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## **SIGNIFICANCE POLICY**

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### **1. Purpose of Report**

This report presents the draft Significance Policy for approval to be consulted on at the same time as the draft Long Term Council Community Plan (LTCCP).

### **2. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Local Government Act 2002 requires that the LTCCP includes a summary of the Council's Significance Policy.*
3. *Note that the Local Government Act 2002 requires that the adoption of a Significance Policy, or any amendment, is consulted on using the special consultative procedure, but that there is no provision for the Significance Policy to be adopted or amended as part of the LTCCP.*
4. *Note that Council's Significance Policy was consulted on and adopted by Council following completion of a special consultative procedure, conducted at the same time as the 2003/04 LTCCP consultation and adoption.*
5. *Agree that it is appropriate to consult on the Significance Policy at the same time as consulting on the 2006/07 LTCCP.*
6. *Recommend to Council that it agrees the attached draft Significance Policy and initiates the special consultative procedure to be undertaken at the same time as consultation on the draft 2006/07 LTCCP.*
7. *Recommend that Council delegates the Chief Executive Officer the authority to:*
  - a. *make any minor editorial changes to the draft Significance Policy prior to publication of the statement of proposal (which comprises the draft Policy); and*
  - b. *decide the form and appropriate summary of the Significance Policy in the summary of information required under s89 of the Local Government Act 2002, and determine the appropriate distribution of the summary of information.*

### **3. Background**

The Local Government Act 2002 (LGA 2002) provides that the Council adopt a policy on significance. The policy is to set out Council's general approach to determining the significance of a decision (including any thresholds, criteria or procedures that will be used by the Council). The policy must also list the assets Council considers to be strategic assets.

The Council agreed its current Significance Policy in June 2003, following consultation on the draft policy undertaken at the same time as the 2003/04 Long Term Council Community Plan (LTCCP).

Council has therefore operated under the current Significance Policy for almost 3 years. It is appropriate that the Significance Policy is reviewed during the 2006/07 LTCCP process.

In order to place the draft Significance Policy in context, it is important to understand the statutory context of 'significance', 'significant' and strategic assets.

#### **3.1 Statutory context - significance**

Significance is defined in the LGA, as is 'significant'. 'Significance' means the degree of importance a decision or matter has, in terms of its likely impact and consequences for:

- the current and future wellbeing of the district (considered in light of the 4 well-beings),
- persons who are likely to be particularly affected by the decision or interested in it; and
- the capacity of the local authority to perform its role (and the financial and other costs)

A decision is 'significant' if, after considering the importance of a matter, it is decided that it has a high degree of significance.

Councils' judgement on the significance of a matter (and in particular the decision on whether something is significant) feeds into 2 key parts of the LGA.

#### ***Decision making - general***

First the assessment of significance plays a part in applying the decision-making provisions of Part 6 of the LGA to particular decisions. To recap these require that for each decision, Council:

- Identifies and considers the options that will achieve the Councils objective (s77),
- Gives consideration to the views of persons likely to be particularly affected, or interested in the matter (s78),
- Identifies any inconsistency with existing Council policy, explain the reasons for the inconsistency, and identify any intention to amend the policy or plan (s81).

How Council meets the above requirements is a matter of judgement. The LGA 2002 makes it clear that the steps taken are to be in proportion with the significance of the decision, the principles of the LGA, the extent of resources, and the scope and opportunity for options to be considered and views and preferences to be considered. This recognises that many of decisions will not follow the above process in any kind of formal way.

### ***Decision making – particular decisions***

The second key role of the assessment of significance, is to determine whether the decision falls within sections 88 or 97 LGA, which relate to:

- an alteration in the mode of delivery of a significant activity - (section 88)
- a decision to commence or cease a significant activity (or to significantly alter the intended level of service provision of a significant activity) - (section 97 (1) (a))
- to significantly affect the capacity of the Council, or cost to the Council, of an activity in the LTCCP - (section 97(1) (d))

If a decision was to come under one or more of the above provisions, it does not mean it can not be made. It simply means that certain processes must be followed prior to making the decision. These include consultation using the special consultative procedure, prescribed content of the consultation information, the requirement that s97 decisions must be specifically provided for in the LTCCP. (Note the latter practically means that the decision will either have to wait until the 'next' LTCCP, or proceed by way of an amendment to the LTCCP, and that the proposal will need to be audited). These requirements are in addition to the requirement that all decisions are made in accordance with sections 76-79 above.

### ***Relationship with consultation***

Finally it is noted that the judgement on significance is not to be confused with a requirement to consult. There is no obligation to undertake consultation under the LGA 2002, unless the decision falls within the particular decisions listed above (where the processes to be followed include the special consultative procedure) or other 'restricted' decisions in the LGA 2002 (for instance the sale of a 'park' or dealing with endowment property, such as the Chews Lane decision made in 2003).

