

Council

**Wednesday, 26 May 2010
Commencing at 5.30 pm**

- Item 12: Central Government
 Weathertightness Proposal**
- Item 16: Confirmation of Minutes –
 Te Taumata Runanga**

**SUPPLEMENT TO A MEETING OF THE COUNCIL TO BE HELD IN THE COUNCIL
CHAMBER AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,
HENDERSON, WAITAKERE, ON WEDNESDAY, 26 MAY 2010,
COMMENCING AT 5.30 PM**

12 CENTRL GOVERNMENT WEATHERTIGHTNESS PROPOSAL

EXECUTIVE SUMMARY

Since 2007, Waitakere has played an integral role in the development of proposals for change in the way in which weathertightness claims are handled and funded and the lobbying of Central Government in respect of those proposals. The previous Labour Government, while appearing to be receptive, did not respond to the approaches made to it. The current Government has been prepared to engage but a proposal, involving a 10% contribution from Central Government, did not find favour with local government.

The Government has now responded with a proposal for funding the costs of repair of leaky buildings claims on the basis of a 25% contribution from Central Government, 25% from the relevant territorial authority and the balance of 50% from the homeowner. This funding regime is in line with a proposal developed by local government and put to the former Labour Government in 2008. The key element of that proposal, and the current proposal, was that homeowners electing to participate in the scheme must abandon any court action against the Council (but are able to continue to pursue court action against any other liable parties) in return for a fixed contribution to the cost of repairs.

The government has asked for an indication from the most affected local authorities, which includes Waitakere, whether they support the current proposal subject to the detail being worked through.

RECOMMENDATIONS

It is recommended that the Council resolve to:

1. **Receive** the Central Government Weathertightness Proposal report.
2. **Agree** to advise the Government that Waitakere City Council supports the proposed weathertightness assistance package announced on 31 May 2010 and welcomes the opportunity to work with the Government to finalise the details of that package.

BACKGROUND

1. Since 2007, Waitakere has played an integral role in the development of proposals for change in the way in which weathertightness claims are handled and funded and the lobbying of central government in respect of those proposals. The previous Labour government, while appearing to be receptive, did not respond to the approaches made to it. The current government has been prepared to engage but a proposal, involving a 10% contribution from central government, did not find favour with local government.
2. The Government has now responded with a proposal for funding the costs of repair of leaky buildings claims on the basis of a 25% contribution from Central Government, 25% from the relevant Council and the balance of 50% from the homeowner. This funding regime is in line with the proposal developed by local government and put to the former Labour Government in 2008. The key element of that proposal, and the current proposal, was that homeowners electing to participate in the scheme must abandon any court action against the Council (but are able to continue to pursue court action against any other liable parties) in return for a fixed contribution to the cost of repairs.

- S1-S27
3. Copies of the following background materials are provided with this report:
- (a) Media Statement dated 17 May 2010 attached at pages S1 to S3;
 - (b) Media Backgrounder attached at pages S4 to S6;
 - (c) Pages 1 to 6 of the Prime Minister's post-cabinet press conference on 17 May 2010, attached at pages S7 to S12;
 - (d) The announcement on the Beehive website on 17 May 2010, at pages S13 to S21 and
 - (e) Background information for territorial authorities issued by the Department of Building and Housing, attached at pages S22 to S7.
4. The fine detail of the proposed scheme has yet to be developed. Matters requiring clarification identified to date fall into three broad headings: entry qualification, standard/cost of repairs and the loan scheme. The sort of issues which arise are:

Entry qualification

- (a) Will the scheme be limited to owner/occupiers or can investors join in? This is relevant because the recent Court of Appeal decision in relation to investor owners has been appealed to the Supreme Court and the case may not be argued before the end of the year;
- (b) Will purchasers who bought with knowledge (or without any enquiry) be eligible to apply, especially if the property was purchased at a discounted price as a consequence? There will need to be some mechanism to avoid gaming of the system by parties who specialise in buying and repairing leaky buildings;
- (c) Will the scheme apply to failed repairs as well as original building work? The probability is that it should. The most common examples of this are likely to be cases of targeted repairs i.e. attempts at repair not involving a full reclad; and
- (d) Is it intended to exclude applicants who commenced court proceedings before 30 June 2006, or filed a Weathertight Homes Resolution Service claim before 30 June 2003, so as to preserve the value of any reinsurance cover that may be available (currently that value is estimated at around \$70 million)?

Standard/cost of repairs

- (e) Is an approved remediation standard proposed? This is something in respect of which local government and Home Owners and Buyers Association Incorporated are in agreement. Currently the cost of repairs is exacerbated by the absence of such a standard, the absence of which results in a generally risk averse approach among all of those involved in the repair process and increased cost of repair;
- (f) Will betterment be excluded from the costs to be funded by Council and the government? If so, will the excluded value of betterment be eligible for loan scheme funding? (An example of betterment would be a monolithically clad house with standard glazing which it is proposed will be reclad in wooden weatherboards and double glazed windows); and
- (g) What is the mechanism proposed for determining the value of the repairs, and resolving any disputes between homeowner relating to the value of the repairs, betterment or the quality of the repairs?

