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12.2 VIEW ROAD SALE AND PURCHASE

Author: **Andrew Dalziel, Chief Operating Officer / Deputy Chief Executive**
Pouwhakahaere Mahinga Rangatōpū / Tumuaki Tuarua

Authoriser: **Wendy Walker, Chief Executive**
Tumuaki

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in s48(1)(a)(i) of the Local Government and Official Information Meetings Act 1987.
Sub-clause and Reason:	s7(2)(g), s7(2)(h) and s7(2)(i) - the withholding of the information is necessary to maintain legal professional privilege, the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities and the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

EXECUTIVE SUMMARY

The Council has received two substantive offers for it's View Road units that have weathertightness defects. It is now in a position to sell the units "as is, where is". The report sets out the differences between the two conditional offers and provides background on a range of related matters. The Council can now determine if it wishes to accept one of the offers.

PURPOSE

The report recommends selling Council's View Road units that have weathertight defects "as is, where is".

RECOMMENDATIONS

That the Council:

1. Receive the report.
2. Accept the Arijit Residential Ltd/Te Runanga o Toa Rangatira Incorporated (TROTR) conditional offer of $8,695,652.17 plus GST (if any) for the 24 View Road units, on the provision that TROTR remove the condition; 'This agreement is conditional upon the purchaser giving notice that it is satisfied with the feasibility of remediation in respect of the property by 5pm on 21 May 2021'.
3. If TROTR do not remove the condition, then instead accept the [redacted] conditional offer of $10,500,000 including GST (if any) for the 24 View Road units.
4. Agree to delegate the power to finalise the Agreement for Sale and Purchase of the View Road units to the Chief Executive.

Background

1. In June 2017, the Body Corporate representing 24 of the 25 units at 26 View Road issued proceedings against the Council and Hinds Builders Ltd in the High Court, alleging that the development suffered defects and damage.

2. The plaintiffs initially claimed remedial costs of [redacted] amending this in 2018 to [redacted]. At the time, Council lawyers (Simpson Grierson) estimated the full claim in the order of [redacted]

3. The parties reached agreement out of court in October 2018. The Council agreed in full and final settlement of the claims to purchase the 24 units for [redacted]. There was no admission of liability. The settlement and its terms are confidential to the parties.

4. The sales and purchase settlement for the 24 units was concluded in June 2019.

5. The Council did not purchase the units for the purpose of supplying accommodation. The Council was therefore able to claim back [redacted].

6. Settling the claim for [redacted], and claiming [redacted] in GST, left the Council with a net borrowing cost of approximately $8.6m.

7. After owners and tenants vacated the units (late November 2019) invasive testing was conducted. The work confirmed weathertightness issues were present. It was found that full remediation as per the Weathertight Homes Resolution Service (WHRS) Assessors report ('a perfect solution') could not practically be achieved. An alternative repair proposal to treat the dampness issues as best we could was put forward for consideration. The methodology was to allow Council to retain the units and rent them out if it wished to. The work could be staged over a number of years as needed.

8. Valuation Consultants Ltd were asked to provide unaffected and affected valuations for the 24 units.

9. The respective March 2020 valuations were:

• 24 units assuming weathertightness remediation, deferred maintenance and internal upgrade complete	$16m
• 24 units assuming weathertightness remediation, deferred maintenance complete (but no upgrade)	$14.2m
• 24 units affected value – no remediation, no maintenance and no upgrade undertaken	$10.2m
• Land value assuming demolition of 25 units	$3m to $4m
• Rental assessment for 24 units at 100% occupancy	$720k p.a.

10. At the time, the Valuer noted that a $10.2m affected sale value would be difficult to achieve as the Council would be a "price taker".

11. For financial accounting purposes the View Road units are currently valued at $7,761,625.

12. The property market has been very bullish of late. Valuation Consultants Ltd were asked to update their valuations. There has been a 25.7% average value increase for Titahi Bay over the previous 12 months. The 'as if complete' valuation is now $18.2m. The 'affected value' is now $12.2m.

13. They also updated their rental estimates for the 11 units that Council's Property Department has recently refurbished (some remediation work, some maintenance, and some upgrade). Units 1, 6, 10, 16, 17, 18, 19, 20, 21, 23 and 24 (5 x 2 bed and 6 x 3 bed) are now able to be rented at between $510 and $620 each per week (11 units at a total of $6,205 x 52 weeks = $322,660 p.a.).

14. While repairing and on-selling the units was viewed as yielding the highest anticipated sale price, this course of action was clearly seen to hold the highest level of risk (because we are not able to practically remediate to the WHRS standard and there is significant legal risk of

receiving new claims if remedial building works fault within 10 years). Options such as demolishing and selling the land, holding, repairing and renting, or on selling "as is" had lower levels of risk.

15. At its August 2020 Meeting, having previously workshopped and then deliberated on the matter, Council resolved to:

- Agree to retain the units until such time as they can be sold "as is" for a satisfactory price, or some similar solution is found for the units.
- Agree to undertake necessary repairs, maintenance and upgrades to allow the units to be tenanted, on the understanding that the rental income will be used to offset the holding cost of keeping the units.
- Agree that should a substantive offer be received, before considering that offer, the units be advertised for sale "as is" with full disclosure of their defects, in order to ensure any other possible offers are taken into consideration before a decision is made.
- The 12 August 2020 Council report highlighted the interest or lack of interest shown in acquiring the Council's View Road units up until that time. [redacted] and a number of private individuals had approached or expressed an interest but nothing had eventuated.

16. On 25 August 2020, a $2.9m plus GST (if any) offer from [redacted] and his associates was declined by Andrew Dalziel, the Council's Chief Operating Officer/Deputy Chief Executive.

17. The current holding cost for Council of owning the View Road units is $743,000 p.a. This cost is made up of items such as loan interest, Body Corporate charges, rates, insurance, electricity, maintenance and security. It includes interest on borrowing for $165,000 of recent refurbishment work the Council's Property Department has had carried out on 11 of the units.

DISCUSSION AND OPTIONS

On 29 September 2020 Helmut Modlik Chief Executive, Te Runanga o Toa Rangatira (TROTR) emailed Andrew Dalziel asking if the Council would consider a $9m to $10m offer for the units. Andrew Dalziel replied the same day saying the Council would do so. The Council's Property Department put the View Road refurbishment work on hold pending the outcome of this approach.

Discussions occurred about the GST situation and site visits for TROTR and their experts were arranged.

On 12 November 2020 [redacted] of TROTR emailed Andrew Dalziel to the effect that having undertaken an initial valuation, site survey and obtained engineering estimates, TROTR now proposed a settlement price of $5m. Andrew Dalziel rejected the offer.

By the end of 2020 no further offer was presented by TROTR. The Council's Property Department was instructed to move forward with having 11 of the View Road units upgraded. These 11 units were seen as the easiest to refurbish to meet MBIE's Healthy Home Standards.

However, the situation changed in February 2021.

Offer one

Arijit Residential Ltd, Helmut Modlik CEO, Te Runanga o Toa Rangatira Incorporated (TROTR) conditional offer.

