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# **PALMERSTON NORTH CITY COUNCIL**

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## **AGENDA**

# **PLANNING & STRATEGY COMMITTEE**

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**9AM, WEDNESDAY 11 MAY 2022**  
COUNCIL CHAMBER, FIRST FLOOR, CIVIC ADMINISTRATION BUILDING  
32 THE SQUARE, PALMERSTON NORTH

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# MEMBERS

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**Aleisha Rutherford (Chairperson)**  
**Patrick Handcock ONZM (Deputy Chairperson)**  
**Grant Smith (The Mayor)**

<b>Brent Barrett</b>	<b>Lorna Johnson</b>
<b>Rachel Bowen</b>	<b>Billy Meehan</b>
<b>Zulfiqar Butt</b>	<b>Bruno Petrenas</b>
<b>Renee Dingwall</b>	<b>Orphée Mickalad</b>
<b>Leonie Hapeta</b>	

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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# **PLANNING & STRATEGY COMMITTEE MEETING**

11 May 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. Public Comment**

To receive comments from members of the public on matters specified on this Agenda or, if time permits, on other Committee matters.

(NOTE: If the Committee wishes to consider or discuss any issue raised that is not specified on the Agenda, other than to receive the comment made or refer it to the Chief Executive, then a resolution will need to be made in accordance with clause 2 above.)

- 5. Confirmation of Minutes** Page 7  
 “That the minutes of the Planning & Strategy Committee meeting of 13 April 2022 Part I Public be confirmed as a true and correct record.”

- 6. Options for Road Closure** Page 13  
 Memorandum, presented by Julie Macdonald, Strategy & Policy Manager and Chris Lai, Senior Transportation Engineer.

- 7. Committee Work Schedule** Page 23

- 8. Wastewater Discharge Consent Project - Progress Update** Page 25  
 Memorandum, presented by Mike Monaghan, Group Manager - 3 Waters.

**9. 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
10.	Wastewater Discharge Consent Project - Progress Update	Legal Privilege - s7(2)(g)	Legal Privilege - s7(2)(g)

	(Attachment 2)		
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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].



## PALMERSTON NORTH CITY COUNCIL

### Minutes of the Planning & Strategy Committee Meeting Part I Public, held as an Audio-Visual Meeting on 13 April 2022, commencing at 9.00am.

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

**Non Members:** Councillors Susan Baty, Vaughan Dennison, Lew Findlay QSM and Karen Naylor.

**Apologies:** The Mayor (Grant Smith) (early departure on Council Business) and Councillor Susan Baty (early departure).

Councillor Susan Baty was not present when the meeting resumed at 10.50am. She was not present for clauses 18 to 21 inclusive.

Councillor Rachel Bowen left the meeting at 11.45am during consideration of clause 19. She was not present for clauses 19 to 21 inclusive.

The Mayor (Grant Smith) was not present when the meeting resumed at 3.41pm. He was not present for clauses 20 and 21.

Councillor Vaughan Dennison was not present when the meeting resumed at 3.41pm. He was not present for clauses 20 and 21.

Councillor Orphée Mickalad was not present when the meeting resumed at 3.41pm. He was not present for clauses 20 and 21.

#### 13-22      **Apologies**

Moved Aleisha Rutherford, seconded Leonie Hapeta.

The **COMMITTEE RESOLVED**

1. That the Committee receive the apologies.

Clause 13-22 above was carried.

#### 14-22      **Public Comment**

Public comment was made by Mr Chris Whaiapu, representing Ngati Hineaute Hapu Authority, regarding the use of Opie Reserve.

Moved Aleisha Rutherford, seconded Patrick Handcock ONZM.

The **COMMITTEE RESOLVED**

1. That the Committee receive the public comment for information.

Clause 14-22 above was carried.

**15-22 Confirmation of Minutes**

Moved Aleisha Rutherford, seconded Lorna Johnson.

The **COMMITTEE RESOLVED**

1. That the minutes of the Planning & Strategy Committee meeting of 9 March 2022 Part I Public be confirmed as a true and correct record, subject to amend the location of the meeting to an audio-visual meeting.

Clause 15-22 above was carried.

**16-22 Further Information on use of Opie Reserve**

Memorandum, presented by Kathy Dever-Tod, Parks and Reserves Manager.

Moved Aleisha Rutherford, seconded Lorna Johnson.

The **COMMITTEE RESOLVED**

1. That the Committee receive the information from Ngāti Hineaute Hapu Authority and Kāinga Ora contained within the report titled 'Further Information on use of Opie Reserve'.
2. That the report titled 'Proposal from Ngāti Hineaute Hapu Authority Kohanga Reo to relocate to Opie Reserve', dated 10 November, be lifted from the table.

Clause 16-22 above was carried.

**17-22 Proposal from Ngati Hineaute Hapu Authority Kohanga Reo to relocate to Opie Reserve**

Report, presented by Kathy Dever-Tod, Manager - Parks and Reserves.

In discussion it was agreed that it was a great opportunity to support Kohanga Reo to achieve their aspirations by leasing the full site of Opie Reserve to them.

Moved Aleisha Rutherford, seconded Lorna Johnson.

The **COMMITTEE RECOMMENDS**

1. That the Council adopt option 3 – Exclusive use (Kohanga Reo) – all of Opie Reserve is leased to the Ngati Hineaute Hapu Authority

Kohanga Reo, subject to the Reserves Act 1977 process.

