

**Taupo District Council –
Funding of the Interim
Establishment Board
and the Lake Taupo
Development Trust**

APRIL 2002

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Preface

This report presents the results of an inquiry we undertook concerning the Taupo District Council's funding of two entities – The Interim Establishment Board and the Lake Taupo Development Trust. These entities were created in connection with a proposal to establish a university and technology park in Taupo.

Our inquiry was prompted by complaints we received from some local ratepayers who were concerned about the accountability of the two entities to the Council and ratepayers for the Council funding provided to the entities.

We also comment on an issue involving potential conflicts of interest. This concerns the appointment of councillors as trustees of external organisations.

As with previous reports on localised matters, we have attempted to present our findings here in a manner that will provide guidance to local authorities generally.

K B Brady
Deputy Controller and Auditor-General

3 April 2002

Contents

	<i>Page</i>
Part One Background	5
Part Two Summary of Events	8
Part Three Our Findings	33

Figures

1 Cost to the Council of the IEB and the Trust	6
2 Funds Sought by the IEB in 1999-2000	14
3 Administrative Structure Recommended by the IEB	17
4 Administrative Structure Established by the Council	19

PART ONE: BACKGROUND

The Nature of the Inquiry and How We Became Involved

- 1.1 We received a number of complaints throughout 2001 from Taupo ratepayers about the Taupo District Council's funding of two entities – the Interim Establishment Board (the IEB) and the Lake Taupo Development Trust (the Trust). We set out the nature and role of these entities later in this report.
- 1.2 The context of the complaints involved a proposal to establish a university and technology park in Taupo. This proposal was developed by the two entities set out above, in conjunction with the Taupo District Council (the Council). The complainants were concerned about the extent to which the Council intended to contribute funds to such a large project.
- 1.3 The complainants perceived that the Council had failed to ensure that the two entities were properly accountable to the Council and ratepayers for the Council funding they received.
- 1.4 The Audit Office has a role in seeing that proper accountability measures are put in place to ensure that ratepayer funds are used by local authorities in an efficient and effective manner. For this reason, we decided to inquire into the matter under section 18 of the Public Audit Act 2001.
- 1.5 When we visited the Council to discuss the complaints, the newly elected Mayor and Deputy Mayor were supportive of our intention to review the Council's funding of the two entities.

What This Report is About

- 1.6 This report is about accountability. It is about the way in which the Council managed a substantial amount of ratepayers' funds that it made available to the IEB and the Trust.
- 1.7 It is important to note at the outset of this report that we are not questioning the Council's decision to involve itself in economic development initiatives. The Council has told us it aims to act as a catalyst for economic growth within its district and it considered this project was consistent with this aim. We agree that this is a legitimate activity for Council to involve itself in.
- 1.8 This report is not about whether it is feasible or prudent to establish a university college in Taupo. This report is also not a review of the activities of the Trust.

1.9 While the Auditor-General is the statutory auditor of the Council, he is not the auditor of the Trust. The Trust is not a “public entity” under the Public Audit Act 2001 because it is not controlled by other public entities; i.e. the Council. Accordingly, the Auditor-General has no authority to audit the Trust’s activities. However, the Auditor-General is able to look at the activities of the Trust (and any of its subsidiaries) for the purpose of examining the way in which the Council has used its resources.

Our Terms of Reference

1.10 The purpose of our inquiry was to determine whether:

- *Council funding was made available to the two entities in accordance with applicable Council policy and/or Council resolutions;*
- *the Council had sufficient information at the time it made the funding available to make an informed decision on whether funding was appropriate; and*
- *the Council put in place proper accountability measures to ensure that the entities that it funded:*
 - *were properly accountable to the Council and ratepayers for the use of that funding; and*
 - *used the funding for the purposes for which it was provided.*

1.11 During the course of our inquiry, an issue relating to potential conflicts of interest arose. We have therefore also reported here on that issue.

Figure 1
Cost to the Council of the IEB and the Trust¹
 (Figures are rounded to the nearest \$000)

<i>Financial Year</i>	<i>1998-99</i>	<i>1999-2000</i>	<i>2000-01</i>	<i>2001-02</i>	<i>Total</i>
Interim Establishment Board	\$86,000	\$58,000	\$110,000	-	\$254,000
Lake Taupo Development Trust	-	-	\$83,000	\$255,000	\$338,000
<i>Total</i>					\$592,000

¹ Further details about these costs are provided in Part Two of this report. See pages 8-32.

The Funding

1.12 A summary of the cost to the Council of the activities of the IEB and the Trust is shown in Figure 1 on the previous page.

What We Did

1.13 We conducted our inquiry by:

- interviewing the Chief Executive of the Council;
- interviewing representatives of Grey Power in Taupo (who had submitted various concerns to us about the Council's funding of the two entities); and
- reviewing all documentation provided to us by the Council, Grey Power and Lake Taupo Development Company Limited (the Company).

1.14 In keeping with our usual practice, we circulated a draft of this report to affected parties and gave them an opportunity to comment on it.

The Structure of this Report

1.15 In Part Two of this report (pages 8-32), we:

- summarise the events leading up to the creation of the IEB, the Trust and the Company; and
- set out the way in which these entities were funded and the activities that they undertook.

1.16 The IEB was created to recommend to the Council an administrative structure to achieve the establishment of a university and technology park in Taupo, innovative economic and business development and enhanced employment opportunities in the Taupo district. When the Council decided to establish the administrative structure recommended by the IEB, the Council resolved that the university project be the first project for one of the trading trusts in that structure.

1.17 Due to the importance of the university project to the activities of the IEB and the Trust, we have summarised a number of key events concerning the university project in Part Two of the report.

1.18 In Part Three of this report (pages 33-41), we set out our findings on our terms of reference.

PART TWO: SUMMARY OF EVENTS

Background to the Establishment of the IEB

- 2.1 In 1998 Mr Peter Henry, a local businessman and member of the Lake Taupo Marketing Advisory Board (the Marketing Advisory Board),² approached the Council with the idea of creating a university campus in Taupo. Mr Henry had lived in Ireland for 16 years and had returned to visit Ireland in June 1998. While there, he had been impressed with the economic revival of the Mid-West region of Ireland, which had flow-on effects for the economic revival for the rest of Ireland.³
- 2.2 On his return to Taupo Mr Henry spoke to Mr Andrew Montgomerie, (the Council's Economic Development Officer), members of the Marketing Advisory Board and other Council officers. Mr Henry suggested that the Council play a role in negotiating a suitable relationship with the University of Limerick to create a new university and technology park in Taupo, which in turn would have resulting economic benefits for Taupo.
- 2.3 The University of Limerick was seen by Mr Henry as an appropriate model to emulate because of its success in linking education with business and producing students with the specific skills required by multi-nationals, especially in high technology areas. Associated with Limerick University are multi-national companies that encourage students to develop their ideas and later establish their own companies. The high technology companies located near Limerick University are referred to as a "technology park".

Taupo Delegation to Ireland

- 2.4 As a result of Mr Henry's approach, the Council's Corporate Services Committee resolved on 16 November 1998 to send one Council representative (Councillor Keehan) to Ireland to attend a series of exploratory meetings with the University of Limerick. The Council's Chief Executive also agreed to send Mr Montgomerie to Ireland as part of the delegation. The cost of Mr Montgomerie's trip was attributed to the budget of Destination Lake Taupo (a division of Council).

² The Lake Taupo Marketing Advisory Board was established by the Council and is made up of prominent local business owners and tourism operators. It is responsible for advising the Council on the use of the money collected under the Council's Marketing Development Rate, which comprises 50% of the Council's Marketing Budget and amounts to approximately \$500-\$600,000 per annum. The Marketing Advisory Board does not have delegated authority to spend Council funds. Instead, it makes recommendations that, if accepted by the Council's Marketing Manager, are implemented through the Council's Marketing Division.

³ Mr Henry saw that this revival had been driven by a combination of the Shannon Free Airport Development Company (SFADC), the National Technological Park of Ireland (which is owned and run by SFAC) and the National Institute for Higher Education, which became the University of Limerick.

