

Council

**Wednesday, 27 June 2007
Commencing at 5.30 pm**

- Item 4: Urgent Business**
- Item 4A: Housing for Older Adults
Revitalisation Project -
Suspensory Loan
Documentation**
- Item 12: Strengthening
Auckland's Regional
Governance**

**AGENDA SUPPLEMENT TO A MEETING OF THE COUNCIL TO BE HELD AT WAITAKERE
CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,
ON WEDNESDAY, 27 JUNE 2007, COMMENCING AT 5.30 PM**

4 URGENT BUSINESS

That the matter of Housing for Older Adults Revitalisation Project - Suspensory Loan Documentation be considered as Urgent Business because if Council accepts the suspensory loan of \$1.5million from Housing NZ Corporation the authorisation from the Chief Executive Officer must be given in a Letter of Offer by Friday, 29 June 2007



**4A HOUSING FOR OLDER ADULTS REVITALISATION PROJECT - SUSPENSORY
LOAN DOCUMENTATION**

PURPOSE OF THE REPORT

The purpose of this report is to seek approval to accept the offer of a suspensory loan of \$1.5 million from Housing New Zealand Corporation (HNZC) for the upgrading of the Housing for Older Adult (HFOA) villages.

BACKGROUND

Council has been preparing an application to HNZC's housing innovation fund (HIF) for a \$1.5 million suspensory loan for the HFOA villages, as part of a 3 to 4 year programme, where the Council is seeking \$3 million plus assistance from HNZC. The fund was set up to promote the provision of social and affordable housing by territorial authorities and other not-for-profit providers.

Officers submitted an application for the \$1.5 million on 2 May 2007 for consideration by the HNZC Board in late May. On 5 June 2007, officers were advised that the Council had been successful in its application for \$1.5 million and HNZC subsequently presented a letter of offer containing a number of terms and conditions. The loan is called a 'Housing Innovation Fund Local Government Modernisation Loan' by HNZC and is subject to fulfilling certain terms and conditions over a 20 year period from the first drawdown of funds. At the end of the 20 year period the loan is written off.

The funding will be used to upgrade five of the twelve HFOA villages owned by the Council with improvements planned to enhance safety, security, design, and healthy living in the villages.

During the 12 month period leading up to the lodging of the application officers liaised with HNZC representatives and submitted regular reports to Council Committees to update on progress.

The Projects Special Committee meeting, 31 January 2007, resolved:

1. *That the Housing for Older Adults Revitalisation Project Update report be received.*
2. *That the Chief Executive Officer be authorised to accept any funding received from Housing New Zealand Corporation on Council's behalf for the Housing for Older Adults project.*

3. *That a commitment be given to retaining the current number of housing for older adult units over the next 20 years as required by the terms of the suspensory loan that the Council is seeking from Housing New Zealand Corporation.*
4. *That Council renew, within the Council's budget approved through the Long Term Council Community Plan 2006-2016, some housing units as a pilot demonstration of what the renewed units will look like.*

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A subsequent report to the 2 May 2007 meeting of the Projects Special Committee provided a further update about the progress that the Council had made in making the application and planning for the upgrades. This report was received by the Committee.

The Projects Special Committee meeting, 2 May 2007, resolved:

"That the Housing for Older Adults Revitalisation Project Update report be received.

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The villages are:

- | | |
|--|-------------------|
| • Flagstaff Village - 6 Flagstaff Place, Massey | Lot 71 DP 76425 |
| • Jack Smyth Village - 14 Royal Road, Massey | Lot 1 DP 84282 |
| • Kaurilands Court - 18 Kaurilands Road, Titirangi | Pt Lot 3 DP 34220 |
| • North Karaka Court - 19 Karaka Street, New Lynn | Lot 33 DP 10124 |
| | Lot 10 DP 43957 |
| • Kaumatua Village - 11 Kaumatua Place, Te Atatu | Lot 10 DP 59308 |

Upgrading work to each of the five villages is scheduled to begin in October 2007 and if all goes to plan, will be completed by June 2008. The work will occur concurrently in all five villages.

Before the upgrading proceeds, demonstration projects will have been carried out on several units in each village so that tenants can see in advance what improvements will be made to the units and Council can assess the proposed changes and make any final minor changes to the specification, before rolling out the programme across the villages.

Details about the proposed upgrades and the demonstration upgrade projects will be contained in a further update report to the Projects Special Committee before September 2007.

Two further applications to HNZC are planned over the next two financial years to help cover the cost of upgrades for a further six of the seven HFOA villages. For those villages, a further \$2 million may be available from HNZC. Wilsher Village is the exception, as it has been earmarked for a significant redevelopment provided that this is financially feasible.

