



TE TAI ŌHANGA
THE TREASURY

Reference: 20200377

26 November 2020

s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 5 November 2020.
You requested:

Treasury Report T2020/1720: Advice on Monark proposal

Information being released

Please find enclosed the following document:

| Item | Date | Document Description | Decision |
|------|-------------|--|------------------|
| 1. | 2 June 2020 | Treasury Report: Advice on Monark proposal | Released in part |

I have decided to release the document listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,
- certain sensitive advice, under section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage,
- commercially sensitive information under section 9(2)(i) – to enable the Crown to carry out commercial activities without prejudice or disadvantage,
- commercially sensitive information, under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information,

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<https://treasury.govt.nz>

- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

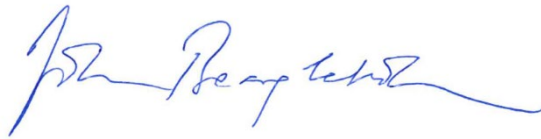
We have redacted the direct dial phone numbers of officials under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's own website.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Beaglehole', with a stylized flourish at the end.

John Beaglehole
Manager, Housing and Urban Growth (Acting)

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Treasury Report: Advice on Monark proposal

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|--------------|-------------|---------------------|-----------------------|
| Date: | 2 June 2020 | Report No: | T2020/1720 |
| | | File Number: | SH-18-1-2 (Kiwibuild) |

Action sought

| | Action sought | Deadline |
|--|--|----------------|
| Hon Grant Robertson (Minister of Finance) | Agree to one of the options to progress the Monark development with the Minister of Housing | Tuesday 2 June |

Contact for telephone discussion (if required)

| Name | Position | Telephone | 1st Contact |
|-----------------|-----------------------------------|------------------|-------------------|
| Elena Salinitro | Analyst, Housing and Urban Growth | s9(2)(k) (wk) | N/A (mob) ✓ |
| John Beaglehole | Manager, Housing and Urban Growth | s9(2)(k) (wk) | s9(2)(a) (mob) |

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

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Treasury Report: Advice on Monark proposal

Recommended Action

We recommend that you:

- 1 **Note** that Kāinga Ora seeks urgent decisions from Ministers for a proposal to underwrite 49 market homes in a development of 93 homes. As one of the options has a closing window of opportunity, we ask for yours and the Minister of Housing's decision how to proceed **today, Tuesday 2 June**.
- 2 **Note** that the developer seeks the further underwrite by Friday 5 June.
- 3 **Note** that Treasury has not been able to test whether the development would fail if the underwrite were provided later.
- 4 **Note** that a further underwrite will allow the development to proceed, but that providing the underwrite will mean existing purchasers are unable to exit the development and reclaim their deposits until the current sunset date, July 2022.
- 5 **Note** that not providing an underwrite might result in the development not proceeding, if the developer cannot realise enough market sales to confirm demand for the bank.
- 6 **Note** that it is unclear whether the proposal is within the agreed Cabinet mandate for the KiwiBuild Buying off the Plans initiative.
- 7 **Discuss** the following options with the Minister of Housing, and **jointly agree** to one of the following options:

Option 1: Decline to provide a further underwrite or other Crown support to the development

Agree/Disagree

OR

Option 2: Submit an item to Cabinet seeking clarification and agreement on derisking non-KiwiBuild dwellings as part of the KiwiBuild Buying off the Plans initiative (Treasury's recommendation, but we note that this does not meet the 5 June 2020 deadline)

Agree/Disagree

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OR

Option 3: Consider giving a guarantee or indemnity under section 65ZD of the Public Finance Act 1989 (Treasury Legal will provide separate advice if this is your preferred option)

Agree/Disagree

OR

Option 4: Proceed with an underwrite or other derisking mechanism at Joint Minister level, and create a new appropriation to cover derisking non-KiwiBuild dwellings (Treasury does not recommend).

Agree/Disagree

8 **If you wish to proceed with option 2, 3 or 4:**

- a **Note** that providing the further underwrite creates precedent risks for other developments;
- b s9(2)(g)(i), s9(2)(i), s9(2)(j)
- c **Agree** that KiwiBuild and Treasury renegotiate the commercial terms of the underwrite, to further de-risk the Crown.

Agree / Disagree

John Beaglehole
Manager, Housing and Urban Growth

Hon Grant Robertson
Minister of Finance

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Treasury Report: Advice on Monark proposal

