

# Kaunihera | Council



## Mēneti Wātea | Open Minutes



Minutes of an ordinary meeting of Matamata-Piako District Council held in the Council Chambers, 35 Kenrick Street, TE AROHA on Wednesday 14 September 2022 at 9.00am.

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### Ngā Mema | Membership

#### **Koromatua | Mayor**

Ash Tanner, JP (Chair)

#### **Koromatua Tautoko | Deputy Mayor**

Neil Goodger

#### **Kaunihera ā-Rohe | District Councillors**

Donna Arnold

Caitlin Casey

Teena Cornes

Bruce Dewhurst

James Sainsbury

Russell Smith

Kevin Tappin

James Thomas

Sue Whiting

Adrienne Wilcock

Unconfirmed  
Minutes Excerpt

7 Pūrongo me whakatau | Decision Reports

## Decision on Better off funding application

CM No.: 2631054

### Rāpopotonga Matua | Executive Summary

The purpose of this report is to seek Council determination on applying for Tranche 1 of the Better Off Funding package offered by the government.

#### WHAKATAUNGA A TE KAUNIHERA | COUNCIL RESOLUTION

That:

1. The information be received.
2. Council has given consideration to the community feedback received on what else Council should be considering when making their decision on whether or not to apply for Better off Funding.
3. Council does not make a Tranche 1 funding application.

Moved by: Mayor A Tanner

Seconded by: Cr T Cornes

**KĀRE I MANA | DEFEATED**

#### WHAKATAUNGA A TE KAUNIHERA | COUNCIL RESOLUTION

That:

1. The information be received.
2. Council has given consideration to the community feedback received on what else Council should be considering when making their decision on whether or not to apply for Better off Funding.
3. Council makes an application for Tranche 1 funding application (required by 30 September 2022).

*Mayor A Tanner, Cr K Tappin, Cr C Casey and Cr T Cornes voted against the motion and requested their vote be recorded.*

Moved by: Deputy Mayor N Goodger

Seconded by: Cr B Dewhurst

**KUA MANA | CARRIED**

#### ATTACHMENTS

A LT MPDC - 3 Waters Funding Agreement - 130922

### Horopaki | Background

The Minister of Local Government has announced that Councils are now able to put forward proposals for the first \$500 million of Crown funding from the Three Waters reform better off support package. The funding is for local government to invest in local community wellbeing and may be applied to capital or operating initiatives. The remaining \$1.5 billion is available from 1 July 2024.

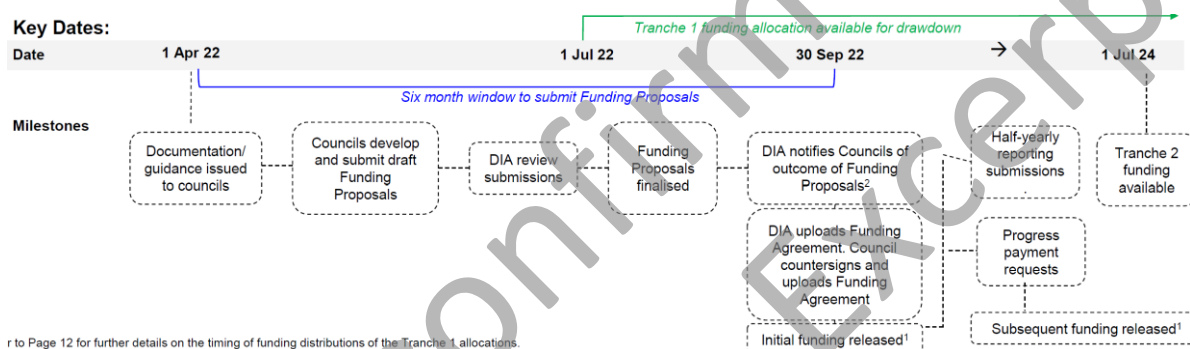
The Heads of Agreement allocated the package with a 75% allocation based on population, a 20% allocation based on the deprivation index, and a 5% allocation based on land area and established the following funding criteria:

- Supporting communities to transition to a sustainable and low-emissions economy, including by building resilience to climate change and natural hazards.
- Delivery of infrastructure and/or services that enable housing development and growth, with a focus on brownfield and infill development opportunities where those are available.
- Delivery of infrastructure and/or services that support local place-making and improvements in community well-being.

