

ORDINARY MEETING

OF

WELLINGTON CITY COUNCIL

AGENDA

Time: 5.30 pm
Date: Wednesday, 28 October 2015
Venue: Committee Room 1
Ground Floor, Council Offices
101 Wakefield Street
Wellington

MEMBERSHIP

Mayor Wade-Brown

Councillor Ahipene-Mercer
Councillor Coughlan
Councillor Eagle
Councillor Foster
Councillor Free
Councillor Lee
Councillor Lester

Councillor Marsh
Councillor Pannett
Councillor Peck
Councillor Ritchie
Councillor Sparrow
Councillor Woolf
Councillor Young

Have your say!

You can make a short presentation to the Councillors at this meeting. Please let us know by noon the working day before the meeting. You can do this either by phoning 803-8334, emailing public.participation@wcc.govt.nz or writing to Democratic Services, Wellington City Council, PO Box 2199, Wellington, giving your name, phone number and the issue you would like to talk about.

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1 Meeting Conduct

1.1 Apologies

The Chairperson invites notice from members of:

1. Leave of absence for future meetings of the Wellington City Council; or
2. Apologies, including apologies for lateness and early departure from the meeting, where leave of absence has not previously been granted.

1.2 Announcements by the Mayor

1.3 APW Awards

1.4 Conflict of Interest Declarations

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

1.5 Confirmation of Minutes

The minutes of the meeting held on 30 September 2015 will be put to the Council for confirmation.

1.6 Items not on the Agenda

The Chairperson will give notice of items not on the agenda as follows:

Matters Requiring Urgent Attention as Determined by Resolution of the Wellington City Council

1. The reason why the item is not on the agenda; and
2. The reason why discussion of the item cannot be delayed until a subsequent meeting.

Minor Matters relating to the General Business of the Wellington City Council

No resolution, decision, or recommendation may be made in respect of the item except to refer it to a subsequent meeting of the Wellington City Council for further discussion.

1.7 Public Participation

A maximum of 60 minutes is set aside for public participation at the commencement of any meeting of the Council or committee that is open to the public. Under Standing Order 3.23.3 a written, oral or electronic application to address the meeting setting forth the subject, is required to be lodged with the Chief Executive by 12.00 noon of the working day prior to the meeting concerned, and subsequently approved by the Chairperson.

2. General Business

TE AWARUA O PORIRUA WHAITUA COMMITTEE REAPPOINTMENT

Purpose

1. This report recommends a new Council representative on the Greater Wellington Regional Council's (GWRC) Te Awarua-o-Porirua Whaitua Committee.

Recommendations

That the Council:

1. Receive the information.
2. Note the Te Awarua-o-Porirua Whaitua Committee's Terms of Reference and Delegations, attached as appendix one.
3. Agree to appoint one Wellington City Councillor to replace Councillor Sparrow as the Wellington City appointee to the Te Awarua-o-Porirua Whaitua Committee.

Background

2. Wellington City Council agreed the Terms of Reference and Delegations and appointed Councillor Sparrow to the Whaitua Committee at its meeting on 25 February 2015. However, due to competing commitments and time constraints Councillor Sparrow has had to resign and the Council need to appoint a new representative to the Whaitua Committee.
3. The Council agreed to appoint Councillor Sparrow at the Council Meeting on 25 February 2015. It can serve as a background to this paper.
4. The Terms of Reference (attached as attachment one) and Committee's Delegations have already been approved by the Council. Appointments to the Committee need to be approved by the Council.
5. In the Regional Plan, GWRC uses the word 'whaitua' to describe a catchment or sub-catchment (zone) managed as an integrated system. Whaitua is a Māori term for a designated area.
6. The Te Awarua o Porirua Whaitua Committee is responsible for developing a Whaitua Implementation Programme (WIP) that will outline regulatory and non-regulatory proposals for integrated land and water management within the whaitua boundary, including measures to implement the National Policy Statement for Freshwater Management. The Te Awarua o Porirua WIP will be added as a chapter to the Regional Natural Resources Plan.

Discussion

Authorising the Committee

7. The Local Government Act 2002 (Schedule 7 Clause 30) enables the Council to establish a governance structure of committees, subcommittees, joint committees or other subordinate decision-making bodies that will assist the Council to effectively perform and fulfil its responsibilities over the triennium. The terms of reference (attachment one) for the Whaitua Committee were agreed by this Council on 25 February 2015 and prescribes the appointment process to be followed.

Administrating the Committee

8. While GWRC will provide the administrative and servicing support for the Whaitua Committee, governance costs associated with establishing and running the committee will be covered by each agency within their respective existing governance programmes.
9. To assist with the continued and smooth functioning of this committee across triennial elections, the Te Awarua o Porirua Whaitua Committee is not discharged at the end of each triennium. The partners to the Whaitua Committee can however each make new appointments to the committee at the start of each triennium.

Conclusion

10. This report recommends a new Council representative on the Wellington Regional Council's Te Awarua-o-Porirua Whaitua Committee to replace Councillor Sparrow.

