



Ōtorohanga District Council Extraordinary Meeting

AGENDA

14 MAY 2020

10am

Members of the Ōtorohanga District Council

His Worship the Mayor MM Baxter
Councillor K Christison
Councillor B Ferguson
Councillor R Johnson
Councillor K Jeffries
Councillor RA Klos
Councillor A Williams

Meeting Secretary: Mr. CA Tutty (Governance Supervisor)

THIS MEETING WILL BE LIVESTREAMED

https://youtu.be/mx8d_lnb6m

**ŌTOROHANGA DISTRICT COUNCIL
EXTRAORDINARY MEETING**

14 MAY 2020

Notice is hereby given that an Extraordinary Meeting of the Ōtorohanga District Council will be held virtually by Zoom on Thursday 14 May 2020.

This meeting will be Livestreamed at: https://youtu.be/mx8d_inbb6m

**Tanya Winter
CHIEF EXECUTIVE**

11 MAY 2020

ORDER OF BUSINESS

PRESENT

IN ATTENDANCE

APOLOGIES

PUBLIC FORUM (UP TO 30 MINUTES)

DECLARATION OF CONFLICTS OF INTEREST

REPORT

ITEM 63

**DECISION-MAKING FRAMEWORK FOR A LOAN TO THE
ŌTOROHANGA KIWI HOUSE**

2

**ITEM 63 DECISION-MAKING FRAMEWORK FOR A LOAN TO THE
 ŌTOROHANGA KIWI HOUSE**

**TO: HIS WORSHIP THE MAYOR & COUNCILLORS
 ŌTOROHANGA DISTRICT COUNCIL**

FROM: CHIEF EXECUTIVE

DATE: 14 MAY 2020

Relevant Community Outcomes

- Foster an involved and engaged Community
-

Executive Summary

The purpose of this report is to provide Council with some options for making a decision as to whether to approve a loan of \$2m to the Ōtorohanga Zoological Society (Kiwi House) for the purpose of the Kiwi House redevelopment.

Recommendations

It is recommended that Council:

- a) Adopt Option 1 as the process it will use to make a decision on a \$2m loan to the Ōtorohanga Zoological Society for the purpose of the Kiwi House redevelopment. This option is described as *“a decision based on full, updated information using a Special Consultative Procedure under the LGA 2002”*
- b) Engage Stephen Hamilton from Horwath HTL to provide an updated Business Plan including financial projections in a post-COVID-19 environment
- c) Undertake a Special Consultative Procedure in accordance with section 83 of the Local Government Act 2002.

Background

The Kiwi House has been operating as a successful tourism and conservation business for 48 years. It attracts over 50,000 visitors per year.

In May 2018, the Kiwi House made a submission to Council's 2018-28 Long Term Plan. In summary the submission wanted Council to consider allocating or providing provisions for the Kiwi House redevelopment project as presented in the Strategic Plan commissioned by Ōtorohanga District Council and Hamilton Waikato Tourism and completed by Horwath HTL and Bespoke Landscape Architecture.

In its deliberations Council agreed that the Kiwi House is a significant tourist attraction within Ōtorohanga, and due to its importance that in the future consideration be given to providing some assistance if required.

At its meeting on the 20 August 2019, Council resolved to increase an existing guarantee to \$700,000 to allow the Kiwi House to undertake Stage 1 of their \$8m redevelopment project. The Kiwi House are now seeking funding to assist with completing the second and third stages of their redevelopment plan. Funding applications have been presented to the Provincial Growth Fund, Waikato Regional Council, and Trust Waikato. The Ōtorohanga Charitable Trust has also pledged funding towards this redevelopment.

At its meeting of 17 December 2019 Council resolved the following:

- 1) *Council supports in principle a low-interest loan of \$2million to the Ōtorohanga Kiwi House and that this is included in the 2020/21 Annual Plan for consultation under Section 82 of the Local Government Act.*
- 2) *That the Mayor and Chief Executive be authorized to sign a letter on behalf of Council that confirms this support in principle, and that there is a requirement to consult with the community before the decision is made.*

COUNCILLOR JEFFRIES/COUNCILLOR FERGUSON

Feedback from the Kiwi House at the time was that this commitment in principle was all that was required to assist them in securing the remainder of the funding, in particular funding from the Provincial Growth Fund (PGF) where a commitment from Council would demonstrate strong community support. The understanding was that the consultation would be undertaken as part of Council's 2020-21 Annual Plan process.

