

12. COUNCIL DECISION-MAKING - AUDITOR-GENERAL'S LETTER

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PURPOSE OF REPORT

1. This is the report requested by the Council at its meeting on 13 October 2005 in response to concluding remarks made by the Controller and Auditor-General in a letter to the Council dated 12 October 2005 regarding the renovation of the Council Chamber.

BACKGROUND

2. In 2005 the Auditor-General considered a complaint regarding the renovation of the Council Chambers.
3. In a letter dated 12 October 2005 the Auditor-General made a number of conclusions regarding the renovation project and made these concluding remarks:

"We have concluded that Council should have explicitly and formally approved the letting of the two contracts because of Council's standing resolution – that expenditure on the Tuam Street Civic Offices be restricted to "essential maintenance". We also note that in these circumstances where Council had appeared to approve the expenditure the actions of the Chief Executive and General Manager – Corporate Services were reasonable.

However, this situation reflects a need by the Council to consider the adequacy of its decision-making processes. In our view, attention to the following points is important to ensure all involved – including staff – are not unnecessarily exposed to challenge and criticism.

- *When decisions – such as the "essential maintenance" resolution – are made, their context and practical implications need to be considered at the time of making the resolution. In the case of the Tuam Street Civic Offices, the essential expenditure implications of ongoing occupancy should have been more comprehensively considered on 18 March 2004, or else the resolution held over until a complete analysis could be completed.*
- *Informal meetings are useful as a means of sharing information and they should be restricted to this purpose. Care needs to be taken that such meetings do not become de facto decision-making fora – whether, as in the case of Tuam Street Civic Offices, through implication or by actual decisions being made at them. Formal decisions should be resolved and recorded in the appropriate forum."*

4. At its meeting on 13 October 2005 the Council resolved that the letter be received and that the Executive Team be requested to report back to the Council on the implications of the Auditor-General's response. From discussion at that Council meeting it was clear that the report was to discuss the Auditor-General's concluding remarks.
5. This report is to consider the three general points raised by the Auditor-General in these concluding remarks which are:
 - (a) a need by the Council to consider the adequacy of its decision-making processes
 - (b) that the context and practical implications of decisions are considered at the time of making the resolution by the Council
 - (c) that informal meetings should be restricted to sharing information and do not become de facto decision-making fora.
6. By implication these same points would be equally applicable to decision-making by the community boards.
7. Each of these points will now be considered in turn.

Adequacy of Decision-Making Processes

8. The Local Government Act 2002 contains a number of new provisions regarding planning and decision making by the Council. In particular there are requirements that the Council in decision-making:
 - seek to identify all reasonably practicable options for the achievement of the objective of a decision
 - assess those options by considering—
 - benefits and costs of each option
 - extent to which community outcomes would be promoted
 - impact of each option on the Council's capacity to meet present and future needs
 - any other matters that in the opinion of the Council are relevant.
9. Clearly with regard to the last bullet-point, previous resolutions of the Council that are relevant would need to be included in that decision-making process. Section 80 of the Act also requires that if a decision of the Council is significantly inconsistent with, or is anticipated to have consequences that would be significantly inconsistent with, any policy or plan the Council has then the Council in making its decision must identify that inconsistency, the reasons for it and the intention of the Council to amend the plan or policy to accommodate the decision.
10. As Councillors will be aware, since the new Act came in, there has been a change in the format of the reports and advice provided to the Council by staff which is intended to meet the requirements of the new Act. In addition, a manual entitled "Decision-Making Guide" (a copy of which is tabled) has been prepared by Council staff to assist staff in working through the practical issues involved in the new decision-making requirements. All staff who prepare reports for the Council have been advised of and are trained in the use of the decision-making manual and the new decision-making requirements in the Local Government Act.
11. Where appropriate, the manual also includes reference to policies or plans adopted by the Council, such as the policy on significance and the community views contained in the Long Term Council Community Plan. Those documents are important in providing advice to the Council.
12. While intended primarily as a tool for staff, it is considered appropriate, given that the issue has been raised in the Auditor-General's letter, that the Council resolve to endorse the use of this manual as a means of achieving compliance with the decision-making processes set out in Subpart 1 of Part 6 of the Local Government Act 2002.

The Practical Implications of Making Resolutions

13. The Auditor-General has stressed that when the Council passes resolutions their context and practical implications need to be comprehensively considered at the time. He has also clearly indicated that an option is that a resolution not be passed until a "complete analysis" can be completed.
14. Certainly where staff are drafting a report with recommendations which can lead to resolutions there is time for a complete analysis to occur.
15. It is considered there are two areas of potential risk where in practical terms it may be difficult for a complete analysis of a resolution to be passed by the Council. Those two areas are deputations and notices of motion/amendments at a meeting.

(a) Deputations

It is well established that decisions cannot be made upon hearing a deputation by the Council or a community board. By its very nature the Board or Council will not have before it any staff advice regarding the matters raised by the deputation, and also there can often be a need to seek other views on the issues raised by the deputation which cannot be done at the time of the meeting. In that situation the appropriate response is for the Board or Council to advise the submitters that it will seek staff advice on the matters raised by the deputation.

(b) **Notices of Motion/Amendments**

The Standing Orders currently provide that an elected member has a right to move a notice of motion or an amendment at a meeting.

