
REPORT 7
(1215/52/IM)

MARINE EDUCATION CENTRE PART 1

1. Purpose of Report

This report provides an update to the Committee on the recent resource consent application for the construction of the Marine Education Centre, and seeks approval from the Committee for a guarantee to be provided to the Wellington Marine Conservation Trust.

2. Executive Summary

The Council is supporting the proposed Marine Education Centre, and has provided a grant of \$360,000 towards the pre-construction costs of the project, including the resource consent process. This grant was only provided after the project successfully raised \$300,000 in funds from other sources.

The Marine Education Centre resource consent application was heard over 11 hearing days between 20 February and 16 March 2006. At the end of this period, the commissioners were unable to reach a decision.

The failure of the hearing to reach a decision has significant financial implications for the Wellington Marine Conservation Trust (the Trust). With the necessity for a new hearing, and with a strong likelihood that any decision will be appealed to the Environment Court, the Trust is concerned that it does not currently have sufficient cash funds to complete the appeal phase. Accordingly, it is not considered prudent by the trustees to proceed at this point.

The Trust is confident that its fundraising activities will secure the necessary cash funds by the time an appeal is heard at the Environment Court. The issue is therefore one of timing. After discussion with Council officers, and evaluation of the options available, it is considered that the best solution is for the Council to provide a guarantee to the Trust for the estimated shortfall.

The guarantee, for an amount up to \$200,000 will allow the Trust to proceed with the hearing without further delay. The alternative would be deferring the application and hearing until the Trust has raised the extra funds. As has been identified previously, delays have an impact on the likely costs of construction, and are therefore undesirable.

The circumstances of this case are unique enough that it is not considered to set an undesirable precedent. Indeed, it is extremely rare for commissioners to be unable to reach a decision. Further, it is clearly a situation that was not reasonably able to be anticipated by the Trust.

Given the Council's intention to support the project with a loan, it is important that the resource consent application is resolved in a timely manner. This can best be achieved by a guarantee from the Council.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Council supports the proposed Marine Education Centre, due to its good strategic fit with Council outcomes.*
3. *Agree to recommend that Council provide a guarantee to the Wellington Marine Conservation Trust, to the amount of \$200,000 to be used for the resource consent process (including any Environment Court appeal).*
4. *Delegate to the Chief Executive the authority to complete the guarantee with such terms and conditions as deemed appropriate.*

4. Background

The Island Bay Marine Education Centre was established at the Victoria University Marine Laboratory in Island Bay as a non-profit, community supported educational facility providing an opportunity for children and adults in the Wellington Region to learn about the south coast marine environment through public education programmes, hands-on activities, natural habitat aquarium displays and monthly open weekend sessions. This Centre operated at the Marine Laboratory site up to December 2003.

The Marine Education Centre project was initially scoped in 1999 when the Wellington Marine Conservation Trust ("the Trust") was formed in order to:

... create and operate a non-profit, but self supporting Wellington Marine Education Centre and Aquarium of New Zealand – Te Moana Tamariki on the Wellington South Coast to foster understanding, enjoyment and guardianship of New Zealand's marine environment.

In 1999 the Council provided a \$75,000 grant to the Trust to undertake a feasibility study to assess the concept of a Marine Education Centre and to undertake initial design work.

Over the 2000 – 2001 period the Council considered the Marine Education Centre proposal on a number of occasions and consulted on the project as a key issue in the 2001/02 Draft Annual Plan.

In June 2001, the Council considered the Trust's proposal for a Centre at Te Raekaihau and included funding for the project in the 2001/02 Annual Plan by way of guaranteeing an interest free loan.

In July 2001, the Council again considered the Trust's proposal during deliberations on the Draft South Coast Management Plan and Te Raekaihau was confirmed as the agreed site for the Marine Education Centre.

Since that time, the Trust undertook further consultation with the community and as a result worked up a revised concept design, with the Trust acknowledging that the result was a significant improvement on the initial design.

In June 2004 the Trust presented the updated concept plans to the Council, in support of a submission from the Trust requesting funding towards the cost of preparation pre-construction phases/documents for the proposed visitor attraction and educational facility. The Council included \$120,000 in the Annual Plan for the 2004/05 year, but this funding was subject to two conditions:

- That a comprehensive project review is undertaken by Officers; and
- That officers are satisfied that the Trust had the ability to raise the balance of funds required for the project to proceed.

Following discussion with officers, the Trust revised the business plan, and as with the concept design, the Trust presented a result that was significantly improved.

In March 2005 Council Officers completed their comprehensive review of the revised business plan and concept designs, and concluded that the attraction had a strong basis for Council support. Based on the detailed work that the Trust had completed, and as shown by the Trust's presentation material, the proposed aquarium and education facility was considered to be a high quality addition to the city's fabric.

The Trust asked for a \$360,000 opex grant from the Council in 2005/06 to complete the pre-construction phases. This grant was approved and was conditional on the Trust obtaining a further \$300,000 from other sources, which it successfully achieved.

The Trust also sought an interest free loan of \$7 million from the Council to be repaid over 25 years. This loan is conditional on the Trust securing the remaining \$12.6 million for the project from other sources.

Since the comprehensive review and the release of the \$360,000 funding, the Trust further developed the concept design and finalised their resource consent application ready for lodgement. The Trust also continued to undertake fundraising campaigns.

The application for resource consent was publicly notified late 2005 with an 11 day hearing being held between 20 February and 16 March 2006. The panel of Commissioners were unable to come to a decision to either approve or decline the application. This was publicly announced on 5 April 2006.