Main points for consideration:

- A written offer was made on 24 February 2021. An Agreement for Sale and Purchase was signed by TROTR on 30 April 2021.
- The offer price is $8,695,652.17 plus GST (if any). If GST was payable, the total purchase price would be exactly $10m i.e. $8,695,652.17 plus 15% GST, which explains how the offer price was determined.
- TROTR have formed a GST registered holding company for the purpose of making this offer, Arijit Residential Ltd.
- TROTR has stated on the Agreement for Sale and Purchase that they intend at settlement to use the property for making taxable supplies. This means it is a zero-rated supply so GST is not payable by Arijit Residential Ltd and GST is not accountable to the IRD by the Council. The Council will receive $8,695,652.17.
- TROTR intend the units to be part of their housing stock to serve their Iwi members going forward. The offer reflects their desire to secure opportunities for affordable house ownership for their whanau.
- Settlement is 20 working days from unconditional agreement.
- TROTR is a $200m plus entity, clearly able to fund the $8,695,652.17 purchase price.
- 15% deposit is payable to Council's solicitor, Simpson Grierson.
- The offer is conditional upon one remaining matter:
    1. On 28 April 2021 TROTR requested:
       'This agreement is conditional upon the purchaser giving notice that it is satisfied with the feasibility of remediation in respect of the property by 5pm on 21 May 2021'.
    2. This is the only outstanding condition. It is taken to mean TROTR will, as part of its due diligence, ascertain whether the weathertightness issues can be remediated before it confirms the contract is unconditional.
    3. Further context was provided in the form of a letter from Helmut Modlik and Paul Thompson (GM Property, TROTR) to Wendy Walker, dated 28 April 2021. TROTR requested "preliminary guidance" from the Council's building and consents teams regarding the feasibility on remediation works.
    4. However, the Council's sale of the View Road properties is on an "as is, where is" basis and the Sale and Purchase Agreement makes it clear that the Council is not a party to the agreement in its regulatory capacity (refer to the Statutory Requirements section of this report for further detail).
    5. Despite the fact that in their letter to Wendy Walker, TROTR states that they recognise that the Council is not liable for "preliminary advice", there is a risk that, if the Council provided guidance over and above that which the Council would ordinarily provide to any member of the public who makes inquiries about the ability to carry out remediation works, the Council would open itself up to a potentially high level of risk and liability in the event that TROTR relied on any advice given and suffered some form of loss as a result.
    6. There is also the risk that providing such advice would essentially give an unfair advantage to TROTR and compromise the integrity of the sale process.
    7. [redacted]
- There are no Treaty obligations associated with the sale of the View Road units. Elected members will take into account any weighting they believe should be given to the the overall working relationship with Ngati Toa when making a decision on this property sale.

Advertising

On receipt of TROTR's 24 February 2021 conditional offer, Council officers and Council's legal advisors addressed the question of how best to implement Council's August 2020 resolution that on receipt of a substantive offer, before considering the offer, the units be advertised for sale 'as is' with full disclosure of their defects, in order to ensure any other offers are taken into consideration before a decision is made.

Public adverts were placed in the Dominion Post and Kapi-Mana requesting offers by 30 March 2021.

Crown Commercial was appointed as an agent for the sale of the property. Crown Commercial were instructed to approach high nett worth developers/investors prepared to take on the work. The scale of fees agreed was 3% on the total sale price of $10m + GST (if any) and above. A $500 plus GST administration fee is payable to Crown Commercial in addition to the scale of fees.

Offer two

Crown Commercial's client is [redacted]

[redacted] *conditional offer.*

Main points for consideration:

- The Agreement for Sale and Purchase was signed on 29 March 2021.
- The offer price is $10,500,000 including GST (if any).
- [redacted] is not registered for GST and is not intending on making any taxable supplies. As such the Council will have to account for GST of $1,369,565.22 to the IRD. This reduces the amount the Council will receive to $9,130,434.78. A 3% agency fee (plus GST) and a $500 (plus GST) administration fee is payable by Council ($315,500) plus GST to Crown Commercial. This further reduces the purchase amount the Council will receive to $8,814,934.78.
- The offer now is conditional upon the following two items:
  1. *The Purchaser obtaining finance on terms acceptable to the Purchaser within two months of acceptance.*
  2. *The settlement date is three months after the agreement is declared unconditional in all respects.*
- It is understood [redacted] will have to raise 50% ($5.25m) of the purchase price and that [redacted] bank will provide the other 50%. [redacted] will need to liquidate assets to raise [redacted] 50% and seeks time to do so. [redacted] did not want to sell assets and then find [redacted] offer was unsuccessful.
- A 5% deposit is payable to the Council's solicitor, Simpson Grierson.
- [redacted]
- [redacted]

The table below provides a comparison between the two offers setting out the financial aspects.

View Road Sale Options

Purchaser	Arijit Residential Ltd	[redacted]
Purchase Price Offer	$8,695,652.17 plus GST	$10,500,000 incl GST
Sale Price to Council	$8,695,652.17	$9,130,434.78
Deposit %	15%	5%
Deposit $	$1,304,347.83	$525,000.00
Deposit held by	Vendors Lawyer	Vendors Lawyer
Sale Costs $	0	$315,500.00 + GST
Settlement date	20 working days from going unconditional	5 months (2 months conditional period & 3 months more)
Revised annual holding costs per 12 Aug 2020 Council report	$455,000.00	$455,000
Security Costs Annual	$288,000.00	$288,000
Total annual costs unoccupied	$743,000.00	$743,000
Holding Costs for sale period	$56,997.26	$309,583.33
Net sale price to Council	$8,695,652.17	$9,130,434.78
Less sales costs	0	$315,500.00
Less Holding Costs	$56,997.26	$309,583.33
Net sales price for comparative offer purposes*	**$8,638,654.91**	**$8,505.351.45**
*Assumes all other settlement costs e.g. lawyers' fees are materially similar for each offer		
Book Value as at 30 June 2020	$7,761,625.00	$7,761,625.00
Comparative gain on sale excluding settlement costs and prior holding costs	**$877,029.91**	**$743,726.45**

[redacted] purchase price ($10,500,000) minus GST ($1,369,565.22) and the agent's commission and administration fee ($315,500) becomes $8,814,934.78. This is payable to the Council. This is $119,282.61 higher than Arijit Residential Ltd's purchase price offer ($8,695,652.17).

However, in addition to the difference in purchase price offered, Council should note the impact that it's holding cost has on the two offers. It is costing Council $743,000 p.a. to hold the View Road units. If TROTR settle within 20 working days, the Council's holding cost for that period is

$56,997.26. The [redacted] settlement period is considerably longer at five months, which would cost the Council $309,583.33. The cost difference between the two offers ($309,583.33 - $56,997.26 = $252,586.07) should be taken into account and recognised as a positive factor when considering the TROTR offer.

[redacted] higher purchase price is eroded by GST, the agent's commission/administration charge, and then by the 5-month time delay in settling. The holding cost consideration occurs to the extent that the TROTR offer becomes $133,303.46 more financially attractive to Council.

	TROTR	[redacted]
Offer	$8,695,652.17	$9,130,434.78
Agents fees		- $315,000.00
		$8,814,934.78
Holding cost	$56,997.26	$309,583.33
	$8,638,654.91	**$8,505,351.45**

While the TROTR offer makes financial sense to accept, the condition that they have added to the Agreement for Sale and Purchase needs to be removed before the Council would sign such an agreement.

At the time of writing this report TROTR haven't followed up on this matter.

