

3. INITIAL OVERVIEW OF IMPLEMENTATION OF LOCAL GOVERNMENT ACT 2002

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1. PURPOSE

1.1 The purpose of this report is to brief elected members on the Council practices and processes which will be affected by the passing into legislation of the Local Government Act 2002. This report sets out the areas in which new or modified practice and policies will need to be developed. While there will certainly be discretion for the Council to consider the content of many of the policies required by the Act, the dates by which they must first be adopted and many of the practises which need to be followed in making decisions are set down in the legislation. Most of the recommendations in this report, therefore, are that the Council note what will need to be done and the timeframes for doing these things.

2. BACKGROUND

2.1 The Local Government Bill which was developed over the last 2½ years was divided in its final stages in the House of Representatives into two different Acts: the Local Government Act and significant amendments to the Local Electoral Act. This report deals with the Local Government Act.

2.2 The Local Government Act establishes councils such as our own, provides councils with powers and requires councils to operate in specified ways in terms of their governance and management and the ways in which they make decisions. The Act also establishes the Local Government Commission and provides the framework in which it operates – that is, with regard to matters such as amalgamations and boundary adjustments.

2.3 Unlike its predecessor, this Local Government Act provides a form of general empowerment to councils to enable them to enter into contracts and undertake transactions, etc, similar to the way in which a private individual or company would. Recognising, however, that councils are public bodies significantly funded by a coercive tax, the legal ability for councils to spend money on any activity they choose is balanced by significant procedural requirements. These are aimed to ensure such things as: a decision is made on the basis of good information and in the light of the long term and “big picture”, decisions are made in the light of community views, and decisions are subject to public scrutiny and ultimately electoral accountability.

2.4 Unlike private individuals and companies councils have powers to make bylaws and enter on to private land, etc. These powers for councils to limit the freedom of individuals are not extended in a general way but are highly prescriptive as to their scope and how they must be operated, thus a substantial bulk of the Act (almost one-third) is devoted to regulatory and coercive powers, their enforcement and offences, penalties and legal proceedings flowing from them.

2.5 There is also a group of sections (Part 7) which places specific obligations and restrictions on a council. There are requirements to assess the extent and adequacy of water, sanitary and land drainage infrastructure. My understanding is that these have been included in the Act to ensure a range of public health outcomes. There are also restrictions relating to the way in which a council may transfer the assets relating to, or manage the provision of water services (an issue made topical in the recent past when the Auckland City Council transferred its assets into Watercare Limited). There are also restrictions on the sale of parks and community assets and endowment property.

2.6 Overall, therefore, the philosophy underlying the Act is that elected councils should be able to do whatever they consider is most appropriate to meet the needs and aspirations of their community. While being generally empowered to do this, decisions must be made carefully with consideration given to alternatives, to wider implications (in terms of social, economic, cultural and environmental outcomes), and with consideration given to community views. There is also a strong framework requiring councils to work with other agencies at least in its wider planning processes if not in more routine decision-making.

- 2.7 There is a specific and onerous process for regional councils wishing to undertake any significant new activities already being undertaken by a territorial authority. These begin with a requirement to consult with the territorial council, require any objections raised be included in the Long Term Council Community Plan (LTCCP), if disagreement continues mediation is required and finally either council may ask the Minister to make a binding decision. The whole process must be done as part of an LTCCP, which generally will occur only once every three years.
- 2.8 In my view one of the significant consequences of the Act is that fewer “one-off” decisions will be able to be made by the Council; rather the Council will need to engage in decision-making processes. To illustrate this a report before a committee might give details of the implications of two or three different options with a recommendation in favour of one of them; if elected members want consideration of a further option not considered in the report or are considering a significant amendment which is not analysed then the appropriate approach in terms of the new Act will often be to defer the making of a decision until further analysis or consultation has been undertaken.
- 2.9 Such implications for the functioning of the Council will be a relevant consideration when elected members are considering issues of representation and governance in the context of reviewing the number of wards, the role of community boards and the size of the Council.
- 2.10 The rest of this paper reviews what the Act requires in terms of a series of topics.

