



Notice is hereby given that an Ordinary meeting of Southland District Council will be held on:

Date: Wednesday, 4 August 2021
Time: 9am
Meeting room: Council Chamber
Venue: Level 2
20 Don Street
Invercargill

Council Agenda OPEN

MEMBERSHIP

Mayor	Mayor Gary Tong
Deputy Mayor	Ebel Kremer
Councillors	Don Byars
	John Douglas
	Paul Duffy
	Bruce Ford
	Darren Frazer
	George Harpur
	Julie Keast
	Christine Menzies
	Karyn Owen
	Margie Ruddenklau
	Rob Scott

IN ATTENDANCE

Chief executive	Cameron McIntosh
Committee advisor	Fiona Dunlop

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Full agendas **are available on Council's website**
www.southlanddc.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.

Health and safety – emergency procedures

Toilets – The toilets are located outside of the chamber, directly down the hall on the right.

Evacuation – Should there be an evacuation for any reason please exit down the stairwell to the assembly point, which is the entrance to the carpark on Spey Street. Please do not use the lift.

Earthquake – Drop, cover and hold applies in this situation and, if necessary, once the shaking has stopped we will evacuate down the stairwell without using the lift, meeting again in the carpark on Spey Street.

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1 Apologies

At the close of the agenda no apologies had been received.

2 Leave of absence

At the close of the agenda no requests for leave of absence had been received.

3 Conflict of Interest

Councillors are reminded of the need to be vigilant to stand aside from decision-making when a conflict arises between their role as a councillor and any private or other external interest they might have.

4 Public Forum

Notification to speak is required by 12noon at least one clear day before the meeting. Further information is available on www.southlanddc.govt.nz or phoning 0800 732 732.

5 Extraordinary/Urgent Items

To consider, and if thought fit, to pass a resolution to permit the Council to consider any further items which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded.

Such resolution is required to be made pursuant to Section 46A(7) of the Local Government Official Information and Meetings Act 1987, and the Chairperson must advise:

- (i) The reason why the item was not on the Agenda, and
- (ii) The reason why the discussion of this item cannot be delayed until a subsequent meeting.

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

"Where an item is not on the agenda for a meeting,-

- (a) that item may be discussed at that meeting if-
 - (i) that item is a minor matter relating to the general business of the local authority; and
 - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion."

6 Confirmation of Council Minutes

6.1 Meeting minutes of extraordinary Council meeting of 29 June 2021

Asset Management Policy

Record no: R/21/6/35060

Author: Shru Shrivastava, Policy analyst

Approved by: Matt Russell, Group manager infrastructure and environmental services

☐ Decision

☐ Recommendation

☒ Information

Purpose

- 1 The purpose of this report is to inform Council that the executive leadership team (ELT) adopted the asset management policy (the policy). The report also summarises Council's responsibilities in relation to asset management, that are outlined in the policy.

Executive summary

- 2 Section 93 of the Local Government Act 2002 requires Council to demonstrate how it manages and plans for its services to the community for now and in the future via the Long Term Plan (LTP) and Infrastructure Strategy. The asset management framework (comprised of this policy, asset management strategies, plans and processes) supports the development and implementation of these documents.
- 3 The policy provides a clear, consistent direction for the development of asset management strategies, objectives and plans.
- 4 The policy applies to assets that are managed and operated for the purpose of delivering services by Council. This includes both infrastructure and non-infrastructure assets.
- 5 The policy is principles based and sits at a high level. A strategic asset management plan (SAMP) governing the management of assets will sit under the policy.
- 6 The policy has been implemented on 26 July 2021.

Recommendation

That the Council:

- a) receives the **report titled “Asset Management Policy” dated 27 July 2021.**
- b) determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) **notes Council’s responsibilities in relation to asset management, as outlined in the Asset Management Policy.**
- e) notes the asset management policy has been adopted by ELT, effective from 26 July, 2021.

Background

- 7 The preceding asset management policy was adopted in 2014 and was due to be reviewed in 2017.
- 8 Council engaged Beca, an engineering consultancy firm, to undertake an asset management maturity assessment of Council’s assets. Part of the scope of the work included Beca assisting with drafting an asset management policy. The draft policy was written by strategy and policy staff and provided to Beca for feedback.
- 9 Beca provided feedback to the draft policy, including a workshop in May 2021 with relevant staff and group managers. Strategy and policy staff conducted the process for finalisation and approval. ELT endorsed a two-week consultation with relevant activity managers and staff members and implemented the policy on 26 July 2021.

Issues

- 10 Key considerations in the policy include:
 - that it is high-level and principles based.
 - a SAMP governing management of assets will sit under the policy. The SAMP will describe how the asset management policy will be implemented, define the asset management objectives, set out how Council will achieve those objectives and provide direction for AMPs, the LTP and any subsequent activity management plans
 - outlines that Council will use international asset management standards (ISO55000 series) and aligned guidelines such as the international infrastructure management manual (IIMM) to guide asset management practices at Council

- applies to all assets that are managed and operated for the purpose of delivery services to Southland District. This includes infrastructure and non-infrastructure assets
- ELT has the responsibility to manage and operate the policy.

Factors to consider

Legal and statutory requirements

- 11 Audit requirements indicate that best practice for management of Council's assets includes an asset management policy. The policy supports Council's strategic framework/direction.

Community views

- 12 As this policy focuses on organisational asset management practice, staff do not consider it appropriate to seek community views.

Costs and funding

- 13 The work Beca has been engaged to complete focussed on an asset management maturity assessment, of which the policy was only a small part. Costs associated with Beca's work were covered within existing budgets.

Policy implications

- 14 The policy promotes the social, economic, environmental, and cultural well-being of the District by managing assets and activities in a manner which incorporates sustainability and resilience.
- 15 The policy also ensures that Council manages its assets appropriately and meets its statutory obligations.

Attachments

- A Asset Management Policy [↓](#)

Asset Management Policy

Group responsible: Services and Assets

Date approved: 26/July/ 2021

File no: R/21/5/23868

Purpose

The purpose of the Asset Management Policy (the policy) is to provide clear, consistent direction for the development of asset management strategies, objectives and plans that will achieve Southland District Council's (Council) commitments to its stakeholders.

This policy sets out Council's approach and defines the key principles and objectives that underpin asset management practices at Council.

Scope

This policy applies to assets that are managed and operated for the purpose of delivering services by Southland District Council.

This policy applies to all Council employees and contractors of Southland District Council.

Context

The Local Government Act 2002 requires Council to demonstrate how it manages and plans for its services to the community for now and in the future via the Long Term Plan (LTP) and Infrastructure Strategy. The asset management framework (comprised of this policy, asset management strategies, plans and processes) support the development and implementation of these documents.

Council owns approximately \$2,200m of assets to support its delivery of services to the community. Asset management is required to achieve strategic and service delivery objectives in conjunction with legislative requirements.

Definitions

DEFINITION	MEANING
ASSETS	<p>An asset is an item, thing or entity that has potential or actual value to an organisation.</p> <p>The value can be tangible or intangible, financial or non-financial, and includes consideration of risks and liabilities. It can be positive or negative at different stages of the asset life.</p> <p>Physical assets usually refer to equipment, inventory and properties owned by the organisation. Physical assets are the opposite of intangible assets, which are non-physical assets such as leases, brands,</p>

DEFINITION	MEANING
	digital assets, use rights, licences, intellectual property rights, reputation or agreements. This policy does not apply to financial investments and instruments.
ASSET MANAGEMENT	Asset management is a systematic approach to achieving Council's fundamental aims through planning, acquisition, operation, maintenance, renewal and disposal of its assets. The objective of asset management is to optimise service delivery potential while managing related risks and costs over the lifecycles of the assets.
ASSET MATURITY ASSESSMENT	Assessment of Council's asset management practice against maturity levels as defined in the International Infrastructure Management Manual (IIMM) or similar guideline. Assessments apply to both asset management systems and activity management plans (AMPs). They identify gaps and inform asset management improvement plans.
ACTIVITY MANAGEMENT PLAN (AMP)	Documented information that specifies the activities, resources and timeframes required for an activity, or grouping of activities, to achieve Council's agreed level of service. AMPs are tactical plans for managing an organisation's infrastructure and other assets to cost-effectively achieve the organisational strategic goals in the long term.
EXECUTIVE LEADERSHIP TEAM (ELT)	Council's executive leadership team is led by the Chief Executive and consists of group managers. Each group manager is responsible for particular departments within Council.
INFRASTRUCTURE STRATEGY	A document with a 30-year horizon that identifies significant infrastructure issues and options for managing those issues and the resultant implications. This strategy forms part of the LTP and is a requirement of the Local Government Act 2002.
INTERNATIONAL INFRASTRUCTURE MANAGEMENT MANUAL (IIMM)	Manual which guides asset management practice based on international asset management standards (ISO55000 series).
LEVEL OF SERVICE (LOS)	The outputs Council intends to deliver to the community, measured by customer and technical performance measures and targets. LoS relate to, but are not limited to, service attributes such as quality, reliability, responsiveness, sustainability, timeliness, accessibility and cost.
LONG TERM PLAN (LTP)	Council's 10 year business plan which is renewed every three years. The LTP sets out Council's strategic direction and priorities, including levels of service, operational and capital project descriptions and costs, funding, and performance measures. The LTP is subject to public consultation prior to adoption. It is compiled from the relevant AMPs and is a requirement of the Local Government Act 2002.
STRATEGIC ASSET MANAGEMENT PLAN (SAMP)	The SAMP describes how the asset management policy will be implemented, defines the asset management objectives, sets out how Council will achieve those objectives and provides direction for AMPs, the LTP and any subsequent activity management plans.

Strategic direction

This policy aligns with and supports Council's strategic direction:

VISION	SOUTHLAND – ONE COMMUNITY OFFERING ENDLESS OPPORTUNITIES			
MISSION	WORKING TOGETHER FOR A BETTER SOUTHLAND			
WELLBEING	ENVIRONMENT	CULTURE	ECONOMIC	SOCIAL
COMMUNITY OUTCOMES	Kaitiakitanga for future generations	Inclusive connected communities	A diverse economy creating healthy and affordable lifestyles	Empowered communities with the right tools to deliver the best outcomes
STRATEGIC PRIORITIES	Support healthy environments and sustainable communities	Better preparing our communities and council for future changes	Provision for appropriate infrastructure and services	Improve how we work to build resilience

Policy statements

In undertaking its asset management activities, Council will reflect its corporate strategic direction for the District through its commitments specified in this policy. Accordingly, Council will:

- use the international asset management standards (ISO55000 series) and aligned guidelines such as the International Infrastructure Management Manual (IIMM) to guide asset management practice
- develop a strategic asset management plan (SAMP) that outlines how this policy will be implemented and drives activity management and long term planning processes
- consult with the community through the LTP process and other targeted consultation procedures to tailor LoS to meet expectations and needs
- comply with all statutory and regulatory requirements relevant to its assets
- understand the risks to achieving stakeholder levels of service and mitigate these to acceptable levels within asset management decision-making processes
- collect and manage asset data that is accurate, current, and regularly reviewed, utilising the information to improve asset management decision-making
- employ optimal whole-of-life principles in the creation, renewal and disposal of assets which promotes accountability to its community
- seek to ensure to obtain market value or greater when disposing its assets
- promote the social, economic, environmental, and cultural well-being of the District by managing assets and activities in a manner which incorporates sustainability and resilience
- allocate sufficient resources to undertake asset management activities and engage personnel who are suitably skilled and experienced to meet the breadth and depth of assets involved
- take a continuous improvement approach to asset management practices, LoS delivery and the operation and maintenance of Council assets

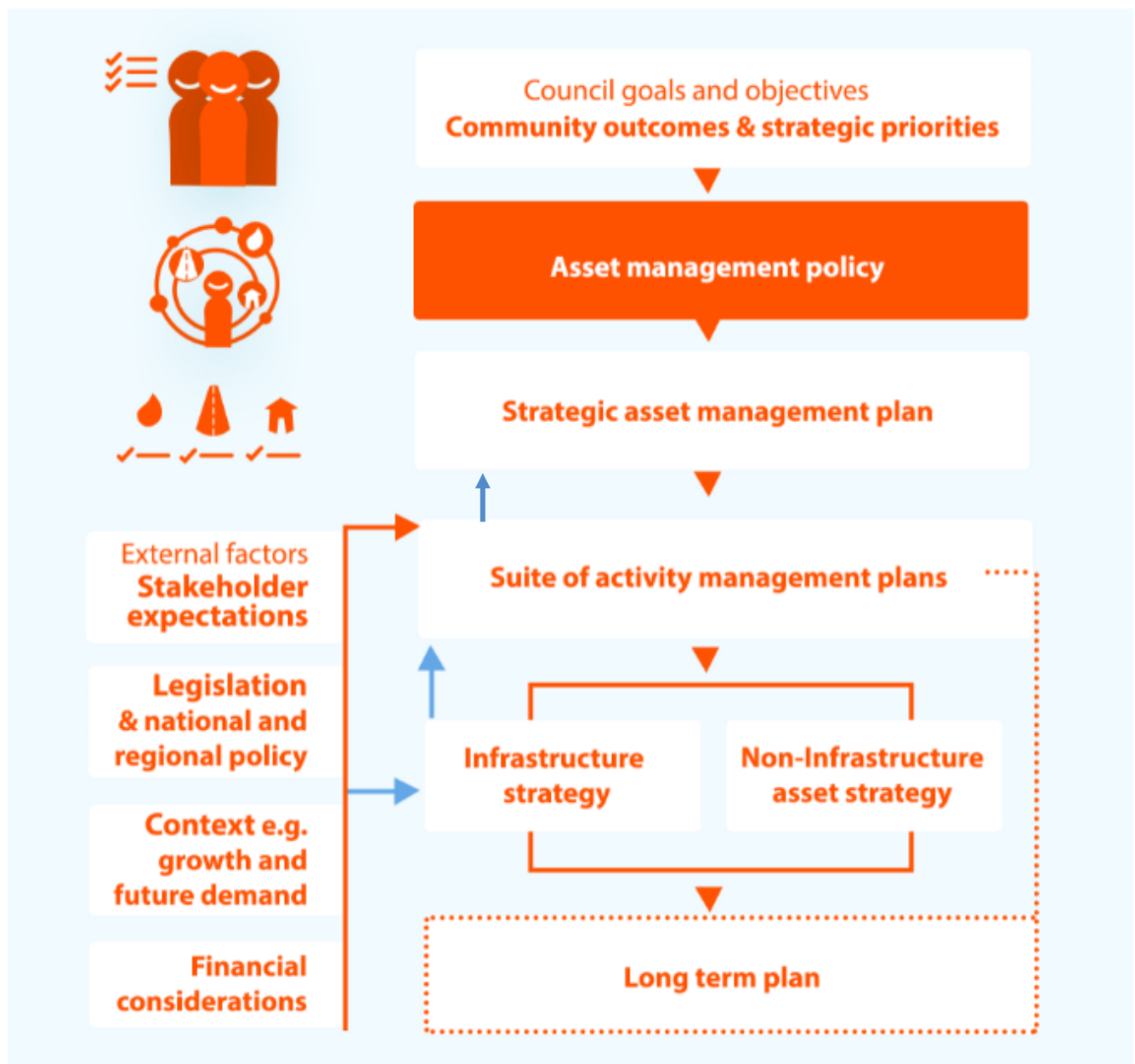
- carry out asset maturity assessments to inform improvement plans which measure improvement and set appropriate asset management practice targets for each activity.

Linkages with other key processes and documents

Council's corporate goals and objectives reflect stakeholder expectations, legislative requirements, demographic changes within Southland District and funding and revenue considerations.

Determining what assets and services are required (both existing and new) to deliver on Council's strategic priorities is central to asset management practice. Direction on future demand and levels of service are taken from Council's strategic framework.

The asset management framework in the diagram below shows the relationship between these elements.



Roles and responsibilities

ROLE	RESPONSIBILITY
COUNCIL (ELECTED MEMBERS)	<ul style="list-style-type: none"> ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets (Excerpt s.14: Principles relating to local authorities, Local Government Act, 2002)
ELT (EXECUTIVE LEADERSHIP TEAM)	<ul style="list-style-type: none"> oversee the implementation of this policy oversee the development of the business requirements and support systems necessary to enable asset management functions to be realised in a consistent manner present accurate and reliable information to Council for decision-making ensure that Council has been appropriately consulted as AMPs are developed.
ACTIVITY MANAGERS	<p>Each activity manager managing assets covered by this policy is responsible for:</p> <ul style="list-style-type: none"> ensuring their asset management practice aligns with Council's asset management framework (refer Figure 1) ensuring their AMP(s) meet the agreed standard of asset management practice ensuring they contribute to Council asset management improvement programmes.

Commencement of policy

This management policy has been adopted by the executive leadership team and is effective from 26 July 2021.

Review of policy

Council will review this policy every three years as part of the development of the LTP.

South District Council Submission - Exposure Draft Natural and Built Environment Bill

Record no: R/21/7/44895
Author: Margaret Ferguson, Resource management planner
Approved by: Matt Russell, Group manager infrastructure and environmental services

☒ Decision

☐ Recommendation

☐ Information

Purpose

- 1 To approve the attached submission to the exposure draft of the Natural and Built Environment Act.

Executive summary

- 2 This report relates to the Council's submission on the exposure draft of the Natural and Built Environment Act.
- 3 The exposure draft of the Natural and Built Environment is currently open for public comment, closing Wednesday 4th August 2021. The proposed Natural and Built Environment Act is to replace the existing Resource Management Act 1991.
- 4 Council's submission in general supports the overarching principles of the exposure draft. However, it is noted that there are components of uncertainty as to the implications of the proposed changes on Council given that the exposure draft is not the full Bill, and only covers high level aspects of the proposed legislation.
- 5 A joint Otago - Southland submission has been prepared which Southland District Council is a signatory to. The attached submission aligns with the joint Councils position.

Recommendation

That the Council:

- a) receives **the report titled “South District Council Submission - Exposure Draft Natural and Built Environment Bill” dated 28 July 2021**.
- b) determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) agrees to approve the submission on the exposure draft Natural and Built Environment Act for submission to the Environment Select Committee (attached as attachment A).

Background

- 6 The Resource Management Act 1991 (RMA) is New Zealand’s main resource management legislation and is the overarching Act that the Council’s District Plan and Resource Management processes are governed by. A review of the RMA has culminated in the recommendation to repeal the existing RMA and to replace it with three new pieces of legislation, one of which is the proposed Natural and Built Environment Act.
- 7 The exposure draft of the Natural and Built Environment Act is now open for public comment. The closing date is 4th August 2021.
- 8 The terms of reference for the submission are: feedback on the exposure draft; feedback on the material in the parliamentary paper; and the provision of a list of ideas for efficiencies within the process. Council’s submission follows the identified terms of reference.

Issues

- 9 The submission focuses on the key issues that are considered to affect Southland District Council.

Factors to consider

Legal and statutory requirements

- 10 The proposed Natural and Built Environment Act will have the potential to significantly affect the manner in which Council undertakes its planning processes. It is important that Council provides feedback to the proposed new legislation given the implications for its processes and wider community.
- 11 The development of new legislation provides for comments (submission) on what is proposed, these comments are due with the Environment Select Committee by 4th August 2021.

Community views

- 12 Any party within Southland District communities currently has an opportunity to make a submission on the draft exposure Natural and Built Environment Act if they wish to do so. There is no requirement for the Council to consult its communities in relation to this submission, and the timeframe for submissions does not provide for this either. However, the submission process provides the Council with an opportunity to input into this legislative review on behalf of its communities.

Costs and funding

- 13 Costs associated with drafting the submission relate to staff time only. However, there will be cost implications arising once the full Bill has passed into legislation.

Policy implications

- 14 At this stage the overall full implications are unknown. A comprehensive assessment will be made once the full bill has passed into legislation.

Analysis

Options considered

- 15 The Council has two options regarding making a submission on the exposure draft of the Natural and Built Environment Act. The first is to submit as per the attached document. The second is to rely solely on the joint Otago - Southland submission and comments put forward by other Councils in their respective submissions.

Analysis of Options

Option 1 – Make a submission

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">Enables the Southland District Council to highlight general concerns to be placed before the Environment Select Committee.Enables the Southland District Council to highlight specific concerns that relate only to the Southland District, and to have these placed before the Select Committee.	<ul style="list-style-type: none">None

Option 2 – Not make a submission

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">None	<ul style="list-style-type: none">Southland's unique context with regard to matters will not be highlighted.

Assessment of significance

- 16 The approval of a submission on the exposure draft of the Natural and Built Environment is not a decision that will have a major or longer term effect on an individual town, or the district, cultural impact or level of service.

Recommended option

- 17 Option 1 – make a submission as per the attached.

Next steps

- 18 The closing date for submissions to the Environment Select Committee is 4th August 2021.

Attachments

- A FINAL SDC Submission Exposure Draft Natural and Built Environment [↓](#)

Te Rohe Pōtae o Murihiku – (Southland District Council) – who are we?

The jurisdictional boundary of Te Rohe Pōtae o Murihiku (Southland District Council) encompasses 30,979 square kilometres, and is the largest geographical land area administered by a territorial authority in New Zealand. The District sits within the jurisdiction of the Southland Regional Council and adjoins Invercargill City to the south, Queenstown Lakes District, Gore District, Westland District, Central Otago to the north and Clutha District to the north and east.

The District supports a wealth of natural and physical resources, including fertile plains, rolling hills, tussock lands, mountainous areas, harbours and sandy beaches. It has an abundance of lakes, rivers, streams and wetlands and a wide variety of native flora and fauna. Notably, Southland hosts one of the best remaining examples of a natural coastal lagoon in New Zealand and the world, being the Waituna Lagoon which is an internationally recognised Ramsar site.

The District supports a variety of infrastructure, including regionally significant infrastructure and also has a range of renewable electricity generation resources and non-renewable energy and mineral resources potentially suitable for development. Two Water Conservation Orders apply in the Southland District: The Water Conservation (Mataura River) Order 1997 and The Water Conservation (Oreti River) Order 2008.

Over half of the land area of the District is held within New Zealand's Conservation Estate and administered by the Department of Conservation. This includes the Fiordland and Rakiura National Parks and part of Mt Aspiring National Park. These areas are recognised locally, nationally and internationally for their outstanding natural and wilderness qualities and support large areas of significant indigenous vegetation and habitats of indigenous fauna. The Department's Management Strategies and Plans provide guidance on management of these lands and outline relevant resource management issues.

Farm land and agricultural activity, predominantly dairy, sheep and beef farms, largely encompass the land outside of the Conservation Estate and these activities in turn support a thriving agricultural economy. Other notable industries in the District include forestry, commercial fishing, aquaculture and tourism all of which shape the Southland District.

The District is one of New Zealand's more sparsely populated districts. The total population of the District is 28,440, this equates to 31% of the Southland Region's population and 0.7% of New Zealand's population. While much of the District's population lives across the Southland Plains, the District also supports a number of towns and settlements, the principal towns being Winton, Te Anau and Riverton/Aparima. Some towns and settlements are experiencing slow but steady growth, while others are static or in decline.

Ngāi Tahu as tangata whenua has a cultural and spiritual relationship with the land, water and resources of the District. Southland District Council deeply values the ongoing strong relationship(s) with Tangata whenua and endeavours to weave iwi interests throughout Council processes and practices so as to reinforce the Ngāi Tahu philosophy of 'ki uta ki tai' (from the mountains to the sea).

Submission

Southland District Council thanks the Environment Select Committee for the opportunity to submit on the exposure draft of the Natural and Built Environment Act (NBA). This submission is to be read in conjunction with the Otago-Southland Councils' joint submission.

We have read the exposure draft alongside the parliamentary commentary and overall support the holistic shift from sustainable development and use of the environment to that of maintaining the health and wellbeing of the environment first and foremost, in order to provide for sustainable use of natural resources.

Whilst we understand it was never the intent of the exposure draft to contain the full details, we consider, that the balance of the bill (and how it relates to other proposed legislation), along with the arrangements for transition and implementation, will be the true test as to whether the Bill will meet the RM objectives. We also note that there is a focus on environmental bottom lines ('environmental limits') and what we consider a weak requirement to 'promote' environmental outcomes suggest that environmental degradation will be tolerated down to bottom lines. We consider that this appears to be contrary to the reforms objective to 'protect and restore the environment'.

Overall position in brief:

- Southland District Council has put significant investment into implementing the current resource management system, with investments ongoing. Implementation costs associated with a new system will be substantial and only worthwhile if the new system brings about significant improvements to the current system. At present, this does appear uncertain in the absence of a full bill to consider.
- To produce an effective system we require:
 - o Clear direction and priorities that guide decision making
 - o Ability to consider a 'local flavour' within planning documents and decision making
 - o A robust monitoring, assessment and review process.
- Legislation that is not ambiguous.

This submission specifically relates to:

- Feedback on the specific parts of the exposure draft and how it will affect the Southland District
- Feedback on Appendix 2: Examples of system efficiencies

Southland District Council makes the following submission:

Submission points	Comment
Part 2 – definitions, purpose and provisions	
Clause 5	<ul style="list-style-type: none"> - SDC supports the holistic shift from sustainable development and use of the environment to that of maintaining the health and wellbeing of the environment first and foremost to provide for sustainable use of natural resources. - SDC supports the inclusion of Te Oranga o te Taiao and we seek guidance on interpretation to ensure successful implementation. We further seek clarity regarding the relationship between Te Oranga o te Taiao and the concept of ecological integrity. - Overall the purpose needs to be clear and unambiguous to avoid costly, drawn out litigation which could arise due to varying interpretations. - To successfully meet Clause 5 of the Act SDC considers that there needs to be funding and resourcing made available to local mana whenua to enable iwi to participate fully in the transition and implementation of the new planning processes. - Local government itself will also require guidance, resources and financial support to ensure staff are culturally aware to best support Mana Whenua. - Local government will require clear guidance on interpreting Te Oranga o te Taiao. .

