

**HAWKE'S BAY REGIONAL COUNCIL
STRATEGIC PLANNING AND FINANCE COMMITTEE**

ESTABLISHMENT OF HOLDING COMPANY ("HBRIC")

DRAFT STATEMENT OF INTENT 2010-2012

1. INTRODUCTION

This Statement of Intent is prepared in accordance with Section 64(1) of the Local Government Act 2002. It is a public expression of the accountability relationship between HBRIC and its shareholder, the Hawke's Bay Regional Council ("Council").

It specifies the objectives, nature and scope of activities, performance targets and other requirements of HBRIC and its subsidiaries.

This Statement of Intent is reviewed annually with the Council and covers a two year period.

HBRIC is a Council-controlled trading organisation for the purposes of the Local Government Act 2002.

2. MISSION STATEMENT

HBRIC's mission is:

To optimise the financial and strategic returns to the Council from its allocated investment portfolio to assist the Council achieve its vision of "a region with a vibrant community, a prosperous economy, a clean and healthy environment, now and for future generations".

3. OBJECTIVES OF HBRIC

The objectives of HBRIC are to:

- Actively manage its allocated investment portfolio and any new investments it makes, including its shareholding in the Port of Napier Limited, to ensure:
 - i. growth of shareholder value;
 - ii. increased financial and strategic returns; and,
 - iii. investments are secure and sustainable over the long term.

4. NATURE AND SCOPE OF ACTIVITIES TO BE UNDERTAKEN

HBRIC will:

- Own and manage the investment assets and liabilities transferred to it by the Council from time to time;
- Make new investments and dispose of current investments in pursuit of its objectives;
- Invest in, and manage, a range of financial and physical assets including, but not limited to, property and infrastructure in the Hawke's Bay Region and elsewhere in New Zealand, shares and equity investments in public listed and unlisted companies; equity in, and loans to, joint ventures; bonds, term deposits, mortgages and other fixed interest securities; and other financial instruments, in accordance with Council's Investment Policy detailed in its LTCCP 2009-2019; and,
- Raise funds for investment by selling bonds, mortgages, preference shares and other debt instruments or by reducing its holdings in equity investments, (for example by way of part sales of shares in Port of Napier Limited), its subsidiary or associated companies, but at no time by selling any of the Council's 100% shareholding in HBRIC itself.
- Assist its subsidiary and associated companies to increase shareholder value and regional prosperity through growth and investment;
- Apply best practice governance procedures within HBRIC and its subsidiaries and other investments;
- Enhance the Council's capability to manage an active investment policy; and,
- Provide flexibility of operation and access to financial tools not otherwise available to Council directly.
- Help achieve the Council's regional strategic economic development objectives by investing in assets that will benefit the Hawke's Bay Region as a whole. Where the Council directs, HBRIC may accept a lower return or slower route to profitability to balance achieving this objective with that of otherwise acceptable returns;

All investments **must be made** or disposed of, and all income derived from these investments used, **for Regional Council purposes and functions as defined in statute**, that is, they must generate financial and economic and, where appropriate, environmental, social and cultural benefits for the Hawke's Bay Region.

5. ACCOUNTING POLICIES

HBRIC will comply with the reporting requirements of the Companies Act 2003 and the Financial Reporting Act 1993.

Financial Statements will be prepared in accordance with the generally accepted accounting practice in New Zealand for public benefit entities adopting New Zealand equivalents to International Financial Reporting Standards (IFRS) and applicable New Zealand Financial Reporting Standards.

Financial Statements will be prepared in thousands of New Zealand dollars excluding New Zealand Goods and Services Tax (GST).

6. PERFORMANCE TARGETS

The following **Table 1** contains the financial performance targets required to be met by the HBRIC "group" over the effective period for this Statement of Intent 1 July 2010 - 30 June 2011.

TABLE 1: PERFORMANCE TARGETS - UNADJUSTED

Performance Indicator	Target
Net debt to net debt plus Equity	<40%
Interest Cover (EBIT/Interest Paid)	> 3x
EBITDA/Total Assets	7%
ROI (Operating surplus/Equity)	5%
Change in Capital Values	5%

Notes: EBIT = Earnings Before Interest and Tax
 EBITDA = Earnings Before Interest, Tax, Depreciation and Amortisation
 ROI = Return on Investment (the Council's net equity transferred to HBRIC)
 Net debt means gross borrowings from outside the HBRIC "group", less loans made to parties outside the HBRIC "group"

Source: McDermott Miller, March 2010
 ©Hawke's Bay Regional Council, 19 May 2010

These performance targets may be adjusted as a result of potentially lower returns as a result of HBRIC being required to assist certain of the Council's strategic economic objectives or from Council's designation of certain assets as "strategic" or "controlled" (see **Section 8** below).

