIONS

- 3.1 Caccia Birch's Trust Deed states that the Board must operate with a minimum of 5 members and a maximum of 7. Usually Council appoints 5 members and the Board can co-opt two trustees (appointed annually at the AGM).
- 3.2 Council could choose to follow its Policy and advertise the positions however, if Council considers that exceptional circumstances exist, and that advertising the positions is not suitable, Council then has the following options:
  - Appoint a councillor onto the Trust Board
  - Leave the Trust Board to operate with four trustees

#### Councillors on the Trust Board

- 3.3 Appointing a councillor as a trustee would meet the requirements of the Trust Deed.
- 3.4 The Appointment of Directors and Trustees Policy states that elected members of the Council should not serve on the boards of Council Controlled Organisations (of which the Caccia Birch Trust Board remains at least until 1 July 2022) unless there is compelling reason to do so.
- 3.5 Officers consider that any potential conflict of interest that might arise from a councillor who is a trustee of a Council Controlled Organisation and the councillor's role in monitoring performance of the same organisation, would be minimal in the current circumstances.

#### Leave the Trust Board with four trustees

- 3.6 This option means the Trust will be operating outside of the requirements of its Trust Deed, but given the circumstances, it is a practical option.
- 3.7 The Trust Board managed the property with fewer than 5 Council-appointed trustees (outside of the Trust Deed) from 2018 to 2020.
- 3.8 Officers assess that leaving the Board with less than the number of members expected by its own deed will leave it open to challenge as it moves to consider its own future.

### 4. NEXT STEPS

- 4.1 If the Council resolved to appoint a councillor onto the Board, expressions of interest will be sought and reported back to the April Council meeting.
- 4.2 The Caccia Birch Trust Board will be informed of the Council's decision.

## 5. COMPLIANCE AND ADMINISTRATION

Does the Council have delegated authority to decide?	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 5: A Driven and Enabling Council	
The recommendations contribute to the outcomes of the Driven and Enabling Council Strategy	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	By carefully considering appointments, Council will ensure that there is effective oversight of the Council Organisations in which the Council has a financial or strategic interest. This will contribute to the desired outcome of an effective and responsible Council that excels in good governance.

## ATTACHMENTS

NIL



## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Review of Appointment of Directors & Trustees Policy

**PRESENTED BY:** Hannah White, Democracy & Governance Manager

**APPROVED BY:** Sheryl Bryant, Assistant Chief Executive

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### RECOMMENDATIONS TO COUNCIL

1. That Council adopt the Appointment of Directors and Trustees Policy 2022 (Attachment 1) to replace the Appointment of Directors and Trustees Policy 2018.
  2. That Council delegate authority to the Acting Chief Executive to make any minor amendments to the Appointment of Directors and Trustees Policy 2022.
- 

### 1. ISSUE

- 1.1 The Appointment of Directors and Trustees Policy 2018 (Policy) is due for review. The purpose of this policy is to outline the process Council will follow to appoint directors to council organisations (COs), the expected skills or knowledge required and the remuneration of the various positions; in accordance with s57 (1) of the Local Government Act 2002 (LGA).
- 1.2 The current Policy outlines the appointments process to Boards of council-controlled organisations (CCOs) and council-controlled trading organisations (CCTOs).
- 1.3 To meet the expectations of the LGA, the proposed new Appointment of Directors and Trustees Policy 2022 (draft policy) (Attachment 1) covers appointments to all of Council's COs, it includes:
  - Council-controlled organisations and trading organisations
  - Community organisations
  - Steering groups and advisory panels, and
  - Selection panels to distribute funds on behalf of the Jaycee Trust and Creative New Zealand.

## 2. BACKGROUND

- 2.1 Council adopted the current Policy in April 2018. The policy outlines the process for how Council will appoint board members to Council's CCOs - Te Manawa Museums Trust, the Regent Theatre Trust and the Globe Theatre Trust, and for the council-controlled trading company, Palmerston North Airport Ltd. It explains the expected skills or knowledge required and the remuneration for the different Boards.
- 2.2 Appointments of directors to the Central Economic Development Agency are set out in the Appointment of Directors Policy of Central Economic Development Agency Ltd as agreed together with Manawātū District Council. Thus, although another CCO, this policy does not apply to the Agency.
- 2.3 Section 57(1) of the LGA is broader than CCOs and requires a policy that sets out the appointment process to all 'council organisations' (see Attachment 2). The LGA defines council organisations in Section 6 as any entity or company which Council either controls, directly or indirectly, one or more of the votes at any meeting of the controlling body or has the right to appoint one or more of the trustees, directors or managers (however described).
- 2.4 To fully comply with the LGA, the draft policy includes a new section which explains the process for making council appointments to the following bodies (council organisations):
  - Community organisations
  - Steering groups and advisory panels, and
  - Selection panels to distribute funds on behalf of the Jaycee Trust and Creative New Zealand.
- 2.5 Council appoints to several other bodies which have not been included in the draft policy, most notably the District Licensing Committee, assigning Appointed Members to Council committees and appointing Resource Management Act commissioners. Appointments to standing committees are specifically excluded in the definition of council organisation in the LGA. Whereas approving a list of commissioners to hear resource consent hearing is governed by the Resource Management Act 1991 and licensing committee appointments by the Sale and Supply of Alcohol Act 2012.

## 3. CHANGES MADE IN THE DRAFT APPOINTMENT OF DIRECTORS AND TRUSTEES POLICY 2022

- 3.1 Following a desktop review, officers have made the following changes to the draft Policy.
- 3.2 Officers conducted a desktop review which involved:
  - Reviewing the policy against legislative requirements and



- Collating the different types of council organisations Council appoints to, and the current practice of appointment to each.
- Reviewing the Policy against the current procedure for appointing board members to CCO Boards.
- Comparing the Policy to policies of other similar-sized councils

3.3 The draft policy contains the following changes:

**Re-formatting to improve structure and readability.**

- 3.4 The draft policy has been re-formatted into two parts, Part One outlines the process for appointing board members to CCOs and CCTOs, which are done annually; and Part Two explains the process for appointments to other COs (which tend to occur on a triennium or ad hoc basis).
- 3.5 Both parts explain the skills and experience required, term of appointment, eligibility requirement, appointment process and remuneration for the different appointments.

**Revised wording and re-formatting of Part One – Appointments to CCOs & CCTO.**

3.6 Part One has been re-formatted to set out the appointment process of CCO Boards in a systematic order, and to update the process to incorporate good practice.

3.7 Changes include:

- Explanation of the legal definition of a CCO/CCTO and which CCOs/CCTOs the policy applies to. It should be noted that the Central Economic Development Agency has its own appointment process.
- Inclusion of additional requirement for applicant to have a clean police record and references– this is good practice.
- Re-ordered the appointment process to clarify logic.
- Emphasised that Council expects vacancies to be advertised, and that a report will only be presented to Council if the Board or officers can provide a compelling reason for a post to be renewed.
- Strengthened the right of Trust Boards to seek specific skills or experience before vacancies are advertised.
- Inclusion of knowledge of tikanga Māori, as a factor the Appointment Panel could consider when interviewing applicants. This is suggested by s 57 (3) of the LGA.

- Outlined the current remuneration rates for Council's cultural CCOs and added detail around setting remuneration for directors of the Palmerston North Airport Board as per their constitution.

