



17 October 2024

Tēnā koe

Official Information Act request

Thank you for your email of 23 August 2024, requesting information about the Ministry's internal policies for Residential Care Loan. On 20 September 2024, we emailed you advising that the Ministry required more time to respond to your request.

I have now considered your request under the Official Information Act 1982 (the Act).

Ministry staff are guided by Map, the Ministry's publicly available internal policy guidelines, to assess applications for Residential Care Loan (RCL). These guidelines are found here: [Residential Care Loan : Contents - Map \(workandincome.govt.nz\)](#)

The statutory basis for RCL is the Residential Care and Disability Support Services Act 2018: [Residential Care and Disability Support Services Act 2018 No 33 \(as at 01 July 2024\), Public Act Contents – New Zealand Legislation](#)

When assessing applications for RCL, Ministry staff also refer to the secondary legislation which contains the eligibility criteria for clients to apply for a RCL: Notice of Eligibility for Loans Under the Residential Care Loan Scheme (Effective On and After 15 August 2009), found here at paragraph 3: [Notice of Eligibility for Loans Under the Residential Care Loan Scheme \(Effective On and After 15 August 2009\) - 2009-go6635 - Te Kāhiti o Aotearoa \(gazette.govt.nz\)](#)

Please note that the Gazette notice refers to the old Social Security Act 1964, as it was made prior to the 2018 Act coming into force. The new Residential Care and Disability Support Services Act 2018 applies.

The ability to issue a loan is legislative and follow the eligibility requirements and rules which are set out in the above Gazette notice. However, the loan applicant's obligations under the loan scheme are contractual, pursuant to the loan agreement. The loan agreement also grants the Ministry the ability to secure the loan via a caveat over the applicant's former home.

Rights of Review and appeal are found in Part 7 of the Social Security Act 2018. Section 69 of the Residential Care and Disability Support Services Act 2018 provides that the Right of Review in Part 7 of the Social Security Act 2018 also applies to decisions or determinations made under the Residential Care and Disability Support Services Act 2018. However, this does not include decisions

made under the Loan Scheme (Gazette notice), as this is secondary legislation set by the Director-General of Health. The decision of whether to offer a loan is discretionary and the Ministry has no obligation to offer a loan.

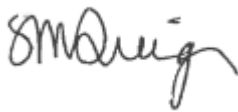
I am providing you with a copy of the Ministry's Sole Owner Loan Agreement document as you may find this helpful. Please see the attached Appendix.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services

RESIDENTIAL CARE LOAN AGREEMENT

Sole owner

DATED this _____ day of _____ 2024

PARTIES

HIS MAJESTY THE KING in right of New Zealand acting by and through the Director-General of Health (Crown)

APPLICANT (Applicant)

INTRODUCTION

- A. A DHB has assessed that the Applicant requires long-term residential care in a Hospital or Rest Home indefinitely.
- B. A Funder pays all or a part of the Cost Of Contracted Care Services by way of a Subsidy for people who are Residents Assessed As Requiring Care and whose Assets have been means assessed under Part 6 and Schedule 2 of the Act as being equal to or less than the Applicable Asset Threshold in Schedule 2 of the Act.
- C. The Applicant is not eligible for a Subsidy because the means assessment has determined his or her Assets exceed the Applicable Asset Threshold because the Applicant owns the Property.
- D. The Crown has agreed to make Advances to the Applicant towards the Cost Of Contracted Care Services provided to the Applicant while he or she is ineligible for a Subsidy, on the terms and conditions contained in this agreement. These Advances will be paid on the Applicant's behalf to the Applicant's Provider.

AGREEMENT

1 Definitions and interpretation

1.1 **Definitions:** In this agreement, unless the context otherwise requires:

Act means the Residential Care and Disability Support Services Act 2018.

Advances means advances made by the Crown, under this agreement, towards the Applicant's Cost Of Contracted Care Services.

Charge means the Applicant's agreement to grant the Mortgage to the Crown.

DHB means the relevant District Health Board.

Gazette Notice means the **Notice of Eligibility for Loans Under the Residential Care Loan Scheme (Effective on or after 15 August 2009)** as published in the New Zealand Gazette, 13/8/2009, No. 119, p. 2726.

Mortgage means a mortgage of the Property on the Auckland District Law Society Memorandum No. 2007/4238 or other applicable form.

Policy has the meaning in clause 6.2(b).

Property means the property described in the schedule.

Specified Date means the following date:

Specified Limit means the following amount:

Subsidy means a Funder's liability under section 56 of the Act.

1.2 **Definitions in Act:** Terms not defined in clause 1.1 but defined in section 6 or Schedule 2 of the Social Security Act 2018 and section 5, 11, 24 or Schedule 2 of the Act have the same meanings in this agreement.

