

I hereby give notice that an extraordinary meeting of the Finance and Performance Committee will be held on:

Date: Wednesday, 13 February 2019
Time: 9.30am
Meeting Room: Reception Lounge
Venue: Auckland Town Hall
301-305 Queen Street
Auckland

**Komiti ā Pūtea, ā Mahi Hoki /
Finance and Performance Committee
OPEN ADDENDUM AGENDA**

MEMBERSHIP

Chairperson	Cr Ross Clow	
Deputy Chairperson	Cr Desley Simpson, JP	
Members	Cr Josephine Bartley	Cr Penny Hulse
	Cr Dr Cathy Casey	Cr Mike Lee
	Deputy Mayor Cr Bill Cashmore	Cr Daniel Newman, JP
	Cr Fa'anana Efeso Collins	Cr Greg Sayers
	Cr Linda Cooper, JP	Cr Sharon Stewart, QSM
	Cr Chris Darby	IMSB Chair David Taipari
	Cr Alf Filipaina	Cr Sir John Walker, KNZM, CBE
	Cr Hon Christine Fletcher, QSO	Cr Wayne Walker
	Mayor Hon Phil Goff, CNZM, JP	Cr John Watson
	Cr Richard Hills	Cr Paul Young
	IMSB Member Terrence Hohneck	

(Quorum 11 members)

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8 February 2019

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Transfer of legal ownership of properties within the council group

File No.: CP2019/00575

Te take mō te pūrongo Purpose of the report

1. To agree the scope of a possible land transfer from Panuku Development Auckland Limited (Panuku) to the Council Entity to be consulted on alongside the Annual Budget 2019/2020.

Whakarāpopototanga matua Executive summary

2. Panuku Development Auckland (Panuku) own and manage some of the city centre waterfront property - land, buildings and any associated water rights relating to city centre waterfront public space, development sites and marinas. These properties are currently valued at around \$800 million and this waterfront land is identified as a strategic asset by the council.
3. The Council Entity (Auckland Council's parent entity) typically has legal ownership of property and council's controlled organisations are given appropriate delegations to undertake activities on behalf of council on this land. There are some exceptions to this (for example, the Art Gallery and Zoo) where a different ownership structure is considered more appropriate.
4. In the next 10 to 20 years, once the development on the waterfront sites is complete, the legal ownership of these properties would have likely transferred back to the Council Entity. To facilitate Panuku moving on to new development areas and to reflect the council's on-going role in managing open space and roads, this approach is consistent with the model for development agencies such as those in the UK and Australia.
5. However, if the transfer of waterfront properties happens after 1 July 2019 it will have a significant impact on rates and debt due to tax law changes. When the tax law changes come into effect, transferring waterfront assets from a council-controlled organisation (CCO) to the Council Entity for no cost will be considered taxable income. The resulting tax liability from a transfer of waterfront land in the future could be about \$220 million (depending on the exact make-up and their value at the time the properties transferred).
6. The council's tax advisors are working with Inland Revenue to obtain a binding ruling to provide certainty about the tax treatment of our proposal.
7. Previous reports to the committee have noted that not transferring waterfront assets before 1 July 2019 may potentially limit the council's flexibility for waterfront land ownership options in the future.
8. A proposal to transfer ownership or control of a strategic asset from a council-controlled organisation to the Council Entity, or from the Council Entity in the future, requires an amendment to the relevant 10-year Budget and a special consultative procedure with a formal long-term plan consultation document.
9. In December 2018, the Finance and Performance Committee agreed to approve the preparation of consultation material to publicly consult on whether the legal ownership of some or all of the land held by Panuku Development Auckland Limited should be transferred to Auckland Council. The committee also agreed that the consultation material be brought back to the Finance and Performance Committee in February with the Annual Budget consultation document for a final decision on whether to publicly consult on any proposal.

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10. Two consultation documents have been drafted. The proposal in consultation document A is for a partial transfer – transferring completed and future development assets only to the Council Entity, while working waterfront assets remain in Panuku ownership for the foreseeable future. The proposal in consultation document B is for a full transfer of waterfront assets from Panuku to the Council Entity. Under both proposals Panuku would be given appropriate delegations to manage and develop the properties on behalf of the council.
11. The working waterfront assets, and Westhaven marina in particular, require ongoing management and are different in nature to the development assets. There is no clearly defined end date to the involvement of Panuku in the working waterfront assets.
12. The transfer of waterfront properties will simply change the ownership structures to be consistent with the other activities done by Panuku in its other development areas, in which the council already has the legal ownership of the assets.
13. Staff recommend that the committee agree to publicly consult on consultation document B – full transfer, noting that this option does not preclude a decision to be made by council for a partial transfer of waterfront land assets or no transfer of waterfront land assets following consultation. If the committee decides to consult on the partial transfer, the committee would be precluded from deciding to transfer all the waterfront assets following consultation.