### **Added Part Two – Appointments to Council Organisations.**

- 3.8 Part Two outlines the current practice for appointments to community organisations, steering groups, advisory panels and selection panels during the council term. The majority of these appointments are made at the beginning of the triennium, or on an ad hoc basis depending on the creation of a new group, or resignation of the council appointee.
- 3.9 It sets out the eligibility requirements, and the appointment process for the Jaycee Trust Assessment Committee and the Creative NZ Assessment Committee.
- 3.10 Officers recommend changing the name of the Jaycee Trust Selection Panel to Jaycee Trust Assessment Committee to avoid confusion with the Appointments Panel of previously similar name.

## **4. NEXT STEPS**

- 4.1 If adopted the Appointment of Directors and Trustees Policy 2022 will be published on the Council's website and the name of the Jaycee Trust committee will be updated in the Delegations Manual.
- 4.2 Officers to contact external organisations to confirm the status of current council appointments prior to the new triennium.

## **5. COMPLIANCE AND ADMINISTRATION**





Does the Council have delegated authority to decide? If Yes quote relevant clause(s) from Delegations Manual	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 5: A Driven & Enabling Council	
The recommendations contribute to the achievement of action/actions in Governance and Active Citizenship	

The action is: Ongoing review of governance systems and structures to support Council's effectiveness and reputation.

Contribution to strategic direction and to social, economic, environmental and cultural well-being

The Appointment of Directors and Trustees Policy sets out the process for council appointments to council organisations, as required by the Local Government Act. The proposed policy governs Council's formal interactions with community groups and ensures effective decision-makers are recruited to govern council-controlled organisations.

## ATTACHMENTS

1. Draft Appointment of Directors and Trustees Policy 2022 [↓](#) 
2. Current Appointment of Directors and Trustees Policy 2018 [↓](#) 
3. Extract from Local Government Act - definition of Council Organisation/ Council- controlled organisation [↓](#) 
4. List of Council appointments [↓](#) 



## Draft APPOINTMENT OF DIRECTORS & TRUSTEES POLICY 2022

Adopted by	Palmerston North City Council on XXX 2022
Next review date	2024 (every 3 years)
Relevant legislation	s57(1) Local Government Act 2020
PNCC documents reference	

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## 1. Introduction

Council makes appointments to a range of council organisations (COs), these include: council-controlled organisations (CCOs) and council controlled trading organisations (CCTOs), community organisations, steering groups, advisory panels and selection panels. This Policy outlines the different appointments and explains the appointment process and remuneration for each.

The Local Government Act 2002 (s57) requires Council to have a policy on the skills required for appointment to, and remuneration of directors of COs.

The purpose of this Policy is to provide an objective and transparent process for the:

- Identification, consideration and creation of the skills, knowledge and experience required of directors of a CO;
- Appointment of directors to a CO; and
- Remuneration of directors of a CO

In addition to this Policy, COs' trust deeds (or constitutions in the case of companies) often include provisions regarding appointments. In the event of a conflict, the deed/ constitution takes precedence over this Policy.

This Policy is in two parts – Part One explains the appointment of Board members to CCOs and CCTOs, and Part Two outlines Council appointment process to other COs.

## 2. Definitions

<b>Appointment Panel</b>	<p>For the purpose of this Policy the term Appointment Panel or panel is a group of elected members and/or Council officers which has been delegated responsibility for making appointments to CCOs and CCTOs.</p> <p>On occasion, the Panel may also include a member of the CCO Board and/or an independent industry expert.</p> <p>Standing Orders do not apply to panel meetings.</p>
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<b>Board member</b>	Includes directors, trustees, or office holders (however described by that organisation).
<b>Candidate</b>	Is a person who has been nominated, submitted a written application, or identified through search activities.
<b>Council organisation (CO)</b>	A council organisation (CO) is defined in section 6 of the LGA as an organisation in which the Council has a voting interest in, or the right to appoint a director, trustee or manager (however described). This is a broad term that covers a large number of bodies.
<b>Council-controlled organisation (CCO)</b>	A council-controlled organisation (CCO) is defined in section 6 of the LGA as an organisation in which the Council controls, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors, trustees or managers (however described).
<b>Council-controlled trading organisation (CCTO)</b>	A council-controlled trading organisation (CCTO) is defined in Section 6 of the LGA as a CCO that operates a trading undertaking for the purpose of making a profit.

### **PART ONE - Council Controlled-Organisations and Council Controlled Trading Organisations (CCOs and CCTOs)**

3. A CCO or CCTO is an organisation which Council (alone or with other councils) controls more than 50% of the voting rights or appoints more than 50% of directors or trustees. A CCTO has a trading function and is profit-driven.

This Policy applies to the appointment of board members for the following Council CCOs and CCTO:

- Te Manawa Museums Trust (five out of nine trustees appointed by Council)
- The Regent Theatre Trust (six out of nine trustees appointed by Council)
- The Globe Theatre Trust (five out of seven trustees appointed by Council)
- Palmerston North Performing Arts Trust (the Mayor and two trustees appointed by Council)



- Palmerston North Airport Limited (all directors appointed by Council).

Council has two CCOs whose appointments are not covered by this Part.

- The Central Economic Development Agency (CEDA) (six out of nine directors appointed by Council) is jointly-owned with Manawatu District Council. Appointments of directors to CEDA are set out in the Appointment of Directors Policy of Central Economic Development Agency Ltd.
- The Manawatu-Wanganui Disaster Relief Fund (one out of eight trustees appointed by the Mayor) is jointly owned by the seven territorial authorities of the Manawātū-Whanganui region and Horizons Regional Council. Council's sole trustee is appointed alongside the community organisations at the beginning of the triennium (refer to Part Two).

#### 4. Objectives

The objectives of Part One are to ensure:

1. That the process of appointing CCO or CCTO Board members is undertaken in an objective and transparent manner while protecting individual privacy.
2. That Board appointments:
  - Are made on the basis of an assessment of skills, knowledge and experience of the current Board and having regard to the nature of scope of the organisation's objectives and activities.
  - Consider the contribution that directors can make to the Board as a whole.
  - Enable continuity through ensuring succession planning of Board chairs.

#### 5. Board diversity and inclusion

Palmerston North City Council values and supports the benefits that diversity of thought, experience and skills bring to our CCO Boards. We recognise that increasing diversity and fostering inclusive Board culture is an essential element in supporting high performing Boards, driving long-term success and delivering better outcomes for the communities of Palmerston North City.

A diverse Board will include and make good use of differences in the skills, experience, perspectives, backgrounds, demographics and other qualities of directors. These differences will be considered in determining the optimum composition of the Board and when possible should be balanced appropriately.





All Board appointments will be made to ensure that the skills, knowledge and experience allows the Board to be effective and continuous with due regard to the benefits of diversity on the Board.

Palmerston North City Council is committed to supporting and / or providing initiatives:

- That lead to an inclusive recruitment and selection process for Board appointments
- Support a diverse range of aspiring directors to develop skills, knowledge, Board room experience and to establish relationships and networks; and
- Build a diverse pool of experienced directors for Palmerston North City organisations and companies.

#### **Board Competencies, Skills and Knowledge**

Board members are expected to meet a number of core competencies as well as specialist skills or experience desired by that Board.

Core competencies expected of CCO/CCTO candidates are:

- Sound judgement and decision-making
- A high standard of personal integrity
- Clear communication skills and an ability to debate in a reasoned manner
- Ability to think strategically
- Appreciation of the wider public interest
- Understanding of governance issues
- An understanding and commitment to Council's obligation to Te Tiriti o Waitangi
- Effective teamwork and collaboration skills; and
- Risk assessment and contingency management

#### **6. Eligibility for Appointment**

The Council has a responsibility for monitoring performance of CCOs/CCTOs and so Elected Members of the Council should not serve on the Boards of CCOs/CCTOs, unless there is a compelling reason to do so. The reason would be needed to inform a council resolution to appoint such elected members.

