

**I give notice that
an Extraordinary Meeting of Council will be held on:**

Date:	Tuesday, 5 May 2020
Time:	10.00am
Location:	www.taupo.govt.nz

AGENDA

MEMBERSHIP

Chairperson Mayor David Trewavas

Deputy Chairperson Cr Christine Rankin

Members

- Cr John Boddy
- Cr Kathy Guy
- Cr Tangonui Kingi
- Cr Kylie Leonard
- Cr John Mack
- Cr Anna Park
- Cr Kevin Taylor
- Cr Kirsty Trueman
- Cr Yvonne Westerman
- Cr John Williamson

Quorum 6

Gareth Green
Chief Executive Officer

Order Of Business

- 1 **Apologies**
- 2 **Conflicts of Interest**
- 3 **Policy and Decision Making**
 - 3.1 Local Government Funding Agency (LGFA) Amendments to Deeds3
- 4 **Confidential Business**
 - Nil

3.1 LOCAL GOVERNMENT FUNDING AGENCY (LGFA) AMENDMENTS TO DEEDS

Author: Neil Ward, Finance Manager

Authorised by: Alan Menhennet, Head of Finance and Strategy

PURPOSE

The purpose of this item is to decide whether to approve amendments to LGFA Deeds to enable the LGFA to measure Council compliance with LGFA covenants at the Group level, to enable the LGFA to lend to Council Controlled Organisations (CCO's) and to increase the amount of borrower notes that must be issued to a local authority when it is borrowing plus minor technical improvements to the borrowing programme.

The Deeds to be amended are:

- Notes Subscription Agreement [attachment 1]
- Multi-issuer Deed [attachment 2]
- Guarantee and Indemnity [attachment 3]

EXECUTIVE SUMMARY

The purpose of the proposed amendments is to:

- enable approved council-controlled organisations to borrow directly through the LGFA borrowing programme (on the basis of a guarantee from and/or sufficient uncalled capital issued to the parent local authority);
- allow a local authority to apply to LGFA to be tested at the group level rather than at the parent level for compliance with LGFA covenants;
- as previously notified by LGFA, increase the amount of borrower notes that must be issued to a local authority when it is borrowing; and
- make certain other minor technical improvements to the borrowing programme (including to facilitate the provision of committed standby borrowing facilities).

The LGFA wishes to have the proposed amendments effective as from 1 July 2020. To enable this to happen the following Deeds need to be amended:

- Notes Subscription Agreement [attachment 1]
- Multi-issuer Deed [attachment 2]
- Guarantee and Indemnity [attachment 3]

The preferred option is for Council to support these changes as recommended by the Shareholders Council to enable the LGFA to measure Council compliance with LGFA covenants at the Group level, to enable the LGFA to lend to Council Controlled Organisations (CCO's) and to increase the amount of borrower notes that must be issued to a local authority when it is borrowing plus minor technical improvements to the borrowing programme.

RECOMMENDATION(S)

That Council:

1. Notes that the New Zealand Local Government Funding Agency (LGFA) has proposed amendments to the Notes Subscription Agreement, Multi-issuer Deed and Guarantee and Indemnity to which the Council is a party, for the purposes of enabling Council Controlled Organisations (CCO's) to borrow directly through the LGFA, allowing a Local Authority to apply to be tested at the Group level rather than the Parent level for compliance with LGFA covenants, increase the amount of borrower notes that must be issued to a Local Authority when it is borrowing and minor technical improvements to the borrowing programme (proposed amendments) and that LGFA wishes to have the proposed amendments effective on 1 July 2020;
2. Notes that the proposed amendments are consistent with the Council's Treasury Management

- Policy, and that there are no significant inconsistencies with other Council plans or policies;
3. Agrees to the proposed amendments; and
 4. Authorises the Mayor and Deputy Mayor to sign and execute all relevant documents (including agreements and deeds) on Council's behalf in order to effect the proposed amendments.

BACKGROUND

The proposal has not been presented previously.

The purpose of the proposed amendments is to:

- enable approved council-controlled organisations to borrow directly through the LGFA borrowing programme (on the basis of a guarantee from and/or sufficient uncalled capital issued to the parent local authority);
- allow a local authority to apply to LGFA to be tested at the group level rather than at the parent level for compliance with LGFA covenants;
- as previously notified by LGFA, increase the amount of borrower notes that must be issued to a local authority when it is borrowing; and
- make certain other minor technical improvements to the borrowing programme (including to facilitate the provision of committed standby borrowing facilities).

