

12 January 2009

File Ref: LG05-0003-I

Tony Marryatt
Chief Executive
Christchurch City Council
P O Box 237
CHRISTCHURCH

Dear Mr Marryatt

OUTCOME OF INQUIRY INTO THE CHRISTCHURCH CITY COUNCIL'S DECISION IN JULY 2008 TO PURCHASE FIVE CENTRAL CITY PROPERTIES

As a result of the high public interest shown in the Christchurch City Council's decision in July 2008 to purchase five central city properties, I decided to inquire into the decision-making process followed by the Council. A wide range of concerns were raised directly with my Office, and indirectly through the media. Not all are matters for the Auditor-General, and not all are dealt with in my findings.

The results of our inquiry are set out in this letter. Our more detailed findings are attached as an Appendix. Overall, we conclude that the decision-making process followed by the Council was sound.

We consider that the Council's process for deciding to purchase the five properties complied with the principles of decision-making set out in the Local Government Act 2002, and was consistent with the Council's wide discretionary powers under the Act.

We acknowledge that the Council's decision was made under time pressure and that the Council considered relevant factors, including its policy on determining significance. The Council considered the consistency of the decision with existing Council strategies and plans; in particular its aspirations for city revitalisation and urban regeneration.

The Council's decision was made on the basis that budget allowances did not fully cover the costs and funding involved. The Council's existing Long-term Council Community Plan did include budget allowances for purchases of this nature, although the allowances had been partially spent on other purchases by the time the Council was considering the decision to buy the five properties.

The merits of the decision to purchase the properties are a matter for the Council's elected members. In this instance, a majority of elected members decided that the Council should buy the five properties.

Our inquiry did not consider whether we agreed with the Council's decision, nor the reasons behind it (such as the Council's views on the merits of city revitalisation and urban regeneration). Rather, our inquiry considered the process that the Council followed to make its decision.

It is not the role of this Office to provide definitive views on the legality of decisions made by local authorities and we have not attempted to do so here. Our primary concern is whether we can see sound administrative and decision-making processes operating, and whether we have any reason to doubt compliance with the requirements of legislation.

In conducting our inquiry and arriving at our overall conclusion, we have made a number of observations that the Council may wish to consider. These observations do not detract from our overall findings noted above, and are set out towards the end of the Appendix to this letter.

As we have discussed with you, we intend to publish a copy of this letter on our website in due course.

Finally, we would like to thank you for the assistance provided by you, your staff, and your elected members.

Yours sincerely

Kevin Brady

APPENDIX: Detailed findings from the Auditor-General's inquiry into the decision by the Christchurch City Council in July 2008 to purchase five central city properties

1 Our inquiry

- 1.1 We have considered the decision-making process followed by the Christchurch City Council (the Council) in deciding in July 2008 to purchase certain properties in and around central Christchurch. The properties cost about \$17 million, and were acquired by the Council from companies connected with one property developer.
- 1.2 We carried out our inquiry under section 18(1) of the Public Audit Act 2001, which provides that the Auditor-General may inquire into any matter concerning a public entity's use of its resources.
- 1.3 We reviewed the process followed by the Council and its staff in deciding to purchase the properties. We reviewed relevant documents, and held discussions with some Council staff and Councillors. We have not discussed this matter with the property developer, as our inquiry focused on the actions and processes of the Council.
- 1.4 Through our discussions, we have noted a number of different views. We have not set out all of these views in this Appendix. In some instances, we have referred to views from particular individuals.
- 1.5 We are aware of many different concerns being raised about the Council's decision to purchase these properties. Some people wrote to us about their concerns, and we also took note of the issues being raised in the media. However, not all are of relevance to the Auditor-General, and not all are dealt with in this Appendix.
- 1.6 We have noted comments about this decision and about our inquiry that suggests a misunderstanding of the Auditor-General's role in this area. Our Office is not a general appeal authority or complaints agency that the community can turn to if it is unhappy with a decision competently reached by its local authority. Under the Local Government Act 2002 (the Act), local authorities have a power of general competence and a substantial measure of discretion in making decisions within a specified decision-making framework. It is not our role to second-guess how local authorities exercise their powers and fulfil their responsibilities.
- 1.7 We focused this inquiry, consistent with our role and mandate, on whether the overall approach the Council took in making this decision was broadly sound and consistent with the requirements of the Act, and was in keeping with good practice.