This will be available in two tranches:

- Tranche 1: \$4.32m (application required by 30 September 2022)
- Tranche 2: \$12.95m (application required by 1 July 2024)

Tranche 1 funding:



### Funding criteria

The programme must:

- Support one or more of the better off package criteria
- Be for new initiatives/projects AND/OR to accelerate, scale up and/or enhance the quality of planned investment
- Be for a duration of expenditure of 5 years or less (completed before 30 June 2027)
- Have Total Maximum amount payable equal to or less than funding allocation

Key points:

- Only one funding proposal can be submitted to access the first tranche – but can cover multiple projects/initiatives
- Should Council not take up the Tranche 1 opportunity, the outstanding monies will be rolled over to Tranche 2. It should be noted this is on the assumption that the Tranche 2 opportunity will still be available in 2024.
- Following approval of a Funding Proposal and an executed Funding Agreement, an initial disbursement of 10% of your requested amount will be released
- The remainder will be disbursed on receipt of a progress payment request which may be submitted on a monthly basis online. A progress report must be submitted online every six months
- The first tranche is distinct from the second, but councils are expected to consider how the first tranche could support funding proposals for the second tranche.

Council consideration:

- At its workshops on 18 May 2022 and 27 July 2022 Council considered the Better Off Funding offered by the government as part of the water reform package. It supported staff moving forward with pulling together application information which would see the Tranche 1 funding allocated to the Pride of Place programme (PoP) with a view to this providing the foundation for Tranche 2 funding.
- At its meeting on 10<sup>th</sup> August 2022 Council considered whether it wished to apply for Tranche 1 of the Better off funding. Council resolved as follows “**Council agrees to defer the application for Tranche 1 of the Better off funding for the POP programme of work until consultation with community has been done**”
- The consultation process has been followed in accordance with Council direction. An online based survey opened on 22 August 2022 and closed on 5 September 2022.

## Ngā Take/Kōrerorero | Issues/Discussion

### Consultation

153 responses were provided to the Better off Funding survey. As requested by Council, feedback was sought on the question “What do you want Council to consider when deciding whether they should apply for Better Off Funding?” The results of the survey are attached.

The consultation was open from 22<sup>nd</sup> August to 4pm 5 September 2022. The consultation was open from 22<sup>nd</sup> August to 4pm 5 September 2022. We received 162 responses through the website, with additional 23 comments and 11 reactions via Council’s facebook page.

A full schedule of comments submitted is attached for elected members’ information.

The following provides a summary of themes emerging from the responses provided.

- **Would acceptance of the funding be considered acceptance of the 3 Waters reform itself?**
  - o They key issue that came through in the majority of the submissions was a question and concern around whether acceptance of the Better Off funding would in any way compromise Council’s opportunity to oppose the 3 Waters Reform. There were multiple references to potential ‘fish hooks’, ‘fine prints’ and ‘too many conditions’ attached to the funding. This came through from submitters both in opposition to taking the funding, and those who said council should apply for the money.
    - Can we still oppose the reform
    - Concerns about the fine prints / legal clauses
    - Concerns that the funding is a bribe from central government
- **The funding can be spent on projects that will benefit the wider community, while minimising the impact on rates**
  - o Some of the projects and type of projects suggested for the Better Off funding included;
    - Projects that support local iwi and Maori
    - Projects that support rural communities
    - Projects to improve our waterways
    - Putting a roof on Morrinsville Pool
  - o
- **Concerns about lack of consultation**

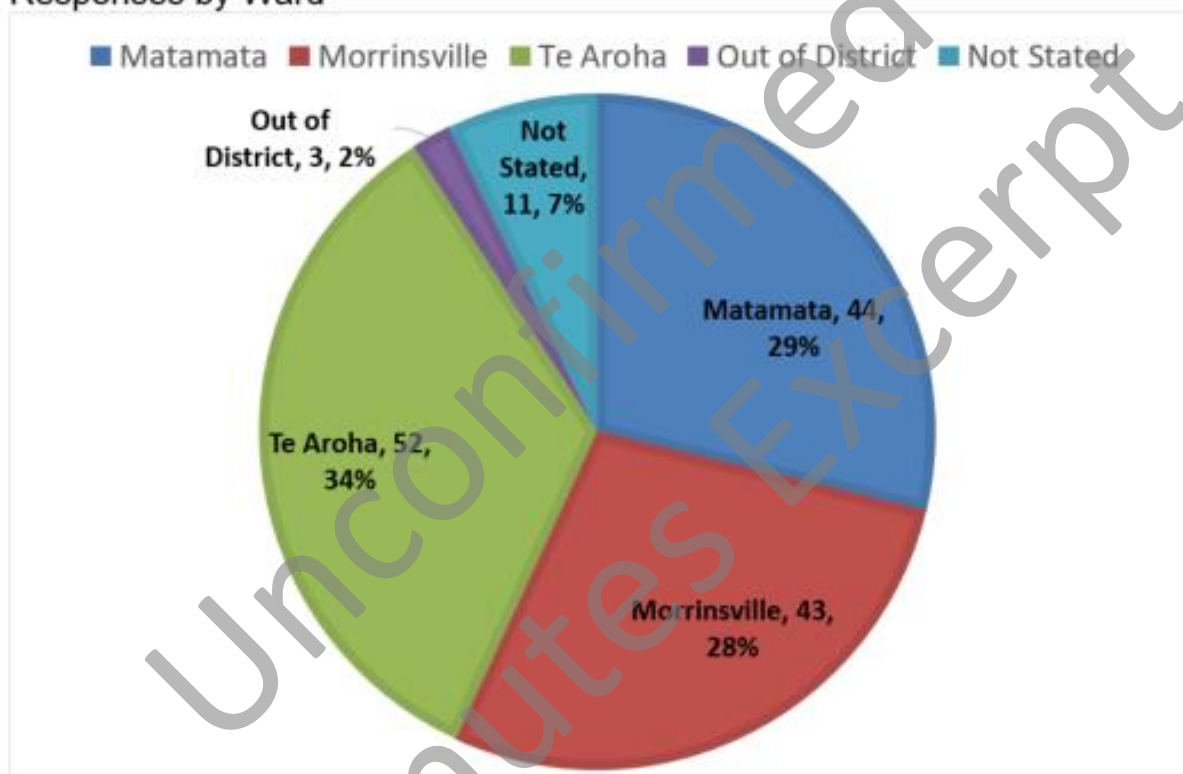
- There was some concerns raised regarding lack of consultation, and the type of consultation undertaken, including Request for a Yes / No vote on whether Council should apply for the funding.

Please note the above is based on an assessment of the text provided in each response. It is indicative of the broad themes expressed and reference should be made to the full individual responses.

Some responses are on behalf of a number of people (e.g. a community group submitting on behalf of their membership) and these are counted as one response.

A below is a breakdown of the location of respondents:

Responses by Ward



#### Legal advice

Concern has been raised by elected members and through the consultation feedback around applying for Better off Funding, whilst opposing Three Waters Reform.

Some of the public feedback critiques the wording of the funding agreement clauses and risks associated with this. Legal advice alongside clarifications received from Three Waters National Transition Unit (NTU), suggest that Council is able to critique and criticise the Governments program, despite applying for or receiving funding.

A Clause by clause commentary on the DIA funding agreement from Council lawyers (Brookfields) is attached.

Taituarā — Local Government Professionals Aotearoa also sought legal advice on the agreement and their summary of it is also attached.

They specifically state that there is nothing in the agreement” generally” that suggests Council is not able to criticise. There is an expectation that Council will not deliberately set out harm the “reputation, good standing or goodwill “of DIA or the Government. However to quote from the advice from Simpson Grierson;

***“There would be a high bar to demonstrating that a particular act created damage to the reputation, good standing or goodwill of DIA or the Government.***

***Opposition to the reforms, and making such opposition public could not reasonably be expected to adversely impact reputation, good standing or good will of the Government or DIA in and of itself.”***

Staff consider based on the above advice, that critiquing and opposing the Three Water reform doesn’t amount to harming the reputation and good standing or good will of the DIA or Government and therefore isn’t contrary to the agreement. Council can continue to express opposition to the reform, at the same time as accepting the funds.

There is an expectation that Council will cooperate with reasonable requests of the DIA as part of the Transition process [which is reasonable], given the process will be legislatively required of Council.

A release from the Three Waters National Transition Unit (NTU) (attached) in providing further clarification that expressing opposition to the reforms will not affect the funding provided.

#### Deferral of the decision

As requested by Council we have also sought further feedback from our DIA contact on the proposition to defer a decision on the funding until after the election. Crown Infrastructure’s representative has not specified the number of Councils that had sought a waiver/extension of the timeframes, but has advised a relatively small group and they were not aware of any that have been turned down to date.

The DIA expect to see sound reasoning behind the request for an extension. It is understood they have been granted for relatively short periods (of a few months).

An example may be where a Council may be promoting a particular project to apply the Better off Funding to and they need time to consult on the project itself. The key point is that seeking deferment will require sound reasoning. Council had previously signalled its intention to apply for funding for projects arising through POP.

#### Uses of Better off Funding

Council staff have met with Crown Infrastructure’s representative and can confirm that Council’s proposal to utilise this funding for PoP meets all of the required criteria.

The Better off Funding opportunity (if approved) would provide funding towards the POP Project in relation to four town centres: Matamata, Morrinsville, Te Aroha and Waharoa.

Should Tranche 2 of the funding not become available, the PoP programme will still provide the basis for consideration of future works for the upcoming Long Term Plan.

With robust ongoing monitoring and evaluation planned, the PoP project can be tailored to respond to learnings along the way and can be responsive to community need.

While, currently town centre focussed, the programme has the potential to move into elements outside of this in future with the opportunity to build greater partnerships and realise leveraging opportunities.

### Mōrearea | Risk

There is a risk that in applying for a time extension to consider accepting Tranche 1 funding, this is not accepted by DIA resulting in an opportunity lost.

Should Tranche 1 not be accepted, the cumulative funding may not be available in 2024 as part of Tranche 2.

Should Council accept Tranche 1 funding, there are risks around not achieving the work within the timeframe stated. This will be mitigated with robust project planning which will include a risk management plan and identify resourcing requirements.

Should tranche 2 not become available the project will be amended, and outcomes prioritised within the budget available. POP (PoP) will inform the Long Term Plan works moving forward.

### Ngā Whiringa | Options

#### Option 1

Do not accept the Better off funding. This will mean that additional funding for the PoP project will need to be sourced elsewhere.

#### Option 2

Submit an application for the Better Off funding Tranche 1 for the purposes of funding towards the POP programme of work.

#### Option 3

Defer decision, applying for an extension to the application deadline.

With the upcoming election on 8<sup>th</sup> October, it is assumed this would mean the incoming Council would consider and make a decision on the Better Off funding Tranche 1. In this respect, it is noted that elected members are scheduled to be sworn in on Tuesday 1 November. Elected members cannot act in their role until they are sworn into office.

The timing of the election, and post-election process may create some challenges in decision making on this issue, depending on the revised deadline that may be given.

### Ngā take ā-ture, ā-Kaupapahere hoki | Legal and policy considerations

#### Local Government Act 2002 decision making requirements

All Council decisions, whether made by the Council itself or under delegated authority, are subject to the decision-making requirements in sections 76 to 82 of the Local Government Act 2002 (LGA 2002). This includes any decision not to take any action.

- **Section 77**, requires the Council to identify all reasonably practicable options for achieving its objective or addressing the matter under consideration, and to then assess each of these options in terms of its advantages and disadvantages.
  - Practically, this requirement is intended to ensure the Council has fully canvassed all the ways in which it might proceed, and that its decision is well informed and reasoned.

- **Section 78**, sets out that Council must consider the views and preferences of interested or affected persons in the course of its decision-making.
  - This requires the Council to identify those persons who are interested or affected by a decision and what their views are, and to then take those views into account.
  - One way of identifying views and preferences is through some form of consultation or engagement, but section 78 makes clear that it does not necessarily require this.
  - In deciding whether engagement or consultation might be appropriate, the Council should consider its Significance and Engagement Policy. Where the Council does choose to undertake some form of consultation, it will need to comply with the consultation principles set out in section 82.
- **Section 79** contains an important proviso to the requirements in sections 77 and 78. It provides that the Council has discretion about how to comply with these requirements in any particular case, but states that compliance should be largely in proportion to the level of significance of the matter concerned.
  - So the more significant a matter is, the more rigorous the Council's assessment under section 77 should be, and the more likely it is that the Council will carry out some form of engagement or consultation under section 78.
- **Section 82** sets out the Principles of consultation; which are in summary:
  - Those who may be affected by, or have an interest in the issue should have reasonable access to relevant information;
  - Those who may be affected by, or have an interest in, the decision should be encouraged to present their views to Council;
  - Council should set out the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented;
  - People are given a reasonable opportunity to present views to Council;
  - Council is to consider views with an open mind and given due consideration;
  - People who provided feedback should have access to a clear record or description of relevant decisions made by Council.

Other decision-making requirements in the LGA 2002 include the need to identify any decisions that are significantly inconsistent with any Council policy or plan (section 80), to provide opportunities for Māori to contribute to decision-making (section 81) and have processes in place for consulting with Māori (section 82).