Loan scheme

- (h) Will the proposed loan guarantee be limited to interest and if so for how long will the guarantee apply? This is relevant to the ability of homeowners to fund borrowing to meet the costs of repairs and will be relevant to the willingness of the banks to lend. Many homeowners may be unable to fund the cost of additional borrowing. The previous proposal from central government had some means testing proposals for eligibility but it is not clear whether those proposals are part of this package;
- (i) Will the guarantee extend to capital repayments? This is relevant where the current value of the house results in negative equity and the repair will, at best, restore the house to its pre-leaky value, rather than an increased value. In a case where there is still negative equity after the repair has been completed who takes the loss? The homeowner or the lender?; and
- (j) For those owners who need to have recourse to the loan guarantee, where does the cost of the loan guarantee (either of income and/or capital) fall? Will it be funded by the government over and above its 25% contribution or will it be funded as a lump sum payment out of the government's 25% contribution to repairs?

DECISION MAKING, SIGNIFICANCE, COMMUNITY VIEWS AND CONSULTATION

- 5. The Council is at this time only being asked to indicate support for the proposal as a first step before the Government sits down with interested parties to work through the fine detail. If that was not the case a number of difficult decision-making issues would need to be made by the Council. An analysis would be required of the likely level of uptake, the likely cost of repairs to which the Council would be committed and the comparative cost of the status quo as against the likely cost of some claims being resolved through this alternative process. Intuitively the feeling is that 25% of a reasonably moderated and controlled repair cost is not likely to involve a total payment on behalf of the Council of an amount which is significantly different to the likely cost of future claim settlements based on current claims resolution procedures, repair cost projections and modelling of the level of claims which the Council has undertaken. However, there are 3 particular points to be considered:
 - (a) Council has historically enjoyed the benefit of a level of insurance cover through Riskpool so that in respect of many of the claims already in hand there is still a realistic prospect that a significant proportion of any amount required to be paid to settle a claim on behalf of the claim will be met by Riskpool. In this regard it should be noted that the Council's excess on insured claims is \$50,000 (costs inclusive) and 25% of the weighted average claim amount used by PricewaterhouseCoopers of \$212,000 per unit is about the same for a single home unit. So for those claims it makes little difference to the Council if it pays an excess or 25% of a \$200,000 repair bill, and most claims for single home units are at that figure or above. The position, however, is much different in respect of insured multi-unit claims where only one excess might be paid. Care will need to be taken to ensure that the final design of the scheme does not put contributions to claims settlements by insurers and re-insurers at risk. If that occurs it may be that this proposal could result in an increased level of payment from Council funds (as distinct from Riskpool funds) in respect of known claims.
 - (b) The corollary to the first point is that over time there has been an inexorable increase in the value of claims and a corresponding decline in the number of solvent third parties who are able and willing to make a contribution to settlement so that looking forward at future claim settlements, whether historical claims or new claims, anything that assists to cap Council's liability has to be a good thing.

- (c) The third point is that Council now has no leaky building cover for new claims going forward. To the extent, if any, that this scheme results in additional claims that might not otherwise have been brought in time there will be additional cost to the ratepayer. Balancing that however is the cap on the amount of the payment which Council will make for repairs to a home of an owner who opts into the scheme.

S22-S27

6. Much will depend on the final design of the scheme and the level of uptake. Current wisdom within territorial authorities is that the level of uptake might be around the 50% of all claims but the information pack attached at pages S22 to S27 has a table with an analysis which assumes a 70% uptake rate. This table also attempts to make an assessment of the cost of uptake in dollar terms but is expressed on an Auckland-wide basis so is of little help in trying to assess the likely cost to Waitakere on its own. However, that table does not make any comparison against the future claim costs under the current system which have been modelled by Waitakere (and Auckland and North Shore, but not the other Auckland councils) using historical claim costs, on the basis of historical claim frequency. The costs stated in the table are not all new costs because a proportion of those costs will relate to claims already in the system and for which some financial provision has already been made by the Auckland councils
7. The short answer, therefore, is that on current information there is no clear basis for saying whether the proposed scheme will have a positive or negative effect on the level of claims previously modelled. There is therefore no basis for determining the significance of any changes to the Council's financial position that would result from implementation of the proposal. This work will, however, need to be done if and when the final detail of the scheme is known and the proposal is implemented. That is unlikely to occur during the term of this Council.
8. In all other respects, it is considered that the proposed scheme will have positive effects when compared to the status quo. The increased repair of leaky buildings will improve the quality of the housing stock with potential spin off in reduced health care costs from living in damp conditions. Money which might otherwise have been spent on legal fees will be used to fund repairs and to reduce homeowner's borrowing costs. The sooner repairs are commenced the less it is likely to cost to effect repairs (although the delays to date in some cases may well make demolition and re-building the most economic alternative). Finding a solution without recourse to adversarial process will also reduce the level of stress to affected homeowners with consequential social benefits. Finally, the repair process will have economic spin off benefits in the form of additional employment opportunities.

