

18. UNIVERSITY OF CANTERBURY: NATIONAL CONSERVATORIUM OF MUSIC



General Manager responsible:	General Manager Corporate Services, DDI 941-8528
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PURPOSE OF REPORT

1. This report proposes Council involvement, through a Council-Controlled Trading Organisation (CCTO), in the funding, development and subsequent lease of a National Conservatorium of Music facility for the University of Canterbury. The proposed development would be on land at the Christchurch Arts Centre, owned by and leased from The Arts Centre of Christchurch Trust.

EXECUTIVE SUMMARY

2. The University of Canterbury's current School of Music facility at its Ilam campus is outdated and the University's Council recently approved its replacement. The University considered two primary options: rebuilding on its campus at Ilam or building a new facility on leased land at the Christchurch Arts Centre.
3. The School of Music is part of the Centre for Fine Arts, Music and Theatre, within the College of Arts at the University of Canterbury. The School currently has 300 students and highly-rated academic staff. Music has been taught at the University since at least 1891 and was established as a faculty in 1924. Since that time the School of Music has made a vital contribution to the cultural life of the University and the city. Through its high-quality programmes and staff, the School of Music also provides a significant contribution as a provider of education and research.
4. The University has a preference to locate the new music facility at the Arts Centre on leasehold land owned by the Arts Centre of Christchurch Trust. The proposal for the Arts Centre site is for a building that will:
 - Replace existing inadequate facilities for music and hence support growth of the current music programmes and allow for the development of new programmes at the University;
 - Fulfil the University's intention to have a visible and beneficial presence in the city;
 - Enliven the cultural life of the University and the city, and provide a tangible interface between the two;
 - Be of architectural merit such that it can act as a much-needed base and point of identity for the University in the city;
 - Meet the University's strategic goal of forming close links with the local community.
5. The creation of the Centre for Music and the Performing Arts at The Arts Centre site will provide a central-city location for the University and will be useful for other university events such as the "UC in the City" lecture series, alumni events, fundraising events for the University Foundation, small conferences and other university activities.
6. The location has the potential to maximise audience numbers and community participation at such events and also at School of Music concerts. It will place the centre within the arts community of the city, enhance linkages with those organisations, and allow the University School of Music to extend its community education role.
7. Sir Miles Warren, in collaboration with the architectural firm, Warren and Mahoney, has developed the concept to plan stage incorporating all of the facilities required by the School of Music. The concept for the building on the current Hereford Street car park site and the creation of a third quadrangle of the Arts Centre has been embraced by The Arts Centre of Christchurch Trust Board and has support from both the Historic Places Trust and the Council's Urban Design Panel.

8. The University has approached the Council to fund the building and lease it back to the University on a long-term lease. This would require the Council, through a Council-Controlled Trading Organisation (CCTO), to lease the required site from the Arts Centre Trust Board, construct the facility and enter into a long-term lease with the University. 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.

FINANCIAL IMPLICATIONS

9. It is recommended that the Council uses Civic Building Limited (CBL), a CCTO, to manage this development and to own the building. This CCTO already has a board in place and has experience with a similar development (the new Civic Building). As well as administrative efficiencies, use of a CCTO offers the Council the opportunity for financial efficiencies through the use of subvention payments from other profit-making companies in the Council group to CBL.
10. The recommended structure would involve the Council borrowing the funds required to build the centre, lease the land from the Arts Centre and provide working capital to CBL, which would be responsible for the development. CBL would then enter into a long-term lease agreement with the University, ensuring that lease payments are sufficient to:
 - Recover the whole cost of the building over 50 years
 - Pay the interest on the required loans
 - Repay the debt and redeemable preference shares
 - Maintain solvency
 - Ensure the structure is cash-flow (and rates) neutral to Council.
11. Based on modelling, CBL would need to be funded as follows:
 - Council borrows the required amount to fund the facility and initial land lease at Council borrowing rates
 - Funds are advanced to CBL, partly as redeemable preference shares to maintain balance sheet solvency, and the balance in debt funding
 - CBL pays the Council an interest rate (or dividends on the redeemable preference shares) that covers the full amount of Council borrowing
 - CBL repays the loan and redeemable preference shares to the Council over 50 years.
12. Indicative financials are contained in a public excluded report on this agenda for reasons of commercial confidentiality. As noted above, the recommended financial structure requires the Council to borrow and advance funds to the CCTO responsible for development. The Council would charge CBL the actual borrowing cost. There is no rates impact of this approach because the increased interest cost from advancing the funds would be met by interest payments from the CBL to the Council. Ultimately this cost is met by the ongoing lease payments from the University to CBL.
13. The main impact on the Council's financial statements is the requirement to borrow the funds, which leads to an increase in Council gross debt. The impact of the required debt has a small impact on the Council's gross debt position. However, the Council remains well within the ratios specified in its liability management policy. These ratios are set in the 2009-19 LTCCP to ensure the Council remains within the acceptable limits for its AA+ rating from S&P.
14. The proposed structure provides the lowest cost of delivery because it utilises Council borrowing ability and interest rates and uses tax subvention payments from the Council tax group. It should be noted that this project will create taxable profits and pay taxes to central government in its later years.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

15. No, the 2009-19 LTCCP budgets made no allowance for funding this project. However, as noted above, there is no rates impact and the Council remains well within the ratios specified in its liability management policy.

