

Christchurch City Council
MINUTES ATTACHMENTS

Date: Thursday 11 February 2021
Time: 9.30am
Venue: Council Chambers, Civic Offices,
53 Hereford Street, Christchurch

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CHRISTCHURCH CITY COUNCIL

Public Forum

Commentary: Council Statutory Processes of Consultation

Thursday 11 February 2021

Presented by David Lynch, Momentum Public Relations Ltd

INTRODUCTION

Thank you for allowing me to speak in this Public Forum section of today's Council meeting. However, before doing so, I place on public record the fact that my deputation request to address the full Council in respect of item 16. Wheels to Wings Cycleway Notice of Motion was declined. I had also requested on behalf of a party, which Momentum PR is assisting, a deputation to today's meeting in respect of same agenda item. However, both deputation requests were declined by the Mayor.

In response to having my deputation requests declined, I subsequently made requests to speak in the Public Forum section, both for Momentum PR and on behalf of the party, which the consultancy is assisting. However, these requests were similarly declined by the Mayor. I then received a call late yesterday afternoon from Jo Daly, the Council's meeting secretary, and following our discussion, she confirmed approval for me to speak in the Public Forum section on the subject of statutory process of consultation.

BACKGROUND

Given the limitations of time to prepare for this Public Forum, I want to address the full Council regarding the Council's compliance with its statutory consultation obligations under the Local Government Act 2002.

There is a recurring and concerning pattern regarding the Council's processes in respect of Council proposals requiring public consultation. It is my understanding that the Local Government Act requires proposals necessitating a public consultation process to be formally ratified by the full Council before undertaking public engagement and inviting submissions. Furthermore, the Council's consideration of options is required before the Council determines its preference for a particular option prior to public consultation. All of those options are nevertheless required to be presented for consideration in the public consultation process.

When the Council does not fulfill these statutory requirements, the public can perceive the proposal to be a fait accompli, a done deal, and the so-called public consultation 'Have Your Say' to be nothing more than a 'tick the box' exercise, whereby the public can either lump it or leave it. Public trust and goodwill can be built up over time by ensuring there is a genuine commitment by the Council to engage with those consulted in compliance with the relevant statutory requirements. Failure to do so places the Council at risk of legal challenge.

I now quote from the Court of Appeal 1993 Judgment, which addressed the matter of consultation:

Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671, at p. 675. Judgment of the Court of Appeal delivered by McKay J quoting McGechan J in the High Court in Air New Zealand and others v Wellington International Airport Limited and others, HC, Wellington, CP 403-91, Jan 6, 1992:

"Consultation must allow sufficient time, and a genuine effort must be made. It is a reality not a charade. The concept is grasped most clearly by an approach in principle. To "consult" is not merely to tell or present. Nor, at the other extreme is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion. Despite its somewhat impromptu nature I cannot improve on the attempt at description, which I made in West Coast United Council v Prebble, at p 405:

'Consultation involves the statement of a proposal not yet fully decided upon, listening to what others have to say, considering their responses and then deciding what will be done.'

Implicit in the concept is a requirement that the party consulted will be (or will be made) adequately informed so as to be able to make intelligent and useful responses. It is also implicit that the party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh..."

When the public perceive that it is no use participating in the Council's so-called public consultation process, as a result of the Council's non-compliance with its statutory obligations, we are witnessing a failure of democracy.

Information contained on the Internal Affairs website in relation to 'What information can I expect from my Council?' states:

Consultation processes

Those who wish to participate in council consultation processes need to be informed of the issues being considered, the decisions being made, and the processes around them. Councils are required to make information on their decisions, plans, finances and strategies accessible to their communities. **They must –**

- Provide you with an easy-to-understand summary of their proposals and plans.
- Identify if you are to be affected by a decision, encourage you to make your views known to the council and provide you with reasons for their decisions.
- **Establish and carefully assess all options for dealing with an issue.** (emphasis added)

Special consultative procedure

Councils must use the special consultative procedure (SCP) set out in the Local Government Act 2002 when making certain decisions. These are set out in section 83 of the Act **but generally have high significance to the community, and may have major implications (such as financial) ...** (emphasis added)

Councils may also choose to use SCPs at times other than those required in the Act.
http://www.localcouncils.govt.nz/lcip.nsf/wpg_url/About-Local-Government-Participate-in-Local-Government-What-information-can-I-expect-from-my-Council