Attachments

Attachment 1. Terms of Reference

Page 10

Author	Nicci Wood, Senior Advisor
Authoriser	John McGrath, Acting Director Strategy and External Relations

SUPPORTING INFORMATION

Consultation and Engagement

Councillors and officers at GWRC have consulted with the councillors and officers at Wellington City and Porirua City Councils and the Te Runanga O Toa Rangatira on the establishment and intent of the Te Awarua o Porirua Whaitua committee. The committee's proposed Terms of Reference has been agreed with all parties.

Treaty of Waitangi considerations

The Te Runanga O Toa Rangatira is a key stakeholder in the Strategy

Financial implications

There are no or very minor financial implications associated with this paper.

Policy and legislative implications

The establishment of the new Te Awarua o Porirua Whaitua committee follows the requirements of the new section 41A of the Local Government Act 2002 which came into force on 12 October 2013.

Risks / legal

This is not a significant decision.

Climate Change impact and considerations

There are no climate change implications associated with this paper

Communications Plan

n/a

Te Awarua o Porirua Whaitua (catchment) Committee – Terms of Reference

‘Whaitua’ is a traditional Te Reo Māori term for a designated area.

The Regional Plan utilises the word ‘whaitua’ to describe a catchment or sub-catchment (zone) managed as an integrated system.

1. Purpose and function

The purpose of the Te Awarua o Porirua Whaitua Committee is to facilitate community and stakeholder engagement in the development of a Whaitua Implementation Programme (WIP). A WIP is a non-statutory report to Council which will contain recommendations for specific plan provisions and work programmes for the integrated management of land and water resources within the whaitua boundary. The WIP may contain both regulatory and non-regulatory proposals.

The Te Awarua o Porirua Whaitua Committee will operate in partnership with mana whenua and develop recommendations guided by the five principles created as part of the Regional Plan Review process:

- Ki uta ki tai – interconnectedness
- Wairuatanga – identity
- Kaitiakitanga – guardianship
- To matou whakapono – judgement based on knowledge
- Mahitahi – partnership (co-operative)

2. Status of the Te Awarua o Porirua Whaitua Committee

The Te Awarua o Porirua Whaitua Committee is an advisory body established by Council. The Committee is not a subordinate decision-making body of Council and is not a committee under the Local Government Act 2002.

3. Specific responsibilities

1. The Te Awarua o Porirua Whaitua Committee is responsible for developing a Whaitua Implementation Programme (WIP) that will outline regulatory and non-regulatory proposals for integrated land and water management within the whaitua boundary, including measures to implement the National Policy Statement for Freshwater Management 2014.
2. It is expected that the WIP will be developed within 24-36 months of the Te Awarua o Porirua Whaitua Committee’s establishment.
3. The WIP development will include:

- a. An assessment of region wide objectives contained in the draft/proposed or operative regional plan, as they relate to the whaitua
 - b. Consideration of the Porirua Harbour and Catchment Strategy and Action Plan
 - c. Implementation of the Porirua Harbour Strategy and Action Plan where this is appropriate to include in the regional plan
 - d. Specific whaitua objectives for water quality and quantity outcomes
 - e. Discharge limits, including for sediment, nutrients and other contaminants if appropriate, including setting timeframes and priorities, and management methods, to achieve freshwater and coastal objectives, including objectives in the Porirua Harbour Strategy and Action Plan
 - f. Identification of mana whenua values and interests in the harbour and fresh water, and how these might be reflected in the regional plan
 - g. An assessment of, and recommendations to alter, existing water allocation limits, to achieve identified objectives for the whaitua
 - h. Programmes or activities that will support or contribute to the achievement of the established objectives for water quality and quantity outcomes, including such tools as environmental accords and post-settlement arrangements and,
 - i. Opportunities for the active integration of existing programmes and plans to achieve the objectives and targets for water quality and quantity outcomes.
4. In developing the WIP the following matters will also be considered:
- a. Identification of the land and water issues, challenges, and opportunities for the whaitua
 - b. Identification of a vision of the future of land and water management for the whaitua
 - c. The management of stormwater and wastewater infrastructure
 - d. The management of sediment inputs into the harbour
 - e. Interactions between groundwater and surface water, fresh water, land use and coastal environments
5. In developing objectives, limits, management methods and activity programmes the members of the Te Awarua o Porirua Whaitua Committee must work within the ambit of the following:

- a. The Resource Management Act 1991
 - b. The New Zealand Coastal Policy Statement 2010
 - c. The National Policy Statement for Freshwater 2014
 - d. The Regional Policy Statement 2010
 - e. The NES for Drinking Water Standards 2007
 - f. The Soil Conservation and Rivers Control Act 1941
 - g. Any other document referred to the Whaitua Committee by Te Upoko Taiao – Natural Resource Management Committee, Porirua Harbour and Catchment Joint Committee or the General Manager, Environment Management.
 - h. Treaty of Waitangi settlements
6. The Te Awarua o Porirua Whaitua Committee shall recommend to Council that regulatory proposals within the WIP be referred to Te Upoko Taiao – Natural Resource Management Committee for incorporation into the Regional Plan through a plan change process.
 7. The Te Awarua o Porirua Whaitua Committee shall recommend to Council that the non-regulatory proposals within the WIP will be further developed within Greater Wellington and in conjunction with relevant external organisations.
 8. The Te Awarua o Porirua Whaitua Committee shall recommend new non-regulatory initiatives to be considered by the Porirua Harbour and Catchment Joint Committee for inclusion in the Porirua Harbour Strategy and Action Plan

4. Council consideration of regulatory proposals in the WIP

If the Council is not prepared to accept any specific elements of the regulatory proposals within the WIP, those specific elements will be referred back to the Te Awarua o Porirua Whaitua Committee for further consideration.

5. Te Awarua o Porirua Whaitua Committee membership and operation

5.1 Te Awarua o Porirua Whaitua Committee membership

The Te Awarua o Porirua Whaitua Committee will be appointed by Council and will have the following membership:

1. One elected and one appointed member of Te Upoko Taiao – Natural Resource Management Committee representing the interest of Greater Wellington Regional Council and acting as a voice of Te Upoko Taiao – Natural Resource Management Committee. One or both of these members may also be a representative on the Porirua Harbour and Catchment Joint Committee or otherwise ensure ongoing liaison with that committee

2. One member nominated from Te Runanga o Toa Rangatira representing the interests of mana whenua
3. One member nominated by each Territorial Authority operating within the whitua boundary; Porirua City Council and Wellington City Council, who shall be an elected member of that territorial authority. These members may also be a representative on the Porirua Harbour and Catchment Joint Committee or otherwise ensure ongoing liaison with that committee
4. Up to 7 members from the community with a range of backgrounds and interests related to land and water management within the community. Council may approve additional members if it determines their necessity to ensure appropriate balance.

In determining the composition of the community members of the Te Awarua o Porirua Whitua Committee, consideration shall be given to balancing the following land and water management interests and values:

- Indigenous biodiversity/environmental values
- Tangata whenua values
- Recreational values
- Wider economic development interests
- Urban ratepayer interests
- Urban Maori interests
- General community interests
- Incorporating existing structures/programmes and how they will be represented.
- Regional infrastructure interests

To be eligible to be considered for appointment to the Te Awarua o Porirua Whitua Committee, a community nominee must either live in, or be able to demonstrate a close connection with, the whitua.

Each community member must also reflect the interests of a wider group within the community and have the skills, experience and knowledge to relay information between the Te Awarua o Porirua Whitua Committee and different sectors within the community.

5.2 Chairperson

The Chairperson position is to be determined by the full Te Awarua o Porirua Whitua Committee when all members have been appointed. The Chairperson position must be filled by a member of the Te Awarua o Porirua Whitua Committee.

5.3 Quorum

A majority of the membership of the Te Awarua o Porirua Whitua Committee shall be present to form a quorum.

5.4 Alternate members

No alternates/proxies shall take the place of Te Awarua o Porirua Whaitua Committee members.

5.5 Committee meetings and workshops

The Te Awarua o Porirua Whaitua Committee will meet at least 4 times per annum (once a quarter) and with workshops and additional meetings as required.

Meetings will be advertised and will be open to the public.

5.6 Consensus

The Te Awarua o Porirua Whaitua Committee will decide upon the recommendations proposed within their WIP by consensus.

6. Remuneration

Each council shall be responsible for remunerating its representative on the Te Awarua o Porirua Whaitua Committee for the cost of that person's participation on the Committee.

All other members of the Te Awarua o Porirua Whaitua Committee will be eligible to receive standard mileage allowances or reimbursement of travel expenses as determined by Council and shall be eligible to receive the following honorarium:

- Appointed members \$5,000 per annum
- Chairperson \$8,000 per annum

7. Duration of the Te Awarua o Porirua Whaitua Committee

The Te Awarua o Porirua Whaitua Committee shall exist for the duration of the development and completion of a WIP (Whaitua Implementation Programme) document, and shall cease to exist when Council has made decisions on regulatory proposals within the WIP.

