

# DRAFT FOR CONSULTATION

## **New Plymouth District Council (Perpetual Investment Fund) Bill**

Local Bill

### **Explanatory note**

#### **General policy statement**

The New Plymouth District Council's Perpetual Investment Fund (**PIF**), was established on 9 November 2004 from the proceeds of selling Council's shareholding in PowerCo Limited. The opening balance of the PIF was \$259 million.

The PIF is a significant financial asset for New Plymouth District, enabling financial benefits to accrue to the Council and its communities.

The PIF has operated with the intention of being a sustainable fund, whereby an annual release from the PIF is provided to Council to subsidise general rates. That release payment should, over the medium term, be lower than the earnings of the PIF (inflation-adjusted) so that the PIF maintains or grows its capital base.

However, the PIF has not always been managed sustainably. Releases were not reduced to account for lowered market returns during the 2008 global financial crisis (**GFC**), and the PIF lost around \$113 million in value over five years. Subsequently, the Council considerably reduced releases and increased rates to enable the PIF to recover its pre-GFC value.

From 2016, the Council implemented a series of changes to how the PIF was managed in order to prevent these issues from re-occurring. Currently, the New Plymouth PIF Guardians Limited, a Council-controlled organisation, manages the PIF as a sustainable

perpetual investment fund in accordance with a Governance Deed.

The Council resolved, during long-term plan deliberations on 19 May 2021, for Council officers to report on introducing a local bill to contain the benefits of the PIF to the current district boundaries, and provide legislative protections to its capital base to ensure benefits flow to the New Plymouth District communities in perpetuity.

Council officers explored various options for achieving these goals, and reported back to the Council on 20 January 2022. Council officers recommended that:

- Draft legislation should be developed for community consultation, on the basis that geographically containing the PIF and ensuring it is used in a perpetual manner through legislation is both feasible and in the public interest.
- The Council should retain some ability to use the capital base of the PIF, for example in emergency situations, in order to avoid a negative impact on Council's credit rating and insurance.
- There are a number of other aspects of the PIF's governance and management framework that legislation can protect in an appropriate manner whilst retaining flexibility for future Council decisions.

### **Options considered**

The primary other options that the Council has considered are:

- Do nothing and retain the status quo, whereby PIF Guardians Limited manage the PIF in accordance with the Governance Deed, which can only be amended or terminated by a vote of not less than 75% of elected members. This does not achieve legislative protection of the capital base of the PIF, or containment to ensure that any future changes in local government boundaries do not affect the PIF's status as a perpetual fund for the benefit of the New Plymouth District.
- An enhanced version of the status quo, by taking measures such as listing the PIF as a strategic asset under section 76AA of the Local Government Act 2002 and requiring a greater majority of elected members to amend or terminate the Governance Deed. This would have the same overall shortcomings of the status quo, and could go too far in terms of limiting the Council's ability to use the capital base of the PIF when circumstances (such as a natural disaster or other emergency) warrant it.
- Establish a new trust to hold the PIF, with trustee obligations to use the PIF for the benefit of the New Plymouth District, and maintain it in perpetuity. However, this would not provide as much protection as legislation, and would remove the PIF from the Council's balance sheet which would significantly reduce the Council's credit rating and increase its borrowing and insurance costs.

The Council has also considered other local legislation, including:

- The South Taranaki District Council (Egmont Electricity Limited Sale Proceeds) Act 1999, which requires that the proceeds of the sale of shares in Egmont Electricity Limited be applied for purposes primarily benefiting the residents and ratepayers of the South Taranaki District as constituted when the Act

commenced.

- The New Plymouth District Council (Waitara Lands) Act 2018, which established funds to receive income from the sale of the various Waitara endowment lands (being lands confiscated by the Crown from Otaraua and Manukorihi hapū before being transferred to the Council's predecessors), and use that money for the benefit of the Waitara community, those hapū and the Waitara River catchment.