2.5 Councillor Keehan, Mr Montgomerie and Mr Henry⁴ visited Ireland between 30 November and 9 December 1998. The purpose of the trip was to “visit the University of Limerick in a bid to attract them to [invest] in Taupo and [assist] in the creation of the University of Lake Taupo”.⁵

2.6 The delegation returned to Taupo with a letter signed by Professor Stuart Hampshire, a Research Dean at the University of Limerick. The letter was addressed to the Paramount Chief of Ngati Tuwharetoa and Her Worship the Mayor of Taupo District. It stated:

I would like to reflect on these discussions [with the delegation] and to work towards preparing a Memorandum of Understanding to be placed before the Executive Board of the University of Limerick, and for the perusal of the New Zealand authorities involved. This would outline possible linkages including franchising of courses and research centre projects, advice on the setting up and running of a university based science park, preliminary scoping studies, a programme for an early exchange of postgraduate students (for instance, a Maori student interested in ethnomusicology), and possible coordination functions.

2.7 The delegation made a presentation to the Council on 15 December 1998 about the development opportunity that had arisen, involving the establishment of a university. Following the presentation, the Council resolved:

...

2. *That Council acknowledges Mr Peter Henry’s tireless efforts, vision and success in securing the university opportunity for the Lake Taupo District.*
3. *That Council endorses in principle the establishment of a Lake Taupo Development Company, and that the Chief Executive prepare an item for an early special Council meeting to endeavour to resolve the establishment of a Lake Taupo Development Company.*

2.8 In our view, it was not clear at this time what sort of opportunity had been “secured” for Taupo. The Council’s Chief Executive reported to a Special Council meeting that the following comments were made during the presentation:

- “Taupo delegation to Ireland [had] stolen a march on other regions in securing [an] opportunity for the district”; and

⁴ The cost of Mr Henry’s trip was met by the Marketing Advisory Board, who resolved to do so on 16 December 1998, after the delegation had visited Limerick.

⁵ As described by Mr Henry at a meeting of the Marketing Advisory Board on 16 December 1998.

- that “Cairns had been dealing with Limerick just before Taupo arrived and had returned for the moment empty-handed”.

2.9 We think that these comments may have overstated what the University of Limerick was offering the Taupo district.

Letter from the Minister of Education

2.10 During the same period, the Hon Wyatt Creech, the then Minister of Education, was told about the proposed university by his colleague, the Hon Georgina te Heuheu. Mr Creech wrote to the Council on 10 December 1998 to outline the hurdles involved in setting up a new university in New Zealand. He stated:

... the form of such a venture is a key issue. In this regard I should point out that I would take some convincing of the need to create another state university in New Zealand, although there may well be an opportunity for a privately established university to be set up as a private training provider. There might also be opportunities for the venture to be established as a college of an existing university. Before you could use the term “university” a number of conditions including quality approvals would also have to be satisfied. Clearly there are number of such issues requiring careful work before you can develop the necessary business plan.

Should you wish to pursue the proposal further after your visit to the University of Limerick it might be useful for you to obtain initial advice from the Ministry of Education regarding issues and pathways.

2.11 The Council has confirmed that it did not seek further advice from the Ministry of Education on the use of the term “university”.⁶ The Council did seek to meet with Mr Creech to discuss the university project, however, a meeting did not occur.

Creation of the Interim Establishment Board

2.12 The Council held a special meeting on 5 February 1999 to discuss the “establishment of commercial arm intent on creating economic development opportunities” based on the Irish example. In his report to that meeting, the Council’s Chief Executive noted:

⁶ The Council considered that this fell within the brief of the IEB, details of which are contained in the next section of this report. Lake Taupo Development Company Limited has told us that the IEB checked this point with the Ministry of Education and quickly moved to talking of a “University College” of an existing New Zealand University rather than a new independent university.

The opportunity created by the University/Technology Park project is, however, at a level beyond that previously undertaken. For the project to become a reality, consideration should be given to the Council's role changing from economic development facilitation to become, as is the case with the Shannon Development Company [an Irish company involved in the growth of economic opportunities Limerick, Ireland], a creator of economic development opportunities.

...

For the University/Technological Park to succeed, Council must build on its Marketing success and forge ahead with the establishment of a commercial arm intent on creating economic development opportunities in a similar way to [the] Shannon Free Airport Development Company.

Council faces some urgency due to the timeframe involved. In my view, the best next step is to create an Establishment Board to recommend to Council the way forward.

2.13 Following discussion on the Chief Executive's report, the Council resolved to create the IEB. The Council's resolution is set out below:

- 1 *That an Interim Establishment Board be established.*
- 2 *That membership of the Establishment Board be as follows:*

Chairman and Convenor of the Board	<i>Mr Peter Henry</i>
Council Representatives	<i>Cr Rex E Hawkins Mr Phillip Green</i>
Tuwharetoa Representative	<i>Tumu Te Heuheu [Paramount Chief]</i>
Maori Representative	<i>Mr Jim Maniapoto</i>
Government Representative	<i>Hon Georgina Te Heuheu</i>
Opposition Representative	<i>Mr Mark Burton MP for Taupo</i>
Lake Taupo Marketing Advisory Board	<i>Mr David Steele [Chairman]</i>

- 3 *That the brief of the Interim Establishment Board would be to:*
 - *Recommend to Council a proposed administrative structure [Trust/Company/Partnership/Business Unit] to best represent all interests to achieve:*
 - *The University and Technological Park*
 - *Innovative economic and business development*
 - *Enhanced employment opportunities in the Lake Taupo District*

- *Feasibility and proposed funding.*
- 4 *That the initial costs involved for undertaking the brief in Part [3] above be sourced from existing Council budgets.*
 - 5 *That any proposed funding recommendations by the Interim Establishment Board be considered by Council in the 1999/2000 Annual Plan process.*
 - 6 *That members of the Interim Establishment Board be paid [if claimed] the daily allowance of \$120 [maximum permitted to councillors] together with reimbursement of expenses incurred whilst undertaking these duties.*

2.14 The Company has told us that the IEB and the Trust were not primarily created to explore and manage the university and technology park project. The Company says that while the university and science park project attained the highest profile, the work of the IEB and Trust was based on exploring a suitable structure for economic growth for the Taupo region, and this included the possibility of a university and science park.

2.15 However, our understanding is that the university and technology park project were central elements of the Council’s plan to become a creator of economic development opportunities. We consider that the Council minutes support this view.

The Status of the IEB

2.16 The Council indicated to ratepayers in late 1999 that it did not consider the IEB to be a “committee” of the Council.⁷ Since that time, the Council has sought legal advice and now confirms that the IEB was a special committee of Council.

2.17 The effect of the IEB being a special committee is that it was subject to the public meeting and official information requirements set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA). However, contrary to those statutory requirements, the meetings of the IEB were not open to members of the public and the minutes of those meetings were not made publicly available or provided to Council.⁸

⁷ In a letter to Grey Power dated 22 November 1999, the Chief Executive of the Council stated “...I advise that the Interim Establishment Board is not a subcommittee or a special committee of Council.”

⁸ The former Chairperson of the IEB has noted that the Council did not request copies of IEB minutes.

2.18 The Council has asserted to us that the meetings of the IEB fell within section 45(2) of LGOIMA, which provides an exemption from the requirements of LGOIMA for informal meetings. Section 45(2) provides:

*For the avoidance of doubt, it is hereby declared that any meeting of a local authority or of any committee or subcommittee of a local authority, **at which no resolutions or decisions are made** is not a meeting for the purposes of this Part of the Act. [our emphasis]*

2.19 The Council considers that the IEB did not pass any resolutions or make any decisions at its meetings. We do not agree. We note by way of example that the IEB made a decision to engage solicitors to help it determine the administrative structure that it would recommend to Council. The Council met the cost of this legal advice.

2.20 The IEB also decided on what administrative structure it would recommend the Council establish. Accordingly, the meetings of the IEB did not fall within the section 45(2) exemption and the public meeting and official information requirements in LGOIMA should have applied.

2.21 We have advised local authorities in the past that section 45(2) should not be misused to avoid the public meeting and official information requirements. In our view, the exemption only relates to informal meetings, social occasions and Council briefing sessions (which are often referred to as Council workshops).

Funding of the IEB

2.22 All of the costs of the IEB were met by the Council. The Council has calculated the total cost of the IEB's activities, over the three financial years it was in existence, to be \$254,357.

The 1998-99 Financial Year

2.23 The Council agreed to meet all initial IEB costs from existing Council budgets. The IEB was established in February 1999 and it incurred costs of \$86,319 between its establishment and 30 June 1999. These costs were met from the Council's Marketing Budget.

The 1999-2000 Financial Year

2.24 In the 1999-2000 financial year, the IEB sought \$117,000 funding from the Council's Taupo/Kaingaroa Committee. On 6 April 1999, Mr Henry presented a funding proposal to that Committee by way of a slide presentation. He broke the total funds being sought into categories, as set out in Figure 2 on the following page.