If TROTR 'hold out' for "preliminary guidance" from the Council's building and consents teams, then the Council is advised to accept the [redacted] offer.

Other interest

[redacted]

In February 2021 [redacted] expressed interest in purchasing the units for $10m including GST. Conditions included 30 working days due diligence, 10 working days settlement and being provided with weathertight information from Council. The information was provided, and the units were made available for inspection.

In early April 2021 [redacted] put [redacted] investigation on hold, saying [redacted] would revisit the process if the Council's public offering was unsuccessful.

[redacted]

[redacted] responded to the Council's public advertising in March 2021. After completing their due diligence, [redacted] verbally offered $3.5m to be zero rated. The offer was declined by Andrew Dalziel.

Other parties who expressed interest through the advertising, but failed to make offers were:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Crown Commercial were unable to bring in any other clients to the Council. They found through approaching parties that the property and its weathertight condition was generally well known about.

Do not sell option

After settling the claim, the Council borrowed $8.6m. The affected value of the units was assessed at $10.2m. Both purchase offers received are substantive and in keeping with [redacted] its August 2020 resolutions. The ‘affected value’ is now assessed as $12.2m, but no offers have reached this level. If the Council decided not to sell the View Road units at this time or a sale does not proceed, 11 of the units can now be tenanted and it has provisioning in place to refurbish the remaining units.

CONCLUSION

The Council now has the ability to sell its View Road units. It has two conditional Agreements for Sale and Purchase offers to consider. The Council’s holding cost for the View Road properties is significant. In keeping with its August 2020 determination, it is recommended Council take the opportunity to free itself from the site.

SUPPORTING INFORMATION

CONTRIBUTION TO COUNCIL'S STRATEGIC DIRECTION

The issues in this report contribute to the strategic priorities of a growing prosperous and regionally connected city.

FINANCIAL CONSIDERATIONS

Cost

Financial considerations associated with the sale of the View Road units and the options open to the Council are outlined throughout the body of this report.

Financial Implications

The GST Act contains specific rules in respect to the supply that wholly or partly consist of land. This will require that the sale of the properties will be *"zero rated"* for the GST where Council sells the properties to:

- A GST registered person who acquires the properties with the intention of using them to make taxable supplies; and
- The properties are not intended to be used as the principal place of residence of the purchaser (or an associated person of the purchaser)

Where *"Zero rating"* applies, this effectively means that GST is charged by Council (but at 0%) and no GST output tax is paid to Inland Revenue.

If the conditions of zero-rating cannot be met, for example if a government agency or developer were to buy the properties with the intention of renting them as residential dwellings (an exempt supply rather than a taxable supply for GST purposes), then the sale would be subject to GST at the standard rate of 15% and Council would have to pay GST output tax on the sale proceeds to Inland Revenue.

It will be important that the Sale and Purchase Agreement and the specific GST sections of the Sale and Purchase agreement are completed correctly by both parties as this will determine the GST treatment for Council.

In order to protect Council from suffering GST impost on the sale price, the Sale and Purchase Agreement should express the sale price as "**plus GST (if any)".**

Costs of Sale

Council will be able to claim GST input tax on costs associated with the sale.

Income Tax

As Council is exempt from income tax (other than on income received from Council Controlled Organisations), Council will not be subject to income tax on the sale of the properties and nor will it be able to claim any deductions for income tax purposes.

STATUTORY REQUIREMENTS

Both parties have signed the Agreement for Sale and Purchase of real estate prepared by Council's Solicitors Simpson Grierson. The agreement contains extensive purchaser acknowledgements regarding the weathertight nature of the property. The Purchaser waives any right or claim it may have against the Vendor in respect of the condition of the property; and must not make any claim in the future. The Vendor gives no representation or warranties in respect of the property apart from minor workings relating to general terms of sale.

The Vendor enters into the agreement in its non-regulatory capacity. When acting in its regulatory capacity it is entitled to consider all applications to it in relation to this Property without regard to this agreement.

Full disclosure regarding the View Road units weathertight nature has occurred with both parties interested in purchasing the units.

FOUR WELL-BEINGS

The matter discussed in the report (the sale of weathertight property acquisition and options open to the Council) primarily relate to the Social and Economic well beings.

TREATY CONSIDERATIONS

There are no particular Treaty obligations to note for this report. Ngati Toa/TRORT's interest in acquiring the View Road units is set out in the report. Elected members will take into account the overall working relationship with Ngati Toa when making a decision on this matter.

SIGNIFICANCE

An earlier report to Council on this matter has highlighted that it falls at the lower end of the financial significant threshold range.

ENGAGEMENT AND COMMUNICATIONS

Most matters to date relating to acquisition of the units have been conducted in public excluded. A press release informed the public about the Council's August 2020 decision to retain the units until such time as they could be sold. On receipt of the substantive offer from TROTR in February 2021 the units have been advertised for sale. An information pack was provided to all potential purchasers or similarly interested parties.

A press release will be prepared following this meeting to inform the public what has been decided.

ATTACHMENTS

Nil

9.1 VIEW ROAD SALE AND PURCHASE

Author: Andrew Dalziel, Chief Operating Officer / Deputy Chief Executive Pouwhakahaere Mahinga Rangatōpū / Tumuaki Tuarua

Authoriser: Wendy Walker, Chief Executive Tumuaki

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in s48(1)(a)(i) of the Local Government and Official Information Meetings Act 1987.
Sub-clause and Reason:	s7(2)(b)(ii), s7(2)(g), s7(2)(h) and s7(2)(i) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information, the withholding of the information is necessary to maintain legal professional privilege, the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities and the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

EXECUTIVE SUMMARY

The Council has received two substantive offers for its View Road units that have weathertightness defects. It is now in a position to sell the units “as is, where is”. The report sets out the differences between the two conditional offers and provides background on a range of related matters. The Council can now determine if it wishes to accept one of the offers.

The report is an ‘update’ on the earlier 20 May 2021 report, which was withdrawn due to receiving new information after that report was circulated. The 20 May 2021 report is attached as Appendix One and should be referred to when considering this updated report.

PURPOSE

The report recommends selling Council’s View Road units that have weathertight defects “as is, where is”.

RECOMMENDATIONS

That the Council:

1. Receive the report
2. Accept either:
   (a) The [redacted] conditional offer of $11,500,000 incl GST (if any) for the 24 View Road units; or
   (b) The Arijit Residential Ltd/Te Runanga o Toa Rangatira Incorporated (TROTR) unconditional offer of $8,695,652.17 plus GST (if any) for the 24 View Road Units.
3. Delegate the Chief Executive to finalise the Agreement for Sale and Purchase of the View Road units.

Reports contain recommendations only. Refer to the meeting minutes for the final decision.

BACKGROUND

1. The earlier 20 May 2021 report recommended accepting the Arijit Residential Ltd/TROTR conditional offer of $8,695,652.17 plus GST (if any) on the provision that TROTR removed a remediation condition that they had added to the Agreement for Sale and Purchase.
2. That report explained that while the [redacted] conditional offer of $10,500,000 incl GST (if any) was a higher purchase price, it was eroded by GST, the agent's commission/administration charge, and then by a 5 month delay for settling. The holding cost consideration for Council occurred to the extent that the TROTR offer became $133,303.46 more financially attractive than the [redacted] offer.
3. [redacted]
4. The report recommended accepting the [redacted] conditional offer if TROTR did not remove the condition.

