

TO: COUNCIL
FROM: MELISSA BROOK, MANAGER – STRATEGY AND POLICY
MEETING DATE: 16 APRIL 2019

CONSULTATION REQUIREMENTS FOR INVESTMENT IN CITY BLOCK

SUMMARY

This report sets out the legislative requirements involved in making a decision on what engagement to undertake for the decision on whether to invest in the City Block. It concludes that the matter is significant, and as such, consultation by use of the Special Consultative Procedure is appropriate.

The report also seeks Council's direction on the timing for consultation.

RECOMMENDATIONS

That the report “Consultation Requirements for Investment in City Block” be received; and

That Council determine that Investment in the City Block is significant in accordance with its Significance and Engagement Policy; and

That Council request a Statement of Proposal for Investment in City Block and other necessary documents be prepared for consideration at an extraordinary meeting as soon as is practicable.

IMPLICATIONS

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| 1. | <i>Has this been provided for in the Long Term Plan/Annual Plan?</i> No |
| 2. | <i>Is a budget amendment required?</i> Yes |
| 3. | <i>Is this matter significant in terms of Council's Policy on Significance?</i> Yes |
| 4. | <i>Implications in terms of other Council Strategic Documents or Council Policy?</i> This matter aligns with SoRDS and a number of Council's Community Outcomes. |
| 5. | <i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> This paper sets out the public consultation requirements. |
| 6. | <i>Has the Child, Youth and Family Friendly Policy been considered?</i> N/A for this report. |

FINANCIAL IMPLICATIONS

The financial implications of consultation are staff time, and preparation and publication of materials. This could be covered within existing budgets.

1: ISSUE

In 2017 Council, through Invercargill City Property Limited (\$1.8m) and Invercargill City Holdings Limited (\$3.2m), became an investor/shareholder in HWCP Ltd. Originally the intention was for the company to acquire all land necessary for a development in the Tay/Dee/Esk/Kelvin Streets block.

In September 2018, Council acknowledged that HWCP Ltd had shifted from a land bank to a developer of the inner city block. Invercargill City Properties Ltd has made it clear that it invested in HWCP Ltd as a land bank and Council has said that it will not invest further funds in HWCP Ltd, as a developer, without consultation with the community.

Council has, not only in its decisions, but also in response to a number of *Local Government Official Information and Meetings Act 1987* requests has indicated that it will not invest further in HWCP Ltd without consultation.

The question for Council to consider now is the process required and timing for any consultation.

2: LEGISLATION

The purpose of the Local Government Act 2002 (the Act), amongst other things, is to provide a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and promote the accountability of local authorities to their communities. The Act provides that the purpose of Local Government is first to meet the current and future needs of communities in a way that is most cost effective for households and businesses. It further provides that the provision of these services is to be efficient, effective and appropriate to present and anticipated circumstances.

The Act was amended in 2012 to constrain councils to providing good quality public services, local infrastructure and regulatory functions. However, the four wellbeings - social, community, environmental and cultural - are currently at Select Committee stage for reintroduction into the Act. Any investment in a city block development would be considered in the context of social and community wellbeing.

Sections 77 to 79 of the Act establish requirements for councils when making decisions. The Act provides that Council must seek to identify all reasonably practicable options for the achievement of the objective of a decision and must assess the options in terms of their advantages and disadvantages. The following reasonably practicable options for responding to the opportunity to invest in the City Block have been identified.

Option 1 - Investment into the City Block.

Option 2 - No investment in the City Block.

A full analysis of the advantages and disadvantages of each option will be included in the consultation materials to be provided to Council.

Section 78 of the Act requires a local authority to give consideration to the views and preferences of persons likely to be affected by, or have an interest in, an investment by Invercargill City Council in the City Block. In this instance, all ratepayers and residents of Invercargill could be seen as affected, as any investment would be funded by rates. In order to obtain the views of the community, Council officers are recommending a consultation process; an engagement plan will be provided for Council's consideration alongside the consultation materials and Statement of Proposal.