3. GOVERNANCE

“...all local authorities within each region must enter into an agreement containing protocols for communication and co-ordination among them during the period until the next triennial general election...each agreement must include a statement of the process for consultation on proposals for new regional council activities.” (section 15)

- 3.1 This triennial agreement will cover our relationship with all of the other Canterbury councils: district councils and regional council. From the 2004 election onwards the agreement will need to be put in place by 1 March following the election, but the first protocol is required by 31 December 2003. It can be anticipated that many of the provisions in the protocol will be general in nature and light-handed (for instance, with regard to our relationship with say Ashburton and Kaikoura Districts) but there may be much more specific agreements appropriate with regard to those councils with which we have more contact, particularly the adjoining district councils and Environment Canterbury. This would suggest that the process for its preparation should address both general and specific elements.

Staff

- Recommendation:**
- 3A That the Canterbury Forum be asked to draft and recommend to councils general provisions for a Canterbury Triennial Agreement by 31 August 2003.
- 3B That the Christchurch City Council invite the following councils to have one-on-one discussions as to the more specific content of the Agreement: Banks Peninsula District Council, Selwyn District Council, Waimakariri District Council, Environment Canterbury and the outcomes of these discussions be reported to each Council by 31 August 2003.
- 3C That these discussions and report back be managed by the Chair and Deputy Chair of Strategy and Finance Committee together with the City Manager and Legal Services Manager.
- 3D That the Council note the requirements in the Act for the Triennial Agreement to be adopted by all Canterbury local authorities by 31 December 2003.

3.2 Section 39 sets out a series of governance principles setting out how local authorities should act. These include the need for structures and processes to be effective, open and transparent and relationships to be clear. As a means to giving effect to these principles a local authority must prepare and make publicly available a governance statement. The following information must be included:

- (a) the functions, responsibilities, and activities of the local authority; and*
- (b) any local legislation that confers powers on the local authority; and*
- (c) the electoral system and the opportunity to change it; and*
- (d) representation arrangements, including the option of establishing Māori wards or constituencies, and the opportunity to change them; and*
- (e) members' roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and*
- (f) governance structures and processes, membership, and delegations; and*
- (g) meeting processes (with specific reference to the applicable provisions of the Local Government Official Information and Meetings Act 1987 and standing orders); and*
- (h) consultation policies; and*
- (i) policies for liaising with, and memoranda or agreements with, Māori; and*
- (j) the management structure and the relationship between management and elected members; and*
- (k) equal employment opportunities policy; and*
- (l) key approved planning and policy documents and the process for their development and review; and*
- (m) systems for public access to it and its elected members; and*
- (n) processes for requests for official information."*

3.3 Much of the above material either exists for this Council or is in preparation. Detail is given on the contents of a code of conduct in Schedule 7 clause 15 of the Act. Our own draft of a code of conduct (e) above and of governance structures and processes and meeting processes (f) and (g) above will be brought to Strategy and Finance Committee in March or April and the Consultation and Communication Special Committee is targeted to finish its work within the next six months, (h) above.

3.4 The Act provides that a local authority must prepare and make available its governance statement by a date six months following each election. Section 274 provides, however, that the initial governance statement must be adopted by the Council by 31 December 2003.

Staff

Recommendation: 3E That the Council note it is required to prepare and publicly notify its first local governance statement by 31 December 2003.

3F That, recognising the elements of the statement are being prepared progressively, the Legal Services Manager report in August 2003 the intended outline of and format for the local governance statement and indicate any elements which at that time are outstanding.

3.5 The 1974 Act included provisions for LATEs (Local Authority Trading Enterprises). This terminology is not used in the 2002 Act, rather it talks about "*council-controlled organisations*". A council controlled organisation includes those which are currently referred to as LATEs but also includes:

"any partnership, trust, arrangement for the sharing of profits, union of interest, co-operation, joint venture, or similar arrangement" (section 6(2)) of which local government has effective control.

3.6 A series of provisions related to council-controlled organisations including the need for each to agree a statement of intent with the Council, a regime for performance monitoring and reporting, and a requirement that a council-controlled organisation has the Auditor-General as its auditor. The first statement of intent for council-controlled organisations that are currently LATEs must be in place by 1 July 2003. All of our LATEs currently have statements of corporate intent. All of the other council-controlled organisations will need to have such statements of intent in place by 1 July 2004.