Clause 17-22 above was carried.

## 18-22

### **Update on the Civic and Cultural Precinct Master Plan**

Memorandum, presented by David Warburton, Project Director, Civic and Cultural Precinct Master Plan.

The meeting adjourned at 10.30am.

The meeting resumed at 10.50am.

Councillor Susan Baty was not present when the meeting resumed at 10.50am.

Moved Aleisha Rutherford, seconded Patrick Handcock ONZM.

#### The **COMMITTEE RESOLVED**

1. That the Committee receive the update report titled 'Palmerston North City Council Civic and Cultural Precinct Master Plan Update for Elected Members', as attached to the memorandum titled 'Update on the Civic and Cultural Precinct Master Plan' presented to the 13 April 2022 Planning and Strategy Committee.

Clause 18-22 above was carried 11 votes to 4, the voting being as follows:

#### **For:**

The Mayor (Grant Smith) and Councillors Aleisha Rutherford, Brent Barrett, Rachel Bowen, Zulfiqar Butt, Vaughan Dennison, Renee Dingwall, Patrick Handcock ONZM, Lorna Johnson, Billy Meehan and Orphée Mickalad.

#### **Against:**

Councillors Lew Findlay QSM, Leonie Hapeta, Karen Naylor and Bruno Petrenas.

## 19-22

### **Arena Master Plan Review: Process and Governance**

Memorandum, presented by Jono Ferguson-Pye, City Planning Manager and John Lynch, Venues Manager.

Councillor Rachel Bowen left the meeting at 11.45am.

Moved Aleisha Rutherford, seconded Leonie Hapeta.

#### The **COMMITTEE RECOMMENDS**

1. That direction on the Arena Master Plan review be provided by Council via Council workshops and reporting through the Planning and Strategy Committee.

Clause 19-22 above was carried 13 votes to 2, the voting being as follows:

#### **For:**

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

#### **Against:**

Councillors Brent Barrett and Karen Naylor.

Moved Aleisha Rutherford, seconded Leonie Hapeta.

2. Note that regardless of whether direction on the Arena Master Plan review is provided by the Arena Master Plan Steering Group or Council, final approval of the Arena Master Plan review will be a Council decision.

Clause 19-22 above was carried.

Moved Karen Naylor, seconded Brent Barrett.

**Note:**

On a motion that clause 19.1 be amended to delete the words 'via Council workshop and'. The motion was lost 2 votes to 12, the voting being as follows:

**For:**

Councillors Brent Barrett and Karen Naylor.

**Against:**

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

The meeting adjourned at 12.08pm.

The meeting resumed at 3.41pm.

The Mayor (Grant Smith) and Councillors Vaughan Dennison and Orphée Mickalad were not present when the meeting resumed at 3.41pm.

**20-22**

**Draft Trade Waste Bylaw 2022 - Deliberations and Adoption**

Report, presented by Julie Macdonald - Strategy and Policy Manager.

Moved Aleisha Rutherford, seconded Patrick Handcock ONZM.

The **COMMITTEE RECOMMENDS**

1. That the Council confirms that:
  - a. the Palmerston North Trade Waste Bylaw 2022 is the most appropriate means of addressing the perceived problems of regulating the quality and rate of trade waste discharges; and
  - b. the form of the Bylaw is the most appropriate form of bylaw; and
  - c. the Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
2. That the Council adopt the Palmerston North Trade Waste Bylaw 2022 and Palmerston North Trade Waste Bylaw 2022 Administration Manual, as shown in attachments one and two.

Clause 20-22 above was carried.

**Abstained:**

Councillor Leonie Hapeta.

**21-22 Committee Work Schedule**

Moved Aleisha Rutherford, seconded Leonie Hapeta.

The **COMMITTEE RESOLVED**

1. That the Planning & Strategy Committee receive its Work Schedule dated April 2022.

Clause 21-22 above was carried.

The meeting finished at 4.00pm.

Confirmed 11 May 2022

**Chairperson**



## MEMORANDUM

**TO:** Planning & Strategy Committee

**MEETING DATE:** 11 May 2022

**TITLE:** Options for Road Closure

**PRESENTED BY:** Julie Macdonald, Strategy & Policy Manager and Chris Lai, Senior Transportation Engineer

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

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### RECOMMENDATION TO PLANNING & STRATEGY COMMITTEE

1. That the Committee receive the memorandum titled 'Options for Road Closure' dated 11 May 2022.

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### 1. ISSUE

In March 2022 the Planning and Strategy Committee considered the report titled 'Options to address 'street racer' issues. Among other decisions, the Committee resolved:

That the Chief Executive provide an update on engineering and legal solutions to the Planning and Strategy Committee in May 2022.

That option 4 is explored fully, engaging a specific piece of work, asking the Chief Executive and officers to explore how a 'temporary gate structure' can work on Longburn and North East Industrial Parks.

This memorandum is in response to these resolutions.

### 2. BACKGROUND

In March 2022 officers provided a report to the Planning and Strategy Committee in response to a resolution in October 2021:

That the Chief Executive investigate the anti-social and 'street racer' activity occurring at various locations on the outskirts of Palmerston North and provide advice on the various options Council could pursue to address this problem.

