

REPORT 3
(1215/52/IM)

REPORT BACK ON THE DRAFT EARLY CHILDHOOD CENTRES POLICY CONSULTATION

1. Purpose of Report

This report presents:

- feedback from the public consultation undertaken on the Draft Early Childhood Centres Policy
- the amended Early Childhood Centres Policy (Appendix 2) for Committee agreement to be referred to the Council for adoption.

2. Executive Summary

The Draft Early Childhood Centres Policy was publicly consulted on from 12 December 2008 through to 27 February 2009. Eighteen submissions were received.

The submissions have been analysed and subsequent amendments to the policy are proposed, including clarification of:

- (a) the definition of income – so that it includes fees and donations that constitute payment for childcare services from parents and other payments including subsidies from Work and Income New Zealand.
- (b) how rent will be assessed - noting that it will be calculated on the revenue attributable to each centre and assessed based on the previous years revenue. At the end of each year a reconciliation against the current year's actual revenue is completed and either a refund or additional payment may be required.
- (c) how asset investment will be recognised - asset investment varies between centres and will be considered on a case-by-case basis with a focus on alterations that add value to the premises (particularly those that reduce costs to the Council).
- (d) how all leases will be reviewed on a case-by-case basis for the purpose of rental determination that may take into account a range of factors including previous investment in the property and maintenance requirements.

- (e) the financial information that is required annually, i.e. reviewed or audited accounts.
- (f) lease arrangements, the lease negotiation process, compliance and maintenance requirements, including:
 - land designation, property legislation and building compliance requirements;
 - negotiation of a new lease with the centre when a centre lease expires;
 - responsibility for exterior and deferred maintenance;
 - compliance costs to meet requirements of the Building Act 2004 (e.g. fire systems, disabled access, but not compliance with Early Childhood Education (ECE) regulations; and
 - building insurance.

The draft policy has not been amended to reflect submissions which sought to:

- amend the role of the Council regarding ECE
- amend the policy regarding the provision of land and buildings
- make changes to the percentages of income used in determining rental levels
- exempt association levies from the assessment of income
- amend the Policy regarding alignment with community centres

An amended version of the policy is attached at Appendix 2 for the Committee's consideration and approval and for referral to the Council for adoption.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Draft Early Childhood Centres Policy was publicly consulted on from 12 December 2008 through to 27 February 2009.*
3. *Note that eighteen submissions were received.*
4. *Note that the policy would be effective from 1 July 2009 with the new rental determination provisions set out in Schedule 1 effective from 1 July 2010.*
5. *Note that where a centre faces a rental increase exceeding \$500 per annum the new rent will be phased in over a period of three years (i.e. one-third increase each year).*

5. *Agree to recommend to the Council that it adopt the Early Childhood Centres Policy (attached as Appendix 2 to this report).*
6. *Agree that the Chief Executive and the Social Portfolio Leader have the authority to make any minor editorial changes required as a result of Strategy and Policy Committee amendments, prior to the policy being referred to Council for approval.*

4. Background

4.1 Early Childhood Centres Policy

The Council's major intervention in the ECE sector is providing suitable land and buildings for rental by service providers. As at 23 October 2008, the Council's support extended to 22 licensed Early Childhood Centres (ECC). In addition, six Council-owned Community Centres hosted ECC through leasing agreements within their premises¹.

At present there are a range of lease arrangements between the Council and ECC. The draft policy provides for the standardisation of lease arrangements in order to achieve the desired outcomes of equity, affordability and sustainability.

The draft policy sets out the Council's role regarding ECC and provides:

- (a) Guidance on how or when the Council may offer support for ECC
- (b) Guidance for managing ECC leases – recognising historic circumstances and relationships with lessees.

The policy does not engage broader issues concerning ECE as these are managed by the Ministry of Education (the Ministry).

4.2 Formal Consultation Process

A copy of the draft policy was sent to: all ECC that currently lease land and/or premises from the Council; all childcare centres in Wellington that are currently registered with the Ministry of Education; and sector organisations. The consultation was advertised in the *Our Wellington* page of the Dominion Post both at the beginning and towards the end of the consultation period. All the relevant documents were placed on the Council's website and hard copies of the draft policy were available from all Council service centres and libraries.

Officers also contacted submitters in order to clarify points raised in their written submissions.

¹ Two other Community Centres host ECE services, however these do not use Council land or buildings.