WELLINGTON CITY COUNCIL'S SECURITY SERVICES CONTRACT

Purpose

1. The Council's Governance, Finance and Planning Committee (GFP Committee) has resolved that officers should consider on a case-by-case basis the value to the Council in terms of improved quality and/or effectiveness of requiring service providers to implement a living wage¹ for work undertaken for the Council.²
2. The Council (along with other local authorities) has recently approached the market with a tender for security services, including guarding, cash collections, noise control and regulatory services. As part of this process, officers have considered the value to the Council of requiring the suppliers to implement a living wage for the work they undertake for the Council.
3. The tender resulted in six initial bids. Two were deemed non-compliant due to being unable to provide a full service offering. Another was not shortlisted due to very low scoring in all key areas. None of the bidding suppliers had an existing approach to living wage remuneration in place.
4. Because the other local authorities involved in the tender did not require that the possible benefits of a living wage be assessed, questions relating to the living wage were not adopted as a determining factor for the selection of a preferred supplier. It was instead treated as a separate consideration that would be assessed by the Council independently and only once a preferred supplier had been identified. For the avoidance of doubt, the other local authorities would be under no obligation to require that a living wage be paid for services provided to them, nor will they incur any additional costs if adopted by Wellington City Council. The evaluation panel for the tender, made up of representatives of all of the participating local authorities, has made a recommendation to enter into a contract with "Supplier 2". The Chief Executive has accepted that recommendation and will finalise and execute a contract with Supplier 2 pursuant to his delegated authority. The Council is now asked to make a decision as to whether it will direct the Chief Executive to require Supplier 2 to implement a living wage for work performed for the Council.

Summary

5. Officers recommend that the Council should not require Supplier 2 to implement a living wage for work performed for it. The basis of this recommendation is that:
 - The information provided by Supplier 2 indicates that there is little by way of tangible benefits to the Council and Wellington City generally by implementing a living wage in this instance. Most notably, it is unclear what measurable KPIs could be put in place to accurately capture whether the Council is receiving any additional benefits. This is significant because under the Local Government Act 2002 (LGA), the increased cost that arises as a consequence of the living wage should allow for a corresponding increase in the quality or effectiveness of the particular service being provided. In this case it is considered that requiring

¹ For the purposes of this paper the living wage is defined as the \$18.40 plus CPI adjustment paid as a minimum by the Wellington City Council to its staff.

² Minutes of the Governance, Finance and Planning Committee (26 May 2015) at 47.

Supplier 2 to implement a living wage cannot be justified in terms of improved quality and/or effectiveness;

- Requiring a living wage to be paid would create a significant cost to the Council. The increase is estimated to be more than \$2.4 million across the life of the contract of seven years. The Council's budgeting considerations would need to be considerably altered to make allowance for this;
- If a living wage is to be required in this instance, this will have a flow-on effect for future tendering processes. By way of example, officers are concerned that the suppliers in this instance were unable to provide information regarding the benefits the Council will purportedly receive. If the Council were to reach the view that the benefits identified are sufficient, the limited information provided here may act as a precedent for the level of benefits that are required to be demonstrated in order for the Council to reach the view that a living wage requirement is justified; and
- Requiring Supplier 2 to implement a living wage in relation to the services it provides to the Council, in the face of limited evidence of increased quality or effectiveness, would give rise to a real public law risk that the Council's decision could be challenged by way of judicial review.
- The Council has previously obtained legal advice regarding the risks of adopting a blanket policy of requiring a living wage to be paid to the employees of Council contractors. The summary of this advice was that it would be unwise to adopt a blanket or near blanket policy due to the risk that there may be instances where doing so will result in an increase in the costs of some services without a corresponding increase in their quality or effectiveness. In such circumstances, the Council is at risk of being found to have acted outside of the purpose of local government as set out by sections 10 and 11 of LGA
- Whilst it is unusual to include legal opinion within public documents, as is the case here, there are precedents of the subject matter benefitting from full and open disclosure of all of the information relating to the issue.

Recommendations

That the Council:

1. Receive the information.
2. Agree not to require the preferred supplier for the Council's security services tender to implement a living wage in relation to the services it provides to the Council.

Background

6. From 2014 the Council initiated a living wage (at \$18.40) for directly-employed staff.³ This was followed by a similar policy for staff of 100% Council-owned CCOs.
7. At its 26 May 2015 meeting the GFP Committee discussed the introduction of a policy that would require contractors to the Council to pay their employees a living wage (at \$18.40 and adjusted by CPI). It was resolved that the GFP Committee:⁴

³ Please note that this is lower than the living wage that is required in order to become an "Accredited Living Wage Employer". While not discussed in this instance, a shift to the higher living wage (which is adjusted each year) would require significant alterations to the Council's current budget allocations.

⁴ Minutes of the Governance, Finance and Planning Committee (26 May 2015) at 47.

11.(b) item 58 – Living Wage

...

