

20 September 2022

Wiremu Thomson  
[Redacted email address]

**Dawn Baxendale**  
Chief Executive  
Christchurch City Council  
info@ccc.govt.nz

**John Ryan**  
Controller and Auditor-General  
Office of the Auditor-General  
John.Ryan@oag.parliament.nz

**Re: Serious Complaints regarding Te Kaha stadium decision**

Dear Ms Baxendale & Controller and Auditor-General,

I am writing to make a number of complaints regarding the Christchurch City Council's decision on the 14<sup>th</sup> of July to invest additional funds in the Te Kaha stadium<sup>1</sup>.

I had a number of complaints about the decision, but did not know whether I had an effective way to make these complaints, so I sought advice from the Ombudsman's office on the 15<sup>th</sup> of July.

An investigator replied to my email on the 13<sup>th</sup> of September and said that in the first instance I should complain to the agency, so in this case I should write to the Council's Chief Executive, Ms Baxendale. The investigator also pointed out the Council has a conflict of interest policy as part of the Code of Conduct, and provided information about how to complain to a government agency.

The following lays out my complaints and the relief I am seeking.

**Ground 1: Not a fair representation of matters**

1. I am unsure what legal provision caused the consultation to be required, but under the Local Government Act 2002 83AA(a) and 93B(a), a consultation document must provide a fair representation of the matters that are proposed.
2. In my opinion, the council failed to meet this requirement.
3. The below image is an excerpt from the consultation document in which I have highlighted misleading statements.

*Total Rates impact of the Te Kaha project*

The total Council contribution (cost) for Te Kaha, including an additional \$150 million, causes a 4.6% rates increase.

*Rates impact per household*

Assuming our current assumptions on interest rates, inflation and rating base growth, and that this is funded from the general rate, the approx. increase to the average residential property for the additional \$150 million would be \$39 per annum in today's dollars, based on a 1.25% rates requirement increase. This increase would occur progressively over the period 2025 - 2027.

The total Council contribution (cost) for Te Kaha, including an additional \$150 million, translates to \$144 per annum per average residential property occurring progressively between 2025 and 2027. These amounts would decline slowly over 30 years as debt was repaid.

4. They are misleading because the non-Council contribution from the Crown basically belonged to Council as well, given Labour's election policy was that Christchurch could

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1 <https://web.archive.org/web/20220728040016/https://www.ccc.govt.nz/the-council/haveyoursay/show/514>

decide how to spend the money. This would mean the cost to ratepayers was significantly more than \$144 per annum.

5. For the 2017 election, National offered \$120 million for the stadium, and Labour offered \$300 million for Christchurch to decide what it was used for. \$80 million went to other Council items, leaving \$220 million that the Council decided to use for the stadium.<sup>2,3</sup>
6. If the Council decided not to use the funding for the stadium it should have been available for other projects.
7. Adding to these misleading statements, at the end of the "If we stop the project" section the document says "The Crown investment would be withdrawn." without mentioning that it would be available for other uses. This was also the advice given to councillors at the decision meeting.
8. The '\$144 a year' figure was then widely used in the media for the cost of the stadium, e.g. "the cost to the owner of the average residential property is \$144 a year between 2025 and 2027, and then declining "slowly" over the loan's 30-year life."<sup>4</sup>
9. The ambiguous "decline slowly" and spreading the cost over a 30 year timeframe also underplays the average cost of the stadium to a ratepayer.
10. The average total cost per Christchurch resident may have given a fairer representation of the impact.
11. The cost was the primary cause of the consultation and by not fairly representing the cost and the rates impact, the false advertising undermined the consultation. If people had known the true costs, those that wrote in support may have written against, and those that felt it did not affect them enough to make a submission may have been motivated enough to make a submission against it.
12. There was also the Q&A section, which only refers to the project cost and not the whole of life costs. The whole of life costs are the primary cost metric in the Council's other investment documents and the procurement objectives.

**What is the current budget for the multi-use arena?**

\$533 million.

**What is the expected cost of the arena now?**

The current project cost is \$683 million. The Project Team is working with BESIX Watpac to reduce this cost through value management and contract negotiations.

13. This consultation-specific change in methodology in addition to being misleading, also hints at bias in the consultation process.
14. The correct answer to "What is the current budget for the multi-use arena?" would have included the budgeted operating subsidy, but \$533 million is just the project cost. If the

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2 <https://www.stuff.co.nz/the-press/business/the-rebuild/96197777/labour-announces-300m-for-christchurch-rebuild>

3 <https://www.beehive.govt.nz/release/delivering-canterbury>

4 <https://www.newsroom.co.nz/how-not-to-build-a-stadium-lessons-from-christchurch>

answer was correct, the figures in the questions could have been similar and possibly led to confusion due to the lack of a \$150 million difference.