This report was circulated to the Kiwi House prior to the Council meeting, who confirmed with the Provincial Development Unit (PDU) that the resolution was sufficient.

The report to Council also indicated the start of a process for approval of a \$2m loan. That process included Council undertaking its own due diligence of the Kiwi House Business Plan. This was necessary for Council to comply with both our Financial Strategy and also our Investment Policy which recognise that as a responsible public authority all investments held should be low risk.

Once Council had made an assessment of the risk, this then would need to be presented to the community as part of the public consultation process to allow them to comment on a full proposal. The timeframe to achieve this was in line with our Annual Plan timetable, which meant consultation in May, and adoption in June. The consultation could have potentially been brought forward, but only after Council were satisfied with the due diligence required.

Council were notified in February 2020 by the Kiwi House that there was now some urgency around getting the loan in place and that support in principle was no longer sufficient for the other funders. This was confirmed at a meeting with the Kiwi House on 26 February 2020, where the Kiwi House presented quite a different financial forecast to the one received in December 2019. The major concern identified by Council staff at this meeting was that the funding from the other parties was now proposed as loan funding, not grant funding. This significantly changed Council's risk profile.

Council subsequently sought independent advice on 27 February 2020 that included a review of the Kiwi House's business case and financial projections. The scope of this work was around whether Council had sufficient information to undertake the due diligence required to understand the risk and make an informed decision on whether to financially support the Kiwi House redevelopment project.

A written report was received on 9 March 2020. This was emailed to Councillors on 12 March 2020 and discussed in a Council workshop on 17 March 2020. There were a number of questions raised in the report that Council needed to consider before undertaking any public consultation.

The events that unfolded in March 2020 with the outbreak of COVID-19 and the long-term decline in the tourist market will obviously have an impact on the viability of the Kiwi House. Council were uncertain if the Kiwi House were able to cover on-going operating costs, let alone embark on an \$8m redevelopment project. Council called a Zoom meeting on the 16 April 2020 to get an understanding of the situation. We were advised that the Kiwi House were proceeding

with the redevelopment project and still wished Council to carry on with public consultation on a \$2m loan.

Current Situation

The world has changed considerably since the last report to Council in December 2019. The Kiwi House Business Case is based on pre-COVID-19 visitor projections. This affects Council's ability to complete its due diligence and go out for public consultation and means our risk exposure is significantly higher.

On 5 May 2020 Council received an email from the Kiwi House, outlining exactly what they were expecting of Council, this being:

1. A clear decision-making pathway by 15 May 2020
2. A \$2m loan in place by 1 July 2020 with no repayments of interest or principal for two years.

This report focuses on the first request from the Kiwi House, and reflects that there are divergent views amongst elected members as to how a decision about whether to advance a loan to the Kiwi House should be made. This report provides Council with some options to consider about a decision-making framework and attempts to explain the risk of each option.

To be clear, the decision to be made at this stage by Council is not about whether to approve a loan to the Kiwi House or not. It is about the decision-making framework that Council will use in order to make a decision about a loan. This report presents three decision-making options for Council to consider, however it is worth noting that there are other options that combine elements of these three options. Council may choose a bespoke option.

Options

Option 1: Decision based on full, updated information using a Special Consultative Procedure under the LGA 2002

Option 2: Decision based on the information we have now using a shorter consultation process

Option 3: Fast-tracked decision based on the information that we have now with no consultation process

A couple of elected members have suggested another option could be to approve a loan with conditions around consultation, due diligence etc. Staff believe that this is what is in place at the moment with the "approval in principle" resolution from 17 December 2019.

Considerations

For ease of comparison, the considerations have been incorporated into the Assessment of Options table below.