	-
Environmental limits	<ul style="list-style-type: none"> - SDC broadly agrees that environmental limits have the potential to improve outcomes for the natural environment. However, <ul style="list-style-type: none"> o SDC notes that the limits are to be set in the NPF. SDC seeks clarity on exactly how these limits are to be set, and proof that the limits can be workable 'on the ground' ie how will a national limit set at central government level be workable in the southern region. What level of flexibility will be within a limit to take account for regional differences and community input? o SDC notes that the Minister can set the national planning framework and seeks clarity on how easily a limit can be amended by incoming Ministers, or successive governments. As is presently drafted, it remains unclear. The potential success of intergenerational environmental management would rely on consistency between governments. o SDC notes that limits can be set at regional level if directed by the NPF. Is there funding for this process and will there be clear direction for this process to avoid lengthy, expensive, legal processes to set limits? o SDC seeks clear guidance on how to set qualitative limits to avoid uncertainty eg what assumptions are there with respect to data to inform these limits. o SDC considers that environmental limit setting will require a robust monitoring and assessment framework to support it.
Environmental Outcomes	<ul style="list-style-type: none"> - In principle SDC considers having an outcomes focused piece of legislation versus an effects based one will better achieve the proposed objectives of the Act. However, SDC notes the following: <ul style="list-style-type: none"> o Clause 8 (m) relates to rural development. We note that the wording 'pursued' suggests that development may or may not occur. We also note that points (b) through to (j) reflect the requirement to protect components of the rural environment. We are unclear how this level of protection, which will have limits attached, will facilitate growth within the rural environment. At the moment it appears that it will be harder to develop in the rural environment than in the urban. We note this given that Southland district is predominately rural with small servicing towns. If development became prohibitive within our rural areas, this would seriously compromise the wellbeing of our communities. We seek an outcome that promotes rural development, rather than 'pursues', within the rural context. o Given the list of outcomes, SDC would require the Act to provide some form of hierarchy of outcomes. This may, or may not relate to the process of resolving conflicts as clearly there will be some outcomes that will be achieved at the expense of another.

	<ul style="list-style-type: none"> ○ SDC considers that the use of environmental outcomes to drive resource management will require a robust monitoring and assessment framework to support its successful delivery.
Part 3 National Planning Framework	
Resolving conflicts	<ul style="list-style-type: none"> - The NPF must provide clear guidance on resolving conflicts to avoid costly litigation to local authorities during an environmental limit setting process or NBA plan making process. Inevitably there will be competing and conflicting priorities. Clear guidance on resolving these conflicts is essential.
Rural development focus	<ul style="list-style-type: none"> - We note that Clause 8(m) (outcome) which relates to rural development is not included in Clause 13 as an identified topic that is to be included in the National Planning Framework. SDC seeks a clear definition of rural development in order to understand the implications on the District. . Given the majority of the Southland District is rural and does not meet the threshold of the NPS-UD, we query if this is an omission or is rural development not considered a priority under the National Planning Framework? This would negatively impact the Southland District and our ability to grow our communities.
Decision making process	<ul style="list-style-type: none"> - We note that the decision making process to create the NPF supports the achievement of the reform objectives through the requirement for the Governor General to be involved in the preparation of the NPF; and the creation of an independent hearings panel to make decisions on proposed plans submitted by Planning Committees. We consider that this independence has the potential to facilitate the consistent intergenerational management of natural resources and remove the political interference of opposing governments in environmental management. However, as stated above we also note the uncertainty that could arise from having the Minister for Environment directly charged with creating the NPF. SDC considers clear guidance on how to implement the decision making process will be vital for successful delivery of the new legislation.
Previous case law	<ul style="list-style-type: none"> - In the preparation of the NPF, given the considerable case law that has gone on previously to interpret the RMA, will this legal history be included in the new legislation? ie to what extent is previous case law informing the new legislation?
Part 4 Natural and Built Environment Acts	

Formulation of plans	<ul style="list-style-type: none"> - For the reform objectives to be truly met, there needs to be clear direction, funding, resources for local government to transition. This will assist the formulation of NBA plans. SDC covers one of the largest geographical areas in New Zealand and maintains a small rate payer base to implement all local government works and services. It is essential that funding, and resources, are available to support us. We note that the exposure draft 'pushes out' details about outcomes and limits.
Planning Committees	<ul style="list-style-type: none"> - It is very important there is clear guidance around how committees are created, their role and function and how they will be funded. In principle this appears a good idea, but detail around 'who and how' to implement will be critical to the committees success within Southland. - See comments above relating to environmental limits and the roles of planning committees to set these. Support to local government is vital for this process.
Appendix 2: Examples of system efficiencies	
Efficiencies	<ul style="list-style-type: none"> - SDC agrees with the listed system efficiencies but maintains that to transition to a system that is efficient and effective will require clear guidance and direction, support, resources, funding and the fundamental recognition of regional differences.

Resource Management Delegations Review

Record No: R/21/7/44911

Author: Marcus Roy, Manager environmental management

Approved by: Fran Mikulicic, Group manager democracy and community

☒ Decision

☐ Recommendation

☐ Information

Purpose

- 1 This report seeks approval from Council to update the Resource Management Act 1991 (RMA) delegations to ensure that they remain current.

Executive Summary

- 2 In July 2021 there was a change in reporting lines for the Environmental Management team.
- 3 As part of the change in reporting line, the job title of the Group Manager (Matt Russell), has changed and this does not accurately reflect the specific Resource Management Act 1991 delegations. With Mr Russell's new job title and reporting line, it is necessary to ensure that the delegations from Council to the environmental planning team are updated to enable decisions to be made at the right level.

Recommendation

That Council:

- a) **Receives the report titled "Resource Management Delegations Review" dated 27 July 2021.**
- b) Determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) Determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) Approves the updated delegations to the environmental planning team as contained in attachment A.

Background

- 4 Council's existing delegations manual delegates certain powers and functions to specific roles within the Environmental Management team. These delegations relate to a variety of matters such as accepting, processing and issuing resource consents, writing reports and issuing abatement notices.
- 5 The powers of delegation enable resource consent decisions to be processed at the appropriate staff level which prevents every decision needing to be approved by the Regulatory and Consents

Committee. Without powers of delegation to staff, resource consent decisions would take longer to process as each application would need to wait until a committee meeting to be determined.

- 6 The recent change in reporting lines has necessitated an update to the delegations so that Mr Russell can made decisions.
- 7 Additional changes are proposed to also enable the Team leader Environmental Policy to also hold some delegations which are in line with the right level of responsibility for the role.

Issues

- 8 Section 34A of the RMA outlines that a local authority can delegate certain powers and functions to employees and other persons. This section of the act also outlines that employees with delegations are not able to further delegate these powers. For example, the chief executive is unable to delegate his powers to other staff within the local authority. Instead, Council must delegate these powers and functions to necessary staff.
- 9 As the delegations manual does not currently reflect the right role and additional delegation is sought for the Team Leader Environmental Policy. The delegations need to be updated to enable resource consent decisions to be processed in a timely manner and enforcement decisions to be made at the appropriate level.

Factors to Consider

Legal and Statutory Requirements

- 10 Powers and functions under the RMA to staff can only be approved by a local authority. The chief executive is unable to delegate powers under the RMA as he is considered to be a staff member.

Community Views

- 11 No community views have been sought as it is a procedural matter relating to powers and functions of the local authority.

Costs and Funding

- 12 There are no funding implications associated with this report.

Policy Implications

- 13 The only policy implication of this report is an update to the existing delegations manual for the organisation.

Analysis

Options Considered

- 14 Approve the reviewed delegation manual relating to the Resource Management Act or not approve it.

Analysis of Options

Option 1 – Approve the revised delegations

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">powers and functions in the RMA are delegated to staff at the right level which enables processes and decisions to be timely and effective.	<ul style="list-style-type: none">no disadvantages identified.

Option 2 – **Don't approve the revised delegations**

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">no advantages identified.	<ul style="list-style-type: none">the ability of the environmental planning team to process resource consents and perform functions under the RMA is constrained which is likely to add delays and costs for applicants.

Assessment of Significance

- 15 This decision is not deemed significant.

Recommended Option

- 16 Option 1 which will enable delegations to fit the new team structure.

Next Steps

- 17 The delegations manual is updated.

Attachments

- A Environmental Management delegations 27 July 2021 [↓](#)



Proposed changes have been tracked

11.43 Resource Management Act 1991

SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
SS.10, 10A, 10B	Determination of whether existing rights in terms of Section 10 of the RMA apply	Group manager environmental services Group Manager – Infrastructure and Environmental Services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.27	To provide information to the Minister for Environment	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Team Leader Environmental Policy Senior Resource Management Planner
s.36(5)	Power to require the payment of additional charges to cover processing costs in accordance with Council's approved Schedule of Fees and Charges under the Resource Management Act 1991	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Team Leader Environmental Policy
s.36(6)	Power to provide on request an estimate of additional charges over and above the processing deposits	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.36AAB (1)	Power to remit the whole or any part of the charge under s36 that would otherwise be payable.	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing
ss.37, 37A	Power to waive and/or extend time limits for functions under the act.	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.38	Authorisation and responsibilities of Enforcement Officers	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner Team Leader Ecology Ecologist Monitoring and Enforcement Officer
s.41B	Direction to provide evidence with time limits	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner
s.42	Protection of sensitive information	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Team Leader Environmental Policy



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.42A	Require the preparation of a report on information provided	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Team Leader Environmental Policy
s.42A (5)	Waiving compliance regarding timeframes for distributing reports, where there is no material prejudice	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.87BA	To issue a notice confirming a boundary activity is permitted	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner
s.87BB	To issue a notice confirming a marginal or temporary activity is permitted	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.87E	Decision on request for application to go directly to environment court	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing
s.87F	Preparation of report on application referred directly to environment court	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Senior Resource Management Planner Resource Management Planner
s.88(3)	Determining an application incomplete and returning to the applicant	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner
s.91	Determining not to proceed with notification or hearing of application pending lodging of further consents under the act	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.92	Request further information or agreement to commissioning of a report on resource consent application	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner
s.92A (2)	Set timeframe for provision of further information or commissioning of a report	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner
ss.95A, 95B	Determination of public notification or limited notification	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Team Leader Consent Processing Senior Resource Management Planner
s.95D	Determination of adverse effects likely to be more than minor	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.95E	Determination if person is affected person	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.95F	Determination if group is an affected customary rights group	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.95G	Determination if group is an affected customary marine title group	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.99	Organise and convene prehearing meetings and prepare reports on these under Section 99 (5)	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.100	Determine whether a formal hearing is necessary	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.101	Fix time and date for hearings	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.102	To determine whether applications are required to be heard by Joint Hearings Committee	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.103	To determine whether two or more applications to different authorities are sufficiently unrelated that a joint hearing is not appropriate.	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
ss. 104, 104A, 104B, 104C, 104D, 108, 113	Make and issue decisions and impose conditions for non-notified resource applications and limited notified resource applications where there are no submissions received or where all submissions received are in support and no party wishes to be heard; in accordance with the provisions of the Southland District Plan and the RMA.	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.106	Ability to refuse subdivision consent in certain circumstances.	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Senior Resource Management Planner
s.108A	Determination of requirement for a bond	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.114	Notify decisions to applicant and other appropriate authorities	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner
s.123 (b)	Duration of consent	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.125 (1A)(B)	Fix longer period for lapsing of resource consents than is the norm under Section 125(1)	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.126	Cancel consent if not exercised	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.127	Determining whether application to change or cancel consent requires notification, or limited notification and changing or cancelling any condition on a resource consent	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.128	Service of notice of intention to review conditions of a resource consent	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Monitoring and Enforcement Officer
ss.129, 130	Formulation and public notification of notice to review conditions	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Monitoring and Enforcement Officer
s.133A	Minor corrections of resource consents	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.134(4)	Approval of transfer of resource consents – written notice	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.138	Surrender of consent	Group Manager – Infrastructure and Environmental Services Group manager environmental-services



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.139	Consider request for and issue Certificates of Compliance for any activity which is a permitted activity under the District Plan.	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.139A	Consider request for and issue Existing Use Certificate.	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.169	Request further information and process notice of requirement	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.170	Discretion to include notice of requirement in proposed Plan	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing
s.171	Consider notice of requirement and make submissions thereto, and make recommendation to the requiring authority	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.174	Lodge appeal against decision of a requiring authority.	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.176A(2) (C)	Outline plan waivers	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.181(3)	Alteration of designation in plan at request of requiring authority, to a minor extent	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.182	Removal of designation at request of requiring authority	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.184(2)	Waiver of lapsing designation	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.220	Issue certificates relating to requirements to comply on ongoing basis with consent conditions and endorsements on titles	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Senior Resource Management Planner
s.221	Imposing and issuing Consent Notices on subdivision consents.	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.222	Dealing with Completion Certificates on subdivision consents	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.223	Approval of Survey Plan – check compliance prior to sealing	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.224	Issue certificates indicating all or any of conditions on subdivision consent have been complied with	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.226	Certifications of plans of subdivision that allotments on the plan meet the requirements of the District Plan	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
ss.229 – 237H	Creation of esplanade reserves and strips and associated conditions.	Group Manager – Infrastructure and Environmental Services Group manager environmental services



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
		Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
ss.240,241	Imposition and cancellation of amalgamation conditions and restrictive covenants	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
s.243(E)	Revoking a condition specifying easements	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner
ss.310, 311	Application to Environment Court for a declaration	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Team Leader Environmental Policy
ss.314,316	Seek and/or respond to an Enforcement Order	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing
s.320	Seek and/or respond to an interim enforcement order	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing
s.325A	Signature or cancellation of abatement notice	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Monitoring and Enforcement Officer



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
Schedule 1, Clause 5A	To identify all affected parties for limited notification of a plan change or variation	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Environmental Policy
ss.322, 327, 3258, 343C	The taking of enforcement action in relation to the Resource Management Act, initiating the review the resource consent decisions, and conditions	Group Manager – Infrastructure and Environmental Services Group manager environmental services Manager Environmental Planning Team Leader Consent Processing
s.332	To carry out inspection of any premises of property (except a dwelling house) to determine whether the RMA, any regulation or rule of the District Plan or resource consent is being complied with	Group Manager – Infrastructure and Environmental Services Group Manager Environmental Services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner Monitoring and Enforcement Officer Team Leader Ecology Ecologist Graduate Ecologist Team Leader Environmental Policy Resource Management Planner - Policy
s.333	Entry to land (except a dwelling house) for purposes connected with any preparation, change, or review of the District Plan	Group Manager – Infrastructure and Environmental Services Group Manager Environmental Services Manager Environmental Planning Team Leader Consent Processing Senior Resource Management Planner Resource Management Planner Graduate Resource Management Planner Monitoring and Enforcement Officer Team Leader Ecology Ecologist Graduate Ecologist



SECTION	SUMMARY OF FUNCTION / POWER DELEGATED	DELEGATED OFFICER
s.336	Return of property seized under ss.323 and 328	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Environmental health manager Environmental health officer
s.342	The power to collect fines for an offence under s.338	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Monitoring and Enforcement Officer Environmental health manager
s.357	The power to consider and make decisions on application for objections for an application which does not require a hearing, except where the decision would result in a net payment of reserve contributions by Council less credits for land to vest exceeding the delegation for the role. The power to decide whether an objection requires a hearing	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Environmental health manager
ss.357C-D	The power to consider and decide upon objections made. To consider, dismiss or uphold (in whole or in part) any objection under sections 357, 357A or 357B of the Act PROVIDED that this delegation shall NOT be exercised in respect of objections on resource consent applications which have been the subject of a hearing under section 100 of the Act	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing
s.360F	To set overall charges payable by the applicant for a plan change or resource consent	Group Manager – Infrastructure and Environmental Services Group manager environmental-services Manager Environmental Planning Team Leader Consent Processing Team Leader Environmental Policy

Monthly Financial Report - June 2021

Record No: R/21/7/44227
Author: Lesley Smith, Management accountant
Approved by: Anne Robson, Chief financial officer

☐ Decision ☐ Recommendation ☒ Information

Summary

1. The purpose of this report is to provide Council with an overview of the draft financial results to 30th June 2021 by the nine activity groups of Council, as well as the draft financial position, and the draft statement of cash flows.
2. This report summarises Council's draft financial results for the year to 30 June 2021.

Recommendation

That the Council:

- a) **Receives the report titled "Monthly Financial Report - June 2021" dated 27 July 2021.**

Attachments

A Monthly Financial Report June 2021 [↓](#)



Monthly financial report

June 2021

Southland District Council
Te Rohe Pōtae o Murihiku

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Executive summary

This monthly financial report summarises Council's draft financial results for the year to 30 June 2021.

The report summary consolidates the business units within each of Council's groups of activities and includes:

- year to date (YTD) actuals, which are the actual costs incurred
- year to date (YTD) projection, which is based on the full year projection and is currently the combination of the Annual Plan and carry forwards
- year to date (YTD) budget, which is based on the full year Annual Plan budget with adjustments for phasing of budgets
- full year (FY) budget, which is the Annual Plan budget figures
- full year (FY) projection, which is the Annual Plan budget figures plus the carry forwards.

Phasing of budgets occurred in September, at forecasting and when one-off costs have actually occurred. This should reduce the number of variance explanations due to timing.

Where phasing of budgets has not occurred, one twelfth of the annual budgeted cost is used to calculate the monthly budget.

Carry forwards were entered in October and forecasting will occur in April.

Southland District Council summary reports use a materiality threshold to measure, monitor and report on the financial performance and position of Council. In determining materiality, variances more of less than 10% of the original budget and greater than \$10,000 are considered material and explained in the report.

This report is based on the draft June result prior to the year end process being undertaken. Year end adjustments to be processed include internal interest, income in advance, revaluations, depreciation adjustment based on actual and revaluations. The final report will to be available for the October Council meeting, along with a comparison of actual to projection report

Report contents:

- A. Council monthly summary
- B. Council summary report - income and expenditure and commentary
- C. statement of comprehensive income
- D. statement of financial position and movement commentary
- E. statement of cash flows.

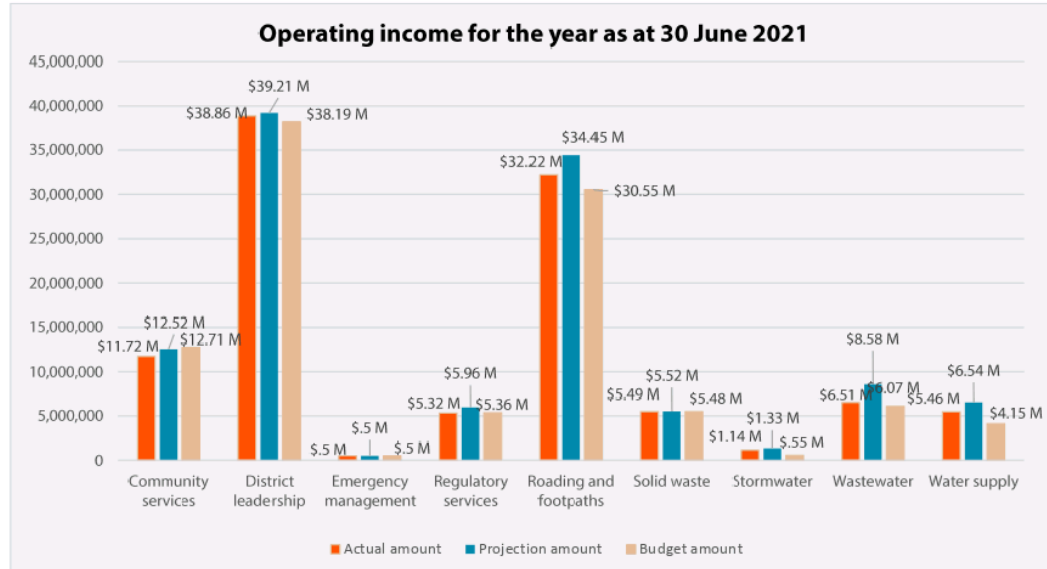
Abbreviation explanation

Abbreviation	Description
AP	Annual Plan
CAPEX	Capital expenditure
ELT	Executive leadership team
FYB	Full year budget
GDC	Gore District Council
GIS	Geographic information system
GMSE	GeoMedia smart client
GST	Goods and Services tax
ICC	Invercargill City Council
LED	Light emitting diode
LTP	Long Term Plan
ME	Month end
NZTA	Waka Kotahi NZ Transport Agency
SDC	Southland District Council
SIESA	Stewart Island Electricity Supply Authority
YE	Year end
YTD	Year to date
YTD Variance	Comparison of actual results compared to YTD budget
\$M	Millions of dollars

Council monthly summary

Income

Operating income is \$7.4 million (6%) below projection YTD (\$107.2 million actual vs \$114.6 million projection). The key reasons for the variances in each activity area is discussed below.

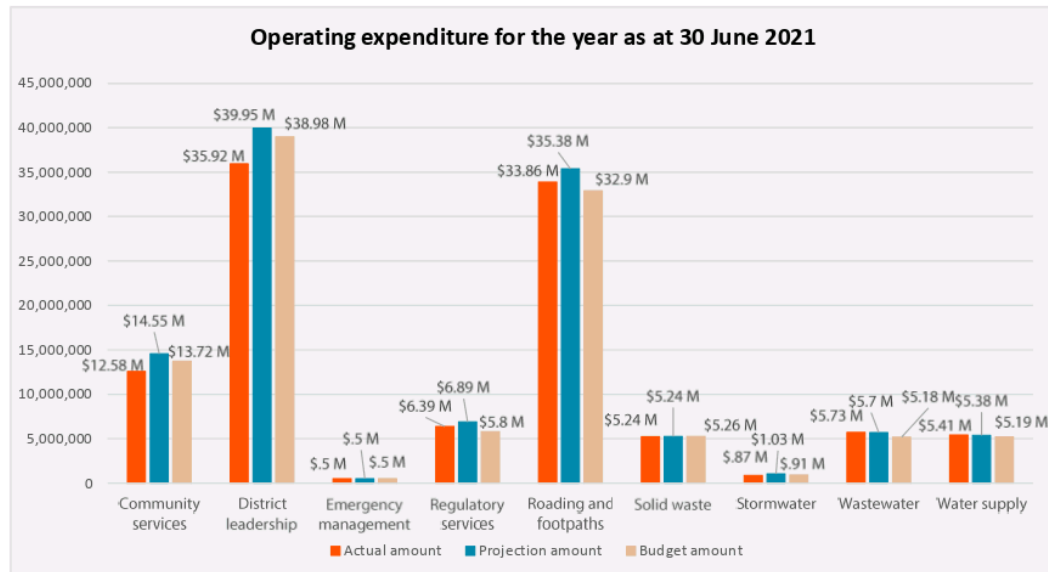


- **community services** income is \$804,292 (6%) lower than projection. The main variances include:
 - grants and donations income is below projection by \$423,259 (42%). Within this activity a number of business units receive interest on reserves held as part of year end balance up this interest will be processed
 - SIESA income is below projection by \$354,213 (16%). The majority of the shortfall is due to the cancellation of the Wind Farm project and the return of the balance of funding to MBIE (\$430,000). This has been offset by higher electricity revenue from increased sales (\$78,000)
 - water structure income is below projection by \$379,515 (89%). The budget included Tourism Infrastructure Fund (TIF) grant income for the Golden Bay wharf. Because this project has been deferred to 2022/23, the grant income will not be received in the current financial year
 - Council facility income is \$206,412 (8%) higher than projection, largely due to the proceeds from property sales. The Hokonui hall (\$95,000) and the land at Winton Woods (\$90,000) were sold with the proceeds from these sales currently sitting in reserves. The land at the Rakiura Museum (\$75,000) was disposed of, with the proceeds being paid to the Rakiura Heritage Trust (included under operational expenditure). This is offset by \$64,000 of interest on reserves still to be processed
 - public convenience income is \$150,920 (17%) higher than projection due to Council receiving the final grant from MBIE for the southern scenic route TIF projects

- **district leadership** income is \$354,168 (1%) lower than projection. The main variances include:
 - corporate services (including Representation and Advocacy) revenue is \$842,000 lower than projected as the costs to be on charged are less than projected
 - water services income is \$108,000 lower than projected due to a delay in recognising the grant income for 3 waters stimulus projects which are yet to be completed. Both the costs and the grant income related to 3 waters projects will be carried forward to the 2021/22 financial year
 - investment income is \$133,000 lower than projected with interest on reserves to be processed as part of the year end entries
 - three waters collaboration income is \$355,000 higher than projected. This income is the contribution from the councils which form the collaboration group and cover its operation. The variance relates to the extension of the staff secondment and related costs
 - forestry income is \$171,000 higher than projected because log prices from the Waikaia forest harvest were better than what was budgeted
 - Milford Opportunities income is \$119,100 higher than projected for the current financial year. This project is a multi year project which started in the 2017/18 financial year. the overall total income has now been received and is in line with the expected grant
 - Stewart Island/Rakiura Visitor Levy income is \$34,000 higher than projected due to higher than forecast visitor numbers
- **regulatory services** income is \$640,642 (11%) below projection. The main variance is building control income, included in the forecasted total income was revenue that was received in advance of completing the work.
- **roading and footpaths** is \$2.2 million (6%) lower than projection. The main variances include:
 - roading district wide is \$1 million lower than projection, this is made up of a number of items resolved as part of the year end process, including interest income to be allocated (\$298,000), petroleum tax income (\$80,000) and the local contribution for footpath renewals (\$296,000). With the majority of the balance coming from Waka Kotahi as part of the final claim of the three year programme
 - special purpose roading is \$1.1 million lower than projection and relates to emergency works for the repair on the Lower Hollyford Road. \$500,000 will be accrued as part of the year end process, this project has been completed and is expected to be \$580,000 lower than originally forecast.
- **wastewater** income is \$2.1 million (24%) lower than projected. This is due to the timing of the MBIE grant for the Te Anau wastewater project for which \$1 million of MBIE income was received in the 2019/20 financial year. The balance of this grant (\$1 million) will be received on completion of the project in the 2021/22 financial year
- **water supply income** is \$1.1 million (16%) lower than projection, due to lower than projected 3 waters stimulus grant income being recognised, this is a timing difference in relation to the AC pipe renewal completion, four of the five AC renewal projects commenced at the end of June or beginning of July with the last to commence in August, the cost of these projects along with the grant income will be carried forward to the 2021/22 financial year

Expenditure

Operating expenditure is \$8.1 million (7%) below projection for the YTD (\$106.5 million actual vs \$114.6 million projection). The key reasons for the variances in each activity area is discussed below.