2 Our general approach to considering the Local Government Act 2002

- 2.1** In considering reasonable compliance with the decision-making provisions contained in Part 6 of the Act, we consider that it is important to read the Act as a whole, and to recognise that it creates a structure of representative democracy for councils and requires them to take a participatory and disciplined approach to decision-making.
- 2.2** In giving an elected council responsibility for particular decisions, the Act clearly expects those decisions to be informed by the political and democratic context within which elected members operate.
- 2.3** However, alongside that political and democratic context, the Act sets out a decision-making framework that includes a number of requirements designed to ensure a measure of rigour and transparency in local authority decision-making processes. In particular, sections 77 and 78 require local authorities to identify options for achieving an objective and to assess them against a range of specified factors. Local authorities are also required to consider the views of those likely to be affected by or interested in the matter at various points in the process.
- 2.4** The Act does not specify standards for how that information should be obtained, the level of depth or detail that is required, or what evidence is needed to demonstrate compliance. However, section 79 makes clear that a local authority has power to adapt the way in which it meets those standards to match the significance of the issue. It is for the local authority to make judgements “in its discretion” as to the appropriate extent, detail, and nature of what is done to meet those standards. This is a clear parliamentary direction that there should be substantial deference to appropriate judgements that a local authority makes on these matters.
- 2.5** The reserving of discretion to the local authority specifically covers the extent to which options are assessed and relative benefits and costs are quantified, the extent and detail of information to be considered, and the extent and nature of any written record that is kept of compliance. The Act also makes clear that the appropriate assessment of significance in a given case is a subjective judgement by the local authority.

3 Background

- 3.1 To provide context to the views expressed in this Appendix, we set out relevant background information to the Council's decision-making process.

Existing Council strategies and plans

Central City Revitalisation Strategy

- 3.2 The Council has been working on central city revitalisation since 2001, when it adopted the Central City Revitalisation Strategy. The strategy is an overarching policy directing the Council's work programme in the central city for a 25-year period.¹ Key priorities of the strategy are to increase the residential population, increase the business and commercial sectors, and redevelop under-used sites. The strategy lists initiatives that the Council should focus on to address these priorities in the next five years. This includes initiation of further redevelopment partnerships and the redevelopment of precincts, particularly in the area south of Lichfield Street, and around the Catholic cathedral and the Christchurch Polytechnic and Institute of Technology campus.
- 3.3 Except for one, the properties purchased by the Council are located in the central city area south of Lichfield Street.
- 3.4 For the central city area, further work was carried out in 2006 when "Stage II" of the Central City Revitalisation Strategy was adopted after a consultation and public planning process. Stage II provides more details about likely redevelopment partnerships and mentions precinct developments, with a focus on the city south area. It also refers to a budget for strategic land purchases, \$23 million for the next 10 years² that may be used to lead regeneration projects in the central city.
- 3.5 Stage II notes that one way to encourage redevelopment in the central city area is to develop a master plan for this area and change the City Plan to promote compatible mixed-use development. The revitalisation of the area south of Lichfield Street has been described by the Council as a cornerstone of the Council's revitalisation and continued improvement programme for the central city.³

The Greater Christchurch Urban Development Strategy

- 3.6 The Greater Christchurch Urban Development Strategy was adopted by the Council after a public consultation process, and launched in June 2007. It was prepared in partnership with other agencies.⁴ One of the actions within this strategy is to implement the Council's Central City Revitalisation Strategy by providing information and incentives for increasing the number of people living in the central city.

¹ Policy Register: Central City Revitalisation Strategy, taken from the Council's website 18 August 2008.

² This budget was reduced to \$20.5 million in the 2006-16 Long-term Council Community Plan.

³ Project Central City South brochure.

⁴ Other agencies involved being Environment Canterbury, Transit New Zealand, Selwyn District Council, and Waimakariri District Council.