The adjustments, if any, to the performance targets contained in **Table 1** as a result of these are detailed in **Sections 7** and **8** below.

7. ASSISTING COUNCIL'S STRATEGIC OBJECTIVES

HBRIC will assist achievement of the Council's regional strategic objectives as directed by the Council. .

These objectives and the way in which HBRIC can assist through its investment portfolio will be identified by the Council and advised to HBRIC from time to time.

Initially, HBRIC will support the Council's strategic investment in water resourcing by establishing a subsidiary company (referred to as "Waterco") fund a feasibility study of water harvesting and storage in the Ruataniwha Plains area of Central Hawke's Bay. If the results of the feasibility study justify investment in water harvesting and storage, HBRIC may become a partner with other investors in water harvesting investments.

8. ASSET CLASSIFICATIONS

The Council will classify assets in the HBRIC portfolio as “strategic” or “controlled” in terms of HBRIC’s investment policy from time to time as follows.

- a. “Strategic” assets are designated as such in terms of Section 97 of the Local Government Act 2002 and can only be sold with the Council’s approval and when applicable provisions for public consultation have been satisfied.
- b. “Controlled” assets are those where any action that changes control of the investment must be approved by the Council.

All assets other than those listed below are “unrestricted” and may be dealt with by HBRIC within its investment management role without further reference to the Council.

The Council has classified the initial portfolio of HBRIC, and adjusted the performance targets of **Table 1** above as a consequence of these classifications, as shown below.

Classification	Asset	Performance Target Adjustment
“Strategic”	HBRIC Port of Napier Limited	None None
“Controlled”	Waterco Limited, during the course of the feasibility study Forestry Assets	-1% EBITDA/Total Assets -2% change in capital value

The effects of these adjustments for strategic and controlled investments on performance required of HBRIC are shown in **Table 2** below. **Table 2** therefore contains the operative performance requirements set by the Council for the period of this Statement of Intent.

TABLE 2: PERFORMANCE TARGETS – ADJUSTED

Performance Indicator	Target
Net debt to net debt plus Equity	<40%
Interest Cover (EBIT/Interest Paid)	> 3x
EBITDA/Total Assets	6%
ROI (Operating surplus/Equity)	4%
Change in Capital Values	3%

Notes: Targets are adjusted from Table 1 to give new, lower, targets for EBITDA/Total Assets, ROI and Change in Capital Values
EBIT, EBITDA, ROI and Net Debt have the same meanings as in Table 1.

Source: McDermott Miller, March 2010
©Hawke’s Bay Regional Council, 19 May 2010

Where HBRIC invests in development projects:

- A capital charge at a rate to be determined by HBRIC and the Council from time to time will be levied on all accumulated payments for each development investment, (including purchases of land, plant and equipment, specialist advisory fees and personnel and material costs incurred in developing the project), during the period each project is in development and prior to it generating operating revenues.

9. STRATEGIC PLANNING

HBRIC will prepare a three year strategic plan for its business, together with annual operating and capital expenditure budgets, for approval by its Board.

The strategic plan will be tabled with the Council and must be consistent with the Council's own strategic plan taking account of the assets owned and managed by HBRIC and its discretion to manage its own portfolio.

The strategic plan will be reviewed on a rolling annual basis, and any changes will be approved by the HBRIC Board.

10. DISTRIBUTIONS TO SHAREHOLDER

HBRIC will distribute no less than 100% of its annual Net Profit after Tax (NPAT) to the Council annually by way of dividend. The dividend for 2010/11 is to be a payment of no less than \$5.2m and for 2011/12 a payment of no less than \$5.8m.

Dividends will be paid by HBRIC to the Council by 20 December (to include dividends received from Port of Napier Limited in respect of its final results for its financial year ended 30 September) and by 20 June (to include dividends received from Port of Napier Limited in respect of its half year ended 31 March) in each calendar year.

Where the completed financial statements of HBRIC show net annual profit after tax to exceed the combined dividends already paid in the preceding December and June in its financial year, HBRIC will pay an additional dividend to the Council equal to the difference between net annual profit after tax and dividends already paid up to 30 June in HBRIC's financial year. Such additional dividend will be paid by 31 October immediately following the close of HBRIC's financial year.

Where adjustments to HBRIC's net profit are required by IFRS requirements, and result in non cash revenue adjustments, then these amounts, where material, are to be excluded from net profit after tax (NPAT) for the purposes of calculation of HBRIC's dividend payments to the Council.

In addition, HBRIC may make distributions of capital reserves and/or repurchase its shares from the Council, as agreed between the Council and HBRIC from time to time.