Figure 2
Funds Sought by the IEB in 1999-2000

Estimated LTD company Establishment Board Investment for next financial year.		PC SUMs
½ salary and expenses Economic Development Manager		\$30,000
Board members' costs & expenses – including flights		\$29,000
Corporate hosting – including delegations from Ireland		
Corporate presentations for venture finance – Internationally based		\$20,000
Design competition		\$10,000
Professional advice		
Legal drafting, Trust deed, Company constitution, tax effectiveness etc		\$10,000
Professional Consultation		
Feasibility studies, student demand assessments, business plan financials		\$18,000
	Investment	\$117,000
Estimated Benefit to District from an institution of	1,000 students	\$26 million
	2,000 students	\$52 million
	5,000 students	\$130 million
	10,000 students	\$260 million

2.25 Following this presentation, the Committee recommended:

That the net cost of services budget for the Taupo/Kaingaroa rating area for 1999/2000 be increased by \$117,000 to be used by the Lake Taupo Development Board in further investigating the university and technological park, the innovative economic and business development and enhanced employment opportunities in the Lake Taupo District.⁹

2.26 The Committee did not place any other conditions on the IEB's use of the funds. However, all invoices for IEB expenditure were put through the Council's financial system for authorisation and payment. The Council was therefore aware of the amounts spent by the IEB.

2.27 The actual costs incurred by the IEB in the 1999-2000 financial year amounted to \$57,572. Of this amount, \$32,500 related to salary costs

⁹ We note that the Committee's recommendation incorrectly refers to the IEB as the "Lake Taupo Development Board".

of Mr Montgomerie, who was authorised by the Council to work on a part-time basis with the IEB, while still a Council employee.

The 2000-01 Financial Year

- 2.28 At a Special Corporate Services meeting on 28 February 2001, approval was given for the unspent budget as at 30 June 2000 to be made available, if required, in the 2000-01 year to complete the tasks of the IEB. The IEB incurred costs of \$110,466 in the 2000-01 financial year.
- 2.29 Mr Montgomerie continued to work part-time with the IEB in the 2000-01 year, and \$33,000 of the costs incurred by the IEB in that financial year related to his salary costs.

The Work of the IEB

- 2.30 The IEB held regular meetings. At its first meeting on 24 February 1999, it discussed the university project. The minutes of that meeting state:

The negotiations with the University of Limerick will continue in tandem with the creation of the [Lake Taupo Development Company]. There are many things that need to be researched, including feasibility and funding.

...

Mr Henry explained that we are not looking to have a branch of the University of Limerick located here, but that the ideal is for a University of Lake Taupo in association with the University of Limerick.

- 2.31 The IEB, and in particular Mr Henry and Mr Montgomerie, also conducted approximately 75 public seminars in Taupo during 1999. The purpose of the seminars was to promote the idea of a University of Lake Taupo to the Taupo community. Mr Henry and Mr Montgomerie expressed their views that it may be possible to replicate the success of the Irish model in Taupo.
- 2.32 In May 1999, three Irish academics visited Taupo to consider the academic feasibility of establishing a University of Limerick-style university in Taupo. The cost of the trip, estimated by the Council to be \$18,000-\$20,000, was met by the Council through the IEB.
- 2.33 There appears to have been some confusion as to whether the three academics were an “official” delegation from the University of Limerick or not. The local newspaper, the *Taupo Times*, reported on

27 May 1999 in an article entitled “Great chance for Taupo say Limerick delegates” that:

Three representatives from Limerick University have been in Taupo this week to look at the proposal to set up a university in the district.

2.34 However, when a query was directed to the University of Limerick by Grey Power Taupo, the President of the University (Dr Downer) clarified that the academics were not an official delegation from the University of Limerick. He confirmed they had visited Taupo in their capacity as individual consultants.

2.35 The former Chairperson of the IEB has told us that the IEB did not pay the members of the delegation. His understanding is that the University of Limerick continued to pay at least two members of the delegation while they were in Taupo. The third member of the delegation, Professor Mulcahy, was retired from the University.

2.36 When the Mayor of Taupo was informed that Grey Power had approached the University of Limerick, she wrote to the President of the University of Limerick to reaffirm the Council’s commitment to the university project, stating:

...

During their visit, and subsequently, it has always been made perfectly clear that they were here at our request to assist us in our feasibility studies in the concept of a University of Taupo.

There has never been any suggestion at this end that the University of Limerick intends to set up a campus in Taupo but we are keen to work with you in order to progress our own concept.

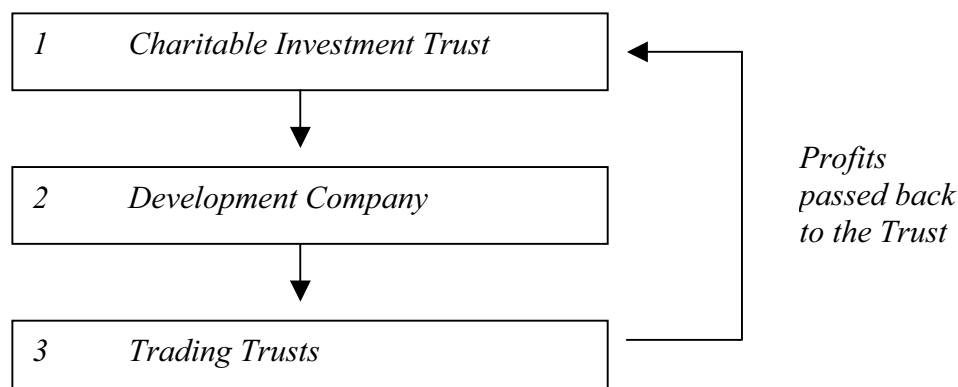
First Report of the IEB

2.37 In October 1999 the IEB reported to the Council on the first part of its brief, which was to recommend to Council a proposed administrative structure to achieve:

- the University and Technological Park;
- innovative economic and business development; and
- enhanced employment opportunities in the Lake Taupo District.

2.38 The IEB recommended the Council establish a three-tiered administrative structure involving an investment trust (with charitable status), an incorporated company, and a series of trading trusts, as set out in Figure 3 below.

Figure 3
Administrative Structure Recommended by the IEB



2.39 The IEB’s report to Council contained a section entitled “Accountability/Checks and Balances” which set out the “boundaries of accountability” of each entity in its recommended structure. The report stated:

*Level 1 The **Investment Trust’s** Trust Deed sets the boundaries of its accountability. It covers the Trust’s purposes, objectives, trustee powers, annual reports, audit and meetings.*

The purpose of the trust is to hold and invest assets for community benefit, and make charitable distributions. The trust objectives are to generate income from investments to be applied for community advancement, and set strategic plans from time to time. Its powers are as investor only – generally (with regard to the prudent trustee test) and specifically in the Development Company (in the form of shares and loans). It has the power to appoint and remove directors of the Development Company, and receive planning & reporting documents from the same. There is no involvement in the commercial activities of the Development Company.

*Level 2 The **Development Company’s** constitution sets the boundaries of its accountability. Its Board is accountable to the Investment Trust for the performance of the company. It is accountable for corporate planning and reporting documents including a statement of corporate intent, group annual reports (to shareholders) and audited financial statements. Its operations are to have regard to the strategic directions for Taupo District as laid down in various strategy documents.*

Level 3 Each Trading Trust entity's constitution sets the boundaries of its accountability including corporate planning and reporting documents. Similarly each is required to have regard to the strategic directions for Taupo District as laid down in various strategy documents.

2.40 All of the entities in the administrative structure recommended by the IEB were independent of the Council. The accountability arrangements outlined by the IEB did not provide for any of the entities to be accountable to the Council.