Council officers are not normally eligible for appointment unless the nature of the appointment requires this. For example, the Local Government Funding Agency has Board positions which are required to be filled by officers of a local authority.

Board members should be independent from management and are not to be employed by the entity. In the event that a Board decides that one of its members should fill a staff vacancy



the Board member must stand down from their position on the Board while filling the vacancy on a non-permanent basis. If they are to be permanently appointed as an employee then they are to resign their position before starting their permanent role.

## **7. Term of Appointment**

Board members will normally be appointed for a term of up to three years from the date of appointment. Upon expiry of that three-year term, the Board member retires from the Board and may be eligible for re-appointment.

A Board member who is retiring may be re-appointed for a further term of up to three years if deemed appropriate by the Council.

## **8. Appointment Process**

### **Appointment Process for Board Members appointed directly by the Council (CCO/CCTO)**

Council's expectation is that all CCO and CCTO Board vacancies will be advertised unless there are exceptional circumstances to re-appoint a Board Member expressed by the Board Chair or council officers, that is accepted by the Council.

The Council will use the following process for appointing a new Board Member:

#### **Notification to Boards of retiring trustees/directors**

The Democracy & Governance Manager will inform CCO/CCTO Boards of which Board Members' terms are expiring and offer Boards the opportunity to request to Council the re-appointment of any retiring members.

If a Board recommends re-appointment of a retiring member, officers will present a report to Council seeking the re-appointment. Council will decide whether to re-appoint the retiring member or to advertise the position.

#### **Advertising the vacancies**

Upon being notified of the upcoming board vacancies, the Appointments Panel (the Panel) will discuss with the relevant Board Chair and the Democracy and Governance Manager the skills, knowledge and experience required for the vacant position(s). These skills will form the basis of the advertisement for the Board Member vacancies.

Candidates may be sought through advertising of the position.

Current Board members who are re-applying will still be required to provide an updated CV. Board members should not be given any expectation that they will be offered a subsequent term on the Board.



### **Application Process**

Prior to being interviewed for a position on a Board, candidates will be required to agree to a police check, provide two references and declare any relevant interests, so that the potential for a conflict of interest can be assessed. In considering any appointment or re-appointment, where a potential conflict of interest has been identified, the Council needs to be confident that any such conflict can be managed.

### **The Appointments Panel and their Role**

The Panel is responsible for recommending the appointment of Board members to Council. This also applies where the trust deed identifies the Mayor as responsible for making appointments; because the Mayor is acting on behalf of the Council. The Panel will be administered by the Democracy and Governance Manager.

Where there are one or more candidates per position, a short-list (if applicable) and interview process will be undertaken. This will be undertaken by the Panel set up at the beginning of the triennium. The Panel will consist of:

- Mayor or Deputy Mayor (as Chair)
- Chair or Deputy Chair of Finance and Audit Committee (or relevant committee)
- Chair or Deputy Chair of Arts, Culture and Heritage Committee (or relevant committee); and
- The Chief Executive (or their representative)

At times the Panel may include a member of the CCO Board and/or an independent industry expert, if the Panel considers it appropriate to do so.

### **Assessment of candidates**

The Panel will assess candidates against the required skills, knowledge and experience:

- Governance experience
- Commitment to Te Tiriti o Waitangi
- Commitment to the principles of good corporate citizenship
- Personal integrity
- Public service ethos
- Sound decision-making judgement
- Communication and collaboration skills
- Strategic thinking skills



And may take into account other factors such as:

- Sector experience
- Alignment with the Council's objectives for that entity
- The capacity of candidates to attend regular Board meetings and fulfil other requirements;
- Chair and Deputy Chair succession planning; and
- Any particular skills identified by the Board and/or Panel as essential to the particular entity

### **Finalisation of Appointments**

Final approval of candidates will usually be made by Council in confidential session to protect the privacy of the individuals before releasing the decision publicly. The successful applicants will be sent a Letter of Appointment.

### **9. Appointments of Chair and Deputy Chair of the Board**

Depending on the provisions of the trust deed or constitution, the Board of the CCO/CCTO will normally appoint the Chair and Deputy. The Chair will be expected to identify future successors, to provide for smooth transition in the event of a planned or unexpected retirement of an incumbent Chair.

### **10. Removal of Board Members**

Council appointed Board members hold office at the pleasure of the Council and may be removed at any time by Council resolution.

Without limiting the rights of the Council, the likely reasons, which would justify removal of a Board member, would be where that Board member:

- Is regularly absent from Board meetings without good justification
- No longer has the confidence of the Board or the Council
- Has breached ethical standards
- Does not act in the best interests of the organisation
- Breaches the confidence of the Board in any way, including speaking publicly on Board issues without the authority of the Board
- Does not act in accordance with the principles of collective responsibility; and



- Is disqualified from being appointed or holding office as a director of a company under section 151(2) of the Companies Act 1993.

Where the Board has concerns regarding the behaviour of one of its members it should be considered by the Board in the first instance and, where necessary, the Board may recommend the removal of the Board member to the Council.

Palmerston North City Council will not make any payment by way of compensation to Board members who have been removed from Boards.

#### 11. Board Members Standing for Political Office

Council appointed Board members who have been nominated to stand or be elected as a candidate in a local body or Parliamentary election should advise the Chair of their Board immediately.

Any Board member who is formally nominated to stand as a candidate for election at a local body or Parliamentary election, or placed on any political party's list, must stand down from his/her Board position from nomination day until the election results are notified or such earlier day as may be determined. This measure aims to ensure that governance of the organisation is not distracted by the Board member's election activity, and to prevent the possibility of any conflicts of interest – real or perceived. Any Board member who is subsequently elected to a local authority or the New Zealand Parliament shall resign from the Board of the CCO/CCTO.

#### 12. Remuneration

Board members of CCOs are remunerated the following for their services to the Board:

CCO	Remuneration
The Globe Theatre Trust <sup>1</sup>	\$85 per meeting
The Regent Theatre Trust	\$85 per meeting
Te Manawa Museums Trust <sup>2</sup> Board Members Chair	\$165 per meeting <i>plus</i> \$1000 for expenses per annum, OR \$5000 per annum

CCOs pay Board Members meeting fees through their own budget.

Remuneration of CCTO directors of the Palmerston North Airport Ltd is set annually by a resolution of Council in line with their constitution.

<sup>1</sup> Council Resolution 173-17 24 October 2017

<sup>2</sup> Council Resolution 64-00 28 August 2000



## **PART TWO - APPOINTMENTS TO COUNCIL ORGANISATIONS (COs)**

Council organisation (CO) is a broad term that encompasses a wide range of different groups that Council appoints elected members and other representatives to.

These can include appointments to:

- Community and not-for profit organisations;
- Project Steering Groups;
- Advisory Panels; and
- Selection Committees – for the distribution of grant funding

### **PART 2.1: Appointments to Community Organisations/ Steering Groups/ Advisory Panels**

#### **13. Required Skills and Experience**

Any person appointed to a CO should have knowledge or experience relevant to the activities of the organisation and familiarity with Council policy, programmes and activities.

#### **14. Terms of Appointment**

Most appointments are made by Council for the triennium and will be re-considered at the beginning of the Council term.

