

**25. SPECIAL CONSULTATIVE PROCEDURE FOR THE PROPOSAL THAT THE COUNCIL FUND A NEW BUILDING FOR THE UNIVERSITY OF CANTERBURY AT THE ARTS CENTRE**

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**PURPOSE OF REPORT**

1. This report summarises the decision-making process the Council has adopted in respect of the proposal that the Council fund a new building for the University of Canterbury at the Arts Centre. It also provides an analysis of the submissions made as part of the special consultative procedure and contains the Mayor's recommendations in respect to this proposal.

**EXECUTIVE SUMMARY**

2. The decision for the Council to consider is whether or not it funds the development of a new building for the University of Canterbury's School of Music at the Arts Centre. The proposal is that Council borrows the funds required, leases the land from the Arts Centre Trust Board and provides working capital to a Council-controlled trading organisation (CCTO), which would manage the development and own the building.
3. The CCTO would then enter into a long-term lease arrangement with the University, ensuring the lease payments are sufficient to:
  - Recover the actual cost of the building over 50 years
  - Pay the interest on the required loans
  - Repay the debt and maintain solvency
  - Ensure the structure is cash-flow (and rates) neutral to Council.
4. The University Council has resolved that the Arts Centre site is the only central-city site it will consider for the building and that this option must involve the Christchurch City Council as the funder and landlord on land leased from the Arts Centre Trust Board. The University's only other option is to build at Ilam.
5. The benefit to the city of the proposal is that it could be expected to encourage more people to come into the central city either as students, teaching staff, performers or to attend an increased number of concerts or events. This is consistent with the Council's community outcomes, the Central City Strategy and the Central City Revitalisation Project. The proposal would also benefit the Arts Centre Trust Board by providing it with additional revenue from the ground-lease that can be used for maintenance and protection of the heritage buildings at the Arts Centre. This is the first feasible option the Arts Centre Trust Board has had in 40 years for this site.
6. The cost of the proposal is the requirement for the Council to borrow \$24.355 million to fund the development. The sum includes \$800,000 to extend the underground carpark by 40 parks for Council use. However, with the exception of the additional carparks, these costs would be ultimately met by the University and the proposal is structured so as to be rates neutral. In addition, the University has agreed to alter the lease payments to allow for actual construction costs and actual interest costs. Because the proposal is structured in this way, it would not limit the Council's ability to borrow for other projects or to meet its future needs.
7. At its meeting on 23 July 2009 the Council resolved to undertake a special consultative procedure before a decision on the proposal was made.
8. On 13 August 2009 the Council approved a Statement of Proposal and Summary of Information for distribution. The period for consultation ran from 22 August 2009 to 23 September 2009.

9. 506 written submissions were received in response to the Statement of Proposal, including 15 submissions that were lodged after the expiry date. Of these, 110 submitters advised the Council that they wished to present their submissions orally. Ninety-five submitters appeared before the Council's hearings panel, including one submitter speaking on behalf of 43 others. A record of the key points emphasised by the submitters who appeared is attached as **Appendix 1**.
10. The Council established a hearings panel comprising all Councillors, with the exception of Councillor Wells who is a current member of the Christchurch Arts Centre Trust Board. She declared a conflict of interest and took no part in the Council's decision-making process.
11. The background of this report contains an analysis of the written and oral submissions made during the consultative process. The background also contains general comments with regard to the issues raised.
12. For the most part, submitters responded specifically to the funding proposal. However, many submitters opposed to the funding proposal believe that the site is inappropriate for the proposed building. The size, style and location of the proposed building will be the subject of consideration by commissioners during the public process to measure the building against the City Plan and the Resource Management Act 1991.