#### Comments on application of sections 77-82

- Section 77 – Council needs to give consideration to the reasonable practicable options available. In essence, Council either can apply for Tranche 1 funding, or not, and if it chooses to apply for the funding it can decide on the projects/initiatives it wishes to include in the application. There is also an option to defer a decision, seeking an extension of the application deadline.
- Section 78 – the views of Interested/affected people have been captured through the consultative period.
- Section 79 – The Significance and Engagement Policy is considered below. A consultation process has been undertaken.
- Section 82 – information was made available on the Council website with the arguments for and against applying for funding. A two week period was provided for feedback.



It should be noted the process undertaken has not followed the Special Consultative Procedure under the LGA 2002.

This is a prescribed process that involves (among other aspects) a Statement of Proposal to be prepared and issued, a consultation period of no less than 1 month, and an opportunity given for people to present their views verbally to elected members. This process is required in certain situations as when adopting the Long-Term Plan, but not for this type of consultation.

### Significance and Engagement Policy

The Policy states:

*We will take into account the following matters when assessing the degree of significance of proposals and decisions, and the appropriate level of engagement:*

- *there is a legal requirement to engage with the community*
- *the level of financial consequences of the proposal or decision*
- *whether the proposal or decision will affect a large portion of the community*
- *the likely impact on present and future interests of the community*
- *recognising Māori cultural values and their relationship to land and water through whakapapa*
- *whether the proposal affects the level of service of a Significant Activity*
- *whether community interest is high*
- *whether the likely consequences are controversial and will have a likely impact on the reputation of Council*
- *whether community views are already known, including the community's preferences about the form of engagement*
- *the form of engagement used in the past for similar proposals and decisions*

*If a proposal or decision is affected by a number of the above considerations, it is more likely to have a higher degree of significance.*

In this instance, it is considered this issue has a medium level of significance:

- The level of significance relates to the funding proposal not the Three Waters Reforms.
- Financially Council would benefit from Better off Funding, being able to fund initiatives without reliance on rates etc.
- The issue does not affect the level of service of a Significant Activity. The Long-Term Plan and Annual Plan provide for an agreed level of service regardless of any funding that may be provided by the Better off funding package.
- Given the views expressed as part of the consultation process any decision is likely to be controversial. The controversy relates to the linkage of the Three Water reforms to the Better off Funding. It is staff understanding that Council would maintain its opposition to the reforms whether it applies for receives Better off Funding or not. With the upcoming elections, some candidates have publicly expressed views on the whether Council should take the Better off Funding.
- Council has previously submitted on the Water Services Entities Bill through the Parliamentary Select Committee. It is noted that Council did not publicly consult on its

position to oppose the Three Water reforms. Council's submission expresses strong opposition to the four-entity model of reform proposed by the Bill and is in support of the Communities 4 Local Democracy submission on the Bill. Council will have the opportunity to submit on any further Bills in the future.

In line with this, the proposed community engagement/communications approach is inform the community of the decision made by Council, and the outcome of the Better off Funding if Council chooses to apply for it.

### Ngā Pāpāhonga me ngā Wātaka | Communications and timeframes

A communication plan will be developed to inform the community on Council's decision making on the Better off Funding.

### Ngā take ā-lhinga | Consent issues

There are no consent issues.










### Te Tākoha ki ngā Hua mō te Hapori me te here ki te whakakitenga o te Kaunihera | Contribution to Community Outcomes and consistency with Council Vision

The funding if approved, would support the POP project which contributes to all of the community wellbeing's and outcomes.

### Pānga ki te pūtea, me te puna pūtea | Financial Cost and Funding Source

The Better off funding will be provided to Council with ten percent on the agreement being signed and on a claim basis henceforth.

### Ngā Tāpiritanga | Attachments

- A.  Better off funding - website information
- B.  Better Off Consultation - Combined Summary, Submissions and Attachments (*Under Separate Cover*)
- C.  Three-Waters-Reform-Better-Off-Support-Package-Guidance-April-2022
- D.  Better Off Funding FAQs attached from DIA
- E.  Better Off Package - Funding Agreement April 2022 (*Under Separate Cover*)
- F.  Funding Agreement - Clause analysis
- G.  Taituara - 3 waters Legal advice summary - Better Off funding
- H.  Taituara - Better off funding - two questions we've been asked
- I.  DIA clarifications

### Ngā waitohu | Signatories

Author(s)	Erin Bates <b>Strategic Partnerships and Governance Manager</b>	
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Approved by	Manaia Te Wiata <b>Group Manager Business Support</b>	
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