

Council report

19 February 2019

Community Housing Consultation Document

Information has been redacted from this report for the following reasons: Making it available is likely unreasonably to prejudice the commercial position of the person who supplied it or who is the subject of the information; to maintain the effective conduct of public affairs through the free and frank expression of opinions by Council officers; to maintain legal professional privilege; to enable Council to carry on negotiations without prejudice or disadvantage. (Sections 7(2)(b)(ii), 7(2)(f)(i), 7(2)(g), 7(2)(i) of the Local Government Information and Meetings Act 1987)

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Item 2: Community Housing Consultation Document



Council

19 February 2019

REPORT R9951

Community Housing Consultation Document

1. Purpose of Report

- 1.1 To approve the draft Community Housing consultation document to be sent to Audit New Zealand.

2. Summary

- 2.1 Council requested staff to prepare a consultation document for public submissions on a proposal to sell its community housing. As community housing is a strategic asset this will require an amendment to the Long Term Plan 2018-28. Audit New Zealand will assess the consultation document before it is released and approve any changes to the Long Term Plan that result following the consultation.

3. Recommendation

That the Council

Receives the report Community Housing Consultation Document (R9951) and its attachments (A2099570, A2138034); and

Approves the draft Community Housing Consultation Document (A2099570) for audit; and

Agrees that the exceptions in relation to offer back as set out in section 40(2) of the Public Works Act 1981 apply to all Council's community housing properties as referred to in attachment 2 (A2138034).

4. Exclusion of the Public

- 4.1 This report has been placed in the public excluded part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

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- Section 7(2)(i) To enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

5. Background

5.1 Council's community housing is an ageing asset that needs increased maintenance and significant renewal investment, while the opportunities to expand the asset to meet growing demand are not affordable under current policies/approaches. As a result discussions have been held with partners resulting in the public announcement in October 2018 of interest from both Housing New Zealand (HNZ) and the Nelson Tasman Housing Trust (NTHT) in purchasing the community housing portfolio.

5.2 At its meeting on 13 December 2019 Council resolved as follows:

Resolved CL/2018/001

Approves development of a consultation document on the proposal to divest Council's community housing as part of the draft Annual Plan 2019-20 community consultation.

5.3 The community housing portfolio is listed as a strategic asset in Council's Significance and Engagement Policy. Section 97(1)(b) of the Local Government Act 2002 requires that a decision to change or transfer ownership of a strategic asset must be provided for in the relevant long term plan and consultation must have been undertaken via a consultation document. In accordance with section 93E of the Local Government Act 2002, the consultation document must include the following:

- The details of the proposed decision
- The reasons for the proposed decision
- An analysis of the reasonably practicable options and their advantages and disadvantages
- A description of any accountability or monitoring arrangements for assessing the performance of the entity that acquires the portfolio
- An assessment of any conflicts of interest that might arise from the sale and how they will be managed

A draft consultation document covering all these elements is attached for consideration (Attachment 1).

5.4 The long term plan amendment process requires a report from the Auditor General on whether the proposed amendment meets its purpose (Local Government Act 2002 section 93B), and on the quality of information and assumptions underlying the information provided (section 93D(4)). This report seeks approval to send the draft

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consultation document to Audit New Zealand for review. Additional information on the specific wording/financial changes required to the Long Term Plan 2018-28, will also be supplied.

- 5.5 The consultation document, once approved by Audit New Zealand and Council, will be incorporated into the wider consultation document on the Annual Plan 2019/20, due to be released to the public on 26 March 2019.

6. Possible constraints on sale

Public Works Act

- 6.1 Community housing is considered to be a public work under the Public Works Act 1981. Under the Public Works Act, Council needs to consider if any offer back obligations may be triggered by the proposal to divest its community housing to a community housing provider.

- 6.2 The Public Works Act s.40(2) provides several exemptions to an offer back including; where it is deemed to be impracticable, unreasonable or unfair to do so, and/or where there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which the land was required or is held.