### **MAYOR'S RECOMMENDATIONS**

13. It is recommended that:
  - (a) The Council:
    - (i) funds the development of a new building for the University of Canterbury School of Music at the Christchurch Arts Centre.
    - (ii) uses an existing Council-controlled trading organisation, Civic Building Ltd, to manage the development and own the building when it is completed.
    - (iii) enters into a lease with the Christchurch Arts Centre Trust Board for the land on which the new facility is to be built.
    - (iv) raises the funds required to complete the development and on lend them to Civic Building Ltd.
  - (b) Resolutions (a) (i) – (iv) above are subject to:
    - (i) resource consent being granted to the Christchurch Arts Centre Trust Board for the issue of a separate certificate of title for the land on which the new facility is to be built, on terms and conditions that are acceptable to the Trust Board and the Council.
    - (ii) the Christchurch Arts Centre Trust Board confirming to the Council's satisfaction that the trustees have acted in accordance with the provisions of the Board's trust deed.
    - (iii) resource consent being granted to the University of Canterbury on terms and conditions that are acceptable to the University, the Christchurch Arts Centre Trust Board and the Council.
    - (iv) the Council being satisfied that the cost of borrowing the funds required to complete the project, including interest, capital repayments, on going maintenance and ground rent will be rates neutral over the complete term of the proposed lease between the Council and the University.
    - (v) the Council and the Christchurch Arts Centre Trust Board entering into a deed of lease in respect of the land on which the new facility is to be built, on terms and conditions that are acceptable to the Trust Board and the Council.

- (vi) the University and the Council entering into a lease in respect of the completed building on terms and conditions that are acceptable to the University and the Council, such conditions to include provision for adjustments to be made to lease payments to ensure that the cost of funding the development remains rates neutral.
  - (vii) each party confirming in writing that it agrees to proceed with the project once the terms and conditions set out in this resolution have been satisfied.
- (c) The Council notes:
- (i) the proposed arrangement for borrowing and on-lending funds to Civic Building Ltd includes repayment over a term of 50 years.
  - (ii) this term is outside the requirements of the Council's liability management policy which states that loans are to have a term of no more than 30 years.
  - (iii) the reason for the inconsistency is that the balance between the repayment of the loan and the income required to meet that cost is best achieved by a 50 year term rather than a period of 30 years.
  - (iv) the Council does not intend to amend the liability management policy if the proposed arrangement is put in place.
  - (v) this is a "one-off" arrangement and the existing restriction on the period on which debt is to be repaid will remain unaltered in the Council's current liability management policy.
- (d) The General Manager Corporate Services and the Corporate Finance Manager (jointly) be authorised to borrow up to \$24.355 million as necessary to advance to Civic Buildings Ltd as redeemable preference shares and debt for the development of the new School of Music subject to the principles resolved on by Council for this development.
- (e) Civic Building Limited be requested to:
- (i) enter into an agreement with the University of Canterbury for the development and subsequent long-term lease of a facility for the University's new School of Music.
  - (ii) enter into a deed of lease with the Christchurch Arts Centre Trust Board.
  - (iii) manage the development and lease of the facility.
  - (iv) amend its Statement of Intent to include this project.
- (f) The Chief Executive be authorised to execute all documents, including any special resolutions of shareholders, necessary to give effect to these recommendations.

