

31 January 2023

Wiremu Thomson  
[Redacted email address]

**Dawn Baxendale**

*Chief Executive*

Christchurch City Council

[Redacted CCC Chief Executive's email address for privacy reasons]

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

Dear Ms Baxendale,

Thank you for providing responses to my complaints. I would like to further discuss the first ground of my complaint (Not a fair representation of matters) because there are a number of important, unresolved issues there. I have added an additional ground 1b (The Council has a legal requirement to ensure those consulted are adequately informed). I have also added another ground for complaint relating to a failure to meet the requirements of s 80 of the Local Government Act 2002 (LGA).

The following lays out grounds for my complaint and the relief I am seeking.

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

**Misrepresentation of consequences to Crown funding if the project was stopped**

1. My seventh statement was as follows:

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statements, at the end of the "If we stop the project" section the document says "The Crown investment would be withdrawn."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.

2. The Council admits in response to my seventh statement "Any alternative use of unspent funds would need to be renegotiated with the Crown." This is significantly different to the statement the Council made in the consultation "The Crown investment would be withdrawn."
3. The Crown investment from the Christchurch Regeneration Acceleration Facility (CRAF) is \$220 million, so this misrepresentation in itself is enough to say the consultation was not a fair representation of the matter.

**Total Rates Impact**

4. The Council's response to my statements 3. to 6. & 8. to 11., does not address my statements because the Council has misinterpreted those statements. This has led to the Council's response providing arguments against a misrepresentation of my statements.
5. In response to 3. to 6. & 8. to 11. the Council said "These Statements are predicated on the complainant's view that Council had complete discretion as to how much of the \$300 million Global Settlement would go to the multi-use arena, should therefore be treated as CCC funding ..."
6. No, my view is that the Government as they stated would let Christchurch decide how it wanted to spend the CRAF, so unless the Government changed their mind it was reasonably likely that the Council subject to some Government oversight had most of the say in what it

was spent on. I did not intend for Council to infer that I considered the fund should be treated as CCC funding, but that given the CRAF could be spent on other things that rates are spent on, it was misleading to not mention the \$220 million of CRAF funding in the analysis of the impact on rates. Perhaps I should have specified that in the screenshot for statement 3. I was highlighting that under the heading "Total Rates impact of the Te Kaha project", the Council was only looking at the Council contribution and not the CRAF, which should have been considered as well given the Government had promised the money and Council had most of the say on how it was spent e.g. roading infrastructure and the Avon River Corridor that could have otherwise been paid for from rates, but instead used some of the CRAF.

7. As statements 3. to 6. & 11. have not been adequately addressed, I will restate them here. I have left out the original statements 8. to 10. as I have stated my view and they do not seem to require a response.
8. 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.

9. 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 decide how to spend the money. This would mean the cost to ratepayers was significantly more than \$144 per annum.
10. 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>1,2</sup>
11. If the Council decided not to use the funding for the stadium it should have been available for other projects.
12. 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.

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

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

## Whole of Life Costs

13. For the Council's response to my statements 12. to 14., by whole of life costs I was actually referring to the annual average operating expenditure, annual average lifecycle costs and capital expenditure as discussed on pg. 14 of the attachment to Council regarding the investment case<sup>3</sup>. I was not referring to the annual operating subsidy, as the Council stated in their response, except for my statement 14. where the question was in regards to the 'budget' not the cost.
14. The annual average operating expenditure (~\$11.3m) and annual average lifecycle costs (~\$2.0m) were not mentioned in the consultation document.
15. However looking again at the Council's procurement policy (s 9.1)<sup>4</sup>, I see 'costs and benefits' could be interpreted as a single concept and not two separate ones, so I accept that including the operating subsidy would be good enough had it been provided in the appropriate answers, which it was not.
16. In response to the Council's response to 12. to 14. I will amend my complaint as follows (changes in red). I would also like to note that for a Q&A section, people might only read, or point out to their friends, the question and answer they are interested in, so it is important for those answers to be complete and correct in relation to the question.
17. There was also the **following questions in the** Q&A section, which only refers to the project cost and not the whole of life costs. The whole of life costs **and benefits** are the primary **value 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.

18. This consultation-specific change in methodology in addition to being misleading, also hints at bias in the consultation process.
19. 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 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.
20. **The correct answer to "What is the expected cost of the arena now?" would include the whole of life costs at the very least by mentioning the operating subsidy.**
21. The Council's response to my statements 12. to 14. also included an image/question that the Council claimed to be snipped from the Q&A section of the consultation document, but it

<sup>3</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>4</sup> <https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Policies/Council-org/Christchurch-City-Council-Procurement-Policy-2018.pdf>

does not exist in the current or archived consultation document. How did this mistake happen?