15. The total whole of life costs was never mentioned in the consultation document however the whole of life benefits over the 30 year forecasting period from the 2019 Investment Case was. This may lead people to unfairly compare the whole of life benefits to the initial project cost, or the project cost plus annual operating subsidy (annual expenditure and lifecycle costs minus annual revenue that had already been counted in the benefits), which would lead to double-counting of a lot of the benefits.

## **Ground 2: Conflict of interest**

16. As set out in the attached complaint, under the Local Authorities (Members' Interests) Act 1968, Councillor James Gough should have declared his conflict of interest and abstained from discussion and voting.
17. I understand the Council has a conflict of interest policy to apply in such cases.
18. It is hard to see how he would have maintained the open mind principle of the Local Government Act to consider stopping the project given his family's investment in the CBD.

## **Ground 3: Lack of a Benefit-Cost Ratio**

19. The consultation lacked a (updated) Benefit-Cost Ratio, which is typically good business practice for infrastructure investment decisions and during the decision meeting there were comments as to its absence.
20. Given the amount of money being spent and the significant change in cost, I would have thought an up-to-date BCR would be mandatory.
21. Lacking a BCR does not appear to be consistent with 14(1)(f) of the Local Government Act 2002: "In performing its role, a local authority must act in accordance with the following principles: ... a local authority should undertake any commercial transactions in accordance with sound business practices."
22. The following reasons were given at the decision meeting for the lack of a BCR.
23. At 3:10:25 in the Stuff video of the meeting<sup>5</sup>, Caroline Harvie-Teare (Chief Executive of Venues Otautahi) said: "No we don't have an updated BCR. Ernst and Young obviously did that work in the Investment Case. We did talk to Ernst and Young about that, but it was a large piece of work to do in too short a period of time."
24. At 5:08:06, Mayor Dalziel said: "I've been quite blunt about the BCR, the Benefit-Cost Ratio. When the business case was developed that identified that Te Kaha was costing more than the anticipated return on that investment. That cost over benefit increases with this decision today. We don't have a precise number and that's largely because the BCR on updating the BCR didn't really stack up for me. The reality is that the assessment of the benefits have probably stayed around the same or even marginally increased given the scale changes that we made last year as contrasted with the Investment Case, but the costs have risen by up to \$200 million, which is a significant amount".

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5 <https://www.stuff.co.nz/the-press/news/129255045/live-christchurch-to-get-new-stadium-after-councillors-agree-to-683m-deal>

25. The imprecise, best estimate should have at least been provided in the consultation document, given the generally held view of the importance of BCRs for evaluating investment decisions.
26. I attempted to calculate a BCR as part of my submission and communicated this to others, but from lack of understanding of what the operational subsidy was, I effectively double-counted the benefits and overestimated the BCR.
27. My current estimate for the BCR is costs of \$1161m (30 years of operating expenditure and lifecycle costs as per the Investment Case<sup>6</sup> pg. 14: \$399m; project cost: \$683m; land purchase cost: \$59m; a guess at the bid incentive fund given Investment Case and subsequent scope changes: \$20m), and the consultation document refers to \$462.2m benefit over the 30 year forecast period, so the BCR is approximately 0.40 and a loss of \$700m.

#### **Ground 4: Inconsistency of expert advice**

28. Inconsistency of expert advice provided to Council by the Chair of Te Kaha Project Delivery Limited (TKPDL) and the independent risk assurance expert they have employed with Barry Bragg seemingly saying the opposite of the independent expert Peter Neven. [The Council explained the difference in their 21/12/22 response.]
29. Mr Bragg said regarding risks that still sit with the council (at 2:50:10, in Stuff's video of the meeting<sup>7</sup>):  
"Secondly because there is an enormous amount of paperwork sitting behind this with drawings and specifications, there could be something that we have missed during the confirmation of the developed design scope, so we've allowed some contingency for that."
30. Also, the Advice on Design and Construct contract states on page 9, "Key cost risks remaining ... 9.2.2 Scope gaps i.e. detail within design that was not apparent at time of Contract signing."
31. Mr Neven said at 4:31:30,  
"This contract here you are not responsible for any design delays, omissions or errors ... so in my view this is a very good contract in this market and one that really leaves a contractor with little opportunity to make claims moving forward."