1.3 **Interpretation:** In this agreement, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa.
- (b) Headings must be ignored.
- (c) References to parties, clauses, annexures and schedules are references to parties, clauses, annexures and schedules to this agreement.
- (d) Where two or more people are bound by a provision in this agreement, then that provision shall bind those people jointly and severally.
- (e) Any reference in this agreement to any statute includes all amendments, revisions, substitutions or consolidations made to that statute from time to time.

2 **Advances by the Crown**

2.1 Subject to this agreement, the Crown will make Advances to the Provider providing the Contracted Care Services to the Applicant.

2.2 The Crown will make the Advances only until the earliest of the following events:

- (a) the Applicant becomes eligible for a Subsidy
- (b) the Specified Date (if any)
- (c) the amount of the Advances reaches the Specified Limit (if any)

2.3 For the avoidance of doubt, the Crown will treat the Applicant as ineligible for a Subsidy until the close of the day before the day that the Funder becomes liable to pay the Subsidy under section 56(2) of the Act.

2.4 The amount of the Advances will be the Cost Of Contracted Care Services provided to the Applicant (not exceeding the Maximum Contribution), less the Applicant's contribution (if any) made in accordance with clause 6.1.

3 Interest

- 3.1 The Advances will not accrue ordinary interest. However, if the Applicant defaults on a repayment, he or she must pay any default interest that the Crown charges, in accordance with clause 7.1(a).

4 Repayment of Advances

- 4.1 The Applicant (or, if the Applicant has died, the Applicant's Estate) must repay the Advances on the earliest of the following dates:
- (a) The date the Applicant sells or otherwise disposes of the Property.
 - (b) Except where paragraph (c) applies, the date 12 months after the Applicant dies.
 - (c) If the Applicant dies and his or her Spouse or Partner also has a Residential Care Loan secured over the Property, the date 12 months after that Spouse or Partner dies.
 - (d) If the Applicant is in default under clause 7.1, on the date required by the Crown in accordance with that clause.
- 4.2 The amount that the Applicant must repay will be determined in accordance with the Residential Care Loan Scheme in effect at the date this agreement was entered into (refer to paragraphs 13.14 to 16 of the Gazette Notice).

5 Security

- 5.1 In consideration of the Crown making Advances to the Applicant, the Applicant agrees to:
- (a) grant the Mortgage to the Crown as security for the Advances and any applicable interest;
 - (b) execute and register the Mortgage when the Crown requests him or her to do so;
 - (c) comply with the terms of the Mortgage until it is executed; and
 - (d) the Crown lodging a caveat against the title to the Property, until the Mortgage is registered.
- 5.2 The Applicant is liable for all registration costs associated with the Mortgage and the caveat.

6 Applicant's other obligations

- 6.1 While the Crown is liable to make advances under this agreement, the Applicant must contribute the New Zealand Superannuation or any other Benefit he or she receives, less the Personal Allowance, towards the Applicant's Cost of Contracted Care Services.
- 6.2 The Applicant must:
- (a) duly and punctually pay all rates, taxes and charges relating to the Property. In regard to rates, the Applicant can discharge this obligation by entering into a rates deferment or rates postponement agreement with the appropriate territorial authority, however, for avoidance of doubt, any postponement of rates during the period of the Advances will not be a prior charge upon repayment;

- (b) insure and keep insured under a comprehensive policy all buildings and improvements on the Property against fire and all other risks normally covered by such a policy, with the Crown noted on the Policy as mortgagee;
- (c) duly and punctually pay all premiums and other sums required to maintain the Policy;
- (d) provide, if the Crown requests, a certificate of currency for the Policy; and
- (e) put and keep in good substantial repair and condition all buildings and improvements on the Property.

6.3 The Applicant must pay to the Crown, at its request, any moneys the Applicant receives from the proceeds of the Policy or from any compensation paid in relation to the Property, to reduce or repay the Advances.

6.4 The Applicant must promptly notify the Ministry of Social Development if:

- (a) the Applicant's or the Applicant's Spouse or Partner's financial circumstances change (except for any increase in the amount of Advances owing or in the value of any of the Applicant's or the Applicant's Spouse or Partner's Assets including the Property);
- (b) the Applicant's Spouse or Partner dies;
- (c) the Applicant's Spouse or Partner becomes a Resident Assessed As Requiring Care;
- (d) the Applicant's or the Applicant's Spouse or Partner's relationship status changes (for example, by entering into or ending a marriage, civil union, or de facto relationship); or
- (e) the Applicant or his or her Attorney or Property Manager's address changes.

6.5 The Applicant must not:

- (a) mortgage or create any charge over the Property whether in priority or subsequent to the Charge (other than a charge in respect of any rates deferment or rates postponement agreement); or
- (b) draw down or obtain, or allow to be drawn down or obtained, any advance or further advance under and secured by any mortgage or charge over the Property at the date this agreement was entered into (for example, under a reverse equity mortgage).