- **community services** operating expenditure is \$1.9 million (14%) lower than projection. The main variances include:
 - community centre costs which are \$239,901 (30%) lower than projection. \$52,000 of the variance relates to projects which are on hold while discussions are held with relevant community boards and hall committees (these projects will be carried forward to the 2021/22 financial year). In addition, the cost of a project at the Colac Bay hall was \$11,000 lower than forecast. \$45,000 of the variance relates to a Dipton hall maintenance project budgeted for in the LTP which should have been removed as part of forecasting. The remainder of the variance is savings in operating costs and internal work scheme across the District
 - other council facility costs are \$285,446 (10%) lower than projected with the main variance because of lower lease costs for the Invercargill buildings due to the delay in moving as well as maintenance costs savings related to the partial closure of the Forth Street building
 - library service costs are \$379,796 (20%) below projection mainly due to lower project costs, in particular \$192,000 related to the RFID (Radio Frequency Identification) project which will be carried forward to the 2021/22 financial year and completed alongside the Winton library building upgrade. The balance of \$100,000 relates to the refurbishment of the Winton library which has been replaced by the library building upgrade
 - parks and reserves are \$228,340 (9%) lower than projection. \$125,000 of this relates to maintenance and maintenance projects across the District including \$55,000 of playground maintenance to provide the additional level of service required which is expected to be carried forward to the 2021/22 financial year. Rubbish collection costs are down by \$30,000 due to lower visitor numbers, particularly in Te Anau.

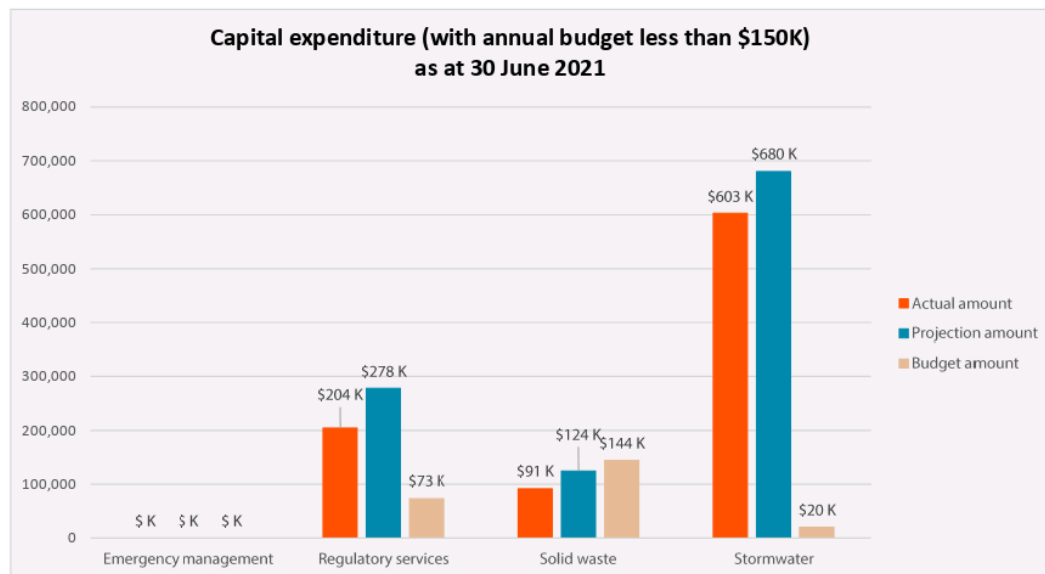
- public conveniences costs are \$108,173 (10%) lower than projection. The majority of this (\$103,000) relates to an error in the expected start date of new cleaning contracts, resulting in a saving for the current financial year
- SIESA costs are \$401,141 (18%) below projection with the main variance related to the cancellation of the wind power project with the associated expenditure not being incurred
- **district leadership** is \$4 million (10%) below projection. The main variances include:
 - communication and engagement is \$158,553 (12%) lower than projected. The main variance relates to events not occurring as budgeted for and the District signage audit/correction project not being completed. The balance of this project \$39,000 will be carried forward to be completed in the 2021/22 financial year
 - governance is \$159,447 (21%) below projection due to staff vacancies resulting in lower than anticipated staff costs
 - information management is \$149,411 (5%) below projection with less printing (\$41,000) occurring, lower software and licencing costs as well as travel and training
 - investments – operating accounting is \$1.65 million lower than projection, as part of Councils year end processes, interest income is allocated to reserves and used to offset operational costs. At this time \$1.25million has yet to be allocated to reserves balances. This year we have not been required to take out any external loans, resulting in no external operational interest charges being incurred although budgeted for
 - water services costs are \$357,323 (15%) lower than projection due to lower consultancy costs associated with the timing of 3 waters stimulus projects. This budget will be carried forward to the 2021/22 financial year and utilised by 31 March 2022.
 - community leadership is \$138,440 (11%) below projection largely because of a lower spend on projects compared to projection.
 - Milford Opportunities project costs are \$195,045 (11%) below projection. Originally this project was expected to be completed by June 2021 but is now expected to be completed in July with the public launch of the master plan. As such this budget is expected to be carried forward to 2021/22 financial year to meet the remaining costs
 - representation and advocacy costs are \$318,133 (12%) below projection. The main variances related to lower general projects costs (\$145,000) as well as lower consultancy costs (\$85,000) for both shared services and the activity
 - forestry costs are \$266,924 (13%) lower than projected, the projection includes a devaluation of \$321,000 for the year for changes in the forest stock value. The actual valuation which will be processed as part of the year end is a revaluation of \$1.1 million, with the change due to growth and prices
 - this activity also includes allocations of corporate overhead costs to district leadership of \$593,000 lower than forecast, which are offset by revenue noted in the income section above
 - three waters collaboration costs are \$292,409 (73%) higher than projected. As stated above, these costs are fully funded by contributions from the collaborating councils, with the variance relating to the extension of the staff secondment and related costs
- **regulatory services** are \$497,748 (7%) below projection. The main variance is in building control with lower than projected ordinary time and consultant's costs. Consultants have been used to assist

with shortages in resourcing. But with the demand for these consultants across the country, Council has been unable to resource this

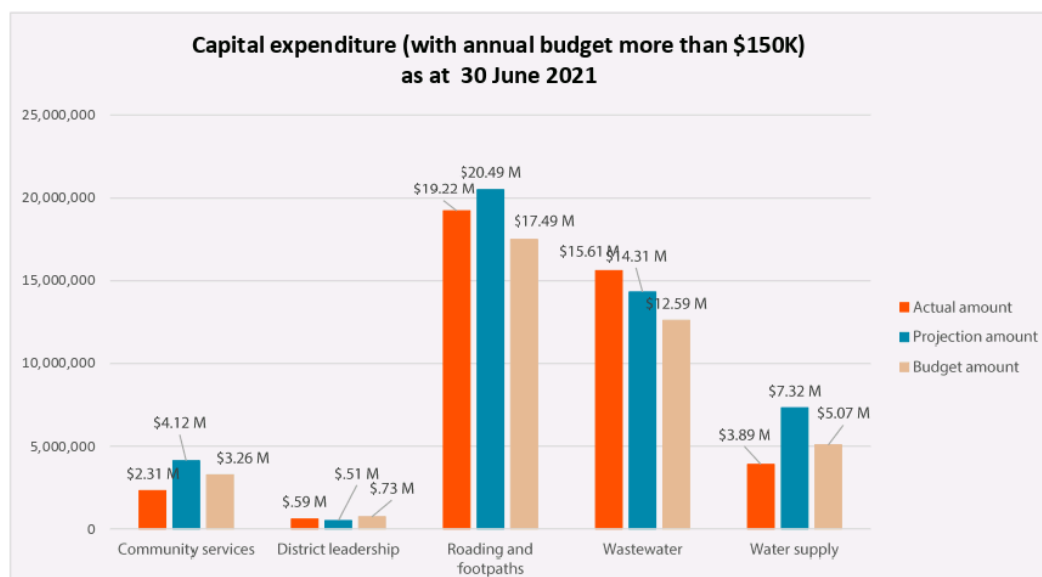
- **roading and footpaths** is \$1.5 million (4%) below projection. The main variances include:
 - roading administration costs are \$543,292 (53%) below projection. Recovery of wage costs has improved as a result of advancements to Council's staff time tracking systems resulting in a cost reduction of \$191,000. Contribution to joint projects is \$241,000 lower than projection, and will remain lower due to the cost of the Pyramid bridge being less than expected
 - special purpose roading is \$1.1 million lower than projection because the cost of emergency repair works on the Lower Hollyford Road is expected to be \$580,000 less than originally forecast. The remaining \$500,000 is a timing difference and will be accrued as part of the year end process

Capital expenditure (CAPEX)

Capital expenditure is \$5.3 million (11%) lower than projection year to date (\$42.5 million actual vs \$47.8 million projection). The key reasons for the variances in each activity area is discussed below.



- **regulatory services** capital expenditure of \$5,859 is for an upgrade to Council's software system to host online applications for new regulatory fees, along with \$197,074 for new vehicles, the variance is due vehicle renewals not purchased in the current financial year
- **solid waste** capital expenditure is \$32,924 (27%) below projection, this relates to capital expenditure at the transfer station at Stewart Island/Rakiura, and will be requested to be carried forward to the 2021/22 financial year for the project to be completed
- **stormwater** capital expenditure is \$77,311 (11%) below projection due to the timing of 3 waters stimulus projects funded from the stimulus grant. These projects are expected to be carried forward to the 2021/22 financial year for completion as part of the stimulus programme



- **community services** are \$1.8 million (44%) lower than projection. The main variances include:
 - Council facilities are \$195,338 (12%) lower than projection. The Invercargill office costs are \$145,000 below budget resulting from savings in phase one of the work completed in May 2021 which are likely to be needed for phase two in the 2021/22 financial year. In addition, the capital work at the Winton office has started and is currently \$50,000 below budget. However, this variance is due to timing and will also need to be carried forward to complete the project in the 2021/22 financial year
 - parks and reserves are \$128,548 (33%) lower than projection. A decision has been made in conjunction with relevant community boards to carry forward a number of playground equipment renewal projects and combine them with projects in the 2021/22 financial year. This will enable staff to provide a better play outcome and create savings further out in the LTP.
 - public conveniences are \$725,441 (83%) lower than projection with the main variance caused by delays in construction of new toilets at Wyndham, Taramea Bay and Te Anau Library. These projects will be carried forward to the 2021/22 financial year
 - SIESA is \$128,852 (67%) lower than projection due to a delay to the generator replacement which was committed in the 2020/21 financial year. However delivery is now scheduled for July, with installation to be completed by September. As such this budget will need to be carried forward to the 2021/22 financial year
 - water structures are \$553,118 (92%) lower than projection because of the deferral of the Ulva Island wharf project to the 2022/23 financial year as part of the LTP process
 - works scheme is \$62,000 lower than projection due to a delay in a vehicle replacement which has been moved to the 2021/22 financial year
- **roading and footpaths** are \$1.3 million (6%) below projection. The main variances include:
 - district roading is \$658,000 (3%) lower than projected. \$307,000 of this has been used to undertake maintenance work and a further \$100,000 will be accrued as part of the year end processes. The

total 3 year programme (capital and maintenance) of \$80.14 million was underspent by \$162,000 (0.2%)

- street works is \$292,000 (38%) below projection, however with the yearend still to be processed, it is expected that this variance will align with projection
- Around the Mountains Cycle Trail is \$270,000 (78%) below projection. \$214,000 for easements, signage and landscaping will be carried forward to next year, the culvert costs were \$20,000 less than budget
- **wastewater** is \$1.3 million (9%) above projection. \$1.8 million of the Te Anau wastewater upgrade project has been delivered ahead of schedule in the current financial year and a carry back from the 2021/22 financial year budget will be required. The balance relates to projects in Manapouri, Ohai and Riversdale that will be carried forward to next year
- **water supply** is \$3.4 million (47%) lower than projection. \$1.1 million of this relates to Lakefront Drive watermain renewal, with a carried forward to the next financial year required to complete this project. \$1.1 million relates AC pipe replacement across areas of the district funded by the stimulus grant. The remainder of the AC pipe renewal projects (are commencing in July and August and are expected to be completed by December 2021. As such budgets for these projects are expected to be carried forward the remaining variance relates to projects in Eastern Bush, Manapouri and Riverton which while in progress will require carry forwards to the 2021/22 financial year to the 2021/22 financial year

Council summary report

Southland District Council financial summary for the period ending 30 June 2021

Operating income									
	YTD					FYB			
	Actual amount	Projection amount	Budget amount	Variance	Var %	Projection amount	Budget amount	Variance	Var %
Community services	11,720,015	12,524,306	12,711,309	(804,292)	(6%)	12,524,306	12,711,306	187,000	1%
District leadership	38,856,829	39,210,997	38,190,162	(354,168)	(1%)	39,210,997	38,190,162	(1,020,835)	(3%)
Emergency management	500,166	499,435	499,435	731	0%	499,435	499,435	(0)	(0%)
Regulatory services	5,323,718	5,964,360	5,360,100	(640,642)	(11%)	5,964,360	5,360,101	(604,260)	(10%)
Roading and footpaths	32,222,028	34,448,004	30,551,021	(2,225,975)	(6%)	34,448,004	30,551,021	(3,896,983)	(11%)
Solid waste	5,492,374	5,522,075	5,481,398	(29,701)	(1%)	5,522,075	5,481,398	(40,677)	(1%)
Stormwater	1,138,810	1,327,110	547,110	(188,300)	(14%)	1,327,110	547,110	(780,000)	(59%)
Wastewater	6,505,085	8,584,785	6,074,785	(2,079,700)	(24%)	8,584,785	6,074,785	(2,510,000)	(29%)
Water supply	5,459,949	6,535,530	4,148,304	(1,075,581)	(16%)	6,535,530	4,148,304	(2,387,226)	(37%)
Total	\$107,218,973	\$114,616,602	\$103,563,624	(7,397,629)	(6%)	\$114,616,602	\$103,563,623	(11,052,979)	(10%)
Operating expenditure									
	YTD					FYB			
	Actual amount	Projection amount	Budget amount	Variance	Var %	Projection amount	Budget amount	Variance	Var %
Community services	12,580,990	14,546,664	13,715,802	(1,965,674)	14%	14,546,664	13,715,805	(830,859)	(6%)
District leadership	35,919,045	39,953,942	38,976,808	(4,034,896)	10%	39,953,942	38,976,808	(977,133)	(2%)
Emergency management	499,608	499,435	499,435	173	(0%)	499,435	499,435	(0)	(0%)
Regulatory services	6,387,446	6,885,194	5,799,218	(497,748)	7%	6,885,194	5,799,219	(1,085,975)	(16%)
Roading and footpaths	33,861,723	35,377,639	32,903,722	(1,515,916)	4%	35,377,639	32,903,715	(2,473,924)	(7%)
Solid waste	5,238,149	5,239,147	5,259,915	(998)	0%	5,239,147	5,259,916	20,769	0%
Stormwater	871,602	1,034,236	905,066	(162,634)	16%	1,034,236	905,067	(129,169)	(12%)
Wastewater	5,726,278	5,700,131	5,181,109	26,147	(0%)	5,700,131	5,181,109	(519,022)	(9%)
Water supply	5,411,673	5,378,335	5,193,632	33,339	(1%)	5,378,335	5,193,631	(184,704)	(3%)
Total	\$106,496,515	\$114,614,723	\$108,434,708	(8,118,207)	7%	\$114,614,723	\$108,434,705	(6,180,018)	(5%)
Net surplus/deficit	\$722,458	\$1,879	(\$4,871,083)	720,579	(14%)	\$1,879	(\$4,871,083)	(4,872,962)	(4%)
Capital expenditure									
	YTD					FYB			
	Actual amount	Projection amount	Budget amount	Variance	Var %	Projection amount	Budget amount	Variance	Var %
Community services	2,314,269	4,120,658	3,258,909	(1,806,389)	(44%)	4,120,658	3,258,909	(861,749)	(21%)
District leadership	587,740	505,183	734,319	82,557	16%	505,183	734,319	229,136	45%
Emergency management	-	-	0	0	0%	-	-	0	0%
Regulatory services	203,942	277,824	73,116	(73,882)	0%	277,824	73,116	(204,708)	(74%)
Roading and footpaths	19,221,272	20,486,617	17,489,071	(1,265,345)	(6%)	20,486,617	17,489,071	(2,997,546)	(15%)
Solid waste	91,312	124,236	143,974	(32,924)	(27%)	124,236	143,974	19,738	16%
Stormwater	602,689	680,001	20,000	(77,311)	(11%)	680,001	20,000	(660,001)	(97%)
Wastewater	15,606,103	14,312,163	12,590,760	1,293,940	9%	14,312,163	12,590,760	(1,721,403)	(12%)
Water supply	3,892,007	7,319,243	5,074,805	(3,427,236)	(47%)	7,319,243	5,074,805	(2,244,438)	(31%)
Total	\$42,519,335	\$47,825,924	\$39,384,954	(5,306,590)	(11%)	\$47,825,924	\$39,384,954	(8,440,970)	(18%)

ACTIVITIES REPORTING UNDER GROUPS LISTED		
COMMUNITY SERVICES	DISTRICT LEADERSHIP	REGULATORY SERVICES
Community assistance (Includes Community Partnership Fund which supports local initiatives and projects, along with grants and donations)	Representation and advocacy (includes governance, Council and councillor costs, Council Elections and chief executive)	Building control
Parks and reserves	Community futures (District development services which includes community leadership, regional development funding and Stewart Island/Rakiura Visitor Levy)	Resource management
Cemeteries	District support (Includes the area offices and the operating costs for the communities)	Animal control
Community facilities (Includes community centres)	Customer and corporate support (includes people and capability, communications, strategy and policy, finance, information management)	Environmental health
Community housing	Forestry	
Library services		
Public toilets		
Airports		
Electricity supply		

Statement of comprehensive income

Statement of comprehensive revenue and expenses for the period ending 30 June 2021					
	YTD			FYB	
	Actual amount	Projection amount	Budget amount	Projection amount	Budget amount
Revenue					
Rates revenue	49,401,485	49,390,227	49,531,501	49,412,657	49,531,500
Other revenue	9,533,410	9,508,266	8,316,238	9,508,266	8,316,238
Interest and dividends	74,145	46,890	72,763	46,890	72,763
NZ Transport Agency funding	17,332,506	18,921,726	15,507,078	18,921,726	15,507,078
Grants and subsidies	8,123,566	12,091,009	5,305,740	12,091,009	5,305,740
Other gains/losses	312,880	(258,353)	(258,353)	(258,353)	(258,353)
Vested assets	0	0	0	0	0
Development and financial contributions	2,199	39,715	24,416	39,715	24,416
	84,780,190	89,739,480	78,499,383	89,761,910	78,499,382
Expenditure					
Employee benefit expense	15,655,215	16,072,687	15,279,127	16,072,687	15,279,127
Depreciation and amortisation	23,841,768	23,815,083	23,815,083	23,815,083	23,815,083
Finance costs	26,354	422,445	422,445	422,445	422,445
Other Council expenditure	44,534,395	49,427,386	43,853,811	49,449,816	43,853,810
	84,057,732	89,737,601	83,370,466	89,760,031	83,370,465
Total comprehensive income	722,458	1,879	(4,871,083)	1,879	(4,871,083)

Note:

The revenue and expenditure in the comprehensive income statement does not reconcile to the total income and total expenditure reported in the Council summary report on page 12 due to the elimination of the internal transactions. However, the net surplus/deficit (as per the Council summary report) matches the total comprehensive income (as per the statement of comprehensive income).

The presentation of the statement of comprehensive income aligns with Council's Annual Report. The Annual Report is based on national approved accounting standards. These standards require us to eliminate internal transactions. Council is also required to report by activities. A number of Council functions relate to a number of activities, eg finance. To share these costs, an internal transaction is generated between the finance business unit and the activity business units. Within the Annual Report, Council also prepare activity funding impact statements. These statements are prepared under the Financial Reporting and Prudence Regulations 2014. This regulation requires internal charges and overheads recovered be disclosed separately. The Council summary report is a summary of what these activity funding impact statements will disclose for income and expenditure at year end

Statement of financial position

Council's draft financial position as at 30 June 2021 is detailed below. The statement of financial position below only includes Southland District Council and SIESA financials. This means that the statement of financial position for 30 June 2020 differs from the audited Annual Report which includes Venture Southland and Wastenet financials

Southland District Council Statement of financial position as at 30 June 2021		
	Actual 30-Jun-21	Actual 30-Jun-20
Equity		
Retained earnings	720,108,920	719,386,462
Asset revaluation reserves	837,648,066	837,648,066
Other reserves	41,811,957	41,811,957
Share revaluation	3,576,565	3,576,565
	<u>1,603,145,510</u>	<u>1,602,423,050</u>
Represented by:		
Current assets		
Cash and cash equivalents	1,674,770	11,498,789
Trade and other receivables	9,116,689	10,682,710
Inventories	126,353	126,512
Other financial assets	2,532,437	2,017,930
Property, plant and equipment	-	-
	<u>13,450,249</u>	<u>24,325,942</u>
Non-current assets		
Property, plant and equipment	1,596,085,053	1,576,652,956
Intangible assets	3,141,132	3,618,162
Forestry assets	12,260,000	12,260,000
Internal loans	33,215,913	35,338,083
Work in progress	373,959	713,532
Investment in associates	944,624	944,624
Other financial assets	1,579	2,105
	<u>1,646,022,260</u>	<u>1,629,529,462</u>
Total assets	<u>1,659,472,509</u>	<u>1,653,855,404</u>
Current liabilities		
Trade and other payables	14,177,845	9,379,639
Contract rententions and deposits	586,574	449,867
Employee benefit liabilities	1,529,737	1,984,447
Development and financial contributions	1,782,389	1,745,776
Borrowings	5,000,000	2,500,000
Provisions	14,000	14,000
	<u>23,090,545</u>	<u>16,073,729</u>
Non-current liabilities		
Employment benefit liabilities	18,631	18,631
Provisions	1,910	1,910
Internal loans - liability	33,215,913	35,338,084
	<u>33,236,453</u>	<u>35,358,625</u>
Total liabilities	<u>56,326,999</u>	<u>51,432,354</u>
Net assets	<u>1,603,145,510</u>	<u>1,602,423,050</u>

Statement of cash flows

Statement of cashflows for the period ended 30 June 2021	
	2020/2021
	YTD Actual
Cash flows from operating activities	
Receipts from rates	48,969,984
Receipts from other revenue (including NZTA)	37,022,182
Cash receipts from interest and dividends	74,145
Payment to suppliers	(39,611,208)
Payment to employees	(16,109,924)
Interest paid	(26,354)
GST general ledger (net)	15,520
Net cash inflow (outflow) from operating activities	30,334,345
Cash flows from investing activities	
Receipts from sale of PPE	312,880
(Increase)/decrease other financial assets	(513,981)
Purchase of property, plant and equipment	(42,934,293)
Purchase of forestry assets	-
Purchase of intangible assets	477,030
Net cash inflow (outflow) from investing activities	(42,658,364)
Cash Flows from financing activities	
Increase/(decrease) term loans	2,500,000
Increase/(decrease) finance leases	-
Net cash inflow (outflow) from financing activities	2,500,000
Net increase/(decrease) in cash and cash equivalents	(9,824,020)
Cash and cash equivalents at the beginning of the year	11,498,789
Cash and cash equivalents at the end of June	1,674,770

Cash and cash equivalents and other financial assets

1. At 30 June 2021, Council had no term deposits
2. At 30 June 2021, SIESA had \$2.07 million invested in seven term deposits as follows:

SIESA investments - term deposits				
Bank	Amount	Interest rate	Date invested	Maturity date
BNZ	\$ 350,000	0.87%	25-Jan-21	26-Jul-21
BNZ	\$ 350,000	0.90%	23-Feb-21	23-Aug-21
BNZ	\$ 370,000	0.95%	7-Apr-21	7-Oct-21
BNZ	\$ 250,000	0.87%	2-Feb-21	2-Nov-21
BNZ	\$ 250,000	1.05%	3-Jun-21	3-Dec-21
BNZ	\$ 200,000	1.00%	4-May-21	4-Dec-21
BNZ	\$ 300,000	1.00%	7-Apr-21	7-Apr-22
Total	\$ 2,070,000			

3. Funds on call at 30 June 2021:

Funds on call				
	Amount	Bank	Account	Interest rate
SDC	\$ 846,879	BNZ	Funds on call	0.05%
	\$ 0	Westpac	Funds on call	0.05%
	\$ 10,000	BNZ	Operating bank acc	0.05%
	\$ 613,500	BNZ	Restricted funds acc	0.05%
SIESA	\$ 202,249	BNZ	Funds on call	0.05%
Total	\$ 1,672,629			

Council's Investment and Liability Policy states that Council can invest no more than \$10 million with one bank. Investments and funds on call, comply with the SDC Investment Policy.

4. Reconciliation to statement of financial position:

	Amount
Cash and cash equivalents	
Note 1 - SDC Investments	\$ 0
Note 2 - SIESA Investments	\$ 2,070,000
Note 3 - Funds on call	\$ 1,672,629
Total cash and cash equivalents	\$ 3,742,629
Add other financial assets	
Cash on hand	\$ 2,141
Loan advances - developers contributions	\$ 1,579
Loans - community	\$ 31,616
Civic Assurance shares	\$ 12,572
Milford Sound Tourism shares	\$ 418,249
Total other financial assets	\$ 466,157
Total cash and cash equivalents and other financial assets	\$ 4,208,786
Per the statement of financial position	
Cash & cash equivalents	\$ 1,674,770
Other financial assets - current assets	\$ 2,532,437
Other financial assets - non current assets	\$ 1,579
Total per statement of financial position	\$ 4,208,786

Management report

Record No: R/21/7/39824
Author: Dianne Williams, Mayoral Support
Approved by: Cameron McIntosh, Chief executive

☐ Decision

☐ Recommendation

☒ Information

Chief executive update

Three waters reforms programme – support package summary

1. The government has developed, in close partnership with Local Government New Zealand, a package of \$2.5 billion to support the sector through the transition to the new water services delivery system, and to position the sector for the future. This package will ensure that local authorities are supported through the transition process, the financial impacts of reform are managed and importantly, all councils and communities will transition to the new system for delivering three waters services in a better position than where they are now.
2. There are two broad components to this support package:
 - \$2 billion of funding to invest in the future of local government and community wellbeing, while also meeting priorities for government investment (the “better off” component)
 - \$500 million to ensure that no local authority is financially worse off as a direct result of the reform (the “no worse off” component).
3. The better off component of the support package, which comprises \$1 billion Crown funding and \$1 billion from the new water services entities, is allocated to territorial authorities on the basis of a nationally consistent formula that takes into account population, relative deprivation and land area. This formula recognises the relative needs of local communities, the unique challenges facing local authorities in meeting those needs, and differences across the country in the ability to pay for those needs. Territorial authorities will be able to use this funding to support the delivery of local wellbeing outcomes associated with climate change and resilience, housing and local placemaking.
4. The no worse off component of the support package comprises an estimated \$500 million contribution from the new water services entities to ensure that no local authority is in a materially worse position financially to continue to provide services to its community as a direct result of the reform. This includes an up to \$250 million provision to support councils to meet the unavoidable costs of stranded overheads associated with the transfer of water assets, liabilities and revenues. The remainder of the no worse off component will be used to address adverse impacts on the financial sustainability of territorial authorities.
5. Initial analysis indicates that the vast majority of councils are likely to be financially better off through the reforms. Councils likely to suffer adverse financial impacts are primarily those with a low level of water debt to revenue and a high level of non-water debt to revenue. The Department will undertake further work with councils during the transition period to understand the potential financial impacts at a local level, including through undertaking the associated due diligence process.

