



Waitaki

DISTRICT COUNCIL

TE KAUNIHERA Ā ROHE O WAITAKI

Notice of

Extraordinary Council Meeting

in the

**Whitestone Cheese Empire Room, Oamaru Opera House,
94 Thames Street, Oamaru**

at

9.00am, Wednesday 9 August 2017

***In the interests of the environment and to help reduce photocopying costs,
please bring your Council agenda with you to the meeting***

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Waitaki District Extraordinary Council Meeting

Agenda

9.00am, Wednesday 9 August 2017
Whitestone Cheese Empire Room, Oamaru Opera House,
94 Thames Street, Oamaru

Apologies

Declarations of Interest

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1. RMA Amendments to Delegations	3 – 5
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• Report and Recommendation	

"That the public be excluded from the following parts of the proceedings of this meeting, namely item 4.

The general subject of each matter to be considered while the public is excluded; the reasons for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter - Section 48(1)
Public Excluded:	
• Recommendation from Executive Committee Meeting 1, 26 July 2017	To protect the privacy of natural persons. Section 48(1) (a). (The disclosure of the information would cause unnecessary personal embarrassment to the persons concerned).
	To enable the Council to carry out commercial negotiations without prejudice or disadvantage. Section 48(1)(a) (Premature disclosure of the information would detrimentally affect the Council's position in the negotiations).

These resolutions are made in reliance on Section 48(1) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of the Act or Section 6 or Section 7 or Section 9 of the Official Information Act 1982, as the case may require, which would be prejudiced by holding of the whole or the relevant part of the proceedings of the meeting in public are as shown above (in brackets) with respect to each item."

4. Recommendation from Executive Committee Meeting 1, 26 July 2017	16 – 19
• Report and Recommendation	

Waitaki District Council Report

From Acting Planning Manager

Date 9 August 2017

RMA Delegation for Consent Appeals

Recommendation

That Council delegate its full decision-making authority to resolve the Network Waitaki resource consent appeal lodged with the Environment Court, to Council's Senior Planner Mike Searle and Assets Group Manager Neil Jorgensen.

Objective of the Decision

To delegate the power to resolve the appeals through a consent order or mediation.

Summary

Council had already delegated this authority to its Planning Manager. However, his resignation has since created a conflict, in that the Acting Planning Manager wrote the original section 42A report. Unfortunately, mediation has been arranged for 5 September, which is before Council's new Planning Manager starts work. Therefore, the delegation to staff needs to be amended so that the mediation can proceed.

Summary of Decision Making Criteria

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	Key	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	No	Social Considerations	No
Financial Criteria	No	Economic Considerations	No
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	No

Background

Network Waitaki Ltd lodged a consent application to relocate its storage (including pole and transformer storage) and servicing facilities to a 4.35 hectare site on Parsons Road.

The application was notified on a limited basis and received a total of five submissions. Of these submissions, four were opposed to the application and one supported the proposed development.

The application was heard in Oamaru on 2 May 2017 by Independent Commissioner Mr Allan Cubitt. The decision to grant the application was distributed to the applicant and all submitters on 29 May 2017.

By the close of the appeal period, one appeal had been received. The appeal is set down for mediation on 5 September 2017. The appeal can be resolved by agreement between all parties through mediation. This agreement is defined in a consent order which is then presented to an Environment Court Judge for approval. Consent orders are desirable as they refine or often resolve the entire appeal and avoid the need for a protracted Environment Court hearing. The time taken to prepare for and proceed to an Environment Court hearing also makes a consent order mediation a desirable path to resolving appeals.

Delegation to the Planning Manager for mediation and consent order purposes has been approved previously.

Council's Acting Planning Manager was the original section 42A planning report writer. The section 42A report recommended that the consent be declined, with the decision granting the application. This now presents a conflict, and an amendment to the current delegation is required to be formally made to another officer.

In regard to consent order mediation, the Environment Court has prepared a Practice Note defining the process:

Environment Court of New Zealand Practice Note 2014
5 Alternative Dispute Resolution (ADR)

5.1 The ADR process generally

...
(h) All parties at ADR sessions are to be represented throughout by a person or persons holding authority from the party to settle the dispute. Any party desiring not to be so represented shall give not less than seven days written notice to the Court and all other parties to the ADR session. The case-managing Judge, or the Commissioner facilitating the mediation, will have discretion as to whether the party may participate other than on the basis of its representative having authority to settle, and this will depend on whether there are special reasons in the context of the particular session.