Assessment of Options

	OPTION 1	OPTION 2	OPTION 3
Description	<p>Decision based on full, updated information using a Special Consultative Procedure (SCP) under the LGA 2002</p> <ul style="list-style-type: none"> - Stephen Hamilton updated business case (proposal being sought) - Full updated financial statements including projections based on COVID-19 impact on tourism - New information from other potential funders - SCP takes minimum of 4 weeks - Process likely to be concluded by end July 2020 	<p>Decision based on the information we have now using a shorter consultation process</p> <ul style="list-style-type: none"> - 2019 business case pre-COVID-19 - Current financial statements - Current information from other potential funders - Shorter consultation period (2 weeks) - Process could be concluded by end June 2020 	<p>Fast-tracked decision based on the information that we have now with no consultation process</p> <ul style="list-style-type: none"> - 2019 business case pre-COVID-19 - Current financial statements - Current information from other potential funders - No consultation process - Process could be concluded by end May 2020
Legal Considerations			
S.76-81 LGA 2002 information	<p>These are the decision-making provisions in the Local Government Act that state the considerations Councils must give before making decisions. The opening clause in s.76 states: Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable. Council is encouraged to click on the links provided and read these sections of the Act rather than them being replicated here.</p>		
Comment	<p>It is up to Council's discretion and judgement to decide what level of information and assessment is required in order for a decision to be made. Staff advise that at a minimum a revised business case including updated financial statements and financial forecasts would be required. The advantage of this is that Council would have the most relevant information on which to base a decision. The disadvantage is that this would take longer to produce.</p>		
Assessment	<p>This option would prolong the decision-making process because the 2019 Business Case would need to be updated. This would include updated financial information.</p>	<p>This option would use the information that Council has currently which would shorten the decision-making process.</p>	<p>This option would use the information that Council has currently which would shorten the decision-making process.</p>

	OPTION 1	OPTION 2	OPTION 3
S.82, 82A and 83 LGA 2002	<p>These are the provisions on consultation in the LGA.</p> <p>section 82 includes the principles of consultation with the first one being:</p> <p>a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons.</p> <p>Section 82A expands on that by stating what information must be provided when consulting. If a Special Consultative Procedure (SCP) is to be used section 83 prescribes what is required.</p>		
Comment	<p>Once again it is at Council's discretion as to whether it chooses to consult on a matter and the extent of the consultation. Council's Significance and Engagement Policy (refer to section below) is a useful document to refer to in order to assess the significance of a particular matter and therefore the level of engagement and consultation with the community that is required.</p>		
Assessment	<p>This option involves a SCP which has the advantage of providing the community with a Statement of Proposal that would include detailed, updated information about the matter for decision. This would include different scenarios that attempt to predict the impact of COVID-19. The disadvantage of this option is that it would take Council staff longer to prepare the information, and require a 4 week consultation timeframe. It means the deadline set by the Kiwi House of 1 July 2020 is unlikely to be met.</p>	<p>This option includes a consultation process but not a SCP so the timeframe can be shortened. Information would still need to be provided to the community as outlined in s.82A but a full Statement of Proposal would not be required. We would use the information that we have now, and staff suggest a 2 week consultation process. The advantage of this process is it's quicker and still includes community consultation. The disadvantage is that the information is not updated for the impact of COVID-19 and it's a shorter timeframe for the community to respond</p>	<p>This option has no consultation with the community at all. Council would make a decision based on the information they have now and what they know and understand the community views to be on this matter. The advantage of this option is a decision can be made quickly. The disadvantage is that some parts of the community may feel they have not had an opportunity to have a say. The other disadvantage is that the information is not updated for the impact of COVID-19</p>
Financial Considerations			
Financial Strategy	<p>Current Financial Strategy states that Council's objective is to adopt a conservative approach to managing its finances. Under this option Council would undertake due diligence around</p>	<p>Under this option Council would not be able to undertake due diligence and assess risk and would need to state that this does not comply with Council's Financial Strategy as part of any</p>	<p>Under this option Council would not be able to undertake due diligence and assess risk and would need to state that this does not comply with Council's Financial Strategy. This is</p>