6. In addition to the support package, the Government expects to meet the reasonable costs associated with the transfer of assets, liabilities and revenue to new water services entities, including staff involvement in working with the establishment entities and transition unit, and provision for reasonable legal, accounting and audit costs. There is an allocation for these costs within the \$296 million tagged contingency announced as part of the 2021 Budget Package for transition and implementation activities. This allocation is additional to the \$2.5 billion support package.
7. The Department of Internal Affairs is continuing to work with Local Government New Zealand to develop the process for accessing the various components of the support package outlined above, including conditions that would be attached to any funding. More information and guidance will be made available in the coming months.
8. The proposal Southland District Council will get is \$19,212,526.

(As sourced from the DIA website)

Community and Futures

Strategy and policy

Bylaw and policy work

9. Staff in the strategy and policy team are in the early stages reviewing a number of documents. These include:
 - Open Spaces Strategy and Reserves Management Policy – it is intended that pre-consultation with stakeholders will begin in August
 - Stewart Island/Rakiura Visitor Levy Bylaw and Policy - it is intended that pre-consultation with stakeholders will take place in July and August
 - Delegations Manual – staff have begun reviewing the manual and identifying possible changes
 - Alcohol Control Bylaw - it is intended that pre-consultation with stakeholders will take place in August
 - Smoke Free Open Spaces Policy – it is intended that pre-consultation with stakeholders will take place before the end of this year
 - Protected Disclosure policy
 - Contract Management Policy
 - Feedback Policy.
10. Council's Asset Management Policy was adopted by ELT on 6 July, and the new policy is now in effect. Staff will present the policy to Council for its information in August 2021. The Fraud Policy was adopted by Council on 23 June and is available to view on Council's website. It is intended that ELT will adopt the draft Sensitive Expenditure Policy in August, completing the review of this policy.

Corporate risks

11. Following annual review by ELT, on 23 June 2021, Council adopted the revised top strategic risks which will form the quarterly risk register moving forward. Risk management reporting has begun for the September 2021 quarter. Staff and ELT are currently updating the risk register and the quarterly reports will be presented to the Finance and Assurance Committee and Council when they meet in September 2021.

Long Term Plan

12. Following Waka Kotahi NZ Transport Agency's announcement that Council would not receive the full amount of funding requested, staff were required to make amendments to the proposed roading works programme as part of the final version of the Long-Term Plan document. On 29 June 2021, Council adopted the Long-Term Plan 2021-2031. The LTP sets out Council's plan for the next 10 years, how this contributes to the strategic direction, the costs, and how they will be paid for, and how we will measure our performance as an organisation. The LTP is our contract with our community for the services that we will deliver. The LTP is available on Council's website to view or download, and printed copies of the LTP will be available to view in all Council offices throughout the District by early August.

Annual Report

13. Work on the development of the 2020/2021 Annual Report has now begun. Staff are working through the year end budget process and the key performance indicator results. Staff are formulating the key highlights, projects and budgets for the year with the Annual Report on schedule to be completed by the end of October 2021.

Interim performance report

14. The final interim performance report period ends 30 June. The results of this will then go into the Annual Report 2020/2021.

Governance and democracy

Elected members remuneration and reimbursement policy

15. On 23 June Council adopted the Elected Members' Remuneration and Reimbursement Policy. The policy came into effect on 1 July 2021 and is available on Council's website.

Community leadership team

Tourism Infrastructure Fund

16. Minister of Tourism Stuart Nash recently announced that Southland District Council will receive \$3,739,125 for projects in Fiordland and Stewart Island/Rakiura from the Tourism Infrastructure Fund.
17. The Fiordland area will receive \$1,100,000 to upgrade the boat ramp, toilets, and carpark at Pearl Harbour, Manapouri and to upgrade the access road and toilets at Fraser's Beach Manapouri, \$1,500,000 additional funding for the Te Anau wastewater project and \$440,000 for the replacement of two boat ramps in Te Anau to meet the required standards and a new toilet for Bluegum Point.

18. Stewart Island/Rakiura will receive \$99,125 on behalf of DOC, to build a viewing platform at Observation Rock, and \$600,000 for replacement of Ulva Island Wharf.
19. Council and Great South staff worked collaboratively to collate the extensive information required, in a short timeframe, to submit the applications to MBIE for consideration.

Welcoming Communities

20. It has been reported by police and other stakeholders that there are a significant number of newcomers in the Southland region who do not have driving licences. Many are driving illegally, and some are not driving at all which is resulting in isolation from their local communities. We have identified this is particularly an issue for those living in the Southland District and who are working on dairy farms. A number of reasons have been identified for this including cost, language barriers, and limited testing stations.
21. Southland District Council have partnered with Invercargill City Council, Gore District Council, and Southern REAP to lodge a funding application for a pilot-extension to Southern REAP's "drive my life" programme that specifically focuses on supporting Southland's newcomers to obtain their learners, restricted, and full driving licenses. The funding application was submitted to the Ministry for Ethnic Communities "Ethnic Communities Development Fund". We are waiting to hear of the outcome.

Milford Opportunities Project

22. The Milford Opportunities Project masterplan has been approved by the Governance Group. The Ministers of Tourism and Conservation jointly took a paper to cabinet on June 28. The public launch of the masterplan will be 28 July.
23. The government made a pre-budget announcement of a further \$15 million in funding for Stage 3 of the project which includes the detailed planning, investigation and development of business cases to implement the masterplan.

Environmental Services

Animal control

24. The many improvements to the dog registration process has resulted in the process running far smoother for staff this year. Some significant problems from the previous year, such as web payment issues, have been resolved.
25. The team ran a successful internal training session for field staff in our building solutions and resource management teams.

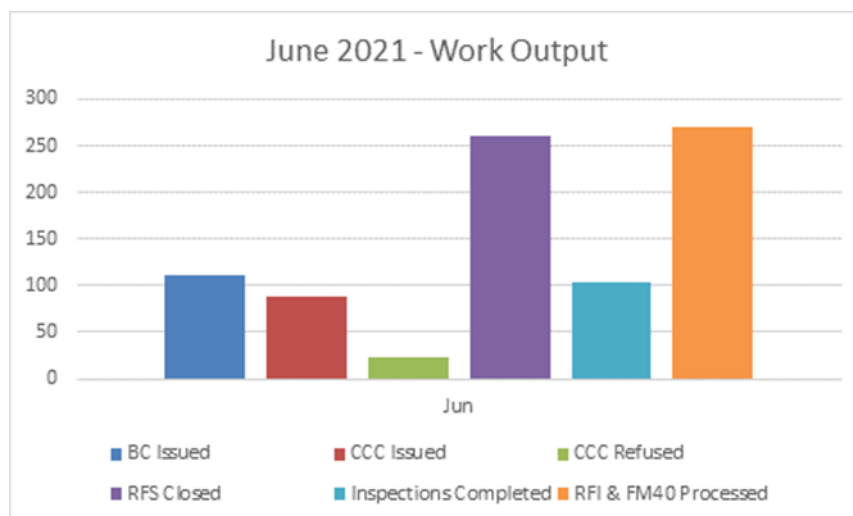
Environmental health

26. A mediation is scheduled through the Environment Court, in relation to the abatement notice that was appealed for rooster noise.
27. Work has started on introducing online applications for alcohol licensing, starting with manager's certificates.

28. Staff are preparing for the alcohol hearing for a proposed bottle store in Riverton, scheduled for 28 July.

Building

29. Council achieved 100% compliance for code compliance certificates and 99% for building consents issued for the month of June 2021. The one BC that exceeded timeframe was from human error and not from an inability to comply with timeframes. Council continue to receive a high volume of consents with 131 consents received during June 2021 (11% more than were received in June 2020).
30. For the year end summary, the team received 1,010 BC applications during FY20/21, 11% higher than FY19/20.
31. 18 June 2021 Council submitted on the Licensed Building Practitioners Regime Consultation to MBIE which was the due date for this submission.
32. Recruitment for the vacant building co-ordinator team leader and building co-ordinator roles continued in June 2021.
33. The new fees structure being implemented from 1 July 2021 was posted on the website the afternoon of 29 June 2021. This has received an immediate response of dissatisfaction from the industry and community who have been questioning the reason for an increase of fees.



June 2021 – Building Consents Received

Primary Property Hk Ey → Property Ward	Count	Sum of Application Val...
Mararoa Waimea	39	NZ\$4,233,122.00
n/a	1	NZ\$10,000.00
Oreti	31	NZ\$4,053,766.65
Stewart Island Rakiura	1	NZ\$750,000.00
Waiau Aparima	33	NZ\$3,647,545.00
Waihopai Toetoe	26	NZ\$1,798,030.00

Resource management

Resource consents

34. The volume and complexity of resource consent applications received remains high over the first six months of the calendar year. Two applications are about to be publicly notified in the coming weeks being the proposed Bromoore Gold mine near Waikaia township and the retrospective resource consent application for the clearance of indigenous vegetation and earthworks associated with the re-development of the Manapouri Boat Club boat ramp in Manapouri. A joint resource consent hearing with Environment Southland is was held on 21 July for a new Fulton Hogan Quarry in Fairlight. A decision is expected in Mid-August. It's anticipated that the volume and complexity of consent will continue of the next six months.

Environmental Policy

35. Work is continuing on the review of the landscapes chapter of the Operative Southland District Plan 2018. It's anticipated that this work will continue into the new year prior when the plan change will be notified. The District Plan effusiveness report has been completed and was presented to the Regulatory and Consents Committee on 14 June. It made a number of recommendations to better improve the performance of the District Plan.

Legislative reforms

36. The Exposure Draft for the Natural and Built Environments Act was released in this reporting period. This is one of the three pieces of legislation proposed to replace the RMA. Submissions close on 4 August and Councils is working on an individual submission and a joint Otago Southland submission. The proposed Act is significantly different to the Resource Management Act and will mean wide-ranging changes to environmental management.

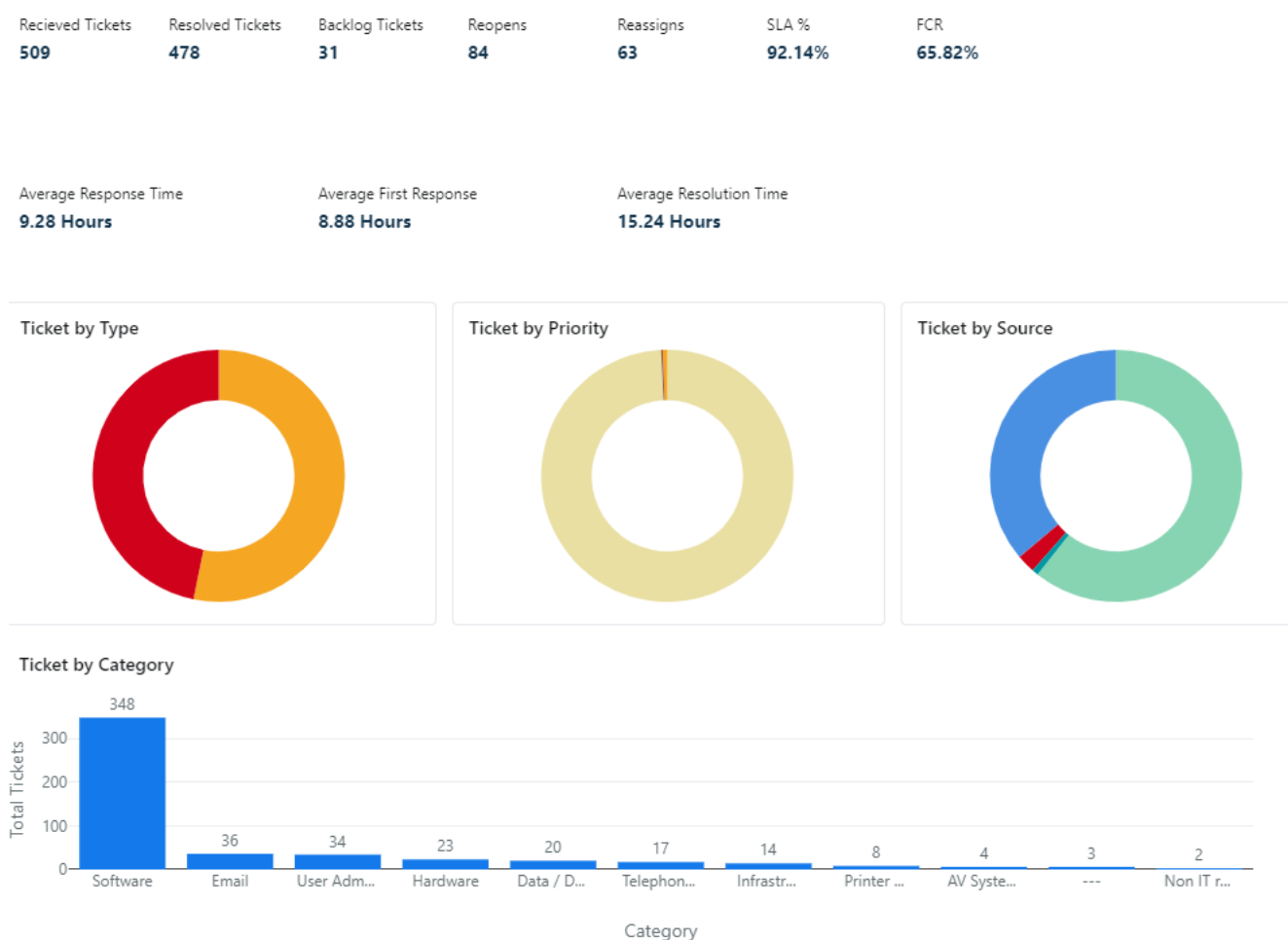
Knowledge Management

37. LIM numbers remained steady for the month of June with 42 LIM's being lodged. We kept our 6 day average turnaround which is promising. In June we processed 167 property file requests which averages 8 per day. LIM's and Property files were moved to E-pathway this month which has reduced some of the manual processing required and now allows for improved reporting.

38. Application integration between Pathway and Records Manager has started for Building and were now looking at the licensing modules due to be implemented over the next few months. NAR integration has been tested and will be implemented with the upgrade from Records Manager to Content Manager. Testing has been completed for the upgrade to Content Manager with users across the organisation, development will start in August with expected implementation in September with completion and roll out in September/October.
39. Other work in the team includes the continued work of Information Inventory (Cataloguing) clearing property files from the safe, as mentioned above the implementation of E-Pathway and the LIM optimisation project plan is being developed which will look at the options available for automation.

Business Solutions

40. Another month of > 500 tickets with a large amount related to the various applications that we support. We continue to have resourcing challenges as we juggle sickness during the winter months.



41. The decommissioning of our old Citrix environment continues with approx. 90% of staff no longer needing to access this. The new remote access method is currently being trialled with the Building team to overcome some of the issues that we face with data heavy applications on the VPN.
42. We have been investigating a number of new security initiatives with the other councils related to end user training, awareness programs and monitoring tools.

- 43. RM8 Pathway integration continues as the team work through the various Pathway modules.
- 44. There were a number of new processes created in pathway which are currently wait for final sign off by the departments. These include debt collection and arrears, BWOF and building fees. There has been a redesign of the ePathway online system to provide a more modern feel and better align with SDC styles.
- 45. The team has also been working hard on tidying up the pathway property data in preparation for integration with IPS, and to allow a better customer experience when using the online search function.
- 46. A draft disaster recovery (DR) plan was presented to ELT for feedback and there are minor changes required. Planning continues for our simulated DR test using our Datto recovery product.
- 47. Preparation work is underway for the move of our email server from on premise to Office 365 with a pilot test planned for August.

Services and Assets

Stewart Island Electrical Supply Authority (SIESA)

- 48. Replacement engine and generator unit is on track for delivery in July 2021.
- 49. PowerNet has prepared a draft 10 year works programme with significant renewal investment identified in initial years. Significant elements requiring replacement or investigation include power transformers, airbrake switches, distribution transformers and 400V switchboard.
- 50. Recent investigations have revealed issues with power transformer that require the replacement identified in the 10-year plan brought forward. Replacement approach is being developed and integrated into annual works programme.
- 51. Proposal for smart meter replacement is being developed.

Forestry (IFS)

- 52. Purchase and planting of seedlings in Waikaia for 2020/2021 season is complete.
- 53. Remaining silviculture operations across the estate were reprioritised to Gowan Hills.
- 54. Draft valuation for FY20/2021 year was received.

Around the Mountains Cycle Trail

- 55. Six yearly structural inspections of the bridges on the trail are complete with minor items identified. These have been instructed for action by the maintenance contractor.
- 56. Pre-development project work to address the Centre Hill erosion has commenced and SDC is continuing to work with Landcorp to identify suitable solutions.
- 57. Initial draft of proposed Around the Mountains Cycle Trail trust deed has been drafted. Formation of trust is pending decision from Council. An expression of interest for interested trustees was advertised and a healthy response was received.

Te Anau Manapouri airport

58. Due to a backlog of work at CAA toward the end of 2020, and therefore a delay in the Safety Management System (SMS) audit, an exemption to the SMS was obtained through to 30 September 2021. SMS and certificate renewal audit is scheduled for 25 August and is on track.
59. Investigative test pits and ground water monitoring is being planned in preparation for design and construction phases of runway surface renewal in FY2021/2022 and FY 2022/2023. Offer of service has been accepted for professional services and this work has commenced.

Property

60. Due to staff being on extended sick leave and the upswing in workload, this has meant that many requests for work or input into projects, have had to be prioritised to best achieve Council's overall objectives. The down side to this however is that a significant amount of work is being added to the uncompleted list of actions however with the staff compliment slowly returning to normal, work will start on dealing with these issues.
61. Work that is underway is the rent review and renewal of Riverton Harbour Endowment farming leases which happen every 21 years. This is at the stage of Council valuers completing their task to advise the Lessees of the new rentals and the new rental amounts have been sent to the Lessees. The draft leases with Landcorp for the lands at Kepler are at their final stages awaiting resolution of water allocation and flows being confirmed.
62. Numerous internal enquiries regarding what is allowed on council property are being received and processed. This is an important role given the many differing land status, to ensure the asset managers are undertaking work on Council property and in accordance with the many restrictions that may, or may not, exist with each status.

Strategic water and waste

63. Downer has been performing well despite a high workload recently, due to several mains failures. Downer has completed a large number of minor projects during the 2020/2021 year. The 2021/2022 programme is well underway.
64. We are still tracking very well with close out of our RFSs. Council's Antenno app is being configured to allow notification of shutdowns and disruptions to properties.
65. We are working with the customer service team to ensure requests are directed to the appropriate contractors.

Resource consent renewals (wastewater)

66. In addition to each specific community scheme proposal inflow and infiltration (I/I) work has also been programmed to coincide with these works.

Wastewater scheme upgrade	Description	Capital budget
Balfour WWTP and consent	Reconsenting is expected to have challenges with the disposal options being limited due to soil structure in close proximity to the existing treatment plant. A working group will be formed shortly to work through this project.	\$1.5 million
Edendale/Wyndham WWTP and consent	A strategy has been proposed and this project will pick up momentum shortly with reconsideration of discharge methodology.	\$3.0 million
Manapouri WWTP and consent	Consenting process is underway with the inaugural Working Group meeting held in June.	\$4.0 million
Riversdale WWTP and consent	Resource consents have been lodged and a notified process is now underway. Land acquisition proceedings are well-developed.	\$2.6 million
Stewart Island disposal field	Disposal field upgrade design has been completed and will be constructed later this year.	
Winton WWTP and consent	Progress has been put on hold while an alternative solution is being investigated and input from Environment Southland is sought. A revised strategy is being reviewed. It is expected that community engagement will be undertaken in early September.	\$25 million

Stimulus

67. Work continues with the Stimulus programme, and 2020/2021 LTP capex programme packages with 10 projects completed, another seven underway.
68. There are five projects currently under design and four projects with completed design awaiting allocation to one of the panel contractors.
69. We are confident that the programme will be delivered on time, in line with our forecasted programme as we are using the Stimulus contracting panel (made up of four local contracting companies) for our delivery. Our use of external professional resource for quality assurance, quantity surveying/ price evaluation and contract engineering is proving efficient and valuable.

Project delivery team (PDT)

70. The 2020/2021 works programme is now complete with circa \$42m completed but still to be finalised in the year in process.
71. Carry forwards are being worked on now and will be incorporated into the 2021/2022 works programme.

- 72. Te Anau Waste Water is well on track for commissioning and operating in the coming months.
- 73. Construction has begun on the Winton library project.
- 74. The 2021/2022 works programme is now in place and works is starting to be sent to market for pricing.
- 75. Core improvement work is well underway with the development of a cost management workbook being developed.

Community facilities

- 76. The team is focused on the end of year process and wrapping up any unfinished projects.
- 77. Capital works projects are progressing however contractor availability and material supply has been hampering progress on some of these projects. This is a risk that may impact on our ability to deliver the new year's capital works programme.
- 78. The locally funded project definitions for the new financial year have all been taken to the nine community boards for approval.
- 79. The team is now in a position where we can start the procurement process for the new financial year's capital works programme.
- 80. The INFOR IPS application is now operational having gone through development and testing. The community facilities data has been imported into the application and staff are working through identifying any gaps in the data. The focus for this is to have all the appropriate information in the system so that we are in a position to produce the next Activity Management Plans and LTP.
- 81. We are working with the other teams within the Services and Assets group and consultants to assess our Asset Management maturity as well as defining standard concept designs.
- 82. Some of focus will now shift to looking at preparing for the 2022-2023 financial year's capital works programme.

Strategic transport

National Land Transport Plan

- 83. The transport team have now had time to work through some of the detail and likely impacts resulting from the reduced funding approval received from Waka Kotahi NZ Transport Agency.
- 84. As previously indicated the reduced funding will reduce the volume of renewals work originally planned for the next three years.
- 85. The biggest impacts are in the bridges and pavement rehabilitation area. The consequences are that for bridges already closed, these are now likely to remain closed over the next three years, and for the sealed road network more temporary speed limits will likely be required to deal with the increase in smooth road surfaces.
- 86. While not a large dollar value from a district wide context, footpath funding and particularly footpath renewal funding has seen a significant reduction from Waka Kotahi NZ Transport Agency. As this activity is locally funded by each township, it will likely have a significant impact on the volume of

works able completed particularly in the renewals area. There is also the likelihood that that for some townships no Waka Kotahi NZ Transport Agency funding will be available for renewals works.

87. The transport team are currently reassessing and re-prioritising the footpath programme from a district wide perspective to determine how best to manage the limit Waka Kotahi NZ Transport Agency budget available and will be reporting back to community boards on the individual impacts of the reduced funding from Waka Kotahi NZ Transport Agency.

District wide roading programme

88. The end of the financial year has also seen the end of the three-year funding period for Waka Kotahi NZ Transport Agency. Over the three-year period a total of just under \$85m was spent across all aspects of the district wide roading programme.
89. This includes a little over \$3m of emergency repairs work as a result of three significant flooding events but excludes any expenditure on special purpose roads which in total was just under \$4m.
90. The pavement rehabilitation survey and design works are progressing well for the 2021/2022 seasons with the first draft of tender documents received mid-July. The first tender is on track to be released to market by the end of July.
91. The short-term bridge renewals programme has been reassessed in line with the reduced Waka Kotahi NZ Transport Agency funding approval. Pre-procurement work is well advanced for the next round of bridges with tender documentation being compiled ready for release to market.
92. A condition of funding from Waka Kotahi NZ Transport Agency for bridges funding is that a Present Value End of Life Analysis (effectively a mini business case) has to be approved for each bridge. These have been completed and sent to Waka Kotahi NZ Transport Agency for their official approval.

Libraries

93. It's been a long time coming but work is finally underway within the hallowed halls of the Winton Library. After a massive effort by library staff to sort, pack and empty a multiple decade spanning collection of stuff, our contractors have finally made it on site. Presently everything is still looking to be on track with a late November or early December reopening.
94. The long-touted library RFID (Radio Frequency Identification) project is about to kick in to gear. After a few setbacks brought on by the COVID situation in Australia we have finally received two conversion trolleys and our supply of RFID tags that will allow the libraries team to start the month-long process of converting our current barcode system to a RFID one. This project will require all hands-on deck and is hoping to be finished in time for the reopening of the Winton Library.
95. Our expanded library programming has been a success across the district with most programs and events reaching or nearing capacity at the majority of our sites. In a lot of ways this is a golden era for our programming team as we have not managed to previously provide neither this variety of services across this broad an area for as many people who are signing up for them in our recorded history. We have reached the capacity of what our small team can provide which does pose the question of if we have the resources to meet our communities demand.