The report provided an analysis against criteria of each of the identified options and made recommendations to Committee and Council about future actions to help address the problem. The options were:

Option 1: Limit access to Works Road through a bylaw

- Option 2: Develop a 'Cruising Bylaw'
- Option 3: Make Works Road a 'No Parking' area
- Option 4: Temporarily close Works Road
- Option 5: Permanently close Works Road
- Option 6a: Physical deterrent (installation of speed humps)
- Option 6b: Physical deterrent (surface treatment)

Council adopted the recommendations of the report, to proceed with options 1 and 3, and 6a. Work is underway to implement those options.

At the Planning and Strategy Committee there was discussion about the report recommendation that temporary road closure (option 4) would not be an effective response to the identified problem. Following this discussion, the Committee resolved to further investigate option 4, the temporary closure of Works Road and North East Industrial Parks, and, to consider the viability of gates at those locations. The Committee also resolved to receive an update on engineering and legal solutions.

### 3. DISCUSSION

#### Engineering update

Staff continue to monitor emerging roading treatments. Speed humps have been installed at both Works Road and El Prado Drive and staff are in the process of implementing the parking restrictions described in the earlier report. Staff continue to liaise with other councils to share ideas and information about effective responses to street racers.

#### Temporary road closure using gates

The Committee has requested further information about the use of 'temporary gate structures' to close Works Road and/or the North East Industrial Park. In the March report to Committee the various options were evaluated against these criteria:

- a. Legal -whether the option can be implemented under law
- b. Viable – whether the option can be practicably implemented
- c. Effective – whether the option will work
- d. Enduring – how long the option will last
- e. Applicable to other locations
- f. Timely – how quickly the option can be implemented
- g. Avoids other adverse effects

This report expands on the advice already received to consider the legal and practical issues of achieving temporary road closure through the use of gates.

#### *Legal advice*

This section of the report considers the legal issues involved in installing gates to control access to Works Road and El Prado Drive. CRLaw has provided advice on this matter, which is appended as attachment 1. The legal advice notes that temporary road closure has merit it is unlikely to be legally reliable as a permanent

solution to the identified problem. The advice suggests that if any temporary road closure is made, that this should be for a defined period until such time as the anticipation of public disorder abates.

### *Viability*

This section of the report considers the practical issues involved in installing gates to control access to either site. This would be achieved through some type of pin-entry mechanism (for example, through an app or a key-pad, or with a swipe card or fob at the entry point). The installation of gates at either location poses several challenges:

- Whatever mechanism was installed would require ongoing Council support to manage access, including on-call response for fire and emergency and contact from legitimate users unable to gain access. Unlike some locations (such as Otene Road in Hastings) with a limited number of residential properties on a closed road, each of the industrial park sites has many vehicle movements by multiple parties. Maintenance of a secure pin system or the provision of cards/ fobs would require ongoing Council support. In general, the greater the number of people with access to the gate, the less secure the gate will be, due to the increasing likelihood of access codes being shared.
- The cost of installing gates would likely be in excess of \$50,000 per location plus the cost of the technology to enable access and ongoing operational costs. Staff note that other mechanisms, such as bollards, would be a much greater cost.
- Because these sites are public roads, the control of any gate mechanism cannot be handed over to private parties. Some instances which have been cited as analogous to the Palmerston North sites (such as Tidal Road in Auckland) are private roads, where the property owners can manage their own access. As the road controlling authority, the Council cannot delegate responsibility and so would need to remain responsible for managing access. This would potentially be a 24-hour availability response, and so would incur staffing and out-of-hours costs.
- Any gate structure would need an appropriate turning area which would cost in excess of \$100,000 per site and may require additional land to be purchased from adjacent properties. There may also be a requirement for fencing of adjacent properties. This provision would be to enable the safe exit for any vehicles failing to gain access to the closed road.
- Similarly, consideration would need to be given to managing any queued traffic waiting to gain access through a gate, which may require changes in road layout.
- While the objective may be for temporary road closure (see the legal issues, above) the mechanisms required to achieve road closure are essentially of a permanent nature.

### *Summary*

The Committee requested advice about how a temporary gate structure could work at the two locations under discussion. Staff consider that the installation of gates is not a viable solution to the problem due to the significant cost, resourcing implications and other challenges to achieving safe and effective access to the site/s while gates are in place.

Officers also note that the scheduled regular closures on an indefinite basis is not likely to be legally reliable as a permanent solution to the problem identified. In addition to the considerable logistic issues in achieving road closure through the installation of gates, the other problems identified in the March report remain. For example, street racer activity may be diverted to other, potentially residential, locations.

#### 4. NEXT STEPS

This memo is for information only. If the recommendation is received then there will be no further actions, other than those previously agreed as outcomes of the earlier report (in March 2022).

#### 5. COMPLIANCE AND ADMINISTRATION

Does the Committee have delegated authority to decide?		<b>Yes</b>
If Yes quote relevant clause(s) from Delegations Manual		
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 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	Council's continued attention to street racing and may contribute to the effective and safe operation of the city's transport network.	