With notices of motion, Standing Orders (S.O. 2.16.2) provide that the Chairperson of the meeting is empowered to direct the Chief Executive to refuse to accept a notice of motion which is

- “(a) Disrespectful or which contains offensive language or statements made with malice; or*
- (b) Not, in subject, within the scope of the role or functions of the local authority; or*
- (c) Contains an ambiguity or a statement of fact or opinion which cannot properly form part of an effective resolution, and where the mover has declined to comply with such requirements as the principal administrative officer may make.”*

While there is a requirement for a notice of motion to be delivered at least five clear days before a meeting, it is common practice for notices of motion to be dealt with by the Council or a community board in a similar way to deputations in that they are referred to staff for full advice. In that way there is the ability for an elected member to have an issue raised before the Council or Community Board and if the Council or Community Board, by majority view, believes that there is value in having staff resource allocated to following up the issues raised in a notice of motion, then the staff will implement the Council or Board resolution to report back on the matter. However, if the Council or Community Board believes that there is no such value in seeking further information, then that is the end of the matter.

16. It will be appreciated that from a staff perspective there is always the issue of the prioritisation of these matters alongside other work that the Council has already asked the staff to carry out in implementation of its annual work programme, and on occasions it may be necessary for staff to report back to the Board/Council advising of this and seeking clarification regarding prioritisation of issues.
17. As identified by the Auditor-General, there is an area of risk for the Council where an elected member expects a notice of motion or an amendment to be passed into a resolution at the meeting where the notice of motion or amendment is to be discussed. In that context, there can be insufficient time for staff to properly advise the Council on the notice of motion or amendment and there is always an issue of judgement at the time as to the “practical implications” the notice of motion or amendment will have for the Council. For example, an amendment to hold the rates at a particular level tabled at an annual plan meeting, clearly would have very significant practical implications in terms of staff being able to properly advise the Council on the implications of such an amendment. Other amendments may be quite easily advised on without difficulty by the staff.
18. While the Council could maintain the status quo and not change any of its processes, to cater for the area of risk regarding the Council being properly advised of the “practical implications” of a proposed notice of motion or amendment identified by the Auditor-General in his letter, it is considered that one way to address this situation would be for the Standing Orders to be amended so that the Chair is given the ability to defer consideration of a notice of motion or amendment until staff are able to properly advise the meeting on the implications of the notice of motion or amendment at a subsequent meeting.
19. Clearly, this may have an effect on some types of notices of motion or amendments if they are time-sensitive, but given the comments by the Controller and Auditor-General, it is believed that the Council needs to address this issue. It should also be noted that while the right of an elected member to move a notice of motion or amendment has been in place for many years, there is now a changing environment in that Parliament has placed new decision-making obligations on the Council that are contained in the Local Government Act 2002. These decision-making requirements in terms of the identification of options and the analysis of costs and benefits may well mean that on some occasions it is simply not practical to provide advice to the Council on a notice of motion or amendment at the meeting when the notice of motion or amendment is moved.

20. It is considered appropriate for the Council to consider at a seminar amending its Standing Orders so as to clarify the position that where a notice of motion or an amendment is received by the Council, then the Chair has the ability to defer but not to rule out of order, consideration of that notice of motion or amendment until proper advice can be received. Clearly there will be an element of judgement involved in making this decision and it is considered that the Mayor would only make that decision on the advice of the Chief Executive or a General Manager at the meeting.
21. The other situation that may arise is where it is realised by staff or elected members after the event that a resolution passed by the Council on the basis of a notice of motion or amendment may have practical implications that were not in the minds of Councillors when the notice of motion or amendment was debated.
22. In that situation Council officers believe that it is appropriate that advice is brought before the Council to set out the practical implications of the Council's resolution and depending on the circumstances to revoke or alter that Council resolution if the majority of the Council so agrees. In that situation officers will be proactive in this matter and will raise the issue again with Councillors if the officers believe there is a need to report back on the matter. It is important that Councillors recognise that the officers are raising these issues again in the best interests of the Council and to ensure that the implications of resolutions are carefully thought through. When officers do this it should not be considered by Councillors that it is a situation where officers are trying to revisit a particular issue, particularly if in the circumstances the original advice provided by officers to Councillors had not been accepted.

Informal Meetings

23. The comments made by the Auditor-General regarding the fact that while informal meetings are useful as a means of sharing information, they cannot become decision-making fora is entirely correct and cannot be disagreed with. Decisions on matters need to be made either by the Council, or by community boards or officers acting under delegated authority conferred by the Council. Officers will be proactive in drawing to the attention of Councillors if they believe that there are situations whereby non-decision-making fora are in effect used for that purpose.

Conclusion

24. In conclusion, it is considered that the Auditor-General's letter is a timely reminder regarding the importance of having robust decision-making processes and that certainly in the context of the new processes under the Local Government Act 2002, there is a need for the Council to carefully consider the relationship between long-standing practices around notices of motion and amendments and how they fit within the decision-making processes now required of the Council by Parliament.
25. It is appreciated that any suggestion to increase the role of the Chair to provide how those notices of motion or amendments are dealt with, is a sensitive one but it is important in terms of the governance structure of the Council for a discussion to take place.
26. It is considered that the suggestion above that the Standing Orders be amended so as to provide for the situation where the Chair has the ability to delay (but not to defer) consideration and debate around a notice of motion or amendment, is a balanced response to the points raised by the Auditor-General in his letter on this topic.

STAFF RECOMMENDATIONS

- (a) That the Council endorse the use of the "Decision-Making Guide" as a means of complying with the decision-making requirements of the Local Government Act 2002.
- (b) That the Council request staff to prepare amendments to the Standing Orders to provide for the Chair to be able to defer notices of motion or amendments where in his or her opinion it is necessary to do so to enable proper decision-making processes to be adhered to.
- (c) That a Council seminar be held to discuss these amendments to the Standing Orders before any changes to Standing Orders are brought to the Council for consideration.