## BACKGROUND

### ARTICLE I. DECISION-MAKING PROCESS

14. The Council must ensure that its decision-making processes promote compliance with the Local Government Act 2002. The funding proposal being considered by the Council is a significant matter in terms of the Council's significance policy. This means that the provisions in the Act are to be appropriately observed, in particular sections 77 (identify and assess options) and 78 (community views).
15. The Act requires the Council to identify all reasonably practicable options for the achievement of the objective of its decision. In this case the objective is to assist the University of Canterbury to establish a new School of Music in the central city and to contribute to achievement of the Council's objectives for the central city.
16. The University has made it clear that the only central city site it will consider is at the Christchurch Arts Centre. If this was not available then it will build a new School of Music at the University's Ilam campus. The Council therefore has only two reasonably practicable options to consider – either agree to fund the proposal before it or decide not to.
17. If the Council decides not to fund the proposal the Vice-Chancellor Dr Rod Carr has stated that the cost of building a new facility at Ilam would be prioritised against other projects in the University's 10-year capital programme.
18. The benefit to the city of a School of Music situated at the Arts Centre is that it could be expected to encourage more people to come into the central city either as students, teaching staff, performers or to attend an increased number of concerts and events.
19. The cost lies in the need to borrow money to fund the development but as is referred to elsewhere in this report any costs incurred by the Council will be met by the University over a period of 50 years.
20. In terms of the present and future social, economic, environmental and cultural wellbeing of the Council's district, the funding proposal itself will have very little impact. Introducing new people into the central city, no matter what the actual number might be, would be expected to provide social and economic benefits. Adding a School of Music to the Arts Centre precinct should add to the cultural activities already undertaken in that area.
21. Environmental issues relate largely to the bulk and location of the new building proposed for the Arts Centre site. Whilst concerns have been expressed by submitters it has already been stated that these issues are more properly dealt with in the resource consent process. An application for consent has been lodged and a decision on whether or not the building as currently designed should be built on the site will be made by two independent commissioners.
22. The Council has as one of its strategic objectives the revitalisation of the central city. There is a need to arrest the decline in the number of people coming into the city to shop, attend events or to live within the four avenues. As indicated earlier, any activity that addresses this issue, could be seen by the Council as being a positive step. To this extent having the University of Canterbury's School of Music at the Arts Centre would be such a step. The proposal fits with the community outcomes sought by the Council, its Central City Strategy and the Central City Revitalisation Project.
23. The Local Government Act 2002 imposes on the Council an obligation to meet the needs of its residents in terms of their present and future wellbeing. There are core services that the Council must provide and these and other activities are set out in its 2009-19 LTCCP. Because the funding proposal is intended to be rates neutral it is considered that there would be no impact on the Council's capacity to meet its statutory responsibilities should the proposal be adopted.

24. The Council has already undertaken arrangements similar to those contained in the funding proposal. In 2003 it borrowed money to construct a jet engine test cell facility at Christchurch Airport. Jet Engine Facility Ltd was established as a Council-controlled trading organisation to lease the facility to Pratt and Whitney Air New Zealand Services. More recently, the Council borrowed and on-lent to Civic Building Ltd sufficient funds to meet that company's share of the cost of developing the new civic building in Hereford Street. Such arrangements fall within the Council's financial management policies.
25. To the extent that in each case these funding arrangements have been referred to and consulted on in the Council's LTCCP or Annual Plan, it was open to the Council to consider that the community would be familiar with a further structure of this nature being put in place. However, it became apparent through the special consultative procedure that because the proposal involved a new building being built at the Arts Centre it has therefore attracted considerable public interest.
26. During the course of the consultative process the community suggested other options for achieving the Council's objectives. For the reason referred to elsewhere in this report there are only two options that could be considered to be reasonably practicable. These are that the Council either funds the University's new School of Music at the Arts Centre or it decides not to.
27. Given this situation, it is the advice of the Council's Legal Services Unit that the Council has taken appropriate steps to identify and assess the options available to it.
28. The Council acknowledged the views of the community at the initial meeting held to consider the funding proposal. It resolved to use the special consultative procedure before the proposal was developed further and a decision made. The Legal Services Unit's advice is that the Council has given appropriate consideration to community views.
29. Judgements in respect of compliance with sections 77 and 78 are the responsibility of the Council to make.
30. As part of the consultative process oral submissions were heard on Tuesday 20 October 2009, Friday 23 October 2009 and on Tuesday 27 October 2009.
31. In response to a request made under the Official Information and Meetings Act 1997 and after discussions with the Ombudsmen's Office, the Council issued a media release on 20 October 2009. This clarified the funding structure set out in the Statement of Proposal and the reasons for it being rates neutral, if the proposal was adopted. The Council also disclosed the expected level of borrowing that would be required, \$24.355 million, and proposed lease arrangements beyond the 50-year term of the funding proposal.
32. The Council was advised by its Legal Services Unit that the information contained in the media release did not alter the funding proposal to an extent that would have required the special consultative procedure to be abandoned and a new one undertaken.
33. Copies of the media release were sent to every submitter, along with an offer to make submissions on the information contained in it if they wished to. 15 submitters made written submissions and 8 were heard by the hearings panel on 27 October 2009.
34. All eligible Councillors have now considered the issues raised by submitters both for and against the proposal.