	OPTION 1	OPTION 2	OPTION 3
	any investment and be satisfied that is low risk, prior to consulting with the community. This would meet the requirements of our Financial Strategy.	consultation. This is in keeping with s.80 of the LGA which states the legal requirements around the identification of inconsistent decisions. The Financial Strategy can only be changed as part of Council's LTP plan process. Financial prudence is the basis of all Council's financial decision making and an integral component of our financial strategy.	in keeping with s.80 of the LGA which states the legal requirements around the identification of inconsistent decisions. The Financial Strategy can only be changed as part of Council's LTP plan process. Financial prudence is the basis of all Council's financial decision making and an integral component of our financial strategy.
Other Financial Considerations	Council would need to consider the rationale for this use of ratepayers funds against other future core infrastructure projects or other potential low interest loans to community organisations. This should be a consideration for all options.	Council would need to consider the rationale for this use of ratepayers funds against other future core infrastructural projects or other potential low interest loans to community organisations. This should be a consideration for all options.	Council would need to consider the rationale for this use of ratepayers funds against other future core infrastructural projects or other potential low interest loans to community organisations. This should be a consideration for all options.
Policy and Plan Considerations			
Investment Policy	Council's current Investment Policy states that as a responsible public authority all investments held, should be low risk. Accordingly, only approved credit worthy counterparties are acceptable. Under this option Council would undertake due diligence around any investment and be satisfied that it is low risk, prior to consulting with the community. This would meet the requirements of our Investment Policy. Council would also need to add an additional clause to our Investment	Under this option Council would not be able to undertake due diligence and assess risk and would need to state that this does not comply with Council's Investment Policy as part of any consultation. Council would also need to add an additional clause to our Investment Policy to allow us to make Loan Advances to community organisations.	Under this option Council would not be able to undertake due diligence and assess risk and would need to state that this does not comply with Council's Investment Policy. Council would also need to add an additional clause to our Investment Policy to allow us to make Loan Advances to community organisations.

	OPTION 1	OPTION 2	OPTION 3
	Policy to allow us to make Loan Advances to community organisations.		
Liability Policy	If Council was to use internal borrowing to advance the loan, then there are no changes required to the Liability Policy.	If Council was to use internal borrowing to advance the loan, then there are no changes required to the Liability Policy.	If Council was to use internal borrowing to advance the loan, then there are no changes required to the Liability Policy.
Long Term Plan 2018-28	<p>The Kiwi House submitted on Council's 2018-28 Long Term Plan. The letter from the Society stated that it would like to see provisions for the following funding options for their redevelopment project:</p> <p>A) Underwriting a loan and/or B) Securing finance via Council and charging back to OZS via an agreed fixed charge/rent and or lease</p> <p>At the LTP deliberations Council resolved the following: <i>Members agreed that due to the importance of both the Otorohanga Kiwi House and Beattie Home that in the future consideration be given to providing the organisations some assistance, if required.</i></p> <p>Council's Long Term Plan (page 135) states that "certain significant community assets, such as the Otorohanga Kiwi house and Beattie Home, may need development to continue effective operation". It also states that "Council will consider, on a case-by-case basis, whether to assist with funding for development of significant community assets not owned by Council."</p>		
Significance and Engagement			
Significance and Engagement Policy (LTP 2018-28)	Council's Significance and Engagement Policy (S&EP) was adopted with the 2018-28 Long Term Plan in accordance with the LGA (relevant sections cited above). The policy can be found here on pages 245-51. There are guidelines in this policy around determining whether a matter is significant and therefore what level of engagement with the community is required.		
Comment	The main matter that Council would likely consult on are around the risk of making a financial commitment in an uncertain environment. In order to make an informed decision the community would need financial information that demonstrates how any loan would be funded, and how it would be paid back. All options would rely on the Kiwi House providing Council with as much information as possible to enable a decision to be made.		
Assessment	This option includes a full Special Consultative Procedure under the LGA. This is the most thorough consultation process a Council can use. Staff believe that this decision is	This option includes consultation with the community, based on the information we have now. While not a full SCP, this process would still require a certain level of information to	This option does not have a consultation component. It is the view of staff that this is contrary to Council's S&EP and would carry a high level of risk. It assumes that this

