



Waitaki

DISTRICT COUNCIL

TE KAUNIHERA Ā ROHE O WAITAKI

**I hereby give notice that the
Additional Council Meeting
will be held on:**

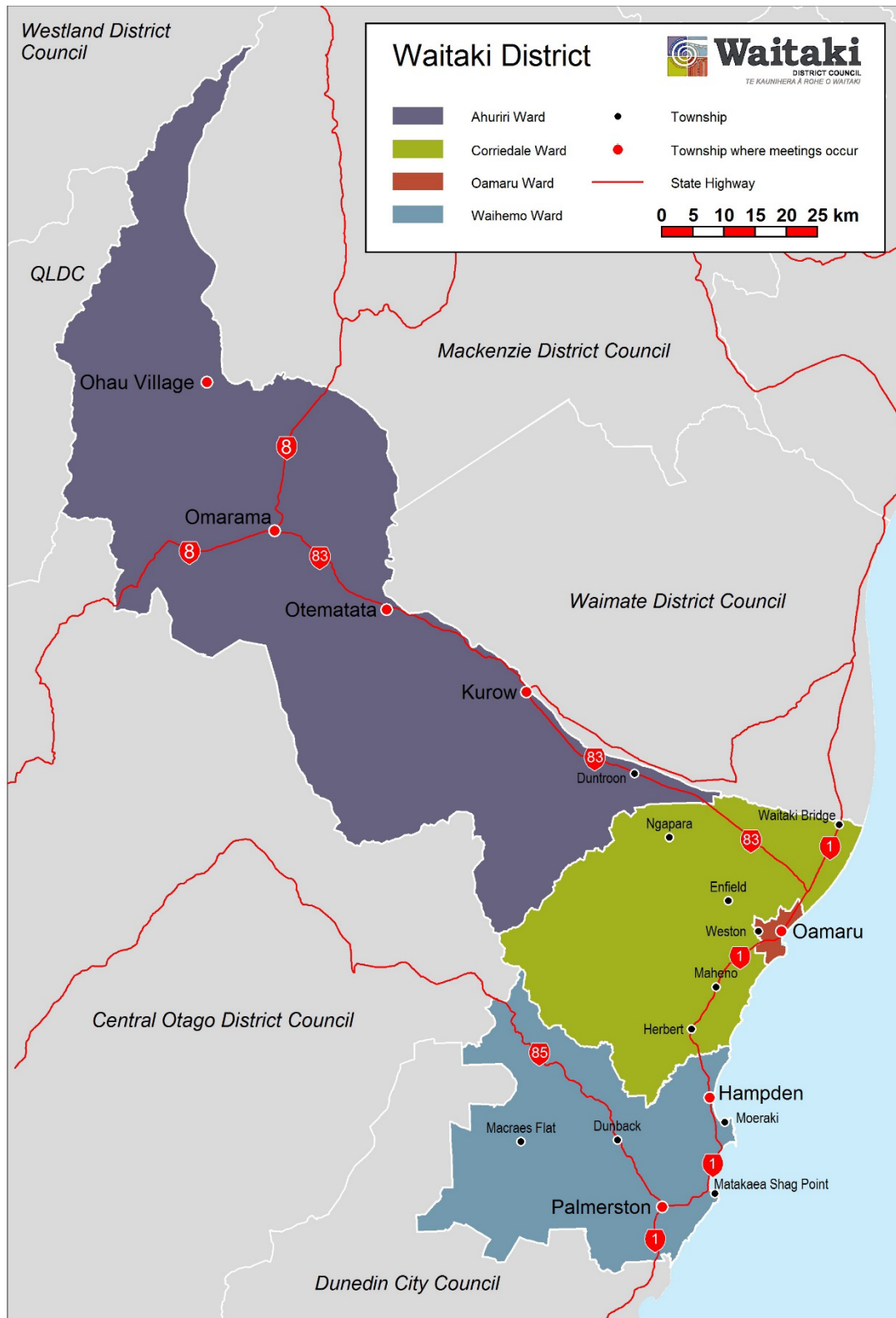
Date: Monday, 28 February 2022
Time: 1.00pm
**Location: Council Chamber, Third Floor
Office of the Waitaki District Council
20 Thames Street, Oamaru**