Long-term Council Community Plan

- 3.7** The Council's 2006-16 Long-term Council Community Plan (LTCCP) reflects community outcomes of strong communities, healthy environment, liveable city, and prosperous economy. One Council objective addressing the liveable city outcome is the maintenance and enhancement of the quality of development and renewal of the city's environments, including the championing of high quality urban design and protecting heritage buildings.
- 3.8** Supporting these outcomes, the LTCCP presents the Council's activities, one of which is city development. This covers urban renewal, central city revitalisation (strengthening the city centre as a vibrant place to live, work, and do business), and heritage protection. It also refers to the Central City Revitalisation Strategy. Within this activity, the Council has forecast capital expenditure, including strategic land purchases, for urban regeneration and renewal projects.
- 3.9** The LTCCP includes a summary of the capital works programme of the Council's forecast overall strategic land purchases. These purchases are intended to address strategic objectives for development of open space, conservation, stormwater management, and urban regeneration.
- 3.10** The LTCCP included a budget of \$20.5 million for urban regeneration property purchases. We were told by the Chief Executive that this budget had since been used for different purchases for the south west area plan. As a result, there was no remaining budget available for strategic land purchases for urban regeneration at the time the Council considered the property purchases in July 2008.
- 3.11** The LTCCP also notes a specific loan of \$60 million⁵ that the Council intended to raise to create a revolving reserve fund for land purchases, with the funds invested until needed. Of the total loan, \$39.5 million was provided for in the LTCCP between 2007 and 2016. This reserve fund has not been created. The Council is raising specific loans for strategic land purchases as required.

Urban regeneration agency

- 3.12** In October 2007, the Council considered a staff report about establishing an urban regeneration agency to achieve the Council's regeneration objectives more effectively and efficiently. The Council agreed to establish such an agency. Its objectives would include achieving redevelopment through the acquisition of real estate to promote the Council's strategies and developing flagship, prestige projects to act as catalysts for private investment and development.⁶ Council staff were directed to further consider an appropriate structure for this agency, to identify funding options, and to report back on the necessary pre-establishment activities by August 2008.
- 3.13** We were told by the Chief Executive that there have been delays in finalising the funding arrangements for this structure. We understand that the Council has not yet made a final decision on whether, or how, to progress this option.

⁵ 2006-16 LTCCP, page 82.

⁶ Council meeting, 4 October 2007.

Events leading up to the decision

- 3.14 From about the end of 2007, staff at the Council had been in general discussions with the developer of the properties in question. They discussed the integrated development of properties owned by him (through various companies) and the Council in the area south of Lichfield Street. The developer had previously developed SOL Square, which was considered to be a successful example of what the Council envisaged for revitalising the central city area in keeping with its strategies and plans.
- 3.15 The Chief Executive told us that he was intending to bring a report to the Council later in 2008 to approve a joint master plan for the area, and to agree staging of any development.
- 3.16 We were told that Council staff became aware that a meeting of creditors was to be held with companies associated with the property developer. Staff were worried that this could lead to important properties for central city revitalisation being sold to a third party and developed in a way that would not support the Council's revitalisation aspirations. We were told that Council staff were aware of market interest in the Sydenham Square site for "big-box retail" uses.
- 3.17 The Chief Executive thought that the Council should consider purchasing these properties before this happened and approached the developer about this.
- 3.18 Given the timing of the creditors' meeting, the Council assessed there to be some urgency in its consideration of this matter. The Council understood that it had about two weeks in which to decide whether to purchase any of the properties.
- 3.19 On Tuesday 22 July 2008, a routine workshop with Councillors was scheduled. The Chief Executive used this workshop to raise the potential purchase of the properties and to outline the issues that Councillors would need to think about if they wanted to consider purchasing any of them. This session lasted about four and a half hours. The Councillors agreed to hold an extraordinary meeting to consider the decision later in the week.
- 3.20 We have been told that the workshop on 22 July 2008 was originally intended for a different purpose, and that Councillors were not told what the workshop was going to be used for. We understand that this reflected the urgency of the matter to be considered.
- 3.21 On Thursday 24 July 2008, there was a scheduled Council meeting. After this meeting, the Chief Executive distributed to the Councillors a report that he had prepared since the workshop. We understand there was some informal discussion about the proposed purchases at this point.