Staff

- Recommendation:** 3G That the Director of Finance be requested to liaise with Christchurch City Holdings Limited and Transwaste Canterbury and report by May 2003 of any ways in which the statements of corporate intent currently in place for the Council's LATEs would need to be altered in order to comply with the requirement for statements of intent by 31 July 2003 under the new Act.
- 3H That the Community Relations Manager report in July 2003 with a schedule of all organisations identified as council-controlled organisations for purposes of the Act and to recommend at that time a procedure for putting in place statements of intent for all such organisations by 1 July 2004.

3.7 In addition the Local Government Act introduces the term "*council organisations*" (section 6). A council organisation is one to which the council has the right to appoint one or more persons to the governing body or the right to vote at the annual general meeting (or similar) of the organisation. Thus the term council organisations includes all council-controlled organisations but extends to include any other body to which the council makes an appointment or where it can vote at its annual meeting. This includes the outside organisations to which councillors are appointed after each triennial election.

3.8 The requirements with regard to council organisations are markedly fewer than those with regard to council-controlled organisations; the principal one relates to appointment of directors. The word "directors" includes trustees or other office holders.

"A local authority must adopt a policy that sets out an objective and transparent process for –

- (a) the identification and consideration of the skills, knowledge and experience required of directors [trustees, etc] of a council organisation; and*
- (b) the appointment of directors to a council organisation; and*
- (c) the remuneration of directors of a council organisation."*

3.9 The first policy on appointment of directors must be adopted by 30 June 2003. It will need to go beyond our current policy on appointment of directors to LATEs.

3.10 Given the requirements of the Act with regard to decision-making it is appropriate for consultation to be held on the preparation of this policy with those stakeholders who can readily be identified and also with Māori.

Staff

- Recommendation:** 3I That the Director of Finance and Community Relations Manager report to the Council in March 2003 on a timetable and process to enable the Council to adopt by 30 June 2003 a policy on appointment of directors to Council organisations.
- 3J That the Community Relations Manager report to the Council in July 2003 with a schedule of all Council organisations other than those which have separately been identified as the Council-controlled organisations.

4. DECISION-MAKING

4.1 Section 76-81 sets out a framework for every decision made by a local authority. This section of the Act is operative immediately and needs to be taken account of in any committee, community board or Council resolution and in delegated decisions made by officers.

4.2 Section 77 sets out the objective information which must be taken into account before a decision is made:

"77. Requirements in relation to decisions

- (1) *A local authority must, in the course of the decision-making process, -*
- (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*

- (b) assess those options by considering –
 - (i) the benefits and costs of each option in terms of the present and future social, economic, environmental and cultural well-being of the district or region; and
 - (ii) the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and
 - (iii) the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and
 - (iv) any other matters that, in the opinion of the local authority, are relevant; and
- (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

(2) This section is subject to section 79.”

4.3 Section 78 sets out the requirement to take account of community views:

“78. Community views in relation to decisions

- (1) A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.
- (2) That consideration must be given at –
 - (a) the stage at which the problems and objectives related to the matter are defined;
 - (b) the stage at which the options that may be reasonably practicable options of achieving an objective are identified;
 - (c) the stage at which reasonably practicable options are assessed and proposals developed
 - (d) the stage at which proposals of the kind described in paragraph (c) are adopted.
- (3) A local authority is not required by this section alone to undertake any consultation process or procedure.
- (4) This section is subject to section 79.”

It is important to note that this section requires consideration be given to the views of persons likely to be affected by, or have an interest in a matter, it does not of itself require consultation with the general public. There is a set of principles to guide consultation when it is undertaken. These include (section 82(1)(e):

“that the views presented...should be received...with an open mind and should be given...due consideration”.

4.4 These two sections (sections 77 and 78) are subject to section 79 which can be summarised as a section saying that a sledge-hammer is not necessary to crack a nut:

“79. Compliance with procedures in relation to decisions

- (1) It is the responsibility of a local authority to make, in its discretion, judgments –
 - (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters effected by the decision; and
 - (b) about, in particular, -
 - (i) the extent to which different options are to be identified and assessed; and
 - (ii) the degree to which benefits and costs are to be quantified; and
 - (iii) the extent and detail of the information to be considered; and
 - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.