Customer Support

96. We answered 3720 calls during the month of June, with an average wait time of 22 seconds. As per normal for this time of year, our focus has been on dog registration, although I am delighted to report that the process has gone extremely smoothly so far this year. The changes to the forms, the process and the training that we completed prior to June have all contributed to this, along with the overall way that the team have approached it. Pleasingly approximately 63% of registrations have come via e-pathway which has definitely reduced pressure on our front of office staff.
97. The new Request for service (RFS) process which allows us to “park” the dog changes until we have time to complete them has provided much needed flexibility to the workflow and ultimately the pressure on the team. All work is managed via the dashboards which has allowed transparency to both the team and the Manager.
98. We have also introduced this process for work coming via the web. It comes through as a request for service and automatically shows in our dashboard. This is a more efficient and secure way to manage our workflow than having several people simultaneously working an email list.
99. The RFS review has now encompassed Community Facilities so we only have Transport, Environmental Health and Water and Waste left to roll out to.
100. We took many calls over this period regarding the LTP and Customer support partner Tracey Hunter provided valuable support as a proof reader.

Recommendation

That Council:

- a) **Receives the report titled “Management report” dated 28 July 2021.**

Attachments

There are no attachments for this report.

Around the Mountains Cycle Trail - Trust

Record No: R/21/5/21124
Author: Ashby Brown, Commercial infrastructure manager
Approved by: Matt Russell, Group manager services and assets

☒ Decision ☐ Recommendation ☐ Information

Purpose

- 1 The purpose of this report is to present information to Council to enable it to make a decision regarding the establishment of a charitable trust for the Around the Mountains Cycle Trail, for the purposes of managing the trail experience.
- 2 Additionally, the report recommends that Council:
 - endorse a draft deed for the Around the Mountains Cycle Trail Trust (the trust)
 - agrees in principle to entering a Memorandum of Understanding and an operational agreement to administer the day to day running of the trust, as between Council and the trust
 - endorses making the Around the Mountains Cycle Trail manager role a permanent part time position.

Executive Summary

- 3 Various governance structures have been considered for the Around the Mountains Cycle Trail (the trail). Both a 2017 business case and a warrant of fitness in 2018 recommended the creation of Around the Mountains Cycle Trail Trust.
- 4 The New Zealand Cycle Trail Board visited Southland in September 2020 and outlined that several successful cycle trails have established a trust for governance purpose with the effect of improving the user experience through greater involvement from the community and local businesses. The charitable trust structure also enables access to increased funding opportunities from private and community funders that are not an option under the current structure.
- 5 Workshops held with the Services and Assets Committee (the committee) in December 2020 and July 2021 have been supportive of the establishment of a trust, and have helped to guide the drafting of a trust deed, included with this report at Attachment A.
- 6 The draft trust deed establishes the Around the Mountains Cycle Trail Charitable Trust, its objectives and how the trust board would operate. For further clarity, it is intended that once established, Council and the trust enter a Memorandum of Understanding (MoU) as well as an operational funding agreement, which will clearly outline the expectations and responsibilities of each party, as well as any funding commitment by Council.
- 7 The trail manager role will be an important part of the success of the trust structure both at the trust's inception and going forward, as it will ensure robust communication between Council and the trust, as well as provide the trust with specialist knowledge regarding the trail. Currently this role is a fixed term, part time role partially funded by the Ministry of Business, Innovation and

Employment (MBIE). It is proposed that to ensure the success of the trust structure, a recommendation be made that Council make this a permanent position.

- 8 This report seeks a decision from Council in relation to endorsing the draft trust deed, as well as agreement in principle on the content of a MoU and an operational agreement between Council and the trust. The report also requests that Council select its preferred option in relation to the establishment of a permanent trail manager position.
- 9 A separate publicly excluded report is included in Council's 4 August 2021 meeting agenda regarding the selection of the first trustees of the trust. The reason that this item is publicly excluded is to protect the privacy of the individuals who have expressed an interest in becoming a trustee, and may not be selected.

Recommendation

That the Council:

- a) **Receives the report titled “Around the Mountains Cycle Trail - Trust” dated 28 July 2021.**
- b) Determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) Determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) Endorses the establishment of a trust for the Around the Mountains Cycle Trail, for the purposes of managing the trail experience and agrees to act as settlor.
- e) Endorses the draft Around the Mountains Cycle Trail trust deed, as attached, with any minor amendments.
- f) Agrees in principle to entering a Memorandum of Understanding and an operational funding agreement, to administer the day to day running of the Around the Mountains Cycle Trail Trust, as between Council and the Around the Mountains Cycle Trail Trust.
- g) Endorses making the Around the Mountains Cycle Trail manager role a permanent part time position within Council, to be funded from rates and any other revenue available to be finalised and formalised through the annual planning process.
- h) Agrees to delegate to the chief executive the authority to approve minor amendments to the draft deed, and to execute the deed.
- i) Approves a grant of \$30,000 to the Around the Mountain Cycle Trail Trust for the 2021/2022 financial year, to be funded from repurposing existing budgets of \$23,250 and \$6,750 from the Around the Mountain Cycle Trail reserve.
- j) Acknowledges that the trust grant funding will be integrated as part of the annual planning process.

Background

- 10 The Around the Mountains Cycle Trail is one of New Zealand’s 22 ‘great rides’. The status of a great ride is similar to that of a great walk in New Zealand. The overseeing body for New Zealand’s great rides is Ngā Haerenga New Zealand Cycle Trail (Ngā Haerenga). To maintain great ride status, Council needs to comply with Ngā Haerenga requirements such as user surveys and payment of membership fees.

- 11 Ngā Haerenga undertook a warrant of fitness on the trail in December 2018, and looked at all aspects of the trail including trail experience, information and services, trail ownership and governance. The trail received mixed feedback, and a plan to improve the trail was established.
- 12 The Ngā Haerenga board visited in September 2020. The Ngā Haerenga board outlined that many successful cycle trails have established a trust which improves the user experience by greater involvement from the community and local businesses.
- 13 Two further community meetings were held with interested parties, including one in Lumsden with official partners, land owners and community members. The first meeting was to establish if there was an appetite for change in governance structure from these stakeholders and a discussion of what this might look like. The concept of a trust was well received, and staff developed a governance approach involving the formation of a charitable trust.
- 14 At the second meeting a charitable trust governance framework and proposed roles and responsibilities were discussed. Feedback was positive, with a desire from the community to work together and take more responsibility for the user experience. Ideas were discussed around co-ordination of the commercial cycle trail product to improve the user experience. There was some appetite to increase official partnership funding for commercial elements such as marketing, and a charitable trust would allow more nimble decision making in this regard.
- 15 Workshops were held with the committee in December 2020 and July 2021, to discuss changes being considered to governance and management of the cycle trail experience. Feedback from the committee was positive, and helped to guide the draft trust deed.
- 16 In June 2021, Council sought expressions of interest from those in the community interested in becoming trustees of an Around the Mountains Cycle Trail Trust. Ten people put their name forward. A separate report is included in the public excluded section of the 4 August 2021 meeting agenda for Council to consider the selection of trustees. The reason that this item is publicly excluded is to protect the privacy of the individuals who have expressed an interest in becoming a trustee, and may not be selected.

Issues

Roles and responsibilities as between Council and a charitable trust

- 17 Currently decision making for the trail sits with Council, which has responsibility for both the physical trail and the cycle experience. Management of the trail asset and the cycling experience are quite different activities. It is proposed that a trust entity take responsibility for the cycle trail experience, and therefore allow greater commercial flexibility and the ability to respond to changing market demands.
- 18 The majority of the 22 New Zealand great rides are managed by a trust structure analogous to the model being proposed. Only a few of them are managed through a Council owned and led governance structure. For example, the Hauraki Rail Trail was initially developed across three councils. In 2016 a trust was established to oversee the user experience, and funding from councils pooled to fund an independently managed trust. This has worked well, with regular reporting back to the councils and projects being managed by the trust. The numbers of cyclists enjoying the trail has increased. This in turn is benefitting the local communities, and more businesses are opening due to the success of this trail.

- 19 The existing official partnership programme for the trail is focused on advertising opportunities for businesses associated with the trail. A trust could look more closely at how businesses can work together to provide a seamless and cycle-centric experience.
- 20 Council is currently reliant on funding from rates, loans and MBIE for maintenance and projects to fund the cycle trail. While MBIE has historically provided support for extreme weather events, there are no established commitments and this funding stream is not guaranteed into the future. The legal status of a charitable trust enables access to increased funding opportunities through private and community donors, which Council does not have access to.
- 21 It is important that the responsibilities as between Council and a trust are clearly defined. Figure 1 provides an illustration of how this could be achieved.

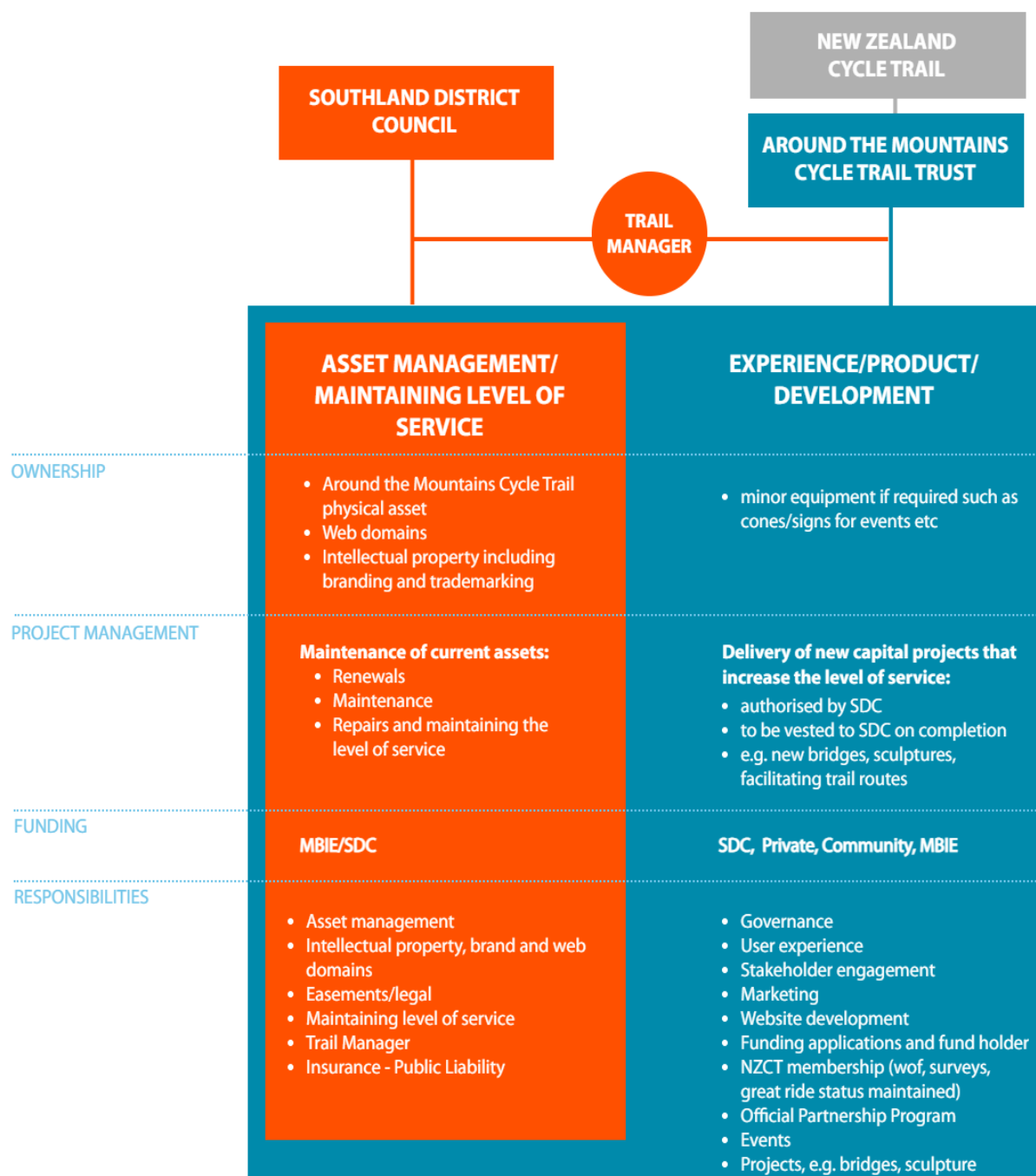


Figure 1: proposed division of responsibility between Council and a trust.

The draft trust deed and associated agreements

- 22 The main functions of the draft trust deed are to establish the trust as a charitable entity, set out the purpose of the trust and describe the composition of the trust board as well as its roles and responsibilities.
- 23 The draft trust deed proposes the main charitable purposes of providing benefits to the community within the region by operating, developing and facilitating the use and enjoyment of the trail. These charitable purposes include:

- delivery of the user experience of the trail including running events for the benefit of the community, implementing processes to improve user experience, stakeholder engagement, promotion of the trail, membership with Ngā Haerenga and developing and managing a programme to partner with commercial operators
- delivery of capital projects for the trail that increase the level of service to the community including developing and constructing extensions and additions to the trail
- raising funds to carry out and complete any of these charitable purposes.

24 The draft deed outlines that ownership of trail assets remains with Council. This includes ownership of any:

- physical repair, maintenance and renewal of the capital assets comprising the trail (including bridges and tracks)
- the legal access agreements over land comprising the trail
- the URL brand (web page address), intellectual property, domains and trademarks relating to the trail existing at the date of the deed or developed by the trust in the course of carrying out its objectives
- any capital assets created as part of delivery of a capital project for the trail by the trust. These will vest with Council upon completion of such a project – provided the Council consented to the project prior to its commencement and the trust has complied with the settlor's reasonable requirements regarding construction.

25 The powers of the trust set out in the draft deed are consistent with other charitable trusts, to enable the board to achieve the purposes of the trust.

26 It is also proposed that Council enter into a MOU and operational funding agreement with the trust which give effect to certain operational elements of the trust deed. These instruments are currently in draft form and attached for Council's information. As they cover operational aspects of the trust, it is not considered necessary that Council approve them specifically.

27 The proposed MOU will set out the roles and responsibilities as between Council and the trust, for trust-led projects that are funded by external funders. A MOU will clarify the intended arrangement between Council and the trust whereby capital assets are transferred to Council after completion, where such projects are partially or fully funded by an external funder.

28 The proposed funding agreement will address the ongoing general operational funding that Council intends to commit to the trust.

Trustees

29 After the trust is formed, the draft deed proposes that the trust board be made up of between five and seven trustees.

30 At the inception of a new trust, trustees are selected in a different manner as compared to when a trust board is operational. This means that Council would be responsible for selecting one Council representative for the trust, as well as between three and five other trustees. Going

forward, Council will retain the power to select its representative on the trust board, but appointment of other trustees will fall within the powers of the trust board as a whole. This is excluding the Great South representative, which will continue to be appointed by that entity.

- 31 As stated above, a separate report is included in the publicly excluded section of Council's 4 August 2021 meeting agenda, in order for Council to select the first trustees of the trust.

Trail manager

- 32 The Around the Mountains Cycle Trail manager role (trail manager) was established in 2019 as an outcome of recommendations from Ngā Haerenga. This is currently a fixed term, part time role, employed by Council, and partially funded by MBIE through to June 2022.
- 33 The trail manager position has provided key support to this activity, and has achieved improvements in operational management and community engagement of the trail.
- 34 It is considered important that employment of the trail manager role by Council continue while the trust is established and gains momentum, to ensure robust communication between Council and the trust, as well as provide the trust with specialist knowledge regarding the trail.
- 35 As the trail manager role is considered critical to the success of the activity and the new trust, it is recommended that Council establish this role as a permanent part time position, in order to provide confidence and continuity for the trust board.
- 36 Other great rides which have had analogous trusts in place for a period of time have eventually established a trail manager role as employed by the trust, not a council. This may be an option that Council could consider when the trust is fully established in the community, if Council so chooses.

Factors to Consider

Legal and Statutory Requirements

- 37 Legal advice has been obtained in relation to the drafting of the trust deed. This ensures compliance with all relevant legislation, including the Charities Act, the Charitable Trusts Act and the Trust Act.
- 38 A charitable trust is established through a deed that broadly sets out a group's purpose and objectives. Charitable trusts have credibility and accountability, and the potential to benefit from exemptions from income tax, resident withholding tax. Control of the trust is with the trustees, with limited liability, providing longer term stability. Trustee succession planning is outlined in the draft trust deed.
- 39 The legal status of a charitable trust enables access to private and community funding that Council does not have access to. If the trust was considered to be a council controlled organisation (CCO), it would not qualify for charitable status and access to alternative funding streams would not be available. Out of an abundance of caution, wording has been added to the draft trust deed to ensure that the trust cannot be considered a CCO, under s.6 of the Local Government Act 2002. The trust could be considered a CCO if half or more of the trustees were controlled directly or indirectly by a local authority. As the minimum number of trustees is five, and two are appointed as between Council and Great South, it is highly unlikely this provision

will be implemented. However, it is considered prudent to include this wording, as the implications of the trust being considered a CCO would change its management and legal status.

- 40 Council's asset management policy outlines the principles by which Council will manage its assets. Staff consider that the trust structure proposed in this report is consistent with the asset management policy. This is because only the user experience and marketing aspects (see figure 1) would be delegated to a trust. In addition, key asset management functions are retained by Council.
- 41 Operational documents including manuals, plans and risk registers that cover health and safety practices and procedures will continue to be developed and maintained by the trail manager on behalf of Council and the trust, as parties separately responsible for specific aspects of the cycle trail activity. In the context of the Health and Safety at Work Act 2015, the Person Conducting a Business or Undertaking (PCBU) may be either party, dependent on the circumstances and nature of the work and engagement.

Community Views

- 42 Feedback from meetings held in 2020 with stakeholders and the community regarding the establishment of a charitable trust entity were positive, with a desire to work together and take more responsibility for the user experience.
- 43 Based on this feedback, further engagement with the wider community regarding the establishment of a trust to manage the user experience of the cycle trail is not anticipated.

Costs and Funding

- 44 Ongoing operation expenditure for the cycle trail is funded via rates collection, MBIE and the Official Partnership programme. The role of the cycle trail manager is partially funded by MBIE through to June 2022. The official partnership programme collects money from partners of the cycle trail. This sum (approximately \$5,000) goes towards the cost of advertising and marketing the trail.
- 45 Operational funding of the trail through rates collection goes towards paying the loan for constructing the trail.
- 46 To establish the trust, Council would need to provide funding to assist with the cycle trail experience, insurance and marketing activities. Existing accounts that fall under the scope of trust purposes are proposed to be consolidated under a funding grant to the trust. Allowing for the expected Official Partnership Programme revenue, the net amount is in the order of \$23,250 and is allowed for within existing approved budgets in the LTP.
- 47 To allow contingency for unanticipated expenses incurred by the trust, the total grant size is proposed to be increased to \$30,000 and will require \$6,750 of unbudgeted expenditure to be funded from Around the Mountain reserve balance. The reserve balance as at 30 June 2020 was \$16,393.61 so for this year, there will be no rates impact. If in future years the \$6,750 is funded from rates, the impact to total rates will be 0.01%.
- 48 It is proposed that ongoing funding arrangements are established through the operational funding agreement between Council and the trust, discussed earlier in this report.

- 49 The trail manger is currently employed on a fixed term basis for 27.5 hours per week, commensurate with the operational funding stream established with MBIE. This funding term was for three years until the end of the 2021/2022 financial year, coinciding with the employment term and related budget for the trail manger. For the financial year 2022/2023 and beyond, this position is not budgeted. While the trail manager is fully budgeted for this financial year, to establish this role as a permanent position, Council is being asked to make a decision on whether it agrees in principle to incorporate this position into budgets as part of future annual plan and long term planning processes.
- 50 There is an expectation that the operational funding stream from MBIE will continue, although this is not guaranteed. The funding agreement requires fifty percent co-funding from Council and also partially covers other operational expenses such as marketing and direct trail maintenance. The current funding agreement is for \$45,000 total per annum (contingent on \$45,000 of Council co-funding)
- 51 As the MBIE funding is not guaranteed (and therefore not budgeted) there is a risk these funds may not be available in the future and in this event, Council would need to cover the shortfall. Therefore the size of this risk is up to \$45,000 (acknowledging the funding covers other expenses in addition to the trail manager role). If this funding shortfall event was realised and additional rates funding was required, the impact to total rates would be 0.08%.
- 52 Table one below outlines proposed changes to responsibility between Council and the trust, for the financial year 21/22 budgets.

	LTP 21/22	Budget retained	Budget available	New budget
Account description	Budget amount	by SDC	to Trust	required
Official Partnership Programme	(\$5,000.04)	\$0.00	(\$5,000.04)	
Cell Phone Charges	\$500.04	\$500.04	\$0.00	
Marketing	\$20,000.04	\$1,000.00	\$18,000.00	
Membership Fee/Subscript	\$2,499.96	\$0.00	\$2,499.96	
Accommodation and Meals	\$1,500.00	\$1,500.00	\$0.00	
Course and Seminar Fees	\$2,000.04	\$2,000.04	\$0.00	
Travel	\$2,000.04	\$2,000.04	\$0.00	
Catering Expenses	\$750.00	\$0.00	\$750.00	
Consultants	\$5,000.04	\$5,000.04	\$0.00	
Resource Consents	\$50.04	\$50.04	\$0.00	
Maint - General	\$74,000.04	\$68,000.00	\$0.00	
Trustee liability insurance				\$4,000.00
Surveys				\$3,000.00
		\$80,050.20	\$16,249.92	\$7,000.00
Subtotal	\$103,300.20		\$103,300.12	
Grant funding (from existing budgets)				\$23,249.92
Contingency (unbudgeted)				\$6,750.08
Total Grant Funding				\$ 30,000.00

Policy Implications

- 53 Establishment of a trust aligns with Council's 2021-2031 strategic framework, with the community outcomes of: 'inclusive connected communities' and 'empowered communities with the right tools to deliver the best outcomes' and strategic priorities of 'better preparing our communities and council for future changes', and 'support healthy environments and sustainable communities'.
- 54 Establishment of a trust fits within the Southland Cycle Strategy that was adopted by all Southland councils in 2018. This highlights the Around the Mountains Cycle Trail as having the potential to be a significant contributor to Southland's cycling and tourism opportunities.

Analysis

Options Considered

- 55 There are two options for consideration in this report:
- option 1 – that Council endorses:
 - the establishment of a trust which will have responsibility for the Around the Mountain Cycle Trail experience
 - the draft trust deed creating the Around the Mountain Cycle Trail Trust
 - making the Mountains Cycle Trail manager role a permanent part time position.
 - approves unbudgeted expenditure of \$6,750, funded from the Around the Mountain Cycle Trail reserves, as contingency to the proposed grant funding.
 - option 2 – propose a different way forward.

Analysis of Options

Option 1 – that Council endorse the establishment of a trust which will have responsibility for the Around the Mountain Cycle Trail experience, endorses the draft trust deed, endorses making the Mountains Cycle Trail manager role a permanent part time position and approves unbudgeted expenditure of \$6,750 as grant funding contingency.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">• a trust structure aligns with governance structures of other NZ great ride cycle trails• a trust could look after the experience side and allow commercial flexibility and the ability to respond to changing market demands.• improves the user experience by greater involvement from the community and local businesses• enables businesses working together to provide a seamless and cycle centric experience• a trust may have the ability to access additional funding streams• endorsing the trust deed will allow progression of the formation of a trust• making the trail manager role a permanent position will facilitate the establishment and success of the trust.	<ul style="list-style-type: none">• should MBIE funding for the trail manager role be discontinued, Council would be responsible for the funding shortfall• removes decision-making control regarding the trail experience from Council• success of a trust is reliant on the ability and motivation of trustees.

Option 2 – propose a different way forward

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">• Council may maintain the same current governance structure for the trail, with which it is familiar.	<ul style="list-style-type: none">• user experience would remain at Council level and would not have involvement from the community and local businesses• funding for the cycle trail may continue to be reliant on funding from loans, rates and MBIE, without access to funding from other sources.

Assessment of Significance

- 56 There is a high level of public interest in the development of the Around the Mountains Cycle Trail. It has been identified that this matter is of lower significance in relation to Council's Significance and Engagement Policy and the Local Government Act 2002.

Recommended Option

- 57 It is recommended that Council proceed with option 1 and endorse the formation of a trust for the Around the Mountains Cycle Trail, as well as endorsing the draft trust deed creating the

Around the Mountain Cycle Trail trust and making the Mountains Cycle Trail manager role a permanent part time position.

Next Steps

- 58 If Council endorses option 1, staff will undertake the necessary steps to execute the draft trust deed and transition the trail manager role to a permanent position.
- 59 If Council proceeds with option 2, staff will outline next steps in line with the approach taken.

Attachments

- A Draft ATMCT Trust Charitable Trust deed [↓](#)
- B Draft MOU SDC and ATMCTTB [↓](#)
- C Draft General Funding agreement SDC to ATMCTTB [↓](#)

Deed of Charitable Trust - Around the Mountains Cycle Trail Trust

between
Southland District Council
and
[], [], [], [] and []



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Deed of Charitable Trust - Around the Mountains Cycle Trail Trust

Date:

2021

Parties

Southland District Council (Settlor)

[], [], [], [] and [] (Trustees)

Background

- A. The Settlor wishes to establish a charitable trust to be known as **Around the Mountains Cycle Trail Trust**.
- B. The Original Trustees have agreed to act as the first Trustees of that Trust.

This deed records

1. Interpretation

- 1.1 In this Deed unless the context otherwise requires:

Annual Meeting	has the meaning given to it in clause 13.1.
Balance Date	means 30 June or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year.
Board	means the Board of Trustees of the Around the Mountains Cycle Trail Trust established by this Deed.
Chairperson	means the Chairperson who is the Trustee appointed in accordance with clause 10.1; or where clause 12.1 applies, the chair appointed for that meeting.
Charities Act	means the Charities Act 2005.
Cycleway	means the public cycleway known as Around the Mountains Cycle Trail together with its associated facilities (including, without limitation, bridges, toilets and user information boards).
Deed	means this deed and including any amendments to it from time to time.
Financial Year	means any year or other accounting period ending on the Balance Date.