5. Discussion

5.1 Submissions received

Eighteen (18) written submissions were received on the Draft Early Childhood Centres Policy.

Two (2) of these submissions were followed up with oral submissions, which were heard by the Strategy and Policy Committee on 9 April 2009.

Five (5) of the written submissions were from early childhood centres with direct tenancy arrangements with the Council, three (3) from organisations that lease space directly from a community centre, six (6) from organisations (including the Johnsonville Community Centre, Wellington Community Childcare Association (WCCA) and the Wellington Play Centre Association) and four (4) from individuals. The submissions are attached as Appendix 1.

The following section provides a summary of the submissions received and the recommended response to the submissions.

5.2 The role of the Council

The draft policy establishes the Council's role regarding ECC. The Council has no statutory responsibilities regarding the establishment, management or funding of ECC. However, the Council is concerned with:

- maximising opportunities, advocacy, and facilitation with a view to ensuring a comprehensive provision of services
- the management of Council land and buildings that are available for lease to ECC.

The draft policy acknowledges the lead role of the Ministry of Education in funding, regulating and supporting both the provision of and participation in ECE services.

The draft policy includes principles to guide decision-making and guidance in responding to requests to establish ECC on Council owned property.

Points raised by submitters

The submissions from the Centres and sector organisations evidence general support for the intent of the draft policy (Sections 2 'Central and Local Government Roles' and 3 'Guiding Principles'). While some individual submitters expressed the view that the Council should not be subsidising the early childhood sector, others called for a higher level of commitment from the Council.

Other points raised about the draft policy were that it:

- recognises that the Council continues to support ECC and is demonstrating leadership
- affirms the importance of ECE and represents 'an important and positive step in clarifying the Council's commitment to early childhood education provision'
- provides support for the continuing development of a collaborative approach between the Council and the early childhood sector

Emphasis was also placed upon the need for effective communication, the development of trust and the importance of one-on-one negotiations between the Council and individual centres.

The points raised by submitters are noted and the draft policy does not require amendment regarding the role of the Council.

5.3 Principles of fairness, affordability and sustainability

The draft policy has been developed to achieve the desired outcomes of equity, affordability and sustainability for all centres.

The consultation document contained the following question:

'Do you agree with the principles of fairness, affordability and sustainability that underpin these proposed changes?'

Submitters' responses

Eleven of the eighteen submitters responded to this question: three individuals, four childcare centres and four organisations.

- Two individuals, one centre and one organisation agreed strongly
- One organisation neither agreed nor disagreed
- One centre and one organisation somewhat disagreed
- One individual, two centres and one organisation strongly disagreed

Submitters who indicated that they either somewhat or strongly disagreed with the principles did not provide specific reasons for their disagreement. However, they did raise issues relating to other aspects of the policy. They:

- expressed concern that the change in rental mechanism would increase the rent they are required to pay (two centres);
- questioned the applicability of the draft Policy to childhood centres located in community centres (one organisation); and
- expressed opposition to any form of subsidy for childhood centres (one individual).

Submitters who agreed with the principles endorsed the emphasis on equity and comment was made that the draft policy sought to be 'fair and even handed'.

These responses were to some degree repeated and amplified in responses to the question regarding the proposed rental determination mechanism (see Section 5.5).

5.4 Provision of land and buildings

The draft policy provides guidance on the management of Council land and buildings that are available for lease to ECC but does not envisage the Council providing further land and buildings.

Points raised by submitters

Issue raised	Response
<p>1. Council should demonstrate a clearer commitment to provide land and buildings</p> <p>One individual submitter suggested that the policy be amended to state that the provision of further land and buildings will be considered according to demand for spaces and availability of Council premises.</p> <p>WCCA expressed the view that the Council should take an active role in assisting existing ECCs if they are required for whatever reason to find alternative premises. This may require the Council to review current land use needs.</p>	<p>The policy states that the Council does not <i>envisage</i> providing further land and buildings – this is not a categorical statement that the Council will not provide land and buildings.</p> <p>The policy states that where there is limited market capacity, the Council may have a role in ensuring suitable premises are available to potential providers though this may be constrained by the designation of the land and availability. The Council’s primary responsibility is to ensure appropriate use of the land.</p>
<p>2. One submitter commented that the statement that the Council does not envisage providing further land and buildings is at odds with the inclusion of assessment criteria which envisages assessment of applications.</p>	<p>The inclusion of assessment criteria for future applications provides clarity around the process for leasing any current land/building should they become available in the future.</p>

The draft policy does not require amendment regarding the provision of land and buildings.