Chief Executive's report

- 3.22 The Chief Executive's report was five pages in length, and was accompanied by aerial photographs of the five properties in question, a two-page legal opinion, and a draft conditional option agreement (see paragraph 3.43).
- 3.23 Three potential options were identified in the legal opinion that was included within the Chief Executive's report:

- to acquire all of the properties listed;
- to acquire none of them; or
- to acquire some of them.

3.24 No further detail or analysis was provided for these or other potential options. The legal opinion recommended that the Council purchase all of the properties referred to in the Chief Executive's report.

3.25 It was noted that the Council usually purchases properties on a case-by-case basis, and that the difference with this situation was that the Council was effectively purchasing several properties from one owner, rather than a collection of owners, and at one time. It also noted that the purchase would be consistent with the LTCCP and the Council's Central City Revitalisation Strategy. It quoted a report by the Auditor-General⁷ that, where an unforeseen opportunity arises requiring an urgent decision, the decision should be consistent with the LTCCP and relevant policies.

3.26 The Chief Executive's report included:

- a summary of the five properties being considered (with the individual titles listed, as some sites comprised more than one title);
- a brief description of each block;
- why each block was being considered for purchase;
- possibilities for development; and
- approximate values.⁸

3.27 The properties and values were: Para (\$5.9 million), Odeon Theatre (\$1.04 million), Welles Street Electrolux (\$5.25 million), Penny Cycles (\$2.95 million), and Sydenham Square (\$4.0 million).

3.28 The Councillors were told that the proposed purchases provided the Council with the opportunity to acquire significant properties with the critical mass to effect a development change. It would allow the Council to support ongoing urban residential development.

3.29 The Chief Executive's report commented that the Council and the developer had discussed how the Council could purchase all or some of the properties, obtain the developer's intellectual property (concepts, plans, and consents) in relation to the sites, and keep the developer involved in the Central City Revitalisation Strategy, if appropriate. The report also commented that the Council would procure valuation updates for any property it wished to purchase, as the basis for establishing the purchase price. The purchases would be funded by an interest-only loan. The expected overall annual interest costs, if all properties were purchased, would be equivalent to 0.68% of rates.

⁷ *Turning principles into action: A guide for local authorities on decision-making and consultation*, September 2007.

⁸ The approximate values had been obtained by the property developer from valuers between March 2007 and July 2008 and were included to assist the Council's deliberations.

3.30 The report also noted that the Council could decide to purchase any number of the separate titles of land. Because none of the separate titles would have a value in excess of \$5 million, one of the factors noted in the Council's policy on determining significance, there was no obligation to consult on any of the purchases. The report also noted that there was no remaining budget provision for the proposed purchases in the LTCCP or in the 2008/09 Annual Plan.

Council decision – 25 July 2008

3.31 The Council met to consider the Chief Executive's report at an extraordinary meeting on 25 July 2008. The meeting was held in private with the public excluded, and lasted about four hours. Three Councillors were not present at all, and one councillor was present for only part of the meeting. An external lawyer was present to provide commercial law advice to the Council. The lawyer had been instructed after the 22 July 2008 workshop, as a result of Councillors requesting commercial advice generally, particularly in relation to the proposed conditional option agreement.

3.32 The Council voted to purchase four of the five properties referred to in the Chief Executive's report. The voting record shows that different councillors voted for and against the various properties.

3.33 We were told that, for the Para site, which had an approximate value exceeding \$5 million, the Councillors discussed the properties on a title/combination of titles basis, and not just as an aggregated property. All other properties were discussed as aggregated sites.

3.34 No details were provided in the Council minutes about the Councillors' reasoning for purchasing the properties. We were told through our discussions that:

- Para site: Purchase of this site was a straightforward decision for the Council, because it was thought to be vital to the central city vision. The property was divided into north and south sites when the sale and purchase agreements were prepared after the Council meeting. This brought the individual titles under the \$5 million threshold within the Council's policy on determining significance, and we were told this would also facilitate any staged re-acquisition by the property developer under the conditional option agreement.
- Welles Street Electrolux site: This was also a relatively straightforward decision with little debate. The property is suited to rental/student accommodation.
- Penny Cycles site: This site is next to the Odeon Theatre. The Council was concerned that a developer would buy it and the theatre, knock both down, and create a large corner site. The Council bought the Penny Cycles site to stop this happening.
- Sydenham Square site: The Council wanted this site as a catalyst to start redevelopment. The Council acknowledged its interest in the developer's plans, and also wanted to protect the site from "big-box" development. Other than the Odeon Theatre, the proposed purchase of this site was debated most.