- 11.(b) 6. Agree to instruct officers to consider on a case-by-case basis the value to Council in terms of improved quality and/or effectiveness of requiring service providers to implement a living wage (i.e. \$18.40 increased by CPI since January 2014) for work undertaken for Council.
 - 11.(b) 7. Note that, notwithstanding [the delegation to the Chief Executive to make decisions on the provision of Council services], the Chief Executive has advised of his intention to refer any specific contracting decisions involving living wage considerations to Council for its decision.
 - 11.(b) 8. Note that Council's preference is to require service providers to implement a living wage where that can be justified in terms of improved quality and/or effectiveness.
8. In June 2015 the Council, Kapiti District Council and Porirua City Council approached the market with a tender for security services, including guarding, cash collections, noise control and regulatory services. This was required as the existing contracts for the local authorities had either expired or were nearing expiry.
 9. The three local authorities agreed to approach the market collectively due to the specialist nature of the services required and because security was not seen as core business. Market research has shown that the security industry has developed significantly in the past decade, with specialist security services now being delivered by trusted and proven third party providers. By contracting these services the three local authorities were able to ensure they had maximum flexibility and appropriate safeguards such as additional and co-ordinated coverage, broader capabilities and better management across the wider geographic region. Major benefits included access to dedicated specialist security forces that operate 24/7 with centrally managed systems, improved quality and service innovation solutions.
 10. Consideration was also given to the fact that these specialist firms were best placed to attract, train and retain the right staff with administrative duties such as licensing, recruiting, screening and scheduling of security personnel being performed internally (for example, some guards will need to be licenced "crowd controllers"). Cost benefits included lower training costs, reduced administration overheads, better response co-ordination, reduced duplication of effort (multiple responses) and improved management of performance and issues.
 11. Lastly, while in-house security was considered, it was discounted for a number of compelling reasons. These included:
 - **Service Complexity.** The different types of services required (ie; cash collection, noise control, etc) could not be met through an in-house model without the need for multiple specialist roles, licensing, training and technology support systems;
 - **Cost.** The total cost for managing in-house services was calculated at twice the cost (excluding any living wage adjustment) of existing third party provided services;
 - **Resourcing.** The number of staff (both full and part time) required to ensure appropriate coverage across all services, particularly during emergencies or absenteeism, was prohibitive with an associated increase in technical, management and administrative overheads;

- **Regional Collaboration.** This model did not meet the needs of all participating Councils and would have prevented a collaborative approach to market, thereby losing any ability to leverage spend, consolidate services, maximise resources and improve performance, and
 - **Operating Structure.** Under the Private Security Personnel and Private Investigators Act 2010, special licences would be required if in-house security employees were paid to guard or enter any property not owned by the Council (for example property owned by a separate council entity or attendance at private dwellings for noise control purposes). Due to the detailed requirements of the Act and uncertainty around ongoing security services and Council ownership of structures, any future licensing needs would be operationally very difficult or impossible for a Council to obtain itself, and therefore a CCO (acting as a limited liability company) would need to be established which would add a layer of complexity and transactional cost.
12. The tender resulted in six initial bids. Two were deemed non-compliant due to being unable to provide a full service offering. Another was not shortlisted due to very low scoring in all key areas.
13. As discussed below, the shortlisted suppliers were asked to provide details of any potential benefits the Council would receive should the relevant supplier implement a living wage for work undertaken for it under the contract. Because the tender involved multiple local authorities, these questions were not a determining factor in the selection of a preferred supplier. Rather, the evaluation panel for the tender, made up of representatives of all of the participating local authorities, would decide on its preferred supplier. The Council would then separately consider whether it would require a living wage to be paid. It would do this independently of the other local authorities.
14. The evaluation panel has made a recommendation to enter into a contract with "Supplier 2". The Chief Executive has accepted that recommendation and will finalise and execute a contract with Supplier 2 pursuant to his delegated authority.

Discussion

15. The Council is now asked to make a decision as to whether it will require Supplier 2 to implement a living wage for work performed for it. In making its decision the Council should note that:
- No other local authorities that are parties to the tender will be affected by the Council's decision relating to the living wage requirement. They will not incur any additional costs as a result. Rather, all additional costs will lie solely with the Council; and
 - The Council's considerations should be framed by the requirements of, and powers provided to it under, the LGA. Most notably, the Council is required to give effect to the purpose of local government, as set out in section 10 of the LGA:⁵

10 Purpose of local government

- (1) The purpose of local government is—
- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
 - (b) to meet the current and future needs of communities for good-quality local infrastructure, local public

⁵ Local Government Act 2002, ss 10 and 11.

services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

- (2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—
- (a) efficient; and
 - (b) effective; and
 - (c) appropriate to present and anticipated future circumstances.

The purpose of requiring the living wage to be considered on a case-by-case basis is to ensure compliance with this section. That is to say, the increased cost that arises as a consequence of the living wage should allow for a corresponding increase in the quality or effectiveness of the particular service being provided.

Legal Advice

16. The Council has previously obtained legal advice regarding the risks of adopting a blanket policy of requiring a living wage to be paid to the employees of Council contractors. The thrust of this advice was that it would be unwise to adopt a blanket policy due to the risk that there may be instances where doing so will result in an increase in the costs of some services without a corresponding increase in their quality or effectiveness. In such circumstances, the Council is at risk of being found to have acted outside of the purpose of local government as set out by sections 10 and 11 of LGA.⁶

... The Council's purpose under section 10 is to meet the needs of communities for "*good-quality*" public services etc. "in a way that is most *cost-effective* for households and businesses". The term good-quality is defined to include the notion of efficiency.

If it is accepted for the purposes of this advice that implementing [a policy of requiring employees of Council contractors to be paid a living wage] will increase the cost of some services without a corresponding increase in their quality or effectiveness, there is at least a prima facie argument that pursuing a policy with such an outcome would fall outside the purpose of local government.