DISCUSSION AND OPTIONS

Update

1. After the 20 May 2021 report was circulated to elected members, on the evening of Monday 17 May prior to the 20 May 2021 Council meeting, Crown Commercial (the Council's appointed agent) advised the Council's Chief Operating Officer that [redacted] had agreed to increase [redacted] offer by a further $1,000,000 to $11,500,000 incl GST (if any).
2. Council officers withdrew the 20 May 2021 report on the basis of new information being received – receipt of a last minute increased offer from one of the offerees, which meant that officers needed to re-assess the report and its recommendations.
3. Both offerees were advised that the report had been withdrawn.
4. TROTR were advised that the other offeree had increased its offer at the last minute. They were asked to consider whether they wanted to increase their offer, and again asked to remove the problematic remediation condition.
5. Both offerees where asked to put their final offer to Council by 5pm on Monday 7 June 2021 and told that the Council would not accept any further offer.
6. Both offerees have complied with the deadline.

[redacted] conditional offer

The only change to [redacted] previous offer is the increase in the purchase price to $11,500,000 inclusive of GST (from previously $10,500,000 inclusive of GST).

Otherwise, [redacted] offer is still conditional on [redacted] obtaining finance on acceptable terms to [redacted] within 2 months of acceptance of the Agreement, and settlement being 3 months after the Agreement is declared unconditional in all respects (5 months in total).

Arijit Residential Ltd/TROTR offer

TROTR have now deleted the problematic remediation condition.

They have changed the previous 20 day settlement clause to a settlement date of 30 June 2021. They are offering to complete the purchase this financial year.

They have not changed their purchase price. Their offer is essentially an unconditional offer for $8,695,652.17 plus GST ($10 million inclusive of GST).

TROTR state in an accompanying letter, their offer is based upon receiving an independent valuation of the properties, as is where is, and remediation advice to reinstate the properties to, amongst other things, ensure statutory compliance and to ensure weather tightness and building performance moving forward.

They have referred the matter back to their independent valuers who confirmed their original valuation figure.

[redacted]

TROTR say their offer holds a full understanding of all the costs of remediation on this project and thereby are the best equipped party to deal with the remediation itself and release PCC from its ongoing liability with a transaction that has probity. They say their offer demonstrates a clear desire to work forward in partnership with PCC and as such accords itself of further consideration as to the best interests of Porirua and the community PCC and TROTR both serve.

The table below provides a comparison between the two offers setting out the financial aspects.

View Road Sale Options

Purchaser	**Arijit Residential Ltd**	[redacted]
Purchase Price Offer	$8,695,652.17 plus GST	$11,500,000 incl GST
Sale Price to Council	$8,695,652.17	$10,000,000.00 GST deducted from sale price
Deposit %	15%	5%
Deposit $	$1,304,347.83	$575,000.00
Deposit held by	Vendors Lawyer	Vendors Lawyer
Sale Costs $	0	$345,500.00
Settlement date	30 June 2021	Assume 5 months (2 months conditional period & 3 months more)
Revised annual holding costs per 12 Aug 2020 Council report	$455,000.00	$455,000
Security Costs Annual	$288,000.00	$288,000
Total annual costs unoccupied	$743,000.00	$743,000
Holding Costs for sale period	$26,463.01	$309,583.33
Net sale price to Council	$8,695,652.17	$10,000,000.00
Less sales costs	0	$345,500.00
Less Holding Costs	$26,463.01	$309,583.33
Net sales price for comparative offer purposes*	**$8,669,189.16**	**$9,344,916.67**

***Assumes all other settlement costs e.g. lawyers' fees are materially similar for each offer**		
Book Value as at 30 June 2020	$7,761,625.00	$7,761,625.00
Comparative gain on sale excluding settlement costs and prior holding costs	**$907,564.16**	**$1,583,291.67**

[redacted] purchase price ($11,500,000) minus GST ($1,500,000) and the agent's commission and administration fee ($345,500) becomes $9,654,500. This is the sum payable to the Council. This is now $958,847.83 higher than TROTR's purchase price offer of $8,695,652.17, which would be payable to Council.

In addition to the difference in purchase price offered, Council should note the impact that it's holding cost has on the two offers. It is costing Council $743,000 p.a. to hold the View Road units. If TROTR settle on 30 June 2021, the Council's holding cost for that period is reduced to $26,463.01. The five month [redacted] settlement period would still cost the Council $309,583.33. The cost difference between the two offers ($309,583.33 - $26,463.01 = $283,120.32) should be considered and recognised as a positive factor when considering the TROTR offer.

	TROTR	[redacted]
Offer	$8,695,652.17	$10,000,000.00
Agents fees		- $345,500.00
		$9,654,500.00
Holding cost	$26,463.201	$309,583.33
Net sales price	**$8,669,189.16**	**$9,344,916.67**

Taking Council's holding costs into account [redacted] new offer is now $675,727.51 better than TROTR's offer. The $1,000,000 increase has changed the financial outcome from the 20 May report which showed TROTR's offer as $133,303.46 more financially attractive to Council.

Under the provisions of the Local Government Act (Schedule 7, Section 32(c)) Council can not delegate the power to dispose of the View Road units. Council is the decision maker on this matter. It can delegate the CE carry out its decision.

The key factors for Council to take into account in making a decision on this matter are the difference in sales prices, the difference in the settlement dates, with one offeree effectively unconditional and the other conditional, and the overall working relationship with Ngati Toa.

The 'Do not sell option' and the 'supporting information' advice remains unchanged from the 20 May 2021 report and is not reproduced here.

CONCLUSION

The Council now has the ability to sell its View Road units. It has two Agreements, one conditional, one effectively unconditional for Sale and Purchase offers to consider. The Council's holding cost for the View Road properties is significant. In keeping with its August 2020 determination, it is recommended Council take the opportunity to free itself from the site.

ATTACHMENTS

1. **View Road Sale and Purchase Report, Public Excluded Council Meeting Agenda, 20 May 2021**

12.2 OPTIONS FOR 26 VIEW ROAD

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Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in s48(1)(a)(i) of the Local Government and Official Information Meetings Act 1987.
Sub-clause and Reason:	s7(2)(g), s7(2)(h) and s7(2)(i) - the withholding of the information is necessary to maintain legal professional privilege, the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities and the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

PURPOSE

The report backgrounds the acquisition of the 24 units with weathertight defects at 26 View Road. It discusses a range of related matters and sets out the various options Council has in respect to remediating, renting, leasing, selling or demolishing the units. The recommendations in the report follow from a Council Options Workshop on 2 July 2020 and an elected members site visit to the View Road units on 4 June 2020.

RECOMMENDATIONS

That the Council:

1. Receive the report.
2. Agree to retain the units until such time as they can be sold "as is" for a satisfactory price, or some similar solution is found for the units.
3. Agree to undertake necessary repairs, maintenance and upgrades to allow the units to be tenanted, on the understanding that the rental income will be used to offset the holding cost of keeping the units.
4. Agree that should a substantive offer be received, before considering that offer, the units be advertised for sale "as is" with full disclosure of their defects, in order to ensure any other possible offers are taken into consideration before a decision is made.

