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Corporate Plan Output: Public Accountability	

INTRODUCTION

The purpose of this report is to address the following resolution passed by the Council at its meeting on 28 October 1999:

“That the Council resolve to seek a report from its officers on the feasibility of the Christchurch City Council implementing a system whereby local residents could require the Council to hold a referendum on a particular issue, such report to cover the issues set out in the Citizens Initiated Referenda Act 1993, the financial implications of such referenda and the basis on which decisions would be made as to which questions would be put to a Citizens’ Referendum.”

REFERENDA GENERALLY

Referenda have been used in New Zealand for more than a century as a means of making a decision on issues of public policy. The most common subject matter of referenda has been the liquor licensing issues over the course of the twentieth century and since the enactment of the Citizens Referenda Act 1993 there have been various matters put to the public.

With regard to local authorities, section 121 of the Local Elections and Polls Act 1976 provides:

121. HOLDING OF REFERENDUM WITH ELECTION--

- (1) A local authority may direct the Returning Officer to conduct a referendum on any matter relating to--*
 - (a) The services that are provided or that may be provided by the local authority; or*
 - (b) Any policy or intended policy of the local authority.*
- (2) More than one referendum may be conducted at the same time.*
- (3) The result of any such referendum shall not be binding on the local authority.*
- (4) The local authority shall determine whether the matter that is the subject of the referendum affects all or part of its district or region and shall direct the Returning Officer to conduct the referendum over all or some of the electors of the district or region accordingly.*

- (5) *A referendum may be conducted in conjunction with any election or poll or separately.*
- (6) *A referendum conducted pursuant to this section shall be deemed to be a poll.*

Apart from this reference there are no other statutory provisions as to the conduct of a referendum by a local authority.

I understand the thought behind the Council's resolution of 28 October 1999 is for a system whereby citizens of Christchurch could "demand" that the Council hold a referendum on a particular topic, whether or not the Council wished to hold a referendum. Further I understand that it would be the intention that, as with national referenda, any outcome of a particular referendum would not be binding on the Council. It is on this basis that I have approached this report.

It is my intention to consider the feasibility of a citizen demanded system of the Council holding referenda. It is not my intention to discuss the value of such a system and whether or not referenda would enhance the democratic process in Christchurch. Those issues are properly for elected members to decide.

I will consider in summary form the provisions of the Citizens Initiated Referenda Act 1993 and then the application of that system at a city level.

CITIZENS INITIATED REFERENDA ACT 1993

The 1993 Act provides that a petition seeking the holding of an indicative referendum can be presented to the House of Representatives. Such a petition can be by one or more persons and it is intended to specify the question that is proposed be put to the voters. Each petition can only relate to one question.

A person proposing an indicative referendum petition must submit the proposed question, accompanied by a draft of the proposed petition, to the Clerk of the House of Representatives.

The Clerk is then required to advertise the proposal, including the wording of the questions, and call for comments. Following consideration of submissions received and consultation of the comments the Clerk must decide the wording of the "precise" question to be put to voters in the indicative referendum. The question must ensure that only one of two answers may be given to it.

On being notified by the Clerk of his approval the promoter of the petition then proceeds to promote it and collect the required number of signatures on approved forms. The petition must be signed by not less than 10% of eligible electors in New Zealand. All expenses relating to the printing of the petition and its promotion are to be met by the promoter.

The promoter must deliver the petition to the Clerk within 12 months after publication of a notice advising of the Clerk's approval of the proposal and the Clerk must then certify that the petition has been signed by the required number of eligible electors. If there are insufficient electors the promoter may collect more signatures within a two month period and resubmit the petition.

Upon receipt of a certified petition the Governor General must, within a month, appoint the day on which the referendum is to be held. Such date must be within 12 months after presentation of the certified petition to the House of Representatives.

There are provisions for the House to defer holding the referendum so that it can be held in conjunction with a general election and the 1993 Act also contains the mechanics for the holding of the referendum, the publicity that may be given to it, limits on expenditure promoting the referendum and the duties on returning officers. All expenses incidental to the holding of the referendum, except for the expenses of the promoter in relation to the proposal and collecting of signatures, is to be met out of public money. Nothing in the 1993 Act requires Parliament to act on the outcome of any referendum.

The 1993 Act provides no specific guidance as to the scope or nature of the permitted subject matter of a referendum and there is no limit on the subject matter to matters which are competent or appropriate for the New Zealand Government to action. It would appear that the only barrier in this regard are the expenses of promoting the petition on the promoter which would regulate frivolous proposals.

The only express provision in the Act regarding subject matter is that the Act states that a petition cannot deal with:

- (a) the subject of an election petition under the Electoral Act 1993 in relation to Parliamentary elections; or
- (b) a petition relating to the conduct of an indicative referendum itself.

CITY COUNCIL SYSTEM

It would be technically feasible to have a similar system at a local authority level.

Such a system could be based upon a petition being made by one or more persons to the Council, that a person appointed by the Council (and I will refer to this matter below) would settle the question so that it is capable of only one answer, and that upon receipt of a petition signed by X% of eligible electors in Christchurch City then the Council would hold a referendum at a time it specified or in conjunction with the triennial local government elections. As with the national referenda, the result of any referendum at a local level would not be binding on the Council.

Regarding the number of persons required to trigger a petition, the system would have to be persons who are registered on the electoral roll and eligible to vote in City Council elections and polls. Presently there is a total of 223,552 persons, being residential electors and ratepayer electors.

The 1993 Act has 10% as the number required to demand a referendum. In the Christchurch context that would be 22,385 persons across the City. Alternatively a higher or lower percentage could be required.