## ATTACHMENTS

1. Legal advice [↓](#) 



## MEMORANDUM

**TO:** Julie Macdonald  
**FROM:** Nicholas Jessen  
**DATE:** 29 April 2022  
**SUBJECT:** Temporary Closure of Works Road

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### Introduction

1. Thank you for your instruction. By resolution, the Council seeks further advice as to how a “temporary gate structure” could be implemented at Longburn and the North East Industrial Park to prevent access to those roads by ‘street racers’, at times when disorder is anticipated.
2. Further, we are asked to give further consideration to whether the Council could rely on the powers under Schedule 10 of the Local Government Act 1974 (**LGA**) to implement a temporary closure of roads, as a regular and long-term solution to issues posed by street racers.

### Further discussion of the Council’s powers under Schedule 10 of the LGA

3. The first principle that Council should note is that public roads are a public common area and cannot be closed except by way of proper legal processes. To an extent this may address any questions about the form that a closure may take. Any barrier, gate, or other structure that prevents public access to a road will constitute a closure and should not occur without lawful authorisation.
4. Council is empowered by Schedule 10 of the LGA to temporarily close roads, as follows:

#### *Temporary prohibition of traffic*

- 11 The council may, subject to such conditions as it thinks fit (including the imposition of a reasonable bond), and after consultation with the Police and the New Zealand Transport Agency, close any road or part of a road to all traffic or any specified type of traffic (including pedestrian traffic)—
  - (a) while the road, or any drain, water race, pipe, or apparatus under, upon, or over the road is being constructed or repaired; or

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- (b) where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or
- (c) during a period when public disorder exists or is anticipated; or
- (d) when for any reason it is considered desirable that traffic should be temporarily diverted to other roads; or
- (e) for a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show, market, concert, film-making, race or other sporting event, or public function:

provided that no road may be closed for any purpose specified in paragraph (e) if that closure would, in the opinion of the council, be likely to impede traffic unreasonably.

5. Our previous advice, informing the officers report to Council dated 9 March 2022, was that the temporary road closure provisions could not be reasonably interpreted to allow for regular and anticipated road closures over an extended period. While our advice was that temporary closures would be possible under clause 11(c), (given reporting of the activities as anticipated public disorder), our advice was that such closures must have the nature of being 'temporary', and in response to specific anticipation of public disorder. In other words, our opinion was that such temporary closures could not be reasonable relied upon to close the road at specified times on an indefinite basis.
6. It has since been brought to our attention that the Council considers it is currently relying on the powers under Schedule 10 of the LGA to maintain the night-time closure of Cliff Road, leading to Anzac Park. As we understand it, this road has been closed nightly since circa 2004 in response to issues of public disorder. Accordingly, the Council considers there is at least an effective local precedent for this type of approach, notwithstanding our advice.
7. We have reviewed items on the Council's historic file in relation to Cliff Road. From what we can ascertain, Council previously sought advice from the Ministry of Transport on 18 November 2003 as to whether it could rely on clause 11(c) to close the road. There is no evidence on the file of a response clarifying the Ministry's position as to the application of that clause.
8. Apart from this, there was a subsequent officer's memorandum to the Fitzherbert Ward Committee dated 4 March 2004. This memorandum advises the Committee that it was the Police who exercised their powers of temporary road closure to close Cliff Road, rather than the Council. I note the following paragraph:

On 23<sup>rd</sup> January Council staff met with Police to discuss ongoing management of the road closure. Police indicated they are prepared to relax the road closure and allow entry to the park during daylight periods during the week. They believe a closure is necessary at this time at nights and during the weekend. Police have undertaken to review the weekend closure if the weekday opening proceeds without incident.

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9. Accordingly, it appears that Cliff Road has been kept closed operationally by the Council, but under the ongoing instruction and statutory powers available to the Police at that time.<sup>1</sup> We note that the Police's power to temporarily close roads under the LGA 1974 has been repealed and replaced by s 35 of the Policing Act 2008, which provides as follows:

### 35 Temporary closing of roads

- (1) A constable may temporarily close to traffic any road, or part of a road, leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that—
- (a) public disorder exists or is imminent at or near that place; or
  - (b) danger to a member of the public exists or may reasonably be expected at or near that place; or
  - (c) an offence punishable by 10 or more years' imprisonment has been committed or discovered at or near that place.
- (2) In this section,—

road has the meaning given in section 315(1) of the Local Government Act 1974 except that it includes—

- (a) a motorway within the meaning of section 2 of the Transit New Zealand Act 1989; and
- (b) a private road within the meaning of section 315(1) of the Local Government Act 1974; and
- (c) a private way within the meaning of section 315(1) of the Local Government Act 1974

**temporarily** means for a period that is reasonably necessary in the circumstances

10. We note that under subsection 1(a), the Police have a similar power to that held by the Council under clause 11(c) in the LGA 1974, except that the Police's equivalent power only allows it to close the road where disorder is "imminent", whereas clause 11(c) uses the broader language that disorder being "anticipated". On standard statutory interpretation principles, it is arguable that the broader language in the LGA 1974 deliberately allows more flexibility to Councils seeking to close roads where there is a less immediate threat of public disorder.
11. However, statutory provisions must be read in their context, and we maintain our view that a provision explicitly dealing with the temporary prohibition of traffic is not intended by Parliament to allow for planned, regular road closures indefinitely based on anticipation of non-specific public disorder. In reaching this view, we note that the clause relates to the "temporary prohibition of traffic", and we also note that none of the other circumstances under clause 11 allow for the Council to provide for regular and indefinite closures.

<sup>1</sup> We are not aware of any further changes to the management approach in relation to Cliff Road.