3.35 The Council voted not to purchase the Odeon Theatre. The five properties that were considered for purchase reduced to four as a result, and the division of the Para site noted above increased the

number of properties purchased back up to five. We were told that the Councillors were keen to buy the Odeon Theatre, but did not do so because earthquake strengthening and refurbishment work was needed and would involve significant cost.

3.36 We were told that the Council considered what would happen if it decided not to purchase the properties. There was no guarantee that the Council would be able to subsequently buy all the properties it wanted to protect, should the titles be sold through a mortgagee sale. Purchasing the properties was to provide certainty for the Council. It was considered that, if the Council lost influence over the properties' development, the Council strategies for the central city area may not be able to be implemented.

3.37 The Council also voted to:

- authorise the Chief Executive to obtain valuations and conclude sale and purchase agreements for the properties that incorporated all relevant intellectual property within those valuations;
- borrow the funds required to purchase the properties on the usual terms and conditions for external borrowing in accordance with the Council's liability management policy;
- authorise the Mayor, Councillors Shearing and Wells, and the Chief Executive to finalise a conditional option agreement between the Council and the developer; and
- acknowledge that the decisions were made in keeping with the Council's policy on determining significance and that no special consultative procedure was required.⁹

Subsequent actions

3.38 Council staff obtained external valuations from registered valuers for all but the Sydenham Square property on 28 and 29 July 2008. The valuations were carried out by the same valuers who provided the earlier valuations for the property developer. The valuers were instructed by the Council to update the earlier valuations, and to treat the request as a joint appointment to arrive at a fair current market value for a transaction between the Council and the vendor.

3.39 The valuers were among a number of firms that the Council uses for similar work.

3.40 The Council relied on a valuation for the Sydenham Square property obtained earlier by the developer (dated 14 July 2008). We were told that the Council did so because the valuation was current and the valuer was also one that the Council would usually use. No further instruction was issued by the Council to the valuer in relation to this property.

3.41 The acting Chief Executive, on behalf of the Council, subsequently entered into five agreements for the sale and purchase of the properties. These were dated 1 August 2008 and referred to 31 July 2008 as the settlement and possession date. Council staff told us that the agreements were not settled until 8 August 2008. The final purchase prices were the same as those in the updated valuations obtained by the Council, where these were obtained. For Sydenham Square, the purchase

price was the same as the most recent valuation that was not updated. The combined final purchase price for the properties was \$16.925 million.¹⁰

- 3.42** The Council funded the purchases through an interest-only loan, expected to cost about \$1.4 million annually, in the form of commercial paper issued to a bank. The funds were drawn down by the Council on 29 July 2008 and were transferred to the Council's solicitor on 7 August 2008. The solicitor settled the purchases on the Council's behalf on 8 August 2008. We were told by Council staff that this is the first time that property purchases have been funded through borrowing, with previous purchases being funded out of cashflow.
- 3.43** The sale and purchase agreements were conditional on the Council being satisfied that it would receive all the developer's intellectual property relevant to these sites. This included resource consents, building consents, and architectural and engineering specifications, master planning documents for the Sydenham Square site, and concept designs for the Para site. No additional payment was made for this intellectual property.
- 3.44** Some of the agreements were also conditional on the vendor immediately providing copies of leases and licence documents and related correspondence. The rental details for the Penny Cycles site had been included in the Chief Executive's report to the Council.
- 3.45** We understand that the Council did not carry out any detailed due diligence, or business, commercial or valuation analysis.
- 3.46** On 1 August 2008, the acting Chief Executive also signed, on behalf of the Council, a conditional option agreement between the Council, the developer, and a company associated with the developer. The conditional option agreement confirms that the Council will begin preparation of a "master plan" for the integrated staged development of the properties acquired and other properties owned by the Council in the central city area, expected to be completed within six months. It also confirms the Council's intention to pursue a staged development of the Sydenham Square property, based on work already carried out by the developer (the "Sydenham plan").
- 3.47** This agreement provides an option for a company associated with the developer to re-purchase the properties at a price that is the greater of:
- the Council's purchase cost plus holding costs (borrowing costs, rates, and compliance costs), excluding repairs and maintenance, and any development costs; and
 - a valuation, based on a report commissioned by the Council.
- 3.48** The agreement provides for the conditions that must be met before the option can be exercised. Essentially the Council must be satisfied that the developer will, after any re-purchase of the properties, proceed to develop them in accordance with the "master plan" or the "Sydenham plan", as