## ARTICLE II. ANALYSIS OF SUBMISSIONS

35. The proposal put out for consultation was for the Council to:
- (a) fund the development of a new building for the University of Canterbury's School of Music
  - (b) use an existing Council-controlled trading organisation, Civic Building Limited, to manage the development and own the building when it is completed
  - (c) enter into a lease with the Arts Centre Trust Board for the land on which the new facility is to be built, and
  - (d) borrow the funds required to complete the development and on-lend them to Civic Building Limited.
36. For the most part, submitters responded specifically to the funding proposal. They also took the opportunity to comment on issues they believed were relevant to the Council's decision. These included such matters as:
- (a) whether the Council should be funding a new building for the University
  - (b) the bulk and location of the proposed building in the Arts Centre precinct
  - (c) the financial risks involved in funding the project over a 50 year term
  - (d) the effect that a funding proposal of this nature would have on the Council's future capacity to borrow for other projects
  - (e) whether the School of Music should be at another site in the Central City
  - (f) insufficient consultation, and
  - (g) splitting the University campus.
37. In general terms these were the main concerns expressed by those submitters opposed to the proposal. On the other hand, submitters supporting the proposal did so for the following reasons:
- (a) it is an opportunity to enjoy the benefits of a further enlivened cultural precinct
  - (b) all costs, including interest and ground rent would be paid by the University
  - (c) the Council's involvement is of fundamental importance
  - (d) relocation of the School of Music will have a positive impact on the Arts Centre and to the central city
  - (e) it is an important component in ensuring that the central city remains vibrant and attractive
  - (f) it is the first time in 40 years that a proposal considered to be suitable for the site has been suggested, and
  - (g) the proceeds of the ground rent will be used by the Arts Centre Trust Board to maintain and protect the heritage buildings on the site.
38. The funding proposal was opposed by 475 submitters and supported by 31. The University attached to its submission copies of 27 emails, which it advised the Council represented a sample of emails received from members of the public supporting the proposal. The University also reported the results of a residents' survey undertaken on its behalf.
39. A number of submitters either produced or referred to petitions in opposition to the proposal.

40. Copies of the written submissions received were distributed to the Mayor and all eligible Councillors prior to the hearings. Any material provided at the hearings was also circulated, including additional submissions made in response to the Council's media release of 20 October 2009. Points made by oral submitters are recorded in the attached schedule.
41. All eligible Councillors have considered the issues raised by submitters both for and against the proposal. What follows are general comments with regard to those issues (a summary of these is also attached as **Appendix 2**):
- (a) funding a new building for the University of Canterbury is not a core service of the Council. However, it could be seen as an opportunity for the Council to assist the University to build its new school of music at the Arts Centre rather than at Ilam. Whilst the University could fund the building itself, it has approached the Council to fund and act as lessor of the building to manage the ongoing relationship with the Arts Centre of Christchurch Trust.
  - (b) the University is intending to raise up to \$500 million to complete a 10-year programme of capital improvements and development. If the Council agreed to adopt the funding proposal, the University would be able to include in the programme projects that may otherwise have had to be deferred to make way for a new School of Music.
  - (c) the University has advised that it does not have direct access to central Government funding for its new buildings. A partnership with the Council would enable funds to be borrowed at a more favourable rate than the University could achieve.
  - (d) a number of submitters were concerned that by borrowing \$24.3m for this project the Council was limiting the opportunity to borrow for other projects. Information provided to Councillors indicates that the impact on the Council's current and future debt position is minor. The Council would remain well within the ratios specified in its liability management policy. This proposal would not limit the Council's ability to borrow for other projects or to meet its future needs.
  - (e) many submitters opposed to the funding proposal objected to the Council funding a building that they believed was inappropriate for the proposed site at the Arts Centre. There was also concern that placing a new structure within the Arts Centre precinct would harm the heritage fabric of adjoining buildings and their surroundings. However the purpose of the special consultative procedure was to consult on the proposal referred to in paragraph 2 of this report. The bulk and location of the proposed building as currently designed will be the subject of consideration by commissioners appointed to measure the building against the Council's City Plan and the Resource Management Act 1991. This is a public process and there will be an opportunity for the merits of the building and the proposed site to be properly assessed. This is not a function that could have been carried out by the Council as part of the special consultative procedure.
  - (f) a number of submitters were concerned about the risks associated with forecasting financial costs and returns over a 50 year term. The advice provided to Councillors by staff has been that this risk is manageable, given that the University has agreed to meet all actual costs associated with the construction and maintenance of the proposed building. These costs will include interest and capital repayments, the pre-payment of ground rent to the Arts Centre Trust Board, maintenance and refurbishment costs and other outgoings incurred by the Council and Civic Building Limited in the development of the building.
  - (g) the lease payments to be made by the University will reflect the actual construction costs and will be adjusted every five years to take account of any movement in interest rates. The payments will also be indexed for inflation and will include an allowance for ongoing replacements and maintenance.
  - (h) at the end of the 50-year term the building would be owned by Civic Building Limited, a Council-controlled trading organisation. If the University wished to terminate its lease during the 50-year term, it would be liable for lease payments for the remainder of the lease.