- 6.3 Legal advice was sought on these issues and a thorough research of the history of each site undertaken. The sites have had significant buildings constructed, undergone subdivision, or been subject to a long passage of time since they were acquired (meaning that the original owner is likely to now be deceased). [REDACTED]

Local Government Act

- 6.4 Section 140 of the Local Government Act 2002 (LGA) sets out that where a property is owned by Council in trust or as an endowment, the property must be retained for the purpose for which it was vested. Additionally section 141 of the LGA states that the Council cannot sell or exchange trust or endowment land unless the proposed use of proceeds is consistent with the purpose of the endowment and/or the Council has made reasonable efforts to notify the donor of the property (including successors) seeking a comment on the proposed divestment.

- 6.5 The property at Examiner Street was held by the Public Trust under the will of the original donor since 1882, and was transferred to Council in 1973 on the basis that Council would build new units for the aged or needy. The Public Trust has been contacted to see if it holds any information on the original donor's successors so as to be able to contact them for comment. [REDACTED]

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[REDACTED]

- 6.6 The property at St Francis Way was acquired from the Roman Catholic Archdiocese of Wellington in 1997 for pensioner housing. Officers are checking to see if any obligation to gain their consent is required.
- 6.7 A number of properties were acquired and developed using Government funds such as low interest loans and grants. At the time of writing this report, officers were still seeking more information as to whether the original terms of the government funds mean that the land should be considered as endowment land under sections 140 and 141 of the LGA.
- 6.8 There is also a possibility that the original transfer deeds included a prohibition on transfer or sale. Extensive research has been undertaken without result so far. If no evidence is found Council officers consider it is reasonable to proceed on the basis that no prohibition to the sale exists.
- 6.9 Officers will provide a verbal update on these matters at the meeting.

7. The Proposal

- 7.1 The key elements of the proposal are set out in 4.1 of the attached consultation document. These will provide the boundaries within which negotiations will be undertaken if, following consultation, Council decides to sell some or all of its community housing. It is therefore important that Council gives careful consideration to each of these elements before the consultation.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

8. Timeline

8.1 A draft timeline is set out below, noting this is subject to change should meetings need to shift etc:

Consultation document approved for audit	19 February 2019
Council approves consultation document for the Annual Plan 2019-20 for public consultation (which includes the proposal for community housing). Audit NZ provides signed audit opinion	21 March 2019
Public consultation	26 March to 29 April 2019

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Hearings	14 & 15 May 2019
Deliberations	4 & 6 June 2019
Council meeting to adopt the draft Annual Plan and amended Long Term Plan	27 June 2019

9. Options

- 9.1 Development of a consultation document is a legal obligation under section 93 of the Local Government Act 2002. Council could choose to delay the release of the consultation document to Audit New Zealand but that would not allow for consultation on community housing to be undertaken at the same time as the draft Annual Plan 2019-20.

10. Next Steps

- 10.1 If, through this process, Council decides to sell its community housing, negotiations with interested parties will commence following the Long Term Plan 2018-28 amendment on 27 June 2019.

11. Conclusion

- 11.1 It is recommended that the draft consultation document be approved for audit.

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Attachments

- Attachment 1: A2099570 - Consultation Document - Community Housing
Attachment 2: A2138034 - Community Housing Stock

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Important considerations for decision making

1. Fit with Purpose of Local Government

Decisions in this report are necessary to allow Council to consult with the community on whether the current and future needs of the Nelson community for community housing can be more efficiently and effectively met by sale to an appropriate provider(s).

2. Consistency with Community Outcomes and Council Policy

The recommendations in this report fit with the community outcomes:

- Our urban and rural environments are people friendly, well planned and sustainable managed
- Our communities are healthy, safe, inclusive and resilient

3. Risk

Approval of the consultation document for audit is low risk as it is a procedural matter in relation to a proposed amendment to the Long Term Plan.

4. Financial impact

There is no financial impact from referring the consultation document for audit.

5. Degree of significance and level of engagement

This is a low significance decision as it only allows the documents to be reviewed by Audit New Zealand with final approval by Council. The public will subsequently be able to provide feedback through a special consultative procedure, which reflects the significance of the ultimate decision to be made.

6. Inclusion of Māori in the decision making process

No engagement with Māori has been undertaken in preparing this report.

7. Delegations

The Community Services Committee referred its mandate for decisions relating to the future of Council's community housing back to Council at its meeting on 27 November 2018.

The Council has the responsibility for considering and approving the draft consultation document.

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