The obligation to consider community views (in section 78 LGA) does not give rise to an obligation to consult. While in many instances consultation will be the chosen method of Council informing itself of community views in order discharge the obligation in s78, there are other options. If consultation is undertaken, the methodology is not prescribed by the LGA 2002. This contrasts with the particular decisions that fall within sections 88 or 97 decisions.

## **3.2 Statutory context - strategic assets**

'Strategic asset' is defined in the LGA 2002 as an asset or group of assets that the Council needs to retain to maintain capacity to achieve or promote any outcome that the Council determines to be important to the current and future well-being of the community.

The definition includes:

- Equity in an airport or port company
- any land or building owned by the Council and required to maintain the Council's capacity to provide affordable housing as part of its social policy
- any asset or group of assets listed in the Council's significance policy as a 'Strategic Asset'

If an asset is a strategic asset then certain additional decision-making processes apply to decisions affecting the assets. In particular any decision to transfer the ownership or control of the asset to or from the Council or any decision to construct, replace, abandon the asset is subject to the same process as set out above for the decisions under s97 affecting significant activities.

## **4. Approach and changes**

The LGA 2002 prescribes that a significance policy must set out Council's general approach to determining the significance of a decision and may include any thresholds, criteria or procedures that will be used by the Council. The policy must also list the assets it considers to be strategic assets.

Attached as appendix 1 is a proposed draft Significance Policy. The changes to the current Policy are not shown as tracked changes, to enable the Policy to be read afresh. The following sections of this report describe the approach taken in the review, and specifically set out the nature and ambit of the changes.

### **4.1 Approach**

A number of objectives were identified as being appropriate guidelines to assist the review of the Significance Policy. The objectives identified are as follows:

- the policy will provide clear direction on how Council will assess the significance of issues, decisions, proposals, and decisions
- the policy will provide clear guidance on what activities Council considers to be significant, and its approach to managing those activities
- the policy must be clear and easy to follow
- Council's approach is transparent and understood by the community

The current Significance Policy and its application over the last 2-3 years was reviewed. The content of the draft Significance Policy attached was also informed by Council's understanding and practical application of the statutory regime referred to above.

### **4.2 Changes**

The changes are described as follows, by reference to the Draft policy:

#### ***Statutory Context (Draft policy - sections 1 and 2)***

A number of changes were required to reduce the repetition in the introductory parts of the policy. The draft has a more concise explanation of the law and the decisions to which significance applies. These changes meet the objective of having a policy that is understood by the community.

### ***General approach to significance (Draft policy - section 3)***

This section is largely unchanged. Some minor amendments have been made to ensure consistency with the LGA, and clarity. Overall, it records that Council will consider each proposal or decision on a case by case basis to consider its significance and to determine whether it is significant. Further it provides that Council will apply the thresholds and criteria set out in the Significance Policy to its overall assessment of the proposal, established from its assessment of:

- the consequences of the proposal or decision (when assessed in respect of the four wellbeings)
- the consequences for parties likely to be particularly affected or interested in the proposal or decision
- the capacity of the Council to perform its role, and the financial and non-financial costs and implications of the proposal or decision.

### ***Thresholds (Draft policy - section 4)***

The current Significance Policy contained two criteria; one financial, and one which was described as the 'public impact' threshold.

Based on the experience of applying the thresholds over the last 2-3 years, and on legal advice, the thresholds proposed should be capable of determination, with certainty at the time of assessment. Therefore, it is recommended that the Council does not continue with the 'public impact' threshold, but that the intent of that threshold is very clearly incorporated into the criteria in the Policy.

The draft policy therefore only includes one threshold, which is described as 'financial impact'. It is retained at the level of the current Significance Policy. However it is recommended that the Policy is clarified to make it clear that the financial impact includes operating expenditure and capital expenditure and/or revenue relating to the proposal or decision. (The current Policy simply refers to capital expenditure).

### ***Criteria (Draft policy - section 4)***

The criteria contained within the proposed draft significance policy have been revised from that contained in the current policy in two respects:

- first, there are several new criteria set out at 4.5.4-4.5.8 (note that the existing criteria are retained with minor amendments - see 4.5.1-4.5.3).
- a separate set of criteria are proposed to assist with the identification of significant activities.

### ***Criteria - for the identification of significant activities (Draft Policy, section 4 paragraphs 4.7-4.11)***

This part of the policy is new. It is proposed in response to an issue that has arisen through application of the LGA 2002 and the Council's current Policy. It relates to what approach Council will take when identifying an activity amounts to a 'significant activity'. Council often needs to determine whether an activity is a 'significant activity' under the LGA 2002 to determine whether certain provisions of the LGA 2002 apply.