#### **15. Conflict of Interest**

Elected Members appointed as council representatives to COs should not hold other interests in the organisation they have been appointed to. They should identify, notify Council of, and manage any actual or potential interests appropriately.

#### **16. Resigning from a Council Organisation**

Elected members can resign from a CO at any time in writing to the Mayor.

#### **17. Appointment Process of Elected Members to Community Organisations/ Steering Groups/ Advisory Panels**

When a vacancy arises on a community organisation, steering group or advisory panel, the Mayor will call for expressions of interest from elected members. The Mayor will nominate councillors to fill each vacancy and final approval of representatives will be made by Council.

An expression of interest should explain why the member has the experience and/or knowledge and interest to contribute to the group on behalf of the Council.

#### **Review of Council Appointments**

When vacancies arise or new organisations seek a Council representative on their governing body, Council will consider what benefit a council representative could offer to the group before agreeing to appoint a representative. If Council agrees to filling a vacancy, the appointments process above will be followed.



### **18. Remuneration**

No additional remuneration is paid to elected members who represent Council on community organisations, steering groups or advisory panels, however travelling costs might be claimed under the Elected and Appointed Members Expenses and Allowances Policy where applicable.

## **PART 2.2: Appointments to Assessment Committees**

Council is responsible for appointing two selection committees<sup>3</sup> to distribute grant funding for the Palmerston North Jaycee Trust Assessment Committee, and Creative Communities New Zealand/ Arts & Culture Fund Assessment Committee.

### **19. Palmerston North Jaycee Trust Assessment Committee**

The Council is responsible for administering the Palmerston North Jaycee Trust. Every triennium, Council appoints the Jaycee Trust Assessment Committee to award two travelling grants of up to \$5,000 each per year to enable people to study, travel or engage in special projects abroad.

The Assessment Committee has delegated authority from Council to assess applications to the scheme and approve up to two travelling fellowships of not more than \$5,000 (including GST) each year, with discretion to grant more than two fellowships as long as the total amount of funding does not exceed \$10,000 per year.

Membership of the Jaycee Trust Assessment Committee will consist of the Chair of the Community Development Committee (or relevant committee) and two members of the public.

### **20. Eligibility and skills required of Appointments**

Resident of Palmerston North city and involvement in the community sector.

### **21. Term of Appointment**

The term of appointment will be for the Council triennium.

### **22. Appointment Process to the Jaycee Trust Assessment Committee**

#### **Advertising the vacancies**

Candidates may be sought through advertising of the position.

#### **New Appointments**

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<sup>3</sup> These are not council standing committees.



The Appointments Panel is responsible for selecting two members of the public to sit on the Palmerston North Jaycee Trust Assessment Committee. The appointment panel comprises of:

- the Mayor,
- Chair of the Community Development Committee (or relevant committee chair) and
- Deputy Chair of the Community Development Committee (or relevant committee deputy chair)

The panel will interview applicants and recommends appointment based on criteria listed in the procedure above. Final approval of candidates will be made by Council.

### **23. Remuneration**

No additional remuneration is paid to elected members who represent Council on the Jaycee Trust Assessment Committee, however travelling costs may be claimed under the Elected and Appointed Members Expenses and Allowances Policy where applicable.

Community Members are not remunerated for this role.

### **24. Creative Communities New Zealand/ Arts & Culture Fund Assessment Committee**

On behalf of Creative New Zealand, Council is responsible for administering the Creative Communities Grant.

At the beginning of the triennium, Council sets up the CCNZ/ Arts & Cultural Fund Assessment Committee as a community-led body. The Assessment Committee is responsible for determining applications for the CCNZ/ Arts & Culture Fund annually.

### **25. Eligibility and Skills required for Appointment**

Community members must reflect the diversity of the city. Candidates will have knowledge of the local art scene and communities of the city.

### **26. Term of Appointment**

The term of appointment is for three years. Members can be appointed for a maximum of two consecutive terms.

### **27. Appointments Process**

Council may appoint up to two elected members to the committee at the beginning of the triennium. Elected members must write an expression of interest to the Mayor, who will nominate two members to the Council for approval.

The remainder of the membership of the CCNZ/ Arts & Cultural Fund Assessment Committee will be appointed by the [appointment process](#) set out by Creative Communities New Zealand.





#### **28. Remuneration**

No additional remuneration is paid to elected members who represent Council on the Creative Communities New Zealand/ Arts & Culture Fund Assessment Committee, however travelling costs may be claimed under the Elected and Appointed Members Expenses and Allowances Policy where applicable.

Community Members are paid a meeting fee for attendance.



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PALMERSTON NORTH CITY COUNCIL

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# APPOINTMENT OF DIRECTORS & TRUSTEES POLICY

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Updated 30 April 2018 | PUBLISHED BY GOVERNANCE AND SUPPORT TEAM | CITY CORPORATE 2018

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OA# 10123911

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## 1. PURPOSE

The purpose of this policy is to set out, in accordance with section 57(1) of the Local Government Act 2002 (LGA), an objective and transparent process for the:

- Identification, consideration and creation of the skills, knowledge and experience required of directors of a Council organisation
- Appointment of directors to a Council organisation
- Remuneration of directors of a Council organisation

## 2. POLICY OBJECTIVES

The objectives of this policy are to ensure:

- That the process of appointing Board members is undertaken in an objective and transparent manner while protecting individual privacy.
- That Board appointments:
  - Are made on the basis of an assessment of skills, knowledge and experience of the current Board and having regard to the nature of scope of the organisations objectives and activities.
  - Consider the contribution that directors can make to the Board as a whole.
- Continuity through ensuring succession planning of Board chairs.

## 3. DEFINITIONS

### ***“Council organisation”***

A Council Organisation (CO) is defined in section 6 of the LGA as an organisation in which the Council has a voting interest or the right to appoint a director, trustee or manager (however described). This is a wide-ranging definition, covering a large number of bodies.

### ***“Council-controlled organisation”***

A Council-Controlled Organisation (CCO) is defined in section 6 of the LGA as an organisation in which the Council controls, directly or indirectly, 50% or more of the votes or has the right, directly or indirectly, to appoint 50% or more of the directors, trustees or managers.

***“Council-controlled trading organisation”***

A Council-controlled trading organisation (CCTO) is defined in Section 6 of the LGA as a CCO that operates a trading undertaking for the purpose of making a profit.

***“Board member”***

The term Board member includes directors, trustees, or office holders (however described by that organisation).

***“Candidate”***

Is a person who has been nominated, submitted a written application, or identified through search activities.

***“Panel”***

For the purpose of this policy the term Panel refers to a Committee of the Council of Palmerston North City Council which has been delegated responsibility for making appointments to CCOs, CCTOs, COs. For avoidance of doubt, in the event that the Council of Palmerston North City chooses not to delegate this responsibility, the term Panel refers to the Council of Palmerston North City.

#### 4. BOARD DIVERSITY AND INCLUSION

Palmerston North City Council values and supports the benefits that diversity of thought, experience and skills bring to our CCO Boards. We recognise that increasing diversity and fostering inclusive Board culture is an essential element in supporting high performing Boards, driving long-term success and delivering better outcomes for the communities of Palmerston North City.

A diverse Board will include and make good use of differences in the skills, experience, perspectives, backgrounds, demographics and other qualities of directors. These differences will be considered in determining the optimum composition of the Board and when possible should be balanced appropriately.

All Board appointments will be made on the basis of the skills, knowledge and experience which the Board as a whole requires to be effective with due regard to the benefits of diversity on the Board.