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|---------------------|---|
| month | means calendar month. |
| officer | means a Chairperson, Secretary or Treasurer holding office pursuant to clause 10. |
| Purposes | means the charitable purposes of the Trust as set out in clause 5.1 of this Deed but subject to the limitations in clause 6. |
| Region | means Southland and that part of Central Otago that the Cycleway runs through. |
| Tax Act | means the Income Tax Act 2007. |
| Trust Assets | means any real and personal property owned or held by the Board on the trusts of this Deed from time to time including such further money or property as may from time to time be added by way of capital or income to be held by the Board upon the Trusts, for the charitable purposes and with the powers as set out in this Deed. |
| Trust | means the charitable trust established by this Deed and known as the Around the Mountains Cycle Trail Trust. |
| Trustees | means the trustee or trustees of the Trust for the time being (including all or any of the Original Trustees who remain as trustees and any additional or substituted trustees). |
- 1.2 Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Deed.
- 1.3 References to parties are references to parties to this Deed.
- 1.4 References to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, estates, agencies of state, government departments, state-owned enterprises and municipal authorities in each case whether or not having separate legal personality.
- 1.5 Expressions defined in the main body of this Deed bear the defined meaning in the whole of this Deed including the recitals.
- 1.6 References to clauses and recitals are references to clauses and recitals of this Deed.
- 1.7 References to the singular include the plural and vice versa.
- 1.8 Any obligations not to do anything shall be deemed to include any obligation not to suffer, permit or cause that thing to be done.
- 1.9 References to statute include references to any regulations, orders or notices for the time being in force made under or pursuant to such statute, and references to a statute include references to all amendments to that statute or otherwise, and references to a statute or provision thereof include references to any statute or

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provision for the time being in force passed in substitution for that statute or provision thereof.

2. Establishment

- 2.1 The Settlor settles the sum of \$10 on the Board as an initial settlement on the Trust.
- 2.2 The Trustees agree to act as trustees of the Trust on the terms set out in this Deed.
- 2.3 The Trust shall comprise all Trust Assets which shall be held on trust by the Board and shall be managed and administered on the terms set out in this Deed.
- 2.4 The Trust shall commence on the date of this Deed and shall continue until terminated under clause 25.

3. Name of Trust

- 3.1 The Trust shall be known as the "Around the Mountains Cycle Trail Trust".

4. Office

- 4.1 The office of the Trust and the Board shall be at any place determined by the Board from time to time.

5. Charitable Purposes

- 5.1 The Board shall hold the Trust Fund on trust for the charitable purposes of providing benefits to the community within the Region by operating, developing and facilitating the use and enjoyment of the Cycleway. This charitable purpose shall include:
 - (a) delivery of the user experience of the Cycleway including running events for the benefit of the community, implementing processes to improve user experience, stakeholder engagement, promotion of the Cycleway, membership with New Zealand Cycle Trails, developing and managing a programme to partner with commercial operators;
 - (b) delivery of capital projects for the Cycleway that increase the level of service to the community including developing and constructing extensions and additions to the Cycleway;
 - (c) raising funds to carry out and complete any of these charitable purposes.
- 5.2 In interpreting the terms of this Deed:
 - (a) The Purposes in clause 5.1 shall take precedence.
 - (b) All other purposes shall be pursued to further the Purposes.
- 5.3 In carrying out its Purposes, the Trust must take reasonable steps to protect any areas of spiritual and cultural significance to tangata whenua on any land where the Cycleway operates which includes consultation with relevant iwi where the Trust considers this is necessary to ensure the appropriate steps are taken.

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6. Limitation on Purposes

- 6.1 The Purposes of this Trust may not extend to any matter or thing which is not charitable within the meaning of the Tax Act or the Charities Act or not carried out within New Zealand.
- 6.2 The Purposes of this Trust also do not extend to ownership of:
- (a) the physical repair, maintenance and renewal of the capital assets comprising the Cycleway (including without limitation bridges and tracks);
 - (b) the legal access agreements over land comprising the Cycleway; or
 - (c) the URL brand, intellectual property, domains and trademarks relating to the Cycleway existing at the date of this Deed or developed by the Trust in the course of carrying out its objectives,
- all of which are and will at all times remain vested in and the responsibility of the Settlor. The Trust shall do all things reasonably necessary to ensure that the benefit of such assets is assigned or transferred from the Trust to the Settlor.
- 6.3 Any capital assets created as part of delivery of a capital project for the Cycleway by the Trust will vest in the Settlor (as owner of all other physical assets comprising the Cycleway existing at the date of this deed) upon completion of such project, provided the Settlor consented to the project prior to its commencement and the Trust has complied with the Settlor's reasonable requirements regarding the construction. This clause 6.3 will not apply in the event the funder of the relevant capital project requires the Trust to own the relevant asset as a condition of their funding.

7. Powers

- 7.1 The Board shall in addition to all other powers conferred by law have the widest possible powers and discretions to achieve the Purposes of the Trust and shall be empowered to exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity.
- 7.2 Subject to the provisions of this Deed, the Board shall have all powers over and in respect of the Trust and the Trust Assets. In particular, without derogating from the foregoing and subject to the provisions of this Deed, the Board shall have full and absolute power to do the following:
- (a) To raise money by all means and in particular to solicit, receive and enlist financial or other aid from individuals and organisations, including gifts and bequests from individuals and organisations, and to conduct fundraising activities;
 - (b) To promote and further the Purposes by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any other means;
 - (c) To make such payments, grants, loans or provide such other financial assistance to any person on such terms and conditions as the Board thinks proper;

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- (d) To enter into any arrangements with any government, public or local authority that may seem conducive to the Purposes and to obtain from any such government or authority any rights, privileges or concessions which the Board may think is desirable to obtain, and to carry out and to comply with any such arrangements, privileges, rights and concessions;
- (e) To purchase, sell, lease, or otherwise deal with the Trust Assets on such terms and conditions as the Board thinks fit;
- (f) To maintain the Trust Assets;
- (g) To provide such amenities as considered necessary;
- (h) To operate any lawful trading activity;
- (i) To borrow money or provide guarantees on such terms, conditions or security (including mortgages) as the Board considers appropriate;
- (j) To invest or lend money on such terms as the Board decides and to vary such loans or investments from time to time;
- (k) To subscribe for, pay up and accept shares in any limited liability company and to purchase or otherwise acquire and hold shares in such companies and to join in and become a member of any partnership, joint venture or other business enterprise of which the Board approves. This includes the power to act as a shareholder and exercise all powers of a shareholder;
- (l) To employ and act as a good employer towards any person engaged to carry out the services of the Trust with power to dismiss such person as necessary;
- (m) To contribute to any tax charity (as defined in the Tax Act) having substantially similar purposes as the Purposes;
- (n) To receive from the New Zealand Government or any council, board or body under the jurisdiction thereof or any other government, state or national body or any international organisation, any grant, subsidy or payment whatsoever in order to further the Purposes;
- (o) To charge any person for use of the Trust Assets such charges as may be fixed by the Board;
- (p) To join with any other person, group, body or organisation under such arrangement as the Board thinks fit to provide for the Purposes;
- (q) To pay all or any of the reasonable expenses incurred in and in connection with the establishment, incorporation and running of the Trust;
- (r) To insure against loss or damage by any cause whatsoever any insurable property forming part of the Trust Assets, and to insure against any risk or liability against which it would be prudent for a person to insure if he were acting for himself, for such amounts and on such terms as the Board may from time to time think fit;
- (s) To enter into contracts with any other person for the purposes of managing and operating the Trust;

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- (t) To instruct agents and consultants to act in relation to the Trust Assets or assets intended to be acquired by the Trust;
- (u) To do the above things as principal, agent, contractor, trustee or otherwise and by or through agents, trustees or otherwise and either alone or in association with others; and
- (v) To appoint committees as expedient to carry out the Purposes. Members of any committee need not be a Trustee.

7.3 None of the powers conferred on the Board by this clause shall otherwise be deemed subsidiary or ancillary to any other power or authority and the Board shall be entitled to exercise all or any of the said powers and authorities independently of any other or others of them. In the event of any ambiguity this provision shall be construed so as to widen and not restrict the powers of the Board provided however that at no time shall any provision be construed so as to detract from the charitable purposes of the Trust.

8. Number of Trustees

- 8.1 The number of Trustees shall be not less than five nor more than seven.
- 8.2 If at any time there are less than five Trustees the Board, or other relevant party under clause 9.1 or 9.2, shall increase the number of Trustees in respect of such number that the respective parties are authorised to appoint in accordance with clauses 9.1 to 9.3, so that the number of Trustees reaches five as soon as is reasonably practicable. The remaining Trustees shall be entitled to act until the number of Trustees appointed is so increased and no act or decision of the Board shall be called into question on such account provided that such actions are limited to essential administrative matters only.

9. Appointment and Removal of Trustees

- 9.1 Southland District Council shall have the power to appoint one Trustee and to remove any Trustee it appoints.
- 9.2 Southland Regional Development Agency Limited (**SRDAL**) shall have the power to appoint one Trustee and to remove any Trustee it appoints and should its appointee not be able to attend a meeting then SRDAL shall have the power to appoint an alternate Trustee to attend in that Trustee's absence. This power to add an alternate Trustee shall prevail over subclauses 9.10(g) and (h) so there is no failure to fulfil Trustee duties and non-attendance by the absent Trustee shall not be a breach of non-attendance for 3 consecutive Board meetings. For the purposes of clarity, the appointment of an alternate Trustee shall not affect the total number of Trustees under clause 8.1 so that the Trustee and alternate Trustee shall constitute one Trustee.
- 9.3 The power of appointment and removal of all other Trustees shall be vested in the Board. In the case of an appointment of Trustee, the appointment must be made unanimously by all members of the Board and is subject to clause 9.9.

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- 9.4 At the end of the third annual meeting and every annual meeting thereafter, two Trustees shall retire. The Trustees to retire on each occasion shall be those who have been longest in office since their last appointment. If there are more than two such Trustees then who shall retire shall be determined by lot. A Trustee who is required to retire pursuant to this clause can be re-appointed by the relevant party as set out in clauses 9.1 to 9.3, subject to clause 9.5.
- 9.5 No Trustee may serve longer than twelve years in total.
- 9.6 A retiring Trustee shall act as a Trustee throughout the meeting at which such person retires.
- 9.7 Notwithstanding anything to the contrary in this deed, where the number of Trustees controlled directly or indirectly by a local authority is in such proportion that the Trust is considered a council-controlled organisation under section 6 of the Local Government Act 2002, the Board shall remove as many of the relevant Trustees as necessary to ensure that the Trust is not considered a council-controlled organisation.
- 9.8 A person can only be considered for appointment as a Trustee if they have one or more of the following attributes:
- (a) An understanding of governance issues;
 - (b) Business experience relevant to the development of tourism and/or the operation of a public cycleway;
 - (c) Sound judgement;
 - (d) Intellectual ability;
 - (e) A high standard of personal integrity;
 - (f) The ability to work as a member of a team;
 - (g) An understanding of tikanga Maori and the significance to the Iwi of the land to be used for the Cycleway,
- and they do not meet any of the criteria in clause 9.10(c), (d), (e) or (f).
- 9.9 In the event that the Board cannot unanimously agree on the appointment of any proposed trustee under clause 9.3, the Board shall refer the decision to the Chair of Nga Haerenga, The New Zealand Cycle Trail Inc. Board (**Cycle Trail Board**) for determination. The Cycle Trail Board's decision is to be based on its view of whether or not the proposed trustee will contribute to the objectives of the Trust in a productive manner. In the event the Cycle Trail Board is disestablished or refuses to make the decision, the Settlor shall nominate a replacement independent body to carry out this role.
- 9.10 A Trustee shall cease to hold office if the Trustee:
- (a) resigns as Trustee by giving written notice to the Chairperson;
 - (b) dies while holding office as a Trustee;
 - (c) becomes bankrupt or enters into any composition or scheme or arrangement with his or her creditors;

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- (d) is convicted of an indictable offence without right of further appeal;
 - (e) becomes of unsound mind or becomes subject to a personal order or a property order under the Protection of Personal and Property Rights Act 1988;
 - (f) becomes disqualified to be an officer of a charity in accordance with the Charities Act;
 - (g) has been deemed by unanimous vote of the other Trustees that he or she has failed to fulfil his or her duties as a Trustee;
 - (h) fails to attend 3 consecutive Board meetings without being granted written leave of absence by the Board.
- 9.11 The Trustees shall record in the Minute Book of the Trust every appointment, reappointment, removal or cessation of office of any Trustee and shall notify Charities Services of all changes of Trustees in accordance with the Charities Act.
- 10. Appointment and Election of Officers**
- 10.1 The Trustees shall annually appoint one of their number to be Chairperson of the Board to hold office for a period of one year from the annual meeting.
- 10.2 The Trustees shall annually appoint one of their number to be Secretary to hold office for a period of one year from the annual meeting.
- 10.3 The Trustees shall annually appoint one of their number to be Treasurer to hold office for a period of one year from the annual meeting.
- 10.4 The Secretary and Treasurer may be the same person.
- 10.5 Only the Trustees are eligible to be officers of the Board. Any officer of the Board shall automatically cease to hold office upon ceasing to be a Trustee.
- 10.6 A Trustee may resign from an office to which that Trustee has been appointed, without resigning as a Trustee.
- 11. Duties and Functions of the Board**
- 11.1 The Board shall conduct the business and activities of the Trust in an open and transparent manner.
- 11.2 The Board will set policies and resolve on courses of action and means of implementing the same so as to achieve the Purposes.
- 11.3 The Board will monitor the activities of the Trust to ensure its assets are used as effectively as possible to achieve the Purposes and to demonstrate to those bodies and agencies which fund and support the Trust's activities that the funding and support provided is being effectively applied and utilised.
- 11.4 The Settlor expressly declares that it is its intention that the Trust shall be a perpetual trust but that the Board shall have power to:
- (a) deal with the income derived from the Trust Assets in accordance with clause 11.5; and

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- (b) pay, appropriate or contribute such portion of the capital of the Trust Assets towards the attainment of the Purposes as the Board considers prudent taking into account the above intention;

provided that nothing in this clause shall restrict the powers of the Board pursuant to clause 25 of this deed.

- 11.5 The Board shall stand possessed of the income derived from the Trust Assets upon the following trusts:

- (a) To pay or apply the same or any part of the current net annual income for or towards the Purposes;
- (b) To appropriate for any of the Purposes the whole or any part of the net annual income arising from the Trust whether or not the same shall have been received by the Board;
- (c) To make or retain out of or charge against income in any income year any payments, reserves or any provision of a capital nature for any of the Purposes or incidental to the exercise of any of the powers, authorities or discretions conferred on the Board by this Deed in respect of the Trust Assets;
- (d) To accumulate the whole or any part of current net annual income derived by the Trust by investing the same in the resulting income therefore to the intent that the Board may elect either:
 - (i) To resort to any accumulated surplus for the same purposes and subject to the same trusts and powers as set out in this Deed as for income; or
 - (ii) To add any accumulated surplus as an accretion to the Trust Assets to be held by the Board upon the same trusts and with the powers declared in this Deed in respect of the capital of the Trust Assets.

12. Proceedings of the Board

- 12.1 All meetings of the Board shall be chaired by the Chairperson. Should the Chairperson not be present, those of the Trustees present shall elect an acting chairperson from their number to chair that meeting.
- 12.2 Voting at meetings of the Board shall be by simple majority, except where otherwise set out in this deed. The Chairperson is entitled to a second or casting vote.
- 12.3 Voting shall be by show of hands or oral indication unless a ballot is directed by the Chairperson or required by any 2 of the Trustees present at the meeting.
- 12.4 The Secretary shall post by ordinary mail, or send by email or fax, written notice of the date, time and place of each meeting of the Board to all of the Trustees so that it is received in the ordinary course of the post or email or fax transmission not less than 7 clear days prior to the meeting. This procedure will not apply to meetings called by the Chairperson pursuant to clause 12.10.
- 12.5 A meeting of the Board may be impeached or called into question solely on the ground that the requisite notice has not been given, but only by a Trustee.

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- 12.6 A proper written record of all decisions and business transacted at every meeting of the Board shall be kept by the Secretary. The minutes may include notice of the next meeting if fixed at the meeting.
- 12.7 A resolution in writing approved by the Board shall be valid as if it had been passed at a meeting of the Board duly called and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees.
- 12.8 The Trustees shall otherwise meet together for the conduct of the affairs of the Trust from time to time and shall regulate and conduct their meetings as they think fit and for such purpose they may make such rules and regulations as they consider desirable, including, without limitation, rules and regulations relating to the conduct of telephone or video meetings.
- 12.9 A quorum for meetings of the Trustees (including Annual Meetings) shall be three Trustees.
- 12.10 The Chairperson may call a special meeting of the Board (other than one at which it is proposed to move a resolution under clause 23.1) by any means (including by telephone) at any time provided that the Chairperson in so doing gives at least 7 clear days' notice which must include advice of the matters to be considered at the special meeting to each of the Trustees then within New Zealand.

13. Annual Meetings

- 13.1 Within 3 months of the execution of this Deed and thereafter within 3 months of the end of each Financial Year a meeting (**Annual Meeting**) shall be called to:
- (a) receive and consider the annual report and review the Board's activities during the preceding year;
 - (b) receive, consider and adopt the income and expenditure account and balance sheet;
 - (c) consider any resolution notice of which shall have been given in writing to the Secretary of the Board at least 14 days before the meeting;
 - (d) consider any general business.
 - (e) decide whether or not to appoint an auditor. Where section 42C of the Charities Act 2005 applies to the Trust, the Trust shall appoint a qualified auditor, who shall not be a Trustee.

14. Delegation by the Board

- 14.1 The Board shall have, to the extent permitted by law, full power to delegate to:
- (a) any Trustee;
 - (b) any officers or employees of the Board; or
 - (c) any attorney, agent or other person nominated or appointed by the Board,

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all or any of the powers, authorities and discretions exercisable by the Board under this Deed, but without in any way releasing the Board from its obligations under this Deed.

15. Bank Accounts and Property

- 15.1 The Trust Assets will be held by and in the joint names of the Trustees until the Board is incorporated as a Board under the provisions of the Charitable Trusts Act 1957, in which case it will be held by and in the name of the Board.
- 15.2 Bank accounts shall be operated on the signatures of a minimum of any two of the Trustees, but one of the signatories must be the Chairperson or the Treasurer.
- 15.3 The Treasurer or other officer of the Board shall have the power to receive and give receipts for all legacies, donations, subscriptions or other moneys bequeathed, made or given to the Trust and every such receipt shall be an effective discharge for the money or other money stated to have been received.

16. Execution of Documents

- 16.1 When the Board is incorporated under the Charitable Trusts Act 1957, documents to be executed by the Board shall be executed under its common seal and attested by any 2 of the Trustees, one of whom shall be the Chairperson.

17. Incorporation

- 17.1 The Trustees shall promptly apply for incorporation under Part 2 of the Charitable Trusts Act 1957 as a Board under the name "Around the Mountains Cycle Trail Trust".

18. Accounts

- 18.1 (a) The Board will cause complete and accurate records to be kept in such manner as it thinks fit of all its receipts, credits, payments, liabilities and other matters necessary for showing the true state and condition of the Trust.
- (b) The annual accounts of the Trust shall be prepared by an independent accountant appointed for that purpose by the Board. To avoid any doubt the independent accountant may be an accountant employed by the Settlor.
- (c) The books of account shall be kept at the office of the Trust and shall be open at all reasonable times to inspection and copy by any of the Trustees.
- (d) If an auditor is required by section 42C of the Charities Act 2005, the Board will have the Trust's accounts audited each year by an independent auditor appointed by the Board.
- 18.2 The Board will properly receive all payments and property paid or transferred to the Trust, will properly meet all liabilities and responsibilities incurred or undertaken by it, and will properly administer the Trust Assets.

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19. Tax Returns and Annual Returns

- 19.1 The Board shall cause to be prepared or filed with the Inland Revenue Department and Charities Services all necessary tax accounts, annual returns, reports, declarations, notices, certificates, reconciliations and other information required to be prepared or filed so as to allow the Trust to retain its charitable status for taxation purposes and to meet all of its obligations under the Acts administered by the Inland Revenue Department and Charities Services.

20. Declarations of Interest

- 20.1 No Trustee shall vote on any matter in which he or she has any personal or pecuniary interest or in which any company or other body in which the Trustee has a personal or financial interest itself has any pecuniary interest.
- 20.2 Any Trustee shall declare any such interest in writing as soon as the Trustee concerned becomes aware of the existence of the interest, the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in good faith in all such matters.

21. Remuneration of Trustees and Payments of Expenses

- 21.1 None of the Trustees shall be paid any remuneration for time spent as a Trustee, but shall be entitled to such expenses incurred in that capacity as the Board may from time to time authorise or ratify by resolution. The intent is that no Trustee shall derive pecuniary gain from his or her office as a Trustee, or from any act done in the capacity of a Trustee, but may be paid expenses if the Board so resolves.
- 21.2 Subject to clause 21.3, any Trustee shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any employee or partner of his or hers in connection with the trusts of this Deed, other than acting as a Trustee.
- 21.3 No Trustee receiving any remuneration referred to in clause 21.2 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by the Board.

22. No Private Pecuniary Profit

- 22.1 Nothing expressed or implied in this Deed shall permit the activities of the Trust or any business carried on by or on behalf of or for the benefit of the Trust to be carried on for the private pecuniary profit of any individual.

23. Alterations and Additions

- 23.1 Subject to clauses 5 and 23.2, the Board may resolve to amend any provisions of this Deed. Any resolution to effect an alteration or addition must be passed by a majority

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of not less than two-thirds of the Trustees at a meeting of the Board where not less than 21 clear days' prior written notice of intention to move the amendment is given to all the Trustees.

- 23.2 No amendment may be made to the Trust Deed in any respect which would have the effect of causing the Trust to cease to be a charitable trust or to amend the Purposes to include any objective which is not a charitable objective or one to be achieved outside New Zealand or to amend clauses 5, 20, 22, 23 and 25.
- 23.3 Notwithstanding anything set out in clauses 23.1 or 23.2 the Board has the power to, and shall, amend this Deed to comply with the Tax Act or the Charities Act.

24. Liability of Trustees

- 24.1 The Board is expressly authorised to exercise the powers of investment expenditure and acquisition conferred upon it notwithstanding that the Trust Assets may be subject to any liability or liabilities and the Trustees shall not be liable for any loss occurring on the realisation of any asset which pursuant to the exercise of those powers comprises part of the Trust Assets.
- 24.2 To the extent permitted by law no Trustee shall be subject to any duties except:
- (a) The duty to act honestly and the duty not to commit wilfully any act known to be a breach;
 - (b) The duty not to omit wilfully any act when the omission is known by the Trustee to be a breach of trust.
- 24.3 To the extent permitted by law, no Trustee shall be liable for any loss suffered or incurred by the Trust unless the loss arises directly from the Trustee's own dishonesty, or from the wilful commission by the Trustee of any act known by the Trustee to be a breach of trust, or from the wilful omission by such Trustee of any act when that omission was known by the Trustee to be a breach of the trust.
- 24.4 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by that co-Trustee.
- 24.5 A Trustee shall be indemnified by and out of the Trust Assets (whether as to the capital or the income thereof) for and in respect of any loss or liability incurred by the carrying out or omission of any function duty or power of the Trustees under this Deed unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission by such Trustee of an act known by such Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission was known by the Trustee to be a breach of trust.
- 24.6 The Board may effect insurance for the Trustees and will meet all costs associated with such insurance.

25. Winding Up

- 25.1 The Trust may be wound up on a unanimous resolution of all the Trustees at a meeting of the Board called for that purpose.

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25.2 In the event of the Trust being wound up and after all liabilities of the Trust have been discharged the Board shall:

- (a) Transfer all remaining funds and assets comprising the Trust Assets to a suitable organisation with preference given to an organisation situated in the Region that is either:
 - (i) exclusively charitable and which has purposes similar to those of the Trust; or
 - (ii) not charitable but agrees to carry out the charitable purposes set out in this Deed in respect of the Trust Assets.

The receipt of the treasurer or secretary or other proper officer of such trusts or organisations shall be a sufficient discharge to the Board and the Board will not be bound to further see to the application of those funds and assets.

25.3 If the Board is unable to make such decisions the Trust Assets shall be disposed of in accordance with the directions of the High Court under section 27 of the Charitable Trusts Act 1957.

26. Governing Law

26.1 The Trust shall be governed by and construed in accordance with the laws of New Zealand.

Signed by

Signed by **Southland District Council** as
Settlor by its Chief Executive Officer under
delegated authority in the presence of:

CEO

Signature of witness

Name of witness

Occupation

Address

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Deed of Charitable Trust - Around the Mountains Cycle Trail Trust

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Signed by [] as Trustee in the presence of:

[]

Signature of witness_____
Name of witness_____
Occupation_____
Address

Signed by [] as Trustee in the presence of:

[]

Signature of witness_____
Name of witness_____
Occupation_____
Address

Signed by [] as Trustee in the presence of:

[]

Signature of witness_____
Name of witness_____
Occupation_____
Address

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Deed of Charitable Trust - Around the Mountains Cycle Trail Trust

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Signed by [] as Trustee in the presence of:

[]

Signature of witness_____
Name of witness_____
Occupation_____
Address

Signed by [] as Trustee in the presence of:

[]

Signature of witness_____
Name of witness_____
Occupation_____
Address

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MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTHLAND DISTRICT COUNCIL

AND

AROUND THE MOUNTAINS CYCLE TRAIL TRUST BOARD

IN RESPECT OF

TRUST PROJECTS FUNDED BY EXTERNAL FUNDERS

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Memorandum of Understanding

Parties

Southland District Council (**Council**)

Around the Mountains Cycle Trail Trust Board (**Trust**)

Background

- A. The Council has established the Around the Mountains Cycleway (**Cycleway**) in the Southland and Central Otago region. The Council owns all Capital Assets, access rights and all intellectual property associated with the Cycleway. The Trust has been established to fulfil the functions of governance, delivery of user experience, securing external funding, and delivery of capital projects that increase the service level, in respect of the Cycleway (**Trust Purposes**).
- B. The Council, when establishing the Trust to carry out the Trust Purposes, agreed to provide certain ongoing general funding to the Trust. The Council will also consider applications from the Trust for specific funding for specific projects that meet the Trust Purposes. The parties also envisage that external funders unrelated to the Council (**External Funder**) may fully or partially fund projects for the Cycleway which may produce additional Capital Assets to form the Cycleway (**External Projects**).
- C. The parties have agreed that any Capital Assets comprising the Cycleway and intellectual property produced as part of the Trust's operations will vest in the Council, regardless of whether or not the Council contributed to its funding. As Council will have the responsibility for maintenance of such Capital Assets, the parties have agreed that Council will have the opportunity to oversee and approve any External Projects to ensure that the Capital Assets are delivered to a standard satisfactory to Council.
- D. However, where an External Funder requires Capital Assets and/or intellectual property produced from an External Project to be held in the Trust's ownership, the parties agree that the Trust will retain all ownership rights. The Trust will provide to the Council such licences and other approvals necessary for the Council to access the relevant Capital Asset and intellectual property. Prior to commencing the External Project, the parties will agree on which party will have the responsibility for maintaining the relevant Capital Asset.