- (2) *In making judgments under subsection (1), a local authority must have regard to the significance of all relevant matters and, in addition, to –*
- (a) *the principles set out in section 14; and*
 - (b) *the extent of the local authority's resources; and*
 - (c) *the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons."*

- 4.5 The way in which section 79 is applied will be critical in terms of the nature and shape of future Council decision-making. Earlier in this report reference is made to the need for elected members to think in terms of "decision-making processes" rather than "one-off decisions". A consequence of sections 77 and 78 is that major issues will need to be treated as projects with a series of decision points designed at the outset. Elected members may recall that this approach has been foreshadowed in the framework of governance material on decision-making which has been previously considered in a series of seminar meetings of Strategy and Finance Committee and which has been referred to community boards. While a major decision must be thought of as a decision-making process, it will be equally important that we take full advantage of section 79 and do not undertake complex research or extensive public consultation when the decisions to be made are relatively minor in nature or the range of practical options available is narrow.
- 4.6 While those sections relieve us from having to use sledgehammers inappropriately, they still impose upon us the obligation to explicitly consider the extent of evaluation, consultation, etc., required for each decision before the Council. Records of those considerations will become part of the Council's official record.
- 4.7 Section 80 will require particular attention to be given in cases where a decision is significantly inconsistent with any policy or plan adopted by the Council. The Act does not prevent the Council from making such a decision but it does require that the inconsistency be identified and the reasons for the Council's decision be clearly set out.
- 4.8 Section 90 requires the Council to adopt a policy on significance. This policy will provide guidance for some aspects of interpreting the sections discussed above and also requires that we list the assets considered by the Council as "strategic assets".
- 4.9 The policy needs to be adopted by 30 June 2003. Given that we are required to use the special consultative procedure (ie, the process used for consultation on Annual Plans) before adopting it, this means that a draft policy will need to be adopted by the Council either at our March meeting or possibly at the April meeting. Initial work is under way for the preparation of a draft policy on significance. Consultation with Māori will be necessary before the Council adopts its draft.

Staff

- Recommendation:**
- 4A That the Director of Policy report to the Council in March 2003 with either a draft policy on significance or a report detailing the process and timeframes to ensure that the Council complies with the Act and has adopted such a policy by 30 June 2003.
 - 4B That, as part of the process, the Māori Liaison Subcommittee be asked for input on the policy on significance.
 - 4C That members note the requirements on decision-making and consultation are now in force, and apply to matters now before the Council, even those for which decision-making began before the Act was passed.

5. RELATIONSHIP WITH MĀORI

- 5.1 The Act confirms the long-held view that local government is not to be regarded as part of the Crown for purposes of the Treaty of Waitangi. Nonetheless, section 4 states,

"in order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes."

5.2 The main way in which this principle is given effect is section 81:

“(1) A local authority must –

- (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and*
- (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and*
- (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).”*

The Council will need to set out in its first LTCCP any steps that it intends to take, having considered ways in which it might foster the development of Māori capacity to contribute to local government. The Council will be adopting its first LTCCP for consultation in March/April 2004.

It should be noted that our obligations under the Act are with respect to all Māori, not simply those who have mana whenua as is the case under the Resource Management Act.

Staff

Recommendation: 5. That the Director of Policy consult with the Māori Liaison Subcommittee and report to the Council in August 2003 on ways in which the Council can give effect to its obligations flowing from section 4 of the Act.

6. PLANNING

Note: This section of the report was considered at the joint meeting of the Strategy and Finance Committee and Community Plans Special Committee which preceded this meeting.

6.1 The Act retains the fundamental planning framework proposed in the Bill, that is:

- The purpose of local government includes promoting the social, economic, environmental and cultural well-being of communities, in the present and for the future;
- Planning is to be based on the concept of outcomes for the community, and the specific contributions the Council will make to furthering those outcomes;
- There is to be collaboration with other organisations and groups capable of influencing or identifying community outcomes.
- A long term council community plan (LTCCP) will be prepared every three years, with much simplified annual plans being prepared for the intervening years. LTCCPs will be prepared to come into effect for the mid year of the electoral cycle.

