

3. ESTABLISHMENT OF SUBMISSIONS PANEL

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PURPOSE OF REPORT

1. The purpose of this report is to seek approval to establish a subordinate decision-making body, the "Submissions Panel", to consider, amend and approve submissions on behalf of the Council on proposed legislation, strategies, policies and plans, where the submissions require Councillor input.

EXECUTIVE SUMMARY

2. The current submissions procedure was established in late 2007. It aims to improve the coordination of Council's submissions to external organisations, and ensure that:
 - (i) the Council is aware of proposals by external organisations that may affect it; and
 - (ii) that submissions are lodged, at an appropriate level (staff, organisation, or Council) on issues of significance.
3. The procedure has, in general, been effective, but due to the short timeframes of many consultation periods (three to four weeks), it has often proved difficult to get timely input from Councillors into Council submissions.
4. On 29 May 2008, the Regulatory and Planning Committee considered a report from the Council Secretary seeking to establish a Legislation and Submissions Committee.
5. The Regulatory and Planning Committee requested that staff develop a model of the proposed committee for evaluation. In particular, Councillors asked for fuller consideration to be given to the scope of any committee, the level of delegation, and how the committee might operate to ensure it remains timely and responsive. Staff were also asked to consider how this committee would integrate with the existing submissions procedure.
6. To ensure that Council submissions are considered and approved by the Council in a timely manner, this report discusses the advantages and disadvantages of two possible decision-making bodies:
 - i. a subcommittee of Council; or
 - ii. a subordinate decision-making body ("the Panel").
7. This report suggests that, due to the need for the timely delivery of submissions, the Regulatory and Planning Committee recommend to Council that it:
 - establish a panel made up of four Councillors;
 - delegate authority to the Panel to consider, amend and approve Council submissions on all relevant bills and regulations; local, regional and central government strategy and policy reviews; Long-Term Council Community Plans and Annual Plans of other authorities; and the strategies and policies of key partners; and
 - provide that the Panel is not discharged following the next triennial local government general election.
8. To ensure that all elected members have input into Council submissions, staff will, where possible, send out draft Council submissions for feedback prior to the Panel meeting. Any elected member feedback would need to be given in a timely manner. If this is achievable in the timeframe given, staff will be able to present this feedback to the Panel for their consideration.
9. The Panel would not consider submissions under the Resource Management Act 1991, for which specific delegations under that Act already exist.
10. It is not anticipated that the Panel would be considering more than 15 submissions over a year long period, based on figures from August 2007 to July 2008.

LEGAL CONSIDERATIONS

11. Under Clause 30(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002), the Council can delegate powers to a subcommittee or subordinate decision-making body, such as the power to consider, amend and approve submissions on behalf of Council.
12. Further discussion of the legal considerations and advantages of establishing a submissions panel over a subcommittee of Council are included in the options section.

FINANCIAL IMPLICATIONS

13. If either option is accepted by Council meeting fees will not apply, as the Council has adopted a salary-only model of remuneration.
14. If the Regulatory and Planning Committee recommends either option, agenda and printing expenses will be met from the Democracy Services Unit's existing budget. However, the public notification costs required with a subcommittee of Council are not required with the establishment of a panel.

DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

15. Yes.

DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH STRATEGIES AND POLICIES

16. The recommendation is consistent with the principles of the Governance Statement, especially s.2, 3 and 4 – and with s.6 on Roles and Conduct of Elected Members.

