

Thomas Gibbons Law

Property – Resource Management – Unit Titles

6 June 2023

Hon Kieran McNulty
Minister of Local Government
Parliament Buildings
Wellington

By email: k.mcanulty@ministers.govt.nz

Dear Minister

Concerns – Hamilton City Council

1. I act for Mr Colin Jones. Mr Jones has been reviewing and investigating various matters relating to Hamilton City Council (HCC). He has made various enquiries and requests for information, both to HCC and to government agencies. The key reasons Mr Jones has instructed me to write this letter are:
 - a. The Principal Adviser to Local Government NZ advised Mr Jones that the nature of the issues required the Minister to investigate; and
 - b. There are various issues that may seem minor when treated in isolation, but which are of significant concern when treated collectively. The collective nature of the issues suggests a more holistic approach is preferred, as against the usual approaches of a complaint to the Ombudsman or even judicial review: hence this letter.

Concerns about the future

2. At the essence of many of Mr Jones' points is a concern about the future of Hamilton City, and the impact of decisions today for future generations. There are also concerns about the solvency of HCC, and how this impacts on future generations.

Asset Valuations

3. I wrote to Quotable Value (QV), which conducts asset valuations on behalf of HCC, on behalf of Mr Jones in late 2022. This letter noted that some of the asset revaluations saw significant increases from 2020 to 2021 including increases (variously) of over 100%, over 300%, over 500%, and over 2000%.

Asset	2020 Value	2021 Value
281713/534727 Peacockes Road Esplanade	461,534	1,008,534
281473/ 534487 Drainage Reserve	11,550	16,459

282407/535421 Munro walkway	48,602	55,102
283035/536049 St Andrews Golf Course	22,355,712	29,657,712
281166/534181 Ferrybank Embassy	168,999	689,199
281365/534379 Minogue Park	1,313,196	9,440,490
281764/534778 Peacockes Esplanade	16,328	478,787
281815/534829 Innes Common	3,670,269	19,937,000
282078/535092 Pukete Farm Park	469,073	10,528,223
281686/534700 Hamilton Gardens	2,912,080	11,035,413

4. QV has now clarified that the 2020 values are not asset values, but reserve values carried forward from 2019 valuations: an example was given for Innes Common, where 2019 values were within 10% of 2021 values. However, the position in respect of other examples is unclear, and this enhances the lack of clarity in respect of HCC's accounts.
5. Further, while QV has defended its methodology (letter dated 10 February 2023), it is worth noting (for example) that Seddon Park is a cricket ground, and has been assessed to have a value of over \$19m for an area of 55,000m². As such, it is valued at approximately \$350/m², for a cricket ground that is used for community purposes and has reserve status, meaning any sale would require Ministerial approval.
6. It is difficult to question QV's professionalism. However, it is also difficult to understand how city assets subject to various legislative restrictions on their use could be valued on an open market basis, by comparison to privately-owned properties that are freely transferable.

Bridge Assets and Depreciation

7. Similar but not identical issues arise in relation to HCC's approach to asset depreciation. HCC has a number of bridges that traverse the Waikato River, at various degrees of age and quality.
8. It seems that HCC made a decision in 1999 to extend the purported useful life of all bridges to 150 years (previously 100 years), and to depreciate them on that basis. However, three of the older bridges (Anzac Bridge, Claudelands Bridge, and Fairfield Bridge) are stated to have a total replacement cost of around \$35m, while a single new bridge (Peacockes Bridge) has a construction cost of around \$130-\$160m.
9. Mr Jones referred his queries about this to the Officer of the Auditor-General, who essentially said that bridges form part of the roading assets class, and so are valued within the class of roads, not individually; and as the assets had been valued by Beca, the OAG was comfortable with this methodology. However, the concern is that this approach means HCC could not pay for replacement bridges, especially once further depreciation is factored in.
10. In addition, it is understood that HCC undertook a complete revaluation of all assets in 1999/2000, in anticipation of the Local Government Act 2002. From 1999-2000 onwards, the HCC financial statements show depreciation was altered from 1.67% of total assets to

1.4% per annum, with the latter percentage remaining relatively constant for the last 20 years.

11. However, the Infrastructure Strategy 2021 shows that HCC has a potential funding shortfall of \$12.5 billion by 2050, with neither the 2023 Annual Plan, nor other documents, showing progress in addressing this shortfall.

The NPS-UD

12. Mr Jones has had significant difficulty with HCC in respect of the National Policy Statement on Urban Development 2020.
13. It seems that HCC's approach is largely based on a Housing Preference survey. This survey provided participants with 10 housing choices. The choices were all apartments, duplex and home units: no stand alone houses were offered, except for lifestyle blocks. Besides the limitations of typology, all the properties offered were priced at \$50,000 to \$150,000 below the then market: Mr Jones commissioned a registered valuer to confirm these prices.
14. HCC has stated at various times that assessments or actions under the NPS-UD are undertaken by FutureProof (a collaboration of various councils, government agencies, and iwi – see <https://futureproof.org.nz/>). However, FutureProof has no formal status, and various pieces of legislation make it clear that it is HCC, and not FutureProof, that has formal responsibilities under the NPS-UD.
15. In particular, Housing and Business Capacity Assessments (HBAs) under the NPS-UD are the responsibility of a territorial authority. Mr Jones believes there are extensive limitations with the approach taken in the HBAs, and in particular the methodologies around land supply and capacity of developable land. This is a significant issue under the NPS-UD, and it can be noted that a Treasury Working Group has identified that a shortage of appropriately zoned land has had a marked impact on housing affordability in Hamilton.
16. When Mr Jones has sought further details of HCC's methodology, he has been advised that HCC has relied on advice and modelling from external consultants – notably Market Economics Ltd – and that the data and model of this consultant is proprietary and cannot be released. Mr Jones believes this is unacceptable in light of HCC's statutory obligations. He has of his own volition appointed another consultant to peer-review the work of HCC's (or FutureProof's?) consultants, but without the modelling, such an exercise will be inherently fraught. Mr Jones is very concerned that HCC is simply not complying with the NPS-UD, by 'hiding' behind FutureProof, by using consultant reports that cannot be questioned because of the unavailability of modelling information, and by failing to properly cater for the city's housing needs.
17. Further, assessment of housing typologies requires an understanding of building costs. Mr Jones' reading is that HCC is assuming that in order to meet NPS -UD housing needs, around 3,200 to 12,000 apartments will be built in the next 6 to 10 years. However, besides issues with city centre infrastructure (discussed below), no detailed information has been provided on building costs or selling prices for high rise apartments. It is well-known that building costs for multi-level apartments are higher than for standalone dwellings, but HCC's assessments give no consideration to this.