11. CORPORATE GOVERNANCE

Role of the Board of Directors

The Board of Directors is responsible to the Council for the direction and control of HBRIC's activities. The Board is to guide and monitor the business and affairs of HBRIC in accordance with its mission and objectives as set out in this Statement of Intent.

Each year HBRIC will submit a draft Statement of Intent for the ensuing year to the Council for its consideration. This draft statement will set out HBRIC's objectives, overall business plan and financial and performance targets for the year. The Council's responses to the draft statement will be taken into account by HBRIC in submitting its final operative Statement of Intent to the Council for its approval.

The Board recommends the approval of appointments of directors to subsidiary companies, joint ventures and associates and the adoption of subsidiary company Statements of Intent.

The management of HBRIC will be undertaken by the Chief Executive and his team. HBRIC may make use of external advisers as and where required.

Board Composition

The Board will comprise seven directors; four of whom are elected members of Council, one of whom will be appointed as the Chairperson, and three will be external independent directors.

Each member of the Board will have single vote on all matters, except for the Chairperson, who will have an additional casting vote to be exercised where voting is otherwise deadlocked.

The Council may choose to appoint a Deputy Chairperson from amongst the councillor-directors to act in the place of the appointed Chairperson when the Chairperson is unavailable or otherwise unable to exercise the rights and undertake the obligations of Chairperson.

In the event the appointed Chairperson, or Deputy Chairperson, is unable to be present at a meeting or otherwise not able to exercise his or her vote on a matter, another person from among the councillor-directors shall act as Chairperson with the rights and obligations of the Chairperson or Deputy Chairperson during the unavailability of the appointed Chairperson or Deputy Chairperson.

The Council makes all appointments to the Board, and will appoint the Chairperson and Deputy Chairperson.

Where necessary, (for example a councillor-director is unavailable to attend to the business of HBRIC), the Council will appoint alternate directors (in accordance with the terms of the Companies Act 2003) for councillor-directors.

All councillor-directors are required to retire within three months following the triennial local government elections, but are eligible to be re-appointed if re-elected to the Council. Appointed councillor-directors retain their appointment at the pleasure of the Council during their term(s) as councillor up until three months following the triennial local government elections.

External directors hold their appointment for a period of three years, retiring by rotation at the Annual General Meeting of HBRIC. The initial rotations for the 2011, 2012 and 2013 years shall be decided by lot amongst the three external directors in 2011 and the remaining two original directors who were first appointed from 1 July 2010 in 2012 and the remaining originally appointed director will stand down at the 2013 Annual General Meeting. All external directors may be re-appointed for one further three year term.

The Council has accordingly appointed:

X,
Y, and
Z

as independent non-executive directors of HBRIC for terms of up to three years, commencing on 1 July 2010, subject to annual rotation as specified above.

In addition,

Councillor A,
Councillor B,
Councillor C, and
Councillor D

are appointed as non-independent non-executive directors and will hold office up until three months after the 2010 local government elections. Further appointments will be made by the new Council formed following the 2010 local government election results for terms to be decided by Council. Such further appointments may include any one or more of Councillors A, B, C and D or none of them.

Councillor A is appointed Chairperson of HBRIC and Councillor B is appointed Deputy Chairperson of HBRIC until further notice.

Chief Executive

The Chief Executive of the Council will also be the Chief Executive of HBRIC and hold this office up until his or her departure from the position of Chief Executive of the Council.

The Chief Executive has been delegated responsibility for the day-to-day management of HBRIC assisted by his Executive Team and other staff as required.

Meetings

The Board is expected to meet at least every two months in the course of transacting the ongoing business of HBRIC.

Additional meetings may be called by the Chairperson as considered necessary from time to time.

A quorum for any Board meeting will be four directors, of whom not less than three must be councillor-directors.

Directors Fees

Fees for the external members of the HBRIC Board will be set triennially by the Council. HBRIC will consider appropriate fee levels based on commercial norms at the time and recommend fee levels to the Council. This will include, where appropriate, fees as chairs or members of any Board Committee or subsidiary company as well as fees as directors of HBRIC itself.

Director's fees will not be payable to any councillor for the whole period of his or her service as a director of HBRIC, (including any period of service pending his or her replacement following the results of a triennial election), or council officer who serves as a director of HBRIC, or of any subsidiary company or associate company of HBRIC during his or her time as councillor or council officer.

HBRIC will effect an appropriate directors and officers' liability insurance cover for all directors at the expense of HBRIC.

Expense reimbursement

HBRIC will reimburse the Council for the ongoing cost of management, accounting and administrative services incurred by the Council in providing these services to HBRIC.

In addition, HBRIC will also reimburse the Council for specialist advisory, technical and management services it provides to HBRIC for particular investments. This includes such services agreed to be provided by the Council for Waterco. Other services will be contracted between the Council and HBRIC for other investment management and operation as required.