CONSULTATION FULFILMENT

17. No consultation is required.

BACKGROUND (THE ISSUES)

18. From 1998 to 2004, a subcommittee of the former Strategy and Finance Committee had delegated authority to:
 - (a) approve submissions on proposed legislation;
 - (b) review and make recommendations to the Council on charges to Standing Orders as necessary; and
 - (c) provide instructions to staff on the contents of Local Bills promoted by the Council.
19. At present the Council operates a tier system of submission making: Council submissions (including submissions on all Bills), organisational submissions, and staff submissions. In some instances where multiple periods of consultation are undertaken, a topic may be submitted on through one or more mechanisms (eg an initial staff comment, a more formal organisational submission on a discussion paper, and a Council submission on a formally proposed policy).
20. All consultation opportunities are evaluated by staff, and the Chief Executive approves how any specific topic should be addressed. The following guidance is in place to assist the Chief Executive in making this decision.
 - (a) **Council Submissions** are approved by Council. A Council submission should be made when:
 - the submission would require Council to determine a policy position. This may occur if there is no existing policy covering the matter, or an existing policy needs to be reviewed or re-confirmed in light of the matters being considered;
 - the matter being consulted on has the potential to significantly impact on Council's community outcomes or existing strategy or policy; and
 - there are significant potential financial implications for Council.
 - *Note:* all submissions on bills are Council submissions where the proposed legislation is relevant to Council.

(b) **Organisational Submissions** are approved by the Chief Executive, rather than Council. Organisational submissions are appropriate where:

- there is existing Council policy and this is reflected in the submission; or
- the matters being submitted on impact at the operational level rather than the governance level.

In some circumstances, an organisational submission may be made to provide staff views on policy matters at an earlier and informal stage of policy development. The decision on whether Council approval is required is made by the Chief Executive or appropriate General Manager.

(c) **Staff Submissions** are approved by the appropriate General Manager. Staff submissions should be confined to matters of technical or operational detail.

21. In addition to the above, the level of submission may need to be escalated to a higher level if:

- there is a strong political interest in the matter or it requires advocacy at the political level; or
- there is a need for the submission to carry greater weight to effect the desired outcomes (ie a more formal response is needed to emphasise the importance of the matter).

22. In the last year, only 23 per cent of requests for consultation have been taken up for submission. Of these, 38 per cent were responded to as staff submissions, 33 per cent as organisational submissions, and 29 per cent as Council submissions.

23. While the submissions process has improved the prioritisation and coordination of submissions, it has proved difficult on occasion to get formal Councillor input into, and approval of, Council submissions in the time available for consultation. This is because:

- many consultation periods are only three to four weeks in total;
- the preparation and management approval of a draft submission may take up to three weeks, making it difficult to meet agenda, printing and circulation deadlines of Regulatory and Planning Committee or Council meetings; and
- Regulatory and Planning Committee and Council meetings may not coincide with the consultation deadline, and agendas may already be full.

THE OBJECTIVE

24. To ensure that Council submissions are considered and approved by Council in a timely manner.

THE OPTIONS

25. This report presents two options for the Regulatory and Planning Committee to consider to achieve this objective.

(a) Set up a **subcommittee of Council** to consider, amend and approve Council submissions. A subcommittee of Council – as a formal body of Council - would be subject to the rules in Part VII of Local Government Official Information and Meetings Act 1987 (LGOIMA) relating to public notice, the right of public attendance, and the availability of agendas, reports and minutes.

(b) Set up a **submissions panel (as a subordinate decision-making body)** to consider, amend and approve Council submissions. A subordinate decision-making body of Council could be delegated the authority to approve Council submissions, and as a body of Council its considerations and decisions would be available to the public as they are “official information” for the purposes of LGOIMA.

26. The preferred option is (b) the establishment of a **submissions panel**, as it is the most flexible means to ensure transparent and timely Council approval of Council submissions.

27. The Panel option provides the required flexibility, while a subcommittee of Council would not be as flexible. A subordinate decision-making body has not been used before but provides a flexible mechanism that would suit the unpredictable nature of the submissions process. Arguments over relative transparency are relevant but not significant given the purpose of the decision-making body, the material which is available to the public, and the reporting function of the Panel, as recommended in this report. Public attendance can be provided for if the Panel wishes. Furthermore, if it is a controversial matter which is being discussed the Panel may wish to refer it to Council to consider, amend and/or approve.
28. The below table sets out the advantages and disadvantages of establishing a panel or subcommittee of Council.

