
REPORT 2
(1215/11/IM)

FUNDING AGREEMENT BETWEEN THE KARORI WILDLIFE SANCTUARY TRUST AND THE WELLINGTON CITY COUNCIL

1. Purpose of Report

This report seeks Council's approval of a funding deed with the Karori Wildlife Sanctuary Trust, in respect of a limited recourse loan, and to delegate to the Chief Executive the authority to sign the agreement.

2. Executive Summary

Council has approved an \$8 million interest free loan to the Karori Wildlife Sanctuary Trust (for the new visitor centre). This was conditional on the Trust raising all other funding from other sources, which has now been achieved. Officers have been working with the Sanctuary in negotiating the terms and conditions of the funding deed that will underpin the parties' rights and responsibilities for the loan.

Council requested officers to come back to Council for formal approval of the proposed funding deed. This paper recommends approving the key elements of the proposed funding deed and delegating to the Chief Executive the authority to sign the funding deed and make any minor changes as required.

3. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to the key elements of the proposed funding deed between the Council and Karori Wildlife Sanctuary.*
- 3. Delegate to the Chief Executive the authority to complete and sign the funding deed.*

4. Background

The Council supports Karori Wildlife Sanctuary (KWS) in its regulatory and non-regulatory roles. The Council has shown its support for this project through the approval of an \$8 million interest free loan to KWS Trust. The KWS loan relates to the development of a new visitor centre at the Sanctuary.

The loan funds part of the proposed project costs. The provision of the loan is conditional on the trust securing the remaining funds required from other sources.

With the successful application to the Significant Community Based Project Fund and other fundraising, the Trust has raised all remaining funds to complete the project.

Officers have been working, with assistance from DLA Phillips Fox, on the proposed terms and conditions of the funding deed with the Trust. A draft funding deed has been presented to the Trust for their review. Negotiation has occurred and the deed is now at a stage that both parties are comfortable with it.

The key elements of the draft deed are attached as Appendix One to this report.

One of the resolutions of the funding paper that went up to Council in February 2007 required officers to come back to Council for formal approval of the proposed funding deed. That paper sought approval for the funding to be provided to the Trust as limited recourse loan, which was subsequently approved by the Council.

This paper outlines the main points of the proposed funding deed, recommending approval and delegating to the Chief Executive the authority to complete the funding deed with such terms and conditions as deemed appropriate.

5. Discussion

5.1 The proposed funding deed

The proposed funding deed is to exist for a term of either 25 years or once the loan is paid back, whichever occurs first. The project over this timeframe has two elements to it, the construction and the operation of the visitor centre, and therefore officers and the Trust had to ensure that the funding deed adequately addressed both elements and ensured that both parties' expectations are met along with protecting both parties' interests and responsibilities.

Due to the term of the funding deed, officers are aware that there is the possibility of situations arising or circumstances changing which could not have been foreseen. On this basis there is a five year review clause which allows the agreement to be, if appropriate, reviewed and amended every five years.

The funding deed also has the requirement for KWS to provide quarterly and annual reports to the Council, which will be administered through the Council Controlled Organisations Performance Subcommittee (CCOPS). This will enable the Council to monitor the Trust to protect its investment.

The proposed agreement has been reviewed by the Council's legal consultant team of DLA Phillips Fox. The Trust has also had their own independent legal review undertaken on the proposed agreement.

The deed is consistent with other funding deeds that the Council has approved. While each funding agreement/project has its own unique circumstances, there are standard clauses that the Council retains for reasons of consistency and risk, for example the level of debt an entity can sustain before the Council intervenes.

5.3 Risks to Council

Officers' view is that the proposed funding deed is consistent with Council's intentions, standards and practices. Through the drafting of the agreement officers have identified potential risks to the Council and have ensured that these risks are managed and/or mitigated through the proposed agreement which requires quarterly reporting to occur, and also provides for the opportunity for Council officers to provide input and approve documentation e.g. the project plan.

6. Conclusion

The funding deed provides the opportunity for the Council to monitor the Trust during the term of the funding deed to ensure that all potential risks to the project, given the Council's level of investment, are adequately managed and/or mitigated.

Officers recommend that the funding deed's main elements, listed in Appendix One, are agreed to and the authority is delegated to the Chief Executive to complete and sign the funding deed.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The project reflects the values and aspirations encapsulated within the Council's recently reviewed strategic direction, particularly in the areas of Environmental, Urban Development, Economic Development and Cultural Well Being. The proposal also aligns with the 2006-09 priorities particularly aiding in strengthening the city's partnerships with stakeholders to increase environmental awareness, community participation and the achievement of environmental goals and allows the Council to take a proactive role in protecting its local sense of place.

2) LTCCP/Annual Plan reference and long term financial impact

The funding is already included in the Annual plan. It will not have any additional long term financial impact.

3) Treaty of Waitangi considerations

This decision does not have Treaty of Waitangi considerations.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

The trust has been consulted and is happy with the proposed agreement.

b) Consultation with Maori

N/A.

6) Legal Implications

There are no legal implications.

7) Consistency with existing policy

This report and recommendations are consistent with existing Council delegations and treasury policy.