Palmerston North City Council is committed to supporting and / or providing initiatives:

- That lead to an inclusive recruitment and selection process for Board appointments
- Support a diverse range of aspiring directors to develop skills, knowledge, Board room experience and to establish relationships and networks; and
- Build a diverse pool of experienced directors for Palmerston North City organisations and companies.

## 5. CCOS

The policy needs to consider the particular needs of the organisation when making appointments. Recruitment of suitable Board members can be challenging. In addition, the trust deeds (or constitutions in the case of companies) often include provisions regarding appointments, but this policy will take precedence over any trust deed.

## 6. ELIGIBILITY FOR APPOINTMENT

### 6.1 Appointment of Elected Members of the Palmerston North City Council

The Palmerston North City Council has a responsibility for monitoring performance of CCOs and so Elected Members of the Palmerston North City Council should not serve on the Boards of CCOs, unless there is a compelling reason to do so. The reason would be needed to inform a Council Resolution to appoint such Elected Members.

### 6.2 Appointment of Palmerston North City Council Staff

Staff of the Palmerston North City Council are not normally eligible for appointment unless the nature of the appointment requires this. For example, the Local Government Funding Agency has Board positions which are required to be filled by staff of a Local Authority.

### 6.3 Appointment of Managers and Staff of CCOs

Board members should be independent from management and are not to be employed by the entity.

In the event that a Board decides that one of its members should fill a staff vacancy the Board member must stand down from their position on the Board while filling the vacancy on a non-permanent basis. If they are to be permanently appointed as an employee then they are to resign their position before starting up their permanent role.

## 7. BOARD COMPETENCIES, SKILLS AND KNOWLEDGE

Board members are expected to meet a number of core competencies as well as specialist skills or experience required for that Board.

### 7.1 Core competencies

The core competencies expected on CCO Boards are:

- Sound judgement and decision-making
- Public service ethos

- An understanding and commitment to Council's obligation to Te Tiriti o Waitangi
- A high standard of personal integrity
- Clear communication and an ability to debate in a reasoned manner
- Effective teamwork and collaboration
- Ability to think strategically
- Risk assessment and contingency management; and
- Commitment to the principles of good corporate citizenship.

## 8. TERM OF APPOINTMENT

Board members normally serve a three-year term. Palmerston North City Council's policy regarding Board tenure is as follows:

**Tenure of three years:** Board members shall hold office for a term of up to three years from the date of appointment.

**Expiry of tenure:** upon expiry of that three-year term, the Board member retires from the Board and may be eligible for reappointment.

**Reappointment:** a Board member who is retiring may be reappointed for a further term of up to three years if deemed appropriate and a recommendation is received to the Palmerston North City Council from the Panel.

## 9. BOARD APPOINTMENTS

### 9.1 Role of the Panel

The Panel is responsible for the appointment of Board members to CCOs. This also applies where the trust deed identifies the Mayor as responsible for making appointments; because the Mayor is acting on behalf of the Council.

### 9.2 Reappointments

Where a Board member's term of appointment has expired and they would like to be considered for reappointment, the Panel may offer a further term on the recommendation of the Board Chair. However, the expectation from Council is that all vacancies will be advertised unless there are exceptional circumstances as accepted by the Council. Current Board members who are re-applying will still be required to provide an updated CV.

Board members should not be given any expectation that they will be offered a subsequent term on the Board.

### 9.3 New Appointments

The Panel will identify the skills, knowledge and experience required for the position with the assistance of the Governance and Support Team Leader and the Board Chair.

Candidates may be sought through advertising of the position, and/or from nominations from elected members, and the Chair of the CCO.

Where there are one or more candidates per position, a short-list (if applicable) and interview process will be undertaken. This will generally be undertaken by the Panel consisting of:

- Mayor and/or Deputy Mayor (as Chair)
- Chair of Finance and Performance
- Chair of Arts, Culture and Heritage; and
- The Chief Executive (or their representative)

The Panel will be administered by the Governance and Support Team Leader.

At times the Panel may include a member of the CCO Board and/or an independent industry expert, if the panel considers it appropriate to do so.

The Panel will assess candidates against the required skills, knowledge and experience and may take into account other factors such as:

- Alignment with the Council's objectives for that entity
- A broad dynamics and stakeholder relationships
- The capacity of candidates to attend regular Board meetings and fulfil other requirements; and
- Chair and Deputy Chair succession planning.

### 9.4 Conflicts of Interest

Prior to being interviewed for a position on a Board, candidates will be required to complete a consent form and declare any relevant interests, so that the potential for a conflict of interest can be assessed. In considering any appointment or reappointment, where a potential conflict of interest has been identified, the Council needs to be confident that any such conflict can be managed.

### 9.5 Finalisation of Appointments

The successful applicants(s) will be offered a Letter of Appointment.

### 9.6 Appointments of Chair and Deputy Chair

Depending on the provisions of the trust deed or constitution, the Board of the CCO will normally appoint the Chair and Deputy. The Chair will be expected to identify future successors, to provide for smooth transition in the event of a planned or unexpected retirement of an incumbent Chair.



### 9.7 Removal of Board Members

Council appointed Board members hold office at the pleasure of the Council and may be removed at any time by Council resolution.

Without limiting the rights of the Council, the likely reasons, which would justify removal of a Board member, would be where that Board member:

- Is regularly absent from Board meetings without good justification
- No longer has the confidence of the Board or the Council
- Has breached ethical standards
- Does not act in the best interests of the organisation
- Breaches the confidence of the Board in any way, including speaking publicly on Board issues without the authority of the Board
- Does not act in accordance with the principles of collective responsibility; and
- Is disqualified from being appointed or holding office as a director of a company under section 151(2) of the Companies Act 1993.

Where the Board has concerns regarding the behaviour of one of its members it should be considered by the Board in the first instance and, where necessary, the Board may recommend the removal of the Board member to the Council.

Palmerston North City Council will not make any payment by way of compensation to Board members who have been removed from Boards.

### 9.8 Board Members Standing for Political Office

Council appointed Board members who have been nominated to stand or be elected as a candidate in a Local Body or Parliamentary election should advise the Chair of their Board immediately.

Any board member who is formally nominated to stand as a candidate for election at a Local Body or Parliamentary election, or placed on any political party's list, must stand down from his/her Board position from nomination day until the election results are notified or such earlier day as may be determined. This measure aims to ensure that governance of the organisation is not distracted by the Board member's election activity, and to prevent the possibility of any conflicts of interest – real or perceived.

Any Board member who is subsequently elected to Council or the New Zealand Parliament shall resign from the Board of the CCO.

## 10. REMUNERATION

Board members of CCOs are remunerated for their services to the Board at \$85.00 per normal monthly meeting and they may also be reimbursed for expenses as per any CCO Board Expenses policy.



