

2. THE LOCAL GOVERNMENT ACT 2002 - POLICY ON SIGNIFICANCE

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The purpose of this report is for the Strategy and Finance Committee to recommend to the Council a Draft Policy on Significance to be included in this year's Draft Annual Plan.

INTRODUCTION

This policy on significance is being prepared to meet the requirements of the Local Government Act that such a policy be prepared and adopted before the close of 30 June 2003. In preparing and adopting the policy, the Council is obliged to use the Special Consultative Procedure as prescribed by the Act.

This policy covers three matters:

1. *Significant Activity* as referred to in sections 88 and 97 of the Act;
2. *Significant Decision* as referred to in section 76(3)(b) of the Act;
3. *Strategic Asset* as defined in section 5 and referred to in section 97.

It is important to note that the significance policy is about decision making in these three areas, not about all Council decision making. The vast majority of decisions made by or on behalf of the Council are not covered by this policy. They are, however, covered by the Act (section 76 (1)) and in making them appropriate consideration should be given to the options and the views of the community.

POLICY ON SIGNIFICANCE

Essentially, the requirement for the policy can be seen as being a means for ensuring that in making significant decisions the Council is:

- clear about why it is addressing a matter;
- has considered and evaluated the options and alternatives;
- has information on the community's views about the matter and the options for addressing it, and particularly it has an understanding of the views and preferences of those persons likely to be affected by, or have an interest in the matter;

and that the amount of time money and effort it puts into researching and evaluating these issues for any matter it is considering is commensurate with the importance (significance) of the matter to the community.

Both this policy, and the Act are about ensuring that decisions are taken after appropriate consideration of the options and of the views of the community. Neither requires the Council to undertake a consultation procedure on every decision it makes, nor requires the Council to be bound by the expressed views of persons likely to be affected by or interested in the decision being made. Both reinforce the Council's right to make decisions and its responsibility for the consequences of those decisions.

The approach taken in this policy is that the responsibility for deciding on the degree of significance of the matter being considered rests with whoever is making the substantive decision – usually the Council or a standing committee. That is, there is a three part decision to be made. The first two parts are:

- (i) In the light of the significance of this decision have we sufficient information before us on the benefits and costs of the options to decide;
- (ii) In the light of the significance of the decision are we satisfied that we know sufficient about and have given adequate consideration to the views of those who are affected by or have an interest in the decision being considered;

If the answer to the first two questions is 'yes' then the decision-maker can proceed to make the third decision:

- (iii) The substantive decision.

The policy enshrines that approach to the determination of the degree of significance and then provides guidelines on matters that influence the degree of significance of the decision being considered.

SIGNIFICANT DECISIONS AND THE LONG TERM COUNCIL COMMUNITY PLAN

While it is not explicitly in the attached draft policy it is probably good practice for the Council to, wherever practical, include its proposals for significant decisions in its Long Term Council Community Plan, or where that is not practical, in its Annual Plan. This has two advantages: it sets the proposal in the context of the Council's overall programme; and it ensures that the matter is put through a special consultative procedure.

The inclusion of a proposal involving a significant decision in a Long Term Council Community Plan or Annual Plan is not simply a matter of including the item as a line item in the plan. Rather what is required is a *statement of proposal* detailing the proposal, and evaluating its purpose, cost and benefits. The financial threshold in the attached policy is designed, in part, to set the level at which new expenditure proposed in a Long Term Council Community Plan or annual plan will be supported by a statement of proposal.

There will inevitably be significant decisions for which the timing requirements of the decision and the timetable for the Long Term Council Community Plan or Annual Plan will not be compatible. There will also be a raft of decisions that are not significant in terms of this policy where compliance with good practice and the decision making principles set out in the Act can best be met by processes outside the Long Term Council Community Plan or Annual Plan. An obvious example is a local road redevelopment proposal where a process to ensure the views of those affected or with an interest in the proposal are considered needs to concentrate on those living in or near the road in question.

SIGNIFICANT DECISIONS AND THE SPECIAL CONSULTATIVE PROCEDURE

Where significant decisions are being made outside the Long Term Council Community Plan or annual plan process, then the decision making committee will need to give careful consideration to the best ways of ensuring that the views of those affected by or with an interest in the matter are given consideration to. In most cases this will probably involve, amongst other things, some form of public consultation procedure.

In my view the Council should not shy away from using the special consultative procedure as set out in the Act. While on first glance it looks like a time consuming chore, and it will take a minimum of three months, if this time requirement is built into the programme at an early stage then it will usually not delay the overall decision making process. Further the information provision requirements are no greater than required for good decision making.

The advantage of using the Special Consultative Procedure is that the Council can be as assured as it is possible to be that it is immune to any challenge that it has not used proper procedure. Nor should this be seen as simply a procedural necessity as well designed consultation can often lead to better decisions being made and can strengthen and build the trust the community has for the City Council. I have not included a commitment to using the Special Consultative Procedure for consultation on significant decisions of city wide interest in the draft policy on significance, but the Committee may wish to consider doing so or of resolving to recommend that the Council use the Special Consultative Procedure for such decisions where appropriate.