Consideration of Community Views

9. The feedback received from home owners who make a claim against the Council through the courts or the Weathertight Homes Resolution Service is that the process is hard, stressful and expensive. Affected members of the community are likely to welcome this proposal as offering another alternative. One of the parties the Government has involved in the development of its proposal is the Home Owners and Buyers Association Incorporated which has adopted an advocacy role on behalf of all owners of leaky buildings for some time. The views of affected homeowners will therefore be heard while the final details of the scheme are being developed. Consultation with affected home owners is, therefore, not considered necessary at this stage to ascertain their views.

10. There may be some members of the community who will be opposed to the scheme on the basis that ratepayers should not be paying to repair the homes of people who did not have taken sufficient care over their own investment decisions when buying their homes or residential investment properties. This view does not, however, take into account the fact that the courts have held that Council is liable at law to contribute towards repair costs in such cases and all that the scheme proposes is an alternative way for Council to make that contribution. So the issue is not one of liability to contribute but rather the quantum of the contribution to be made. As noted above the scheme is not sufficiently developed to enable the quantum of any additional cost arising from implementation of the scheme to be accurately assessed at this time. There is therefore little point in attempting to consult on something which as yet has only embryonic development. The scheme when finally designed will need legislation to be implemented and those parties who hold such views will have an opportunity to express their views in the submission process to that legislation.
11. For the moment all that is required is an “in principle” approval with the final detail of the scheme yet to be developed. On that basis, while the issue is of considerable interest to the community generally and potentially is of some significance at a financial level it would be an appropriate exercise of discretion under s 79(1)(a) of the Local Government Act 2002 for the Council to proceed at this time without the need for consultation to ascertain community views under s78 LGA 02) of or for more detailed analysis of the matters requiring assessment under s 77(1)(b) of the Local Government Act 2002 beyond that already contained in paragraphs 5 – 9 of this report.

STRATEGIC CONTEXT

12. The strategic context for this report is the community outcomes relating to strong communities, a strong economy, a sustainable environment (which includes an emphasis on a healthy living environment) and healthy lifestyles. The repair of leaky buildings within the Waitakere, and Auckland generally, will deliver on all of these outcomes, to one degree or another.

RESOURCES

13. There are no resources issues arising out of this report at this time. In due course once the final details of the proposed scheme are known and given effect (which is unlikely to occur during the lifetime of this Council) some assessment will be required of the financial effect of the scheme and an assessment made as to the level of any additional, or reduced, financial provision to be made.

IMPLEMENTATION ISSUES

14. There are no implementation issues arising from this report.

AUCKLAND COUNCIL TRANSITION ISSUES

15. The Auckland Transition Agency is aware of the government proposal and has been asked to express a view, but does not have a decision making role on behalf of the existing Auckland Region council in respect of such matters. It may only confirm those decisions which require confirmation under s 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009.

16. The decision making proposed in this report is not constrained by s31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. It does not directly or indirectly because of its consequences significantly prejudice the reorganisation, significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation. This is because an in principle decision only is required. In due course once the proposal has been developed there are two possibilities:
- (a) The Council may be required to opt into the scheme. It is not considered likely that will be required but if it is a decision will not be required during the term of this Council;
 - (b) The proposed scheme will be mandated by legislation and the Council will have no choice.

Report prepared by: Denis Sheard, Manager: Legal Services



16 **TE TAUMATA RUNANGA**

I NOHO TE TAUMATA RUNANGA KOMITI A TE MANE, TE KAU MA WHITU O HARATUA 2010.

YOUR COMMITTEE SUBMITS THE FOLLOWING REPORT OF ITS MEETING HELD ON MONDAY, 17 MAY 2010.

MATTERS CONSIDERED

*Pages S28-
S33
Supplement*

Your Committee dealt with a number of items for which it has delegated powers to act and a copy of the minutes of the meeting is attached at pages S28 to S33 of the supplement.

NGA TAKE E WHIRIWHIRIA

E whakatau ana Te Taumata Runanga i nga take i whakamanangia i te ture he whakaahua o nga tuhi kua tona ki nga mema o te Kaunihera.

It is recommended that the Council resolve to:

Receive the report of the meeting of Te Taumata Runanga held on Monday, 17 May 2010.

W Paki, JP
CHAIRMAN

