

Report

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Report to:	Estates Committee
Date of Meeting:	13 December 2005
Report by:	Executive Director (Enterprise Resources)

Subject:	Granting of Irritancy Protection Rights for Occupational Tenants at the New Cross Shopping Centre, Hamilton
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1 Purpose of Report

1.1 The purpose of the report is to:-

- ◆ note the action taken in terms of Standing Order No. 36(c) to the granting of Irritancy Protection rights for occupational tenants at the New Cross Shopping Centre, Hamilton

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) that the Irritancy Protection rights to the occupational tenants at the New Cross Shopping Centre, Hamilton, are granted
- (2) that the Executive Director (Enterprise Resources) in consultation with the Head of Legal Services, if appropriate, is authorised to conclude the necessary legal agreements on behalf of the Council
- (3) that in view of the requirement to progress this matter as soon as possible, and in terms of Standing Order No. 36(c), the action taken by the Executive Director, Enterprise Resources in consultation with the Chair and an ex-officio Member, be noted

3 Background

- 3.1 The Council is the Ground Landlord at the New Cross Shopping Centre, which has recently been refurbished and extended in partnership with the Head Tenant, Elandome Ltd. The Council receives a share of the occupational rents.
- 3.2 Elandome Ltd have agreed terms with HFC Bank Ltd and the Richmond Fellowship, to share equally the 7,000sqft first floor office accommodation at the Centre. Both organisations are new to Hamilton and both will provide a significant number of new office jobs.
- 3.3 If in the future the Council exercises its right to "irritate", i.e. terminate, the Ground Lease due to a major default by Elandome Ltd., the occupational Leases granted by Elandome Ltd to the occupational tenants will also automatically terminate. In these circumstances the Council will be left with a choice - it can grant new Occupational Leases (to safeguard the jobs supported by the occupational tenants), or it can allow the Centre to close.

- 3.4 Incoming tenants who recognise this risk will seek Irritancy Protection Agreements before they sign occupational Leases. The effect of these Agreements is to oblige the Council to grant a new occupational Lease on identical terms so long as the occupational tenant is not materially in default of its obligations (or has caused the breach which triggered termination of the Ground Lease). These Agreements are subject to standard terms, recognised by both parties.
- 3.5 In modern Ground Leases this protection is automatically provided for occupational tenants so multiple separate Agreements are not necessary. However, in this case the Ground Lease was granted by the Council to Elandome's predecessors in 1983 and the above provision is absent.
- 3.6 HFC Bank and the Richmond Trust are well advised prospective occupational tenants and are both insisting that Irritancy Protection Agreements be provided by the Council before they will sign occupational Leases with Elandome Ltd. Elandome Ltd have agreed to pay the Council's costs (including the Council's external solicitors fees) for the drafting and finalisation of both Agreements.

4 Proposal

- 4.1 It is proposed that Irritancy Protection Agreements be provided on standard terms for the benefit of HFC Bank Ltd and the Richmond Fellowship, the effect of which is to oblige the Council to grant a new occupational Lease on identical terms to the above parties, if during the lifetime of their occupational Leases, the Council terminates the Ground Lease with Elandome Ltd.
- 4.2 If other prospective tenants seek Irritancy Protection Agreements, these will be provided as above.

5 Employee Implications

- 5.1 None

6 Financial Implications

- 6.1 All of the Council's costs are to be paid by Elandome Ltd., the Council's Head Tenant.

7 Other Implications

- 7.1 There are no other implications associated with the proposal

8 Consultation

- 8.1 All necessary consultation has taken place with the Council's Legal and Estates Services.

Iain Urquhart
Executive Director (Enterprise Resources)
9 November 2005

Link(s) to Council Objectives

- Creating Successful Communities – Progressing Key Town Centre Improvements

Previous References

- Executive Committee 20 August 2003

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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