

# **Council**

**Wednesday, 18 December 2002  
Commencing at 4.30 pm**

**Part C: Report of the Chief Executive**

**Item 12: Waitakere Playhouse Theatre  
Trust - Update of Status /  
Issues**

**SUPPLEMENT TO AN ORDINARY MEETING OF THE COUNCIL TO BE HELD IN THE  
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON WEDNESDAY, 18 DECEMBER 2002,  
COMMENCING AT 4.30 PM.**

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**PART C - REPORT OF THE CHIEF EXECUTIVE**

**12 WAITAKERE PLAYHOUSE THEATRE TRUST - UPDATE OF STATUS/ISSUES**

**PURPOSE OF THE REPORT**

The purpose of the report is to advise Council of the current status and issues with regard to the Waitakere Playhouse Theatre Contract - Alterations and Additions.

**BACKGROUND**

The Trust requested that Council provide financial assistance by way of a loan guarantee or underwriting funding at the sufficient level to construct and complete the alterations and additions to the Waitakere Playhouse Theatre in Glendale Road, Glen Eden.

The Trust has been fundraising to cover the refurbishment costs and Council has provided a grant of \$254,000 in the 2001/2002 Annual Plan and also underwritten a further \$200,000 making a total of \$454,000 approved funding to the Trust.

A resolution (2910/2001) passed by the Finance and Operational Performance Committee on 13 December 2001 was resolved at the full Council meeting of 19 December 2001:

- “1. *That Council advise the Waitakere Playhouse Theatre Trustees that subject to the Trust:*
- (a) Completing the tripartite agreement with Council and the Glen Eden Playhouse Theatre Inc relating to the vesting of the Playhouse Theatre property and the future utilisation of the property, and*
  - (b) Complying with any recommendations arising from the review of the proposed contract documentation undertaken by Council’s Engineer, and*
  - (c) That the Trustees acknowledge to Council that they will use their best endeavours to continue fundraising during the construction phase with a view to negating the necessity to uplift such funding, recognising the significant assistance already provided by Council, and*
  - (d) That the Trustees and the Project Manager continue to liaise with Council’s Engineer during the refurbishment period to ensure expenditure remains within the contract sum established and any technical contract issues identified are addressed to Council’s satisfaction;*
  - (e) That Council will underwrite up to \$292,000 of any existing funding shortfall for the completion of the refurbishment and redevelopment of the Playhouse Theatre to enable the contract to be let no later than 31 January 2002.*

2. *That the Director: Finance be authorised to make any payment which may be necessary in accordance with this commitment, the source of any funds so applied to be reported back to the Finance and Operational Performance Committee.*
3. *That a Business Plan including strategies and forecasts be prepared by the Trust by 31 March 2002 for presentation to the meeting of the Finance and Operational Performance Committee scheduled to be held on Thursday, 11 April 2002."*

2974/2001

Subsequent to this meeting a Council resolution (795/2002) was passed on 24 April 2002 modifying the last paragraph of Recommendation 1 as follows:

*"That the underwriting of up to \$292,000 to the Waitakere Playhouse Theatre Trust be reconfirmed as the Council requirement for the contract for refurbishment and redevelopment of the Glen Eden Playhouse Theatre to be entered into by 31 January 2002 and unable to be achieved due to necessary contract amendments, but has since been entered into by the parties concerned."*

### **CONTRACT ISSUES**

Council's Engineer reviewed the construction documentation and provided a report dated 14 December 2001 outlining a number of issues and recommendations to the Trust.

Subsequently, advice was provided to the Trust regarding the name of an independent consultant for the Trust to engage for on-site health and safety monitoring in order to reduce their risk of contravening the Health & Safety in Employment Act.

Prior to the signing of the contract, Council's Engineer observed that no liquidated damages (an estimate of financial damages the Trust would incur should the contract not be delivered in the prescribed timeframe) had been inserted, although explicitly highlighted in the report dated 14 December 2002. This was subsequently amended prior to contract signing.