Furthermore, there is an inconsistency evident when one considers the Council's process undertaken in respect of the Harewood Road, Gardiners Road, Breens Road Intersection public consultation (May-June 2019), and the Council's process undertaken in respect of the 'Wheels to Wings' public consultation, the latter a project of considerably greater scale, cost and impact on the community. For example, in the case of the 2019 consultation, safety options were presented for public consideration, which included advantages and disadvantages of each, and impacts on the wider transport network. Funding was also mentioned, an accident risk assessment was provided, and site constraints and issues were included. Public meetings were convened by the Council, which included a staff presentation and an opportunity for public questions and answers.

Preliminary advice I have received strongly suggests that public consultation in respect of the proposal 'Wheels to Wings' should be undertaken consistent with the requirements for the Local Government Act's Special Consultative Procedure.

PROVISIONAL COUNCIL FEEDBACK

I have received a response from Sean Rainey, Manager Official Information and Privacy Officer, Office of the Mayor and Chief Executive, following my question as to whether the 'Wheels to Wings' consultation should have been undertaken in accordance with the

Special Consultative Procedure, given its high level of significance, as identified by Council staff.

While he has confirmed that '*The level of consultation to be undertaken for any matter is largely in proportion to its significance (s.79(1)(a) LGA02)*' and that '*the proposed cycleway was assessed as being of high significance, both locally and to the wider community*', he has provided no evidence of the Council's consideration as to whether the Council should have undertaken the Special Consultative Procedure in respect of the 'Wheels to Wings' proposal.

In any case, when options relating to a proposal are not presented to the public, whether in accordance with the Special Consultative Procedure or not, the Council cannot be said to be acting in compliance with its statutory obligations.

QUESTIONS to COUNCIL

I am submitting the following related questions to the Council's Chief Executive under the **Local Government and Official Information Meetings Act 1987**.

1. Notwithstanding Jo Daly's written communication to me, on what legal basis was the Mayor relying for her decision to decline my deputation request in respect of Agenda Item 16. Notice of Motion for the Council's 11 February 2021 meeting?
2. Similarly, notwithstanding Jo Daly's written communication to me allowing me to speak in the Public Forum section, on what legal basis was the Mayor relying for her decision to decline my request to address the full council in the Public Forum section of the meeting?
3. Would you please provide the Council's policy setting out the process in respect of the full Council's prior approval of a draft proposal before its release for public consultation under the Local Government Act 2002?
4. It appears that the Council has failed to meet its obligations under the Local Government Act 2002 to undertake the Special Consultative Procedure in the case of the 'Wheels to Wings' proposal. Is she satisfied that the full Council consider undertaking the Special Consultative Procedure in respect of the 'Wheels to Wings' proposal, and what evidence can she provide in support of the Council meeting all of its statutory obligations in respect of determining the 'Wheels to Wings' public consultation process?
5. Given the inconsistency identified between the Council's public consultation process in respect of the Harewood Road, Gardiners Road, Breens Road

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Intersection public consultation (May-June 2019) proposal and that of the current 'Wheels to Wings' proposal, what explanation can the Council's Chief Executive provide for this?

6. Will the Council's Chief Executive consider halting the public consultation process in respect of the 'Wheels to Wings' proposal until she has satisfied herself that the Council is acting in compliance with its relevant statutory obligations, and if not, why not?

SUMMARY

It is my professional opinion shared by interested parties, that the current public consultation process is **ultra vires, must be abandoned and commenced anew in accordance** with the requirements of the Local Government Act 2002 and any other relevant legal considerations.

Thank you for the opportunity of presenting this commentary. I look forward to the Council's written response at its earliest convenience.

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Momentum Public Relations Christchurch City Council Public Forum

Supplementary Material

11 February 2021

The long-time cyclist Chris Kitson described the St Asaph St cycleway as a “death trap.”

Chris was on his way to work in September 2017 when a car going into a carpark turned across the cycleway.

The cycleway, part of a \$3.5 million redevelopment of St Asaph Street, has been plagued with problems since it was opened in late 2016

<https://amp.rnz.co.nz/article/9038fa4d-ce29-41e0-a8d9-a6bd7102dde5>