The approximate cost to hold a stand alone referendum is \$300,000 and this arises principally through the cost of mailing the voting paper to all eligible electors in Christchurch. If a referendum was held in conjunction with the local body elections the cost of the referendum would be approximately \$50,000.

A key role in any citizens initiated referendum system at the local level would be the person who determines the wording of the precise questions to be put to the voters in a referendum. As noted above the 1993 Act requires that the question must be such as to convey clearly the purpose and effect of a referendum and such as to ensure that only one of two answers may be given to the question. There is no equivalent in any local authority context to a position such as the Clerk of the House of Representatives.

While the Clerk is an officer of Parliament he is seen as being independent of the Government of the day in terms of making a decision on the question to be put to the voters.

The closest analogy in a local context would be the position of the Returning Officer. That would be one option or alternatively some other Council officer who has the confidence of the Council to act in an independent manner could be appointed to the task of settling the question to be put to the voters.

I also believe that if there was to be a local system then there would have to be stricter criteria regarding the subject matter of any referendum. Given that such referenda are relatively expensive it would be appropriate to ensure that the subject matter was something upon which the Council was capable of acting if it choose to accept the result of a referendum. In that regard it could perhaps be appropriate that the person who decides the form of the question would also be empowered to make a decision on whether or not the question was one which the Council was able to act upon.

As with a national referendum it would be a matter for the promoter of a local referendum to meet the expenses of obtaining the signatures of the required percentage of the voters of Christchurch to the petition for referendum. The checking of those signatures could be carried out by the Council as is the case at present with other situations where the Council can be receiving petitions, for example in an amalgamation request.

I would envisage that the mechanics of the conduct of the referendum itself would be those used for the carrying out of a poll and which are presently set out in the Local Elections and Polls Act 1976. An issue that would need to be considered further would be the grounds upon which the result of a referendum could be challenged through the courts as is presently provided for in other types of polls. In this regard clearly there could be additional expense for the Council. At the national level there has been one judicial review of the Clerk's decision to determine the question to be put to electors and that is a potential expense which could also occur at the local level.

As with the public service, Council units would have a neutral role in providing assistance on the formulation of the question which would be the subject of a referendum. However, it may be that at times a Council response to a proposed referendum could be considered appropriate. Such a response could involve a declaration of support for the proposal, an indication of willingness to take account of public debate over the issue, rejection of the proposal or the provision of information that might assist the debate.

If the Council was minded to support the proposal then an approach could be made to the promoter in that regard so as to avoid the need for a referendum to be held.

CONCLUSION

It is feasible for a system for the holding of local referenda to be initiated by the Council providing the Council is willing to fund the potential expenditure that is involved.

At the present time a local authority is empowered under the Local Elections and Polls Act to hold referenda on any matter that it chooses to do so. So a voluntary system as provided for in the 1993 Act could be adopted by the Council with some modifications and applied to the existing legal provisions. However, those existing provisions are dependent entirely on the willingness of the Council to fund any referendum proposal which it receives.

If the Council desired to have a system whereby electors could demand as of right a referendum provided the required signatures were obtained then in that regard the Council could promote a local bill which would be drafted in the format of the 1993 Act at a local level.

The City Manager commented:

The following section deals with the potential purpose and some of the implications of citizens referenda.

Firstly, the purpose. Most of the commentary and academic analysis of referenda procedures is written in the context of the use of binding referenda. As noted by Mr Mitchell, our legislation explicitly states that referenda are not binding, although statutory change could be introduced. It is argued by some that referenda processes, particularly binding referenda, are somehow “more democratic”. Others dispute this, pointing out that there are differing concepts of democracy, namely participatory democracy and representative democracy. The democratic model on which governance is based in New Zealand is of the representative mode. As elected members are well aware, they are held accountable to those on behalf of whom they exercise power and make decisions through the electoral process. This is not “less democratic” than a system based on use of plebiscite, it is just different.

There are significant accountability issues which arise when the two systems are mixed. There is a loss of accountability when a governing body such as a council has key decisions taken from it and determined by binding referenda. This is why the New Zealand approach has been for Parliament or councils not to be bound by referenda but for a referendum to be an input to the decision-making process rather than superseding the accountability of elected members.

Given this there are two potential purposes for citizens initiated referenda: a mechanism for raising issues which the Council has not addressed and a mechanism for providing input as to community attitudes on a specific issue. It is therefore relevant to review the extent to which our existing processes and mechanisms provide for issues to be raised with Council and community views to be canvassed.

The following are among the ways in which issues can be raised by Christchurch citizens for consideration by Council:

- petition to community board or Council
- delegation, seeking speaking rights at a meeting
- submissions on Annual Plan
- approach to an officer in person, (including one of the community or other advocates) in writing or by telephone
- approach to an elected member
- complaint to the Ombudsman or Audit office on use of legal remedy

The following are all ways in which the views of citizens can be and are canvassed by Council during decision-making process:

- consultation on the Annual Plan
- consultation on a specific policy draft, programme or project proposal
- consultation with interest groups, residents groups, community boards, etc.
- annual citizens survey and other statistically significant survey methods
- special consultative procedures under the Local Government Act

Given the New Zealand governance framework, the key reasons for seeking increased use of referenda would be if it led to appropriate issues being raised which are not otherwise considered by the Council, or provided a significantly better quality of input of community views to decision-making than is available with current methods.

Two other matters should appropriately be raised, firstly, the relatively high cost of referenda, not simply the polling cost of approximately \$300,000 per ballot in Christchurch, but also the marketing cost of providing information and raising of awareness for a ballot. Secondly, the technical difficulty of wording sometimes complex issues in a closed way so as to secure a 'Yes' or 'No' response.

Recommendation: That the City Council and Community Boards continue to develop practice for effective community consultation but not in the area of city-wide referenda.