## Double-Counting Revenue

22. The Council's response to my statement 15. indicated the Council did not understand how one would double count the benefits as worded (though statement 26. may have helped). I hope the following statements and tables clarify this point.
23. My 15<sup>th</sup> and 26<sup>th</sup> statements were as follows:
- (a) 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.
  - (b) 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.
24. A reader of the consultation document could be left with the following impressions: \$462.2m in benefits, project cost of \$683m, and cost of \$126m for 30 years of a \$4.2m/yr operating subsidy (whatever operating subsidy means as there was no definition of it in the consultation document, though it was the only figure mentioned under a heading of operational costs, and a reader can reasonably expect the Council to be presenting information clearly and in a non-misleading way) without realising that the benefits figure was largely made up of annual revenue that had already been used to reduce the operating subsidy. The annual revenue is a significant amount at an average of \$9.1m/yr for 30 years = \$273m that a reader could have double-counted.
25. The following tables illustrate the double-counting problem. The first demonstrates the impression a reader could have been left with, in which the annual revenue is double-counted because it appears in both the benefits and costs, while the other two demonstrate more sound comparisons because the revenue is only counted once. The annual revenue, expenditure and lifecycle costs were not stated in the consultation document, so it would be hard for a reader to see the mistake illustrated below as all they would have to go on is the total benefits, project cost and total operating subsidy.

Figure 1: Revenue is double-counted

Benefits		Costs	
Revenue	273	Project	-683
		Operating Subsidy	Revenue 273
			Operating Expenditure -339
			Lifecycle Costs -60
Other Benefits (such as tourism spend, non-monetary benefits to locals, one-off land value increase, and residual asset value beyond the 30 year forecast period)	189.2		Total operating subsidy -126
Total Benefits	462.2	Total Costs	-809

Figure 2: Revenue is considered a benefit

Benefits		Costs		
Revenue	273	Project		-683
		Operating Subsidy	Operating Expenditure	-339
			Lifecycle Costs	-60
Other Benefits	189.2		Total operating subsidy	-399
Total Benefits	462.2	Total Costs		-1082

Figure 3: Revenue is used to reduce costs

Benefits		Costs		
		Project		-683
		Operating Subsidy	Revenue	273
			Operating Expenditure	-339
			Lifecycle Costs	-60
Other Benefits	189.2		Total operating subsidy	-126
Total Benefits	189.2	Total Costs		-809

26. A summary of the issues that mean the consultation was not a fair representation (i.e. did not adequately inform those consulted) follows. Note for this list, references to statements refer to this document):
- A significant material misrepresentation/omission (1. to 3.).
  - Failure to provide adequate information about the rates impact of the decision (8. to 12.).
  - Incorrect answers to questions (16. to 20.).
  - Failure to adequately present whole of life costs and benefits information that would normally be considered for this kind of decision, and presenting enough inadequate information that people may be left comparing figures that should not be compared (13. to 25. excluding 21.).
  - Failure to identify the decision was significantly inconsistent with the Long Term Plan (LTP) (discussed below, 31. to 33.).

## Ground 1b: The Council has a legal requirement to ensure those consulted are adequately informed

27. As a consequence of the Council’s responses to my statements 1. and 2., there appears to be a question regarding whether the Council had a legal obligation to fairly represent matters in the consultation. The Council did have a legal requirement to fairly represent matters as this ground sets out.
28. The following image is from pg. 25 of the Minute Item Attachments of Council – Thursday, 14 July 2022<sup>5</sup>, and outlines the Council’s legal requirements.

5 [https://christchurch.infocouncil.biz/Open/2022/07/CNCL\\_20220714\\_MAT\\_7426.PDF](https://christchurch.infocouncil.biz/Open/2022/07/CNCL_20220714_MAT_7426.PDF)

# Consultation

- The Council received legal advice that it should seek community views about the additional funding prior to making a decision as Section 78 of the Local Government Act states:

S78 Community views in relation to decisions

(1) A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

29. There is some case law regarding consultation that the Office of the Auditor General's website refers to when discussing consultation legal requirements<sup>6</sup>, namely the Court of Appeal judgement on the 24<sup>th</sup> September 1992, on a case between Wellington International Airport Limited v Air New Zealand and some other airlines regarding a failure to consult on the airport's decision setting landing fees. The judgement refers to principles outlined by the High Court judge regarding consultation.

"Consultation must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. The concept is grasped most clearly by an approach in principle. To "consult" is not merely to tell or present. Nor, at the other extreme, is it to agree.

Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion.

Despite its somewhat impromptu nature, I cannot improve on the attempt at description which I made in *West Coast United Council v Prebble*, supra, 405

"Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done".

**Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses.** It is also implicit that the party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh. Beyond that, there are no universal requirements as to form. Any manner of oral or written interchange which allows adequate expression and consideration of views will suffice. Nor is there any universal requirement as to duration. In some situations adequate consultation could take place in one telephone call. In other contexts it might require years of formal meetings. Generalities are not helpful." (Emphasis added)

30. Obviously omitting important details does not meet the "requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses."