Appendix 2

Representation and attendance at mediation

(a) Parties may attend the mediation in person, or be represented by one or more persons. There is no requirement that a representative be a lawyer, or have other professional qualifications. The names and contact particulars of each representative and attendee are to be provided to the Court and the other parties at least 5 working days in advance of the mediation, as part of the preparation for the mediation.

(b) Each party shall have at least one representative who is present through all sessions and who is authorised to participate, for instance by answering questions and co-operating in the mediation in any appropriate manner.

(c) **Where a party appoints a representative to attend the mediation, the party will be taken, unless express advance notice to the contrary is given to the Court and all other parties, as required by Clause 5.1(h) of the Practice Note, to have given that representative full authority to settle the dispute or the issues at stake.** (Refer to Clause 5.1(h) for the full detail on this.)

(d) Where issues in dispute relate to matters of expert opinion, the parties' relevant experts should, whenever reasonably practicable, attend the mediation, or at least be available by telephone, should the need arise to discuss such issues during the mediation.

Clause 5.1 and schedule 2 of the practice note can be found at:

<https://www.environmentcourt.govt.nz/assets/Documents/Publications/2014-ENVC-practice-notes.pdf>

It is desirable to grant the delegation to staff to resolve or refine any appeals through a consent order.

Summary of Options Considered

Option 1 – Delegate the ability to resolve any appeals relating to the Network Waitaki consent through a consent order to Senior Planner Mike Searle and Assets Group Manager Neil Jorgensen (recommended).

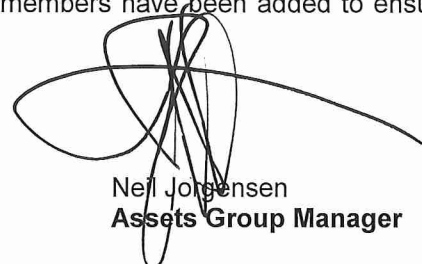
Option 2 – Status quo, no further delegation of function to staff. Any consent order mediation would require the full attendance of a quorum of Council for the duration of the mediation.

Assessment of Preferred Option

Having considered the options summarised above, the following conclusions have been reached:

Council has already considered this matter and agreed to delegate this authority to the Planning Manager. However, there has since been a change in staffing which has created a conflict and a further formal delegation to other staff is required. Two staff members have been added to ensure there is adequate coverage.

Sherilyn Byron
Interim Planning Manager



Neil Jorgensen
Assets Group Manager

Attachment

Additional decision making considerations

Additional Decision Making Considerations

The following matters have been considered in making the decisions.

Financial Considerations

Considerable efficiencies can be achieved by resolving appeals before an Environment Court Hearing.

Legal Considerations

The ability to delegate this function is within the powers of the Council under the Resource Management Act 1991.

Waitaki District Council Memorandum

From Policy and Communications Manager

Date 9 August 2017

Draft Waitaki District General Bylaw 2017 – Consideration of Consultation Feedback

Recommendation

That Council receives the information for consideration as part of the Special Consultative Procedure for the Waitaki District General Bylaw review.

Attachments

Attachment 1: Verbal Submission (circulated as a separate PDF)

Attachment 2: Non-verbal Submissions (circulated as a separate PDF)

Purpose

To present for consideration the verbal and non-verbal submissions to Council's Draft Waitaki District General Bylaw 2017.

Background

The Draft Waitaki District General Bylaw 2017 has been out for public consultation for one month from 3 July 2017 to 3 August 2017, as required using the Special Consultative Procedure under Sections 83 and 86 of the Local Government Act 2002.

In addition to the formal consultation, two live Facebook sessions were held on 11 July 2017 and 20 July 2017.

Submission response and review of submissions

To date, approximately 30 formal written submissions have been received from the community. Seven (7) submitters indicated that they would like to be heard at the Extraordinary Council Meeting on 9 August 2017. In addition, some individuals (approximately 28) requested that their Facebook comments also be considered by Council, and these have been combined to be considered as "Facebook comments". The remainder of the submissions received requested to be non-verbal.

Copies of all submissions received have been included as two separate attachments to this memorandum (verbal submissions and non-verbal submissions).

Verbal Submissions

People wishing to speak to their submissions will be heard by Council on 9 August 2017.

Process from here

The following steps to be completed are:

- | | |
|---|----------------------------------|
| • Hearing of verbal submissions (and deliberations) | 9 August 2017 |
| • Customer Services Committee | 11 October 2017 |
| • Approval by Minister of Conservation | Between 11 October & 29 November |
| • Adoption by Council | 6 December 2017 |



Mike Roesler
Policy and Communications Manager



Lisa Baillie
Customer Services Group Manager

Attachment 1: Verbal submissions (circulated separately)

Attachment 2: Non-verbal submissions (circulated separately)

Waitaki District Council Report

From Chief Financial Officer

Date 9 August 2017

Observatory Retirement Village Stage 2 Care Facility Development Funding

Recommendations

That Council:

1. Acknowledges the request from the Observatory Retirement Village Trust for financial assistance to help accelerate the development of its stage 2 care facility, in order to be able to address the need for additional community care beds
2. Approves an additional loan of up to \$3.5 million under similar terms and conditions to the previously approved loan, being:
 - Maximum initial loan \$3.5 million
 - An interest rate based on the 1 year swap rate plus a 1.5% margin
 - Maximum term of 10 years
 - First charge security over the facility (ranking after any statutorily-required security)
 - All principal and interest payments at the borrower's discretion on a quarterly basis
3. Makes an amendment to the agreement to allow the option of compounding interest, if required by the borrower.
4. Delegates the finalisation of the agreement to the Chief Executive.

Objective of the Decision

To determine whether Council wishes to provide a source of funds to the Observatory Retirement Village Trust to allow an immediate start to the development of stage 2 of the care facility to help meet the current and future demand for care beds in the Waitaki District.

Summary

It is proposed that Council agrees to lend to the Observatory Retirement Village Trust up to \$3.5 million to allow the immediate development of an extra 20+ community care beds to help serve the population of North Otago.

Summary of Decision Making Criteria

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	No	Cultural Considerations	No
Significance	Moderate	Social Considerations	Key
Financial Criteria	Moderate	Economic Considerations	Moderate
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	Moderate

Background

Council has previously made the decision to actively support the development of a retirement village by the Observatory Hill Retirement Village Trust ("the Trust") including approving a loan to the Trust to a maximum of \$9,000,000 (including compounded interest). Among the primary reasons for the decision to support the development was the acceptance that there would be both a short-term and a long-term shortage of elderly person community care beds in North Otago and that there were no announced plans by other providers to meet that need.

The key features of the loan were:

RESOLVED
WDC15/223

Crs Tavendale/Garvan
"That Council:

1. Agrees to provide two loan facilities over a 10 year period to Observatory Village Lifecare Limited consistent with the term sheets attached:

First Facility

- a. \$8 million maximum loan amount
- b. An interest rate based on Council's weighted average return on funds to be compounded up to the maximum value
- c. A maximum term of the first four years of the facility
- d. First charge security over the facility (ranking after any statutorily-required security)
- e. All principal and interest payments at the borrower's discretion on a quarterly basis.

Second Facility

- f. Maximum \$5 million loan amount
- g. An interest rate based on the 1 year swap rate plus a 1.5% margin
- h. Maximum term of remaining six years of the facility
- i. First charge security over the facility (ranking after any statutorily-required security)
- j. All payments to be made on a "table mortgage basis" (interest and principal) based on the maximum life of the loan.

Council considered this matter further at the 15 February 2017 Council meeting, at the request of the Trust. This request was made because the Trust was concerned at the number of available care beds following the sale and impending closure of Rendel on Reed. The Trust's position was that, whilst it could study the viability of immediately starting construction of additional care beds once stage one of its development was complete, it would need funding assistance to complete the work that was required to be able to make an informed decision.

After considering the matter, Council resolved the following:

RESOLVED

WDC17/008

Crs Tavendale/Hopkins

"That Council:

1. Acknowledges the information provided by the Observatory Village Trust on their desire to help address the needs for additional community care beds by investigating and possibly accelerating the stage 2 of their care facility but their limited capacity to respond at this point in time.
2. Approves in principle a donation of \$93,000 to the Observatory Village Trust, funded from the PT Mulligan Pensioner Housing Bequest held by Council, subject to agreement by the relevant executor.
3. Approves a loan to the Observatory Village Trust of up to \$157,000, interest free, to be funded from the Community Housing Reserve.
4. Acknowledges that further requests may be forthcoming, but that decisions around any other funding to the Observatory Village Trust will be made once the following matters have been completed:
 - a. the supply of supporting information, including a business case or similar confirmation of viability, and any other investigations deemed to be necessary during the review period.
5. Enters into dialogue with other providers of community care beds to determine the number and type of facilities planned for the future, and where the gaps are in our community."

CARRIED

Mayor Kircher did not participate in the debate and abstained from voting

It is also important to note that the purposes of the Trust are to help meet the need for quality elderly person care and to provide a source of funds for the provision of health care in North Otago.