7 Default

7.1 If the Applicant defaults on any of his or her obligations under this agreement, the Crown may serve on the Applicant written notice requiring the Applicant to remedy the default before a specified date, which must not be earlier than one month following the service of notice. If the default is not remedied by the specified date, the Crown may, at any time until the default is remedied and without prejudice to any of its other rights and remedies, exercise any or all of the following remedies:

- (a) Charge default interest at a rate of 10% per year, calculated on a daily basis, on any Advances outstanding, from the date specified in the notice until the Applicant has repaid the Advances in full. Such default interest will form part of the Advances.

- (b) Charge the Applicant for any enforcement costs it has to pay. Such costs will form part of the Advances.
- (c) Require the Applicant to repay any or all of the Advances immediately.
- (d) Any of its rights and remedies under the Mortgage.

8 Power of attorney

8.1 The Applicant irrevocably appoints the Crown, and any person authorised by the Crown under clause 9 of this agreement to act on its behalf, to be the Applicant's attorney to do any of the following things:

- (a) Execute any mortgage or document or do anything else that the Applicant has failed to do under this agreement, or take any other action that, in the Crown's opinion, is necessary to protect its interests under this agreement.
- (b) Exercise the Applicant's voting rights under section 96 of the Unit Titles Act 2010, in respect of a stratum estate.
- (c) If the Property comprises or includes a leasehold interest, exercise the Applicant's rights and powers (if any) under that lease.

9 Actions by the Crown

9.1 The Crown may execute this agreement and act under this agreement through:

- (a) the Director-General of Health or any employee of the Ministry of Health with delegated authority from the Director-General;
- (b) any officer of the Ministry of Social Development authorised to act by virtue of his or her office under a power of attorney given by the Director-General of Health to act on his or her behalf in respect of the Subsidy; or
- (c) any other person who is for the time being authorised by or through the Crown to administer the Crown's Residential Care Loan Scheme.

9.2 If any person listed above purports to act under this agreement, that fact will, in the absence of evidence to the contrary, be sufficient evidence of the person's authority to do so.

10 Independent advice

10.1 The Applicant acknowledges that he or she has:

- (a) received independent legal advice before signing this agreement; or
- (b) been advised that he or she is entitled to obtain independent legal advice but has declined to do so.

11 Notices

- 11.1 The Crown may give any notice for the Applicant under this agreement to the Applicant in person or to any person (other than the Crown) who the Crown is advised is the Applicant's Attorney in relation to Property or Property Manager appointed under the Protection of Personal and Property Rights Act 1988. The written notice may be served in person or by post (ordinary or registered). If postal delivery is used, the notice will be sent to the last notified address of the Applicant or his or her Attorney or Property Manager and will be treated as being received on the fourth day after posting. If the notice is delivered in person, the notice will be treated as being served on that date.

12. Execution of agreement

- 12.1 This agreement may be executed in two or more counterpart copies, all of which will together be deemed to constitute the agreement.
- 12.2 A party may enter this agreement by signing a counterpart copy of the agreement and delivering either:
- (a) the physical copy;
 - (b) a PDF copy by email; or
 - (c) a facsimile copy

to the other party.

SIGNED on behalf of the Crown by
EMILY FRANCES WILLIS
Legal Executive
Ministry of Social Development

in the presence of:

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by / on behalf of *
APPLICANT

in the presence of:

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

* If you have signed this agreement as attorney for the Applicant, you must also complete the appropriate certificate of non-revocation (and if applicable, non-suspension) of power of attorney at the end of this agreement.

Released under the Official Information Act 1982

SCHEDULE**Real Property:**

Address:		
Legal description:	Estate:	Area: m ²
	Lot:	DP:
	Flat Number:	DP:
	Lease Number:	
	Record of title:	Registry:
Subject to: Memorials as per Title		
Prior mortgages or charges having priority over the charge created by this agreement:		

Other: (e.g. Shares, Licences)

Description: _____

Details: _____

If you have signed the attached agreement as attorney for the Applicant pursuant to an **enduring power of attorney**, you must complete a certificate in the following form.

Note that Statement B in the certificate does not apply as an attorney solely in respect of personal care and welfare cannot sign the agreement.

CERTIFICATE OF NON-REVOCATION AND NON-SUSPENSION OF ENDURING POWER OF ATTORNEY

Section 103C, Protection of Personal and Property Rights Act 1988

I, *[full name, address, occupation of attorney]*, certify that—

1 *For this paragraph select the statement that applies.*

Statement A

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* property.

*Select one.

Statement B

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* personal care and welfare.

*Select one.

Statement C

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* personal care and welfare and his/her* property.