Palmerston North City Council

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## 6 Meaning of council-controlled organisation and council organisation

(1) In this Act, unless the context otherwise requires,—

**council-controlled organisation** means a council organisation that is—

- (a) a company—
  - (i) in which equity securities carrying 50% or more of the voting rights at a meeting of the shareholders of the company are—
    - (A) held by 1 or more local authorities; or
    - (B) controlled, directly or indirectly, by 1 or more local authorities; or
  - (ii) in which 1 or more local authorities have the right, directly or indirectly, to appoint 50% or more of the directors of the company; or
- (b) an entity in respect of which 1 or more local authorities have, whether or not jointly with other local authorities or persons,—
  - (i) control, directly or indirectly, of 50% or more of the votes at any meeting of the members or controlling body of the entity; or
  - (ii) the right, directly or indirectly, to appoint 50% or more of the trustees, directors, or managers (however described) of the entity

**council-controlled trading organisation** means a council-controlled organisation that operates a trading undertaking for the purpose of making a profit

**council organisation** means—

- (a) a company—
  - (i) in which equity securities carrying voting rights at a meeting of the shareholders of the company are—
    - (A) held by 1 or more local authorities; or
    - (B) controlled, directly or indirectly, by 1 or more local authorities; or
  - (ii) in which 1 or more local authorities have the right, directly or indirectly, to appoint 1 or more of the directors (however described) of the company; or
- (b) an entity in respect of which 1 or more local authorities have, whether or not jointly with other local authorities or persons,—
  - (i) control, directly or indirectly, of 1 or more of the votes at any meeting of the members or controlling body of the entity; or
  - (ii) the right, directly or indirectly, to appoint 1 or more of the trustees, directors, or managers (however described) of the entity.

(2) For the purposes of subsection (1), **entity** means any partnership, trust, arrangement for the sharing of profits, union of interest, co-operation, joint venture, or other similar arrangement; but does not include a company, or a committee or joint committee of a local authority.

## List of organisations Council appoints to as of March 2022

(covered by Appointment of Directors and Trustees Policy)

### Council Controlled Organisations

- Central Economic Development Agency (CEDA) (six out of nine trustees appointed by Council) jointly owned with Manawātū District Council.
- Te Manawa Museums Trust (five out of nine trustees appointed by Council)
- The Regent Theatre Trust (six out of nine trustees appointed by Council)
- The Globe Theatre Trust (five out of seven trustees appointed by Council)
- Palmerston North Performing Trust (The Mayor and two trustees appointed by Council) **exempted from the reporting requirement of the LGA until June 2022.**
- The Manawātū-Wanganui Disaster Relief Fund (one out of eight trustees appointed by the Mayor). Jointly owned by the seven territorial authorities and Horizons Region Council, **exempted from the reporting requirement of the LGA until June 2022.**

### Council Controlled Trading Organisation

- Palmerston North City Airport Limited (two out of five directors appointed by Council)

### Council Organisations

#### Community Organisations:

- Age Friendly Palmerston North
- Community Arts Palmerston North
- Disability Coalition
- Disabled Persons Assembly
- Manawatu Multicultural Centre Inc (Mayor +1)
- Palmerston North Community Services Council
- Palmerston North Neighbourhood Support Group
- Safety Advisory Board

#### Steering Groups:

- Palmerston North City Housing Steering Group (HSG)
- Arena Masterplan Steering Group
- Hockey Turf Steering Group

#### Advisory Groups:

- Victoria Esplanade User Group
- Kotahitanga Alliance

- Manawatū Community Athletics Track Advisory Committee
- Palmerston North Defence Heritage Advisory Group
- Design Working Party for Te Motu o Poutoa
- Consent Phase Project Reference Group (BPO Wastewater)

#### **Community Trusts:**

##### **Trusts:**

- Wildbase Recovery Community Trust Board (one out of five trustees appointed by Council)
- Hoffman Kiln Trust (one out of seven trustees appointed by Council) – under the trust deed there is no obligation for Council to appoint to the Trust.

#### **Grant Selection Committees**

- Jaycee Trust Assessment Committee (Chair of Community Development and two panellists appointed by Council).
- Creative Communities New Zealand/ Arts & Culture Fund Assessment Committee (two elected members appointed by Council and community panellists selected according to Creative Communities NZ appointment criteria).

#### **List of other external bodies Council appoints to as of March 2022**

##### **(NOT covered by Appointment of Directors and Trustees Policy)**

Horizons Climate Action Joint Committee (Mayor)

Horizons Passenger Transport Committee

Horizons Regional Transport Committee

Manawatū River Accord

Manawatū – Whanganui Civil Defence Emergency Management Group

New Zealand Local Government Association (Zone 3) (5)

Palmerston North Public Transport Services Advisory Group (Mayor +2) (Horizons)

Regional Chief's Meeting (Mayor)(Horizons)

Te Apiti Governance Group (Mayor) (Horizons)

## MEMORANDUM

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Exemption of the Manawatū-Wanganui Disaster Relief Fund from being a Council Controlled Organisation

**PRESENTED BY:** Hannah White, Democracy & Governance Manager

**APPROVED BY:** Sheryl Bryant, Assistant Chief Executive

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### RECOMMENDATION TO COUNCIL

1. That Council exempt the Manawatū-Wanganui Disaster Relief Fund from being a Council Controlled Organisation for a further three years.
- 

#### 1. ISSUE

- 1.1 Council has received a request from Horizons Regional Council (as administrator) that the Manawatū-Wanganui Regional Disaster Relief Fund Trust ('the Trust') exemption status as a council-controlled organisation (CCO) be renewed.
- 1.2 An exemption to the Trust was last granted by the Council in August 2017.

#### 2. BACKGROUND

##### The Manawatū-Wanganui Regional Disaster Relief Trust

- 2.1 In March 2004 the Council resolved that the Manawatū-Wanganui Regional Disaster Relief Fund Trust be established under the Charitable Trusts Act 1957 and granted it exemption from being a council-controlled organisation because the nature and scope of its activities only take place after a significant adverse event.
- 2.2 The Trust is represented by an elected member from each of the territorial authorities of the Manawatū – Wanganui region and Horizons Regional Council.
- 2.3 The purpose of the Trust is to provide financial or other assistance to meet the needs of people who have suffered any damage or loss following a significant disaster. It raises funds through public donations.

### **Requirements for review**

- 2.4 Review of the exemption, under the Local Government Act 2002, was due in August 2021. Council only received a request to review and exempt the Trust as a CCO in February 2022.
- 2.5 The Local Government Act 2002 (LGA), expects any exemption granted to be reviewed within three years of the date of the original grant, and after the first review, at intervals of not less than three years. Legal advice notes that a CCO exemption does not automatically expire if a review of its exemption status is not carried out within a 3-year period.
- 2.6 Any further exemption will be applied for three years, noting that the review also now covers the retrospective period between August 2021 and today.
- 2.7 Section 7 of the LGA enables local authorities to exempt small organisations from being Council Controlled Organisations. The Council must take into account two matters before any exemption is made, namely:
  - (a) the nature and scope of the activities provided by the organisation; and
  - (b) the costs and benefits, if an exemption is granted, to the local authority, the council-controlled organisation, and the community.

### **Review and recommendation**

- 2.8 Because of the Trust's small size and limited activities, it is considered that the benefits of continuing the exemption outweigh the costs. There would be significant additional costs if the Trust is required to meet the obligations of a Council Controlled Organisation.
- 2.9 Horizons Regional Council is expected to exempt the Trust at its 29 March 2022 meeting.

### **3. NEXT STEPS**

- 3.1 The decision of the Council will be communicated to Trustees via Horizons Regional Council.
- 3.2 Exempted status will only apply once all councils associated with the Trust have passed similar resolutions.



#### 4. COMPLIANCE AND ADMINISTRATION

Does the Council have delegated authority to decide? If Yes quote relevant clause(s) from Delegations Manual	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>No</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 5: A Driven & Enabling Council	
The recommendations contribute to the achievement of action/actions in Governance and Active Citizenship	
The action is: Ongoing review of governance systems and structures to support Council's effectiveness and reputation.	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	Exempting the trust board from the CCO reporting requirements of the LGA enables the Trust to focus on its core matters.