12. Further, we consider that 'temporary' means for a limited amount of time or a transient period. We take guidance here from the definition of 'temporarily' in s 35 of the Policing Act 2008, as cited above.
13. As indicated in our previous advice, we consider that clause 11 can be relied upon by the Council to close roads in reliance on clause (c) in response to anticipated public disorder. Our advice, however, is that the exercise of this power by a delegated official should be subject to regular review as to whether there remain sufficient legitimate grounds to maintain any temporary closure. Therefore, our caution is not that clause 11 cannot be relied upon to close the road, but that it is unlikely to be reliable as a lawful, permanent solution to street racer issues. Any such use of the power in this way would be potentially subject to review.

#### Conclusion

14. It remains our opinion that clause 11 is unlikely to be legally reliable as a permanent solution to prevent instances of public disorder, despite this option having merit as an interim solution.
15. We do not consider Cliff Road to be a comparable precedent for the indefinite closure of other roads in the district at scheduled and regular times. The limited documents that we have reviewed indicate that the Police closed Cliff Road, not the Council, and that the Council maintains that closure on behalf of the Police. While we have no opinion as to how the Police exercises their powers, our advice in relation to Works Road or other Council Roads would apply equally to Cliff Road in that we would caution Council as to the reliability of indefinitely closing it under clause 11(c).
16. Despite this, the Council can rely on clause 11(c) to close roads in relation to information regarding anticipated public disorder. The Council may wish to rely on the provision for a defined period until such time as the anticipation of public disorder abates, or a more permanent solution is revealed.
17. As an aside, it appears to be an assumption of the Council that it must be the agency to be responsible for any such road closure. However, we observe that the Police under s 35(1)(b) possess a power that the Council does not, specifically, it may temporarily close a road where danger to a member of the public exists or may reasonably be expected at or near that place. Given the violence that recently occurred at Works Road, it may be worthwhile for Council to engage further with the Police to discuss whether they would be prepared to exercise this particular power at that location.

#### CR LAW



**Nicholas Jessen**  
Partner  
[niessen@crlaw.co.nz](mailto:niessen@crlaw.co.nz)

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## COMMITTEE WORK SCHEDULE

TO: Planning & Strategy Committee

MEETING DATE: 11 May 2022

TITLE: Committee Work Schedule

### RECOMMENDATION(S) TO PLANNING & STRATEGY COMMITTEE

1. That the Planning & Strategy Committee receive its Work Schedule dated May 2022.

COMMITTEE WORK SCHEDULE MAY 2022				
Estimated Report Date	Subject	Officer Responsible	Current Position	Date of Instruction and Clause number
11 May 2022	Update on engineering and legal solutions for street racing activity	Chief Planning Officer		9 March 2022 Clause 10.8
8 June 2022	Process and options, including the use of bylaws, to establish and enforce heavy vehicle routes in the city's urban transport network.	Chief Planning Officer		Finance & Audit Committee 24 November 2021 Clause 82-21
8 June 2022	Palmerston North Civic and Cultural Precinct Masterplan – Update Report	Chief Planning Officer	Project setup	1 April 2019 Clause 16.19 11 August 2021 Clause 27-21
10 August 2022	Investigate options for free bus fares for priority groups	Chief Infrastructure Officer/Chief Planning	Collaborating with Horizons Regional Council	Committee of Council 9 June 2021 Clause 28.26-21
14 September 2022	Draft Procurement Policy targeting social and environmental impact	Chief Planning Officer	Procurement audit currently in progress. Policy delayed until audit completed and recommendations endorsed.	19 August 2019 Clause 54.3

14 September 2022	Information relating to the description, timing and quantum of the infrastructure work programmes to enable growth in Aokautere.	Chief Planning Officer		9 March 2022 Clause 11.4
New triennium	Palmerston North Civic and Cultural Precinct Masterplan – Final Report	Chief Planning Officer		1 April 2019 Clause 16.1
New triennium	Licensing, Regulatory and Service Provision Tools for Waste Minimisation, and Impact Council Service Provision has on Commercial Sector	Chief Infrastructure Officer/Chief Planning		11 August 2021 Clause 24-21
New triennium	Draft Waste Management and Minimisation Bylaw – Approval for Consultation	Chief Planning Officer		11 August 2021 Clause 24-21
New triennium	Initiate a process to extend parking restrictions to other areas where street racing activity occurs.	Chief Planning Officer		9 March 2022 Clause 10.3
TBC	Street racer issue - Explore how a 'temporary gate structure' can work on Longburn and North East Industrial Parks.	Chief Infrastructure Officer		9 March 2022 Clause 10.9
TBC	Ferguson/Pitt Street Intersection Upgrade - additional safety management options and timings	Chief Infrastructure Officer		Council 2 March 2022 Clause 4.3-22

## ATTACHMENTS

Nil

## MEMORANDUM

**TO:** Planning & Strategy Committee

**MEETING DATE:** 11 May 2022

**TITLE:** Wastewater Discharge Consent Project - Progress Update

**PRESENTED BY:** Mike Monaghan, Group Manager - 3 Waters

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

### RECOMMENDATION TO PLANNING & STRATEGY COMMITTEE

1. That the Committee note the progress update on the Wastewater Discharge Consent project.

### 1. BACKGROUND

- 1.1 Council formally adopted the preferred Best Practicable Option (BPO) for the future management of the city's wastewater at the Extraordinary Meeting of Council held on 15 September 2021. An Adaptive Management approach was adopted as part of this resolution which enables an enduring focus on limiting the amount of highly treated wastewater that is discharged to both land and river, by finding beneficial other uses and by reducing the amount of wastewater generated by the City.
- 1.2 Following the endorsement of the BPO the Project Team are progressing a 'consentable solution'. The PNCC Wastewater Treatment Plant (WWTP) discharge remains authorised by the current discharge consent until 2028. This provides time to seek a new discharge consent and construct the consented solution.
- 1.3 This phase of the project is now known as the 'Wastewater Discharge Consent Programme' (WDCP).  
  