Purpose

- (a) The purpose of this Memorandum is to set out the principles and guidelines which will apply between both parties as they work with each other in respect of the Cycleway, acknowledging that external funders may contribute towards External Projects but that the Council has an interest in ensuring the standard of External Projects is carried out to a satisfactory level.
- (b) This Memorandum is not intended as a formal or contractual document such as a joint venture agreement or a partnership under the Partnership Act. This Memorandum is based on goodwill, trust, mutual respect, benefit and cooperation and is not intended to be legally binding on the parties other than with respect to the confidentiality and privacy obligations.

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THE PARTIES AGREE:**1 OWNERSHIP OF CAPITAL ASSETS PRODUCED FROM EXTERNAL PROJECTS**

- 1.1 Subject to clause 1.2, the parties agree that any Capital Assets comprising the Cycleway and any intellectual property produced as part of the Trust's operations will vest in the Council upon completion of the relevant project, regardless of whether or not the Council contributed to the funding of the relevant project. As Council will be responsible for maintenance of the Capital Assets, the Trust will provide the Council with the opportunity to oversee and approve any External Projects so that the Capital Assets are delivered to a standard satisfactory to Council.
- 1.2 Where an External Funder requires Capital Assets and/or intellectual property produced from an External Project to be held in the Trust's ownership, the parties agree that the Trust will retain all ownership rights in respect of the relevant Capital Asset and intellectual property. The Trust will provide to the Council such licences and other approvals as necessary for the Council to access the relevant Capital Asset and intellectual property. Prior to commencement of the relevant External Project the parties will agree on which party will have the responsibility for maintaining the relevant Capital Asset.

2 TRUST'S RESPONSIBILITIES**Standards and compliance with laws**

- 2.1 In undertaking any External Projects funded fully or in part by an External Funder, the Trust must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

External Project standards and approvals

- 2.2 Having regard to clause 1, the Trust will obtain written approval from the Council (which may be given on any conditions specified by the Council including specifying approved contractors) prior to the commencement of any External Project in respect of the Cycleway.
- 2.3 The Trust will ensure that all External Projects relating to the Cycleway are carried out:
- (a) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice and to the satisfaction of Council;
 - (b) by appropriately trained, qualified, experienced and supervised persons;
 - (c) in accordance with any directions of the Council, notified by the Council in writing from time to time; and
 - (d) where reasonably required by Council, in the presence of a Council representative.

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Provision of information

- 2.4 The Trust will provide the Council with any information about the External Project that relate to the Council's ongoing obligations in respect of any Capital Assets produced by the External Project.
- 2.5 The Trust will not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Council in respect of any External Projects. The Trust must keep the Council informed of any matter known to the Trust which could reasonably be expected to have such an effect.

Records and accounting

- 2.6 The Trust agrees to keep full and accurate records (including accounting records) of any External Project, and retain them for at least 7 years after completion of the relevant External Project.
- 2.7 The Trust appoints the Council (or any accountant nominated by the Council) to prepare all annual accounts and for such purposes permits access to documentation relating to the External Projects and permits the Council and/or the accountant access to the Trust's premises, systems and personnel for this purpose.

Insurance

- 2.8 The Trust must effect and maintain insurance that is adequate to cover its obligations under this Memorandum. The Trust must, on request, provide the Council with evidence of its insurance cover required under this clause.

Health and Safety

- 2.9 Without limiting its other obligations under this Memorandum, the Trust must:
- (a) perform its, and ensure that the contractors perform their, obligations under any External Project in compliance with its and their obligations under the Health and Safety at Work Act 2015;
 - (b) comply with all directions of the Council relating to health, safety, and security; and
 - (c) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Council to the extent that it relates to, or affects any External Project.

3 INTELLECTUAL PROPERTY

- 3.1 Where permitted by the relevant external funder, the Trust will do all things reasonably necessary to transfer to the Council any intellectual property created in the course of any External Project.
- 3.2 The Council grants an irrevocable, perpetual, royalty-free, sub-licensable licence to the Trust to use all reports, documents, information and other materials provided by the

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Council, or developed by the Trust and transferred to the Council, under or in connection with any External Project.

- 3.3 The Council warrants that it has obtained all rights and permissions necessary to enable the grant and exercise of the licence in clause 3.2 without infringing the intellectual property rights of any third party.
- 3.4 The Recipient warrants that, in the course of its activities in connection with any External Project, it will not infringe any intellectual property or other rights of any third party.

4 **CONFIDENTIALITY**

- 4.1 Subject to clause 4.2 and 4.3, each party must keep the other party's Confidential Information in confidence, and must use or disclose that Confidential Information only to the extent necessary under this Memorandum. However, this will not prohibit:
- (a) either party from using or disclosing any information with the written prior consent of the other party;
 - (b) use or disclosure of information that has become generally known to the public other than through a breach of this Memorandum;
 - (c) either party from disclosing information to its personnel or contractors with a need to know, so long as the relevant personnel and contractors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Memorandum;
 - (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
 - (e) the Council from using or disclosing to any party any documents, reports or information received in relation to this Memorandum, provided that prior to any such disclosure the Council removes all information that is commercially sensitive to the Memorandum from the relevant work.
- 4.2 The Trust acknowledges and agrees that nothing in this Memorandum restricts the Council's ability to discuss, and provide all information in respect of, any matters concerning the Trust or this Memorandum with any Minister of the Crown, any other government agency or any of their respective advisors.
- 4.3 The parties acknowledge that:
- (a) the contents of this Memorandum; and
 - (b) information provided by a party to the Council or to the Trust (as applicable),

may be official information in terms of the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 and, in line with the purpose and principles of those Acts, this Memorandum and such information may be released to the

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public unless there is good reason, in terms of the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987 (as applicable) to withhold it.

5 MEDIA AND COMMUNICATIONS

- 5.1 Before making any media statements or press releases (including social media posts) regarding this Memorandum and/or any External Projects, the Trust will consult with the Council, and will obtain the Council's prior approval to any such statements or releases.
- 5.2 The Trust will refer any enquiries from the media or any other person about the terms or of this Memorandum to the Council's Contact Person.
- 5.3 The Trust does not have the right to enter into any commitment, contract or agreement on behalf of the Council or any associated body, or to make any public statement or comment on behalf of the Council.
- 5.4 All correspondence with the Council under this clause 5 must be directed to the Council's Contact Person.

6 DISPUTES

- 6.1 In the event of any dispute, controversy or claim arising out of or in connection with this Memorandum, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other specifying the nature of the Dispute and requesting discussions under this clause 6. As soon as reasonably practicable following receipt of a Dispute Notice, the parties must meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
- 6.2 A party must not commence any proceedings in connection with a Dispute unless at least 30 Business Days have elapsed since the issue of a corresponding Dispute Notice, and that party has used reasonable endeavours to comply with this clause 6. However, nothing in this clause will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

7 GENERAL

- 7.1 Each notice or other communication given under this Memorandum (each a notice) must be in writing and delivered personally or sent by post or email to the address of the relevant party set out in this Memorandum or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Memorandum is deemed to be received if:
 - (a) **Delivery:** delivered personally, when delivered;
 - (b) **Post:** posted, 5 Business Days after posting; and

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(c) **Email:** sent by email:

- (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
- (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

- 7.2 The parties agree to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this Memorandum according to its true intent.
- 7.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Memorandum.
- 7.4 This Memorandum constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 7.5 This Memorandum is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Memorandum.
- 7.6 This Memorandum is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 7.7 This Memorandum may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement.

8 DEFINED TERMS

- 8.1 In this Memorandum, unless the context requires otherwise:

Best Industry Practice means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Trust or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Memorandum.

Business Day means any day other than a Saturday, Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Capital Asset means any physical asset that forms or will form part of the Cycleway including, without limitation, bridges, tracks, toilets, shelters, interpretation panels, sculptures.

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Confidential Information of a party (Owner), means any information in the possession or control of another party (Holder) that:

- (a) was originally acquired by the Holder in connection with this Memorandum through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Memorandum through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above;

but excludes any information which the Holder can show:

- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Memorandum, and is free of any other obligation of confidence owed to the Owner; and/or
- (e) has been independently developed by the Holder without reference to the Owner's Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

Notwithstanding the foregoing, the terms of this Memorandum are Confidential Information of which each Party is both an Owner and a Holder.

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SIGNATURES

SIGNED for and on behalf of
SOUTHLAND DISTRICT COUNCIL
under delegated authority by:

Name:

Position:

Date:

SIGNED by **AROUND THE
MOUNTAINS CYCLE TRAIL TRUST
BOARD** as the Recipient by affixing
its common seal in the presence of:

Name:

Position: Authorised witness

Date:

Name:

Position: Authorised witness

Date:

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FUNDING AGREEMENT

BETWEEN

SOUTHLAND DISTRICT COUNCIL

AND

**AROUND THE MOUNTAINS CYCLE TRAIL TRUST
BOARD**

FOR

**DELIVERY OF USER EXPERIENCE AND INCREASE
OF SERVICE LEVEL FOR THE AROUND THE
MOUNTAINS CYCLEWAY**

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PART 1: KEY DETAILS

- 1 **Parties** Southland District Council (**Council**)
- and
- Around the Mountains Cycle Trail Trust Board, being an incorporated Trust Board under the Charitable Trusts Act 1957 (incorporation number []) (**Recipient or Trust**)
- 2 **Funding Start Date** Commencement Date
- 3 **End Date** []
- 4 **Background** The Council has established the Around the Mountains Cycleway (**Cycleway**) in the Southland and Central Otago region. The Council owns all Capital Assets, access rights and all intellectual property associated with the Cycleway. The Trust has been established to fulfil the functions of governance, delivery of user experience, securing outside funding, and delivery of capital projects that increase the service level, in respect of the Cycleway (**Purposes**).
- The Council, when establishing the Trust to carry out the Purposes, agreed to provide certain ongoing general funding (**Funding**) to the Trust. The Council has agreed to contribute the Funding on the terms and conditions of this Agreement (**Agreement**).
- Key details of this Agreement are set out in this **Part 1**. The full terms and conditions are set out in **Part 2**. Defined terms and rules of interpretation are set out in **Part 3**.
- 5 **Conditions Precedent** No funding is payable under this Agreement until the Council provides written confirmation to the Recipient that it has received, and found to be satisfactory to it, the following documents and evidence:
- A copy of the resolution of the Recipient's board of trustees authorising entry into this Agreement;
 - Evidence that appropriate insurances are in place, refer to Part 1, section 13(b);
 - Evidence that all required rights in relation to any real property are held by the Recipient or the Council;
 - Delivery of the Financial Model for the Project;
 - Any other conditions precedent arising from the conditions precedent set out above.
- 6 **Project Description (The Project)** The Project is:
- On-going governance of the Cycleway throughout the Term;
 - Delivery of user experience of the Cycleway throughout the Term

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including running events for the benefit of the community, implementing processes to improve user experience, stakeholder engagement, promotion of the Cycleway, developing and managing a programme to partner with commercial operators;

- Preparation of applications to secure outside funding for the Cycleway user experience including for capital projects (such as additional bridges and tracks) that increase the service level of the Cycleway throughout the Term.

Expected outcomes of the Project:

-
-

7 Project Deliverables and Instalments

The Recipient will provide the following Deliverables to the satisfaction of the Council by the following dates:

Completion Date	Deliverable	Instalment payable on completion
Commencement Date	Funding Agreement executed by both parties and all Conditions Precedent have been satisfied or waived.	
Each anniversary of Commencement Date	Completion of annual reporting obligations	

8 Key Personnel

None specified.

9 Approved Contractors

N/A. Any contractors must be approved in writing by the Council.

10 Funding

The total Funding available under this Agreement is up to **NZ\$[]** plus GST (if any). This is the Total Maximum Amount Payable.

The Funding will only be paid in instalments on the completion dates set out in item 7, subject to completion of the relevant Project Deliverable set out in item 7; receipt of a Payment Request in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement.

11 Co-Funding

N/A

12 Reporting

The Recipient will provide the Council with the following reports:

- (a) A [Monthly/Quarterly] Status Update via email on the final business day of each [month/quarter]; and

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- (b) A Post Contract Outcomes Report within 6 months of the End Date.

Each [Monthly/Quarterly] Status Update must include the following information:

- (a) description and analysis of actual progress of the Project against planned progress;
- (b) a summary of expenditure to date, actual against budgeted, and expected cost and time to completion;
- (c) any risks and/or issues arising or expected to arise with the Project, costs or performance of this Agreement including detail of any issues notified to the Council in accordance with clause 3.11 of Part 2;
- (d) an update on media, marketing and communication activities for the Project, if any; and
- (e) any other information that is notified by the Council in writing to the Recipient as being required.

The Post Contract Outcome report must include the following information:

- (a) an analysis of how the Funding has enabled the Recipient to achieve the key outcomes of the Project;
- (b) how the Project has increased social inclusion and participation;
- (c) how the Project has contributed to Māori development;
- (d) how the Project has contributed to New Zealand's climate change commitments and environmental sustainability; and
- (e) any other information that is notified by the Council in writing to the Recipient as being required.

13 Insurance

Refer to Part 2, section 3.15, and:

Prior to commencement of construction of the Project, where the Council does not hold, or has not agreed to hold such insurance in respect of such assets, the Recipient must ensure that at all times insurances are maintained in full force and effect, which:

- a) insure in respect of its interests in the property and the plant and equipment on the property (including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) and to:
 - i) provide customary cover against loss or damage, including by fire, storm, tempest, flood, earthquake, lightning, explosion, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage;

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- ii) provide cover for site clearance, professional fees and tax;
- b) provide for contractor's all risks insurance covering contractors and sub-contractors for the Project (where applicable);
- c) include public liability insurance; and
- d) insure such other risks as a prudent person or entity in the same business would insure.

14 Special Terms

1. In addition to the Funding, the Council will second one Council employee at no cost to the Recipient to undertake various management and administrative functions on behalf of the Recipient to carry out the Purposes throughout the Term. The Council shall remain responsible as the employer of the employee for all employment-related obligations in respect of the employee.
2. The Council will ensure that any Capital Asset that is transferred from the Recipient to the Council on completion of the Project will be maintained in accordance with best industry practice, in any way necessary to be maintained in good repair.
3. In reference to Clause 10.1 (Media and Communication), the same applies to the Council where before making any media statements or press releases (including social media posts) regarding this Agreement and/or the Council's involvement with the Project, the Council will consult with the Recipient, and will obtain the Recipient's prior approval (which shall not be unreasonably withheld or delayed) to any such statements or releases.

15 Contact Person

Council's Contact Person:

Recipient's Contact Person:

Name:

Name:

Email:

Email:

16 Address for Notices

To the Council:

To the Recipient:

Attention:

Attention:

Email:

Email:

SIGNATURES

SIGNED for and on behalf of
SOUTHLAND DISTRICT COUNCIL
 under delegated authority by:

SIGNED by **AROUND THE**
MOUNTAINS CYCLE TRAIL TRUST
BOARD as the Recipient by affixing
 its common seal in the presence of:

 Name:

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Position:

Date:

Name:

Position: Authorised witness

Date:

Name:

Position: Authorised witness

Date:

END OF PART 1

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PART 2: GENERAL TERMS**1 FUNDING**

- 1.1 The Council must pay the Funding (up to the "Total Maximum Amount Payable" specified in the Key Details) to the Recipient, subject to the terms of this Agreement. Unless stated otherwise in this Agreement, the Recipient may only claim the Funding to the extent necessary to cover Eligible Costs incurred by the Recipient. If the Recipient receives any Funding before it has incurred corresponding Eligible Costs, the Recipient must use the Funding solely on Eligible Costs. If any surplus funds are held by the Recipient on the End Date, the Recipient shall repay the surplus to the Council as soon as reasonably practicable.
- 1.2 Where required by the Council, the Recipient must submit a Payment Request to [insert email address] and copying in Council's Contact Person in accordance with item 7 (Project Deliverables and Instalments) of the Key Details.
- 1.3 Each Payment Request is to be signed by two trustees of the Recipient and must be in the form set out in the Schedule and include the confirmations set out therein, and must include:
- (a) the amount of Funding requested, which must not exceed the Instalment set out in item 7 of the Key Details;
 - (b) a breakdown of total Eligible Costs incurred by the Recipient and confirmation that such costs are Eligible Costs for the purpose of this Agreement and have been paid or are currently due and payable (not required for any initial payment to be paid on the Commencement Date);
 - (c) copies of invoices received by the Recipient from third parties in relation to the Eligible Costs where those Eligible Costs are more than \$1,000 (on an individual basis or when grouped by supplier or subject matter) and statements and accounts showing the Eligible Costs incurred;
 - (d) a valid GST invoice complying with the Goods and Services Tax Act 1985;
 - (e) confirmation that no Termination Event is subsisting and that each of the warranties under clauses 3 and 7 of this Agreement are correct as at the date of the Payment Request; and
 - (f) contain any other information required by the Council.
- 1.4 The Council is not required to pay any Funding in respect of a Payment Request:
- (a) where the Council is, reasonably, not satisfied with the progress of the Project;
 - (b) if any Project Deliverable(s) have not been completed by the relevant "Completion Date" specified in the Key Details;

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- (c) if the Council is not satisfied with the information that is contained within, or provided in connection with, the reports specified in the Key Details or the Payment Request noting that in the context of the Payment Request the Council may elect to pay the Recipient for certain Eligible Costs that are the subject of the Payment Request and withhold payment for other Eligible Costs that the Council disputes;
 - (d) if the Council is not satisfied that the Recipient has applied Co-Funding in accordance with clause 2(a)(ii) of this Agreement;
 - (e) if payment will result in the Funding exceeding the "Total Maximum Amount Payable";
 - (f) while there are one or more Termination Event(s) subsisting;
 - (g) if this Agreement has expired or been terminated; and/or
 - (h) while the Recipient is in breach of this Agreement.
- 1.5 Subject to the terms of this Agreement, the Council must pay each valid Payment Request by no later than the 20th day of the month after the month the Payment Request is dated, and if such day is not a Business Day, on the next Business Day.

2 CO-FUNDING

If specified at item 11 of the Key Details, the Recipient must:

- (a) ensure that during the term of this Agreement the Co-Funding:
 - (i) is and remains secured and available to the Recipient to be applied towards the Project on the same terms and conditions approved by the Council; and
 - (ii) is applied to Eligible Costs as set out in the Key Details; and
- (b) immediately notify the Council if it becomes aware of any circumstances that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the Project.

3 RECIPIENT'S RESPONSIBILITIES

Standards and compliance with laws

- 3.1 The Recipient must undertake the Project as described in this Agreement.
- 3.2 In undertaking the Project, the Recipient must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

Project Deliverables, Key Personnel, Contractors and the Project

- 3.3 The Recipient must ensure that the Project Deliverables and the Project are carried out:

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- (a) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice and to the satisfaction of Council;
 - (b) by appropriately trained, qualified, experienced and supervised persons; and
 - (c) in accordance with any directions of the Council, notified by the Council in writing from time to time.
- 3.4 The Recipient must ensure that the Project Deliverables are completed by the relevant "Completion Date" specified in the Key Details.
- 3.5 The Recipient must ensure that the Key Personnel undertake their respective roles in connection with the Project as specified in the Key Details, except as otherwise approved in writing by the Council. If any Key Personnel become unavailable to perform their role, the Recipient must promptly arrange replacement Key Personnel acceptable to the Council.
- 3.6 The Recipient may not contract the delivery of the Project or any of its obligations under this Agreement unless:
 - (a) it has the Council's prior written approval (which may be given on any conditions specified by the Council); and
 - (b) the contractors are named as "Approved Contractors" in respect of particular roles in the Key Details.
- 3.7 The Recipient is responsible for the acts and omissions of any contractors.
- 3.8 The Recipient must ensure (and must procure that the head contractor when engaging with any other contractor ensures) that all agreements it enters into with contractors or any other party in connection with the Project are on an "arm's length" basis, provide value-for-money and do not give rise to any Conflict of Interest. The Recipient must provide the Council with reasonable evidence of compliance with this clause 3.8 in response to any request by the Council from time to time.

Information Undertakings

- 3.9 The Recipient must provide the Council with the reports (if any) specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 3.10 The Recipient must provide the Council with any other information about the Project requested by the Council within the timeframe set out in the request.
- 3.11 The Recipient must promptly notify the Council if:
 - (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest;
 - (b) the Recipient becomes aware of any matter that could reasonably be expected to have an adverse effect on the Project, or result in a Termination Event or a breach of any term of this Agreement by the Recipient.

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- 3.12 The Recipient must not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Council. The Recipient must keep the Council informed of any matter known to the Recipient which could reasonably be expected to have such an effect.

Funding, records and auditors

- 3.13 The Recipient must receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.
- 3.14 The Recipient must keep full and accurate records (including accounting records) of the Project, and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit the Council (or any auditor nominated by the Council) to inspect all records relating to the Project and must allow the Council and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection.

Insurance

- 3.15 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement, plus any other insurance specified in the Key Details. The Recipient must, on request, provide the Council with evidence of its insurance cover required under this clause.

Health and Safety

- 3.16 Without limiting its other obligations under this Agreement, the Recipient must:
- (a) consult, cooperate and coordinate with the Council to the extent required by the Council to ensure that the Council and the Recipient will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement and the Project;
 - (b) perform its, and ensure that the contractors perform their, obligations under this Agreement and the Project (as applicable) in compliance with its and their obligations under the Health and Safety at Work Act 2015;
 - (c) comply with all directions of the Council relating to health, safety, and security; and
 - (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Council to the extent that it relates to, or affects, this Agreement or the Project.

4 PROJECT GOVERNANCE

- 4.1 If advised in writing by the Council the Recipient must:
- (a) provide reasonable notice to the Council of all Project management group meetings and Project governance group meetings; and

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- (b) provide copies of all documents and notices to be tabled at the Project management group meetings and Project governance group meetings to the Council no later than a reasonable period prior to the meetings, and the minutes of those meetings within a reasonable period after each meeting
- 4.2 The Council may appoint observers who will be entitled to attend and speak at all Project management group meetings and Project governance group meetings (but will not be entitled to vote on any matter at those meetings).

5 INTELLECTUAL PROPERTY

- 5.1 The Recipient acknowledges that the Council and its licensors own all pre-existing intellectual property which they contribute to the Project, and all new intellectual property which the Recipient creates in the course of the Project. The Recipient will upon request do all things reasonably necessary to transfer to the Council all intellectual property created in the course of the Project.
- 5.2 The Council grants an irrevocable, perpetual, royalty-free, sub-licensable licence to the Recipient to use all reports, documents, information and other materials provided by the Council to the Recipient, or developed by the Recipient and transferred to the Council, under or in connection with the Project and this Agreement.
- 5.3 The Council warrants that it has obtained all rights and permissions necessary to enable the grant and exercise of the licence in clause 5.2 without infringing the intellectual property rights of any third party.

6 TERM AND TERMINATION

- 6.1 This Agreement will be effective on and from the Commencement Date, which will be the latest to occur of:
 - (a) the date this Agreement has been signed by both parties; and
 - (b) the date on which the Council has provided written notice to the Recipient that the Conditions Precedent specified in the Key Details, if any, have either been satisfied (in the opinion of the Council) or waived by the Council.
- 6.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement (the Term).
- 6.3 The Council can terminate this Agreement with immediate effect, by giving notice to the Recipient, at any time while:
 - (a) the Council reasonably considers that the Recipient has become or is likely to become, insolvent or subject to a decision to wind up;
 - (b) the Recipient is subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets;

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- (c) the Recipient has ceased to carry on its operations or business (or a material part of them) in New Zealand; or
 - (d) any one or more of the follow events or circumstances remains unremedied:
 - (i) the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
 - (ii) the Recipient abandons the Project;
 - (iii) the Recipient has provided the Council with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
 - (iv) the Council reasonably considers that this Agreement or the Project has caused, or may cause, the Council and/or the New Zealand Government to breach any legal obligations (including its international trade obligations);
 - (v) the Recipient is involved in any intentional or reckless conduct which, in the opinion of the Council, has damaged or could damage the reputation, good standing or goodwill of the Council, or is involved in any material misrepresentation or any fraud;
 - (vi) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to the Council's satisfaction; or
 - (vii) any change in law, regulations, government policy or other circumstances materially affects the Council's ability to perform its obligations under this Agreement.
- 6.4 However, where the Council considers that a Termination Event set out in clause (d) can be remedied, the Council must give notice to the Recipient requesting a remedy, and must not exercise its right of termination unless the relevant event remains unremedied for at least 20 Business Days (or any longer period agreed with the Recipient) after that notice has been provided by the Council.
- 6.5 The Council may recover Funding from the Recipient as follows:
- (a) **Misspent Funding.** At any time the Council may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, together with interest on all such amounts calculated at 10% per annum from the date of the misspending to the date the money is repaid.
 - (b) **Uncommitted Funding.** On expiry or termination of this Agreement, the Council may recover any Funding paid to the Recipient, which the Recipient:
 - (i) has not spent or contractually committed to spend in accordance with this Agreement; or

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- (ii) has spent or contractually committed to spend in accordance with this Agreement but which the Recipient can have refunded or released from that commitment, provided the Recipient must use all reasonable endeavours to obtain such refund or release.
 - (c) **Co-Funding not provided.** If Co-Funding is required as set out in the Key Details, on expiry or termination of this Agreement, if the Co-Funding has not been used for the Project, the Council may recover an amount that represents the same proportion of the Funding as the proportion of Co-Funding that has not been used is of the total Co-Funding.
 - (d) **Project abandoned.** If the Recipient has abandoned the Project or stated an intention to abandon the Project, and does not within 20 Business Days of being requested to do so by the Council demonstrate to the Council's satisfaction that the Recipient will proceed with the Project, the Council may recover an amount up to the total value of the Funding, provided the Council may not recover under this subclause if the Recipient satisfies the Council that it acted on reasonable grounds in deciding to abandon the Project.
 - (e) **Excess Funding.** On expiry or termination of this Agreement, where the total Funding paid under this Agreement and any other money received by the Recipient to carry out the Project exceeds the funding required to perform the Project, the Recipient must upon request refund to the Council the excess amount. The Recipient is not required to refund, under this clause 6.5(e), any amount that exceeds the total amount of Funding.
- 6.6 The Recipient, not being in default, may terminate this Agreement in the event the Council is materially in breach of any obligation or a condition or warranty under this Agreement, provided the Recipient has first given the Council written notice to remedy the breach and the Council has not remedied such breach within 20 Business Days of service of the notice.
- 6.7 Clauses 1.4, 3.1, 3.13, 3.14, 5, 6, 7, 8, 9, 10, 11, 12 and 13 survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Termination Event that occurred before expiry or termination.
- 7 **WARRANTIES**
- 7.1 The Recipient warrants that, in the course of its activities in connection with the Project, it will not infringe any intellectual property or other rights of any third party.
- 7.2 The Recipient warrants that, as at the date of this Agreement:
- (a) It has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms;

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- (b) all information and representations disclosed or made to the Council by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive the Council as to any material matter;
 - (c) it has disclosed to the Council all matters known to the Recipient (relating to Project, the Recipient, its contractors or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Council; and
 - (d) it is not aware of any material information that has not been disclosed to the Council which may, if disclosed, materially adversely affect the decision of the Council whether to provide the Funding.
- 7.3 The Recipient acknowledges that the Council has entered into this Agreement in reliance on these warranties.
- 7.4 The Recipient acknowledges and agrees that the Council has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Project other than the Funding.