#### ATTACHMENTS

NIL



## COMMITTEE WORK SCHEDULE

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Work Schedule

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### RECOMMENDATION(S) TO COUNCIL

1. That the Council receive its Work Schedule dated April 2022.

### ATTACHMENTS

1. Work Schedule - April 2022 [↓](#) 

## COUNCIL

### WORK SCHEDULE – APRIL 2022

Item No.	Estimated Report Date	Subject	Officer Responsible	Current Position	Date of Instruction/ Point of Origin
1	<del>April</del> June 2022	Elected Members Code of Conduct	Assistant Chief Executive	Laid on the table Workshop planned for early 2022	Council 1 December 2021 Clause 141-21
2	April 2022	Manawatū Residents' card	Assistant Chief Executive	In progress	Council 27 May 2020 Clause 48-20
3	May 2022	Remits received from other Territorial Authorities	Assistant Chief Executive		Council 24 June 2020 Clause 69-20
4	TBC	Ferguson/Pitt Street Intersection Upgrade - additional safety management options and timings	Chief Infrastructure Officer		Council 2 March 2022 Clause 4.3-22

## CONFIDENTIAL DECISIONS RELEASED

**UPDATED FOR 2 MARCH 2022 Meeting**

Meeting date	Report Title	Released	Not Released
7 July 2021	150th Variety Show	Report, decision and division	N/A
1 September 2021	Civic Honours Awards 2021	Report, decision and division	N/A
6 October 2021	Trustee Appointments to Globe Theatre Trust Board	Report, decision and division	Attachment - Withheld LGOIMA s7(2)(a) Privacy
3 November 2021	District Plan Change Hearings 2022-2023 - Appointment of Commissioner	Report, decision and division	Attachment - Withheld LGOIMA s7(2)(a) Privacy
1 December 2021	Award of Contract - Healthy Homes Compliance Upgrades	Report (redacted), decision and division	N/A
1 December 2021	Award of Contract - Papaioea Place Stage 3	Report (redacted), attachment, decision and division	N/A
1 December 2021	District Licensing Committee Appointment Process	Report (redacted), decision and division	N/A
1 December 2021	Request for Additional Funding for Chief Executive Performance Review Panel	Report (redacted), decision and division	Attachment - Withheld s7(2)(b)(ii) Third Party Commercial
20 December 2021	All Saints Resource Consent: Objection to Costs	Report (redacted), decision and division	N/A

More information on the decisions released can be found on [released decisions](#)

Oasis ID 9457664



## RECOMMENDATIONS FROM COMMITTEE

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Presentation of the Part I Public Community Development Committee Recommendations from its 9 March 2022 Meeting

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Set out below are the recommendations only from the Community Development Committee meeting Part I Public held on 9 March 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

### **5-22 Night Shelter - Options, costs and timeframes for a feasibility study**

1. That the Council direct the Chief Executive to proceed with Option 1A in the 21-22 financial year with funding of \$100,000 for the Night Shelter feasibility study coming from the operational surplus and report back to Community Development Committee in the first quarter of the 22-23 year.





## RECOMMENDATIONS FROM COMMITTEE

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Presentation of the Part I Public Planning & Strategy Committee Recommendations from its 9 March 2022 Meeting

---

Set out below are the recommendations only from the Planning & Strategy Committee meeting Part I Public held on 9 March 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

### 10-22 Options to address 'street racer' issues

5. That Council endorse *Option 1: Limit access to Works Road through a bylaw* as described in the Memorandum dated 9 March and entitled 'Options to address 'street racer' issues.
6. That unbudgeted expenditure of \$30,000 be approved to enable a Traffic and Parking Bylaw review to be brought forward to 2021/2022 – 2022/2023.
7. That unbudgeted expenditure of \$50,000 be approved to enable the implementation of *Option 6a: Physical deterrent (installation of speed humps)* at additional locations (where appropriate).

### 11-22 Infrastructure to support Proposed Plan Change G: Aokautere Growth

1. That the Committee receives the memorandum entitled 'Infrastructure to Support Proposed Plan Change G: Aokautere Growth' presented to the 9 March 2022 Planning & Strategy Committee.
2. That the Council endorses the need to fund and provide adequate infrastructure to support development of land in Aokautere in order to give effect to key strategy and policy documents including the Innovative and Growing City Strategy, the City Growth Plan and National Policy Statement on Urban Development 2020.
3. That if Proposed Plan Change G: Aokautere Growth is approved for consultation under the First Schedule of the Resource Management Act 1991, the Chief Executive be directed to prepare infrastructure work programmes required for land transport and stormwater to be included in the 2024 Long Term Plan prior to the hearing for Plan Change G: Aokautere Growth.

4. That the Chief Executive be directed to provide information relating to the description, timing and quantum of the infrastructure work programmes to enable growth in Aokautere at the 14 September 2022 Planning and Strategy Committee.
5. That in advance of the hearing for Proposed District Plan Change G: Aokautere Growth the Chief Executive be directed to explore opportunities for Waka Kotahi to fund and/or co-fund transport infrastructure upgrades to enable development in Aokautere.

## 12-22

### **Deliberations Report - Draft Support and Funding Policy 2022**

1. That the Council adopt the Support and Funding Policy 2022, Attachment 2 of the Memorandum entitled 'Deliberations Report – Draft Support and Funding Policy 2022' dated 9 March 2022.
2. That the Support and Funding Policy 2022, Attachment 2 of the Memorandum entitled 'Deliberations Report – Draft Support and Funding Policy 2022' dated 9 March 2022, replaces the Community Funding Policy 2018.
3. That the Chief Executive Officer prepare an implementation and monitoring plan for the proposed Support and Funding Policy 2022.
4. That a Sector Lead Partnership Fund is referred to the 2024-2034 10-Year Plan process for consideration as a separate budget item.
5. That the Chief Executive trial the Sector Lead Partnership Agreements, using the funding that has already been assigned to these organisations through the 2022 allocations from the SPG fund, and report back to Community Development Committee prior to the development of the next 10 year plan. And delete the line on top of page 89 'once Council has determined a funding source for any sector lead arrangements'.

## RECOMMENDATIONS FROM COMMITTEE

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Presentation of the Part I Public Finance & Audit Committee Recommendations from its 23 March 2022 Meeting

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Set out below are the recommendations only from the Finance & Audit Committee meeting Part I Public held on 23 March 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

**19-22 Palmerston North Airport Ltd - Interim Report for 6 months to 31 December 2021**

Memorandum, presented by Steve Paterson, Strategy Manager Finance, Murray Georgel (Palmerston North Airport Ltd (PNAL) Chair) and David Lanham (PNAL Chief Executive).

The **COMMITTEE RECOMMENDS**

1. That Council receive the Interim Report and Financial Statements of Palmerston North Airport Ltd for the period ended 31 December 2021, presented to the Finance & Audit Committee on 23 March 2022.

**20-22 Palmerston North Airport Ltd - Draft Statement of Intent for 2022/23**

Memorandum, presented by Steve Paterson, Strategy Manager Finance, Murray Georgel (PNAL Chair) and David Lanham (PNAL Chief Executive).

The **COMMITTEE RECOMMENDS**

1. That Council receive the Palmerston North Airport Ltd (PNAL) draft Statement of Intent for 2022/23, presented to the Finance & Audit Committee on 23 March 2022, and PNAL be advised that Council supports the proposed direction and implementation strategy.