LEGAL CONSIDERATIONS

16. The decisions to be made by the Council are whether or not to:
- (a) fund the development of a new building for the University of Canterbury;
 - (b) use an existing CCTO, Civic Building Ltd, to manage the development;
 - (c) enter into a lease with the Arts Centre Trust Board for the land on which the building is to be constructed;
 - (d) borrow the funds required to complete the development and on lend them to Civic Building Ltd.
17. In terms of the Council's significance policy, these decisions are significant. The Council is undertaking an activity that is not specified in the 2009-19 LTCCP. It must therefore consider using a special consultative procedure before making the decisions.
18. In assessing whether or not a special consultation procedure should be used in this instance the following considerations are relevant:
- (a) there is no requirement to use a mandatory consultation process before making a decision to use an existing CCTO for the development of the new building;
 - (b) the proposed lease of land from the Arts Centre Trust Board is not in itself significant. It won't be put in place unless consents from the appropriate authorities are obtained for the proposed development and the parties have agreed to proceed with it;
 - (c) borrowing on the open market at a favourable rate and on-lending the funds to a CCTO is an arrangement that the Council has used several times before. These arrangements comply with the Council's financial management policies;
 - (d) the cost of the funding required to complete the development will be met by the University and will not have any impact on rates;
 - (e) there are only two options open to the Council. If it decides not to support construction of the new building at the Arts Centre site, it will be built at the University's Ilam campus, without any Council involvement;
 - (f) matters such as the design and scale of the proposed development will be determined by way of the resource and building consent processes. These are not decisions for the Council to make.
19. It is the view of the Legal Services Unit that the level of compliance with the decision-making processes set out in sections 77 and 78 of the Local Government Act 2002 is largely in proportion to the significance of the decisions to be made by the Council, as set out above. As stated by the High Court in Whakatane District Council v Bay of Plenty Regional Council the Council is free to determine this for itself. The choice of the reasonably practicable options available is for the Council to make.

20. Council staff have assessed the proposal to be considered by elected members against the provisions of sections 77 and 78 and comment as follows:
- (a) only two reasonably practicable options have been identified. Either the Council supports the University's proposal and funds the development or it decides not to. If the second option is adopted, it is likely that the new school of music will be built at Ilam;
 - (b) having the school of music at the Arts Centre will enhance the existing cultural activities in the area and the outcomes sought for the cultural well-being of the Council's district. The social and environmental impact of the facility is considered to be at a low level;
 - (c) a benefit and cost analysis carried out in respect of the proposal has determined that the suggested funding arrangements will have no impact on the Council's capacity to meet its present and future needs. The cost of financing the development will be met by the University and will have no impact on rates;
 - (d) the public have become aware of the proposed involvement of the Council through media releases and discussion. It is unlikely that a formal consultative process would add anything more to the knowledge that the Council already has of community views on the matter;
 - (e) the Council is aware of the views of those people and organisations that have expressed their opposition to the design and scale of the proposed building. Whilst these have been considered, it is the advice of Council staff that such views will be taken into account during the resource and building consent processes;
 - (f) as stated elsewhere in this report, the Arts Centre Trust Board, the Historic Places Trust (in principle) and the Urban Design Panel have been consulted and have indicated their support of the proposed development.
21. Following the reasoning in the Whakatane case, the Council is entitled to consider community views as a matter of inference from information it has received. The Council is not required by section 78 alone to undertake any consultation process or procedure.
22. The Legal Services Unit's advice is that based on the matters referred to in paragraphs 19–22 above, it is open for the Council to elect not to use a special consultative procedure before making its decisions in respect of the proposal.
23. It should be noted that the judge in the Whakatane case expressly disagreed with the decision in COSS v CCC. The Whakatane decision has been appealed, but this has yet to be heard. It is the view of the Legal Services Unit that even if the Whakatane decision is overturned, the Council is in a much stronger position that it was with regard to the COSS challenge because the Council is expressly dealing with the matter of significance, the assessment of reasonably practicable options and the consideration of community views.
24. It is intended that the loan to Civic Building Limited be repaid over a 50 year term. This is outside the requirements of the Council's liability management policy which states that loans such as this are to have a term of no more than 30 years.