Agenda

Additional Council Meeting

28 February 2022

**Alex Parmley
Chief Executive**



STRATEGIC FRAMEWORK

Waitaki **THE BEST PLACE TO BE!**

Waitaki - Whenua taurikura

EMPOWERING OUR PEOPLE AND PLACE TO THRIVE

Whakapuāwai takata, Whakapuāwai whenua

COMMUNITY OUTCOMES

economic

PROSPEROUS DISTRICT

- Attractive to new opportunities
- Support local businesses
- Foster a diverse and resilient economy

social and cultural

STRONG COMMUNITIES

- Enable safe and healthy communities
- Connected, inclusive communities
- Promoting a greater voice for Waitaki
- Celebration of our community identity

environment

VALUED ENVIRONMENT

- Protecting our diverse landscapes and water bodies
- Meeting environmental and climate change challenges

QUALITY SERVICES

- Robust core infrastructure and services
- Community facilities and services we are proud of

STRATEGIC PRIORITIES

Providing high-quality core infrastructure and services

Determining the best way to deliver 3-waters for the community

Working with the community to respond to COVID-19 challenges

Creating a District Plan that is fit for Waitaki's future

Striving towards better Council performance

Driving best value for rates

Ensuring we get core business done while delivering on our strategic priorities and achieving our community outcomes



Agenda Items

1	Apologies	5
2	Declarations of Interest	5
3	Public Forum.....	5
4	Decision Reports	6
4.1	Forrester Heights Future Use Engagement	6
4.2	Amendment to Council Committee Membership for the 2019 - 2022 Triennium	13
5	Resolution to Exclude the Public	14
6	Public Excluded Section	15
6.1	Oamaru Whitestone Civic Trust - Trustee Appointment PE	15
6.2	Directorship Appointments to the WDHS Board - February 2022 PE.....	15
7	Resolution to Return to the Public Meeting	15
8	Release of Public Excluded Information	15
9	Meeting Close	15

- 1 APOLOGIES**
- 2 DECLARATIONS OF INTEREST**
- 3 PUBLIC FORUM**

4 DECISION REPORTS

4.1 FORRESTER HEIGHTS FUTURE USE ENGAGEMENT NEW

Author: Mathew Scott, Property Assets Officer

Authoriser: Paul Hope, Acting Assets Group Manager

Note: Attachments for this report are being uploaded as a separate PDF to the agenda

RECOMMENDATIONS

That Council:

1. Rescinds item 2 of resolution WDC 2021/116 from the Waitaki District Council Meeting held on 10 August 2021, as follows:
 2. *Instructs Officers to compile feedback from a public engagement process on a range of options and present it to a future Council Meeting to enable a decision to be made on the future of the site;*
 - a) *Options to provide for feedback to include:*
 - i) *Do nothing*
 - ii) *Set aside the land as a greenspace reserve*
 - iii) *Develop the land as a reserve similar to Cape Wanbrow*
 - iv) *Set aside part of the land as greenspace reserve, and develop the remainder*
 - v) *Sell the land "as is" through a tender or similar open market process;*
 - vi) *Seek partners for a joint venture in developing the land;*
 2. Instructs Officers to compile feedback from the public engagement process and present it to a future Council meeting to enable a decision to be made on the future of the site;
 - a) Options to provide for feedback to include:
 - i. Do nothing – continue to hold the land as endowment for capital gains;
 - ii. Sell the land; or
 - iii. Undertake work to establish the land as a Reserve.
 3. Notes the difficulties in establishing the endowment land as a Reserve or using it as a park given the obligations of the endowments.
 4. Endorses the engagement plan for the Forrester Heights public engagement process.
 5. Delegates to the Chief Executive, in consultation with the Communications Portfolio Elected Members, the ability to approve the Forrester Heights consultation document.

DECISION OBJECTIVE

To finalise the options and material for public engagement on the future of Forrester Heights.

SUMMARY

Council must conclude its desired approach to public engagement on the future use of Forrester Heights. This report requests amendments to Council resolution WDC 2021/116 based on parallel works requested of officers through the same resolution to finalise consultation options.

DECISION-MAKING EXPECTATIONS

Governance Decision-Making:	Approve options and approach to engagement
Operational Decision-Making:	Design and timing of consultation materials release
Communications	Media Releases – contributed to by officers and Elected Members Media/public enquiries regarding governance decision-making topics above can be addressed by governance Media/public enquiries regarding operational decision-making topics above can be addressed by officers

SUMMARY OF DECISION-MAKING CRITERIA

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	Key	Social Considerations	No
Financial Criteria	No	Economic Considerations	No
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	Moderate

BACKGROUND

At the Waitaki District Council Meeting held on 10 August 2021, Council resolved (WDC 2021/116) as follows:

1. *Instructs Officers to carry out a public engagement process to discern the community’s views on the future of Forrester Heights;*
2. *Instructs Officers to compile feedback from a public engagement process on a range of options and present it to a future Council Meeting to enable a decision to be made on the future of the site;*
 - a) *Options to provide for feedback to include:*
 - i) *Do nothing,*
 - ii) *Set aside the land as a greenspace reserve,*
 - iii) *Develop the land as a reserve similar to Cape Wanbrow,*
 - iv) *Set aside part of the land as greenspace reserve, and develop the remainder,*
 - v) *Sell the land “as is” through a tender or similar open market process,*
 - vi) *Seek partners for a joint venture in developing the land, and*
3. *Instructs Officers to carry out parallel works to determine which approach will provide the best return for the ratepayer on a risk / return basis.*

This report presents the outcome of the parallel works referred to in point 3 of the above resolution and makes final recommendations for Council to approve prior to the commencement of public engagement on the future use of Forrester Heights. The assessment of options focuses on the question of proceeding to engagement.

DISCUSSION

As instructed by resolution WDC 2021/116, Officers have completed an assessment of the options outlined above. Options ii-iv have been considered together as they present the same difficulty in terms of the use of endowment land.

Option i. Do Nothing¹

Risk	Return
Low – Moderate	Current Market Value (CMV) + Growth to point of sale or development – holding costs – cost of future engagement if required

- Council continues to work towards a future sale or development for financial return.
- Council actively manages the site to ensure that its use continues to meet the purpose of the endowments.

The majority of land of Forrester Heights is endowment land (the yellow and green areas in the attached map). The remaining blue portion of the site is former road, now held by the Council in fee simple and not subject to the same restrictions around use as the endowment land. Endowments are a gift of property to be used for a specific purpose. This purpose acts as a binding legal Trust that can only be amended by the donor, which in the case of Forrester Heights endowments is the Crown. The purpose of the Forrester Heights endowments is to generate revenue. Put simply, this means that Council must use the land to generate revenue, or it will breach the Crown’s Trust.

Within the context of endowments, ‘Do Nothing’ is a viable option only if the land continues to be held to generate revenue by way of capital gains (the current state). Selection of this option would suggest that Council considers the option to develop or sell at the moment is not the best result for the ratepayer.

‘Do Nothing’ really means ‘do not change what is happening now’ rather than ‘do nothing ever’. If Council was to choose to do nothing at this current point in time, it would nevertheless still need to develop or sell the land at some point in the future to meet the purpose of the endowments.

It is important to note that the option of ‘do nothing’ is not a zero-cost option as there will still be holding costs associated with the land – eg rates and the ongoing cost of maintenance at a defined level of service.

Options ii-iv. Reserve and Greenspace Options

As Options ii-iv all anticipated the establishment of a Reserve or similar, at least in part, they have been considered together. The discussion below does not apply to the stopped road parcel. However, due to the size, slope, and location of this parcel, it is only considered valuable or relevant as part of the wider site encompassing the two endowments and therefore has been ignored for the purposes of assessing these options.

¹ NB: the cost of consultation is common to all options and therefore has not been factored into returns.

Risk	Return
High	Nil

- Would require an Act of Parliament to remove the endowments.
- The exception is former road parcel which could be converted to Reserve.

Reserves Act

Under the Reserves Act 1977, Council can establish land it owns as a Reserve for a number of different purposes including for recreational purposes. However, this approach is not considered feasible for the Forrester Heights endowment land, as it would not remove the endowments.

Even if Council could technically establish Forrester Heights as a Reserve, the subsequent restrictions on the use and disposal of the land post-Reserve status would almost certainly lead Council to a position where it was in breach of Trust with the Crown. In essence, the use of land as a Reserve and the use of land to generate revenue are antithesis and cannot be reconciled within the same piece of land.

Use as Greenspace or a Park without the Reserve Status

It is considered that locking the land into an open space or similar park-like activity would run counter to the intent of an endowment – ie to use in a manner that generates an income stream for the endowment purposes.

Act of Parliament to Remove Endowments

It is considered that the only way of establishing Forrester Heights as Reserve or similar would be to petition Parliament to remove the current endowment status through enactment of law. The most likely way that this would be achieved is through a Local Members’ Bill.

The current Local Member of Parliament, the Hon Jacqui Dean, took a Local Members’ Bill to the House to clarify the land status as endowment land and not ‘Reserve’ which was enacted in 2013. This was done to facilitate sale subject to a 2006 resolution of Council. Pursuing the establishment of a Reserve on the endowed Forrester Heights land would require reversing the effect of the Act with a new Bill for the greater portion of the land.