2.41 The Council considered the IEB's report at a workshop session on 12 October 1999 and again at its meeting on 26 October 1999. At that meeting, the Council resolved:

- 1 *That the Interim Establishment Board Report be received.*
- 2 *That the structure as recommended in the Interim Establishment Board's Stage 1 report be established and appointments be made to its relevant boards.*
- 3 *That the University and Technological park concept become the first project for one such trading trust entity.*
- 4 *That the names of the charitable investment trust, development company and university trading trust be called:*
 - *Lake Taupo Development Trust*
 - *Lake Taupo Development Company*
 - *University of Lake Taupo Trading Trust*
- 5 *That the Interim Establishment Board completes the second stage of their brief in consultation with the board members of the above trusts and company.*
- 6 *That Taupo District Council endorses the actions of the Interim Establishment Board and acknowledges with thanks its member's times and commitment.*
- 7 *That the Interim Establishment Board and the Taupo District Council establish a process to ensure that the public are made aware of matters related to the Lake Taupo Development Trust, the Lake Taupo Development Company, or the University of Lake Taupo Trading Trust, that are not commercially sensitive.*

2.42 The minutes of the meeting record that some councillors expressed concern with:

- whether there should be formal consultation with the community before the structure was established; and

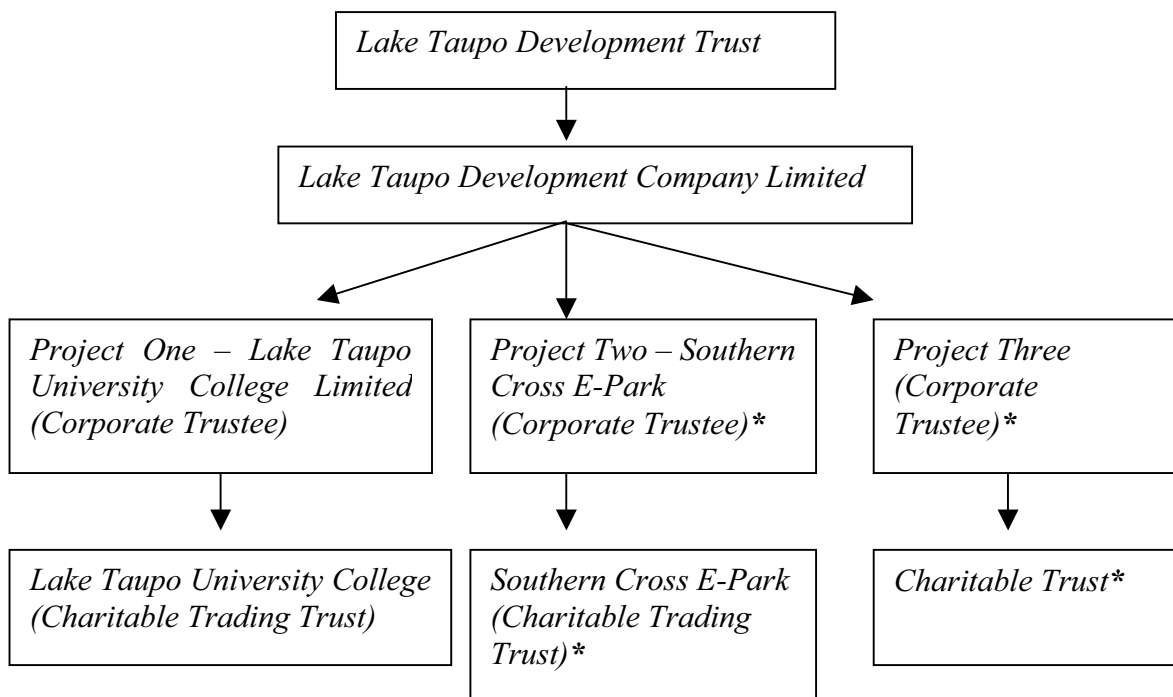
- the funding for the structure.

2.43 The Council attempted to address these concerns by inserting item 7 into the resolution set out above.

Establishment of the Recommended Structure

2.44 Following the Council’s resolution, the IEB established the entities in that structure, as illustrated in Figure 4 below.

*Figure 4
Administrative Structure Established by the Council*



* These entities form part of the current structure, but were not established at the time.

2.45 The Trust Deed for the Lake Taupo Development Trust was signed on 18 August 2000. It provides for seven trustees, three appointed by the Council, one of whom must be the Mayor. The effect of this is that the Council appointees do not have a majority vote on the Trust. To further emphasise the independence of the Trust, clause 9.12 of the Trust Deed states:

The Trustees wish to make it clear that the Trust at all times remains separate from the control (as that term is use in Part XXXIVA of the Local Government Act 1974) of the Taupo District Council and of Ngati Tuwharetoa.

- 2.46 On 28 March 2000 the Council appointed the Mayor as Joint Chairperson of the Trust and the Chairs of the Taupo/Kaingaroa Committee and the Planning and Regulatory Committee as the other Council appointees on the Trust. These appointments were made up to 31 October 2001.¹⁰ The other trustees of the Trust at the time were Ariki Tumu Te Heu Heu and Hupa James Maniapoto (representing Ngati Tuwharetoa), Dennis Allan (appointed by the local Member of Parliament) and the Chairperson of the Company.
- 2.47 Lake Taupo Development Company Limited (the Company) had been incorporated as a company with the Companies Office on 11 February 1999 in order to secure the name.
- 2.48 Lake Taupo University College Limited was incorporated on 14 September 2000 as a wholly owned subsidiary of the Company. Its purpose was to act as a corporate trustee for the Lake Taupo University College Charitable Trust.

Two Memorandums of Understanding

- 2.49 On 29 February 2000 the Company signed a Memorandum of Understanding with the University of Limerick (the First MOU).
- 2.50 This first MOU provided for the University of Limerick, in conjunction with two other Irish entities, the Shannon Free Airport Development Company and the National Technological Park, to formulate a consultancy proposal for the Company. The consultancy proposal was to set out the basis upon which the University of Limerick, in conjunction with the Shannon Free Airport Development Company and the National Technological Park, might contribute towards:
- *The formulation of feasibility studies for the setting up of a university and a university-based science/technology park in Taupo, New Zealand, along the lines of the University of Limerick and related National Technological Park combination in Ireland.*
 - *The development of a shared vision for the establishment of a university and a university-based science/technology park at Taupo, New Zealand.*
 - *The development of a rationale for the establishment of a university and a university-based science/technology park at Taupo in the context of the New Zealand educational, economic and local/national political environments, including specifically the needs of the Maori community.*

¹⁰ These trustees were able to be appointed before the signing of the Trust Deed, as the Lake Taupo Development Trust had existed since 18 December 1998. The new Trust Deed signed on 18 December 2000 superseded the existing trust deed.

* These entities form part of the current structure, but were not established at the time.

- *The development of a complementary rationale for the involvement of the University of Limerick and the National Technological Park in the establishment of the university-based science/technology park at Taupo, New Zealand.*

2.51 The signing of the First MOU was seen by Council as significant step forward for the university project. In a feature in the *Taupo Times* on 14 March 2000, the Marketing Division of the Council described the signing of the MOU as follows:

The University of Limerick, a key player in Ireland's astounding success in linking education and business, has given its official stamp of approval to establish a university and technology park in Taupo.

2.52 In our view, the Council may have overstated the effect of the First MOU by describing it as an “official stamp of approval”. We consider the First MOU sets out an agreement to put together a consultancy arrangement. This type of arrangement was consistent with the comments of the President of the University of Limerick in a letter he sent several months before signing the First MOU, on 4 August 1999, to the New Zealand Vice-Chancellors Committee. In that letter he noted that the University was not considering establishing a satellite campus in Taupo, but was willing to assist in the development of the initiative, provided there was regional and national support for the project.

2.53 On 8 September 2000, a second Memorandum of Understanding was signed by the Company, the University of Limerick and Victoria University of Wellington (the Second MOU). The introduction to the Second MOU stated:

This agreement sets out the intention of Lake Taupo Development Company, with Victoria University of Wellington (VUW) and University of Limerick (UL) to establish an independent university college called Lake Taupo University College (LTUC). LTUC while being financially and constitutionally independent, will be a constituent part of VUW. UL will work with the Lake Taupo Development Company and VUW to develop a rationale for the establishment of a university and a university based science park at Lake Taupo.

2.54 The Second MOU was signed on behalf of the University of Limerick by Professor Eamonn McQuade, who arrived in Taupo in December 2000 to spend a year working on the university project.¹¹ Professor

¹¹ Professor McQuade's work in Taupo is explained in more detail later in this report.

McQuade was authorised to sign the Second MOU by the President of the University of Limerick on 30 August 2000.¹²

Second Report of the IEB

2.55 The IEB presented its findings to the Council on the second stage of its brief on 31 October 2000. That stage involved consideration of the feasibility and proposed funding for the university project. The IEB's findings were presented by way of a slide presentation. One slide stated:

Feasibility Established

Study available to the risk takers.

Feasibility has been tested, peer reviewed, and refined;

Financially – Price Waterhouse University model

Academically – Victoria and Limerick working groups

Commercially – Multinationals with a NZ presence

The partners agree that it is feasible – financially, academically and commercially to deliver University degrees in Lake Taupo and are committed to doing this, beginning 2002.

Business plan is being co-ordinated through KPMG.

- Commercially sensitive containing
- Victoria financials, Limerick financials, Bond financials

2.56 The IEB did not present a written feasibility study to the Council at this time.

2.57 Following the presentation, the Council resolved:

That the Interim Establishment Board report be received and the following actions taken:

- 1 That the work of the Interim Establishment Board having been completed that the Board now be disestablished.*
- 2 The funds presently in the account of the Interim Establishment Board in the sum of \$29,127 be*

¹² There appears to be some confusion as to Professor McQuade's authority to sign the Second MOU. We are satisfied that he did have authority to sign. A third MOU, developed by Victoria University of Wellington, was not signed by the University of Limerick and it is this third MOU that may have caused the confusion.

disbursed by way of grant to the Lake Taupo Development Trust to further benefit the university/science project.

3 *That public meetings be arranged as appropriate.*

4 *That the Interim Establishment Board be sincerely thanked for their efforts relative to the university/science park project.*

2.58 With regard to part 2 of the resolution set out above, the Council has confirmed that the \$29,127 was not transferred to the Trust, as outstanding invoices of the IEB, presented after the Council's resolution, used up the surplus funds.

2.59 We consider there may have been some overstatement in the findings presented by the IEB. In relation to "academic feasibility", the IEB slide referred to "Victoria and Limerick working groups". However, in a letter dated 3 July 2001 to Grey Power Taupo, the Vice Chancellor of Victoria University, Professor Stuart McCutcheon, stated:

The University has not formally taken part in anything that could be described as an "academic feasibility study". However, it has been involved in various discussions with the parties on the ways in which an educational activity might be established as a branch of the University, and the kinds of academic quality management systems which would apply.

2.60 Similarly, Professor Noel Whelan, Vice President and Dean of Limerick University wrote in an e-mail to Grey Power dated 1 May 2001:

I can also say that (1) the University of Limerick did not carry out, officially, a feasibility study into the project; (2) the University has had no official role in considering the feasibility of setting up a University College and Technological Park in Taupo.

2.61 The former Chairperson of the IEB has asserted that neither institution would have signed the Second MOU if they were unhappy with the project's feasibility.¹³ However, we think it is difficult to reconcile the IEB's assertion to Council that the "partners agree that it is feasible – financially, academically and commercially, to deliver University degrees in Lake Taupo ... beginning 2002" with the comments of the two universities set out above.

2.62 The Council has told us that it considered the signing of the Second MOU by the two universities to be tacit approval of the feasibility of the project. Again, we consider that the comments of the two

¹³ He also noted that the two comments set out in paragraphs 2.59 and 2.60 were made after adverse publicity concerning the university project had caused both universities to "take a step backwards".

universities set out above show that neither university had formed its own view as to whether the project was feasible.

- 2.63 In our view, the signing of the Second MOU cannot be considered evidence of the project's feasibility. The Second MOU set out the "intentions" of the parties to establish an independent university college in Taupo. It did not create any binding legal obligations on the parties. The preamble acknowledges this when it anticipates that the parties will enter into a formal joint venture agreement in the future.

Professor McQuade's work on the University Project

- 2.64 In December 2000, Professor Eamonn McQuade arrived in New Zealand to spend a year assisting with the university project. Professor McQuade was on sabbatical from his academic duties at the University of Limerick during his time in Taupo, and was not representing the University.

- 2.65 Professor McQuade was a member of steering group set up by the University of Limerick for the "Lake Taupo project". In a letter dated 3 February 2000 to Mr Henry, the President of the University of Limerick confirmed Professor McQuade's membership of the steering group and noted:

Please be assured that the members of the Steering Committee and I look forward to working with the Establishment Board of the Lake Taupo Development Company on this worthy project and recognise many mutual benefits emanating from our collaboration. I assure you of our institutional commitment to facilitate the realisation of your exciting vision to establish a University and Science Park at Taupo.

- 2.66 Professor McQuade continued to be a member of the steering group while in Taupo. However, the University of Limerick confirmed to Grey Power Taupo in a letter dated 3 April 2001 from Professor Noel Whelan, Vice President and Dean and Chair of the Steering Group, that Professor McQuade "had decided [during 2001] ... to devote his experience and energy to the Lake Taupo University Project **on a personal basis.**"

- 2.67 In order to clarify its position in relation to the university project, Professor Whelan also noted to Grey Power that:

The University is willing to share with Lake Taupo University Project interests (in a spirit of goodwill) any expertise or experience which it may have ... However, it can only do this on the basis of a paid consultancy input and subject to the availability of the relevant expertise...

2.68 The Company has confirmed to us that, consistent with Professor Whelan’s communication to Grey Power, it has always intended to have a paid relationship with any university partner, whether in New Zealand or overseas. The company considered this vital to retain financial and constitutional independence and therefore bring the financial and employment benefits into the Taupo district.

Funding of the Lake Taupo Development Trust

The 2000-01 Financial Year

2.69 In the 2000-01 financial year, the Council was the sole source of funding for the Trust. It provided \$83,240, made up of:

- a \$40,000 grant from the Council, as recommended by the Marketing Advisory Board;
- salary costs associated with the secondment of Mr Montgomerie and the provision of part-time secretarial services, estimated to be \$37,000;¹⁴ and
- other marketing related administrative costs of \$6,240.

2.70 In addition, the Council granted the Trust the “leftover” IEB funds of \$29,127 to use in the 2000-01 financial year. However, as noted earlier in this report, these funds were not transferred to the Trust.

2.71 The Trust’s audited financial statements for the 2000-01 financial year were provided to the Council in October 2001.¹⁵ The financial statements record income of \$40,030 (made up of the \$40,000 Council grant and \$30 donations).

The 2001-02 Financial Year

2.72 In December 2000, the Council realised that it had not received a request from the Trust for funding for the 2001-02 financial year. This led to the Council’s Corporate Services Committee resolving:

That the Chief Executive request that the Lake Taupo Development Trust urgently make a written request to Council as part of the annual plan process outlining its requirements, if any, for the 2001/2002 financial year.

¹⁴ Mr Montgomerie was seconded to the Trust on 11 December 2000. The Council also provided part time secretarial services to the Trust.

¹⁵ The audited financial statements were publicly available under clause 18.7(c) of the Trust Deed.

2.73 In response to this request, the Trust made a written submission to the Council in January 2001 seeking \$291,000 for its operations for the 2001-02 financial year. The Trust's submission stated:

The Lake Taupo Development Trust is the body created by Council to ensure that the benefits of some of the most significant and innovative economic development initiatives ever undertaken remain within the district.

Council funds will not fund any of these projects themselves, including the university, but will go towards funding the operations of the body responsible for gathering together the expertise, financial investment and commitment to the Lake Taupo district necessary for these projects to succeed.

2.74 The Trust also made a slide presentation to both the Taupo/Kaingaroa Committee and the Turangi/Tongariro Community Board in January 2001 regarding its submission.

2.75 On 9 March 2001, the Council met with representatives of the Trust and the Company for an informal briefing. The meeting was arranged by the Council's Chief Executive, who had circulated a report to councillors about the Trust's request for \$291,000. In his report, the Chief Executive made the following key points:

- The funding sought by the Trust might not meet the criteria set out in the Council's policy on community grants to voluntary organisations "to the letter of the law", although it may meet the intent of the policy.
- The Council's policy guidelines for community grants reflect grants in the order of "small tens of thousands of dollars", whereas the Trust was seeking \$291,000, which equated to a 1.5% movement in rates across the district.
- Councillors should consider whether the Trust's proposal required more evaluation criteria and the imposition of conditions, over and above those provided for in the existing policy.

2.76 The Chief Executive's report also stated:

Whilst benefits to the district of a Lake Taupo University College are relatively clear, what is not so clear is the projects feasibility – is it likely to actually get off the ground and provide community benefit?

A pragmatic approach is that:

i] by making the grant requested by the [Trust] Council is essentially providing seeding capital for the Lake Taupo

University College since that project appears to be the primary focus of [the Trust] at the moment

ii] before providing further significant funding to that project, it is [i]ncumbent on Council to gain an understanding of the project's feasibility. Importantly, a feasibility study [funded by Council previously] has already been prepared. However, Council has not been privy to its contents.

The need for the project to protect items of commercial sensitivity is acknowledged. It is further acknowledged that the signing of a Memorandum of Understanding between Limerick and Victoria Universities and Lake Taupo Development Company to 'establish an independent University College' is tacit approval/acceptance for the feasibility of the project. However, this does seem a rather weak logic on which to forward another \$291,000 to this project. The feasibility study may raise issues that are important to an entity such as Council providing seed capital to this project which issues we would be totally unaware of until we have had an opportunity to review the feasibility study, eg break even points for the project, relevant assumptions, academic feasibility, etc.

2.77 The Chief Executive then set out a number of questions that he suggested the Council should put to the Trust. He also suggested a number of items the Trust should be required to report back to the Council on, if funding was provided.

2.78 During the consideration of the Trust's application, Councillor McElwee asked to see the feasibility study that had been carried out by the IEB. The Trust declined to provide the study on the basis that it contained commercially sensitive information. The Council appears to have accepted this reason.

2.79 The Council granted the Trust's funding request in March 2001 without seeing the feasibility study or questioning the Trust along the lines suggested by the Chief Executive. The minutes of the Taupo/Kaingaroa Committee meeting held on 22 March 2001 record:

It was observed that the Trust had previously sought a funding grant of \$291,000 however, the extent of that grant had subsequently been the subject of lengthy debate and investigation.

The question then arose as to whether a grant should be approved and if so, to what extent and under what conditions [if any].

Discussion ensued during which it was the consensus that a grant should be made and in the sum of \$211,000. It was

suggested that the grant was to fund a top quality project and one of the most important projects facing Council.

It was noted at that point that the Turangi/Tongariro Community Board had recently voted to approve a \$16,880 as a grant to the Trust which was welcomed by the Committee.

RESOLVED

That the Taupo/Kaingaroa Committee approves a grant of \$211,000 to the Lake Taupo Development Trust subject to the Trust reporting to Council twice per year [September 2001 and March 2002 Council meetings] on progress reached in achieving the operational goals and outcomes for which the Council's funds are advanced.

2.80 In total, the Council provided the Trust with funding amounting to \$255,000 in the 2001-02 financial year.¹⁶ That amount was made up of:

- a \$211,000 grant, approved by the Taupo/Kaingaroa Committee on 22 March 2001, ratified by the Council on 4 April 2001;
- a \$16,880 grant, approved by the Turangi/Tongariro Community Board on 20 March 2001, ratified by the Council on 27 March 2001; and
- a \$27,000 grant, from the Council's Business Attraction Fund, as recommended by the Marketing Advisory Board.

The End of Victoria University's Involvement

2.81 In late-July 2001, the Company severed its relationship with Victoria University. The Company was quoted as stating that Victoria University had an "unbending attitude over wanting absolute control [of] the project".¹⁷

2.82 The Pro Vice-Chancellor of Victoria University, Neil Quigley, was quoted as saying that Victoria was "unable to participate in the development of university college that is not controlled by Victoria University. These same constraints apply to all publicly-funded universities."¹⁸

¹⁶ \$227,880 of this amount (the total of the two grants of \$211,000 and \$16,880) were paid to the Trust in two instalments of \$113,940 each, on 6 July 2001 and 3 January 2002.

¹⁷ *The Dominion*, 2 August 2001.

¹⁸ *The Evening Post*, 2 August 2001.

2.83 The Company put out a news release on 2 August 2001 stating:

... the company has begun initial discussions with a possible university partner who would be more compatible with the needs of the community.

The Trust's Half-Yearly Report to the Council

2.84 The Trust provided a half-yearly report on its activities to the Council on 25 September 2001.¹⁹ The Council's Chief Executive reviewed the Trust's report prior to the Council's meeting and in his report to Council he noted:

...

OVERVIEW

i] Benchmarking Performance

4 On the face of it, the Trust has made good progress on several fronts, especially given the time and resources required to take the Trust through its 'start up' phase. However, the attached report [from the Trust] does not disclose specific operational goals/outcomes sought by the Trust for the same reporting period against which the actual achievements documented in the attached report can be measured.

The report also fails to provide any measure of efficiency or effectiveness of the Trust's operations.

Without these benchmarks for comparison, it is difficult to establish from the attached report whether or not the Trust's performance has been outstanding or mediocre.

...

CONCLUSION

The objectives of the Trust are laudable. On the face of it the Trust has already taken action regarding a number of projects that, if successfully implemented, will both generate economic growth within the district, as well as providing supporting infrastructure for existing businesses.

...

¹⁹ This report was provided in accordance with the twice-yearly reporting condition imposed on the Trust by the Taupo/Kaingaroa Committee on 22 March 2000 when it granted the Trust \$211,000 .

22 *The Trust deserves Council's support since activities undertaken by the Trust are consistent with the general direction of the Council's own Strategic Plan. This has been the supporting logic to Council providing financial assistance/seed funding to the Trust and the Interim Establishment Board.*

23 *A condition of Council support, however, must be the appropriate accountability and transparency in reporting by both the Trust and LTDC. ...*

2.85 After considering the Trust's report and the Chief Executive's report, the Council resolved at its meeting on 25 September 2001:

1 *That the Lake Taupo Development Trust is thanked for their report to Council and commended for the progress the Trust has already made regarding economic development initiatives within the district.*

2 *That the Lake Taupo Development Trust be asked to provide the following information to Council in its March 2002 report:*

i] A report on progress reached in achieving the operational goals and outcomes for which the Council's funds are advanced by:

Comparing the Trust's achievements for the reporting period against operational goals and outcomes established through the Trust's Annual Business Plan Reporting to Council any relevant measures of efficiency and effectiveness for the Trust's operations

ii] An up to date and accurate assessment of whether or not major projects such as the University College and E-park are on track in terms of projected start up dates

iii] An indication of the time periods being covered by the report

iv] Information on how Council's grant funds have actually been applied

v] Information on steps taken to secure other sources of funding to cover future annual operational expenditure of the Trust for the period when distributions from Lake Taupo Development Company will be inadequate to cover the Trust's operating expenses.

3 *That Council take up the opportunity provided by the Lake Taupo Development Trust to have input into preparation of the Trust's 2001/2002 Annual Business Plan.*

- 2.86 Mr Dennis Allen, the Acting Managing Director of the Company and a trustee of the Trust was reported in the local media to have responded to the Council’s resolution immediately, describing it as “unduly demanding and bureaucratic”.²⁰ We note that Mr Allen wrote to the Council the following day confirming that the view he had expressed was his personal view.
- 2.87 Councillor Rex Hawkins and Mayor Williamson (both trustees of the Trust) were also reported as considering the Council’s resolution to be unfair, though neither voted against the resolution at the Council’s meeting.

The Trust’s Plans

- 2.88 The Trust published its Long Term Strategic Plan and Annual Business Plan in October 2001, and invited public comment on both Plans.
- 2.89 The Trust’s Annual Business Plan estimates that the Trust will receive \$650,000 from grants and donations in the 2001-02 financial year, \$780,000 in the 2002-03 financial year – increasing in every subsequent year. The Plan does not provide an analysis of where these grants and donations will come from, however, the Company has told us that the Trust has consistently attempted to generate funds independently of the Council.
- 2.90 The Council made a submission on the Trust’s Plans.

The Future of the University Project

- 2.91 At the Company’s meeting on 10 September 2001, Professor McQuade noted that all references in future would be made to the Lake Taupo Institute (rather than the Lake Taupo University College), as the word “university” was protected and could not be used until the Company was affiliated [with another New Zealand university].
- 2.92 The Trust’s September 2001 report to the Council noted that, following the termination of its agreement with Victoria, the Company was exploring a number of promising alternatives with other New Zealand university partners. The Company was also negotiating with landowners for a number of sites in the Taupo area. With regard to the commencement of University Foundation courses, the Trust noted that the summer programme, run in cooperation with various secondary schools, was on track to commence in 2002.

²⁰ This comment appeared in the *Taupo Times* on 28 September 2001.

- 2.93 The Council's Chief Executive pointed out to Council that Professor McQuade said at the Trust's First AGM on 11 September 2001 that the University College may not meet the 2002 timetable.²¹
- 2.94 On 21 February 2002, the *Taupo Times* reported that the Mayor and the Chief Executive of the Company had said the plans for a university in Taupo had been put 'to the side'. The Chief Executive of the Company confirmed that the university's future should be clarified by the end of March. He noted that the Company was in serious discussions with another academic partner and confirmed that the Company had nine projects under investigation, and the university was just one of them.
- 2.95 The Company has told us that bringing an existing university campus to Taupo, specifically dedicated to information technology learning and the interface between education and enterprise, has always been, and remains, achievable.

