



Engagementworks

Community Engagement Basics

Session 3 – Video 2

**Significance & Engagement
Legal Requirements**

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Legal Requirements



Introduction

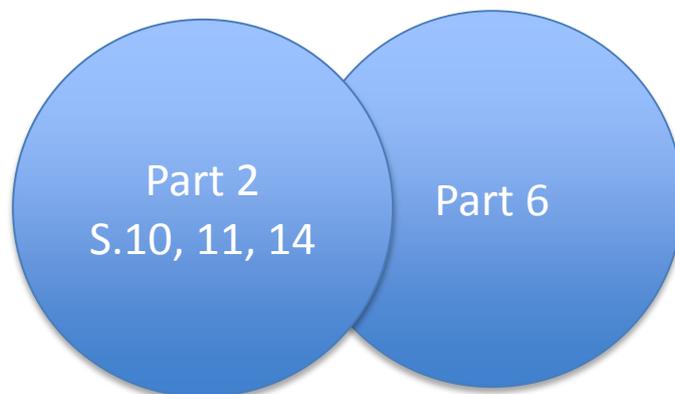
In this video we focus on the significance and engagement requirements set out in Part 6 of the Local Government Act 2002, Amendment Act 2014 (LGA).

Prior to the 2014 amendments, significance and engagement were dealt with separately.

Councils were required to have significance policies but engagement or consultation policies were not mandated

LGA Part 2 & Part 6 go together

Planning, decision-making and accountability is dealt with in Part 6 of the LGA which must be read in conjunction with Part 2 which sets out the purpose of local government as well as the role and principles of a local authority.



LGA Part 2, S.10 - Purpose

The purpose of local government is described in section 10 as:

- enabling democratic local decision-making and action by, and on behalf of, communities; and
- 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.



LGA Part 2, S.11 - Role

The role of a local authority is defined in section 11 as:

- giving effect, in relation to its district or region, to the purpose of local government stated in section 10; and
- performing the duties, and exercising the rights, conferred on it by or under the LGA and any other enactment.

LGA Part 2, S.14 - Principles

Principles relating to local authorities are set out in section 14 and include:

- conducting business in an open, transparent and democratically accountable manner
- making itself aware of, and have regard to, the views of all of its communities
- when making a decision taking account of:
 - o the diversity of the community, and the community's interests, within its district or region; and
 - o the interests of future as well as current communities; and
 - o the likely impact of any decision on these interests
- providing opportunities for Māori to contribute to decision-making processes.



LGA Part 6 - Decisions

Every decision made by a local authority must be made in accordance with Part 6 and must:



- seek to identify all reasonably practicable options for the achievement of the objective of a decision
- where land or a body of water is involved, consider the interests of Māori
- consider the views and preferences of persons likely to be affected by, or have an interest in the decision to be made.

Contents of the Policy

Each council must adopt a significance and engagement policy setting out:

- the council's approach to determining the significance of proposals and decisions in relation to issues, assets and other matters
- any criteria, or procedures to be used to assess significance

- how the council will respond to community preferences about engagement on decisions relating to specific issues, assets or other matters including when use of the special consultative procedure is desirable
- how the council will engage with communities on other matters.

Purpose of the Policy

The purpose of the significance and engagement policy is to:

- enable the council and its communities to identify the degree of significance attached to particular issues, assets or other matters
- provide clarity about how and when communities can expect to be engaged in decisions
- inform the council from the beginning of a decision-making process about extent, form and type of engagement required.



Other Requirements

The policy which may be amended from time to time, must list strategic assets.

When being adopted or amended the council must consult in accordance with section 82 unless it considers on reasonable grounds that it has sufficient information about community interests and preferences to enable the purpose of the policy to be achieved.

Councils must also:

- establish and maintain processes to provide opportunities for Māori to contribute to decision-making
- consider ways to foster the development of Māori capacity to contribute
- provide Māori with relevant information.

Applying the Policy

Their significance and engagement policies will be an important guide to councils in making judgements, in relation to particular issues and decisions about the appropriate:

- extent to which different options are to be identified and assessed



- degree to which costs and benefits are to be quantified
- extent and detail of the information to be considered
- extent and nature of any written record to be kept recording how compliance has been achieved.