5. Discussion

5.1. Financial implications from the non-decision

The failure of the hearing to reach a decision has significant financial implications for the Wellington Marine Conservation Trust (the Trust).

With the necessity for a new hearing, and with the likelihood that any decision will be appealed to the Environment Court, the Trust is concerned that, while it can complete the second hearing, it does not currently have sufficient cash funds to complete any appeal phase. The Trust has estimated the cost of a fresh hearing and an appeal, and this information is presented separately.

5.2. Other considerations

NON-DECISION

The non-decision is unusual in the extreme, and could not reasonably have been anticipated by the Trust. As noted above, the hearing has cost the Trust a significant amount of money, but for no result. Now that the situation has occurred, the Trust is in the difficult position of needing to raise more funds to be sure of successfully obtaining its resource consent. This will take some time, which could further delay the project.

It was noted in the comprehensive review by Council officers in March 2005 that delays to the project could impact on the project cost by \$0.5m - \$1.0m for each year's delay.

SAVE THE POINT – PROCEDURAL CHALLENGE

Save the Point has lodged an application to the Environment Court, challenging the hearing process and the resultant non-decision. They seek a declaration from the Environment Court, around their assertion that the non-decision is equivalent to declining the resource consent application.

The effect of this challenge is to introduce uncertainty to any hearing in the short term. At the very least, the effect of this challenge will be to slow down the progress of the consent hearing. Obviously it will also add to the Trust's costs, as the Trust will be obliged to participate in the process, along with legal and other support.

5.3. Options available to the Trust

The Trust has considered its options, and approached the Council Chief Executive to share its thoughts. The main areas of concern to the Trust are the time delays; the uncertainty created by the non-decision (and the procedural challenge raised to this outcome); and the additional cost.

There were essentially three options available to the Trust. Each was summarised for its impact on the project, in terms of time, uncertainty and cost. The results of this analysis have been provided separately, and show that the preferred option is a new hearing.

5.4. Progressing the preferred option

Having identified the preferred option, the one obstacle for the Trust is the availability of sufficient funds to complete any Environment Court appeal. While the Trust has sufficient funds to complete the new hearing, it will need to raise more funds for the cost of any appeal to the Environment Court.

The trustees believe that it is prudent to obtain certainty of funds. This could mean waiting to lodge a new resource consent application until the fundraising campaign achieves another \$200,000, and this delay is undesirable. Trustees have advised that they are very confident of raising this amount by the time an Environment Court appeal is heard. On this basis, the Council has the option to offer a guarantee for the shortfall.

5.5. Guarantees

The Council's Treasury policy states that the Council may provide guarantees to achieve its strategic objectives.

A guarantee is where the Council agrees to act as a guarantor on a loan that a third party organisation has arranged with a lender, normally a commercial bank. The bank

normally requires a guarantee in cases where the borrower cannot provide adequate security for the loan or does not have a proven credit history.

EXAMPLES OF COUNCIL GUARANTEES

In 1999 the Council provided a guarantee to Karori Wildlife Sanctuary Trust for \$1.5 million. This guarantee was to the Wellington Community Trust, and was against construction of the predator-proof fence. This guarantee is still in place. The Council has also provided guarantees for bank loans to the Wellington Museums Trust (\$605,000), and to the Premises Management Trust (\$970,000 now terminated).

PROBABILITY THE GUARANTEE IS NEEDED

Essentially this guarantee might not need to be put in place, if the Trust succeeds in its fundraising endeavours over the next few months. Assuming the guarantee is established, there is only one scenario in which it will be required. This is if there is an appeal to the Environment Court, which rules against the Trust (i.e. declines the application). If by that time the Trust had not raised any further funds, it might wind up on the basis that the project could not proceed. The guarantee would then be called in by the lender.

<i>Risk item</i>	<i>Probability of occurrence</i>
<i>Decision appealed to Environment Court</i>	<i>High</i>
<i>Court declines the application</i>	<i>Low</i>
<i>Trust has not raised any more funds</i>	<i>Low</i>

This scenario is considered to be highly unlikely, and therefore the probability that the guarantee is called is assessed as very low.

6. Conclusion

The Council has consistently supported the Marine Education Centre project for over 7 years, and is therefore interested in the outcome of the resource consent application. The Council is confronted with an extremely unusual event - with a resource consent hearing being unable to reach a decision.

After consideration of the options, and in consultation with the Trust, officers agree that the best option moving forward is for the Trust to withdraw its original application, and lodge a new resource consent application, which the Trust has now done. The Council has an option available to it to assist the Trust to move ahead as quickly as possible. This is by providing a guarantee to the Trust for up to \$200,000 towards the costs of any Environment Court appeal.

The assessed risk that the guarantee will be called upon is very low, and accordingly officers recommend that the guarantee is provided.

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Supporting Information

1) Strategic Fit / Strategic Outcome

Agreement to the recommendation will contribute to Council meeting the more competitive outcome: Wellington's high-quality natural environment will attract visitors, residents and businesses (see outcome 4.8 More Competitive in the Draft LTCCP for 2006-16).

2) LTCCP/Annual Plan reference and long term financial impact

There is no direct LTCCP impact. If approved, there will be a contingent liability created.

3) Treaty of Waitangi considerations

N/A.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Council is not required under legislation to consult generally on this matter. The Council has consulted with the directly affected parties.

b) Consultation with Maori

N/A.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report and recommendations are consistent with existing Council delegations and treasury policy.