The Deeds of Amendment have been reviewed and approved by LGFA (with the assistance of LGFA's legal counsel, Russell McVeagh) and by the LGFA Shareholders' Council (with the assistance of Simpson Grierson)

Redline versions of the LGFA documents are provided in the following attachments:

- Notes Subscription Agreement [attachment 4]
- Multi-issuer Deed [attachment 5]
- Guarantee and Indemnity [attachment 6]

DISCUSSION

The LGFA has provided the following explanatory notes with respect to two of the key changes to the deeds and agreements

1. Measurement of council compliance with LGFA covenants at the group level:

Currently LGFA tests each council borrower's compliance with either the Foundation Policy or Lending Policy covenants at the parent council level i.e. it excludes any debt, revenue or interest payments made by a subsidiary entity from the calculations. This might not reflect the most accurate representation of a council's financial position if the council delivers some of its services or activities or holds assets through a subsidiary entity.

It is proposed that a council can apply to the LGFA Board to be tested at the group level rather than at the parent level for compliance with LGFA covenants. It is important to note that:

- The Foundation Policy Covenants (if the council had an external credit rating) or Lending Policy Covenants (if no external credit rating) would still apply to the council regardless of being measured on a parent or group basis.
- The Senior Manager Credit and External Relationships would provide analysis and recommendation to the LGFA Board for consideration as to whether they should approve the request.
- To provide certainty to the council, the testing at the group level would apply for the life of the existing loans from LGFA.

- We expect that this will apply to only a small group of councils and our current expectation is that only Auckland Council would wish to have their covenants calculated at group level.

2. Lending to Council Controlled Organisations ("CCOs"):

Currently LGFA only lends to the parent council and not to any other related entities. This is not ideal as;

- Several councils borrow and on-lend to CCOs e.g. Christchurch City Council, New Plymouth District Council, Rotorua District Council, Marlborough District Council and Auckland Council have previously borrowed and on-lent to Christchurch City Holdings Limited, New Plymouth Airport, Rotorua Regional Airport, Marlborough District Council Holdings and Watercare respectively. The proposed changes will provide the councils with greater flexibility in structuring their borrowing and on-lending activities.
- LGFA cannot currently lend to multiple owned CCOs. While there are currently very few of these entities which have borrowings, they may become established in the future e.g. jointly owned water companies.
- Dunedin City Council ("DCC") borrows via a CCTO subsidiary company, Dunedin City Treasury Limited. This is one reason why DCC has not become a member of LGFA.

To ensure that LGFA does not bear any additional risk than that incurred with lending to a parent council, it is proposed that LGFA could lend to a CCO provided;

- The parent council (or group of shareholding councils) of the CCO must each be a guarantor of the loan in favour of LGFA.
- LGFA will only lend to a CCO if:
 - there is uncalled capital from the parent council that is at least equal to the financial obligations of the CCO; or
 - there is a guarantee from the parent council in respect of the CCO.
- LGFA will undertake credit analysis on the CCO as well as the parent council.
- The CCO would be subject to LGFA Board approval before borrowing.
- The LGFA Board would apply bespoke financial covenants to the CCO taken into consideration factors such as the ownership structure, cashflow and balance sheet quality and what activity or services the CCO is delivering on behalf of the parent council shareholder(s).

Why is LGFA proposing these changes to the Foundation Policies?

We are proposing these changes because of feedback from member and non-member councils. LGFA has built a successful track record of continuous improvement and evolving to meet council needs e.g. short dated lending and bespoke lending.

Auckland Council delivers a large amount of services through Watercare and Auckland Transport and is analysed on a group basis by the credit rating agencies.

There are some council members who currently borrow and on-lend to their CCO subsidiaries, so this proposal will give them the option to streamline the borrowing process and provide more flexibility in how they structure their borrowing.

Is there more risk for LGFA guarantors?

No as regardless of being measured on a group or parent basis the council must remain compliant with the LGFA covenants and we have recourse over rates revenue as security.

No as a CCO who borrows from LGFA will have the benefit of a parent council guarantee or uncalled capital. LGFA would negotiate lending documentation with each CCO and LGFA would undertake credit analysis of the CCO as well as the parent council or councils.

Why would the LGFA Board grant bespoke covenants to CCOs?

While councils are very similar to each other, there can be significant differences between CCOs. In addition, CCOs also do not have rates revenue. Therefore, the LGFA Board, following advice from LGFA management and external legal advisors, would need to negotiate bespoke covenants with the CCO. While covenants may vary between CCOs, the underlying recourse remains the uncalled capital or parent guarantee.

Will the credit rating agencies and investors be concerned?

We don't think these key groups will be concerned with measurement on a group basis rather than a parent basis if requested. As outlined previously, all councils must remain compliant with LGFA covenants and the underlying security remains unchanged.