Officers could make no commitments as to the cost, timeframe, or success of its delivery. This is not considered to be a viable course of action given the uncertainty of outcome and Council’s current timetable for conclusively deciding the future use of Forrester Heights.

Given the recent community action toward the creation of a Reserve at Forrester Heights, it is considered there is a need to communicate the significant obstacles to proceeding with this option as part of engagement.

Option v. Sell land “as is”

Risk	Return
Low	CMV

- Meets the purpose of the endowments – specifically anticipated through s141 of the LGA 2002.
- Best for Council to indicate a preferred option for the use of sale proceeds.

- Decisions would need to be made on the sale process to be followed at the time a decision to sell was confirmed.

Use of Land Following Sale

Council has indicated its concern that any development of the Forrester Heights site is undertaken in a way that is sympathetic to its environs. Limitation on the development of land is primarily the realm of the District Plan. However, it is possible for a landowner to encumber their land with covenants that further limit the use of land within its planning context. The imposition of further constraints on the land could be considered by Council should it decide to sell.

Use of Proceeds

Given the broad purpose of the endowments, it is considered that funds generated by the Forrester Heights endowments can legitimately be applied to any legal purpose or activity of Council. The attached engagement materials outline this and present some possible uses should Forrester Heights be sold. Given that no analysis or preferred use of funds is being presented to the community this time around, the later decision report to confirm the future use of Forrester Heights should be informed by more specific community engagement on the preferred use of funds in the event of sale.

Sale ‘as is’

Officers have identified difficulty with the phrasing of the previous resolution presenting an option to sell the land ‘as is’. The reference to sale of the land ‘as is’ may lead some in the community to consider that the land would pass from Council ownership in its current configuration of town lots. It is considered that, in order to provide the best return for the ratepayer, Council should be open as to how the land could be sold and it is best to remove this reference from the previous resolution.

Removal of the reference to sale ‘as is’ will mitigate the risk that support from the community is only given on the understanding that there will be no change to the land prior to sale. It will also remove any perceived constraint around the work that needs to be undertaken to provide the best return for ratepayers, balancing financial return with impacts of development post-sale.

Option vi. Seek Partners for Joint Venture

Risk	Return
Moderate – High	Developed Value – Development and Holding Costs

- Permissible under the purpose of the endowments provided the intent is to generate a fiscal return.
- No identified development partner and uncertainty as to nature of joint venture.
- Novel undertaking for Council.

A high degree of trust is required between Joint Venture (JV) partners. This will take time to develop given the need to clarify and align aims, responsibilities and expectations. Council’s desired timeframe for proceeding to community engagement has not afforded Officers the requisite time to identify a partner for a JV to develop Forrester Heights. Furthermore, the implications of a JV for the Forrester Heights endowments are not well understood and would take further time to establish should it be viable.

The recommendation of Officers is that Council does not proceed to community engagement with the option of Joint Venture for the development of Forrester Heights. The question of Council-led development, JV, or a minimal intervention sale can be worked through should the decision to sell be taken by Council.

Based on the information set out above, Officers have developed three modified options being:

- i. Do nothing – continue to hold the land as endowment for capital gains;
- ii. Sell the land; or
- iii. Undertake work to establish the land as a Reserve.

It is proposed that these options form the basis of the of the public engagement process.

ENGAGEMENT PLAN

The attached engagement plan details the engagement strategy, significant risks, and mitigations.

SUMMARY OF OPTIONS CONSIDERED

Option 1 – Retain the original set of options for engagement confirmed through Council resolution WDC 2021/116 and proceed to engagement on this basis.

Option 2 – (Preferred) Adopt the revised set of options being:

- i. Do nothing – continue to hold the land as endowment for capital gains;
- ii. Sell the land; or
- iii. Undertake work to establish the land as a Reserve;

and adopt the engagement process and endorse the consultation material attached to this report.

ASSESSMENT OF PREFERRED OPTION

By revising the set of options for community engagement and proceeding to engagement with the materials attached, Council will:

- (a) undertake a more focused engagement with the constraints of land use made clear to the community;
- (b) more clearly articulate to the community the implications and confidence of success of the options presented; and
- (c) ensure that options for sale to provide the best overall result for the community are not unduly constrained by this engagement should Council eventually decide to sell.

The resulting engagement will be more clearly defined in terms of scope and have a higher chance of delivering meaningful feedback to inform Council's final decision on the future use of Forrester Heights.

CONCLUSION

On 10 August 2021, Council identified options for consultation on the future use of Forrester Heights and asked Officers to undertake a risk versus return assessment of these options. As a result of this assessment, Officers have ruled out one option and condensed three options into one. The reference to sale 'as is' has been removed to alleviate the perception that there will be no change to Forrester Heights land prior to any sale by Council.