SIGNIFICANT ACTIVITY

The relevance of defining what the Council considers to be a *significant activity* is that proposals to change the mode by which a significant activity is undertaken by or on behalf of the Council (e.g. from Council provided to provided by a Council controlled organisation) can only be done either via a statement of proposal in the Long Term Council Community Plan or using the special consultative procedure (section 88 of the Act). Also under section 97 a decision to significantly alter the intended level of service of a significant activity can only be made via a statement of proposal in a Long Term Council Community Plan.

Obviously it is neither practical nor sensible for minor changes and changes incidental to the provision of a significant activity to trigger these requirements. For example we would not want a situation where City Care losing a maintenance contract it currently has (i.e. a change from provision by a council controlled organisation to provision by another organisation) required a special consultative procedure. The policy therefore defines significant activity at the high level of 'each group of activities as they are grouped in the Long Term Council Community Plan or Annual Plan'.

A definition at this level means that it is a proposal to alter the mode of delivery of a major component of a significant activity¹ that triggers the need for a Special Consultative Procedure. Likewise it is a proposal to cease or add a major component to that significant activity² that is a decision to alter significantly the intended level of service of a significant activity.

This is intended to enshrine good practice and largely reflects the Council's current practice which is not to make such decisions without thorough evaluation and providing ample opportunity for people affected by or with an interest in the proposal to have their views heard and considered.

STRATEGIC ASSETS

Section 90 (ii) requires the Council to identify and list the assets it considers to be strategic assets.

In Clause 5 strategic assets are defined as:

***strategic asset**, in relation to the assets held by a local authority, means an asset or group of assets that the local authority needs to retain if the local authority is to maintain the local authority's capacity to achieve or promote any outcome that the local authority determines to be important to the current or future well-being of the community; and includes---*

- (a) *any asset or group of assets listed in accordance with section 90(2) by the local authority; and*
- (b) *any land or building owned by the local authority and required to maintain the local authority's capacity to provide affordable housing as part of its social policy; and*
- (c) *any equity securities held by the local authority in -*
 - (i) *a port company within the meaning of the Port Companies Act 1988;*
 - (ii) *an airport company within the meaning of the Airport Authorities Act 1966*

The importance of listing strategic assets is that Section 97 of the Act requires that decisions 'to transfer the ownership or control of a strategic asset to or from the local authority' or to 'construct, replace or abandon a strategic asset' can only be made via a statement of proposal in the Long Term Council Community Plan (or an amendment to it).

Presumably it is not the intention of the Act, and it is definitely not practical, for these requirements to be 'triggered' by e.g. the addition of a new road to the Council's network as a result of subdivision. As with the definition of significant activity the need is to list the strategic assets at such a level that it is major changes in ownership or control and major additions or abandonment of assets that go through the Long Term Council Community Plan process. That is the sort and magnitude of change that the Council would expect to make after extensive evaluation and consultation. The list therefore makes use of phraseology designed to make it clear it is the total asset that is considered strategic not individual components of it (e.g. 'The Christchurch City Roding network as a whole'). On the other hand that should still mean that a decision affecting a major component of the strategic asset is made within the context of a Long Term Council Community Plan.

The list of strategic assets included in the attached policy is very much a draft one, and the committee could usefully consider what changes it wishes to propose. In particular:

1. The Council's equity in the Selwyn Plantation Board has not been included in the list of strategic assets;
2. Nor has the Red Bus Company;

Do these assets fit the definition of strategic assets?

¹ e.g. events and festivals is an element of the sports, leisure and events significant activity. A proposal to provide all festivals 'in house' would be considered as the alteration of the mode of delivery of a significant activity. However a change of provider for an individual festival would not.

² e.g. To continue with the events and festivals example, a proposal to stop funding these as a group would be a proposal that significantly altered the intended level of service of a significant activity. However, decisions on the exact mix of festivals and events supported would not be considered to significantly alter the intended level of service.

PROCEDURE

The Local Government Act requires that the Council has in place its first Policy on Significance by the end of 30 June 2003. It also requires that the policy is subject to the special consultative procedure. It is proposed that this be done by including the draft policy in the Draft Annual plan. Hence recommendations resulting from the consideration of this report should go to the Council's Annual Plan meeting (25 March 2003) rather than to its regular March Council Meeting.

However, while the timetable for the Annual Plan provided for submissions to close at the end of May the days set aside for hearing submissions are not till late June and the Annual Plan is not due for final confirmation until 15 July. Therefore to enable the 30 June deadline to be met for the policy on significance it is proposed that a special meeting of the Strategy and Finance committee be held at the conclusion of the ordinary meeting on 16 June 2003 to hear these submissions. This will then enable the final policy to be recommended to the ordinary meeting of the Council on 26 June in order to meet the 30 June deadline.

Staff

Recommendation: That the Committee:

1. Approve the attached Policy in Significance (subject to amendments made at the meeting) for inclusion in the Council's Draft Annual Plan to be approved by the Council on 25 March 2003.
2. Consider and amend as it thinks fit the draft list of strategic assets and in particular determine whether the Council's equity (via CCHL) in The Red Bus Company and the Selwyn Plantation Board be included in the strategic assets.

Chair's

- Recommendation:**
1. That recommendation 1 be adopted.
 2. That the draft list of strategic assets be approved.