	Subcommittee of Council	Submissions Panel
Flexibility		
Ability to meet at short notice	If scheduled: Limited to scheduled weekly meetings. Potential for regular cancellations. Would need to meet cancellation-associated costs. If not scheduled: a minimum of five working days for public notices and two working days for agendas to be distributed to members. These may be waived if urgent meetings are required.	Members can be called together at any time.
Transparency		
Public access to information	All information is available and can be inspected by the public. Agendas available prior to meeting.	All information is available and can be inspected by the public.
Public notification	Required. If this body is to be flexible, public notices will not meet the legal time requirements set out in Part VII of LGOIMA, although as noted above these may be waived if urgent meetings are required.	Not required.
Public attendance	Public attendance provided for but public can be excluded (subject to Part VII of LGOIMA).	Public attendance is not explicitly provided for and would be at the discretion of the Panel.
Financial		
Notification costs	Would apply	Would not apply

Function and Scope

29. The function of either a panel or subcommittee of Council would be to consider and approve Council submissions on all relevant bills and regulations; local, regional and central government strategy and policy reviews; Long-Term Council Community Plans and Annual Plans; and the strategies and policies of key partners (eg Ngāi Tahu, Canterbury District Health Board etc).

Level of Delegation

30. Either decision-making body would need to have delegated authority to:
- consider Council submissions prepared by staff;
 - provide direction to staff on the contents of Council submissions;
 - approve Council submissions; and
 - refer any proposed submission to Council for its consideration and approval, where it considers the matter to be of particular significance, or where the Committee is unable to confirm the Council's position on an issue before it.

Final Decision

31. In delegating authority to either a panel or subcommittee of Council, the Council cannot rescind the decisions of these decision-making bodies. In both cases approval of submissions will require a majority of those present.

Membership

32. Staff recommend that, to facilitate the timely organisation of meetings, a panel or subcommittee of Council be limited to four Councillors. A quorum of two members is suggested for either body.

Meeting Frequency

33. Staff anticipate that such a decision-making body will need to have unscheduled meetings with the expectation that the Democracy Services Unit staff can set up a meeting with members on demand. The members chosen for this subcommittee would need to be flexible enough to meet at short notice and it is anticipated that there may be times when meetings are required each week, depending on consultation period timeframes.

Gaining Elected Member Feedback

34. To ensure that all elected members have input into Council submissions, staff will, where possible, send out draft Council submissions for feedback prior to the Panel meeting. Any elected member feedback would need to be given in a timely manner. If this is achievable in the timeframe given, staff will be able to present this feedback to the Panel for their consideration.

Reporting to Council

35. It is recommended that the Chairperson of the decision-making body, or Deputy Chairperson if necessary, provide an oral report as a standing agenda item, to Council once a month with a summary of submissions considered by the body. Copies of finalised submissions would be available to Councillors and the public. This would help the Panel be accountable to Council and the public. Otherwise the decision-making body's report would need to be lodged with the Democracy Services Unit three weeks before a Council meeting.

Secretarial Services

36. The Democracy Services Unit will provide secretarial support to either decision-making body. A subcommittee of Council would require formal public notification whilst a panel would not. This means there will be some extra cost and possible delays with the subcommittee option. Agenda papers will be distributed no less than five working days prior to the meeting, where possible. There may be times, however, where reports and draft submissions are not delivered until the day of the meeting.