Judgement Criteria



In making judgements they must also have regard to:

- all matters of significance
- the principles in section 14 of the LGA
- the scope and opportunity to consider a range of options or the views and preferences of other persons
- other enactments.

Inconsistent Decisions

Where a decision is inconsistent with the significance and engagement policy, when making the decision the council must identify:

- the inconsistency
- the reasons for the inconsistency
- any intention to amend the policy to accommodate the decision.



Consultation Principles

Consultation must be carried out in accordance with principles set out in section 82 which in summary are:

- persons who will be affected by, or have an interest in, the decision or matter should:
 - o be provided with reasonable access to relevant information in a manner and format that suits their needs
 - o encouraged to present their views
 - o given clear information concerning the purpose of the consultation and the scope of the decisions to be taken
 - o given an opportunity to present their views to the local authority in a manner and format that suits them



- views presented to a council must be received with an open mind and be given due consideration before any decision is made
- persons who present views should have access to relevant decisions made by the council.

Councils must also ensure that they have in place processes for consulting with Māori.

There is discretion and some provisos relating to the principles of consultation including:

- observing the principles in a manner the council considers appropriate in any particular instance and in particular having regard to the:
 - o requirements of section 78 which requires a council to consider the views and preferences of persons likely to be affected by, or have an interest in the decision to be made
 - o nature and significance of the decision or matter
 - o provisions of Part 1 of the Local Government Official Information and Meetings Act 1987
 - o costs and benefits of any consultation process or procedure
- not being required to observe the principles where there is conflict with the requirements in other legislation relating to consultation.

Consultation Information

Councils, when beginning a consultation process, (excluding use of the special consultative procedure or consultation for an annual plan) must make the following publicly available:

- the proposal and the reasons for the proposal
- an analysis of options
- a draft of any proposed plan, policy or other document
- details of amendments to any existing plan, policy or other document



Special Consultative Procedure

In some cases the Act and other enactments require use of the special consultative procedure set out in section 83 of the LGA. This process requires the council to:

- prepare and adopt a statement of proposal and in some cases a summary of the statement of proposal which must:
 - o be a fair representation of the statement of proposal
 - o be in a form determined by the council
 - o indicate where it is available
 - o state the period within which people are invited to present their views

- make publicly available:
 - o the statement of proposal
 - o a description of how people will be able to present their views
 - o a statement of the period the proposal is open for people to present their views
- make the summary of proposal widely available
- allow people to present their views to the council ensuring that they have a reasonable opportunity to do so and know how and when this opportunity will be available to them
- allow people to present their views by audio link or audio-visual link.



The council may also request advice or comment from a council officer or any other person.

There are some variations or exceptions relating to the special consultative procedure



Where a council is required to use the special consultative procedure in relation to making, amending or revoking bylaws the statement of proposal must include:

- a draft of the proposed bylaw, or the proposed amendment or a statement of revocation of the bylaw
- the reasons for the proposal
- a report on any determinations made under section 155 of the Act on whether a bylaw made under this Act is appropriate.

Where none of sections 86 or 93A of the LGA apply but a council is required to use the special consultative procedure, the statement of proposal is a draft of any plan, policy or similar document or in any other case a detailed statement of the proposal which must include:

- the reasons for the proposal
- an analysis of options
- any other relevant information.

Where none of sections 86 or 93A of the LGA apply and there is no requirement to use the special consultative procedure but a council chooses to consult using a procedure that closely resembles the special consultative procedure then the:

- consultation must meet the requirements of Section 82; and
- information must be provided in compliance with Section 82A

Long Term Plan and Annual Plan

A council must have a long-term plan and must use the special consultative procedure in its adoption. Instead of a statement of proposal based on a draft **long-term plan**, the council must prepare a consultation document setting out the key issues which must:

- be presented in a concise and simple manner
- not have attached to it a draft of the long-term plan or any unnecessary information
- state where members of the public may obtain information to substantiate statements in the consultation document
- include a report from the Auditor-General on whether the document gives effect to the purpose of the document as set out in section 93B and the quality of information and assumptions underlying information in the consultation document.