Section 79 provides Council the discretion to make judgements about how best to achieve compliance with sections 77 and 78, although compliance should be largely in proportion to the significance of the matter concerned. In particular, Council has discretion to make judgements about the extent to which different options are to be identified and assessed, the degree to which benefits and costs are to be quantified, the extent and detail of the information to be considered and the extent and nature of any written record to be kept of the manner in which it has complied with sections 77 and 78. When making these judgements, Council must have regard to the principles relating to local authorities established in section 14 of the Act, the extent of Council's resources and the extent to which the nature of the decision or the circumstances in which a decision is taken, allow Council scope and opportunity to consider a range of options or the views and preferences of other persons.

The principles set out in section 14 of the Act (*Appendix 1*) are particularly relevant, as they refer to commercial undertakings and risk.

In section 82, the Act sets out the principles of consultation. In essence:

- people must have reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those people;
- people who will be affected by, or have an interest in, the decision or matter should be encouraged to present their views to council, and council must provide them with a reasonable opportunity to present those views in a manner and format that is appropriate to the preferences and needs of them;
- persons encouraged to present their views to council should have clear information from council on the purpose of consultation and the scope of the decisions to be taken after consideration of everyone's views;
- Council must receive the views presented with an open mind, and give due consideration to those views;
- The nature and significance of the decision, including its likely impact on people with an interest in the matter, will determine the approach to consultation that the Council determines to be appropriate.

All of the above is a forerunner to considering how significant the proposal is, and for that, Council must turn to its Significance and Engagement Policy.

3: SIGNIFICANCE AND ENGAGEMENT POLICY

The Council is required to consult on issues as determined by it. To help with the determination and to guide the level of consultation, Council has adopted a Significance and Engagement Policy. Using the categories contained in that policy, the decision on whether to invest in the City Block is considered of greater significance.

Contribution to Community Outcomes

Council will consider the extent to which the decision contributes to its Community Outcomes or any key project. If a matter clearly contributes to several Community Outcomes or a key project and is borderline in regards to the other thresholds and criteria for determining significance, this will mitigate in favour of the decision being treated as "less significant". If,

however, a decision does not clearly contribute to Community Outcomes or a key project and is borderline in regards to the other thresholds and criteria for determining significance, Council will adopt a precautionary approach and treat the issue as being “more significant”. Investing in the City Block would likely contribute towards the following Community Outcomes identified by Council within its 2018-28 Long-term Plan:

- Invercargill’s economy continues to grow and diversify
- Invercargill’s business areas are bustling with people, activities and culture
- Strong collaborative leadership of the City is demonstrated
- Residents of, as well as visitors to, Invercargill give positive feedback and have great experiences.

Consistency with Long-term Plan (LTP)

The City Block development was not included in the ICC 2018-28 LTP. This gives the issue greater significance.

Net Cost to Council

More information is required on the net cost to Council, but it is fair to say it will be significant. Unbudgeted capital expenditure over \$5 million is considered significant.

Variation of Options

There are significant variations in the impacts between a decision by Council not to invest any further in the City Block development as opposed to a decision to provide further investment in the project. This leads to the decision having greater significance.

Reversibility

Once made, a decision to invest in the City Block is not easily reversed. The decision will be relied upon by a number of other parties. This leads to the decision having greater significance.

Level of Controversy

Council’s investment in the City Block development has the potential to be controversial. This leads to the decision having greater significance.

Precautionary Approach

If in doubt, Council’s policy is to consult.

Impact on Funders

The impact on rates of this decision is currently unknown, an analysis will be included in the Statement of Proposal.

Due to the significance of the issue being considered, it is recommended that Council choose to use the Special Consultative Procedure to engage with the community prior to making a decision on further investment in the City Block project.

4: TIMING

The proposal has shifted up a gear in recent months, with funding from the Provincial Growth Fund for feasibility work. Resource consent was applied for, and the hearing conducted in the last week of March. The hearing is currently adjourned, awaiting further information.