Ngā tūtohunga Recommendation/s

That the Finance and Performance Committee:

- a) agree to recommend to the Governing Body to consult on the full transfer of waterfront assets currently owned by Panuku Development Auckland to the Council Entity
- b) note that the proposed consultation document on the full transfer of waterfront assets currently owned by Panuku development Auckland to the Council Entity includes information on the alternative options considered and does not preclude a decision on these options following consultation.

Horopaki Context

14. Panuku is the sole entity within the council group responsible for urban redevelopment leveraging council-owned property, managing redevelopment and property transactions on behalf of Auckland Council. Panuku own and manage some of the city centre waterfront property - land, buildings and any associated water rights relating to city centre waterfront public space, development sites and marinas. These properties are currently valued at around \$800 million.
15. To assist the redevelopment, Auckland Waterfront Development Agency, the predecessor to Panuku, was given legal ownership of the waterfront properties at the time of amalgamation. In the next 10 to 20 years, once the development is complete, this legal ownership would likely have transferred to the council entity to facilitate Panuku moving on to new development areas, while the Council Entity would maintain the newly developed public assets.
16. New Zealand's tax law is changing. From July 2019, transferring assets from a council-controlled organisation (CCO) to the Council Entity for no cost would be considered taxable income. A transfer of waterfront land properties after 1 July 2019 is likely to have a significant impact on rates and debt. Depending on the exact make-up of the properties to be transferred this could cost the council approximately \$220 million.

17. A report to the Finance and Performance Committee in November 2018 provided advice on issues relating to the ownership of waterfront assets and the potential for tax law changes to potentially limit the council's flexibility for waterfront land ownership options in the future.
18. A proposal to transfer ownership or control of a strategic asset from a council-controlled organisation to the Council Entity, or from the Council Entity in the future, requires an amendment to the relevant 10-year Budget and a special consultative procedure with a formal long-term plan consultation document.
19. As the council is preparing to consult on its Annual Budget 2019/2020, the Local Government Act 2002 states that the council should combine any amendment to the 10-year Budget into the same consultation document. The consultation material must include an audit opinion, and there is a very tight timeframe to complete the audit work required.
20. In December 2018, the Finance and Performance Committee agreed to approve the preparation of consultation material to publicly consult on whether the legal ownership of some or all of the land held by Panuku should be transferred to Auckland Council (Council Entity). The committee also agreed that the consultation material be brought back to the Finance and Performance Committee in February with the Annual Budget consultation document, for a final decision on whether to publicly consult on any proposal.
21. The Panuku board expressed a desire to talk to elected members and a workshop was held on 31 January 2019. The Board is supportive of the need to consider land transfers now, noting it will require some work by Panuku and council staff to manage any transfers. The board stressed the importance of making it clear that Panuku has an ongoing role in managing and developing the waterfront and that the appropriate delegations are put in place at the time of any transfer of property ownership.
22. The Panuku board have noted that they consider their role for the working waterfront properties to be different to the development role for the rest of their business and that there is therefore a case for Panuku to retain legal ownership of the working waterfront assets, such as the Westhaven marina as well as other berths and marine activities situated on the Western edge of Wynyard Point.

Tātaritanga me ngā tohutohu Analysis and advice

The role of Panuku in Auckland's waterfront development

23. Panuku's role in the waterfront is defined in its constitution: *"To continue to lead the development of the Auckland waterfront in a way that is consistent with the Waterfront Plan 2012, and which balances commercial and public good objectives, including high quality urban design"*.
24. Panuku's operating model is not premised on owning the land which it is redeveloping on behalf of Auckland Council. A large part of the operations of Panuku are in the transform and unlock locations, where the assets are legally owned by the council. In these sites, Panuku requires appropriate delegations from the council to undertake its role. In the transform and unlock locations, these are given when a high-level project plan is approved by the Planning Committee.
25. Similarly, Panuku does not need to own land to fund its operations as it receives operating and capital funding from the council.
26. The council typically has legal ownership of property and council-controlled organisations are given appropriate delegations to undertake activities on behalf of the council on this land (for example Auckland Council owns the transport network and Auckland Transport manages and develops this network). There are some exceptions to this (for example, the Art Gallery and Zoo where a different ownership structure is considered more appropriate). The proposal to transfer all or part of the ownership of city centre waterfront property from Panuku to the Council Entity will consolidate council property.