Recent Developments

As requested, the Trust has completed the planning and design of the potential next phases of the Observatory Retirement Village (ORV). This has included detailed design work and obtaining confirmed pricing on the next key stages. The Trust has confirmed that there is continued strong interest in all three levels of accommodation being offered in the ORV (villas, apartments and care beds), and that sales of villas and apartments and occupancy of care beds are significantly in advance of the original projections. At the time of writing this report, all apartments had been sold; 10 villas had been sold, with construction started on five of them; and 100% occupancy of the care beds is expected when the facility starts operating in early August.

The level of uptake described above will have a positive impact on operating cash flows and bring a high level of certainty in terms of staffing and other operational matters. Achieving this level of success at such an early stage of development means that the Trust could potentially be able to repay Council earlier than agreed. In addition, it may allow the Trust to start providing funding for health care far earlier than expected. Both of these positive early outcomes would be dependent on the Trust staying within the scope of the original development.

The level of uptake indicates that there is unmet demand for the type and quantity of accommodation being offered. The Trust has confirmed this, highlighting ongoing demand and enquiries about the availability of villas and a list of approximately 20 people who have expressed interest in or are actually waiting for apartments.

Of more serious concern is the anecdotal evidence that there is a growing shortfall of care beds available in the District. This includes information from the Trust, Waitaki District Health Services, the Southern District Health Board, and occupancy levels in all existing care bed facilities. This is consistent with the information provided to Council when the initial proposal was considered. That study showed that there would be an ongoing increase in demand for care beds over the next 20 – 25 years. However, since then, the closure of two facilities and reconfiguration of others means that, even with the beds added at ORV, there are now fewer care beds available than five years ago.

Proposed Development and Funding Request from the Trust

The Trust has developed three potential responses to the current situation. These were identified during the consideration of its business case. They have been designed and costed to a level to allow a reasonable amount of certainty as to the price and development issues attached to each.

The first potential response is to consolidate stage 1 as it was originally designed, with the only development being the construction of additional villas as they are sold. This would allow the early repayment of the Council loan and an earlier contribution to the provision of health care services.

The second potential response is to start the process to develop further apartments and villas to meet demand immediately and delay the development of further care beds until the project is more mature and the demand more certain. Developing the apartments and villas as soon as possible is attractive, because it does not tie up available funds on a long-term basis and it helps improve operating results. The financial structure of the village means that the higher the ratio of villas and apartments to care beds, the more viable the village is and the higher the level of distribution for health care purposes. In purely commercial terms, this is the best option for the Trust.

The third potential response is to simultaneously develop all three accommodation types. This would mean an immediate start to constructing additional care beds, and the design and construction of the next stages of villas and apartments. The proposed care bed development would create the infrastructure and shell for 40 beds, but only 20 would be fitted out at this stage. This staged development is in part designed to ensure there is no oversupply of beds in the market, which would have a negative impact on existing providers.

The Trust has gone so far as to have an agreement in place that would allow an immediate start on stage 2 of the care facility if funding and all approvals are in place. However, this agreement has a short timeframe to be fully agreed and executed.

There are a number of barriers that the Trust would face if it wanted to pursue the third potential response option. The first and most significant is that it does not have the financial resources to undertake both the care bed and villa / apartment developments at the same time. Due to the regulatory environment the Trust operates under, it is unable to have in place other third party funding in time to allow the development to proceed immediately.

Based on Council's previously stated position of support, the Trust has requested that Council considers making an advance of \$3.5 million to fund the immediate construction of 20 stage II care beds and the infrastructure to allow the development of a further 20 beds at a later date.

It should be noted that theoretically there would be a fourth potential response – that of developing the care facility first – but the Trust has not put this forward for consideration. Essentially, such an option is not financially viable, for the following reasons:

- (a) the length of time capital would be tied up in the facility;
- (b) the limited ability to service the debt, particularly debt on the undeveloped shell; and
- (c) no additional apartments or villas could be developed for a significant period of time.

Summary of Options Considered

Option 1 – Do nothing – Provide no additional funding or support.

Council can take the position that as much support as possible has been provided and no further resources can be committed to meet this request for additional funds.

Option 2 – Provide additional funding under terms similar to that of the existing loan.

Council could make a new advance under terms similar to that of the existing loan. Based on the information supplied by the Trust, this would essentially mean lending an additional net \$2 million for an extra 2 – 3 years.

Option 3 – Provide a mix of loan and other funding

Council could, in addition to a loan, make other funding available, including a direct injection of funding into the development.

Assessment of Preferred Option

Option 2 is the preferred option if Council wants to facilitate the immediate start to the development of further care beds to meet the growing community need. This loan would be made under similar terms and conditions to the existing loan. This would allow the agreement to be developed in an efficient and effective manner and provide a return to Council slightly above what would be received if the funds were invested in the usual manner. The only variation that would be recommended is the inclusion of an option to accrue interest for a period.