For example :

- if Council proposes to alter the mode by which a 'significant' activity is undertaken, section 88 of the LGA applies (what comprises the 'alteration of the mode' is defined in section 88(2)).
- if Council proposes to significantly alter the intended level of service provision for any 'significant activity', including a decision to commence or cease service provision of such an activity. S97 applies.

The proposed criteria align Council's approach to its seven strategies and classification of activities within the LTCCP (as proposed). This is not proposed as an absolute measure. The thresholds in the policy will be applied to assist with determining the significance of an activity. Examples are given to illustrate the application of the approach.

#### ***Procedures (Draft Policy, section 4 paragraphs 4.12- 4.15 )***

The procedures in the draft have been aligned with current Council practice.

#### ***Strategic assets (Draft Policy, Section 5)***

A proposed list of strategic assets is included in the draft Significance Policy attached. The table differentiates between the Council assets that are 'deemed strategic assets' under section 5 of the LGA, and assets that Council determines to be a strategic asset. The list in the attached draft was compiled by reference to the list in the current Significance Policy. The list is recommended on the basis that they are all assets that Council needs to retain to maintain capacity to achieve or promote any outcome that the Council determines to be important to the current and future well-being of the community.

In reviewing the current Policy, it is not recommended that all current assets that are listed remain on Council's list of strategic assets in its Significance Policy. The reason for this is that, while they are important assets, it is not believed essential that Council owns these assets to deliver on its outcomes. As a result, they do not fall within the definition of strategic asset. The assets are:

- the Civic Centre complex
- recreational facilities
- the quarry
- the core data set used to deliver Council services in its entirety.

In addition it is recommended that the former reference to 'the library network as a whole' is amended so that the library network (excluding buildings) is listed as a strategic asset. Other changes to note are:

- the terminology used to refer to the Waterfront has been updated.
- the terminology used to refer to Council's housing assets has been amended to better reflect the wording used in section 5 of the LGA 2002.
- the reference to 'landfills' has been amended to refer simply to the Southern Landfill to recognise that the Northern Landfill has now been closed.
- the reference to the Wellington Zoo has been amended to reflect that the land is Town Belt, and therefore covered in a separate strategic asset listing.

### *Strategic assets – management (Draft Policy, section 5, paragraphs 5.4- 5.5)*

The current Significance Policy includes a section on the 'management of strategic assets'. This specifically allows Council to manage parts or elements of a strategic asset or group of strategic assets without having to follow the processes set out in section 97 of the LGA.

The draft attached proposes that this approach is maintained, however proposes that it is clarified in the following way:

- the provisions that set out Council's ability to manage strategic assets (paragraphs 5.4 and 5.5) are specifically authorised as part of the strategic asset listing in Table 1.
- clearer examples are given, in particular the examples set out at 5.5.1.1-5.5.1.3.
- an additional 'test' is added, as a balance to ensure that the management of a part or element of a asset or group of assets does not affect the overall strategic nature of the remaining assets. (See paragraph 5.4).

It is noted that one of the examples provided in paragraph 5.5 relates to the Waterfront. This example relates to the current and anticipated leasing transactions contained within the Waterfront Framework.

## **5. Process**

The LGA 2002 requires that a summary of the Significance Policy is included in the LTCCP. The LGA 2002 requires that the adoption of a Significance Policy, or any amendment, is consulted on using the special consultative procedure, but that there is no provision for the Significance Policy to be adopted or amended as part of the LTCCP.

The Significance Policy will be therefore consulted on at the same time as, and in conjunction with the LTCCP.

## **6. Conclusion**

It is appropriate to review the Significance Policy at the same time as the 2006/07 LTCCP. It is recommended that the current Significance Policy is revised as set out in the attached draft Significance Policy.

<b>Supporting Information</b>
<p><b>1) Strategic Fit / Strategic Outcome</b>  <i>The policy is a core legislative requirement.</i></p>
<p><b>2) LTCCP/Annual Plan reference and long term financial impact</b>  <i>N/a</i></p>
<p><b>3) Treaty of Waitangi considerations</b>  <i>There are no treaty of Waitangi implications</i></p>
<p><b>4) Decision-Making</b>  <i>This is not a significant decision.</i></p>
<p><b>5) Consultation</b>  <b>a) General Consultation</b>  <i>The statement of proposal will be consulted under the special consultative procedure at the same time as consultation on the 2006/16 LTCCP</i></p>
<p><b>6) Legal Implications</b>  <i>Council's lawyers have been consulted during the development of this report.</i></p>
<p><b>7) Consistency with existing policy</b>  <i>N/a</i></p>