6.2 Long-term council community plans are subject to audit. The auditor is to report on the extent of compliance with the Act with respect to the plan, the quality of the information and assumptions underlying the forecasts in the plan, and the extent to which the information provided in the plan allows for the meaningful assessment of the actual levels of service provision. The auditor is excluded from commenting on the merits of any policy content of the plan.

6.3 The audit requirement applies to both draft and adopted LTCCPs.

6.4 Plans – both LTCCP and Annual – will have to be prepared and adopted before the financial year to which they apply begins, that is before 1 July. At present, the annual plan can be adopted up to 3 months after the financial year has begun.

6.5 Section 280 of the Act requires all local authorities to prepare an LTCCP for the year beginning 1 July 2006. This plan must be prepared using the full process prescribed in the Act.

In summary, that involves identifying organisations capable of identifying or promoting community outcomes, seeking their agreement to the process for identifying community outcomes, encouraging the public to participate in identifying and prioritising community outcomes, preparing plans for the Council's programme of work looking 10 years ahead, then adopting the LTCCP using the special consultative procedure. Both the draft and adopted versions of the LTCCP will be subject to audit as discussed above.

- 6.6 Councils have the option of preparing an LTCCP for either of the years beginning 1 July 2003 or 1 July 2004 (section 279). Councils may avail themselves of an abbreviated process for preparing their first LTCCP. They will not have to go through the full process of engagement to identify and prioritise community outcomes – they can prepare their statement of community outcomes from information they already hold. Nor will the LTCCPs be subject to audit, for either draft or adopted version. Although the term is not used in the Act, it may be helpful to think of this as a “Transitional LTCCP”.
- 6.7 Section 281 requires councils who choose not to prepare an LTCCP for 2003 to prepare an Annual Plan under the provisions of the 1974 Act (as if those provisions had not been repealed), with some modifications, namely:
- Funding, financial, investment and liability management policies and statements must be prepared under the provisions of the 2002 Act.
 - The special consultative procedure in the 2002 Act must be followed
 - The consultation and decision making standards in the 2002 Act apply
 - An updated summary of the Council's long-term financial strategy must be included
 - The following statements, not required by the 1974 Act, must be included:
 - The council's policy on partnerships with the private sector
 - The council's policy on determining significance.

The timing of the 1974 Act still applies. That is, the annual plan does not have to be adopted until up to three months after the financial year begins.

- 6.8 The provisions of the Act are generally as had been anticipated when the Council resolved in September 2002 to prepare its first LTCCP for the 2004-2005 year. The earlier decision had anticipated that this initial LTCCP would need to be based on a shortened process and would be followed by a “full” LTCCP. In many ways the “Transitional” LTCCP can be thought of as a key milestone in a process of working with other agencies and the community towards the plan which will crystallise for the 2006-2007 year.

Staff

- Recommendation:**
- 6A That the Council prepare an annual plan for the year beginning 1 July 2003 pursuant to the provisions of section 281 of the Local Government Act 2002.
- 6B That the Council reconfirm its earlier decision to prepare its first Long Term Council Community Plan for the year beginning 1 July 2004 pursuant to the provisions of section 279 of the Local Government Act 2002.
- 6C That the Director of Information and Planning report to the Council in April 2003 on the process for Long Term Council Community Plan preparation for 2004 with particular reference to the process for identifying community outcomes.

7. BYLAWS AND ENFORCEMENT MATTERS

- 7.1 The new Act streamlines the bylaw-making powers for territorial authorities and provides that a territorial authority may make bylaws for one or more of the following purposes:
- (a) protecting the public from nuisance;
 - (b) protecting, promoting and maintaining public health and safety;
 - (c) minimising potential for offensive behaviour in public places.