²¹ As noted by the Chief Executive in his 25 September 2001 report to Council.

PART THREE: OUR FINDINGS

- 3.1 The purpose of our inquiry was to determine whether:
- *the funding was made available in accordance with applicable Council policy and/or Council resolutions;*
 - *the Council had sufficient information at the time it made the funding available to make an informed decision on whether funding was appropriate; and*
 - *the Council put in place proper accountability measures to ensure that the entities that it funded:*
 - *were properly accountable to the Council and ratepayers for the use of that funding; and*
 - *used the funding for the purposes for which it was provided.*
- 3.2 During the course of our inquiry, we also decided to report on some potential conflict of interests that we had observed.
- 3.3 We address each of these issues below.

Was the funding made available in accordance with applicable Council policy and/or Council resolutions?

The Funding of the IEB

- 3.4 The Council has recognised through its strategic planning that it needs to act as a catalyst for economic growth in the Taupo district. The creation of the IEB to make recommendations about the establishment of a commercial arm to pursue economic development opportunities, was consistent with this aim.
- 3.5 The Council resolved to meet the initial costs of the IEB from existing Council budgets. The Council was entitled to make this decision.
- 3.6 The ongoing funding of the IEB was to be considered by Council as part of its 1999-2000 Annual Plan process.²²
- 3.7 On 6 April 1999, as part of the annual planning process, the Taupo/Kaingaroa Committee recommended that the IEB be provided with \$117,000 to cover its costs for the 1999-2000 financial year. This recommendation was accepted by the Council at its meeting on 9 April 1999. The \$117,000 did not appear in the draft 1999-2000 Annual Plan, which was published only three days after the Council's confirmation of the funding, on 12 April 1999. However, it was included in the final Annual Plan document.

²² Part 5 of the Council's 5 February 1999 resolution.

- 3.8 We have previously considered what a local authority should do when consultation results in changes to the draft annual plan.²³ Should the local authority seek further consultation on those changes?
- 3.9 The special consultative procedure in section 716A of the Local Government Act 1974 does not set out what councils should do in this situation.
- 3.10 In our view, where changes result from consultation, and those changes would have attracted additional or different submissions to those actually received, the council should consider whether it not the consultation process should be recommenced in relation to those changes. The purpose of the special consultative procedure is ensure open consultation. This cannot occur if significant changes are made to proposals and those changes are not adequately notified to the public.
- 3.11 In this case, the Council decided to add \$117,000 funding for the IEB to the final Annual Plan without further consultation. This is a decision that the Council was entitled to make.

The Funding of the Trust

- 3.12 In the 2000-01 financial year, the Council provided the Trust with:
- a \$40,000 grant from the Council’s Business Attraction Budget, as recommended by the Marketing Advisory Board;
 - an estimated \$37,000 of salary costs associated with Mr Montgomerie’s secondment to the Trust and the provision of part-time secretarial services to the Trust; and
 - other marketing related administrative costs of \$6,240, paid from the Council’s Marketing Budget.
- 3.13 In addition, the Council granted the Trust the “left-over” IEB funds of \$29,127. However, as noted at paragraph 2.54 on page 21, these funds were not paid to the Trust.
- 3.14 We are satisfied that the grant to the Trust of \$40,000 was recommended by the Marketing Advisory Board and authorised by the Marketing Division of Council. We are also satisfied that the secondment of Mr Montgomerie to the Trust, for the period 11 December 2000 to 30 June 2001, along with the provision of part-time secretarial services, was made pursuant to a resolution of the Council’s Corporate Services Committee on 11 December 2000. However, we note that Mr Montgomerie was then seconded by the Trust to the Company, and that the part-time secretarial services appear to have

²³ In our December 1998 report *Public Consultation and Decision-making in Local Government*.

been provided to the Company also. We are not aware of whether the Council consented to this.²⁴

- 3.15 The Council's Marketing Manager approved the other marketing related administrative costs of \$6,240 under delegated authority. These costs were for secretarial services, which needed to be provided after the Council employee who had been providing those services left. Approving these costs was consistent with the Council's resolution to provide secretarial services to the Trust until 30 June 2001.
- 3.16 In the 2001-02 financial year, the Trust received three grants from the Council:
- \$211,000 approved by the Taupo/Kaingaoroa Committee;
 - \$16,880 approved by the Turangi/Tongariro Community Board; and
 - \$27,000 from the Council's Business Attraction Fund, as recommended by the Marketing Advisory Board.
- 3.17 The first two grants were confirmed by the Council, on 27 March 2001 and 4 April 2001 respectively. However, in our view, neither grant complied with the Council's Community Grants Policy.
- 3.18 That policy requires grant applicants to "have evidence of community support by way of public fundraising, commercial sponsorship etc.". The Trust did not present any evidence of this type in its application, although it has confirmed to us that it considered the project had strong public support.²⁵ The policy also notes that "in general, a minimum of 50% of the cost (in cash or kind) of the project be secured prior to application." Again, the Trust's application did not identify any other sources of funding for the Trust for the 2001-02 financial year.
- 3.19 We acknowledge that the Council is not bound to follow its own policies and is entitled to make grants that do not comply with its Community Grants Policy. However, in our view, the Council's policy contains safeguards to ensure that projects funded by Council have community support and other financial contributors. Given the size of the grant sought by the Trust, it may have been prudent for the Council to follow its own policy, to ensure that ratepayers' funds were safeguarded to the extent possible.
- 3.20 The Council also paid the Company \$27,000 for services provided by the Trust over the period 1 July 2001 to 1 November 2001.

²⁴ The company has noted that the Council was aware that the company was the "operational arm". Accordingly, the Council would have been aware that the services of Mr Montgomerie (and the secretarial services) were being provided to the company.

²⁵ Evidenced by a telephone survey of 424 people carried out on 23 February 2001, and numerous letters from various organisations throughout Taupo and several Ministers of Parliament expressing support for the University project.

3.21 The payment arose out of a resolution made by the Marketing Advisory Board on 6 March 2001:

That as part of the Business Attraction Strategy for the year commencing July 2001, the Marketing Advisory Board seeks to contract the services of the Lake Taupo Development Trust and request from them a description of services they would provide for a 12 month contract.

3.22 We are not aware of whether the Trust provided the Marketing Advisory Board with a description of services. However, we are aware that no contract for services was entered into. On 11 September 2001, the Marketing Advisory Board resolved:

- 1 *That the Marketing Advisory Board approve the payment of \$27,000 + GST by Destination Lake Taupo to the Lake Taupo Development Company for services provided to date and ongoing services until 31 October 2001.*
- 2 *That Destination Lake Taupo calls for tenders for the provision of business attraction services for the period 1 November 2001 to 30 June 2002.*

3.23 In October 2001, the Council conducted a tender process for the provision of business attraction services. Three tenders were received, but the Council chose not contract with any of the tenderers.

3.24 We are concerned that the Marketing Advisory Board recommended the Council pay the Company \$27,000 for “services provided” in the absence of a contract.

3.25 Our understanding of this arrangement was that the Marketing Advisory Board intended the Council’s Marketing Division to pay \$80,000 to the Trust. This amount, combined with the grant of \$211,000 approved by the Taupo/Kaingaoroa Committee, equated to the \$291,000 sought by the Trust.²⁶ In this light, the \$80,000 arrangement (although only \$27,000 was eventually paid) appears artificial. In our view, this arrangement was more akin to another grant, rather than a genuine payment for services provided.

Did the Council have sufficient information at the time it made the funding available to make an informed decision on whether funding was appropriate?

3.26 The Council received a number of briefings about the potential of the university project, and the need for the Council to create economic

²⁶ The Council has indicated to us that it was not aware that the Turangi/Tongariro Community Board intended to also make a grant to the Trust.

development opportunities, in late-1998 and early-1999. In our view the Council had sufficient information at that time to make an informed decision about providing initial funding to the IEB for the remainder of the 1998-99 financial year.