The WDCP will develop and determine -
  - Concept Design of the wastewater treatment plant sufficient to satisfy the information requirements of the resource consent application
  - Assess the effects of the BPO for land and river discharges
  - Specific mitigation to be included in the application for new consents.
- 1.4 In December 2021 Council endorsed the recommendations for the Consenting Phase Implementation. These included:

1. That Council note the appointment of Beca New Zealand Ltd. to undertake Project Management Services for the project.
2. That Council approve the Award of Contract 4096 for Consent Phase Lead Technical Services to Stantec New Zealand Ltd. for a duration of two years from 1 December 2021 to 30 November 2023.
3. That Council approve a new Capital Programme titled Wastewater BPO Consent Renewal with a budget of \$2,500,000 for the 2021-22 financial year to secure consents from the proposed Best Practicable Option.
4. That Council endorse the establishment of a Consent Phase Project Reference Group (as amended) to facilitate engagement with key stakeholders on the project including the development of the adaptive management approach to be adopted within the wastewater consent application.
5. That Council release the report and Attachment 2 (Project Reference Group Terms of Reference) upon signing of the contract in Recommendation 2.
6. That Council note that operating programme 1319 be removed.

## 2. UPDATE ON PROJECT PROGRESS

### Technical Workstreams

- 2.1 Following the engagement of the lead designer Stantec (supported by PDP consultancy), supporting specialists have been engaged including Aqualink (reviewers for the irrigation workstream), Aquanet (river monitoring and modelling), Simpson Grierson (legal advisor), The Property Group and others including iwi and hapu advisors.
- 2.2 The workstreams that are being undertaken for this stage of consenting are:

Task	What are we trying to determine
Land application areas investigation	To demonstrate that there are suitable sites for the irrigation of the highly treated wastewater
Wastewater flows and loads	To develop future projections of the amount of wastewater and the contaminant loads for the next 50 years, to ensure that the design of the treatment is suitable for future changes in population and water usage.
River modelling	Modelling of the river water quality and

	ecology, as a baseline of current day, and with future projections of the highly treated in-river discharges to confirm wastewater treatment levels to meet regulatory requirements
Wastewater treatment plant concept design	Further development of the treatment concept, including changes to layout of the existing plant to add new processes to meet required treatment standards
Treated wastewater pipeline concepts	Work to determine options for the location of the wastewater pipelines required to convey the treated wastewater from the plant to the land application areas
Effects investigations – River discharge	Investigations required for the assessment of effects for the resource consent applications. These include <ul style="list-style-type: none"> <li>• Public health risk assessment</li> <li>• Water quality and ecology</li> <li>• Recreation</li> <li>• Water supply protection</li> </ul>
Effects investigations - Land	Investigations required for the assessment of effects for the resource consent applications. These include <ul style="list-style-type: none"> <li>• Public health risk assessment</li> <li>• Terrestrial ecology</li> <li>• Water supply protection</li> <li>• Groundwater quality</li> <li>• Sensitive land uses</li> <li>• Social and economic</li> <li>• Archaeological</li> </ul>
Cultural values assessment	This assessment is prepared by tangata whenua and assesses the effects of the wastewater scheme on such matters as the river, mauri, sites of significance, mahinga kai, kaitiakitanga

2.3 These workstreams will lead to the development of the consent application documents, and the assessment of effects on which the consents are based.

## **Technical Workstreams Updates**

### **Land Application workstream**

- 2.4 Identification of land for testing its suitability for irrigation is a high priority. An advisory group has been established with PDP, The Property Group, Federated Farmers and Food and Fibre.
- 2.5 The Project Team have identified a larger land area to focus further investigations within. This area has been identified through an assessment process, with larger land parcels being preferred to maximise the available area to discharge wastewater per property.
- 2.6 The Project Team are aware of concern in the farming community about identification of land for the irrigation. Discussions with Food & Fibre and Federated Farmers have highlighted this matter on several occasions.
- 2.8 At the end of April contact has been made with several landowners to seek permission to undertake soil investigations. The soil investigations are required to inform the Land Application workstream.
- 2.9 A media release and a letter drop to properties with the spatial area identified for investigations occurred in early May. The letter drop included approximately 600 properties and the letter provided a project update to these property owners.
- 2.10 Communications regarding the soil investigation elaborate that the testing proposed does not pre-determine those land parcels are being required for the discharge of wastewater for the project. These investigations are required to collect information within a geographical area.

### **Data Gathering and Monitoring workstream**

- 2.11 Data continues to be collected for the monitoring regime required as baseline information to inform the consent application. Ecological information is being collected from the Manawatū River to provide baseline data to be used for the freshwater assessments of impact of the discharge.
- 2.12 Officers continue to seek advice from iwi partners and other experts on the monitoring required at this consent stage.