## Ground 2: Inconsistency with the Long Term Plan

31. The Council's decision was inconsistent with the 2021-2031 LTP.
- (a) this should have been clearly identified in the consultation document, and is another important detail necessary to meet the requirement to adequately inform affected and interested people; and

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6 Para. 107 to 110 of <https://oag.parliament.nz/1998/public-consultation/part1.htm>

- (b) the council did not meet the statutory obligation of s 80 of the LGA.
32. When making a decision, the Council is required by s 80 of the LGA to clearly identify any significant inconsistencies with its LTP, reasons for the inconsistency, and any intention to amend the LTP to accommodate the decision.
33. The Council failed to clearly identify its proposed rates increase in 2025/26 is above its 2021-2031 LTP’s quantified limit for that year, and the limits are a requirement of s 101A(3)(b)(i) of the LGA. Nowhere in the Council’s documents for the decision or in the video recording of the meeting<sup>7</sup> does it clearly identify this inconsistency.

## Supporting Information

### 34. 80 Identification of inconsistent decisions

- (1) If a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—
- (a) the inconsistency; and
  - (b) the reasons for the inconsistency; and
  - (c) any intention of the local authority to amend the policy or plan to accommodate the decision.
35. “**101A Financial strategy** (3) The financial strategy must—(b) include a statement of the local authority’s—(i) quantified limits on rate increases and borrowing”
36. The limits set in the 2021-2031 LTP are as follows (pg. 18 LTP 2021-2031 volume 2<sup>8</sup>, highlighting added).

	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31
<b>Proposed increase</b>	6.7%	6.1%	6.2%	6.1%	6.2%	5.8%	4.4%	4.8%	3.1%	3.9%
<b>Rates increase limit</b>	7.7%	7.1%	7.2%	7.1%	7.2%	6.8%	5.4%	5.8%	4.1%	4.9%

37. The council’s proposed increases in their financial report<sup>9</sup> are below (highlighting added). Note there is an accounting difference between the percentages below and those in the limits because the percentages below are for existing ratepayers, whereas those above are for total rates, so include rates from new properties. The existing ratepayer increases below will be a lower percentage figure than the total rates increases as long as the number of ratepayers continues to grow. The accounting difference does not change the inconsistency in 2025/2026 (highlighted), and the percentage below would be even more above the limit if the total rates increase percentage was used instead.

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

8 [https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/Long-Term-Plan/LTP-2021-final/LTP2021-Vol2/Long-Term-Plan-2021-31\\_Vol-2.pdf](https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/Long-Term-Plan/LTP-2021-final/LTP2021-Vol2/Long-Term-Plan-2021-31_Vol-2.pdf)

9 pg. 58, s 4.11 [https://christchurch.infocouncil.biz/Open/2022/07/CNCL\\_20220714\\_ATT\\_7426\\_EXCLUDED.PDF](https://christchurch.infocouncil.biz/Open/2022/07/CNCL_20220714_ATT_7426_EXCLUDED.PDF)

Rates Increase %	2022/23 Annual Plan	Additional Cost plus revised cost profile	Proposed Increase - \$150m more	2021/31 LTP
2022/23	4.66%	0.00%	4.66%	4.97%
2023/24	4.96%	0.00%	4.96%	5.42%
2024/25	5.79%	0.05%	5.84%	5.37%
2025/26	8.06%	0.42%	8.48%	5.45%
2026/27	4.93%	0.75%	5.68%	5.03%
2027/28	3.82%	0.02%	3.84%	3.62%

38. As an additional question, I tried looking for the rates increases in the 2022/23 Annual Plan as the column heading in the table above suggests, but could only find information for the year of the plan and nothing about rates increases after that year. Could you please tell me where in the 2022/23 Annual Plan it mentions the rates increases in the column above?

## Relief Sought

39. On the basis of ground 1a and 1b together, in addition to responses to my complaints, I am seeking the following relief.

(a) A public declaration that the decision was unlawful, and the contract invalid; the relief sought in my complaint from the 20<sup>th</sup> of September; and for construction works on the Te Kaha project to cease until after the consultation process and a lawful decision has been completed.

40. On the basis of ground 2, in addition to responses to my complaints, I am seeking the following relief.

(a) A public declaration that the decision was unlawful, and the contract invalid; and for construction works on the Te Kaha project to cease until after a lawful decision has been made.

## Further Questions

41. From the Council's response I was left wondering why exactly it does not believe there is justification for the reliefs sought, so I am asking the following questions in the hope that they will provide more of an explanation.

42. *Does the Council believe the consultation document fairly represented the matter at hand?*

43. *Does the Council believe it is legally required to fairly represent the matter at hand in a consultation document?*

44. *Does the Council believe those consulted were adequately informed so as to be able to make intelligent and useful responses?*



45. *Does the Council believe it is legally required to ensure those consulted were adequately informed so as to be able to make intelligent and useful responses?*