

## 8. NEW CIVIC BUILDING

<b>General Manager responsible:</b>	General Manager Corporate Services, DDI 941-8528
<b>Officer responsible:</b>	Legal Services Manager
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### PURPOSE OF REPORT

1. To advise the Council of a recommended legal structure for the development of the new civic building.
2. To seek approval for the Statement of Proposal and Summary of Information (attached) outlining the new structure, that will be distributed for public consultation.

### EXECUTIVE SUMMARY

3. At its meeting on 11 October 2007 the Council approved the purchase by Tuam 2 Limited of the site chosen for the new civic building. The Council also approved the issuing of 50% of the shares in Tuam 2 Limited to Ngai Tahu Property (CCC-JV) Limited or its nominated subsidiary. Tuam 2 Limited was to be responsible for the design and construction of the new building.
4. The Council also approved the use of Civic Building Limited as part of the funding structure.
5. Following the decisions made by the Council, Tuam 2 Limited has proceeded with the project. The necessary consents have been applied for in the name of Tuam 2 Limited. The purchase of the land and the existing building will be completed in May 2008 and it is likely that construction will begin shortly afterwards.
6. Tuam 2 Limited is a subsidiary of Civic Building Limited. The latter company was established so that the Council could borrow and lend to it the Council's half share of the project development costs. These funds are to be on-lent to Tuam 2 Limited. Its joint venture partner, Ngai Tahu Property (CCC-JV) Limited, will be contributing an equal amount.
7. The Council has been asked by the directors of Civic Building Limited and Tuam 2 Limited to restructure the joint venture from an incorporated to an unincorporated entity. The request is that all of the shares in Tuam 2 Limited should be owned by Civic Building Limited (not 50% as at present) and that Tuam 2 Limited and Ngai Tahu Property (CCC-JV) Limited become equal partners in an unincorporated entity that would continue with the development. According to the advice received by the parties, this structure would be more efficient for both partners so far as administrative costs and tax benefits are concerned.
8. This would require establishing a Council-controlled organisation. This means that a special consultative procedure will have to be undertaken before a decision can be made on the proposal.
9. Attached to this report is a Statement of Proposal and Summary of Information for approval. If these documents are approved consultation will be carried out in conjunction with the 2008-09 Annual Plan process.

### FINANCIAL IMPLICATIONS

10. The Council's share of the cost of construction of the new civic building remains unaltered at \$52.5 million.
11. This amount will be borrowed by the Council and on lent to Civic Building Limited which in turn will advance the funds to Tuam 2 Limited. That company will introduce the funds to the project through the new unincorporated entity as and when required. Ultimately Civic Building Limited may be amalgamated with Tuam 2 Limited.
12. The structure recommended by Deloitte will simplify the Council's investment in the new building in terms of funding and the Council's tax group transactions. Civic Building Limited and Tuam 2 Limited advise that the new structure will also simplify the administration of the new civic building project.
13. Ngai Tahu Property (CCC-JV) Limited will match the funds contributed by Tuam 2 Limited.

## **Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?**

14. There is no change to the amount budgeted for construction of the new civic building.

### **LEGAL CONSIDERATIONS**

15. The proposed joint venture arrangement is to operate on the basis that each party will share equally in all aspects of the development. This will include all legal and beneficial interest in the new civic building, obligations, liabilities and entitlements.
16. Tuam 2 Limited and Ngai Tahu Property (CCC-JV) Limited will form a board comprising three representatives each. Because the Council will have the right, indirectly, to appoint 50% of the board and control 50% of the votes at any meeting, the new entity will be a Council-controlled organisation, as that term is defined in Section 6 of the Local Government Act 2002.
17. Section 56 of the Act states that before the Council can establish or acquire shares in a Council-controlled organisation, the proposal to do so must be adopted following completion of a special consultative procedure.
18. Section 83A of the Act allows the Council to carry out consultation in respect of the new entity at the same time as the special consultative procedure for adopting the 2008-09 Annual Plan is completed.
19. Section 83 requires the Statement of Proposal and Summary of Information to be included on the agenda for a meeting of the Council.
20. The Council has a policy on partnerships with the private sector. This is to ensure that the Council acts wisely when it enters into business partnerships with the private sector and that the Council's interests are protected and the desired outcomes are consistent with its strategic objectives.
21. The policy does not apply to commercial arrangements made by Council-controlled trading organisations and their subsidiaries. The proposed unincorporated joint venture between Tuam 2 Limited (a CCTO) and Ngai Tahu Property (CCC-JV) Limited is such an arrangement.
22. If it had been an arrangement to which the policy applied, it is the view of the Legal Services Unit that the proposed entity would meet the conditions of the policy.

### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

23. The only difference between the financial structure referred to in the LTCCP and the recommended structure is that Civic Building Limited will own all of the shares in Tuam 2 Limited, not 50% of them as is the case at present.
24. Tuam 2 Limited will have a 50% legal and beneficial interest in the new unincorporated joint venture entity.
25. The 2009-19 LTCCP will include reference to the new entity.

### **CONSULTATION FULFILMENT**

26. If the Council approves the Statement of Proposal and Summary of Information attached to this report, public consultation will be undertaken in accordance with the special consultative procedure.

### **STAFF RECOMMENDATION**

It is recommended that the Council resolves to:

- (a) Approve the Statement of Proposal and Summary of Information in respect of the establishment of a new Council-controlled organisation to hold the Council's interest in the new civic building project;
- (b) Include the proposal in the special consultative procedure to be adopted for the 2008-09 Annual Plan.

## **BACKGROUND (THE ISSUES)**

27. In September 2006 the Council appointed Vbase Limited to manage the process of selecting a site for a new civic building. This included managing Tuam 2 Limited which was intended to be the eventual owner of the building.
28. At its meeting on 11 October 2007 the Council passed a number of resolutions in respect of the purchase of a site for and construction of the new civic building.
29. These included approving the purchase by Tuam 2 Limited of the site for the building and the issue of 50% of the shares in Tuam 2 Limited to Ngai Tahu Property (CCC-JV) Limited or its nominated subsidiary. The subsidiary nominated by Ngai Tahu was Ngai Tahu Property (CCC-JV) Limited.
30. The Council also approved Civic Building Limited being part of the funding structure. Vbase Limited manages this company as well.
31. Since that time the directors and staff of Vbase and Tuam 2 Limited have proceeded with the development. Consents have been applied for, plans prepared and contracts entered into.
32. The purchase of the site and existing building will be completed in May 2008. Construction will commence shortly thereafter.
33. The Boards of Vbase Limited, Civic Building Limited and Ngai Tahu Property (CCC-JV) Limited have received advice that a more simple legal structure could be implemented that would make the commercial arrangements more efficient to manage. Over time this would give rise to commercial and tax benefits that the current structure makes more difficult to achieve. They have proposed an alternative structure, based on advice received from Deloitte.
34. The proposal is for the new civic building to be owned by two companies in equal shares in an unincorporated joint venture. One company will be owned indirectly by the Council and the other by Ngai Tahu Property (CCC-JV) Limited.
35. The Council is advised that there are no adverse income tax implications for the transfer of responsibility for the development to the new entity. It is proposed that Tuam 2 Limited sells a 50% share in the development to Ngai Tahu Property (CCC-JV) Limited. The consideration for the sale would be settlement of the debt owed by Tuam 2 Limited to Ngai Tahu Property (CCC-JV) Limited in return for the transfer to Civic Building Limited of the shares in Tuam 2 Limited previously owned by Ngai Tahu Property (CCC-JV) Limited.
36. The result will be that Tuam 2 Limited is wholly owned by Civic Building Limited. To complete the process at some point in the future the two companies may be amalgamated into one.
37. Deloitte has advised the directors of the companies that an unincorporated joint venture arrangement is more tax efficient.
38. As indicated earlier, the proposed joint venture arrangement is to operate on the basis that each party to it will share equally in all aspects of the development of the new civic building. This will include all legal and beneficial interest in the building, obligations, liabilities and entitlements.
39. Tuam 2 Limited and Ngai Tahu Property (CCC-JV) Limited will form a board comprising three representatives each. Because the Council will have the right, indirectly, to appoint 50% of the Board and control 50% of the votes at any meeting, the new entity will be a Council-controlled organisation.
40. Because of this, the Local Government Act 2002 requires the Council to use the special consultative procedure before it can make a decision adopting the proposal.
41. A Statement of Proposal and a Summary of Information in respect of that proposal is attached to this report. If the Council approves the proposal, consultation will be undertaken as part of the special consultation procedure to be adopted for the 2008-09 Annual Plan.

## **THE OBJECTIVES**

42. To put into effect up to date tax advice given to Tuam 2 Limited and Ngai Tahu Property (CCC-JV) Limited with regard to the development of the new civic building.

## **THE OPTIONS**

### **Option 1**

43. The first option is to do nothing. The development of the new civic building would proceed, but the joint venture parties would not be able to benefit from a simplified business structure and tax efficiency identified by their financial advisors.

### **Option 2**

44. The second option is to establish an unincorporated joint venture entity with Ngai Tahu Property (CCC-JV) Limited as referred to in this report. Council staff are advised that this is the most administratively sound and tax efficient structure for development of the new civic building.

## **THE PREFERRED OPTION**

### **Option 2**

45. The second option is preferred.