8 LIABILITY

- 8.1 The maximum liability of the Council and the Recipient under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement.
- 8.2 Neither party is liable for any claim under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

9 CONFIDENTIALITY

- 9.1 Subject to clause 9.2 and 9.3, each party must keep the other party's Confidential Information in confidence, and must use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:
- (a) either party from using or disclosing any information with the written prior consent of the other party;
 - (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
 - (c) either party from disclosing information to its personnel or contractors with a need to know, so long as the relevant personnel and contractors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they are informed of the

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confidential nature of the information and in the case of the Recipient, the Recipient receives an acknowledgement from its personnel or contractors that they acknowledge, and must comply with, the confidentiality obligations in this Agreement as if they were party to it;

- (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (e) the Council from using or disclosing to any party any documents, reports or information received in relation to this Agreement, provided that prior to any such disclosure the Council removes all information that is commercially sensitive to the Recipient from the relevant work.

9.2 The Recipient acknowledges and agrees that nothing in this Agreement restricts the Council's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Project or this Agreement with any Minister of the Crown, any other government agency or any of their respective advisors; and
- (b) publicise and report on the awarding of the Funding, including the Recipient's and any of its subcontractor's names, the amount and duration of the Funding and a brief description of the Project, on websites; in media releases; general announcements and annual reports.

9.3 The parties acknowledge that:

- (a) the contents of this Agreement; and
- (b) information provided by a party to the Council or to the Recipient (as applicable),

may be official information in terms of the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 and, in line with the purpose and principles of those Acts, this Agreement and such information may be released to the public unless there is good reason, in terms of the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987 (as applicable) to withhold it.

10 MEDIA AND COMMUNICATIONS

10.1 Before making any media statements or press releases (including social media posts) regarding this Agreement and/or the Council's involvement with the Project, the Recipient will consult with the Council, and will obtain the Council's prior approval to any such statements or releases.

10.2 The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to the Council's Contact Person.

10.3 The Recipient will acknowledge the Council as a source of funding in all publications (including any digital presence) and publicity regarding the Project. The Recipient must

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obtain the Council's approval of the form and wording of the acknowledgement prior to including the acknowledgement in the publication or publicity (as the case may be).

- 10.4 If requested by the Council, the Recipient will establish or erect temporary and/or permanent signage at the site of the Project acknowledging the Council as a source of funding for the Project. The Council may provide such signage and the Council will consult with the Recipient in respect of a suitable location for such signage.
- 10.5 The Recipient does not have the right to enter into any commitment, contract or agreement on behalf of the Council or any associated body, or to make any public statement or comment on behalf of the Council.
- 10.6 All correspondence with the Council under this clause 10 must be directed to the Council's Contact Person.

11 DISPUTES

- 11.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other specifying the nature of the Dispute and requesting discussions under this clause 11. As soon as reasonably practicable following receipt of a Dispute Notice, the parties must meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
- 11.2 A party must not commence any proceedings in connection with a Dispute unless at least 30 Business Days have elapsed since the issue of a corresponding Dispute Notice, and that party has used reasonable endeavours to comply with this clause 11. However, nothing in this clause will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

12 CONTACT PERSONS

- 12.1 All matters or enquiries regarding this Agreement must be directed to each party's Contact Person (set out in the Key Details).
- 12.2 Each party may from time to time change the person designated as its Contact Person on 10 Business Days' written notice to the other Party.

13 GENERAL

- 13.1 Each notice or other communication given under this Agreement (each a notice) must be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the Key Details or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting; and

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(c) **Email:** sent by email:

- (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
- (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

- 13.2 The Recipient agrees to execute and deliver any documents and to do all things as may reasonably be required by the Council to obtain the full benefit of this Agreement according to its true intent.
- 13.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 13.4 This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 13.5 No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 13.6 The Recipient may not assign or transfer any of its contractual rights or obligations under this Agreement, except with the Council's prior written approval.
- 13.7 The Council may assign or transfer any of its contractual rights or obligations under this Agreement without the Recipient's prior approval. The Council may at any time disclose to a proposed assignee or transferee any information which relates to, or was provided in connection with, the Project or this Agreement.
- 13.8 No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 13.9 The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 13.10 This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.
- 13.11 Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to

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the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

13.12 This Agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

13.13 This Agreement may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement.

END OF PART 2

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PART 3: DEFINITIONS AND CONSTRUCTION**Defined terms**

In this Agreement, unless the context requires otherwise:

Agreement means this agreement including Parts 1, 2 and 3 and Schedule 1 (and any other annexures or attachments).

Approved Contractor means an “Approved Contractor” specified in the Key Details.

Best Industry Practice means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Capital Asset means any physical asset that forms or will form part of the Cycleway including, without limitation, bridges, tracks, toilets, shelters, interpretation panels, sculptures.

Co-Funding means the “Co-Funding” (if any) or any part of the Co-Funding (as the context requires), described in the Key Details.

Commencement Date has the meaning given in clause 6.1 of Part 2.

Confidential Information of a party (Owner), means any information in the possession or control of another party (Holder) that:

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or

- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or

- (c) is derived from information of a kind described in paragraph (a) or (b) above;

but excludes any information which the Holder can show:

- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or
- (e) has been independently developed by the Holder without reference to the Owner’s Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

Notwithstanding the foregoing, the terms of this Agreement are Confidential Information of which each Party is both an Owner and a Holder.

Conflict of Interest means any matter, circumstance, interest or activity of the Recipient, its personnel or contractors, or any other person with whom the Recipient has a relationship that:

- (a) conflicts with:
 - (i) the obligations of the Recipient (or its personnel or contractors) to the Council under this Agreement; or
 - (ii) the interests of the Recipient in relation to this Agreement

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and/or the procuring of the Project; or	<i>Funding Start Date</i> means the “Funding Start Date” specified in the Key Details.
(b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to diligently and independently carry out the Project in accordance with this Agreement.	<i>Key Details</i> means Part 1 of this Agreement.
<i>Eligible Costs</i> means the actual costs reasonably incurred by the Recipient:	<i>Key Personnel</i> means the “Key Personnel” specified in the Key Details.
(a) on or after the Commencement Date and no later than the End Date;	<i>Payment Request</i> means a request submitted to the Council by the Recipient seeking payment of Funding substantially in the form set out in the Schedule to this Agreement.
(b) in good faith for the purpose of carrying out the Project or for purposes incidental to the Project, including all internal costs, disbursements and expenses incurred by the Recipient for such purposes (and to the extent the Recipient is carrying out any other activities) reasonably and proportionately allocated towards such purposes; and	<i>Project</i> means the “Project” described in the Key Details.
(c) to the extent that the expenditure relates to work performed by parties not at “arm’s length”, that expenditure is assessed at reasonable market value, and contains no unacceptable overhead and no element of “in group profit”.	<i>Project Deliverable</i> means a deliverable to be provided by the Recipient to the Council, as set out in the Key Details.
<i>End Date</i> means the “End Date” specified in the Key Details.	<i>Recipient</i> means the Recipient specified in the Key Details.
<i>Financial Model</i> means a spreadsheet detailing the expected sources and uses during construction of the Project.	<i>Termination Event</i> means any one or more of the events or circumstances set out in clause 6.3 or 6.6.
<i>Funding</i> means the funding or any part of the funding (as the context requires) payable by the Council to the Recipient in accordance with the terms of this Agreement, as described in the Key Details.	Construction In the construction of this Agreement, unless the context requires otherwise: <i>Currency</i> : a reference to any monetary amount is to New Zealand currency; <i>Defined Terms</i> : words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement; <i>Documents</i> : a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time; <i>Inclusions</i> : a reference to “includes” is a reference to “includes without limitation”, and “include”, “included” and “including” have corresponding meanings;

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Joint and Several Liability: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Precedence: if there is any conflict between the different parts of this Agreement, then unless specifically stated otherwise, Part 2

will prevail over the Key Details, and the Key Details will prevail over any Attachments;

Related Terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Writing: a reference to "written" or "in writing" includes email and any commonly used electronic document format such as .DOC or .PDF.

END OF PART 3

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SCHEDULE: PAYMENT REQUEST

To: SOUTHLAND DISTRICT COUNCIL

Dated: [•]

PAYMENT REQUEST NO. [•]

1. We refer to the Funding Agreement dated [•] between [•] as recipient (**Recipient**) and Southland District Council (**Council**) (the **Agreement**). Terms defined in the Agreement have the same meaning in this Payment Request.

2. This is a Payment Request for the purpose of clause 1.3 of the Agreement.

3. The Project Deliverables which are the subject of this Payment Request are

[insert description of Project Deliverables].

4. The amount of Funding requested is \$[•] plus GST if any.

5. The Funding requested in this Payment Request is required to meet the Eligible Costs.

6. Invoices/statements and accounts evidencing the Eligible Costs incurred are attached.

**Note that for any Eligible Costs that are more than \$1,000 (on an individual basis or when grouped by supplier or subject matter) a copy of the original invoices received from third parties in relation to the Eligible Costs must be provided.*

7. Each of the items referred to in paragraph 3 are Eligible Costs for the purpose of the Agreement have been paid or are currently due and payable.

8. [Co-Funding must be used to meet the following Eligible Costs that have been incurred by us:

[include breakdown description of Eligible Costs that Co-Funding must meet]

9. *[Include valid GST invoice if relevant].*

10. We confirm that:

(a) no Termination Event is subsisting; and

(b) each of the warranties set out in the Agreement are correct as at the date of this Payment Request.

Except to the extent otherwise agreed in writing by the Council, all those items forming part of the Eligible Costs identified in any previous Payment Request as due or becoming due and payable, have been paid in full.

By and on behalf of the Recipient by

Around the Mountains Cycle Trail Trust Board

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Position: Trustee

Position: Trustee

DRAFT

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Destination Fiordland - transfer of residual funds to Great South

Record no: R/21/7/39014
Author: Simon Moran, Community partnership leader
Approved by: Cameron McIntosh, Chief executive

☒ Decision ☐ Recommendation ☐ Information

Purpose

- 1 To request that Council approve the Fiordland Community Board's recommendation to transfer to Great South the residual funds of Destination Fiordland (DF).

Executive summary

- 2 The Te Anau community board (now the Fiordland community board) is named in Destination Fiordland's constitution as the recipient of any residual funds to hold in trust if that organisation liquidated. That liquidation is currently in the process of occurring.
- 3 Destination Fiordland was, and Great South is, a regional tourism organisation (RTO). Great South is the RTO for the wider Southland region and since 1 April 2021 it has now also taken on that role for the Fiordland area under the "Visit Fiordland" RTO brand. Therefore, Council is being asked to consider the Fiordland community board's recommendation that all of Destination Fiordland's residual funds are transferred to Great South so that it can apply them to marketing and programmes that will continue the type of work that was previously being done.
- 4 Staff recommend that Council, subject to the conditions outlined in this report, approve of the residual funds, once known, being transferred in full to Great South.

Recommendation

That the Council:

- a) receives **the report titled “Destination Fiordland - transfer of residual funds to Great South” dated 28 July 2021**.
- b) determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) makes the transfer of the residual funds subject to an agreement with Great South to do the following –
 - ring-fence the funds to be used only for supporting tourism in Fiordland in line **with the objectives of Destination Fiordland’s constitution**.
 - provide an annual report to the Fiordland Community Board, by August each year, on how the funds have been spent and/or is intended to be spent until such time as the value of the transfer funds has been fully used.
- e) approves the transfer of all residual funds received from the liquidation of Destination Fiordland Inc to Great South in accordance with resolution (d).
- f) approves unbudgeted expenditure equal to the amount of residual funds received from the liquidation of Destination Fiordland.

Background

- 5 The regional tourism organisation ‘Destination Fiordland’ was an incorporated society that had the following objects stated in its constitution –

3. Objects

The objects and assets of Destination Fiordland both capital and income from time to time arising at the members’ absolute discretion shall be used to further the following purposes and objects:

- 3.1 To facilitate initiatives for the marketing of the District and the surrounding environment as a visitor destination.
- 3.2 To effectively market Fiordland’s natural, cultural and historical assets to domestic and international markets so that Fiordland has a sustainable year round visitor flow.
- 3.3 To improve Fiordland’s visitor industry product development, business skills and workforce to effectively meet the needs of visitors and enhance visitor experience.
- 3.4 To ensure that visitor industry growth is managed in a sustainable manner that is sensitive to Fiordland’s natural, cultural and historic environments.

- 3.5 To hold membership of organisations and joint ventures that furthers the interests of Destination Fiordland.
 - 3.6 To monitor any proposed legislation, regulations, bylaws or other rules or regulations which affect the interests of Destination Fiordland's members and the District with a view to making representations and submissions where appropriate.
 - 3.7 To procure and disseminate information and benefits that may be helpful to members.
 - 3.8 To encourage and provide education and training, including individuals and institutions in support of the visitor industry in the District.
 - 3.9 To promote good fellowship and encourage co-operation amongst its members.
 - 3.10 To encourage community pride and community participation by the establishment and operation of community events within the District.
 - 3.11 To confer, liaise and communicate with all other persons, organisations and public bodies in New Zealand and elsewhere to promote and advance the objects of Destination Fiordland.
 - 3.12 To do all such things as are incidental or conducive to the attainment of the above objects or any of them and to promote any other activity not repugnant to these objects.
- 6 Destination Fiordland held a special general meeting on 22 December 2020, and resolved that Destination Fiordland Incorporated proceed with actions to transition the function of the RTO to Great South and to liquidate the incorporated society as per the constitution.
 - 7 A further special general meeting was held on 23 March 2021 at which its members at the meeting unanimously voted to approve that Destination Fiordland Incorporated be put into liquidation on 31 March 2021 and that Insolvency Management be appointed as the liquidator.
 - 8 In accordance with the constitution the third and final members meeting was required to conclude the process of placing Destination Fiordland in liquidation. That meeting was held 5 July and confirmed the liquidation.
 - 9 All Destination Fiordland assets have now been placed in the hands of the liquidator (Iain Nellies from Insolvency Management) and when the liquidation process is completed all residual funds will be transferred to the Fiordland community board as per clause 23.3 of the constitution, detailed below:

23 Liquidation and disposal of funds

- 23.1 If in the opinion of the management committee it shall become no longer possible or feasible to carry out the objects of Destination Fiordland then Destination Fiordland may at an Annual General Meeting or General Meeting by resolution liquidate Destination Fiordland and appoint a liquidator. No resolution liquidating Destination Fiordland shall take effect unless it has been passed by a two-thirds majority of the members of Destination Fiordland personally present and entitled to vote at such meeting and entitled to vote and only after three months notice of intention to move such resolution has been given in the manner provided in Rule 19.6.
- 23.2 Such liquidation shall not take effect unless at a subsequent General Meeting of Destination Fiordland called for that purpose. (Such meeting to be held not earlier than thirty (30) days after the date of the meeting declaring such liquidation). Such liquidation is

confirmed by resolution to that effect carried by a simple majority of those members personally present and entitled to vote.

23.3 If upon liquidation there remains after satisfaction of all debts and liabilities any property whatsoever the same shall not be paid to or distributed amongst the members or Management Committee members, but shall be given or transferred to the Te Anau community board to be held in trust and used for the promotion of the District.

- 10 At this stage it is not clear how long the liquidation process will take, nor the exact amount of funds that are to be transferred until it has been completed.

Issues

Great South

- 11 Great South is the regional tourism organisation for Southland and have now taken over that role for Fiordland as well. Transferring the residual funds to Great South in full would therefore enable efficient and continued support of the area's tourism.
- 12 If the liquidation of Destination Fiordland meant that there was no regional tourism organisation for the Fiordland area then it would make sense for the Fiordland community board to retain control of the residual funds. Great South however, will be fulfilling the same tourism role as Destination Fiordland used to so it seems reasonable that both the funding and the control of that funding should pass to that organisation subject to conditions relating to management and reporting.

Management and reporting

- 13 The Fiordland community board has consistently stated that it needs to ensure that the governance decisions it makes are financially prudent. Therefore, it is recommended that the community board endorse making the transfer of residual funds in full, subject to Council approval, and the written agreement of Great South with at least the following two conditions.
- i. that the funds will be ring-fenced for supporting tourism in Fiordland in line with the objects of Destination Fiordland's constitution.
 - ii. that an annual report to the Fiordland community board, by August each year, on how the money has been spent and/or is intended to be spent until such time as the value of the transfer funds has been used.

Factors to consider

Legal and statutory requirements

- 14 A question that has been considered by Council's policy staff is whether the community board can transfer the entire amount of any funds that it will be managing in trust as a result of the liquidation clauses in Destination Fiordland's constitution. The position has been reached that it is possible.
- 15 As the board does not have the delegated authority to enter into agreements and financial commitments on behalf of Council, the decision is still subject to Council approving a resolution of the Fiordland community board recommending that Council transfer the funds in full.

Community views

- 16 In this instance it is the view of Destination Fiordland's previous membership that ensuring funds are utilised for the promotion of the Fiordland area and district is of key importance, as much of the funding reserve is likely to include an element of membership fees.
- 17 It is clear from the minutes of the two special general meetings held with Destination Fiordland members to date, that members have voted in favour of liquidation and the transfer of residual funds to the Fiordland community board therefore follows as a consequence of the provisions set out in their constitution.

Costs and funding

- 18 There are no additional costs associated with the transfer of residual funding to Great South from Destination Fiordland, held in trust by the Fiordland community board.

Policy implications

- 19 There are no policy implications.

Analysis

Options considered

- 20 There are three options to consider in this report:

Option 1: to transfer the residual funding in full to Great South

Option 2: to transfer the funding in part to Great South and retain the remainder in trust

Option 3: to not transfer any of the funding to Great South and remain in trust with the Board

Analysis of options

Option 1 – to transfer the residual funding in full to Great South

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">• no costs and time associated with managing and allocating the funds will be incurred by the board and council staff• on-going marketing and promotion of the Fiordland area will continue through the regional tourism organisation Great South• the transfer of residual funds in full to Great South is in keeping with the wishes of the Destination Fiordland members• additional funding opportunities will be sought and leveraged, through Great South for the promotion of the area	<ul style="list-style-type: none">• there is no direct control over how the funds are spent or what they are spent on.

Option 2 – to transfer the funding in part to Great South and retain the remainder in trust

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">there is still some oversight that the board can exercise over how the funds are spent and what they are spent on.	<ul style="list-style-type: none">there are ongoing costs and time associated with managing and allocating the funds for the board and Council staffeach allocation is likely to require supporting reports to the boardthe funds may not be spent on the most effective projects/programmes to support tourism operators and the community

Option 3 – to not transfer any of the funding to Great South and remain in trust with the Board

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">the board has complete oversight over how the funds are spent and what they are spent on	<ul style="list-style-type: none">there are ongoing costs and time associated with managing and allocating the funds for the board and council staffeach allocation is likely to require supporting reports to the boardthe funds may not be spent on the most effective projects/programmes to support tourism operators and the community and/or integrated with Great South as the regional tourism organisation for Southland.

Assessment of significance

- 21 This recommendation is not considered significant in relation to the Council's Significance and Engagement Policy.

Recommended option

- 22 It is recommended that the Fiordland community board choose Option 1 and recommend to Council the transfer of all residual funding in full from Destination Fiordland to Great South and that the money be used for the same type of activities as described in the objects of Destination Fiordland's constitution.

Next steps

- 23 Staff will prepare a report for Council to approve the community board's recommendation.
- 24 If Council approve the transfer of residual funds in full, staff will arrange for the transfer of the funds to Great South.

- 25 Council staff will advise Great South of the recommendation made by the Fiordland community board and obtain its written agreement to the conditions recommended.
- 26 Staff will advise Destination Fiordland's committee and liquidator of the Council's decision.

Attachments

There are no attachments for this report.

Tourism Infrastructure Fund projects - unbudgeted expenditure

Record no: R/21/7/44383

Author: Simon Moran, Community partnership leader

Approved by: Fran Mikulicic, Group manager democracy and community

☒ Decision

☐ Recommendation

☐ Information

Purpose

- 1 To ask Council to approve the unbudgeted expenditure of the Tourism Infrastructure Fund portion of the project funding.

Executive summary

- 2 Council has been successful with its applications to the Tourism Infrastructure Fund and will receive \$3,739,125 of funding. The expenditure of that funding has not been budgeted as it was not guaranteed that the applications would be successful.
- 3 The funding therefore needs to be approved as unbudgeted expenditure.

Recommendation

That the Council:

- a) **receives the report titled "Tourism Infrastructure Fund projects - unbudgeted expenditure" dated 27 July 2021.**
- b) determines that this matter or decision be recognised as not significant in terms of Section 76 of the Local Government Act 2002.
- c) determines that it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with Section 79 of the act determines that it does not require further information, further assessment of options or further analysis of costs and benefits or advantages and disadvantages prior to making a decision on this matter.
- d) Approves the unbudgeted expenditure of the \$3,739,125 of external funding that will be received from the Tourism Infrastructure Fund for the projects that were identified in the funding applications endorsed by Council at its 23 June 2021 meeting.

Background

- 4 At its 23 June 2021 meeting Council was asked to consider the Tourism Infrastructure Fund (TIF) applications that had been submitted to the Ministry of Business, Innovation and Employment (MBIE) for projects in the Fiordland and Stewart Island/Rakiura areas. Council decided to -
 - formally endorse the Southland District Council applications to the Tourism Infrastructure Fund; and
 - agree in principle the local co-funding component of the applications as set out for those projects in the 2021-2031 Long Term Plan subject to approval by Council on 29 June 2021.
- 5 The Long Term Plan (LTP) was subsequently adopted at its meeting on 29 June 2021 with no amendments to the relevant projects or their funding.
- 6 On 16 July 2021 Minister Nash announced the outcome of the TIF funding round and the Council was successful in getting funding for all of its applications. Council received \$3,739,125 funding, of which \$3,040,000 is for projects in Fiordland priority area. The amount of TIF funding received towards each project was -
 - \$1,100,000 to upgrade the boat ramp, toilets, and carpark at Pearl Harbour, Manapouri and upgrade to access road and toilets at Fraser's Beach Manapouri
 - \$1,500,000 additional funding for the Te Anau Wastewater project
 - \$440,000 for the replacement of two boat ramps in Te Anau to meet the required standards and a new toilet for Bluegum Point
 - \$99,125 to build a viewing platform at Observation Rock, Stewart Island/Rakiura
 - \$600,000 for replacement of Ulva Island Wharf, Stewart Island/Rakiura

Issues

- 7 By adopting the LTP the funding identified in it is considered to be the approved budget for the projects amounted to \$2.14 million. The TIF funding however, enables improved levels of service i.e. the replacement of boat ramps rather than simply maintenance, new projects such as the development of the Frasers Beach recreation area, and includes further funding toward the Te Anau wastewater project.
- 8 The timing of the TIF application rounds and the uncertainty around how much funding, if any, Council would be successful in obtaining meant that no approval has been sought for the increased level of expenditure now made possible.
- 9 In order for staff to be able to use the additional funding received from the TIF on the projects the spending of that funding needs to be approved by way of this unbudgeted expenditure report.

Factors to consider

Legal and statutory requirements

- 10 All expenditure should be from an approved budget therefore in order to spend the TIF funding that it will receive, Council needs to authorise the additional expenditure of the external TIF funding that will be received.

Community views

- 11 There is no requirement to seek community views on this matter as it is simply the Council decided whether to approve the additional expenditure of the external TIF funding that will be received.

Costs and funding

- 12 There are no additional costs to ratepayers from authorising the unbudgeted expenditure as it is external funding.

Policy implications

- 13 There are no policy implications.

Analysis

Options considered

- 14 It is a choice between approving the unbudgeted expenditure or not.

Analysis of Options

Option 1 – Approve the unbudgeted expenditure of \$3,739,125

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">The projects can be undertaken in line with the applications which Council endorsed at its meeting on 23 June 2021.	<ul style="list-style-type: none">None

Option 2 – Not approve the unbudgeted expenditure \$3,739,125

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none">None	<ul style="list-style-type: none">Council could not undertake the projects in line with the applications which Council endorsed at its meeting on 23 June 2021.

Assessment of significance

- 15 This decision is not considered significant as it is simply authorising the use of external funding that will be received.

Recommended option

- 16 Endorse Option 1 and approve the unbudgeted expenditure of the \$3,739,125 of funding that will be received from the Tourism Infrastructure Fund.

Next steps

- 17 Council will need to enter into funding agreements with MBIE.

Attachments

There are no attachments for this report.

Exclusion of the public: Local Government Official Information and Meetings Act 1987

Recommendation

That the public be excluded from the following part(s) of the proceedings of this meeting.

C10.1 Around the Mountains Cycle Trail Trust - appointment of trustees

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 the passing of this resolution
Around the Mountains Cycle Trail Trust - appointment of trustees	s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.	That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists.