



Finance and Audit Committee

OPEN MINUTES

Minutes of a meeting of Finance and Audit Committee held in the Council Chamber, 15 Forth Street, Invercargill on Wednesday, 17 October 2018 at 1.02pm to 1.03pm, 2.55pm to 4.16pm, 4.52pm to 5.24pm.

PRESENT

Chairperson	Ebel Kremer
Councillors	John Douglas
	Paul Duffy
	Bruce Robertson (1.02pm to 1.03pm, 2.55pm to 3.51pm)

APOLOGIES

Mayor Gary Tong

IN ATTENDANCE

Councillor Julie Keast (1.02pm to 1.03pm, 2.55pm to 4.16pm)
Chief Executive – Steve Ruru
Group Manager, Services and Assets – Matt Russell
Chief Financial Officer - Anne Robson
Communications Manager – Louise Pagan
Governance and Democracy Manager – Clare Sullivan
Committee Advisor - Fiona Dunlop

Adjournment of Meeting

The Chair advised that the meeting would have to open and adjourn until the conclusion of the Services and Assets Committee meeting.

Resolution

Moved Chairperson Kremer, seconded Cr Douglas **and resolved that the Finance and Audit Committee adjourns until the conclusion of the Services and Assets Committee.**

The meeting adjourned at 1.03pm.

The meeting reconvened at 2.55pm.

Councillors Kremer, Douglas, Duffy, Keast and Bruce Robertson (external member) were present when the meeting reconvened.

1 Apologies

There were apologies from Mayor Tong.

Moved Chairperson Kremer, seconded Cr Douglas and **resolved:**

That the Finance and Audit Committee accept the apology.

2 Leave of absence

There were no requests for leave of absence.

3 Conflict of Interest

There were no conflicts of interest declared.

4 Public Forum

There was no public forum.

5 Extraordinary/Urgent Items

There were no Extraordinary/Urgent items.

6 Confirmation of Minutes

Resolution

Moved Cr Duffy, seconded External Member Robertson **and resolved:**

That the Finance and Audit Committee confirms the minutes the meeting held on 24 September 2018 as a true and correct record of that meeting.

Reports

7.1 Business Case - Te Anau Wastewater Discharge Method - Kepler Block

Record No: R/18/10/23194

Group Manager, Services and Assets – Matt Russell, Management Accountant – Susan McNamara, Community Partnership Leader – Simon Moran and Stantec Consultant Roger Oakley were in attendance for this item.

Mr Russell advised that the purpose of the report was to enable the Committee to provide comment on the financial and risk management issues associated with the decision that Council needs to make in regard to the selection of a wastewater discharge method at the Kepler Block based on an updated and peer reviewed business case.

(External Member Bruce Robertson left the meeting at 3.51pm.)

The Chief Executive addressed the meeting regarding legal advice that he had sought in relation to Section 10 of the Local Government Act 2002. Section 10 outlines the purpose of local government. A copy of the legal advice is appended to the minutes as appendix one.

(Councillor Keast left the meeting at 4.16pm.)

(The meeting adjourned at 4.16pm and reconvened at 4.52pm.)

(Councillors Kremer, Douglas and Duffy were present when the meeting reconvened.)

Following the legal advice and more discussion on the matter the chair moved to receive the report but not the rest of the recommendations in the officer's report.

Moved Cr Kremer, seconded Cr Douglas the motion that the Finance and Audit Committee Receives the report titled "Business Case - Te Anau Wastewater Discharge Method - Kepler Block" dated 8 October 2018.

The motion was put and declared CARRIED.

Moved Cr Kremer, seconded Cr Douglas the motion that the Finance and Audit Committee Recommends to Council that it notes:

- That it is important for Council to ensure that it meets the relevant legislation requirements including the requirements in section 10 and Part 6 of the Local Government Act 2002

- That Council needs to ensure that it can, under the Local Government Act 2002, adopt a funding tool that is at variance to its Revenue and Financing Policy if it is to ask the Te Anau and Manapouri community to fund the higher costs associated with option 3 and in this regard asks the Chief Executive to seek legal advice before the matter is referred back to Council for consideration
- That the Council note that there are risks associated with obtaining, within a tight timeframe the resource consents that are needed for option 3 – subsurface drip irrigation and extension of the current Upukerora discharge
- That it is important that Council retain centre pivot irrigation as a ‘fall back’ option, should there be delays in obtaining the resource consents needed to proceed with the implementation of option 3
- That there is a risk that the costs of implementing option 3 could be higher than the estimates indicated in the business case and this could raise questions about the capacity of the Te Anau and Manapouri communities to fund these increased costs
- Notes that Council needs to consider the origin of cost increases should they arise in order to ensure that the Te Anau and Manapouri communities are not subjected to cost escalations that arise irrespective of the discharge method, such as those which might be associated with construction of the pipeline to the Kepler block.

The motion was put and declared CARRIED.

Final resolution

That the Finance and Audit Committee:

- a) Receives the report titled “Business Case - Te Anau Wastewater Discharge Method - Kepler Block” dated 8 October 2018.**
- b) Recommends to Council that it notes:**
 - **That it is important for Council to ensure that it meets the relevant legislation requirements including the requirements in section 10 and Part 6 of the Local Government Act 2002**
 - **That Council needs to ensure that it can, under the Local Government Act 2002, adopt a funding tool that is at variance to its Revenue and Financing Policy if it is to ask the Te Anau and Manapouri community to fund the higher costs associated with option 3 and in this regard asks the Chief Executive to seek legal advice before the matter is referred back to Council for consideration**
 - **That the Council note that there are risks associated with obtaining, within a tight timeframe the resource consents that are needed for option 3 – subsurface drip irrigation and extension of the current Upukerora discharge**
 - **That it is important that Council retain centre pivot irrigation as a ‘fall back’ option, should there be delays in obtaining the resource consents needed to proceed with the implementation of option 3**
 - **That there is a risk that the costs of implementing option 3 could be higher than the estimates indicated in the business case and this could raise**

questions about the capacity of the Te Anau and Manapouri communities to fund these increased costs

- **Notes that Council needs to consider the origin of cost increases should they arise in order to ensure that the Te Anau and Manapouri communities are not subjected to cost escalations that arise irrespective of the discharge method, such as those which might be associated with construction of the pipeline to the Kepler block.**

The meeting concluded at 5.24pm.

CONFIRMED AS A TRUE AND CORRECT RECORD AT A
MEETING OF THE FINANCE AND AUDIT COMMITTEE
HELD ON WEDNESDAY 17 OCTOBER 2018.

DATE:.....

CHAIRPERSON:.....



16 October 2018

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Dear Steve

Section 10 Local Government Act 2002

Background

- 1 The Te Anau Wastewater Discharge Project Committee (the Committee) has passed a recommendation to proceed with sub-surface drip irrigation and specifically noted that this option is "outside section 10 of the Local Government Act". Section 10 is one of the purpose sections of the LGA and is:

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 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.

- 2 The purpose of the LGA itself is:

3 Purpose

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and

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- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
 - (c) promotes the accountability of local authorities to their communities; and
 - (d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.
- 3 The focus of section 10 is on both being cost-effective with ratepayers' money, efficient and effective, and also meeting the future needs of the community. This emphasis on future needs is similar, but more constrained, than the repealed reference to the four well-beings and is developed in section 14(h) whereby a principle for a local authority performing its role is sustainable development:
- in taking a sustainable development approach, a local authority should take into account—
- (i) the social, economic, and cultural interests of people and communities; and
 - (ii) the need to maintain and enhance the quality of the environment; and
 - (iii) the reasonably foreseeable needs of future generations.
- 4 There is a conflict within the LGA between the amended section 10 with its focus on cost-effectiveness and the other wider purpose and principles sections.
- 5 The Committee has made a recommendation rather than a decision so there is an ability for the Council (Finance and Audit Committee and Services and Assets Committee) to make a different decision from the recommendation. Council can also form a view about what the most cost-effective option is and explain those reasons which may justify the recommended option. But Council should not continue with a decision that is explicitly inconsistent with Council's purpose.
- 6 We answer your specific questions below.

Interpretation and use of section 10

How section 10 should be interpreted including how a local authority might determine what is the most cost effective option, when choosing between a range of options.

- 7 Section 10 sets out the purpose of local government and cannot be ignored or avoided. However, being the most cost-effective¹ is prefaced with meeting the needs of current and future communities. This means that long-term considerations can be included in an assessment of what is the most cost-effective. We consider that determining what is "most cost-effective" is a political judgement involving a balance of what is the right spend in the circumstance considering capital costs, operating cost over the whole of life of an asset, and what Council is getting for the money.

¹ Section 10(1)(b)

- 8 The term "cost-effective" is not defined in the LGA and is not commonly used in legislation. A discussion paper from the Auditor-General from 2011 (around the time the section 10 amendment that introduced the term was being progressed) describes the term as "about the relationship between the investment – the input of dollars and resources – to the result, or the impact or outcome achieved"².
- 9 Council is able to pay more than the cheapest option if the additional outcomes (e.g. environmental benefits) are both desired and achieved by a more expensive option.
- 10 Any decision needs to be "cost-effective" to be valid.
- 11 In addition to meeting the "future needs" and being "most cost-effective" infrastructure is to be "good quality". This term "good quality" is defined and again there is a balance that requires an assessment of what is "efficient", "effective" and "appropriate to present and anticipated future circumstances". Once again Council can include a temporal element to decision making but this has the caveat of being "appropriate" and has no higher weighting than the need for infrastructure to be "efficient" and "effective".

How section 10 should be used in decision-making processes

- 12 Any decision should be justified in accordance with the restrictions of section 10. Included in the definition of "good quality" is a requirement that infrastructure is appropriate to future circumstances. There may be an argument that the option preferred by the Committee is better for future circumstances because of future development of the airport and environmental effects. If this is the case then any decision should include a discussion of the tensions in section 10 and how the cost effectiveness has been counterbalanced by the future circumstances.

The role of community views as compared to other factors such as environmental effects and costs in coming to a view on what might constitute the most cost effective option.

- 13 Section 10 itself refers to enabling democratic decision making. These community views and environmental outcomes will be relevant to determining what is most cost-effective in the future. This reflects what Council determines the ratepayers should pay for what it is that can be delivered.

Implications of setting aside section 10

What are the legal implications of the committee having made a conscious decision to record that it has not complied with section 10 of the LGA in arriving at its decision?

- 14 The Committee has made a recommendation only and it is for Council (Finance and Audit Committee and Services and Assets Committee) to make a decision. Council needs to consider the recommendations and make up its own mind and in our view be satisfied the proposed spending is cost-effective and give reasons why that is the case.

Does the fact that the committee has explicitly recorded the fact that it has 'set aside' section 10 create the risk that the committee's decision would be seen as being ultra vires if it were to be challenged via judicial review?

- 15 No, because it is only a recommendation. Any *ultra vires* issue can be fixed by Council. It is important that Council does not repeat the Committee's resolution in the same form.

² Discussion paper – Central government: Cost-effectiveness and improving annual reports, Controller and Auditor-General, June 2011, para 4.7 (<https://www.oag.govt.nz/2011/improving-annual-reports/docs/cost-effectiveness-and-improving-annual-reports.pdf>)

What would be the implications for Council of it accepting the committee recommendations and similarly recording that it wishes to 'set aside' section 10?

16 This would be invalid in our view and susceptible to a successful challenge.

Yours faithfully
Anderson Lloyd



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