⁹ The Council's policy on determining significance notes that it is the responsibility of the substantive decision-maker, such as the full Council, to satisfy itself that the requirements of the policy are complied with.

¹⁰ Para site (south): \$1.6 million; Para site (north): \$3.875 million; Welles Street Electrolux site: \$4.9 million; Penny Cycles site: \$2.55 million; and Sydenham Square site: \$4.0 million.

appropriate. Should the developer fail to do so within six months of any re-purchase, the Council can buy the properties back at the same price as the developer paid the Council.

- 3.49 The purchase was made public on 8 August 2008 by a Council press release. The Council had considered how the purchase should be made public, and had intended for the Mayor to make the announcement. However, the purchase was finalised later than expected, and the Mayor was then unavailable.
- 3.50 The Council has told us that it will develop a master plan for the properties south of Lichfield Street, and establish time frames for development. The costs of the master plan are already included in the Council's budgets, as this work was always contemplated. We were told that the Council will develop a staged plan for the development of the Sydenham Square site. We were also told that the Council does not anticipate carrying out any of the development or construction work, and so does not anticipate incurring any development costs for these properties.

4 Compliance with the Local Government Act 2002

- 4.1 If an action is contemplated in a local authority's properly prepared planning documents and a budget has been approved for the action in the LTCCP or annual plan, we would ordinarily have no concerns with the authority deciding to proceed on that basis.
- 4.2 Here, the Council was of the view that purchasing the properties was consistent with its existing strategies and plans. The Council's decision was based primarily on the Council wanting to ensure that the properties would remain available to support central city revitalisation and urban intensification, in keeping with the Central City Revitalisation and Greater Christchurch Urban Development Strategies. The Council has said that all the sites purchased are extremely desirable in the context of the Council's plans for urban intensification.¹¹
- 4.3 One of the properties acquired, Sydenham Square, is outside the planning area for the central city revitalisation, but fits within the Council's general urban intensification aspirations. The Council considers that the purchase of this site was consistent with the Sydenham Town Enhancement Strategy, prepared in 2001, that described attracting people to the area to shop, live, play, and work.
- 4.4 While these strategies did not specifically identify the purchase of these particular properties in these circumstances, we consider that it is reasonable to view this decision as being broadly consistent with the intent of the strategies.
- 4.5 The Chief Executive's report stated that there was no budget allowance in the LTCCP for the property purchases. There was a budget of \$20.5 million in the LTCCP for strategic property purchases, although this budget had already been spent by the Council on other acquisitions. There was also an allowance for loan funding for purchases of this nature that had not been used, although this was not highlighted in the Chief Executive's report.

¹¹ Council's press release, 8 August 2008.