**21-22 Debt funding arrangements for Palmerston North Airport Ltd - Loan Facility Agreement**

Memorandum, presented by Steve Paterson, Strategy Manager Finance.

The **COMMITTEE RECOMMENDS**

1. That the loan facility agreement (attached) that would enable the Council to borrow sums from the Local Government Funding Agency and on-lend to Palmerston North Airport Limited in the form of fixed rate unsecured debt be approved.
2. That the Chief Executive be authorised to approve amendments to the agreement (if required) to address the way in which Local Government Funding Agency Borrower Notes are treated between the parties, or as a consequence of annual reviews.
3. That the Chief Executive be authorised to enter transactions contemplated by the loan agreement of amounts not exceeding \$10 million in advance of the approval of the final Statement of Intent each year, and subsequently transactions not exceeding the maximum term debt for each year as outlined in the adopted Statement of Intent.

## 22-22

### **Fees and Charges Review**

Report, presented by Steve Paterson, Strategy Manager Finance.

#### The **COMMITTEE RECOMMENDS**

##### Planning & Miscellaneous

1. That the Statement of Proposal (and the associated summary) to adopt updated fees and charges for Planning Services and Miscellaneous Services effective from 1 July 2022 as attached in Appendix 3, be approved for public consultation and the Chief Executive be authorised to undertake the necessary consultative process under sections 83 and 150 of the Local Government Act 2002.

##### Building

2. That the fees and charges for Building Services, as proposed in Appendix 4 be adopted and following public notification take effect from 1 July 2022.
3. That Council receive the report titled 'Fees and Charges Review', presented to the Finance & Audit Committee on 23 March 2022, and that the current status of fees and charges be noted.

##### Trade Waste

4. That the proposal to adopt updated fees and charges for Trade Waste services effective from 1 July 2022 as attached in Appendix 2, be approved for public consultation and the Chief Executive be authorised to undertake the necessary consultative process under sections 82 and 150 of the Local Government Act 2002.

##### Environmental Health

5. That the fees and charges for Environmental Health Services (in terms of regulation 7 of the Health (Registration of Premises)

Regulations 1966) as proposed in Appendix 5, be adopted and following public notification, take effect from 1 July 2022.

#### Animal Control

6. That the fees and charges for the Impounding of Animals (in terms of section 14 of the Impounding Act 1955) and for Dog Registration and Dog Impounding (in terms of sections 37 and 68 of the Dog Control Act 1996) as proposed in Appendix 6 be adopted, and following public notification, take effect from 1 July 2022.

#### Burial & Cremation

7. That the fees and charges for Burial and Cremation, as proposed in Appendix 7 be adopted and following public notification, take effect from 1 July 2022.

#### Service Connections

8. That the fees and charges for Service Connections, as proposed in Appendix 8 be adopted and take effect from 1 July 2022.

#### Resource Recovery/Waste Management

9. That the changes to fees and charges for Resource Recovery/Waste Management relating to the recycling of tyres as proposed in Appendix 9 be adopted and take effect from 1 July 2022.

#### Sportsfields

10. That the fees and charges for Sportsfields as proposed in Appendix 10 be adopted and take effect from 1 July 2022.

#### Backflow Prevention

11. That the fees and charges for Backflow Prevention testing and maintenance as proposed in Appendix 11 be adopted and take effect from 1 July 2022.

#### Corridor Access Request

12. That the fees and charges for Corridor Access Requests as proposed in Appendix 12 be adopted and take effect from 1 July 2022.

## 23-22

### **Variations to Operating Budget**

Memorandum, presented by Cameron McKay, Acting Chief Financial Officer.

#### The **COMMITTEE RECOMMENDS**

1. That Council receive the memorandum titled 'Variations to Operating Budget' presented to the Finance & Audit Committee on 23 March 2022.
2. That Council note and approve bringing forward capital

expenditure of \$1m from 2022/23 into 2021/22 for Programme 1879 - Council's Plant and Vehicle Replacements.

**24-22 Allocation of funding from the Low Carbon Fund to Capital Renewal Programmes**

Memorandum, presented by Adam Jarvis, Senior Climate Change Advisor.

The **COMMITTEE RECOMMENDS**

1. That 'Programme 1791 – Parks Depot – Building Reserves' be increased by \$90,000 in the 2021/2022 Financial Year for the upgrade of the Ferguson Street Depot boiler to modern energy efficiency standards.
2. That 'Programme 1837 - Swimming Pools – Pool Renewals' be increased by \$39,558 in the 2021/2022 Financial Year for the upgrade of the modern energy efficient variable speed drives at the Lido Aquatic Centre
3. That 'Programme 1888 – Low Carbon Fund' be reduced by \$129,558 in the 2021/2022 Financial year.

**25-22 Ashhurst Domain - Vacant Ex-Cafe Building Options**

Report, presented by Bryce Hosking, Group Manager - Property, and Kathy Dever-Tod, Group Manager - Parks and Logistics.

The **COMMITTEE RECOMMENDS**

1. That Council retain the ex-café building within Ashhurst Domain and seek to lease the building once the review of Ashhurst Domain Reserve Management Plan is completed.

**26-22 Colquhoun Park - Proposal to grant a lease on reserve land to Manawatu Softball Association Incorporated and Freyberg Old Boys' Rugby Football Club Incorporated**

Memorandum, presented by Bryce Hosking, Group Manager - Property and Kathy Dever-Tod, Group Manager - Parks and Reserves.

The **COMMITTEE RECOMMENDS**

1. That Council approve entering a new lease with Manawatu Softball Association and Freyberg Old Boys' Rugby Club Incorporated for part of the Colquhoun Park Pavilion, 134-136 Fairs Road, Palmerston North, in accordance with Section 54 of the Reserves Act 1977.

## RECOMMENDATIONS FROM COMMITTEE

**TO:** Council

**MEETING DATE:** 6 April 2022

**TITLE:** Presentation of the Part I Public Environmental Sustainability Committee Recommendations from its 30 March 2022 Meeting

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Set out below are the recommendations only from the Environmental Sustainability Committee meeting Part I Public held on 30 March 2022. The Council may resolve to adopt, amend, receive, note or not adopt any such recommendations. (SO 3.18.1)

### 5-22 Confirmation of Gross vs Net Organisational Emissions Reporting

Memorandum, presented by Adam Jarvis, Senior Climate Change Advisor.

#### The COMMITTEE RECOMMENDS

1. That the Eco City strategy target of a 30% reduction in citywide carbon emissions is confirmed to relate to 'net' emissions, inclusive of sequestered carbon.
2. That the Council's own organisational emission progress is confirmed to relate to 'net' emissions, inclusive of sequestered carbon.

### 6-22 Low Carbon Roadmap

Memorandum, presented by Adam Jarvis, Senior Climate Change Advisor.

#### The COMMITTEE RECOMMENDS

1. That the Council endorse the flowchart detailed in the Low Carbon Roadmap attached to the memorandum titled 'Low Carbon Roadmap' presented to the 30 March 2022 Environmental Sustainability Committee.
2. That the Council endorse the three approaches (listed in 2.14):
  - Internal Asset Value Optimisation
  - Carbon Neutral Programme Development
  - Citywide Reduction Projects that complement National Direction

3. That the Chief Executive continues to develop the Low Carbon Roadmap and report to Council in 2023 with specific options and actions to achieve the city-wide goal of 30% reduction in emissions by 2031, and that the proposed scope and methodology for that report be presented to the Environmental Sustainability Committee in September 2022.