27. Panuku will continue to lead the development of the city centre waterfront and would be given new delegations to develop and manage the waterfront properties such that its operations will remain unaffected.

Waterfront properties for consideration

28. The waterfront properties currently legally owned by Panuku can be broken down into three categories:

1. Completed development properties (projected at \$191 million as at date of transfer)

These properties are generally either freehold land interests on commercial sites (e.g. hotels or apartment buildings) or completed public space assets. For these properties, there are very limited opportunities for Panuku to add further value. This category also includes Queens Wharf, as the current phase of the development of the public realm work is complete.

2. Future development properties (projected at \$269 million as at date of transfer)

These are under-utilised properties that are intended to be redeveloped in partnership with the private sector to produce high-quality commercial and public space assets, in line with the agreed Waterfront Plan. Panuku have a key role to play in driving this transformation and the works are mostly expected to be completed in the next 10 to 20 years.

This role is very similar to the transformative role Panuku is currently playing in other parts of Auckland, such as Manukau, Avondale and Onehunga, where it does not have legal ownership of the assets. In those areas, legal ownership rests directly with the Council Entity and Panuku is given a clear mandate and full delegation to carry out its redevelopment activities.

3. Working waterfront properties (projected at \$339 million as at date of transfer)

Panuku also owns a range of properties associated with marina operations. These properties are located in the western part of the city centre waterfront. This includes ownership interests in Westhaven Marina as well as other berths and marine activities situated on the Western edge of Wynyard Point.

Alongside its activities to reinvigorate and expand these commercial marina activities, Panuku has been developing high-quality public space assets close by. This is a key element of the council's long-term strategic plan for the city centre which envisages a working waterfront in which marine industry activities add flavour and character to public recreation and hospitality activities, rather than compete with them. There is a close connection between these commercial properties (which generate a return on public investment) and the public space assets (which require ongoing public funding).

29. A full list of properties proposed to be transferred can be found in section two of the Supporting Information.

Options considered

30. There are four options that have been considered in determining where ownership of the waterfront assets should reside. These are:

1. status quo – no transfer
2. partial transfer - transferring the completed development properties only with Panuku retaining the working waterfront assets and future development properties
3. partial transfer – transferring completed and future development properties only, while leaving the working waterfront assets in Panuku ownership
4. full transfer of all waterfront properties from Panuku ownership to the Council Entity

31. These options are depicted in Figure 1.
32. Under all options, the land assets will remain in public ownership. Under options 2, 3 and 4 there is no impact on council rates or debt as a result of proposed transfers. If these assets were transferred after 1 July 2019 there may be a financial impact on the council.

Figure 1: Waterfront assets for consideration



33. The options have been assessed in terms of their advantages and disadvantages. Table 1 summarises this analysis. Staff recommend that the council consults on full transfer of the waterfront land assets to the Council Entity, with appropriate delegations to Panuku, to lead the planning and delivery at the waterfront (Option 4). This option does not preclude Options 2 or 3 being adopted following consultation. If the committee, however, chooses to consult on the partial transfer of assets, the council will be precluded from deciding on Option 4 – full transfer following consultation.

Table 1: Analysis of land asset transfer options

	Option 1: Status quo	Options 2 and 3: Partial transfers	Option 4: Full transfer
Overview	Panuku retains ownership of the properties, and the council continues to operate as it does currently.	Panuku transfers the ownership of the completed only or completed and future waterfront property developments to direct the Council Entity ownership, while leaving either the working waterfront assets or working waterfront and future developments in Panuku ownership.	Panuku transfers the ownership of completed and future waterfront development property and the working waterfront property to the Council Entity.
Advantages	No transaction costs in the immediate future. Panuku's day to day operations in their waterfront activities would not be changed.	Would be a marginally simpler transaction to implement than full transfer, although would require mostly the same legal procedures. Would mitigate some of the potential future liabilities to the council. Would consolidate some of the strategic land ownership and decision making in the Council Entity. Would reduce some duplication in governance for approvals. May provide Panuku greater freedom and flexibility to implement its strategic plans for the working waterfront.	Facilitates an orderly transition from development to ongoing maintenance activities without the need for a transfer in the future. Is consistent with the way Panuku operates in other development locations. Will reduce duplication in governance for approvals.