- 4.6 It is arguable, in our view, that the LTCCP included budget allowances that would broadly encompass purchases of this kind, although the Council did not take this view. Instead, it took what could be regarded as a “worst-case” view.
- 4.7 In a situation where proposed expenditure is unbudgeted, we would generally expect extra consideration to be given by the Council. We would also generally expect extra consideration to be given as to whether the proposed expenditure being considered was, or was anticipated to have consequences that would be, significantly inconsistent with the Council's policies and plans, and, if so, to take the steps required by section 80 of the Act.
- 4.8 The extent of such extra consideration and how this is balanced in practice with the other factors relevant to the decision (for example, the perceived urgency, importance, and confidentiality of the proposed decision) are matters for the discretion of the Council.
- 4.9 One of the issues that this Office stresses in situations such as this, is whether the Council focused on the “right question”. In our view, the questions before the Council were whether to purchase properties (with a combined purchase price of about \$17 million), whether these were the right properties, and whether to borrow funds to purchase them. (The Council also considered whether to enter into a conditional option agreement with the developer). However, focusing on these questions would not have meant that the matter was necessarily significant under the terms of the Council's policy, because it involved a balancing act of the various factors involved. It is not the case, for example, that any decision costing \$5 million is automatically significant under the Council's policy, and it was within the judgement of the Council to find that the matter was not significant. The division of the Para site did not materially change this position.
- 4.10 We also note that, in the context of a specific decision of this nature, being taken at short notice and relating to a commercially-sensitive transaction, it is more likely that a council's judgement and discretion will favour an approach that does not involve specific, lengthy, and additional formal consultation. The view expressed to us by some Councillors was that the Council already had sufficient knowledge of the community's views in this area. Many of the Council's existing strategies and plans had already been consulted on and had been the subject of other forms of engagement in the preceding years. The knowledge acquired from this, coupled with an understanding of the current environment and the decision in question, may have given the Council a basis for gauging current community views at the time of making this decision.
- 4.11 As provided by the Act, the Council has discretion to appropriately determine the significance of a decision, and exercised that discretion in this instance. The Council's basis for complying with its policy for determining significance, as documented in the Chief Executive's report, emphasised just one of the financial limits reflected in that policy (specifically the one referring to \$5 million of capital expenditure), but did not clearly address the other factors reflected in the policy that the Council has to consider. Other factors to be considered under the Council's policy (beyond an additional financial limit of \$1 million for operating costs, which is exceeded by the combined debt servicing costs relating to the properties acquired) include, for example, whether the matter was likely to be controversial within the community, and its reversibility and practicality.

- 4.12 This emphasis on one of the financial limits in the policy for determining significance was also reflected in the Council's press release announcing the decision. The public was told that the Council did not consult on the decision because the individual properties were valued at less than \$5 million and the significance threshold was not reached.
- 4.13 In our view, neither the documented basis of the Council's decision (the Chief Executive's report and the Council resolution) nor the Council's press release adequately represent the assessment made by the Council – that it already had knowledge of community views, that further consultation was not required, and that the Council would not usually consult on a confidential matter such as a proposed property purchase. These matters were not explicitly dealt with in the Council's communication of its decision, nor in the Chief Executive's report or the record of decision.
- 4.14 We were told that the Council was aware, at the time of making the decision, that it would prove controversial. Without affecting our overall view of the decision made, we would have expected the Council, given that knowledge, to have gone to additional lengths to explain and justify its decision to its ratepayers. We did not find this to be so. A number of comments have been made to us that the Council's communication of the decision was not handled as well as it could have been, nor as planned.
- 4.15 The Chief Executive's report that went to the Council on this decision was less detailed than some of the Council's other staff reports about property purchases that we have seen. Some of the sections appearing in other reports were not used, and the report included only limited information about, for example, purchase options. We acknowledge that the report was prepared in a short time frame (in a two-day period after the initial Council workshop).
- 4.16 The Act does not specify how a council's judgement and compliance with Part 6 should be documented and explained. These are matters within the discretion of a council under section 79 of the Act. In our view, decisions should be documented as fully as possible, even where decisions are being considered within short time frames.
- 4.17 Our overall conclusion is that the process followed by the Council in making its decision to purchase the five properties was sound and consistent with the principles set out in the Act, including the discretionary powers available to the Council under the Act.
- 4.18 We consider that the crucial factors relevant to the Council were considered in making this decision. However, it would have been better for the Council to have recorded the process more thoroughly, in order to more clearly demonstrate that it had addressed all of the Act's requirements for decision-making, although we also note the urgency under which the Council was acting.

5 Other comments and observations

- 5.1 We make a number of further comments and observations that the Council may wish to consider. These do not detract from our overall findings that the decision-making process followed by the Council in this instance was sound and consistent with the principles of the Act.