#### **Ground 5: TKPDL's legal requirement is to deliver the stadium, which will bias their recommendations, and no disclosure was made as to this bias**

32. From an outside perspective, TKPDL appears to be an independent, expert, project management board providing sound investment advice to the Council, but their legal requirements to deliver a stadium as set out in the Letter of Expectations compromises this advice.
33. TKPDL should disclose this bias when providing recommendations.
34. I would have sought information on how TKPDL director Richard Peebles, who is a Christchurch property developer, managed his conflict of interest given he is basically in the

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<sup>6</sup> [https://christchurch.infocouncil.biz/Open/2019/12/CNCL\\_20191212\\_ATT\\_4037\\_EXCLUDED.PDF](https://christchurch.infocouncil.biz/Open/2019/12/CNCL_20191212_ATT_4037_EXCLUDED.PDF)

<sup>7</sup> <https://www.stuff.co.nz/the-press/news/129255045/live-christchurch-to-get-new-stadium-after-councillors-agree-to-683m-deal>

same situation as Cr. Gough, but on closer inspection of TKPDL I see that his interests align with TKPDL's objectives.

35. I also would have sought information as to why TKPDL's board directors did not pass on the outgoing project director's report detailing the director's concerns to the Council.
36. The Funding Agreement and previous council decisions also limits their ability to give responsible investment advice.

#### **Ground 6: Inadequate time to consider submissions**

37. The Councillors had hardly any time to consider submissions and relied to a large extent on the report from their research team.
38. Cr. Templeton tweeted that they did not have the submissions (and possibly report) by Monday evening for the decision they were making on Thursday morning.
39. Given consultation closed Tuesday the week before and the Council had been processing submissions throughout the consultation period, why did councillors not at least have access to processed submissions on the Wednesday after consultation closed?
40. Obviously, no one expects them to read 30,000 submissions, and the report did seem to give a good overview of issues raised, but it did not cover some issues to the level of detail required for councillors to have an adequate understanding.
41. For example, in my submission I mentioned a school pool type fundraising drive under the concept of user pays, but the report just mentions user pays with no mention of ways it could be implemented.
42. Obviously, a school pool type fundraising drive only really works if you do it before committing to a contract, but this crucial detail was not apparent from the submissions report.
43. It also helps to read the issues in the context of an entire submission, and so one would expect councillors would have at least a week to read and reflect on as many submissions/reports as they wanted to in that time, especially for the biggest decision they have had to make in a while.

#### **Aside from my complaint**

44. This paragraph is not part of my complaint, so please do not let it delay a response, but is more for the Council's benefit, and it would be remiss of me not to mention it given other work I have done. Has budgeting for the stadium considered:
  - a. the shadow price of carbon in line with the recommendation of the Productivity Commission's Low-emissions economy report of 2018<sup>8</sup>; and
  - b. if, in the interests of taking climate action for future generations, the Government were to introduce a carbon tax on fossil fuels (petrol, coal used for imported steel, etc.) or restricted Emissions Trading Scheme units (both government and private sector forestry units) such that it caused petrol to cost about \$3.60/litre (in real value), would the fixed

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8 <https://www.productivity.govt.nz/inquiries/lowemissions/>

price budget still be sufficient to cover the cost of the stadium and could the council afford it given potentially reduced airport and tourism revenue (other effects being not as bad because the Government has to reintroduce the money back into the economy somewhere)?

### **Relief Sought**

45. On the basis of each of the grounds set out above, together and individually, in addition to responses to each of my complaints, I am seeking the following relief.
46. The consultation process to be redone without the aforementioned deficiencies in democratic process, so there is confidence that the decision to invest more money in the stadium was an uncorrupt, democratic decision. People in a democratic country and especially the chief executive of a council should expect no less. This would mean:
  - a. Presenting a fair (and not misleading) representation of matters in consultation documents about the cost of the stadium including combining forecasted operating costs with project costs, and central government money that could be spent on other things, and the cost of purchasing the land. A good estimate of the Benefit-Cost Ratio should also be provided. If the total whole of life benefit is presented then so too should the total whole of life cost be presented.
  - b. Providing enough time for submitters to make a submission like the Council did the first time, but also providing at least a week for councillors to read some submissions and reflect (I am aware submissions and possibly reports were not available until 2-3 days before).
  - c. There not being inconsistencies in expert advice given, and if there is then an expert or someone else at the meeting questioning it, so that expert advice that the decision is based on is correct.
  - d. Clarity about the purpose of TKPDL, i.e. are they an impartial advisory group or a stadium advocacy group?, especially when they provide a recommendation on whether to go ahead with the contract. Clarity about whether TKPDL board members declared any self-interests and how these were handled when making decisions.
  - e. Councillors with conflicts of interest declaring their conflict and abstaining from the discussions and vote.

Regards,  
Wiremu Thomson