STRATEGIC CONTEXT

Council's strategic priorities that are of particular relevance to housing include 'sustainable development' and 'safe city'. Of further strategic importance when considering Council's provision for housing in the City, are the following platforms: 'urban and rural villages' and 'integrated transport and communication' by ensuring people have choices in housing and have accessibility to transport and communication links and 'strong communities' by supporting the health and wellbeing of the community.

ISSUES

Letter of Offer

A68-A72

Officers are currently in negotiations with HNZC to finalise the contents of the letter of offer which sets out the terms upon which the loan is made available. A copy of the letter of offer in its most recent form is attached at pages A68 to A72.

HNZC requires that the letter of offer must be signed on or before Friday 29 June 2007 otherwise the offer will be withdrawn. Unfortunately the earlier approvals obtained from the Council did not extend to two matters arising under the terms of the letter of offer (and which have not previously been raised or intimated by HNZC representatives in discussions to date) Both matters are beyond the Chief Executive Officer's delegated authority and are discussed in more detail below.

The other terms of the letter of offer have been reviewed by the Legal Services Manager who comments that although aspects of the drafting leave something to be desired in terms of clarity of expression and certainty, the intention of the letter of offer is relatively clear. The letter appears to contemplate a formal loan contract being entered into prior to the date of drawdown at which time any residual drafting deficiencies in the documentation can hopefully be addressed.

There has been some debate over the definition of the "repayment events" (page 2 of the letter of offer) which arise if Council either:

- abandons the housing project;
- elects not to complete it and does not re-apply the funds for another social housing project approved by the Corporation;
- makes a decision pursuant to the relevant provisions of the Local Government Act 2002 to alter its long-term council community plan in a manner that affects the provision by the Council of social housing; or
- Makes a decision to otherwise withdraw or significantly alter its investment in joint funded social housing.

Under these terms the Council would retain the right to make changes to operational policies, procedures and practices, provided that these changes are made in accordance with the decision making principles and processes of the Local Government Act 2002.

Security

The letter of offer requires that the Council give security for the loan over the five properties in respect of which advances are to be made for upgrading, by way of registered first mortgage. It is proposed that the mortgage be in the standard Auckland District Law Society All Obligations mortgage form, with a priority recital of \$2,250,000 pursuant to s80A(2) of the Property Law Act 1952. The Legal Services Manager advises that this particular form of mortgage is in common use by solicitors throughout New Zealand for lending transactions of this type. Its terms are considered to be fair and balanced as between lender and borrower.

The giving of this security requires an approval by Council because of the requirements of the Council's Liability Management and Investment Policy which provides (LTCCP, vol 4 pg 93) that "physical assets will be charged only where:

- There is a direct relationship between the debt and the purchase or construction of the asset which it funds (e.g. an operating lease or project finance);
- the Council considers a charge of the physical assets to be appropriate;

- the Director: Finance ensures that the required register of charges and any associated documents are provided, filed and kept in accordance with the provisions of the Local Government Act 2002 and any other relevant legislation;

As previously noted the Legal Services Manager has no issue with the form of the mortgage security. What does however require a decision is whether it is appropriate to charge the physical assets with repayment of a suspensory loan of this type, and if the answer to that is "yes", then to determine whether there is a sufficiently direct relationship between the debt and the "purchase or construction of the asset which it funds".

As to the first step, HNZA is dealing with taxpayer funds. Money is being lent interest free and provided the terms of the loan are complied with repayment of those funds will be forgiven at the end of 20 years. Viewed from the lender's perspective it is entirely appropriate, and in accordance with prudent lending practice, to protect the taxpayer's interest by way of security for repayment in the event of default by the Council in its obligations within the 20 year period.

As to the second step, there might be some doubt whether a loan for refurbishment falls squarely within this wording. However it is felt that the purpose of the first bullet point does no more than indicate the need for a direct causal nexus between the lending transaction and an asset arising from that lending transaction. That is clearly the case here. Without refurbishment the existing assets would not be able to be used for their intended purpose and would have a correspondingly reduced value. Once refurbished the buildings will have an increased asset value. On that basis the second threshold also seems to be met.

First right of refusal

A69

It is a term of the letter of offer (attached at page A69) that:

"If the Council intends at any time to sell all or any part of the relevant land or all or any part of the residential dwellings refurbished or constructed with this funding or any replacement project approved by the Corporation (before 20 years from the date on which the loan is drawn down), then the Council will first offer to sell those dwellings or that land to the Corporation or to a social housing provider approved by the Corporation at market value."

The first point to make is that the Council's HOFA assets are strategic assets for the purpose of the Council's significance policy. Before any decision could be made to sell or any part of the Council's HOFA portfolio they would need to be extensive public consultation using the special consultative procedure. The right of first refusal sought by the Crown does not impact in any way upon that obligation. What it seeks to do is to say that if any future time the Council is in a position where it can lawfully offer these assets for sale it will give the Crown the first opportunity to buy, at market value.