*Select one.

- 2 I have not received notice of an event revoking my authority to act under the enduring power of attorney.
- 3 I have not received written notice from *[full name of donor]* suspending my authority to act under the enduring power of attorney.

Date:

Signature of attorney:

NOTES**Definition of an event revoking the power of attorney**

An *event revoking the power of attorney* means any of the following events in which the enduring power of attorney ceases to have effect:

- the donor revokes the power while mentally capable of doing so; or
- the donor dies; or
- the attorney gives notice of disclaimer in accordance with [section 104](#) of the Protection of Personal and Property Rights 1988; or
- the attorney dies, or is adjudged bankrupt, or becomes a patient within the meaning of the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) detained in a hospital under that Act, or becomes subject to a personal order under [Part 1](#) of the Protection of Personal and Property Rights Act 1988 or a property order under [Part 3](#) of the Protection of Personal and Property Rights Act 1988, or otherwise becomes incapable of acting; or
- in the case of an enduring power of attorney that appoints more than one attorney with joint but not several authority, one of the attorneys dies, or is adjudged bankrupt, or becomes a patient within the meaning of the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) detained in a hospital under that Act, or becomes subject to a personal order under [Part 1](#) of the Protection of Personal and Property Rights 1988, or a property order under [Part 3](#) of the Protection of Personal and Property Rights 1988, or otherwise becomes incapable of acting; or
- a Court revokes the appointment of the attorney pursuant to [section 105](#) of the Protection of Personal and Property Rights 1988.

If you have signed the attached agreement as attorney for the Applicant pursuant to an **ordinary power of attorney**, you must complete the following certificate.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, *[Full name of attorney]* of *[Place and country of residence]*, *[occupation]* certify:

- 1 That by deed dated *[date of instrument creating the power of attorney]*, *[Full name of donor of power of attorney]* of *[place and country of residence of donor]* appointed me his/ her* attorney.
- 2 That I have not received any notice of any event revoking the power of attorney.

Signed at this day of 2024

* Delete if inapplicable

PAYMENTS

You (or your Estate) must repay all advances (including any default interest and enforcement costs payable following a default) on the earliest of the following dates:

- (a) the date you sell or otherwise dispose of the secured property (see below); or
- (b) except where paragraph (c) applies, 12 months after the date of your death; or
- (c) if you die and your spouse or partner also has a residential care loan secured over the property, 12 months after your spouse or partner dies; or
- (d) if you are in default, on the date required by the Crown in accordance with the Agreement.

You may repay all advances at any time without penalty.

The amount you are required to pay will be determined in accordance with the Residential Care Loan Scheme in effect at the date the Agreement was entered into. (Refer to paragraphs 13.14 to 16 of the Gazette Notice).

SECURITY INTEREST**1. Real property**

Under the Agreement, you agree to grant to the Crown a mortgage over the following property as security for all of the advances and your obligations under the Agreement:

Address:

Estate:

Legal description:

Record of title:

Registry:

The Crown may register a caveat or mortgage against the title to the property.

2. Other (e.g. shares, licenses)

Description:

Details:

DEFAULT INTEREST CHARGES AND FEES

If you default under the Agreement you will be liable to pay:

- Default interest at the rate of 10% per year calculated on a daily basis on any unpaid advances, and
- Any enforcement costs related to the collection of any unpaid advances and/or default interest.

You must not mortgage or create any charge over the property in priority to the Crown's charge under the Agreement.

RIGHT TO CANCEL BY APPLICANT

The Credit Contracts and Consumer Finance Act 2003 gives you a right, for a short time after the terms of this contract have been disclosed to you, to cancel the contract.

HOW TO CANCEL

If you want to cancel this contract you must give written notice to the creditor.

You must also return to the creditor any advance and any other property that you received under the contract.

TIME LIMITS FOR CANCELLATION

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within three (3) working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice that you intend to cancel within five (5) working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within seven (7) working days after they were posted.

Saturdays, Sundays and national public holidays are not counted as working days.

WHAT YOU MAY HAVE TO PAY IF YOU CANCEL

If you cancel the contract the creditor can charge you:

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports etc); and
- (b) interest for the period from the day you received the advance until the day you repay the advance.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is acting unreasonably in any way, you should seek advice immediately.

CONTINUING DISCLOSURE STATEMENTS

No continuing disclosure statements will be provided, as you are not required to pay either interest charges or credit fees (unless you are in default under the Agreement).

CONFIRMATION OF INITIAL DISCLOSURE

I confirm:

1. I have been provided with a copy of this Disclosure Statement before I signed the Agreement or within five working days of the date the Agreement was made; and
2. I was provided with a copy of the Agreement at that time.

SIGNED BY:

APPLICANT

Released Under the Official Information Act 1982