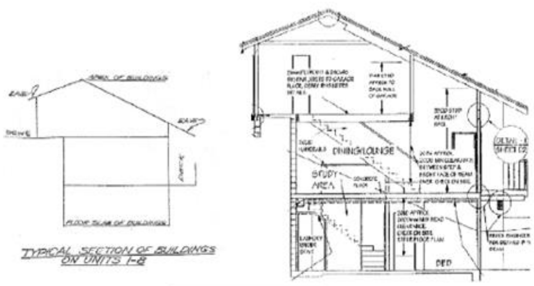
Reports contain recommendations only. Refer to the meeting minutes for the final decision.

BACKGROUND

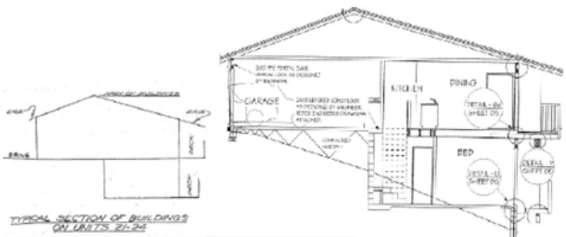
<u>Description of the units</u>

The 26 View Road site is comprised of 25 townhouses. There are 12 duplex units and a single unit totalling 13 separate blocks in four different configurations. The building types and corresponding units are outlined in the following table and diagram.

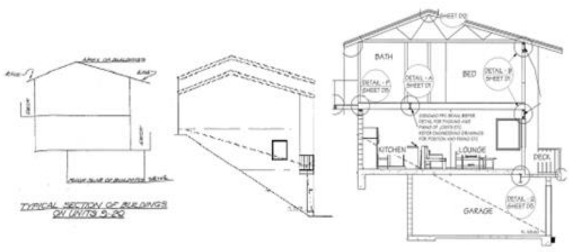
Building Type	Relevant Units	Description
1	1-8	The garage effectively comprises the entire top floor of the building. The middle level is made up of a living area and kitchen. The lower level contains bedrooms and a bathroom. These units have three floors.
2	9-20	The garage effectively comprises the entire ground floor of the building. The middle level contains the living area, kitchen and a toilet. The top level contains the bedrooms a bathroom and, in most cases, a closet laundry. These units have three levels.
3	21-24	The top floor is made up of the garage, living area and kitchen. The lower floor contains bedrooms and a bathroom. These units have only two floors.
4	25	Unit 25 is the only unit onsite which is housed entirely within its own building. The top floor is made up of the garage, living area and kitchen. The ground floor contains the bedrooms and bathroom.



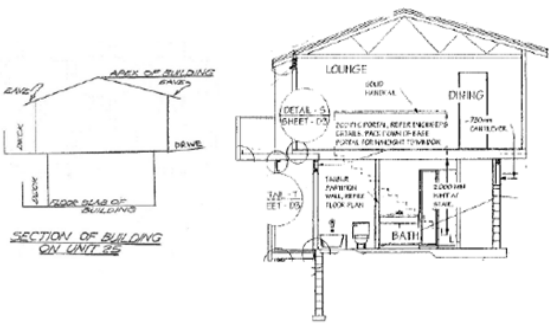
Building Type 1 - Units 1-8



Building Type 3 - Units 21 - 24



Building Type 2 - Units 9 - 20



Building Type 4 - Unit 25

The units contain a mix of two and three bedroom; 13 of the units are three bedroom and 12 units are two bedroom.

The units are located and cut into a steep hillside and are partially set above or below the access road. They are set on concrete block retaining wall foundations which support up to two timber framed upper levels. The cladding is a mix of painted fibre-cement weatherboard or textured fibre – cement sheet and the roofs are painted steel. The decks are either concrete or cantilever timber joists.

The units were all built by Hinds Builders Ltd under consent number 0564/06 and were completed circa 2006. Code of Compliance certificates were issued by Porirua City Council in June 2007.

The location is close to the sea and is within a Zone D corrosion zone. The wind zone is likely to be Specific Engineering Design.

Claim

In February 2016, the Body Corporate applied for a Weathertight Homes Resolution Service (WHRS) assessors report. A WHRS assessors eligibility report was then issued in May 2016. It confirmed that the development met the criteria set out in the WHRS Act 2006.

A WHRS assessors follow up full report then meticulously detailed the unit's weathertight defects.

These are in summary:

a) Inadequately detailed and terminated waterproofing membranes to reinforced concrete retaining walls.

b) Inadequate weatherproofing to first floor concrete balconies throughout Units 9-20.

c) Poorly detailed and terminated saddle flashings to cantilevered balcony joist penetrations.

d) Inadequate step down from driveway surfaces to interior floor levels.

e) Inadequately weatherproofed joinery units to rear access doors.

In addition, the WHRS report identified a number of deficiencies that in the opinion of the Assessor could lead to future water entry and damage.

f) Lack of drainage at the base of cavity wall construction.

g) Inadequate separation and clearance of cladding to party walls above exterior timber decking.

h) Inadequate clearance of head flashings above ranch slider doors.

i) Inadequately weatherproofed horizontal plastered surfaces to party wall projections.

The Assessor set out a full “scope of works” to fix the units. The work in summary is:

a) Excavation and replacement of the waterproofing membranes to the below ground concrete retaining walls (all units).

b) Uplifting existing tiles and balustrades to concrete balconies and installation of waterproofing membranes (Units 9-20).

c) Modification of existing timber slatted decks, where installed to the rear elevation. This will include some partial recladding of weatherboards and replacement of decay damaged timber framing (Units 1-8 and 21-25).

d) Recladding of the fibre-cement weatherboards to the front elevations of Units 1-8 and installation of walls either side of the garage doors (Units 1-8).

e) Temporary removal and reinstallation of the rear single access doors and installation of sill tray flashings (Units 9-20 only).

Future damage repairs – (optional work if considered to be needed):

f) Removal and replacement of the lowest fibre-cement weatherboard to all sections of fibre-cement weatherboards (where not already affected due to other repair works), remove the existing horizontal timber battens and the base of each elevations section and replace with new timber battens to allow drainage /ventilation (all units).

g) In conjunction with removal of the existing timber decks to the rear elevations of Units 9-20 (due to excavation around retaining walls, ensure new decks are constructed with suitable separation and clearance to existing clad party walls (Units 9-20).

h) Remove the weatherboard above the existing head flashings adjoining the ranch slider doors (excluding on upper levels where under wide eaves), replace the current lapped flashings with a continuous welded powder-coated metal head flashing and install new weatherboards above each new flashing (all units).

i) Retrospective installation of metal capping to horizontal plastered surfaces above projecting party walls. In localised areas (between Units 5 & 6 and 7 & 8).

The cost of repair was independently estimated by a QS during the WHRS assessment process, as:

Current defects allowing water entry	$4,094,235.00	inc GST and Professional fees
Future damage	$75,765.00	inc GST and Professional fees
Total estimated cost:	$4,170,000.00	

N.B. – 85% ($3.5m) of this cost estimate is in regards to the cost of excavation and replacement of the tanking membranes.

That cost will have since increased.

In June 2017, the Body Corporate and 24 of the 25 units issued proceedings against the Council and Hinds Builders Ltd in the High Court, alleging that the development suffered defects and damage. The owners of unit 3 did not participate in the proceedings. Unit 3 is identified in red on the following aerial picture.