- (i) the risk to the Council is that it will own an empty building and that steps would need to be taken to find new tenants. However this risk is mitigated by the fact that the building would be consistent with the activities listed in the Arts Centre Trust Deed and that costs incurred by the Council would have been repaid.
42. One of the reasons for the Council adopting the funding proposal is that relocating the School of Music to the Arts Centre would contribute to the revitalisation of the central city. The Council's intention is to have a strong and healthy economy, environment, culture and society (Central City Strategy). Although no specific quantitative analysis of the possible benefits has been undertaken, the Council could decide that any level of interest generated by the new facility would have a contribution towards achieving the Council's objectives..
43. A number of submitters were of the view that the cost of borrowing a large sum of money would be out of proportion to the perceived benefit. In fact, all costs will be paid by the University. Therefore, whilst the benefit to the city has not been quantified the addition of a School of Music in the Arts Centre precinct, with its own facilities and access to others in the area, may be seen to be a positive contribution to achieving the Council's strategic objectives.

### **CONCLUSIONS**

44. At the end of the day, Councillors will need to determine whether or not funding the proposed School of Music for the University at the Arts Centre is good for the city and for the Arts Centre. The following points may be considered to be relevant to the Council's deliberations:
- (a) it is the first time in 40 years that a proposal considered to be suitable for the site has been suggested.
  - (b) the Christchurch Arts Centre Trust Board has been advised that leasing the land on which it is proposed that the new School of Music be built is within the powers given to the Board by its trust deed.
  - (c) the ground rent for the site has been set at a commercial level, with the first 20 years paid in one sum in advance. This will enable the Board to make a start on earthquake strengthening work with a capital sum that it would not otherwise have had.
  - (d) the University has made it clear that it will not consider any other site in the central city. This effectively reduces the options available to the Council and removes the opportunity that might have existed to include the School of Music in a cultural precinct around the existing Christchurch School of Music and the CPIT Jazz School in the Madras Street – Barbadoes Street area.
  - (e) if the Council decides not to fund a building for the School of Music at the Arts Centre it will be built at the University's Ilam campus.

### **OPTIONS**

45. On the face of it and on the basis of the submissions made in response to the Statement of Proposal, there appear to be a number of options for the Council to consider. These could have included:
- (a) agreeing to fund the new building but only if it is on another site in the central city, such as one of the Council-owned properties in the area south of Lichfield Street
  - (b) agreeing to fund the building but only if the concerns expressed with regard to bulk and location are met, and
  - (c) encouraging the University to build its new School of Music in the central city but pay construction costs itself without assistance from the Council.



46. The Council is not in a position however to consider these options. The only two reasonably practicable options are those set out in the Statement of Proposal. These are:
- (a) fund the development of a new building for the University of Canterbury's School of Music at the Arts Centre, or
  - (b) decide not to adopt the proposal.