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The below outlines the main elements of the proposed funding deed between the Wellington City Council (Council) and the Karori Reservoir Wildlife Sanctuary Trust (Trust).

1. Funding

The deed outlines the type of funding that the Council will provide to the Trust for the Gateway Project, by way of a 25 year, interest free, limited recourse loan of \$8 million.

2. Advances

There are certain requirements that the Trust have to complete before an advancement can be made.

The Council will make each Advance to the Trust in accordance with the payment schedule which has been previously submitted to and approved by the Council.

The Advances are limited recourse and shall be interest free, unsecured and the Council's rights to claim repayment of the Advances are limited to the payments out of the Trust's Surplus Funds which is described as:

“In respect of the Trust and any controlled entity of the Trust the difference in each Financial Year between:

- *the sum of all income of any nature, gifts, donations, legacies and grants, funds received on the disposal of any asset, and any funds of a capital nature including by way of loan, received by the Trust for that Financial Year, and including the release of any provision or reserves to the general purposes of the Trust in that Financial Year;*

and

- *the sum of all costs, expenses, taxes or charges of any nature, any appropriate provisions or reserves that the Trust considers appropriate to meet liabilities and maintenance of the Trust Assets, and any reserve that the Trust considers appropriate to provide for capital works to replace or improve Trust Assets, capital expenditure that the Trust considers appropriate in furtherance of the Trust's objects and any debt reduction, including any periodic repayment of the Advances made during the Financial Year (other than Surplus Funds repaid from the prior financial period).”*

3. Term and review of funding deed

The term of the Deed shall commence on the Commencement Date and shall expire on the sooner of:

1. the date of full repayment of the loan; and
2. the date 25 years from the Commencement Date.

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If any Advances are outstanding on the date 25 years from the Commencement Date, the Trust and the Council shall agree in writing the terms upon which those Advances shall be repaid, and the Deed shall continue until such agreement is reached.

The parties shall meet to review all the terms of the Deed on every fifth anniversary of the Commencement Date.

4. Approval to major transactions

The Trust shall obtain the written consent of the Council prior to the exercise of any power to:

- give any guarantee;
- borrow any money (other than advances under the Deed); or
- give any security over any of the Trust Assets,
- undertake any one or a series of transactions in any one Financial Year involving an acquisition, new development or any expenditure on any existing Trust Asset where the total projected cost over the period exceeds [20%] of the value of the Trust Assets at the time that the relevant power is exercised.

5. Trust obligations

The Trust shall:

- act at all times in accordance with its Trust Deed.
- register as a charitable entity under the Charities Act 2005 and do everything reasonably required to maintain its registration.
- keep the Council informed as to changes in Trustees.
- submit Business Plans, Strategic Plans, Statements of Trustee Intent and accounts and reports to the Council in accordance with the Deed.
- comply with the terms and conditions of DIA's funding.

6. Relationship Management

The below values are provided in the Deed which are to guide how the Trust and the Council deal with each other under the Deed. The Council and the Trust will:

- work in a collaborative and constructive manner recognising each others view points and respecting differences;
- act towards each other honestly and always in good faith;
- communicate with each other openly, promptly and in a clear and timely manner;

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- recognise the accountabilities that each have to the other and to those for the benefit of whom services are provided; and
- encourage new and creative ways to achieve the outcomes required under the Deed.

There are clauses that relate to dispute resolution in the event that a dispute arises between the Council and the Trust concerning the Deed, the Funding or any Advance.

7. Performance monitoring

During the construction of the Project the Trust's Chief Executive and Project Manager (as required), and the Council's representatives shall meet at least fortnightly to discuss:

- the Trust's progress towards completing the Gateway Project in accordance with the Project Plan; and
- any other performance targets and other measures recorded in the Statement of Trustee Intent or agreed between the parties; and
- any departures from or amendments to the Project Plan or the Trust's Business Plan; and
- any other relevant matters.

Following practical completion of the Gateway Project, for the balance term of the Deed the Trust's Chief Executive and the Chair of the Trust, and the Council's representatives, shall meet regularly but at least quarterly to discuss:

- the Trust's progress in repaying Advances out of Surplus Funds; and
- any other performance targets and other measures recorded in the Statement of Trustee Intent or agreed between the parties; and
- any departures from or amendments to the Trust's Business Plan; and
- any other relevant matters.

If the Council is not satisfied with the Trust's progress in either of the above and it can not be resolved and the Trust's performance does not improve to the satisfaction of the Council, and the matter can not be resolved by escalation, the Council may terminate the Deed by written notice to the Trust.

8. Documents, Reports and Plans

The Trust shall prepare a Strategic Plan and Business Plan, submitted every year for duration of the funding deed. The Trust is also requirement to submit a Statement of Intent along with quarterly and annual reports and financial statements:

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9. Termination

The Council has the right to terminate the Deed at any time if certain criteria are triggered.

If the Deed is terminated for any reason the Council is not obliged to make any further Advances and is entitled to take ownership and control of the Gateway Project (if not completed), or of the buildings and other assets comprising the Gateway Project (if completed). The Trust is obliged to repay the Advances made to date.

10. Other

Council's standard clauses have been included in the deed to address:

- Indemnity
- Trustee's liability
- The Council's regulatory position
- Approvals and consents
- Waivers
- Variations