The plaintiffs claimed remedial costs of [redacted] including GST, excluding other costs such as expert costs, relocation costs, consequential losses, etc.

The Council engaged Alexander and Co as building surveyors who advised that there were a number of defects that were consistent across the units. However, they considered the scope of works produced for the plaintiffs was significantly overstated.

Council obtained an initial assessment of loss in value from Darroch based on the remedial costs proposed by the plaintiff, with the findings of an affected value of approximately [redacted]. The unaffected value for the units was in the range of [redacted] to [redacted]

In 2018, the claim was amended by the plaintiffs to [redacted] based on the information provided by their property expert (Helfen). Council's lawyers (Simpson Grierson) then estimated the plaintiff claim in the order of [redacted] including expert costs, relocation costs, consequential losses, etc.

Court facilitated mediation in October 2018 did not achieve settlement. However, the parties subsequently reached agreement in December 2018. The Council agreed in full and final settlement of the claim to purchase the 24 units for [redacted]

Settlement

Following the agreement in December 2018 that Council purchased the 24 units involved for [redacted] The parties worked through suitable terms for the Settlement Agreement and the Purchase Agreement for each unit. Whilst Council would have preferred vacant possession, a number of owners negotiated to stay whilst looking for new homes or build a new home, and there were existing tenants on fixed or non-fixed terms. In total [redacted] owners/ tenants stayed on. A unit rental of [redacted] was agreed for owners [redacted] The tenants in question continued to pay their existing rental amounts to Council.

The Council carried out pre-settlement inspections prior to the settlement and prepared pre-tenancy reports for the units being rented back.

The settlement was achieved out of Court. [redacted] The settlement and its terms are confidential to the parties.

The sales and purchase settlement for the 24 units was concluded in June 2019. A summary of settlement is shown in the following table:

Settlement summary

Payment to 22 unit owners	23 May 2019	[redacted]
Unit 20	06 June 2019	[redacted]
Unit 10	12 June 2019	[redacted]
Subtotal		[redacted]
Payment to Body Corporate	09 May 2019	[redacted]
TOTAL		[redacted]

Council now owns 96% of the development and a new Oceanview Estate Body Corporate was formed on 30 May 2019.

After Council purchased the properties it was able to claim a GST second-hand goods credit, meaning that Council claimed GST input tax of circa [redacted] This was possible because Council purchased the properties as part of its taxable activity and did not intend to use the properties solely for the purpose of making exempt supplies for GST. Exempt supplies, as set out in the Goods and Service Act 1985 (the GST Act) includes the supply of accommodation in a dwelling.

With owners and tenants staying on in [redacted] of the units for a period of time Council used a special agreement that local authorities have with Inland Revenue for this type of situation. This has seen Council pay GST output tax to Inland Revenue on the rental income that it has received from the properties.

Settling for [redacted] and claiming [redacted] in GST, left Council with a net borrowing cost of approximately $8.6m.

All 24 owners and tenants had vacated the units by late November 2019.

Invasive testing

In August 2019 the Council engaged the IR Group, with sub-contractors Central Adjusters (weathertight expertise) and Maycroft to gather further information about the state of the buildings. A methodology for invasive testing was agreed that ensured that the results of the testing could be extrapolated out across the other building types if required.

The invasive testing work was carried out in the latter part of 2019 and reported on in January 2020. The findings can be summarised as:

Unit exteriors

The weatherproof membrane has been poorly installed and is missing in places. Defects included incorrect laps, gaps, incorrect materials used, among other issues. All of this indicates poor construction methodology and monitoring.

Unit interiors

Dampness and mould were detected. Water is present behind the walls and some framing is beginning to degrade.

Balconies

A lack of fall on the balcony, lack of waterproof membrane on the surface and poor flashing details around the door have all caused water to track inside the building and into the garage. This has led to the damage of the ceiling linings and corrosion of the steel beam below the balcony inside the garage.

Full remediation as per the WHRS Assessor's report

The IR Group was asked to provide the Council with options for remediating the units and for associated costs. After looking at the scale and scope of the issues identified, particularly the core issue relating to dampness and in some cases water ingress through the sub-ground exterior walls, the IR Group concluded that full remediation of units as per the WHRS Assessors report is not a feasible option.

The design methodology and construction detailing observed, means no reliance can be made on the integrity of the damp proof membrane under slabs and behind the concrete walls. It must be assumed that to achieve proper remediation, the buildings would essentially need to be fully excavated and a new membrane applied behind the concrete masonry sub-ground walls and treatment to the slabs and foundations to improve the damp proofing of the slab. One detail that would be extremely hard to achieve, if not impossible, is to guarantee a fully effective joint between the wall and slab membranes.

Given that remediation as per the WHRS Assessor's report cannot practically be achieved, there was little point in attempting to update the 2016 $4.2m remediation estimate.

A building consent would be needed for the type of work set out in the WHRS Assessor's scope of works for remediation.

Valuations

As noted earlier in this report as the Council worked toward settlement, Darroch provided it with market valuations for the 24 units: unaffected value [redacted] affected value [redacted] (September 2018).

The Council also engages Quotable Value to conduct three yearly property revaluations for the entire city. The relevant values for the 24 units in summary at November 2016 and November 2019 were:

Year	Land value	Improved value	Capital value
2016	$3.4m	$6m	$9.4m
2019	$5.6m	$3.8m	$9.3m

The 2016 valuation is an "unaffected value". The 2019 valuation is an "affected value" i.e. the 2019 valuation takes into account the units' weathertight defects.

After the invasive testing work was carried out, Valuation Consultants Ltd were asked to provide unaffected and affected valuations for the 24 units; a valuation for just the land (assuming demolition of the buildings had occurred); and a rental assessment for the 24 units.

The respective April 2020 valuations are:

• 24 units assuming weathertightness remediation, deferred maintenance and internal upgrade complete.	$16m
• 24 units assuming weathertightness remediation and deferred maintenance complete (no upgrade)	$14.2m
• 24 units affected value – no remediation, maintenance or upgrade undertaken	$10.2m
• Land value assuming demolition of 25 units with the purchase of Unit 3	
1. Sale to individual builders	$3.5m to $4m
2. Sale to one developer	$3m
3. Sale to one developer with slabs left in place	$3.5m
• Rental assessment for 24 units at 100% occupancy	$720k p.a.

The valuer noted that the $10.2m affected value would be difficult to achieve. Banks will not finance weathertight building purchases. The Council would be a “price taker”.

While the current QV land value is $5.6m, the valuer stated that this figure does not represent the underlying land value. It would not be feasible to sell duplex sites even if they were re-subdivided down to individual fee simple sites. So instead of 25 lots, there are 13 lots for practical purposes. Dual sites tend to sell for a premium of 30% to 40% above the selling price of a single site.

Alternative repair proposal

The Council now has three expert reports confirming weathertight defects with the units. However, as was seen on the elected member site visit on 4 June, the damage actually appears relatively minor. Despite the identified issues, the buildings have been largely fit for purpose since they were built. The buildings look to be sound and appear well constructed.

The units cannot be fully remediated as per the ‘perfect’ solution set out by the WHRS. An alternative repair proposal is to treat the dampness issues as best we can. The balconies can be remediated. The top section of the weather proofing membrane of the basement walls can be upgraded. A specialist negative pressure membrane can be applied to internal walls.