- 7.2 The new bylaw-making provisions come into force on 1 July 2003.
- 7.3 The Council is given the power to make a bylaw which in its district prohibits or regulates the consumption of liquor, and possession of liquor in a public place. Until now the Council generally has had to link prohibitions on liquor to public events but with the new bylaw-making power the Council has the opportunity to control liquor consumption in public places in all parts of its district.
- 7.4 This new bylaw-making power will be considered later this year when the Council reviews the Central City liquor ban.
- 7.5 There are new provisions which require that before the Council makes a bylaw it must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. The Council would then at a subsequent meeting go on to consider the form of the bylaw and commence the special consultative procedure to make the new bylaw. The Council is required to review all of its bylaws by 30 June 2008, and thereafter at 10 yearly intervals. If a bylaw is not reviewed within this process then it ceases to have effect two years after the date on which the bylaw had to be reviewed.
- 7.6 Enforcement procedures such as prosecution and injunctions continue under the new Act with the fine for breach of a bylaw increasing from \$500 to \$20,000, and a breach of a Trade Waste bylaw increasing from \$20,000 to \$200,000.
- 7.7 There are new provisions relating to the seizure and impoundment by a Council enforcement officer of property that is materially involved in the commission of an offence and where it is reasonable to seize the property. An example could be use of a skateboard in a public place in breach of a Council bylaw. As occurs with seizures of stereo equipment under the Resource Management Act the Council may return the seized property upon payment of the Council's costs of seizure, empowerment and storage.
- 7.8 A local authority may now contract out to any other local authority or any person the administration of its regulatory functions, including the operational aspects of enforcement, inspection, licensing, but the local authority retains legal responsibility for the manner in which those tasks are undertaken.
- 7.9 There are new provisions enabling an infringement notice system for offences under the Local Government Act, including bylaw offences.

8. DEVELOPMENT CONTRIBUTIONS

- 8.1 The Act provides that the Council may require a development contribution when granting a resource consent, a building consent or an authorisation for a service connection, provided it has established a development contribution policy in its LTCCP.
- 8.2 The Act provides that development contributions (being money, land or both) can be required if the effect of a development is to require new or additional assets or assets of increased capacity and, as a consequence, the Council incurs capital expenditure to provide appropriately for:
- (a) reserves;
 - (b) network infrastructure (being the provision of roads and other transport, water, wastewater and stormwater collection and management);
 - (c) community infrastructure (being land for development assets on land owned or controlled by the Council to provide public amenities).

"Development" is defined as a subdivision or other development that generates a demand for reserves, network infrastructure, or community infrastructure.

- 8.3 Such a development contribution can be required, in part or in full, for capital expenditure already incurred by the Council in anticipation of the development and there is a provision for the cumulative effects of two or more developments.
- 8.4 The Act provides that the development contributions policy which must first be adopted by the Council must set out and explain a number of matters including:

- (a) the capital expenditure identified in the LTCCP that the Council expects to incur to meet the increased demand for increased facilities resulting from growth;
- (b) the proportion of capital expenditure that will be funded by –
 - (i) development contribution;
 - (ii) financial contributions under the Resource Management Act;
 - (iii) other sources of funding;
- (c) identify separately each activity or group of activities for which a development contribution or financial contribution will be required and the total amount of funding to be sought by development contributions or financial contributions.

8.5 The Act sets the methodology to be used for calculating the development contributions. Development contributions for reserves cannot exceed 7.5 per cent of the value of the additional allotments created by a subdivision and the value equivalent of 20 square metres of land for each additional household unit created by the development. There is also a formula to set maximum contributions for network infrastructure or community infrastructure.

8.6 Different development contributions can be payable for different parts of the district.

8.7 There are requirements on how the Council is to use development contributions, and detailed requirements relating to the use of development contributions received for reserve purposes. Contributions are only to be used for capital expenditure and not for maintenance.

Staff

- Recommendation:**
- 8A That the Council prepare a Development Contributions Policy to be included in the Long Term Council Community Plan for 1 July 2004.
 - 8B That the Associate Director of Policy report to the Council in August 2003 with either a draft policy or a report detailing progress on the development.

9. ELECTORAL MATTERS

9.1 As noted in paragraph 2.1 above the Local Government Bill was divided into two Acts, the Local Government Act 2002 and the Local Electoral Amendment Act 2002. The Local Electoral Amendment Act came into force on 25 December 2002.