Now could be an appropriate time to consult the public. It is unfortunate that the proposed consultation process will lead up to, and the decision will need to be made in, the pre-election period. However, matters related to the regulatory framework have been addressed and are now under consideration by independent commissioners. If Council is to be an investor in the City Block it needs to match its partners' timeframes. There will be no right time, but Council can now reasonably ask the public for its views on investing in the development.

5. RISK

Officers have considered the need for this proposal to be treated as an amendment to the Long-term Plan. Officers consider that it does not meet the test in section 97 (certain decisions to be taken only if provided for in long-term plan) of the Act and therefore the decision can be made without amending the Long-term Plan. This section relates to level of service for significant activities and ownership or control of a strategic asset.

Guidance from the Local Government New Zealand website advises that *'It is only an amendment to the long-term plan if there is a significant (as defined in your significance and engagement policy) change to what was forecast in the long-term plan.'*

Without yet knowing the impact on rates, the Revenue and Financing Policy and the consequential decisions that may need to be made relating to information included within the Long-term Plan, there is a risk that Council may breach its statutory requirements under the Local Government Act 2002 through not treating this proposal as an amendment to the Long-term Plan. A breach of Council's statutory obligations would result in a tag on the Annual Report when reviewed by Council's auditors.

This risk is mitigated through undertaking the extensive consultation process as recommended by this report. Council may wish to accept this risk as the preparation of an amendment to the Long-term Plan would require extra time to prepare the documentation and have the audit completed as well as extra cost associated with having the audit undertaken. The consultation process as recommended will meet the requirements for an LTP amendment, the only requirement that would not be completed would be the report from the Auditor General following an audit of the consultation document and underlying information.

Questions could be raised as to whether the proposal fits within the purview of local government. Section 11A of the Act lists core services that Council must have particular regard to when providing its services, a development like the City block is not included in the list. The current legislation remains focused on councils meeting 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. Although at Select Committee stage, the four wellbeings have not been reintroduced into the Local Government Act. There is a risk in being ahead of the legislation by taking a decision to get involved in this project for the social and economic wellbeing of the community.

Section 14(fa) requires Council to periodically assess the expected returns to Council from investing in, or undertaking, a commercial activity. The Council also needs to satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity. With the investment in this proposal likely to be for strategic and social wellbeing reasons, there is a risk the returns are not likely to meet a purely commercial measure.

6: TIMEFRAMES

It will take approximately a month to develop the necessary documentation, have it reviewed for accuracy and prepared for an extraordinary Council meeting. That meeting could be held on the first or second Tuesday of May.

For a matter of this import, it would be wise to allow an extended period of consultation, and the period for submissions could be held open until near the end of June. That would provide for oral hearings to be held in mid-July, and then a report summarising the public's views, enabling deliberation by Council could be considered early August. To allow the time to get it right the following timetable is proposed:

| <i>Action</i> | <i>Indicative Date</i> |
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| Council considers and adopts the Statement of Proposal and other consultation material for consultation. | 14 May 2019 |
| Public Notice in The Southland Times. | 18 May 2019 |
| Statement of Proposal and other consultation material on Council's website. | 18 May 2019 |
| Submission period. | 18 May - 28 June 2019 |
| Hearing of submissions. | Week commencing 15 July 2019 |
| Report drafted summarising views contained in submissions. | 2 August 2019 |
| Council deliberates and makes decision on potential investment in the City Block. | 6 or 13 August 2019 |

CONCLUSION

This report sets out the requirements for Council to be mindful of, alongside its Significance and Engagement Policy, in consulting with the public on a proposal to invest in the city block development.

Possible dates for consultation are from mid-May to end June, with hearings in July and a meeting for deliberating on the issue to be held in early August. It is important that sufficient time is allowed that the matter is not rushed – both for officers in preparing the documentation, and for councillors in considering the issue.