Terms of Reference

37. A proposed Terms of Reference for a panel – as the recommended option – is **attached** for Council approval.

Legal Considerations

38. Under clause 30(1) of Schedule 7 of the LGA 2002:

“A local authority may appoint –

- (a) the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate...”*

39. Clause 32 allows for delegations to be made by the Council to a subcommittee or subordinate decision-making body, as follows:
- "Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except..."* [decisions on submissions is not one of the exceptions].
40. It should also be noted that clause 30(6) provides:
- "...(6) Nothing in this clause entitles a local authority or committee to rescind or amend a decision made under a delegation authorising the making of decision by a committee, a subcommittee, or another subordinate decision-making body."*
41. The reference to other subordinate decision-making bodies in clause 30 of the LGA 2002 is new. The Act does not further define what is meant by this term, but it must be something other than a committee, subcommittee or joint committee, and it must also be a "body" which is subordinate to the Council and has a specific decision-making function.
42. The meaning of this term has not as yet been tested in the Courts, but the Department of Internal Affairs has informally advised that the inclusion of "subordinate decision-making bodies" in the LGA 2002 was the result of an explicit intention to provide for greater flexibility concerning internal governance arrangements, and not to restrict or bias options in favour of committees or subcommittees.
43. The rules in Part VII of LGOIMA (which deal with issues such as public notice, the right of public attendance, the availability of agendas, reports and minutes) do not apply to subordinate decision-making bodies, but would apply to a subcommittee. This is because the definition of "meeting" in section 45 of the LGOIMA does not refer to meetings of other subordinate decision-making bodies.
44. Utilising a subordinate decision-making body does not prevent the Council from being accountable and transparent in decision-making. The Council can establish appropriate terms of reference for a subordinate decision-making body, covering matters such as the quorum, how its meetings should be run, the limits of what the members could do and their responsibilities, and how it should report back to Council.
45. Pursuant to clause 30(7), the Council may wish to provide that the desired decision-making body is not discharged following the next triennial general election, which would allow it to keep "working" on Council submissions over that election period, if necessary.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Establish a Submissions Panel (as a subordinate decision-making body).
- (b) Delegate to the Panel the power to:
 - consider Council submissions prepared by staff on all relevant bills and regulations; local, regional and central government strategy and policy reviews; Long-Term Council Community Plans and Annual Plans; and the strategies and policies of key partners;
 - provide direction to staff on the contents of Council submissions;
 - approve Council submissions; and
 - refer any proposed submission to Council for its consideration and approval where the Panel is unable to confirm the Council's position on an issue before it.
- (c) Approve the **attached** Terms of Reference.
- (d) Require that the Chairperson of the Panel, or the Deputy Chairperson if necessary, provide an oral report as a standing agenda item, to Council each month, with a summary of submission(s) approved by the Panel, and a brief summary about the consultation(s).
- (e) Provide that the Panel is not discharged following the next triennial local government general election.
- (f) Appoint a Chair, a Deputy Chair and the two Councillors as members of the Panel.
- (g) Affirm that the delegation does not include submissions on matters under the Resource Management Act 1991, for which delegations already exist.

COMMITTEE RECOMMENDATIONS

It is recommended that the Council:

- (a) Establish a Submission Panel of at least four members (as a subordinate decision-making body).
- (b) Delegate to the Panel the power to:
 - consider Council submissions prepared by staff on all relevant bills and regulations; local, regional and central government strategy and policy reviews; Long-Term Council Community Plans and Annual Plans; and the strategies and policies of key partners;
 - provide direction to staff on the contents of Council submissions;
 - approve Council submissions; and
 - refer any proposed submission to Council for its consideration and approval where the Panel is unable to confirm the Council's position on an issue before it.
- (c) Approve the **attached** Terms of Reference.
- (d) Require that the Chairperson of the Panel, or the Deputy Chairperson if necessary, provide an oral report as a standing agenda item, to Council each month, with a summary of submission(s) approved by the Panel, and a brief summary about the consultation(s).
- (e) Provide that the Panel is not discharged following the next triennial local government general election.
- (f) Appoint a Chair, a Deputy Chair and the two Councillors as members of the Panel.
- (g) Affirm that the delegation does not include submissions on matters under the Resource Management Act 1991, for which delegations already exist.
- (h) Provide for all councillors to be circulated with the draft submissions and Panel meeting times to enable their respective attendance at Panel meetings if possible.