It is highly unlikely that there will be sufficient time available to get an agreement finalised and signed prior to the deadline the Trust has to confirm the immediate start to stage 2. However, the Trust has indicated that a positive decision from Council may give them enough certainty to make that commitment prior to the full agreement being in place. That said, the Trust has also indicated that it would need to do further analysis of the impact of any Council decision before it could make an absolute commitment. The finalisation of this agreement could be delegated to the Chief Executive.

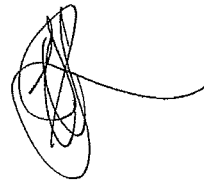
Council has more than sufficient funds available to finance the loan over the proposed period. The maximum difference between the expected cash flows of the existing loan and proposed loans is approximately an additional \$2.5 million in lending before the repayments of the original offset any further advances. This type of investment is allowed under Council's Investment Policy and would be reported on through the quarterly Treasury report. In summary, Council has the ability and authority to make this advance.

Option 3 is also a viable option. It is not recommended at this time, but could be considered if there was a further request from the Trust. This could be a matter that is considered through the Long Term Plan process, which would in turn allow further options to be developed and provide an opportunity for public comment.

Option 1 is not recommended as it would mean there would be no increase in care beds. The Trust has indicated that to ensure the best long-term result for the ORV, the development of villas and apartments has to take priority, primarily because of the pay-back period and level of return of apartments and villas compared to the care facility.

Conclusion

The Observatory Retirement Village Trust has developed a plan to meet the growing need for community care beds in an immediate and sustainable manner. However, it does not have the financial capacity to fund the development at this point in time and therefore has asked Council to help facilitate the immediate start to the project. It is recommended that Council approves this request, as it will help meet a community need and provide an improved level of return on the funds involved.



Neil Jorgensen
Acting Chief Executive

Paul Hope
Chief Financial Officer

Attachments

Additional decision making considerations

Appendix 1 – Request from the Observatory Retirement Village Trust

Additional Decision Making Considerations

The following matters have been considered in making the decisions.

Outcomes

1. We keep our District affordable
2. We enable opportunities for new and existing businesses
3. We provide and enable services and facilities so people want to stay and move here
4. We understand the diverse needs of our community
5. Waitaki's distinctive environment is valued and protected
6. We maintain the safest community we can.

The focus of this item is to enable others to provide a service and facility to allow residents to stay in the District. It also will directly contribute to outcomes 2, 4, and 6.

Community Views

There was strong community support for the original proposal. It is reasonable to assume a similar level of support to address an urgent issue from non-rate funded sources. Comment to date on social media would support this view.

Significance

Council can make this type of investment under the Investment Policy. However, it will involve further investment into a single entity. This risk is offset by both the success to date and likely investment term.

Financial Considerations

Primarily covered above. Council has the capacity to provide this level of funding, especially if spread over more than one financial year.

Economic Considerations

Positive multiplier effect in terms of the construction phase and expanded operating impact. The facility will primarily be funded on an operational basis by Central Government.

Social Considerations

As noted above, this relates to the provision of suitable accommodation for some of the most vulnerable members of the community. The lack of suitable accommodation in the district has a direct impact on the people concerned and their family and friends. This is an area that councils have been involved in, either directly or indirectly.

Publicity & Communication Considerations

It is recommended information is made available to the public as quickly as practical after a decision is made.

Appendix 1

Email dated 3 August 2017 from the Trust to Council

From: Ian Hurst <ian@hurstgroup.nz>
Date: 3/08/17 8:17 AM (GMT+12:00)
To: Gary Kircher <gkircher@waitaki.govt.nz>
Cc: Ken Scott <kjs@netspeed.net.nz>, 'Natalie Anaro' <natalie@anaro.co.nz>, "Berry and Co (Mike)" <mdebuyzer@berryco.co.nz>
Subject: Request for Financial Assistance for Stage 2 Observatory Village Development

Mr Mayor,

On behalf of the Trustees of the Observatory Villager Retirement Village, we would like to formally request Council consider making available a further loan facility for up to \$3,500,000.

These funds would be used to provide for the development of a further 20 care beds, consistent with discussions and presentations made at the Council Workshop held on Wednesday 26th July 2017.

Ideally, we would like the initial interest component to be offset against the "ex Clare Street, Social Housing Fund", or at least maintain a dialogue on this initiative.

Thank you for giving this your consideration.

Regards,

Ian Hurst (Trustee)