	Option 1: Status quo	Options 2 and 3: Partial transfers	Option 4: Full transfer
Disadvantages	<p>If future transformed assets remain with Panuku indefinitely, then developed waterfront assets will have a different ownership arrangement to properties relating to the other development activities undertaken by Panuku (e.g. Manukau, Avondale, Onehunga, etc).</p> <p>Once development of the waterfront is complete, Panuku would be left with ownership of public assets such as parks which are used for activities that are outside of their core business.</p> <p>May have possible tax implications that would significantly impact the council's rates and debt.</p>	<p>Panuku's urban development mandate could be confused with marina operating activity.</p> <p>Any proposed transfer of the waterfront properties in the future would need to consider potential impact on the council's rates and debt.</p> <p>No single entity owning waterfront spaces – potential for misalignment</p> <p>Future public space assets would need to be maintained by the council and Auckland Transport while these entities do not have legal ownership.</p> <p>Panuku risk losing momentum and leadership over the waterfront development and may impact their reputation in the market – this would be mitigated by giving Panuku appropriate delegations.</p> <p>May have possible tax implications that would significantly impact the council's rates and debt.</p> <p>Transaction costs of approximately \$300,000 to \$500,000.</p>	<p>Panuku risk losing momentum and leadership over the waterfront development and may impact their reputation in the market – this will be mitigated by giving Panuku appropriate delegations.</p> <p>Transaction costs of approximately \$300,000 to \$500,000.</p>

34. It is noted that Westhaven Marina was originally purchased by Auckland City Council so that the marina would remain in public ownership. Ownership by either the Council Entity or Panuku would give effect to this original intention.
35. The working waterfront assets, and Westhaven marina in particular, require ongoing management, and are different in nature to the development assets. There is no clearly defined end date to Panuku's involvement in the working waterfront assets.

Consultation documents

36. Due to timing constraints, two draft consultation documents have been developed for the committee to consider where ownership of the city centre waterfront assets should reside. The committee workshopped these documents on 7 February 2019. These documents reflect options 3 and 4. Consultation document – partial transfer, is consistent with Option 3 and the interests expressed by the Panuku board. Consultation document – full transfer, is consistent with Option 4 – full transfer.
37. Both consultation documents include an assessment of other options considered.
38. On a purely financial basis, transferring all the Waterfront assets to the Council Entity would maximise the council's options in the future. However, there are other issues to consider, such as any potential impact on the operations of Panuku, and perception of Panuku's role in the development marketplace.
39. From a consultation perspective, staff recommend consulting on transferring all of the waterfront assets to the Council Entity. This would not preclude the council from deciding to transfer only some (or none) of the assets once consultation is complete. In effect, it keeps the council's decision-making ability open.
40. The consultation item agreed to will be reflected in the consultation document tabled in the following item.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

41. Panuku staff and board have been engaged in the development of these options.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

42. If the committee decides to consult on the transfer of ownership of waterfront land to the Council Entity, staff will seek the views of all local boards.

Tauākī whakaaweawe Māori Māori impact statement

43. Auckland's waterfront land is significant to mana whenua. If the committee decides to consult on the proposal, staff will engage with mana whenua. There is the potential to maximise engagement with mana whenua through combining public consultation on the Auckland Water Strategy discussion document, the Annual Budget 2019/2020 and a proposal for the transfer of waterfront land.

Ngā ritenga ā-pūtea Financial implications

44. The budget approved for consultation is part of the Annual Budget consultation budget.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

45. Because of the tight timeframes for the statutory requirements, any delay in making a decision on the material to be consulted on will mean that staff are not able to complete the necessary work in time.
46. A decision to not consult will limit future options for waterfront land and may have future financial implications for the council. The options identified and analysed discuss this risk, and option 4 provides the least risk.
47. The council's tax advisors are working with Inland Revenue to obtain a binding ruling to provide certainty about the tax treatment of our proposal before any transfers were to take place.

Ngā koringa ā-muri Next steps

48. Following decisions today, all consultation material will be finalised for print and distributed to libraries, service centres, local board offices and made available online in time for the start of the consultation process on 17 February 2019.
49. The key dates and steps are outlined in the report to this committee titled 'Adoption of consultation material: Annual Budget 2019/2020.'

Ngā tāpirihanga Attachments

There are no attachments for this report.

Ngā kaihaina Signatories

Authors	Alastair Cameron - Manager - CCO Governance & External Partnerships Claire Gomas - Principal Advisor
Authorisers	Phil Wilson - Governance Director Matthew Walker - Group Chief Financial Officer