### **Design Workstreams**

- 2.13 The Flows and Loads Workstream has been progressed near to completion. This comprises assessments of inputs into the plant over the next 50 years, including trade waste, and is assumption based. There have been some discussions with significant trade waste producers, which will continue through the consenting process, to ensure any planned future changes in trade waste at this stage are included in our assumptions.

- 2.14 The Flows and Loads workstream also includes assumptions about discharges from the plant. Work continues on adaptive management, utilising the skills and experience of the project reference group – at this stage broad assumptions have been made about the levels of flow to be discharged, to enable the remaining design work to progress.
- 2.15 The Concept Design workstream for the Wastewater Treatment Plant has been scoped and agreed with Stantec.
- 2.16 The BPO process selected Treatment Level 4 (TL4) for the Project. However, at that time design concepts had not resolved whether there would be a different level of treatment for the land discharge, to preserve more nutrient in the treated water. At current concept design stage, consideration has been given by the design team to what this would entail in practice – likely two different treatment trains for at least part of the treatment process. This has cost and operational implications.
- 2.17 Consideration is also being given to the consequential operating costs of cut and carry farm management potentially requiring added nutrient if the water is treated to a TL4 level, whilst noting that adaptive uses of treated water will be significantly greater if the water is produced without nutrient.
- 2.18 Treatment scenarios have been integral in discussions with Rangitāne in recent months, with Rangitāne indicating a preference for TL4 100% of the time.
- 2.19 Work on a strategy for biosolids has commenced – at present biosolids from the treatment plant are composted and used at the closed landfill at Awapuni. Future scenarios indicate that more biosolid will be produced with the new treatment regime, and the use of biosolids to create the closed landfill capping layer will not be required for the whole consent period. Therefore, other disposal options have to be identified and costed.

### **Consent Preparation**

- 2.20 A Draft Consent Strategy has also been prepared by Stantec and is being worked through with the wider project team. The Consent Strategy is an important milestone to outline the statutory approvals and consenting pathway for the Project, and strongly influences the workstreams and the programme for completion of the consent application.

### **Project Partner, Iwi and Stakeholder Engagement**

- 2.21 The complexity of the work has necessitated a flexible approach, to ensure we work with project partners in a way that works for them, and brings best advice to the project team. Whilst a variety of forums and advice groups have been established, one-to-one engagement is also undertaken with project partners and stakeholders.

Separately to the advice elements, some iwi partners are involved in co-design within specific workstreams. This is separate to tangata whenua inputs on the cultural values assessment, and strives to bring mātauranga Māori advice into the design process.

### **Project Reference Group**

- 2.22 Further to resolution 4 in section 1.4 above, a Project Reference Group (PRG) has been established. Councillor Brent Barrett joined the PRG as an Elected Member representative in 2022. The membership of the group is included in Attachment 1. The group meets monthly, and Councillors now receive a monthly update approximately one week after the PRG, to reflect the PRG briefing from Councillor Barrett.
- 2.23 To facilitate the development of Adaptive Management options for the project Jim Bradley (Stantec) and Mike Monaghan (PNCC) have presented on existing Adaptive Management carried out at the PNCC Wastewater Treatment Plant and other techniques used around New Zealand. The PRG attendees have been invited to submit their ideas to the Project Team for investigation.

### **Ngāti Whakare**

- 2.24 A Memorandum of Agreement has been developed with Ngāti Whakare, a hapu of Ngāti Raukawa, which recognises the ongoing effects of wastewater discharges into the river on their hapū. Technical specialists from Ngāti Whakare will join the Project Technical team to advise on specific interest areas. Ngāti Whakare have extended an invitation to councillors to visit their marae in Shannon and build relationships now the COVID 'red settings' are relaxed to amber. The Project Team is working with the governance team to facilitate this.

### **Te Tūmatakahuki**

- 2.25 The Project Team have recently met with representatives from Te Tūmatakahuki, a group which represents the coastal hapu of Ngāti Raukawa. Discussions are ongoing to develop an ongoing working arrangement, and work scopes.

### **Farming Community**

- 2.26 A farm advisor has been appointed to support engagement with the farming community, and to advise on farm management options and costs as the consent development progresses. Regular meetings have been held with Federated Farmers and Food and Fibre representatives from the Project Reference Group, working alongside the Property Group to develop approaches to landowner engagement.

## Other Stakeholders

- 2.27 The project team presented to the Foxton Community Board on 29 January 2022. The team presented on the BPO resolutions, and on the workstreams for this consent stage. The Community Board were pleased that PNCC had selected such a high treatment level for the plant.
- 2.28 Discussions have commenced with Fonterra, both as a trade waste customer and as representing some elements of the dairy industry locally.
- 2.29 Horizons Regional Council has invited PNCC to present on the Project in June.

## Public information

- 2.30 Although the consent application development does not have a high level of public engagement required for decision-making, the website has been updated to coincide with the commencement of landowner engagement. The "Nature Calls" branding continues for this consenting stage.