The purpose of the consultation document is to provide an effective basis for public participation relating to the content of a **long-term plan** by:



- providing fair representation of the matters included in a way which can be readily understood and explaining the objectives of the various proposals and how rates, debt and service levels might be affected
- identifying and explaining significant and important issues and choices and their consequences
- informing discussions between the council and its communities about matters contained in the long-term plan.

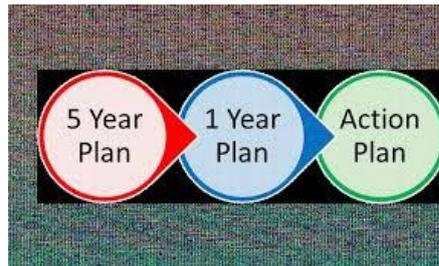
In providing an effective basis for public participation relating to the content of the **long-term plan** and without limiting the requirements of section 93B the long-term plan consultation document must describe:

- each included issue having regard to the significance and engagement policy and the importance of other matters to the district and its communities
- the principal options and their implications for addressing each issue
- the local authority's proposal for addressing each issue



Long Term Plans

- the likely consequences on rates, debt and levels of service from proceeding with each issue
- other matters of public interest relating to the content of the financial and infrastructure strategies
- any significant changes proposed to the way operating and capital expenditures are funded
- the direction and scale of changes to rates, debt and service levels that will result from the proposed long-term plan
- the impact of proposals on rates using examples from different categories of rateable land and a range of property values.



The content of the consultation document for an amendment to the **long-term plan** are that it must include:

- a description of the proposed amendment
- the reasons for the amendment
- the implications (including financial implications) of the proposed amendment
- any alternatives to the proposed amendment.

And it:

- may have attached a copy of the proposed amendment, or
- must state where a copy of the proposed amendment may be obtained, and
- must contain a report from the Auditor-General on whether the document gives effect to the purpose of the document as set out in section 93B and the quality of the information and assumptions underlying the information in the consultation document.



Additional requirements for the content of the consultation document where section 97 applies to a proposed decision are that the consultation document must include:

- the details of the proposed decision
- the reasons for the proposed decision
- an analysis of options, including the proposal
- in respect of the transfer or control of a strategic asset a description of any accountability and monitoring arrangements and an assessment of possible conflicts of interest.

Where proposals in the **annual plan** differ materially or significantly from the long-term plan, councils must consult in compliance with section 82 of the LGA on their annual plan and prepare a consultation document that provides a basis for effective public participation in decision-making on the differences and their effect on costs and funding, by:



- identifying significant differences between the long-term plan and the annual plan
- explaining the differences as simply as possible
- informing on discussions with communities on the differences
- outlining expected consequences of the differences
- not have attached to the consultation document a draft of the annual plan or any substantial unnecessary information
- state where the public may obtain information to substantiate the content of the consultation document.

One consultation document must be used where a council carries out consultation on an amendment to a **long-term plan** at the same time as consultation on an **annual plan** and the special consultative procedure must be used for this combined consultation.

What is Significance?

Definition

The LGA in section 5 defines significance, in relation to any issue, proposal, decision, or other matter that concerns or is before a local authority, as meaning the degree of importance of the issue, proposal, decision, or matter, as assessed by the local authority, in terms of its likely impact on, and likely consequences for:



- the district or region:
- any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter:
- the capacity of the local authority to perform its role, and the financial and other costs of doing so.

Significant, in relation to any issue, proposal, decision, or other matter, means that the issue, proposal, decision, or other matter has a high degree of significance

Conclusion

In this lesson we have run through the legal requirements for councils contained in the Local Government Act as amended in 2014.

Along the way we have covered –

- Significance and engagement
- The policy and its contents
- The Special Consultative Procedure
- Long-term Plans and Annual Plans

From our review of New Zealand legislation these requirements are the most comprehensive we have found. By incorporating them into your good practice community engagement policy and processes you should avoid any repercussions relating to failure to comply with the law. There may be exceptions which you will need to deal with on a case by case basis.