5.5 Rental determination process

The proposed rental determination mechanism has been developed to replace the previous proposal to use the Council's Leases Policy as the basis for valuing ECC rentals. The following rationale informs the new mechanism:

- Council recognises the value of early childhood services and accordingly is not seeking 'market' rent from ECC, nor full cost recovery
- the level of rent set should be equitable, affordable and support sustainability across all centres requiring support
- rent should be linked to a centre's ability to pay.

A combination of payments received from the Ministry and income received for services is proposed as a basis for determining rental (which is similar in approach to the 'turnover' methodology of calculating rental used in a commercial context).

The proposed rental determination process is set out in Schedule One, Clause 1 of the draft policy. It is proposed that rental will be assessed as a percentage of the revenue of each centre based upon: (a) Ministry payments (excluding equity grants) and (b) other income received by the centre.

The percentage of revenue charged will be 4% for a premises lease and 1% for a land-only lease. These percentages result in rentals that are in a similar range to those that might be calculated under the leases policy. It is also noted that for some centres a reduction in rent may be possible after taking account of affordability, asset investment and maintenance commitments. These will be determined on a case by case basis with centres.

5.5.1 Specific question regarding rental determination

The consultation document contained the following question:

'Do you agree with the proposed mechanism to determine rent for tenant childcare centres?'

Submitters' responses

Eleven of the eighteen submitters responded to this question: three individuals, four childcare centres and four organisations:

- Two individuals and one centre strongly agreed
- Two organisations somewhat agreed
- One centre somewhat disagreed
- One individual, two centres and two organisations strongly disagreed

Submitters who either somewhat or strongly disagreed with the proposed mechanism:

- expressed concern that the change in rental mechanism would increase the rent they are required to pay (two centres)
- expressed concern at the impact that rent increases might have on the sustainability of some centres (One centre)
- questioned the applicability of the draft policy to childhood centres located in community centres (one organisation)
- expressed opposition to any form of subsidy for childhood centres (one individual).

Submitters who supported the proposed mechanism:

- acknowledged the fairness of the approach
- noted that rent would be determined with each centre on a case by case basis.

One submitter suggested that the policy should be amended to read that rent will be capped at 4% as opposed to a flat 4%. Officers consider that this change would result in an expectation that rents will generally be less than 4%; in contrast to the draft policy that indicates that 4% is considered an appropriate level and that in some cases there may be a rent reduction. The draft policy does not require amendment on this point.

5.5.2 Definition of income

The definition of income attracted significant comment. As noted above, the draft policy indicates that rental will be assessed as a percentage of the revenue of each centre – with revenue comprising a combination of Ministry payments (excluding equity grants) and other income received by the centre. Where a service faces a rental increase as a result of renewing its lease, the new rent will be phased in over a period of three years. This will be determined on a case by case basis.

Points raised by submitters

The substantive question raised by submitters was concerned about what will be classed as income.

Issue raised	Response
1. That income should not include fees paid by parents	The fees paid by parents are for childcare services and should be classified as income.
2. That a net income figure should be used because centres faced a range of costs that effectively reduce a centre's disposable income. In particular, the argument was advanced that association levies should be exempt from assessment as income	The payment of association levies is considered to be part of the operational expenses of each centre (centres receive services from the association), therefore levies are not excluded from the income of a centre.
3. Clarity was sought whether subsidies	The definition of income has been

received from Work and Income NZ (WINZ) for the attendance of children from families on low incomes and interest earned on investments would be defined as income.	amended as follows to provide greater clarity (changes in bold italics), Schedule 1, Clause 1: 'income received by the centre <i>that constitutes payment for childcare services (including fees, donations and subsidies from Work and Income New Zealand)</i> '
4. Five of the affected centres are affiliated to the Wellington Play Centre Association, that is the lessee on behalf of the centres (as well as a further 21 centres not leasing Council land or premises). Concern was expressed that the definition of income in Schedule 1, Clause 1 of the draft policy would effectively require the Association (as lessee) to pay a percentage of the total income of the Association and not simply the proportion of income that relates to the five affected centres.	This concern has been addressed through a change to Schedule 1, Clause 1 of the draft policy clarifying that rent will be calculated on the revenue attributable to each centre.