This is a methodology to use if the Council retains the units and rents them out. The work can be staged over a number of years as needed. The Council would also need to address some deferred maintenance items.

The alternative repair work is summarised as:

Area	Work item
Upgrade balcony membrane 12 units $19k a unit / total cost if applied to all 12 units $230k	• Remove and dispose of existing balustrades • Remove and dispose of all tiles and prep slab • Install new appropriate membrane on concrete balcony (sealing cold joint) • Install new tiles on balcony • Install new metal side mounted balustrades • Strip away layers of gib encasing steel beam • Grind back or wire brush off existing surface rust and paint • Reinstate gib, plaster and paint

This would be priority one work. It would be carried out first to the units that obviously require it.

Area	Work item
Upgrade top termination of retaining wall membrane 24 units $14k a unit / total cost if applied to all 24 units $340k	• Excavate around the top of the basement walls to expose membrane • Prepare wall to take new membrane • Lap new membrane strip over the top of the existing membrane • Terminate top of membrane with new pressure bar flashing • Install protection and backfill

This would be priority two work. This would only be done as necessary where there is obvious dampness and moisture issues.

Area	Work item
Treat rising damp with negative pressure slurry 11 units $102k a unit / total costs if applied to all 11 units $1.1m	• Remove interior lining trip and battens to expose block walls • Treat walls with specialist coating • Reinstate linings & trim on new battens • Paint and new floor coverings in effected rooms • Electrical and plumbing disconnections and reconnections • Make good affected joinery units

This is also priority two work, only undertaken to units as required.

Area	Work item
Deferred maintenance $800k	• Repaint exterior surfaces • Rescrew roofing • Replace Galvanise fixings with new S/Steel • Upgrade existing barriers and fences and install new vehicle barrier

This work is priority three. Some aspects like exterior painting can be pushed out quite a number of years.

Building Consent

While a building consent would be required for the nature of the work required to undertake the WHRS Assessor's scope of works, a building consent would not be required for the alternative repair work. The structure has not yet failed durability Clause B2 of the New Zealand Building Code. The damage is quite minor. The repair work is about keeping water out, not remediating damaged framing. Under Schedule One of the Building Act 2004 repairs can be undertake as part of normal repair and maintenance. The work itself would need to be carried out in a way that is compliant with the Act.

Residential Tenancies Act and Healthy Homes Standards

If the Council repairs and rents the units, it will be subject to obligations under the Residential Tenancies Act, including the Healthy Homes Standards.

Under the Residential Tenancies Act 1986, landlords are generally responsible for:

- providing the premises in a responsible state of cleanliness;
- providing and maintaining the premises in a reasonable state of repair;
- complying with smoke alarm, healthy homes standards, and requirements under other enactments;
- providing for the collection and storage of water where there a reticulated water supply does not exist;
- compensating the tenant where the tenant has spent money on fixing something urgently in circumstances where the tenant has made reasonable attempts to notify the landlord of the problem; and
- taking reasonable steps to make sure that other tenants do not interfere with the reasonable peace, comfort and privacy of the tenant.

There are five healthy homes standards:

Heating, insultation, ventilation, draught stopping and moisture ingress and drainage. The Council would be required:

- to immediately comply with the insulation requirements in the Health Homes Standards upon letting an apartment; and
- to comply with the remainder of the standards (relating to heating, draught stopping, ventilation, moisture and drainage) by 1 July 2021.

Most standards (including the moisture tightness and drainage standard) are subject to the "reasonably practicable" standard, which states that the standards do not apply where it is not reasonably practicable for the landlord to fulfil them.

Our assessment is that if we undertake repairs we will be able to meet the legislative obligations. Before tenanting we would also be wise to obtain an independent experts sign-off for acceptable moisture levels.

Unit 3

A summary of the main facts relevant to Unit 3 is:

Denis & Ann Clode purchased for $328k	Jan 2016
QV valuation unit 3 - $355k	Nov 2016
PCC purchased unit 4 for [redacted]	May 2019
QV valuation unit 3 - $370k	Nov 2019
Market value if repaired - $554k	Mar 2020
CEO authorised to acquire unit 3 at fair market price if necessary	Dec 2018

A suggested fair market price for Unit 3 as a weathertight affected property would be [redacted] If the Council was considering demolishing its units and selling the land, it would look to acquire Unit 3 (which is joined to Unit 4). [redacted]

Body Corporate

The Body Corporate was reformed after the Council purchased its units and is "staffed" by Council officers. The Body Corporate agrees and then takes a levy off the respective owners (itself and Unit 3) for common upkeep items. Insurance is the main cost, but there are AGM and financial statement requirements.

If the Council wanted to dissolve the Body Corporate, the cost and time to do so is largely dictated by Unit 3's agreement or not.

If Unit 3 agrees with a resolution to cancel the unit plan or the Council purchases Unit 3, it can apply to the Land Registrar to cancel the unit plan under section 177 of the Unit Titles Act 2010. The estimated cost is $15k and a one to three month timeframe.

If the Council didn't acquire Unit 3 and was selling its units and wanted to cancel the unit plan, it has the option of using Section 188 of the Unit Titles Act. Cancellation must be just and equitable having regard to the interests of unit holders. Application is made to the High Court. If unopposed, the estimated cost is $30k to $50k and a three month timeframe. If opposed, the estimated cost is $70k to $100k and a 12 month timeframe.

Interest shown in acquiring the Council's units to date

[redacted] have been approached about their interest. They have declined. The site is too steep and there is limited scope to increase yield.

[redacted] have no interest due to the moisture/mould issues.

[redacted] were approached but have no interest given the issues.

Ngati Toa's new Chief Executive, Helmut Modlik has expressed an interest. Ngati Toa could fund remediation but would want a guarantee and would look to split the profit from selling the units with the Council. Ngati Toa would use the profit to fund social housing. This is not a viable option for the Council. We can't guarantee the repair. Alternatively, Ngati Toa may be interested in purchasing the units in their affected state, priced accordingly.

[redacted] has expressed an interest in acquiring the units in their affected state, priced accordingly. Ngati Toa and [redacted] have indicated they would work together to acquire the units.

Private individuals have approached the Council from time to time, expressing an interest in acquiring one or two affected units. The Council would have a preference to sell the units to a GST registered buyer. Further, in order to protect Council from suffering a GST impost on the sale price, any Sale and Purchase Agreement would express the sale price as "plus GST (if any)".

GST treatment

- The Council claimed back [redacted] GST when it purchased units to settle the claim. It did not purchase the units for the purpose of supplying accommodation. Intention is important.
- If Council sell the units to a GST registered buyer/s, the transaction can be zero rated. No GST would be paid.
- If Council sell the units to non-registered buyer/s, the Council will have to pay 15% GST on sale proceeds.
- Strictly speaking if Council fixes the units and rents them, this amounts to a "change in use". The Council should pay back [redacted] GST. This outcome can be avoided if the units are kept available for sale and rented in the meantime. The Council would pay 15% tax on the rental received until it sold the units, then it would claim back that tax.

DISCUSSION AND OPTIONS

The Council has various options to remediate, rent, lease, sell or demolish the units (or to undertake a combination of those options).