Having considered its options, including its experience with the New Plymouth District Council (Waitara Lands) Act 2018, the Council resolved on 8 March 2022 to develop a draft local bill, and use the special consultative procedure under the Local Government Act 2002 to engage with its communities on the draft local bill.

The Council considered that the draft bill should require the Council to consider the following principles when dealing with the PIF:

- It should be used in a perpetual manner.
- The capital base may be used if circumstances arise warranting it.
- Investments should be independently managed, on a prudent commercial basis, and to avoid prejudicing the Council's reputation.

**[This explanatory note may be updated depending on the outcomes of consultation]**

### **General effect of the Bill**

The Bill will require the Council to use the PIF for purposes that are primarily for the benefit of current and future communities of New Plymouth, as defined by its current boundaries.

Independent financial managers will make best-practice investment decisions to maintain or increase the value of the PIF over time, and avoid prejudicing the Council's reputation.

The Council will be able to reduce the real value of the capital of the PIF only where circumstances arise that warrant doing so.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* relates to commencement. The Bill comes into effect on the day after the date of Royal Assent. There is no reason or need to defer commencement.

*Clause 3* sets out the purpose of the Bill, which is to ensure the PIF continues as a long-term financial investment for the benefit of current and future communities of the New Plymouth District.

*Clause 4* defines various terms used in the Bill. This includes distinguishing investment decisions from other management or application of the PIF.

It also provides that terms used in the Local Government Act 2002 have the same meanings in the Bill.

*Clause 5* provides that other applicable enactments continue to apply to the Council,

except to the extent that they are inconsistent with or modified by the Bill. This means that the provisions of the Local Government Act 2002 that are relevant to the PIF continue to apply including, for example, the investment policy requirements in sections 102(2)(c) and 105.

*Clause 6* provides that the PIF is to be managed and applied wholly or principally for the benefit of current and future communities of the New Plymouth District.

*Clause 7* sets out principles for managing and applying the PIF, including to ensure that the real value of its capital is maintained or increased over time.

The Council may intentionally reduce the real value of the capital of the PIF only when the Council considers, on reasonable grounds, that to do so will achieve a benefit that is better than maintaining the real value of the capital of the PIF, and that this is the best available means of achieving that benefit.

*Clause 8* sets out additional principles for investing the PIF, which are that prudent, commercial decisions are to be made in accordance with best-practice and avoiding prejudice to the Council's reputation. It provides that investment decisions should be independent of elected members and non-political.

*Clause 9* requires the Council to give effect to the above principles so far as is practicable (including when making decisions that relate to the PIF under other enactments), and resolve conflicts between them in accordance with section 14 of the Local Government Act 2002.

*Clause 10* provides that section 97 of the Local Government Act 2002, which requires the Council to consult on decisions to significantly alter intended levels of service for significant activities, or transfer ownership or control of strategic assets (which are defined as including port and airport companies), does not apply to investment decisions. This is so prudent investment decisions are not delayed or compromised by the long-term plan process.

*Clause 11* confirms that the Council is not a trustee of the PIF or income derived from it, including for income tax purposes.

*[Sponsoring member]*

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## **Contents**

		Page
1	Title	1
2	Commencement	2
<b>Part 1</b>		
<b>Preliminary provisions</b>		
3	Purpose	2
4	Interpretation	2
5	Other applicable legislation	3
<b>Part 2</b>		
<b>Perpetual Investment Fund</b>		
6	PIF to benefit New Plymouth District	3
7	Principles for managing and applying the PIF	3
8	Additional principles for investment decisions	3
9	Giving effect to principles	4
10	Investment decisions do not need to be provided for in long-term plan	4
11	Council not a trustee	4

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the New Plymouth District Council (Perpetual Investment Fund) Act 2022.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Preliminary provisions**

**3 Purpose**

The purpose of this Act is to ensure the Perpetual Investment Fund continues as a long-term financial investment for the benefit of the social, economic, environmental, and cultural well-being of current and future communities of the New Plymouth District.