Administration of Council business

5.2 In carrying out our review, a number of differing views have been given to us about the Council's administration of its decision-making process in this instance. These comments were about:

- the time frame within which Councillors had to make this decision, and the length of time devoted to its consideration;
- the use of Council workshops, and the extent of notification to Councillors of the subject matter at workshops; and
- the effect of confidentiality and urgency on the availability of advice, both internal and external, and the balancing of associated risks and opportunities.

5.3 The Council's elected members took an active part in discussing the individual properties proposed for purchase at the Council meeting on 25 July 2008. A majority of Councillors decided that four of the five properties recommended by staff should be purchased. We make no assessment of the differing views expressed to us, but the Council may wish to consider how it addresses the concerns and expectations of its elected members in similar situations in future.

Budgets

5.4 The Council's 2006-16 LTCCP included some budget allowances for the Council to purchase and fund properties of this nature and for the broad purpose for which the Council decided to acquire them. However, these allowances had already been partially used for other purchases by the time this decision was being considered. Council staff highlighted to Councillors at the time of the decision that there was no budget available for the purchases.

5.5 The full details of available LTCCP budgets and their partial prior use, through the earlier property purchases, was not clearly presented to, or canvassed with, Councillors at the time of the decision to purchase the properties. We consider that doing so would have been useful.

Valuation matters

5.6 The Council resolution recording the decision to purchase the properties in question states that the Council instructed the Chief Executive to obtain valuations as the basis for the price to purchase the properties. The Chief Executive told us that the approach that was subsequently taken for the valuations was discussed by Council staff before the Council meeting on 25 July 2008, and with Councillors who were present at that meeting. The Chief Executive's view is that the Councillors present at the meeting of 25 July 2008 were clear on what process was going to be undertaken in updating the valuations of the properties.

5.7 However, it is clear from our review that some Councillors, and observers, had different expectations as to how the appropriate values for the various properties would be ascertained. The wording of the Council's resolution was not detailed enough to clearly record and remove any ambiguity about the actions the Council expected the Chief Executive to undertake in relation to the valuations.

- 5.8 Questions have been raised about the Council's use (through a joint instruction) of the same valuers as used by the developer, and, in the case of the Sydenham Square property, the Council's adoption of an existing valuation prepared for the vendor and without further instruction by the Council.
- 5.9 Clearly, where decisions are made and instructions issued to Council staff, these need to be clearly and unambiguously recorded in Council's resolutions, and demonstrably executed as intended.
- 5.10 We were told that the Council's usual approach to property valuations and purchases in such circumstances is either for the Council to obtain its own valuation, which can then be used to negotiate against a valuation obtained by the vendor; or to agree with the vendor on a valuer to jointly instruct, and for both the Council and the vendor to abide by the valuation received.
- 5.11 In this instance, the Council broadly took the latter approach. The Council was seeking to deal with the developer on a willing buyer/willing seller basis and did not seek to negotiate the purchase price of the properties.
- 5.12 It is normal practice for a property purchaser to take appropriate steps to be satisfied that valuation risks are adequately addressed. In this case the Council was aware that professional valuers had provided recent valuations for these properties solely for the vendor. We have been advised by the Chief Executive that Council was aware of this risk. In our opinion, Council should have recorded how it satisfied itself that the risk had been considered and mitigated.
- 5.13 For four of the properties, the Council did instruct the same valuers as those used by the vendor to update existing valuations and to provide them jointly to Council and the vendor. The Council was comfortable with the work of these valuers from its other dealings with them, and jointly instructed them in keeping with the Council's usual approach. By instructing these valuers, the Council did achieve some contractual protection.
- 5.14 In the case of the Sydenham Square property, the Council did not commission any professional valuation, whether jointly or otherwise. It relied entirely on the recent valuation (it was about two weeks old at the time of the Council's decision) prepared solely for the vendor and the Council's general comfort with the work of the valuer.
- 5.15 While we understand that the time constraints in this case affected how valuations were obtained in practice, we nevertheless consider that the Council could generally have done more to document how it satisfied itself about the valuation risks relating to these properties. In the case of the Sydenham Square property, the Council should have contracted with a valuer if only to confirm the recent valuation that had been completed.