17. And further:⁷

The [Local Government Act 2002 Amendment Act 2012] therefore shifted the focus from broadly stated "outcomes" to specified "outputs". In addition to this, the new purpose introduced an input-focused constraint by requiring that local authorities act cost-effectively. In this regard, the focus of local government has arguably changed from one of more general well-being, to one where affordability has become "the bottom line" for how outcomes are delivered.

There is little by way of case law or related definitions in other legislation to assist with interpreting the words "most cost-effective". A 2001 report by the Auditor-General referred to cost-effectiveness as "impact or outcome over cost",

⁶ Letter of DLA Piper to Wellington City Council regarding "Living Wage" (18 May 2015) at [13] and [14] (emphasis in original).

⁷ At [21] to [23] (emphasis in original).

which is consistent with the everyday/economic use of the term as describing the relationship between benefit and cost.

Applying this meaning of cost-effective, section 10(1)(b) of the [LGA] (working in conjunction with sections 11 and 12) means that it would fall outside the purpose of local government to provide local services etc. in a way that is explicitly not the most cost-effective. While the nature of the cost/benefit analysis underpinning cost-effectiveness means that local authorities are not restricted to choosing the cheapest option, we have assumed that [requiring employees of Council contractors to be paid a living wage] will increase the cost of some services without a corresponding increase in their quality or effectiveness. If this assumption is correct, then the test of acting in a way that is most cost-effective for households and businesses would, on balance, not be met.

18. This advice recommended that the Council adopt a case-by-case approach to ensure that the increased cost that arises as a consequence of the living wage in a particular set of circumstances results in a corresponding increase in the quality or effectiveness of the particular service being provided. If the Council requires the living wage in circumstances where there is no corresponding increase, there is a genuine risk that the Council will be acting outside the purpose of local government as set out in the LGA and accordingly a significant public law risk will exist.
19. For the sake of completeness, it should be noted that the advice given above was later added to in order to address advice provided by barrister Matthew Palmer to the Public Service Association on the same issue some years earlier. Dr Palmer reached the view that a local authority would not be prohibited under the LGA from paying its employees, or requiring its contractors or CCOs to pay their employees, a living wage. Both Council's lawyers and Dr Palmer agreed on the legislative provisions that were likely to be engaged in considering this matter. However, Dr Palmer reached a different conclusion by relying on macro studies showing aggregate benefits caused by the living wage. The Council's lawyers maintained their initial position, concluding:⁸

While we do not offer any critique of [the macro studies cited by Dr Palmer], our view is that if the Council had to justify its position in court, a judge is unlikely to accept such broad meta-analyses as evidence of improved quality or effectiveness. Rather, any potential challenge is likely to focus on a specific case where the benefits are highly contestable. Our approach differs in that it advances on the basis that there are likely to be instances where there are increased costs to the Council, but the benefits are less clear. Accordingly, we recommend a case-by-case approach and consider the risks of a universally applied policy to be material.

20. They further noted that any further differences between the two positions may be put down to the fact that:⁹

Our advice and that of Dr Palmer have slightly different foci. Our advice focused solely on the payment of a living wage to the employees of Council contractors. Conversely, Dr Palmer's advice had a broader scope in that it focused on local authority employees, CCO employees and the employees of local authority contractors (however he deals with these categories collectively). The legal risk will change depending on what the focus is — requiring a living wage to be paid to Council employees is less risky than requiring it to be paid to the employees of Council contractors. This is because different LGA provisions will be available to

⁸ Letter of DLA Piper to Wellington City Council regarding "Living Wage — Addendum to advice of 18 May 2015" (10 June 2015) at [4.3].

⁹ At [4.4.1] and [4.4.2].

justify the particular decision (e.g. the LGA requirements that Council be a good employer will apply to Council employees, but not to contractor employees); and

The law in this area is reasonably new and untested. Accordingly, this makes it difficult to predict what view a court may reach. Ultimately, these issues require judgement calls to be made one way or the other. Because of this, a divergence of views is understandable. Regardless, there will be a degree of risk involved

21. Returning to the issue at hand, officers are concerned that the large increase in cost proposed in this instance is not matched by a similar increase in the quality or effectiveness of the particular service being provided. Accordingly, were a judicial review to be taken there is a real risk that the Council will be found to have acted unlawfully.
22. In support of this, officers have received legal advice that a court could reach a view that the evidence presented by Supplier 2 regarding the cost-effectiveness of the living wage requirement is demonstrably weak. If the Council were to require that the living wage be paid based on such evidence, it could be found to be acting in a manner that is inconsistent with the purpose of local government and, accordingly, beyond the powers provided to it under the LGA. The advice provided is that while a court *may* show deference to the Council's assessment of cost-effectiveness, there is no guarantee of this. As a consequence, if a decision to require payment of the living wage in this case was challenged by way of judicial review, there is a material risk that that challenge would be successful.