We don't think they will be concerned with lending to CCOs as the guarantee retains the strength of the LGFA structure e.g. Christchurch City Council has the same credit rating as Christchurch City Holdings Limited ("CCHL") because of the uncalled capital that exists within CCHL. Lending to CCOs will also diversify the LGFA lending book and could bring in new council members to LGFA.

Will this facilitate the establishment of separate water entities?

No and in fact we think this would strengthen the case for keeping any possible new water entities in local government ownership as it allows lending to multiple owned CCOs. Any new water entity would also benefit from borrowing at a lower cost of funds than in their own name. The bespoke covenants for a water entity could possibly be set be higher than the current LGFA financial covenants so the multiple owned water entities could borrow more and therefore reduce pressure on parent council balance sheets. 7

Could a Council Controlled Trading Organisation ("CCTO") borrow from LGFA?

Currently under section 62 of the Local Government Act 2002 a council cannot give any guarantee, indemnity or security in respect of the performance of any obligation by a CCTO. For a CCTO to borrow under this proposed structure, uncalled capital could be used, or the parent council could continue to borrow from LGFA and on-lend to the CCTO.

Will the proposed changes make it easier for councils to borrow more or to avoid a covenant breach?

No as the LGFA Board approves the testing of a council at the group or parent level. The LGFA Board will consider whether a move to testing at the group level will weaken the credit profile of the council before deciding on the change. Regardless of the basis for measurement, the LGFA Board expects all council borrowers to maintain sufficient headroom under the LGFA covenants.

Based on this information it is considered that there are only two options being approve the amendments or do not approve the amendments.

OPTIONS

Analysis of Options

Council options in this matter are practically limited to approving the changes required by the LGFA to the Trust Deed's and Agreements or not approving the changes.

Option 1. Approve the changes to the LGFA Deed's and Agreements

Advantages	Disadvantages
<ul style="list-style-type: none"> Allows the LGFA to measure Councils at the Group level Allows the LGFA to lend directly to CCO's Allows the LGFA to develop a committed standby borrowing facility 	<ul style="list-style-type: none"> None

Option 2. Do not approve the changes to the LGFA Deed's and Agreements

Advantages	Disadvantages
<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Council would be going against the advice of the Shareholders Council and its advisors.

Analysis Conclusion:

The preferred option is for Council to approve the recommended changes to the LGFA deeds and agreements as recommended by the Shareholders Council.

CONSIDERATIONS**Alignment with Council's Vision**

Council's vision is 'to be the most prosperous and liveable district in the North Island by 2022'. This is accompanied by a core set of values to underpin decision-making, the following of which are relevant to this particular proposal: World Class; Quality; Resilient and Value.

Financial Considerations

There will be no cost to Council to amend the Deed's and Agreements. Legal costs are being met by the LGFA.

Legal Considerations**Local Government Act 2002**

The matter comes within scope of the Council's lawful powers, including satisfying the purpose statement of [Section 10](#) of the Local Government Act 2002. That section of the Act states that the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. It is considered that [social / economic / environmental and / or cultural are of relevance to this particular matter.

Policy Implications

The proposal has been evaluated against the following plans:

- Long Term Plan 2018-2028 Annual Plan Waikato Regional Plan
 Taupo District Plan Bylaws Relevant Management Plan(s)

The key aspects for consideration with regards to this proposal are as follows:

- The proposal is consistent with Council's Treasury Management Policy

Risks

There are no known risks associated with Council providing approval to amend the LGFA documents as recommended by the Shareholders Council.

SIGNIFICANCE OF THE DECISION OR PROPOSAL

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- a. The level of financial consequences of the proposal or decision;
- b. Whether the proposal or decision will affect a large portion of the community or community of interest;
- c. The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- d. Whether the proposal affects the level of service of an activity identified in the Long Term Plan;
- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016), and are of the opinion that the proposal under consideration is of low importance.

ENGAGEMENT

Taking into consideration the above assessment, that the decision is of a low degree of significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

COMMUNICATION/MEDIA

No communication/media required.

CONCLUSION

The preferred option is for Council to support these changes as recommended by the Shareholders Council to enable the LGFA to measure Council compliance with LGFA covenants at the Group level, to enable the LGFA to lend to Council Controlled Organisations (CCO's) and to increase the amount of borrower notes that must be issued to a local authority when it is borrowing.

ATTACHMENTS

1. Amendment and Restatement Deed (Guarantee and Indemnity) [↗](#)
2. Amendment and Restatement Deed (Multi issuer Deed) [↗](#)
3. Amendment and Restatement Deed (Notes Subscription Agreement) [↗](#)
4. Compare - Guarantee and Indemnity [↗](#)
5. Compare - Multi issuer Deed [↗](#)
6. Compare - Notes Subscription Agreement