Subsidiary and monitored companies

- All subsidiary and monitored companies will be required to submit annual Statements of Intent to HBRIC, which will evaluate them and suggest changes as considered necessary, before finalisation by the company concerned.
- Appointments to Boards of subsidiary companies designated as "strategic assets" in terms of Section 97 of the Local Government Act 2002,(such as the Port of Napier Limited), will be recommended by HBRIC to Council for approval.

- Appointments to Boards of subsidiary or associated companies designated as “controlled assets” by the Council from time to time will be recommended by HBRIC to Council for approval.
- Appointments to Boards of companies or other entities where HBRIC owns a minority shareholding and has rights to appoint directors will be made by HBRIC and reported to Council. However, where such appointments include councillors or council officers, Council shall be required to approve them.
- HBRIC will appoint the Chief Executive or principal officer of all its subsidiaries, other than for Port of Napier Limited, where the Board of Port of Napier Limited will appoint its Chief Executive, subject to confirmation by HBRIC.
- HBRIC will require the Boards and management of subsidiary companies to meet with HBRIC at least twice annually to discuss their company’s strategic direction, financial performance and position and other matters as required by HBRIC.

Subsidiary companies will also provide HBRIC with all information required under Section 10 of the Council’s Investment Policy adopted for the Council’s LTCCP 2009-2019.

Joint Ventures

Joint ventures not established as company entities will adhere to the reporting requirements specified for subsidiary companies above.

12. PORT OF NAPIER LIMITED

Statement of Intent

Port of Napier Limited will submit an annual draft Statement of Intent to HBRIC which will review it and may suggest changes it considers necessary. The finalised Statement will take into account changes suggested by HBRIC after consultation with the Council.

As noted in Section 11 above appointment of directors of the Port of Napier will be recommended by HBRIC to the Council for approval.

Dividends

Port of Napier will be required to pay not less than 70% of its reported surplus (operational and any other) after taxation by way of dividends for the year ending 30 September 2010 and not less than 75% for years ending 30 September 2011 and 2012. Capital profits on operational assets which are to be replaced will be excluded from this calculation. Where adjustments to the Port’s net profit are required by the IFRS requirements, and result in non cash revenue adjustments, then these amounts where material are to be excluded from the net profit after tax (NPAT) for the purposes of calculating dividend payments.

The Port will pay an interim dividend in June and a final dividend in December in respect of each of its financial years ending 30 September.

Port Companies Act 1988

In accordance with the provisions of the Port Companies Act 1988, HBRIC may appoint no more than two of its directors or employees or councillors or council officers to the Board of the Port of Napier Limited. Any such appointments will only be made with the consent of the Council.

Reporting

The Port of Napier Limited will continue to submit a range of reports and information to HBRIC as detailed in Section 10 of the Council's Investment Policy adopted in its LTCCP 2009-2019. This includes requirements to brief HBRIC at least twice annually. Councillors will be invited to attend these briefings.

13. HBRIC TO BE PERIODICALLY VALUED

HBRIC will provide the Council with an independent assessment of the market value of the HBRIC group. The first such valuation is to be undertaken as at 30 June 2012 and thereafter on 30 June at three yearly intervals.

HBRIC will monitor its own market value at 30 June and 31 December in each financial year by undertaking an internal assessment of its ongoing capital value (including valuation of subsidiaries and associates). This will be used assist management of capital, debt and revenue and expenditure streams to achieve the returns required in accordance with Sections 6, 7 and 8 of this Statement of Intent.

14. REPORTING AND INFORMATION TO BE PROVIDED BY HBRIC

HBRIC will ensure the Council is fully informed of all major developments affecting HBRIC, while recognising that commercial sensitivity may preclude certain information from being made public. Within this constraint, HBRIC will inform the Council of its affairs through the following reports:

- a. An annual Statement of Intent in accordance with Section 64(1) of the Local Government Act 2002 and any other information the directors of HBRIC consider appropriate (such as revisions to financial forecasts).
- b. An Annual Report, including audited financial statements, director's report and such other information to enable the Council and other stakeholders make an informed assessment of HBRIC's financial performance and position during the financial year and as required under the Companies Act 2003 and the Financial Reporting Act 2003.
- c. Half yearly reports on the financial performance, financial position and operating results of the HBRIC "Group" against budgets and including guidance on the ensuing full year result;
- d. Briefings to Council, no less than twice annually, on its operations, performance and progress against HBRIC's strategic plan objectives.

- e. Budgeted financial performance and financial position for the current full year and the ensuing two years;
- f. Such other information and reports as the Council may require from time to time in accordance with the requirements of Section 10 of the Council's Investment Policy adopted in its LTCCP2009-2019.

24 May 2010