5.5.3 Process to manage fluctuations in revenue

Submitters appear to be conversant with the proposed mechanism to index rent to revenue. Greater clarity was sought regarding the process to be used to review rents following an initial determination. Clearly, if the revenue received by a centre were to either increase or decrease the amount of rent due would also require adjustment.

Points raised by submitters

Issue raised	Response
1. One submitter advised that centres receive grants from the Ministry every four months and enquired whether rents would be adjusted in line with these payments.	The draft policy has been amended through the inclusion of the following, Schedule 1, Clause 1: <i>'Rental payments are based on the previous year's revenue and are due every four months. After the end of each year a final payment or refund may be due if there is a difference between the current and previous years' revenue.'</i>
2. A related issue concerns the type of financial information regarding revenue that is required by the Council. One submitter (centre) expressed concern at likely compliance costs if the Council were to require audited accounts as part of the financial information.	The draft policy has been amended as follows to provide clarity (changes in bold italics) - Schedule 1, Clause 5: "The Lessee will provide to the Council annually pertinent financial information <i>(reviewed or audited accounts)</i> , including the annual report of the trust or incorporated society'.

5.5.4 Recognition of asset investment

As noted above the draft policy indicates that matters including asset investment will be taken into account when determining rental and that a reduction in rental may be possible.

Points raised by submitters

Issue raised	Response
<p>1. Submitters have requested a greater degree of clarity regarding the process that the Council will follow in assessing any asset investment by a centre and how this will be related to rental.</p>	<p>The draft policy has been amended through the inclusion of the following regarding the case-by-case approach and assessment of asset investment - Schedule 1, Clause 1</p> <p><i>In some cases some reduction in rental may be considered. For example:</i></p> <ul style="list-style-type: none"> • <i>where a centre is facing financial hardship</i> • <i>where asset investment has been made or maintenance costs incurred that add value to the premises (particularly those that reduce costs to the Council).</i> <p><i>In these circumstances all ECC will be considered on a case-by-case basis and any reductions made in a process of negotiation with individual groups.</i></p>

5.6 Lease arrangements

Section 4.2 of the draft policy provides guidance regarding lease arrangements, as follows:

- ECC which do not currently have a formal agreement in place will enter into a lease or similar agreement
- ECC occupying Council owned land and/or buildings will be subject to the rental determination and management provisions outlined in Schedule One of the draft policy
- current lease terms and conditions will be reviewed to align with the draft policy and a transition arrangement will be provided for existing ECC
- where the lessee owns the building they will be responsible for all maintenance and compliance costs associated with the building
- where the Council owns the building the respective Council and lessee responsibilities are identified regarding maintenance costs, compliance costs, building insurance, outgoings, and legal and advertising costs for preparing a new lease.

Points raised by submitters

There was an expectation for a greater degree of clarity regarding lease arrangements, in particular regarding the following issues.

Issue raised	Response
<p>1. Transitional arrangements regarding the negotiation of a new lease</p>	<p>Section 4.2 of the draft policy has been amended through the inclusion of the following to clarify lease arrangements:</p> <p><i>'The provisions of the lease/agreement will comply with Council's policy requirements relating to land designation, property legislation and building compliance requirements. Some provisions of the lease may be amended to reflect individual centres' situation'.</i></p> <p><i>'When a centre's lease expires (or upon earlier request), where the centre continues to meet the assessment criteria (4.1 above), Council officers will negotiate a new lease with the centre. Formal committee (Regulatory) approval is required.</i></p>
<p>2. Building maintenance and compliance costs – clarification was sought regarding whether the Council would assume responsibility for meeting compliance standards set by the Ministry of Education</p>	<p>Section 4.2 of the draft policy has been amended to clarify building compliance responsibilities as follows (changes in bold italics):</p> <p>Where the Council owns the building, the Council is responsible for:</p> <ul style="list-style-type: none"> - all exterior and deferred maintenance <i>(undertaking repairs that have not yet been done e.g. replacing damaged weatherboards)</i> of the building - compliance costs <i>to meet requirements of the Building Act 2004 (e.g. fire systems, disabled access) – (this does not include compliance with ECE regulations)</i>
<p>3. Responsibility for costs associated with preparing a new lease</p>	<p>The requirement for the lessee to meet costs associated with preparing a new lease is a standard condition of all leases entered into by Council.</p>

5.7 Community Centres

The draft policy states that consultation will occur with community centre committees regarding current arrangements with ECC and the establishment of new ECCs in community centres, with a view to achieving future alignment with the draft policy. At present six ECC have direct tenancy arrangements with a community centre.