**4 Interpretation**

(1) In this Act, unless the context otherwise requires,—

**Council** means the territorial authority named in the Local Government Act 2002 ([Part 2](#) of Schedule 2) as the New Plymouth District Council, and any legal successor that has the role of giving effect to the purpose of local government in relation to the New Plymouth District

**New Plymouth District** means the area delineated in clause 35 of the Local Government (Taranaki Region) Reorganisation Order 1989

**Perpetual Investment Fund** or **PIF** means the fund established by the Council to contain the proceeds of the Council's sale of its shares in PowerCo Limited on 9 November 2004, and includes—

(a) any additional funds that the Council may from time to time add to the PIF; and

(b) any accumulations of capital and income on the PIF.

(2) A term or expression that is defined in the Local Government Act 2002 and used but not defined in this Act has the same meaning as in the Local Government Act 2002, as the case requires.

**5 Other applicable legislation**

The Local Government Act 2002, and any other enactment applicable to the Council's management, accounting for, and use of funds, apply except to the extent that those enactments are inconsistent with, or modified by, this Act.

## **Part 2**

### **Perpetual Investment Fund**

#### **6 PIF to benefit New Plymouth District**

- (1) The PIF, including any part of the PIF, must be managed and applied by the Council only for purposes that the Council considers, on reasonable grounds, are wholly or principally for the benefit of current and future communities of the New Plymouth District.
- (2) Subsection (1) does not limit the ability of the Council to invest the PIF outside the New Plymouth District.

Compare: 1999 No 5 [s 3](#)

#### **7 Principles for managing and applying the PIF**

- (1) When managing and applying the PIF, the Council must consider the following principles—
  - (a) the PIF is a long-term fund for the benefit of social, economic, environmental, and cultural well-being of current and future communities of the New Plymouth District;
  - (b) the PIF must be managed and applied with the intent of maintaining or increasing the real value of its capital, unless circumstances warrant otherwise;
- (2) Circumstances that warrant intentionally reducing the real value of the capital of the PIF are where the Council considers, on reasonable grounds, that—
  - (a) the PIF can be applied in a way that will achieve a benefit that is better, for the well-being of current and future communities of the New Plymouth District, than maintaining the real value of the capital of the PIF; and
  - (b) reducing the real value of the capital of the PIF is the best available means for achieving that benefit.

#### **8 Additional principles for investment decisions**

- (1) The Council must ensure that investment decisions are undertaken by financial managers who act independently of elected members and their personal or political interests.
- (2) Investment decisions must be made on a prudent, commercial basis in a manner that is consistent with—
  - (a) best-practice portfolio management; and
  - (b) maximises return without undue risk to the PIF as a whole; and
  - (c) avoiding prejudice to the reputations of the Council and the New Plymouth District community.

Compare: 2001 No 84 [s 58](#)

**9 Giving effect to principles**

- (1) The Council and any person acting under authority from the Council must, in making decisions, performing functions or duties, or exercising powers—
  - (a) under this Act; or
  - (b) in relation to the PIF under any other enactment:  
give effect to the principles set out in sections 7 and 8 that are applicable, so far as is practicable in the circumstances.
- (2) If applicable principles are in conflict in any particular case, and this conflict is not resolved by the application of section 7(2), the Council must resolve the conflict in accordance with the principles set out in [section 14](#) of the Local Government Act 2002.

**10 Investment decisions do not need to be provided for in long-term plan**

An investment decision is not a decision to which [section 97](#) of the Local Government Act 2002 applies.

**11 Council not a trustee**

- (1) The Council is not a trustee of the PIF and this Act does not make the Council a trustee.
- (2) PIF income is derived by the Council in its capacity as a local authority, and the Council is not a trustee in respect of the income.

Compare: 1999 No 5 [s 5](#), 2018 No 2 [s 36\(3\)](#)