Information regarding the impact of the living wage as provided by the preferred supplier

23. In order to give effect to the instruction of the GFP Committee, officers asked two specific living wage questions of the three shortlisted suppliers:

Please specify and explain the implications (both positive and/or negative) to the Services detailed in your Proposal, including price, if your organisation were to receive a request to pay a living wage to your employees and/or sub-contractors (defined as \$18.40 per hour, CPI adjusted since January 2014) for the portion of the Services provided to Wellington City Council?

and

If you were to apply the living wage, please explain how the quality and effectiveness of the Services you propose to deliver as part of this contract could improve, over and above those stated in your Proposal?

24. The initial responses to these questions lacked detail. Accordingly officers asked two follow up questions:

If you were to pay the living wage to personnel providing services to Wellington City Council, in what ways (if any) would this benefit Wellington City Council? For example, would the quality and effectiveness of the Services you propose to deliver to Wellington City Council (including performance against the proposed Key Performance Metrics) improve, over and above those stated in your Proposal and, if so, how?

and

You have indicated in your response to our initial living wage questionnaire that, if you were to pay the living wage to personnel providing services to Wellington City Council, this would change the price you have stated in your Proposal. Please state specifically, by way of a percentage or dollar amount, the amount of such change in price.

25. In answering these questions, Supplier 2 (the evaluation panel's preferred supplier) cited general benefits to the Council, rather than tangible changes to service levels:

As detailed in [Supplier 2's] proposal, we have offered to raise the KPI criteria significantly above the Council's suggested level of achievement. This will be achieved through the quality and calibre of personnel we plan to deploy on already higher rates than other security companies [i.e. irrespective of moving to a living wage]. If the living wage was to be paid, the likelihood of meeting the higher level of achievement would be more often and frequent.

26. The basis for this claim, according to Supplier 2, is that the introduction of a living wage would result in:
- A reduction in staff turnover. This stable workforce is intended to lead to consistency and continuity in service as well as an ability to build stronger skills and knowledge;
 - Improved job satisfaction meaning a higher quality of employee output and reduced rates of absenteeism; and
 - An ability to attract and retain higher quality candidates, meaning high performers with better communication skills.
27. According to Supplier 2, the cost to the Council is likely to be approximately a 19% increase on the total contract price.

Evaluation of the response provided by the preferred supplier

28. Officers are concerned that the benefits outlined by Supplier 2 lack sufficient detail to justify the significant increase in cost that would result if the Council were to require that a living wage be paid in this instance. There is limited ability for the Council to identify tangible benefits and ensure they come to fruition through measurable KPIs. This is particularly true given that:
- When assessing this issue, the Council's focus should be on the difference between the quality of service that will be provided under the contract regardless, and the additional level of service provided as a consequence of requiring a living wage to be paid. That is to say the focus is on the incremental change;
 - No separate and additional service or activity will be provided by Supplier 2 as a result of the Council paying the cost of a living wage. Rather Supplier 2 suggests that its standard services will simply be provided to a higher level. However, large portions of its standard services are unlikely to be improved simply due to an increase in wages. For example, staff numbers will remain the same meaning that response times are unlikely to be reduced; and
 - For the purposes of the LGA, the Council must assess the benefits to the Council and Wellington City generally, rather than considering peripheral benefits, such as those that would be gained by the employees of Supplier 2.
29. Any increase in services should also be weighed against the increased costs the Council would face. Currently there is no allocation in the budget for the 2015/2016 financial year for employees of Council contractors to be paid a living wage. Accordingly, the Council would face a shortfall for the remainder of this year. In the budget for the 2016/2017 financial year there is an allocation of \$250,000 for employees of Council contractors to be paid a living wage. This increases to \$500,000 in the 2017/2018 financial year. These amounts will be either wholly or largely consumed by the increased costs in relation to the current contract alone. The effect of this is that significant budget allocations will need to be made to address the additional living wage increases in relation to this contract, let alone future contracts for other

services should the Council wish to require that a living wage be paid in those instances (this is discussed in greater detail below). Accordingly, any additional allocations required to support the implementation of a living wage will need to come from funding already reserved for other initiatives in the LTP.

30. It should be noted that the contract cost stipulated by Supplier 2, putting to one side the living wage component, is below the current budget for this contract, representing a saving of approximately 8%. In noting this however, the Council has an organisation-wide savings target of \$2.286 million for the 2015/2016 financial year. The expectation is that any savings from this contract will contribute to the LTP budgeted savings target, and not be used to fund the living wage.