### **CONSTRUCTION ISSUES**

During the construction process, Council's Engineer requested on 24 April 2002 that the Trust's Project Manager furnish information regarding contract documentation (bond, insurances, health and safety plan) and overall budget management processes including monitoring, reporting, as well as the approval processes (between Project Manager and Trust) for variations, claims, payment certificates, issues, programme, delays and performance/quality. In addition minutes of site meetings were requested. This information was not provided by the Trust's Project Manager or the Trust, despite a number of attempts.

Council's Engineer did receive copies of minutes for site meeting number 11, dated 10 July 2002, and technical meeting number 8, dated 17 July 2002. The Engineer also inspected the site on two occasions to view progress, quality and discuss issues.

Late August 2002, the Trust provided limited information as requested by the Engineer in April 2002. The information provided was Project Financial Report number 3, dated 12 August 2002 prepared by the Project Manager.

This report indicated that variation orders in the sum of \$112,810 have been committed with only approximately \$2,500 agreed. The report also indicated a potential over-expenditure (amount above contract sum of \$1,450,023) of \$63,586.

After further enquiries Project Financial Report number 5, dated 23 September 2002 was received by Council's Engineer. This report now projected a potential over-expenditure of \$217,049 including variation orders in the order of \$196,834, contractor claims of \$43,266, and an increase in consultant's fees of \$25,173. In addition, of the variations/contractor claims, approximately \$10,500 was agreed.

At a meeting held on 24 October 2002 between the Trust, their Project Manager and Council's Engineer, a number of issues were discussed covering information required and requested by the Council's Engineer. At the time of this report no information has been provided. The information requested included:

1. Budget management processes;
2. Project Manager's monitoring and reporting to the Trust (and responses);
3. Contract programme (including Critical Path Analysis);
4. Approval systems for time extensions, claims, and variations;
5. Reports on performance issues with consultants or the Contractor;
6. Record of inspections / approvals by consultants;
7. Status report on expected completion and liquidated damages.

#### **OTHER FACTORS**

The funding for this project was inadequate and no provision was made by the Trust for consultant's fees during the construction period. These costs were taken from the construction contingency budget of \$80,000 and estimated at \$56,949.

The construction contract of \$1,450,023 was inclusive of the contingency sum of \$80,000. This equates to 5.8% of the construction costs, which is not adequate for works including refurbishment of a Historic Places building. A contingency of 15% of the contract sum (approximately \$200,000) was more realistic for the construction phase (excluding consultant's costs). It is recognised that this type of refurbishment is likely to result in delays associated with costs as well as a number of unknowns throughout the project.

The Contractor on this project is the same contractor that has recently constructed the Aquatic Centre Upgrade project, with similar issues around variations and claims. There are also some questions regarding the advice/service provided to the Trust by the Project Manager.

#### **SUMMARY**

The Trust have not fully met the requirements of the resolution (2974/2001) passed by the full Council on 19 December 2001 with respect to Item 1, Part (b) and in particular Part (d).

As a result of the Trust not meeting the requirements of resolution 1 (d), resolution 2 (authorisation to make payment) cannot be enacted on by the Director: Finance. This effectively means that the funding of up to \$292,000 cannot be released to the Trust by Council officers.

#### **CONCLUSION**

The Trust has received payment certificate number 9, certified for payment by the Project Manager on 28 November 2002. This requires the Trust to make payment in the sum of \$274,755 plus \$34,344.38 GST, totalling \$309,099.38 within ten working days. The actual payment to the Contractor should therefore have been made by 12 December 2002.

The Trust has indicated by way of a fax dated 29 November 2002 that it is not at present in a position (with available funds) to meet this contractual commitment and has requested that the sum of \$292,000 underwritten by Council be uplifted.

The Council's Engineer is not in a position to make such a recommendation given the resolutions passed and actions by the Trust and it would have to be entirely at Council's discretion (after hearing from the Trust) as to whether these funds are released to the Trust. This would require Council to set aside resolution 2974/2001. A course of action we cannot recommend.

### **RECOMMENDATION**

That the information be received.

Report prepared by: Alan Tresadern, Service Manager: Aftercare/Special Projects, City Services.



