

CCO Exemption for the Hauraki Rail Trail Charitable Trust

TO	Thames-Coromandel District Council
FROM	Greg Hampton - Area Manager Thames
DATE	29 October 2014
SUBJECT	CCO Exemption for the Hauraki Rail Trail Charitable Trust

1 Purpose of Report

To continue to grant the Hauraki Rail Trail Charitable Trust (HRT) an exemption from the general Council-Controlled Organisation (CCO) requirements of the LGA, under section 7(3) of that Act.

2 Background

Section 6 of the LGA defines the entities which are deemed to be CCOs. The section defines a CCO as:

An entity in respect of which one or more local authorities have, whether or not jointly with other local authorities or persons

- (i) Control, directly or indirectly of 50% or more of the votes at any meeting of the members or controlling body of the entity; or*
- (ii) The right, directly or indirectly to appoint 50% or more of the trustees, directors, or managers (however described) of the entity.*

3 Issue

The Councils have previously agreed that the governance entity will include a representative from each Council and three (3) Iwi representatives selected from Iwi that have mana whenua status over the proposed path of the HRT.

With the Trust as governance entity, this means that 3 trustees have been appointed by the Councils and 3 have been appointed by local Iwi.

Consequently, 50% of the votes at Trust meetings will be indirectly controlled by Councils and this means that the Trust will be a CCO for the purposes of the LGA.

It was recommended by the now disbanded Joint Committee (HDC, MPDC, TCDC) that the Hauraki Rail Trail Charitable Trust be treated as an exempt CCO.

Thames-Coromandel District Council resolved to grant a CCO exemption for the Hauraki Rail Trail Charitable Trust at its meeting on 21 May 2014, this exemption expires in December 2014.

Also as part of the Thames-Coromandel District Council's 21 May 2014 meeting resolution the Council requested reporting of financial and operational details from Hauraki Rail Trail Charitable Trust be brought back to Council. Attached to this report is the Hauraki Rail Trail Charitable Trust Financial statements year ended 30 June 2014.

4 Discussion

Part 5 of the LGA (sections 55 to 74 and Schedules 8 and 9) Act details the requirements for CCOs. These requirements are quite onerous. They include a range of reporting obligations and a requirement to prepare a statement of intent.

The statement of intent needs to be prepared within a short timeframe of establishing the CCO. There is an entire schedule to the LGA devoted to the content and function of statements of intent (Schedule 8). CCOs must also provide half yearly and annual reports. Furthermore, before a Council can establish a CCO, it must go through a special consultative procedure. The special consultative procedure prescribes the process for consultation and provides for a full submission process.

These requirements will impose a number of additional costs on the Trust and the Councils which will need to be funded either by the Councils or by the Trust itself. Given that the Trust is projected to make a loss for at least its first five years, the costs associated with the CCO regime will initially need to be funded by the Councils.

However, under section 7(3) of the LGA, Councils may exempt a CCO from the requirements generally imposed on CCOs provided that they first consider the factors listed in section 7(5) of the Act. Those factors are:

- (a) the nature and scope of the activities provided by the CCO; and
- (b) the costs and benefits of granting the exemption to Council, the CCO and the community.

Any decision to grant an exemption is required to be reviewed every three years.

In 2011 the Joint Committee considered whether the Trust, as a CCO, should be granted an exemption by the Councils. It considered the issues required by s 7 of the LGA and made the following comments on the relevant factors:

Nature and Scope of Activities (s7(5)(a))

The nature and scope of the Trust's proposed activities are, under the proposed Trust Deed, relatively narrow and limited to governance of the HRT. The projected current total operational budget is approximately \$180,000 per annum.

The fact that the range of activities to be undertaken by the Trust is narrow and focussed suggests that it would seem reasonable for Council to agree to exempt it from being a CCO under section (7)(5)(a).

Costs and Benefits (s7(5)(b))

The CCO regime will impose costs on the Trust arising from:

1. The costs associated with formation of the Trust by way of the special consultative procedure; and
2. Ongoing administration and reporting costs.

The special consultative procedure is likely to cost \$20,000.00 per authority (or \$45,000 for a joint consultation). This procedure is time consuming and the delays will not be helpful for the HRT project.

The CCO regime will also impose significant ongoing costs on the Trust. On the basis of the Councils' experience with Local Authority Shared Services Ltd, these additional costs are estimated at approximately \$30,000 per annum.

The question that therefore needs to be considered is whether these costs and potential delays outweigh the potential benefits for the Councils in requiring the Trust to comply with

the CCO regime.

These potential benefits are:

1. receiving regular reports which will allow the Councils to oversee the Trust's operations; and
2. the democratic benefit of providing for public consultation in relation to the Trust's formation.

However, given the nature of the HRT project, both of these benefits are available to the Council without the costs and time delays associated with the CCO regime.

After considering these matters, the Joint Committee's view is that the Councils should grant the Trust an exemption from the CCO regime.

The Committee's reasons for this view were:

1. the requirements imposed on CCOs under the LGA are unreasonably onerous for the Trust;
2. under the Council's Determining Significance Policy, a decision in accordance with the recommendation(s) is not considered to have a high degree of significance;
3. the Trust can be subject to sufficient Council oversight and control outside the CCO regime under the terms of the proposed Management Agreement;
4. the Trust will have neither the funds nor the responsibilities that necessitate the reporting or consultation requirements imposed on CCOs, particularly once the HRT is constructed and operational;
5. public consultation will be required as part of any process to designate the HRT under the RMA and the special consultative procedure would lead to costly and unnecessary duplication;
6. there will be significant financial benefits and few, if any, costs to the local authority and the community from the exemption;
7. the Trust will be a charity, not a profit making organisation and it will be dependent upon the Councils to meet the costs of the CCO requirements;
8. the Trust will not be in a position to meet the reporting requirements attaching to statements of intent without professional assistance, creating further costs, and those costs will outweigh any reporting benefits because of the small size of the organisation and its not for profit basis;
9. the Trust will have to provide financial reports to the Charities Commission in order to maintain its status as a charitable organisation and those reports must also be provided to the Councils and to local iwi upon request so there will still be public transparency regarding its financial position; and
10. In the event that the Trust's operations change over time, the Councils may revoke its status as an exempted organisation. In any event, the exemption must be reviewed within 3 years after grant and at a minimum of 3 yearly intervals thereafter. On that basis there is no disadvantage to the Councils by resolving to grant an exemption to the trust when it is first created.

5 Suggested Resolution(s)

That the Thames-Coromandel District Council:

1. Receives the report.
2. Continues to grant the Hauraki Rail Trail Charitable Trust an exemption from the general Council-Controlled Organisation (CCO) requirements of the LGA, under section 7(3) of that Act.

References-Tabled/Agenda Attachments

Attachment A *Hauraki Rail Trail Charitable Trust Financial statements year ended 30 June 2014*

Attachment A

[Attachment A - The Hauraki Rail Trail Charitable Trust Financial State...](#)