This refined set of options focuses attention on the status of the endowment land and the constraints it imposes on the use of the land. Council is now asked to adopt a new resolution confirming the refined options, supporting materials, and timeline for engagement.

Officers will report back on the community feedback following engagement as part of another decision report to determine the future use of Forrester Heights.

ADDITIONAL DECISION-MAKING CONSIDERATIONS

Outcomes

We keep our district affordable

We enable opportunities for new and existing business

We provide and enable services and facilities so people want to stay and move here

We understand the diverse needs of our community

Waitaki's distinctive environment is valued and protected

We maintain the safest community we can

4.2 AMENDMENT TO COUNCIL COMMITTEE MEMBERSHIP FOR THE 2019 - 2022 TRIENNIUM

Author: Gary Kircher, Mayor for Waitaki

RECOMMENDATION

That Council approves an amendment to the current version of the Council Committee Membership for the 2019-2022 triennium, by appointing the Independent Member of the Performance, Audit and Risk Committee as the Associate Chair (Risk) for that Committee, with effect from the date of this meeting for the remainder of this 2019-2022 triennium.

DECISION OBJECTIVE

To amend the current version of the Council Committee Structure for the 2019-2022 triennium to appoint a new Associate Chair (Risk) for the Performance, Audit and Risk (PAR) Committee, for the remainder of the triennium.

SUMMARY AND BACKGROUND

Following the passing of the late Cr McRobie in November 2021, Council agreed at the 21 December 2021 Additional Council Meeting not to appoint a replacement member to the PAR Committee or to appoint another Associate Chair (Risk) at that time. Following subsequent consultations with elected members and in recognition of the greater emphasis by Council on the need to monitor and address strategic risks which is the delegated responsibility of the PAR Committee, it is now important and timely for a new Associate Chair (Risk) to be appointed.

At the 8 December 2020 Council Meeting, the Executive Committee was delegated to take the lead in appointing an independent member of Council's PAR Committee. At its 6 April 2021 meeting, the Executive Committee appointed Mr Simon Neale as that independent member. The agenda report to that meeting highlighted Mr Neale's expertise in the area of risk and included comments from the PAR Chair and the late Cr McRobie in support of that expertise. [Copies of these documents have been circulated separately to Elected Members, for ease of reference.]

Mr Neale attended his first PAR Committee Meeting on 27 April 2021. From the outset, he demonstrated his skills, knowledge, and experience in addressing risk-related matters that came before the Committee. He was specifically appointed by the late Cr McRobie (then Associate Chair (Risk)) as a member of the Risk Working Group which was given responsibility to work with officers to develop the Strategic Risk Register. That Register has since been adopted by the Committee and is considered a key strategic document for all of Council.

Both the Committee and Council have benefitted from the valuable contributions Mr Neale has made to deliberations since his appointment, and especially with regard to risk-related issues. With the agreement of the PAR Committee Chair, I am now proposing that Mr Neale is the most appropriate member of the PAR Committee to be appointed to the Associate Chair (Risk) role. Mr Neale has advised that he would be pleased to take on the role if appointed to it at this meeting.

Remuneration Matters

Mr Neale is an Independent Member of the PAR Committee and a Council appointee rather than an elected member. Therefore, his remuneration is not sourced from the remuneration pool for Waitaki District Council elected members that is determined by the Remuneration Authority. His appointment as Associate Chair (Risk) in the PAR Committee will not require an amendment to the Remuneration Authority Determination for Waitaki District Council that is currently in place.

5 RESOLUTION TO EXCLUDE THE PUBLIC

RECOMMENDATION

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter 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 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 for the passing of this resolution
6.1 - Oamaru Whitestone Civic Trust - Trustee Appointment PE	s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a)(i) - the public conduct of 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 would exist under section 6 or section 7
6.2 - Directorship Appointments to the WDHS Board - February 2022 PE	s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	s48(1)(a)(i) - the public conduct of 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 would exist under section 6 or section 7

6 PUBLIC EXCLUDED SECTION

7 RESOLUTION TO RETURN TO THE PUBLIC MEETING

RECOMMENDATION

That Council resumes in open meeting and decisions made in public excluded session are confirmed and made public as and when required and considered.

8 RELEASE OF PUBLIC EXCLUDED INFORMATION

In accordance with Waitaki District Council Standing Orders, and pursuant to resolutions in the public excluded session of the meeting, any previously public excluded information that Council decides to release will be included under this agenda item in the Public Minutes of this meeting.

9 MEETING CLOSE