25. Where a decision of the Council is significantly inconsistent with one of its policies, section 80 of the Local Government Act 2002 requires the Council to identify the inconsistency, the reasons for it and any intention to amend the policy to accommodate the decision.
26. 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. As noted in this report, the proposed structure provides the lowest cost of delivery.
27. There is no intention to amend the liability management policy if the Council approves the funding arrangements recommended by staff. This is a "one-off" arrangement and the existing restriction of the period in which debt is to be repaid will remain in place.

OPTIONS

28. As noted above, there are two options for the Council:
 - Option A. Council to borrow and provide working capital to (CBL) to fund the National Conservatorium of Music facility at the Arts Centre. Within this option there are a number of sub-options, which are summarised below.
 - Option B: Council not to provide funding to CBL.
29. Option A is the recommended option. It is recommended to use a CCTO to fund the development of the facility to take advantage of the financial efficiencies that are available. The use of subvention payments early in the project's life ensure this is the least-cost option to develop and lease the facility to the University. Further, it is considered appropriate to use CBL, rather than a new CCTO, to manage the development of the facility due to the fact that it already has a board in place and has expertise in similar projects. CBL's Statement of Intent would need to be amended because currently it is focused solely on the development of the new Civic Building.
30. If the Council resolved not to provide funding for the project, the University would need to negotiate directly with the Arts Centre Trust Board and fund the development of the facility from its own balance sheet. This would increase the likelihood that the University would pursue the development of the facility at its Ilam campus. While this option would have no impact on Council, it would remove the ability to achieve the benefits associated with the development of the Arts Centre site.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

31. As noted above, this project is not included within the LTCCP Activity Management Plans. However, it is well aligned to Council strategy (see below), and to several of the community outcomes outlined in the LTCCP including:
 - A city for recreation fun and creativity
 - A city for lifelong learning
 - An attractive and well-designed city

ALIGNMENT WITH STRATEGIES

32. The proposal is well aligned to the direction set by the Council as part of its Central City Revitalisation Project. The addition of the School of Music will further enhance the character and visibility of the cultural precinct area, which already encompasses the Arts Centre, Art Gallery, and a wide range of cultural experiences and facilities. The re-introduction of the University to the Central City reconnects the historic Town and Gown link, and reinforces the Central City as a place for young creative people. Along with developments at CPIT, the School of Music will assist in supporting more residential activity in the Central City, adding to the rich diversity of the emerging communities throughout the area.

33. Anchoring an element of the University in the Central City also provides a basis for the Council to begin to address how it connects Ilam to the Central City and to develop greater synergies between that campus and down-town. The proposed building has also been reviewed by the Council's Urban Design Panel, which has endorsed how well the design has integrated itself with existing and surrounding activities and built form in the locality.

STAFF RECOMMENDATION

It is recommended that the Council resolves:

1. That in its judgement, and based on the information contained in the report prepared by staff, that:
 - (a) the decisions set out in this resolution are significant in terms of the Council's policy on determining significance;
 - (b) compliance with sections 77 and 78 of the Local Government Act 2002 requiring the assessment of all reasonably practicable options and the consideration of community views has been achieved in proportion to the significance of the decisions;
 - (c) the Council has decided not to undertake a special consultative procedure before making the decisions;
 - (d) the decision making processes in Part 6 of the Act have been appropriately observed.
2. That the decisions to be made in respect of this matter are subject to appropriate consents and authorities being obtained for the proposed development and all parties agreeing to proceed with it.
3. To approve the Council's involvement, through Civic Building Limited and subject to the principles below, in the development and subsequent lease of a National Conservatorium of Music facility for the University of Canterbury at the Arts Centre of Christchurch.
4. To approve the principles with respect of the arrangement as outlined in the public excluded section of this agenda.
5. That it acknowledges that the terms of the loan to Civic Building Limited are inconsistent with the requirements of the Council's liability management policy because the loan is to be repaid over a period of 50 years. This is greater than the maximum of 30 years provided for in the policy.
6. That it is not intended to amend the policy and that the loan to Civic Building Limited is to be regarded as a "one-off" arrangement.
7. Authorise the General Manager Corporate Services and the Corporate Finance Manager (jointly) to borrow funds as necessary to advance to CBL as redeemable preference shares and debt for the development of the National Conservatorium of Music facility subject to the principles resolved on by Council for this development.

8. To request Civic Building Limited to:
 - Enter into an agreement with the University of Canterbury for the development and subsequent long-term lease of a facility for the National Conservatorium of Music
 - Agree the land lease terms with the Arts Centre Trust Board
 - Manage the development and lease of the facility
9. To direct that all necessary modifications to the Statement of Intent of Civic Building Limited be initiated by its Board.
10. To authorise the Chief Executive to execute all documents, including any special resolutions of shareholders, necessary to give effect these recommendations.