Set out below are some rough order costings for the main options. Costs are given at maximum levels.

<u>On-sell "as is"</u>

- Legal, marketing etc — $100k
- Agent fees x24 units vs one purchase — $300k

<u>Repair and on-sell</u>

- Full remediation not possible to cost — $4.2m
  - use rental methodology for repair instead (maximum) — $1.7m
- Deferred maintenance (maximum) — $800k
  - exterior painting, rescrew roofing, replace galvanised fixings, fences and barriers
- Upgrade (maximum) — $480k
  - replace carpet, internal repaint, replace door and hardware ($20k per unit)
- Agent fees x24 units — $460k
- Legal x24 units, marketing etc — $100k

<u>Repair and rent</u>

- Rental methodology to treat dampness — $1.7m
- Deferred maintenance — $800k
- Upgrade — $480k

Holding costs with renting

- Interest on existing $8.6m loan — $300k p.a.
- Body Corp fees / insurance — $75k p.a.
- Rates — $65k p.a.
- Interest on any loan to fund remediation / maintenance / upgrade ($3m) — $90k p.a.
- Tenancy management (via an agency) — $25k p.a.
- Ongoing maintenance (3% at $16m) — $480k p.a.

Demolish

- Cost of purchasing Unit 3…say… [redacted]
- Demolition of 25 units — $930k
- Marketing / legal / agent fees (for sale of land) — $220k

Benefits, Costs and Risks

Set out below is a summary of the benefits, costs and risks with the main options.

On-sell "as is"

- Benefits
  - least amount of PCC time and resource
  - [redacted]
  - least expensive option.
- Costs
  - sale price unlikely to be high*
  - legal, marketing and agent fees with sale.
- Risks
  - [redacted]
  - [redacted]
  - [redacted]

*Full disclosure of weather tightness issues required to negate future liability

The table below highlights the profit that could result from a $10.2m "as is" sale compared to the loss of [redacted] if a lower [redacted] sales price resulted.

On-sell "as is"	**Top price**	**Lower price**
Settlement cost (net GST)	[redacted]	[redacted]
Cost of sale	$400k+	$400k+
Sales price	$10.2m	$6m
Profit / (loss on sale)	[redacted]	[redacted]

Excluding holding cost. Assumes sale to GST registered buyer.

Repair and rent

- Benefits
  - overtime revenue cancels out cost
  - land and buildings (hopefully) appreciate overtime
  - [redacted]
  - maintenance can be planned to suit the rental income stream
  - suggested repair and maintenance methodology exempt from building consent.
- Costs
  - ongoing repair / maintenance commitment – initially quite high
  - some invasive works will delay letting all units immediately
  - resource to manage works / let units.
- Risks
  - [redacted]
  - [redacted]
  - [redacted].

The tables below highlight the relevant costs and income associated with the repair and rent option. The right-hand column exemplifies that if the Council only undertakes repair, maintenance and upgrade work as necessary and phases work over a number of years, rental income can cover our holding costs.

Repair and rent	**Do it all at once**	**Phase over 6 years – Yr 1**
Settlement cost (net GST)	[redacted]	[redacted]
Repair	$1.7m	
Deferred maintenance	$800k $3m	$500k
Internal upgrade	$480k	
-GST	-$450k	-$75k
Capital cost (net GST)	[redacted]	[redacted]

Repair and rent	**Do it all at once**	**Phase over 6 years – Yr 1**
Loan interest on settlement cost	$300k	$300k
Loan interest on repair / maintenance / upgrade	$90k	$15k
Body Corp	$75k	$75k
Rates	$65k	$65k

Tenancy management	$25k	$25k
Ongoing maintenance	$480k	$70k
Annual operating cost	**$1,035m**	**$550k**

Repair and rent	**Do it all at once**	**Phase over 6 years – Yr 1**
Rental income	$720k (100%)	$650k (90%)
- 15% tax on income	- $110k	- $100k
	$610k	$550k
Annual margin	**$(425k)**	**$0**

- Adjust repair / maintenance / upgrade / ongoing maintenance year by year according to need.
- Adjust rental income according to availability of units.
- Sell in future. Pay GST. Claim back any tax paid.

Repair and on-sell

- Benefits
  - highest anticipated sale price that should actually cover costs.
- Costs
  - remediation, deferred maintenance, upgrade, agents, legal etc.
- Risks
  - can't practically remediate to WHRS standard
  - [redacted].

Due to the noted risks it is recommended this option is discounted.

Demolish and sell land

- Benefits
  - peace of mind – buildings can't cause future issues
  - [redacted].
- Costs
  - cost acquiring Unit 3
  - cost of demolition
  - cost of selling land
  - resource to oversee work
  - loss realised of selling land for less than units acquired for.
- Risks
  - [redacted]

- [redacted]
- [redacted]
- [redacted]

Because the sale price of the land is expected to be considerably lower than its QV value and the damage has been found to be relatively minor (but practically difficult to guarantee a fix to) it is recommended this option is also discounted. Any sale amount from the land is likely to be lower than that achieved by an on-sell "as is" of the units option.

<u>Recommended Option</u>

Selling the 24 units at this time "as is" with full disclosure of defects theoretically should provide a return in excess of [redacted] This would mean the Council would cover its purchase and sales costs. However, realistically the theoretical price is unlikely to be achieved. Our valuers' advice is that if we attempt to sell the units at this time "as is" we should expect to receive a significantly lower price. Negative sentiment, inability to raise finance, and developer profit margins are key factors in this consideration. Repairing the units via the alternative repair methodology outlined in this report with a view to covering our holding costs, until such time as the units prove themselves to be weathertight and an on-sale "as is" price close to the affected market valuation of $10.2m (or equivalent at time of sale), is the recommended option at this time.

CONCLUSION

This report touches on a number of matters and sets out the various options Council has in respect to the units. Despite efforts to tease out interest there hasn't been a great deal of interest shown from parties to date. Achieving the affected market value by way of an "as is" sale at this time is unlikely. As an interim position the repair and rent option is recommended. As such there is no particular need at this time to purchase Unit 3. The Body Corporate can also remain for the time being, which we would look to retain as cheaply as possible.

SUPPORTING INFORMATION

CONTRIBUTION TO COUNCIL'S STRATEGIC DIRECTION

The issues in this report contribute to the strategic priorities of a growing prosperous and regionally connected city.

FINANCIAL CONSIDERATIONS

Financial considerations associated with the acquisition of the units and the various options open to the Council are outlined throughout the body of this report.

STATUTORY REQUIREMENTS

A number of relevant statutory and legal obligations are outlined throughout the body of this report.

FOUR WELL-BEINGS

The matters discussed in this report (a weathertight property acquisition and options for its future) primarily relate to the Social and Economic well beings.

TREATY CONSIDERATIONS

There are no particular Treaty obligations to note for this report. Ngati Toa's possible interest in acquiring the units is highlighted in the report.

SIGNIFICANCE

An earlier report to Council on this matter has highlighted that it falls at the lower end of the financial significant threshold range.

ENGAGEMENT AND COMMUNICATIONS

Matters to date have been conducted in public excluded. However, once a formal decision is made about the future of the units, a press release will be prepared to inform the public about what has been decided. A pack of information will also be assembled for "as is" purchasers or similarly interested parties.

ATTACHMENTS

Nil