9.2 With regard to the Local Electoral Amendment Act, that Act now provides for the first time that some members of the Council may be elected from wards, and other members of the Council may be elected by the district as a whole. If the Council decided to have a mixture of election at large and election by ward, there is a prohibition against a person being a candidate in both the at large election and the ward election.

9.3 The Act provides with regard to community boards that the number of appointed board members is to be less than half the total number of board members. This will have the effect in Christchurch that with nine board members, four councillors can now be appointed to each community board.

9.4 The Act provides similar provisions for the review by the Council of its membership and ward boundaries as at present with some significant changes.

9.5 The Council now has the option of conducting the review either by 31 August 2003 or by 31 August 2006, and thereafter at least once every six years.

9.6 When conducting that review the Council is also required to decide whether there should be communities and community boards and, if so, the nature of any community and the structure of any community boards. The Act now provides that the Council may resolve to abolish or unite communities and to alter community boundaries. Under the Local Government Act 1974 the Council required the consent of a community board to the alteration of boundaries or abolition of the board, or a determination of the Local Government Commission if the Council and community board could not agree. The Act provides that if there is to be any change with regard to the existence of a community board or an alteration to board boundaries then the Council's resolution must include an explanation of the reasons for the proposed change.

- 9.7 As was previously the case the Council's resolution with regard to the review must be publicly notified and there is an opportunity for objections (including objections from a community board), a requirement by the Council to hear those objections and a right of appeal (including by a community board) to the Local Government Commission in respect of the Council's decision on those objections. As at present the Local Government Commission has the power to make a binding decision on the Council's resolution and its decision on the objections.
- 9.8 As previously criteria for the review are based upon effective representation of communities of interest within the district and ensuring that the electors of a ward receive fair representation, that wards have a population within 10 per cent greater or smaller of each other (although there is the possibility for the Council to deviate from this requirement), and with regard to community boards, that the election of members will provide effective representation of communities of interest within the community and fair representation of electors.
- 9.9 The Act provides that the Council may resolve that a district be divided into one or more Māori wards. There is no mandatory requirement for the Council to consider whether or not the district should be divided into Māori wards.
- 9.10 If the Council decides to divide the district into one or more Māori wards then it must publicly notify that resolution and there is a public right to demand a poll in respect of that resolution with that poll result binding the Council.
- 9.11 There is a formula in the Act, based upon the population of Māori in the district which would set out the maximum number of persons to be elected by a Māori ward on to the Council. On the basis of the formula in the Act in Christchurch City there could only be a maximum one councillor to be elected from a Māori ward if the Council decided to establish such a ward.
- 9.12 If the Council takes no steps with regard the establishment of a Māori ward then 5 per cent of the electors of the Council (being all electors and not just Māori electors) may demand that a poll be held on the question of whether the district should be divided into one or more Māori wards. The result of that poll is binding upon the Council.
- 9.13 The Act now provides that if a person is nominated for both the Council and a Community Board and elected to both then the person must be treated as having vacated the office as a member of the community board. In that situation the Electoral Officer must give an amended declaration declaring the highest polling unelected candidate to be elected to the community board. If, during the term of the Council, a community board member is elected to the Council then that person is treated as having vacated office as a member of the community board with the result that an extraordinary vacancy occurs on the community board and a board by-election must be held.

Staff

- Recommendation:** 9A That, as a poll on the electoral voting system to be used by the Council at the 2004 elections is to be held in April 2003, the outcome of that poll be awaited before the Council considers the electoral review.
- 9B That the Legal Services Manager and Electoral Officer report to the Council at its May 2003 meeting regarding the electoral review.

Chair's

- Recommendation:** 1. That the above recommendations be adopted.
2. That all Councillors now be appointed pursuant to section 19F of the Local Elections Act to their respective Community Boards as follows:
- Burwood/Pegasus: Carole Evans, Gail Sheriff, Alister James, Chrissie Williams.
- Fendalton/Waimairi: Sally Buck, Pat Harrow, Barbara Stewart, Ron Wright.
- Hagley/Ferrymead: Anna Crighton, Denis O'Rourke, Erin Baker, David Cox.
- Shirley/Papanui: Megan Evans, Ingrid Stonhill, Graham Condon, Norm Withers.