	OPTION 1	OPTION 2	OPTION 3
	<p>significant enough to warrant a SCP for the following reasons:</p> <ul style="list-style-type: none"> - Financial consequences - Level of community interest - Ongoing effect on the community - Potential for controversy - A change in direction for Council's Financial Strategy and some key financial policies <p>Ultimately this is Council's decision, but staff assess this as the lowest risk option</p>	<p>be provided to the community to enable them to express their views. The assessment against Council's S&EP is the same, but the approach to consultation is at a reduced level. Staff believe this still carries risk. If the Kiwi House can provide Council with updated information themselves that would reduce the risk.</p>	<p>decision does not warrant community views, or that Council has sufficient evidence to demonstrate that we already know broad community views on this matter.</p>
Consultation required	Special Consultative Procedure (4 weeks in accordance with the LGA)	Consultation (Council determines a timeframe. Could be 2 weeks)	No consultation
Iwi Considerations			
Maori Involvement in Decision-making (LTP 2018-28)	Council is required in its Long Term Plan to state how we will involve Maori in decision-making. This is on page 260 of our Long Term Plan . Council staff have not engaged with Iwi on this matter, but if a consultation process was undertaken, engagement with Iwi would be part of that.		
Overall Risk Assessment and Impact			
Assessment	Low Risk	Moderate-High Risk	High Risk
Impact	<p>Legal –compliant with decision-making and consultation provisions in LGA</p> <p>Policy & Plan – compliant with Significance & Engagement Policy</p> <p>Timeliness – this process will take longer and not meet the Kiwi House deadline</p> <p>Reputational and political – potential negative feedback from Kiwi House and some in the community who may</p>	<p>Legal – questionable compliance with decision-making and consultation provisions in LGA. Moderate risk of judicial review on decision-making process</p> <p>Policy & Plan – questionable compliance with Significance & Engagement Policy</p> <p>Timeliness – this process will meet the Kiwi House deadline</p>	<p>Legal – not compliant with decision-making and consultation provisions in LGA. High risk of judicial review on decision-making process</p> <p>Policy & Plan – not compliant with Significance & Engagement Policy</p> <p>Timeliness – this process will meet the Kiwi House deadline</p> <p>Reputational and political – likely to please the Kiwi House and some community members advocating for</p>

	OPTION 1	OPTION 2	OPTION 3
	accuse Council of being too risk adverse or delaying making a decision Financial – engaging Stephen Hamilton to provide another report will cost Council Media – risk of negative media response in that Council are seen as not supporting the Kiwi House	Reputational and political – negative feedback from Kiwi House and some in the community who may accuse Council of being too risk adverse or delaying making a decision Financial – use of existing information at no extra cost Media – less likely risk of negative media response	this project. May receive negative feedback from others in the community who have not been provided with an opportunity to have their say Financial – use of existing information at no extra cost Media – risk of negative media response in that the wider public have not been consulted.

Timeline Summaries

The timelines for each option are presented below:

NOTE: these timeframes are indicative only and are subject to change

Option 1:

DATE	14 May 2020	15 May 2020	18 May 2020	5 June 2020	16 June 2020	19 June 2020	22 June 2020	28 July 2020
MILESTONE	Extraordinary Council meeting to confirm process for a decision on \$2m loan	ODC to provide Kiwi House decision on process	Stephen Hamilton commences update of Business Plan	-Draft report received from Stephen Hamilton -Staff commence work on a Statement of Proposal for consultation with the community	Ordinary Council meeting -adoption of 2020/21 Annual Plan -workshop with Stephen Hamilton on draft report (one with Council, one with Kiwi House and funders)	Staff complete Statement of Proposal	Special Consultative Procedure 22 June–17 July (4 weeks)	Ordinary Council meeting (pushed out from 21 July depending on number and nature of submissions) -consider submissions -Hearing -Make a decision on a \$2m loan (this could be done at this meeting or at a later meeting)

								depending on the volume and nature of submissions)
--	--	--	--	--	--	--	--	--

Option 2:

DATE	14 May 2020	15 May 2020	18 May 2020	26 May 2020	29 May 2020	16 June 2020	30 June 2020
MILESTONE	Extraordinary Council meeting to confirm process for a decision on \$2m loan	ODC to provide Kiwi House decision on process	Request to Kiwi House for as much information as they have currently	Ordinary Council meeting	Consultation 29 May – 12 June 2020 (2 weeks)	Ordinary Council meeting	Extraordinary Council meeting -consider submissions -Hearing -Make a decision on a \$2m loan (this could be done at this meeting or at a later meeting depending on the volume and nature of submissions)

Option 3:

DATE	14 May 2020	15 May 2020	18 May 2020	26 May 2020
MILESTONE	Extraordinary Council meeting to confirm process for a decision on \$2m loan	ODC to provide Kiwi House decision on process	Request to Kiwi House for as much information as they have currently	-Ordinary Council meeting -Make a decision on a \$2m loan

Preferred Option and Reasons

The preferred option of staff is Option 1. A decision to make a \$2m loan to an organisation with tourism as its revenue mainstay for a redevelopment project in a post COVID-19 environment carries with it significant risk. That risk is summarised in the table above. It is the view of staff that should Council wish to proceed to make a decision about a loan to the Kiwi House, that the community are provided with adequate opportunity to comment on a proposal, and that any proposal should have full and updated information.

Tanya Winter
CHIEF EXECUTIVE