The Legal Services Manager has considered the drafting of the particular provision and has observed that it lacks the sort of provision one would expect for a right of first refusal. It is short on detail as to how the offer is to be made. The use of the phrase "at market value" without any mechanism to establish how that value might be fixed gives rise to significant potential for disagreement between the parties. The clause as drafted also does not cover the circumstances where the Crown might decline to purchase "at market value", the Council is unable to sell on the open market at that value and proposes to sell at a lesser value. In such a case must the Council re-offer the property to the Crown at this lesser figure? Officers will attempt to address these issues before the letter of offer is finally concluded.

The issue for Council however is the more strategic issue as to whether this right of first refusal should be granted and if so upon what terms. From the Crown's perspective the argument would be that the right of first refusal is the quid pro quo for the use of the Crown's money interest-free for 20 years and the right of first refusal is the mechanism by which the Crown protects the public interest in ensuring the ongoing provision of social housing of this type. From the Council's perspective the granting of a right of first refusal creates at worst an inconvenience, at best a mechanism for the sale of surplus assets at market value without incurring sale expenses to a purchaser who will have the ability to pay. Provided that there is no great debate over "market value" and the terms upon which the right of first refusal can be triggered are made crystal clear, there does not appear to be any great disadvantage to the Council agreeing to this request.

As presently drafted the right of first refusal continues both before and after the 20 year loan period. There is no obvious mechanism by which this right of first refusal will be registered against the title to the Council's property and there is therefore every prospect that it might get lost in the mists of time. During the currency of the loan that is least likely so to in the period shortly following repayment of the loan. More than 10 years after the repayment date the greater the risk that the right of first refusal would become an inconvenience. It is recommended that officers be authorised to attempt to negotiate for a sunset clause in relation to this obligation, for example to limit it to 30 years after drawdown.

RESOURCES

The total cost of the upgrades to the five villages is \$2million and has been budgeted. The loan of \$1.5million from HNZC will be supplemented by Council's contribution of \$500,000, which has been provided for in the Long Term Council Community Plan 2006 - 2016.

RECOMMENDATIONS

1. That the Housing for Older Adults Revitalisation - Suspensory Loan Documentation report be received.
2. That the Council approve the giving of first mortgage security to secure repayment of the \$1.5 million suspensory loan for upgrading purposes over the following properties:

(a) Flagstaff Village - 6 Flagstaff Place, Massey	Lot 71 DP 76425
(b) Jack Smyth Village - 14 Royal Road, Massey	Lot 1 DP 84282
(c) Kaurilands Court - 18 Kaurilands Road, Titirangi	Pt Lot 3 DP 34220
(d) North Karaka Court - 19 Karaka Street, New Lynn	Lot 33 DP 10124
	Lot 10 DP 43957
(e) Kaumatua Village - 11 Kaumatua Place, Te Atatu	Lot 10 DP 59308
3. That Director: Finance is directed to update the register of charges once the mortgage security has been given and to affect any other registration of charges required by law.
4. That the Council agrees in principle to the granting of a first right of refusal in favour of the Housing New Zealand Corporation at market value in the event that the Council at some time in the future agrees to sell all or any of the properties listed in resolution 2 above.
5. That the Chief Executive Officer be delegated authority to negotiate and finalise the terms of the letter of offer, the mortgage security and the right of first refusal.

6. That the Chief Executive Officer be authorised to delegate as appropriate the practicalities of the implementation of the loan advance and the giving of the mortgage security by the Council in favour of Housing New Zealand Corporation in accordance with the Local Government Act 2002.

Report prepared by: Stephen Drumm, Group Manager: Service Management: City Services.



12 **STRENGTHENING AUCKLAND'S REGIONAL GOVERNANCE**

Te Taumata Runanga at its meeting held on Monday, 18 June 2007 received a report from the Director: Corporate & Civic Services on Auckland Regional Governance. Te Taumata Runanga recommends that Council include the following with their submission:

- That Te Taumata Runanga expresses its desire to further comment on proposals to strengthen the Auckland regional governance and notes that its Members will be consulting within their own organisations;
- That Te Taumata Runanga strongly supports Mana Whenua representation on the proposed Auckland Regional Sustainable Development Forum; and
- That Te Taumata Runanga strongly supports adequate resourcing of Mana Whenua representation on the Regional Sustainable Development Forum, both of the representatives themselves and through provision of appropriate dedicated officer support for the representatives in discharging their roles.

RECOMMENDATIONS

1. That the feedback be received.
2. That the Council include the feedback provided by Te Taumata Runanga with any feedback provided to the Auckland Regional Governance process.