Broader implications of requiring a living wage in this instance

31. Officers have concerns regarding the broader implications of requiring that a living wage be paid in this instance. These are:
- If the Council were to require a living wage to be paid for those contracting services that are the most amenable to it (e.g. security, waste management, cleaning, construction works), the total cost per annum to the Council would be substantial. This is not to say that the Council should never require a living wage to be paid. Rather, that unless there are significant changes to budgeting in this area, the Council will have to choose which of these contracts are the most appropriate for a living wage requirement;
 - The shortlisted suppliers in this instance provided limited responses to officers' questions regarding the benefits that will purportedly be received if a living wage is to be paid. If the Council were to agree to a living wage in this instance, it risks setting a precedent as to the amount of information that should be provided/the level of benefits that need to be demonstrated as part of a tender response. In doing so, it may limit the ability of the Council to decide against the living wage in relation to future matters on the grounds that there is insufficient information regarding the potential benefits. This is particularly concerning given the lack of tangible benefits that were presented in this instance. Deciding to require the living wage in the present circumstances may provide a new mechanism by which those in favour of the living wage can challenge the Council should it decide that it wants better information in relation to a future matter; and
 - The Council approached the market together with two other local authorities on the basis of a syndicated contract. Methods such as syndicated contracts provide the Council with potential procurement advantages. Introducing a living wage component is likely to make a fully syndicated contract impossible. This in turn may impact upon the Council's ability to lead or participate in syndicated contract or shared services initiatives in the future.

Options

32. The options available to the Council are to:
- Require that Supplier 2 implement a living wage in relation to the security services provided to the Council. In doing so the Council will also need to consider the long-term budget implications and readjust its allocations accordingly; or
 - Not require that Supplier 2 implement a living wage in relation to the security services provided to the Council.

Next Actions

33. A decision is required by 31 October 2015 to enable negotiations to progress. A decision to require Supplier 2 to implement a living wage will require additional time for negotiations and implementation impacts to be discussed and finalised.

Attachments

Nil

Author	Brett Ridgen, Manager Contracts & Procurement
Authoriser	Andy Matthews, Chief Financial Officer

SUPPORTING INFORMATION

Consultation and Engagement

A number of Officers have been consulted on the paper including the CE, CFO Director HR, Acting Director Strategy & External Relations, Manager Risk Assurance, and Manager Compliance & Advice. Other participating Councils Officers are aware of WCC's consideration of the Living Wage, but are not privy to any specific details in relation to this tender.

Treaty of Waitangi considerations

N/A

Financial implications

Finance assisted with the cost/price assessments of the tender and subsequent living wage impact. The second (PE) paper addresses the financial implications of requiring a contractor to Council to implement the living wage.

Policy and legislative implications

Strategy & External Relations has been consulted on this paper. Post a decision, any policy implications will need to be developed and where necessary incorporated.

Risks / legal

The legal view and associated risks are highlighted in this paper.

Climate Change impact and considerations

N/A

Communications Plan

A communication plan will be developed post a decision.

3. Committee Reports

REPORT OF THE TRANSPORT AND URBAN DEVELOPMENT COMMITTEE MEETING OF 8 OCTOBER 2015

Members: Mayor Wade-Brown, Councillor Ahipene-Mercer, Councillor Coughlan, Councillor Eagle, Councillor Foster (Chair), Councillor Free, Councillor Lee, Councillor Lester, Councillor Marsh, Councillor Pannett, Councillor Peck, Councillor Ritchie, Councillor Sparrow, Councillor Woolf, Councillor Young.

The Committee recommends:

HOUSING ACCORD IMPLEMENTATION - NOMINATION OF SPECIAL HOUSING AREAS

Recommendations

That the Council:

1. Recommend to the Council that the Minister of Building and Housing approve the following five special housing areas and associated qualifying development criteria as identified in the Special Housing Area maps:
 - a. 10 Surrey Street, Tawa, with qualifying developments criteria being 2 or more dwellings or allotments;
 - b. 20 Glanmire Road, Newlands, with qualifying developments being 2 or more dwellings or allotments;
 - c. 48-62 Mein Street, with qualifying developments being 2 or more dwellings or allotments;
 - e. Shelly Bay, with qualifying developments being 10 or more dwellings or allotments, noting that officers must consider the Open Space values in assessment of any application for this area.

PROPOSED DISPOSAL - 114B ABEL SMITH STREET, TE ARO

Recommendations

That the Council:

1.
 - a. Declares the property at 114B Abel Smith Street, Te Aro being 10 m² (subject to survey) described as part Section 117 Town of Wellington (the Land) surplus to requirements.
 - b. Approves the disposal of the Land.
 - c. Delegates to the Chief Executive Officer the power to conclude all matters necessary to dispose of the Land including offerback investigations and negotiations.

Attachments

Nil

4. Public Excluded

Resolution to Exclude the Public:

That the Council :

Pursuant to the provisions of the Local Government Official Information and Meetings Act 1987, exclude the public from the following part of the proceedings of this meeting namely:

General subject of the matter to be considered	Reasons for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
4.1 Wellington City Council's Security Services Contract	7(2)(h) The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities.	s48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7.
4.2 Local Government Funding Agency Annual General Meeting	7(2)(a) The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.	s48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7.
4.3 Public Excluded Report of the Transport and Urban Development Committee Meeting of 9 September 2015	7(2)(i) The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	s48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7.
4.4 Public Excluded Report of the Transport and Urban Development Committee Meeting of 8 October 2015	7(2)(i) The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	s48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7.