Purpose of Report

1. Kāinga Ora seeks urgent decisions from Ministers for a proposal to underwrite 49 market homes in a development of 93 homes. The balance of 44 homes are already underwritten KiwiBuild homes, which were approved by joint Ministers in November 2018 [BRF18/19110078 refers].
2. As a condition for development finance, the developer's bank requires presales with a minimum period of six months between expected completion and the sunset date set out in the sale and purchase agreements (SPA). All 44 KiwiBuild homes and 45 of the 49 market homes have been sold, however the development is delayed and the expected completion date communicated to the home buyers is now June 2022¹, one month before the SPA sunset date. Further delays could result in buyers cancelling SPAs once the sunset date is reached in July 2022. The developer's bank therefore requires further assurance before issuing development finance, either by extending the sunset dates of existing presales, or through a full underwrite (see paragraphs 8-12 for details).
3. The developer does not wish to extend the existing sunset date, as this would see it carry greater risk, particularly as taking this step would allow existing purchasers to cancel their contracts.
4. The developer has stated this assurance is needed before Friday 5 June 2020. Treasury has been unable to test whether this date is firm or if other options aside from underwriting market homes are viable.
5. The maximum Crown exposure of the total underwrite is \$40,260,870 (excl. GST), including the existing exposure of \$18,956,522 (excl. GST) for 44 KiwiBuild homes and the proposed further underwrite of \$21,304,348 for 49 market homes.
6. This Treasury report has been prepared quickly and under a tight deadline. It sets out three options to progress further assurance for this development: submitting an item to Cabinet, issuing a guarantee or indemnity under the Public Finance Act 1989 (PFA), or progressing through making a decision as joint ministers. It sets out Treasury advice on the policy, vote and commercial implications of these options, and our recommended way forward.
7. If you wish to provide additional Crown support, and to do so by Friday 5 June 2020, we ask for yours and the Minister of Housing's decision on which option you would like to progress **today, Tuesday 2 June 2020**. That will allow officials to prepare any necessary further papers.

¹ The developer confirmed with Kāinga Ora that they expect practical completion five months before sunset date, however, this is before code compliance certificate (CCC) and title are issued.

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Commercial view: proposed option

8. To issue the project finance needed for the development to get underway, the developer's bank has requested that the developer either a) s9(2)(b)(ii) or b) seeks a KiwiBuild underwrite for all homes in the development.

s9(2)(b)(ii)

... whereas a further Crown guarantee de-risks the project but locks purchasers in and creates additional risk for the Crown

10. Kāinga Ora has proposed that the Crown should provide the full underwrite, noting that the existing 89 unconditional presale contracts (KiwiBuild and open market) would otherwise be at risk of buyers pulling out.
11. The proposal shifts risk to the Crown: for example, construction delays might result in completion occurring after the sunset date, leading to buyers cancelling their SPA. Under the current proposal, the developer could then trigger the underwrite of *all* homes s9(2)(b)(ii), s9(2)(i), s9(2)(j) Kāinga Ora expect that the developer would likely attempt to sell the market homes at market prices rather than triggering the underwrite at KiwiBuild price points. s9(2)(b)(ii), s9(2)(i), s9(2)(j)
12. s9(2)(i), s9(2)(j)
13. The Ministry of Housing and Urban Development (HUD) have provided initial advice to Minister Woods. We understand that advice questioned whether an additional underwrite was consistent with the current Cabinet mandate (we share this concern), and queried whether the precedent that the proposal could set could be contained. We understand that Minister Woods has, however, expressed an interest in providing support for the development, and asked officials to assess whether and how the precedent could be contained.
14. s9(2)(i), s9(2)(g)(i), s9(2)(j)

² The sunset date is the date by which if the property has not been completed, then the potential buyer's deposit is refunded.

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Policy/vote view: Mandate

15. If Ministers want to progress with further support for the Monark development, there are three options: implementing at Joint Ministers' level, seeking Cabinet agreement, or by the Minister of Finance providing a guarantee or indemnity under section 65ZD of the Public Finance Act.

Implementing at Joint Ministers level or seeking Cabinet agreement

16. The current underwrite for KiwiBuild homes in the Monark development was given as part of the KiwiBuild Buying off the Plans initiative. The parameters of the KiwiBuild Buying off the Plans initiative were agreed by Cabinet in 2018 ("KiwiBuild Definitions, Eligibility Criteria and the 'Buying off the Plans' Initiative (Underwrite)" (CAB-18-MIN-0142 refers)).
17. It is not clear that the proposed further underwrite of market homes is within the agreed parameters of the Buying off the Plans initiative. Treasury suggests that given the Cabinet minute does not provide clear direction on this matter, it would be appropriate to seek Cabinet's approval before providing additional support.
18. If the proposal was agreed and the further underwrite was later called on, a new appropriation would need to be created as the current appropriations' scopes more clearly exclude derisking market dwellings. A new appropriation could be created by Joint Ministers, if it reflects Cabinet decisions.

Providing a guarantee or indemnity under section 65ZD of the Public Finance Act

19. A third option available is issuing a guarantee or indemnity under section 65ZD of the Public Finance Act 1989, if you are satisfied the underwrite is necessary or expedient and is within the public interest. As the contingent liability of this proposal exceeds \$10 million, if a guarantee or indemnity were issued it would need to be tabled in the House as soon as practicable under section 65ZD(3).

Options analysis

20. If Ministers wish to provide additional commercial support to the development, the Treasury recommends that Ministers ask KiwiBuild and the Treasury to negotiate the commercial terms of the additional underwrite, s9(2)(i), s9(2)(j)
21. If Ministers want to further support the development, the Treasury recommends seeking an additional Cabinet mandate, to allow your colleagues to consider the pros and cons of doing so. We are conscious, however, that taking an item to Cabinet takes time, and could not be done before Friday 5 June 2020. If you wish to move by that date, the preferred option is to offer a guarantee under section 65ZD of the Public Finance Act 1989.
22. The Treasury does not recommend proceeding at Joint Ministers level, as it is not clearly within the current Cabinet mandate.

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Next Steps: Options for Ministers

23. As the window of opportunity for option 3 is closing, the Treasury recommends you discuss the options with the Minister of Housing and jointly agree an option **today, Tuesday 2 June**.
24. Once we have your decision, officials will start implementing your chosen option, providing further advice to you as required.

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