## Project Programme

- 2.31 The draft programme included in the December 2021 Council paper highlighted that the significant amount of work which is required to prepare an application of the required standard cannot be completed in the period prior to 1 June 2022 which is the existing consent target date.
- 2.32 The inability to meet this deadline is a flow-on effect resulting from COVID-19 delays during the BPO Phase. Condition 23C required that the BPO was lodged in June 2021 and this was delivered to Horizons in September 2021. At the time of development of the consent conditions, there was a 1 year timespan allocated between the BPO decision and the lodgement of consent, presumably to allow sufficient time to develop a good quality consent application. The overall consent to discharge is valid until 2028, presumably to also reflect the significant work required to design and build a new treatment facility after consent is granted.
- 2.33 The December 2021 paper highlighted the significant work required particularly in respect of the refinement of the land areas, identification of the land areas for assessment as well as the significant engagement with iwi and affected parties. At the time, it was assumed that a lodgement in September, to reflect a 1-year work programme for the consent application was more realistic. The ongoing effects of Covid-19 have impacted the team, both in terms of illness across the supply chain slowing down work, and added difficulties in engagement and face-to-face meetings, including site meetings, through different levels.
- 2.34 The project team have determined that more time is needed to develop the consent in this context and have estimated a likely project completion of 31 December.

- 2.35 The issue of the lodgement date was discussed with Rangitāne representatives and they reluctantly agreed to the extension of the programme of works to the 31 December 2022. With their support, contact was made with Horizons Regional Council to advise them of the delay.
- 2.36 A letter was sent to Horizons on 21 March 2022 to outline the challenges associated with meeting the consent condition 23C relating to the June 2022 lodgement date. This letter detailed the work underway, to demonstrate that work continues to progress on the project in earnest, despite the many challenges associated with the pandemic. Horizons Regional Council has acknowledged the letter and the likely programme delay and is aware of the significant and complex work that Council have done to develop the BPO and progress the consent application.
- 2.37 Officers sought legal advice from Simpson Grierson. Based on their advice, officers are comfortable that this is a practicable approach to expedite the delivery of the consent application documents.

### 3. PROJECT BUDGET

- 3.1 A consequence of the later lodgement of the resource consent application is the required carry over of capital spend.
- 3.2 The December Council paper estimated a spend of \$2.5M for the FY2021/2022. Spend to date of \$754,329 is behind estimated spend for this period, based on the idea that the application will take 6 months longer than originally anticipated.
- 3.3 The cost analysis is being updated to bring information into the Annual Plan process

### 4. PROJECT RISKS

- 4.1 High priority risks to the Project include are outlined in Table 2 below– the table reflects the unmitigated risks and consequences, and the revised risk after identification and mitigation by the project team

**Table 2 – Key Project Risks**

Risk	Unmitigated Likelihood	Unmitigated Consequence	Mitigated Risk Level
Insufficient Budget	Likely	Major	Moderate Budget requires careful management for a project of this size and scale. An external PM has been appointed

Ability to develop 'robust' consent application for December 2022 lodgement	Likely	Major	Moderate  Delay from June to December will require careful management due to Land Discharge Area workstream. An external PM has been appointed, plus a land advisor.  Project control group meets weekly to review programme and address issues.
External influences resulting in delays (i.e. COVID-19)	Likely	Moderate	Moderate  Lessening of alert levels and BAU working resulting is reduced/no further lockdowns. However, the future risks related to Covid 19 cannot be predicted.
Ability to access land for land discharge area testing	Likely	Major	Moderate  Lack of land access has ability to impact technical assessment development for consent lodgement. Mitigations include identifications of alternate landowners, and an assumptions-based approach if required
Effects on the mauri of the river and Cultural Effects	Likely	Major	Moderate  Being addressed through the various Project forums, requires careful consideration to mitigate cultural effects throughout Project development. High treatment levels are a mitigation
Iwi Relationships	Likely	Major	Moderate  Working relationships and agreements being developed. Requires

			ongoing consideration and management. Project sponsors and senior managers heavily involved in relationship development
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- 4.2 Project risks will be closely monitored through the Project Control Group and will be reported to Council periodically.

**5. NEXT STEPS**

- 5.1 The Project Team will provide quarterly updates to the Council on the development of the consent application.
- 5.2 Monthly updates will be provided to Council via the Project Reference Group.

Attachments

1. Project Reference Group Membership [↓](#) 
2. Legal Advice- deferral of lodgement - **Confidential**

## Project Reference Group Membership

Role / Organisation	Nominee / Representative
Palmerston North City Council	Brent Barrett
Independent Chair	David Warburton
Rangitāne o Manawātū	Jonathon Proctor
Te Tūmatakahuki (Raukawa)	Greg Carlyon (Provisional)
Te Rūnanga o Raukawa	Rarite Mataki
Ngāti Whakatere	Robert Ketu Tom Williams
Food and Fibre Forum	Peter Wells
Environment Network Manawatu	Stewart Harex Chris Teo-Sherrell
Federated Farmers	Murray Holdaway
Fish and Game	Phil Team Amy Coughlan
Department of Conservation	Chelsea Kenny
Public Health (DHB)	Brett Munro
Horizons Regional Council (observer)	Nic Peet
Department of Internal Affairs	Ian McSherry
Manawatu Chamber of Commerce	Amanda Linsley
Trade & Industrial Waste	Geoff Young
Council Executive Team	Sarah Sinclair (CIO)
BPO Project Manager	Anna Lewis
PNCC Group Manager, Three Waters	Mike Monaghan
PNCC Activities Manager – Three Waters	Jaques Mik