Development Contributions

18. HCC has seen significant litigation over development contributions (DCs) in recent years (the *AGPAC* and *Everton* decisions in the High Court). While it could be suggested that this simply reflects the operation of the legal system, besides the lack of clarity leading to litigation, there are no doubt numerous other instances which parties felt were not worth challenging in Courts, and an unknown number of private development agreements which impact on DCs revenue, but which are unavailable to the public.
19. Further, HCC has made extensive use of Private Development Agreements (PDAs) HCC has refused to provide these agreements on the basis that they contain confidentiality clauses, though as PDAs are generally prepared by HCC, it seems these clauses are primarily for HCC's benefit. Mr Jones' concern is that many of these PDAs contain concessions that will impact future DCs revenue. HCC modelling does not seem to take into account these concessions, so it is impossible to obtain a clear picture of future revenue.
20. There is clear evidence that DCs affect the cost of new housing, and the cost of new housing affects the affordability of all housing. Further, a likely decrease in DCs income as the market slows will further affect HCC's financial position.

Infrastructure Constraints

21. Recent media from HCC has highlighted that there are critical infrastructure capacity issues affecting the city – see eg <https://hamilton.govt.nz/property-rates-and-building/water-services/three-waters-capacity/>. It is of course difficult to know the extent to which these are linked to HCC's opposition to intensification, embodied in HCC's extensive list of proposed "qualifying matters" under its Plan Change 12, an intensification plan change required under recent RMA amendments.
22. This media release contains the 'interesting' comment that HCC will honour existing resource consents (box 1). Of course it will – as it must under the RMA. To imply HCC might do otherwise is legally concerning.
23. For many years, HCC's strategies and growth plans have assumed there is significant capacity for infill development within the city. However, the draft Infrastructure Strategy 2021 has raised issues concerning the limits of three waters capacity, and it is proposed that:
 - a. An Infrastructure Capacity Assessment report is required for nearly all future development within the city;
 - b. A Connections Policy under the Local Government Act (separate from HCC's current plan change processes) will introduce a charge for connecting dwellings to city services, even where these dwellings are permitted, an approach that can be seen as contrary to the RMA Enabling Housing amendments.
24. It is also unclear whether HCC has factored these infrastructure constraints into PC12 or its HBA under the NPS-UD.

Financial Constraints

25. Recent media from HCC has also suggested that HCC is forecasting a “balancing the books deficit of \$34.4m”, though various funding sources, some of them “potential” rather than actual, suggest this could be reduced (see <https://hamilton.govt.nz/your-council/news/community-environment/councils-draft-budget-approved-with-caveat-of-saving-6-million-more>).
26. Concerningly, this deficit presumably reflects the massive asset revaluations described above, but this issue of a deficit also highlights that there may be grounds for much greater concern: if the “books” did not reflect asset revaluations that on their face seem unreasonable, the real problem might be known to be much later.
27. Further, if there is “potential” central government funding, there is also the potential for this funding to be withdrawn, or (say) for DCs revenue to be much lower than expected. These go to concerns about the overall solvency of HCC. Central government has already contributed extensively to infrastructure to support the Peacockes subdivision, including the new Peacockes Bridge and associated roading network, but few titled sections have as yet been created, and few houses have yet been built.

Comments

28. It is well known that a range of central and local government bodies draw on the work of external consultants. However, where this is done consistently, and the instruction provided to the consultant is not clear, and the methodology used by the consultant is either unclear or not stated, and a body then relies on that advice, members of the public remain entitled to be interested in the scope and nature of that consultant’s advice. While external consultants are “independent”, they also rely on repeat business, including (if not especially) in the local government field.
29. It can be appreciated that there are many local authorities in New Zealand, and various current and future law reforms which impact on what these local authorities do. There are also avenues for drawing attention to concerns about local authority behaviours, including the Ombudsman, OAG, and in some cases the judicial system.
30. However, the gravity and scope of the issues affecting HCC makes it clear that further attention from the Minister is necessary. Mr Jones is happy to discuss the matters in this letter further, and/or I can as his adviser.
31. Mr Jones’ views are that:
 - a. There should be a forensic audit of HCC’s accounts, in order to obtain a clear picture of the current situation and its future impacts.
 - b. Audit New Zealand should have a clear policy on local authority depreciation for the life of assets.
 - c. HCC’s current annual plan shows a ‘borrow and hope’ approach, that does not serve the best interests of the city. HCC councillors, many of whom are new and heavily

reliant on staff reports, do not understand the gravity of the position that HCC faces,
nor the consequences of a credit downgrade.

A handwritten signature in blue ink, consisting of several overlapping, sweeping strokes that form a stylized, cursive name.

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