- 3.27 The IEB’s funding for the 1999-2000 year was provided on the basis of a funding proposal on one slide. The slide contained only very general information, see Figure 2. No evidence was presented to the Committee to justify either the costs estimates on the slide or the “estimated benefit” figures.
- 3.28 However, given that the full Council had set a clear brief for the IEB only two months before this funding application was made, we are satisfied that the Committee had enough information as to the tasks of the IEB to justify providing further funding.
- 3.29 Turning to the funding provided by the Council to the Trust, we consider that Council may have been unclear as to what it was funding the Trust to do.
- 3.30 The Trust made it clear in its application for a \$291,000 grant that the funding was not for specific projects (as these were to be self-funding), but was to fund the operations of the entity (the Company) that was promoting and developing the projects.
- 3.31 However, the Council may have been confused by the Chief Executive’s report, which referred to the grant as “seeding capital” for the university project. The Chief Executive has confirmed to us that he used this phrase as the university project was the only project being advanced by the Trust at the time – although it was clear to him that the funding sought by the Trust was for the establishment and ongoing administrative expenses of the Trust and the Company.
- 3.32 We also note that the Taupo/Kaingaroa Committee referred to the \$211,000 grant as a “grant to fund a top quality project and one of the most important projects facing Council”.²⁷ We believe the Committee was referring to the university project when it made this comment.
- 3.33 We consider the lack of clarity as to what the Council was funding the Trust to do meant that the Council was unable to decide:
- what information it needed from the Trust in order to decide if the funding was appropriate; and
 - the conditions that should be placed on the funding.
- 3.34 If the Council considered the funding was “seeding capital” for the university project, or was funding for “a top quality project”, then it

²⁷ As recorded in the minutes of its meeting on 22 March 2001.

was vital for the Council to review the feasibility study that the IEB had been asked to prepare, before deciding whether funding was appropriate.

- 3.35 However, if the grant was sought to fund the operations of the Company, as the Trust stated, then the Council needed to assess whether it wanted to provide significant funds to a non-council controlled entity to engage in the development of economic opportunities for the district. If it did want to, then it needed to agree upon the objectives that the Trust would pursue on behalf of the Council. It does not appear that the Council addressed the funding application from this perspective.

Did the Council put in place proper accountability measures to ensure that the entities that it funded:

- **were properly accountable to the Council and ratepayers for the use of that funding; and**
- **used the funding for the purposes for which it was provided?**

- 3.36 All invoices for IEB expenditure were put through the Council's financial system for authorisation and payment. The Council was therefore aware of the amounts spent by the IEB.

- 3.37 However, the Council's failure to recognise the true status of the IEB as a special committee meant that the legislative accountability arrangements between councils and their committees were not utilised. For example, we were surprised that the Council did not receive a copy of the feasibility study that it had funded the IEB to prepare when the IEB made its final report to Council in October 2000. In fact, the Council did not receive the study until it made an official request to the Trust for it in September 2001. This was 11 months after the IEB had been disbanded.

- 3.38 The Council did not receive the minutes of the IEB's meetings. It was therefore not able to scrutinise whether the IEB was effectively and efficiently getting on with the tasks that Council was funding it to do. And, without Council scrutiny, the ratepayers were unable to gain any assurance that ratepayers' funds were being spent effectively and efficiently.

- 3.39 The Council has told us that the members of the IEB were well-known, respected leaders who were charged to "get on with it". The Local Government Act acknowledges that councils often call on the expertise of individuals in the community to assist with council projects. The Act provides for such individuals to be part of special council committees.

- 3.40 However, at all times, the council remains accountable to its ratepayers for the use of council resources, including the use of its resources by any council committee. A council must maintain oversight over all its committees, including those made up of non-elected members.
- 3.41 A different type of accountability arrangement needed to be put in place between the Council and the Trust, a non-council controlled organisation. Where a council provides funds to a non-council controlled organisation, the council remains accountable to its ratepayers for the use of those funds. Accordingly, the council must put in place appropriate accountability arrangements to ensure that the funding is used for the purposes for which it is given. These arrangements should be additional to any reporting requirements required under the organisation's own rules, such as to produce an annual plan and audited financial statements. These reporting requirements do not contain the detailed information that a council needs to satisfy itself that its funds have been used appropriately.
- 3.42 We consider that the Council failed to put in place any effective accountability arrangements to ensure that the Trust was properly accountable to the Council and ratepayers for its use of Council funding. Because of this, the Council is now unable to assess whether the funds it provided to the Trust were used effectively or efficiently.
- 3.43 Where significant funds are granted to a non-council controlled entity, we consider a council should consider putting in place a contract setting out the specific services or outcomes it expects in return for the funding. The contract should contain a monitoring regime, so the council can be assured the entity is using the funds appropriately.
- 3.44 It appears that the Council has attempted to remedy the lack of accountability arrangements between itself and the Trust by way of its resolution on 25 September 2001. However, as we noted earlier in this report, in the absence of a clear understanding as to the purpose for which the funding was provided, it is difficult for the Council to now formulate appropriate accountability arrangements.
- 3.45 We understand that the Council is currently considering an application from the Trust for funding for the 2002-03 financial year. If the Council considers further funding is appropriate, we urge the Council to carefully consider what type of accountability arrangement it requires.

Potential Conflicts of Interest

- 3.46 The Trust Deed provides for the Council to appoint three of the seven trustees, one of whom must be the Mayor. Two of the trustees appointed by the Council may be non-councillors. To date, however, the two Council appointees (other than the Mayor) have been

councillors – the Chairs of the Planning and Regulatory Committee and the Taupo/Kaingaroa Committee.

3.47 The appointment of councillors as trustees of external organisations gives rise to a potential conflict of interest. We addressed this issue in our 2001 report *Local Authority Governance of Subsidiary Entities*. While that report focused on council controlled entities, we consider the points made in relation to the appointment of councillors as trustees are equally applicable to trusts that are not council-controlled.

3.48 We observed that a councillor who accepts appointment as a trustee owes a primary fiduciary duty to the interests of the trust. This creates a potential conflict with the duties the councillor owes as an elected representative. For example, if a trust has received funding from a council and is not using that funding for the purposes for which it was provided, a councillor trustee may feel bound by duty not to disclose this to the council, as it is clearly not in the interest of the trust to do so. However, the council clearly has an interest in receiving this information.

3.49 The Taupo District Council has a policy regarding appointments of councillors to external organisations. The policy was adopted by the Council on 25 February 1998 and is therefore applicable to the Council's appointments to the Trust. The policy recognises the point made in the paragraph above, that a Councillor appointed to a external trust owes a primary fiduciary duty to that trust.

3.50 The policy requires Council appointees to external organisations to report to the relevant Council Committee as follows:

Where Council funding is provided to the external organisation:

i] The Appointee should report back to the relevant Committee of Council at least annually at the end of the respective financial year of the organisation to which they have been appointed. Other reports by exception should be produced as and when circumstances require.

ii] The reporting back function should be performed from the perspective of a councillor or Council staff member, that is, independent of the external organisation.

iii] Annual reporting to the relevant Committee of Council should include:

- A set of audited financial annual accounts for the year*
- A Chairman or Executive Officer's annual statement/report*
- Outcomes of the projects/services [against services agreements where applicable] and an overview of the*

future if not already included in the Chairman's or Executive Officer's report

- *Final use of grant funds*
- *Confirmation that those organisations distributing grant funds on Council's behalf have done so in accordance with Council's Grants Policy.*

- 3.51 We have seen no evidence to suggest that any of the three Council appointees to the Trust reported to the Council, or a relevant Council Committee, on the activities of the Trust in the 2000-01 or 2001-02 financial years in the manner required by this policy.
- 3.52 We agree that it can be beneficial to have council representation on the governing body of an entity with community based objectives such as the Trust. However, in this case, we consider that appointment of the Mayor (as required by the Trust Deed) along with the Chairpersons of two of the Council's committees as trustees of the Trust may have limited the ability of the Council to objectively scrutinise the activities of the Trust.
- 3.53 The Council has indicated to us that it intends to reconsider whether it wishes to appoint councillors to the Trust in the future.
- 3.54 We are also concerned about potential conflicts of interest of some members of the Marketing Advisory Board.
- 3.55 At least two members of the Marketing Advisory Board are also directors of the Company. We note that neither member declared a conflict of interest at the Board's meeting on 11 September 2001 when it recommended the Council pay the Company \$27,000 plus GST.
- 3.56 In our view it is not appropriate for members of Marketing Advisory Board who are also directors of the Company to participate in recommendations of the Board relating to funding of the Company. We consider those members clearly have a conflict of interest in such a decision.
- 3.57 We consider that the Council should address this issue as a matter of urgency.