Submissions were received from one community centre and three community crèches that lease space directly from a community centre.

Submitters' responses

The community centre submission expressed the view that the provisions of the draft policy, in particular regarding the proposed rental determination mechanism, should not apply to the centre. Current arrangements between the centre and tenant childcare centre were considered to be satisfactory to both parties.

The community crèches were supportive of the Council's recognition of the importance of ECE and one crèche expressed strong support for both the underlying principles and rental determination (discussed at 5.3 and 5.4 above) – the other two crèche did not answer the specific questions.

Other points raised by the community crèches have been included in previous discussion and as a group they expressed the same issues as other childhood centres.

The draft policy is clear that the Council will consult with community centre committees. The draft policy does not require amendment on this point.

5.8 Other issues raised

The following issues were raised by just one or two of the submitters:

Issue raised	Response
1. Proposed Annual Review meeting One submitter suggested that an annual review process be established in order to facilitate communication and relationship development between the Council and tenant centres.	Comments noted. Property and City Communities staff currently meet with each centre as required. However, there is no formal review procedure. Officers will consider developing a joint process involving Property and City Communities.
2. Impact on kohanga reo One centre raised issues that impact on the centre's sustainability (for example, a low funding rate from the Ministry of education and a lack of qualified teachers). Concern was expressed that any increase in rent	Comments noted. The issues raised will be taken into account as part of the review process undertaken with each centre. It is noted that the proposed rental mechanism

would have a disproportionate effect upon the centre.	takes account of differential incomes – i.e. rent is proportional to income.
3. Supply issues The view was expressed that the Council should be pro-active in providing additional premises for early childhood centres	Comments noted. Refer to 5.2.1 above. The draft policy role clearly states that the Council is concerned with maximising opportunities, advocacy, and facilitation with a view to supporting the provision of services.
4. Impact of Ministry regulations Concern was raised that changes in Ministry compliance regulations regarding premises may affect the financial viability of some centres	Comments noted. The draft policy is clear that the Council is not responsible for meeting Ministry requirements regarding premises.
5. Opposition to Council providing any form of subsidy to childcare centres	Comments noted.

6 Conclusion

The Draft Early Childhood Centres Policy has been amended to reflect feedback provided on the policy during consultation. An updated version of the policy is attached at Appendix 2 for the Committee's consideration and it is recommended that it is forwarded to the Council for adoption. The policy would be effective from 1 July 2009 however the new rental determination provisions set out in Schedule 1 are effective from 1 July 2010. Officers will contact each centre within the next twelve months to set a rent and implement a lease where appropriate.

Contact Officer: *Dr Michael Dale, Senior Policy Adviser*

Supporting Information

1) Strategic Fit / Strategic Outcome

The ECC Policy supports Council activities as a provider of social infrastructure and community properties. The policy will contribute to Council meeting the following outcomes:

- *Improving liveability*
- *Building capability and capacity to support social infrastructure*
- *Promoting and enhancing community participation*
- *Attracting and retaining a highly skilled productive population base.*

2) LTCCP/Annual Plan reference and long term financial impact

The support of ECC is contained in 6.4.6 provider – community centres and halls and is part of Annual Plan projects: A468 and C130B.

There is no significant long-term financial impact.

3) Treaty of Waitangi considerations

No Treaty implications have been identified.

4) Decision-Making

This is not considered a significant decision in terms of Council's Significance Policy, although it affects part of a group of strategic assets. The impact is considered limited, as a significant change to the level of service is not proposed.

5) Consultation

a) General Consultation

Affected parties involved in managing ECC in Wellington have contributed to the development of the draft policy. Public consultation will provide opportunities for users of those ECC to have input. It is proposed that consultation be targeted to lessees, ECE industry sector organisations, government agencies and the wider public. If there is sufficient interest, meetings will be held with a range of groups.

b) Consultation with Maori

The draft policy has been reviewed by the Manager Treaty Relations.

6) Legal Implications

No legal advice has been received for this report.

7) Consistency with existing Policy

The proposed policy is consistent with the Council Leases Policy – a new rental mechanism is introduced.

Appendix One