

Our ref: 0354171

20 April 2005

Garry Poole
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WELLINGTON

Dear Garry

V8 Supercar race

Introduction

- 1 At the Councillor briefing on Monday, a number of legal questions were raised. You have asked that we record our advice on those questions.
- 2 The questions asked were:
 - 2.1 What are Council's options in respect of the current proposal being consulted on using the special consultative procedure, given the outcome of the work now undertaken on track viability?
 - 2.2 If Council withdraws the proposal, or suspends the current special consultative procedure, is it obliged to hear oral submissions?
 - 2.3 Can Council complete the special consultative procedure on the proposal approved for consultation on 15 March 2005 and make a substantive decision to host a race 'in principle' but subject to further consultation on track location at a later date?
 - 2.4 Can the Council take into account the submissions received (and any analysis of them) when it considers whether to explore the Stadium track?

What are Council's options in respect of the current special consultative procedure, given the issue of track viability?

- 3 The options for Council are to:
 - 3.1 Cease further consultation. Within this option the Council could:
 - withdraw the proposal, or
 - suspend the special consultative procedure, leaving open the option to amend the proposal to consult on the Stadium track at a later date.
 - 3.2 Make a decision on the proposal following the completion of the special consultative procedure (ie consider the written submissions, hearing oral submissions, receipt of the Officers' report and deliberations).

If Council withdraws the original proposal, or suspends the current special consultative procedure, is it obliged to hear oral submissions?

- 4 If Council withdraws the proposal completely, there is no obligation on Council to give those who made submissions (and requested to be heard) an opportunity to be heard.
- 5 If Council suspends the special consultative procedure, it has the effect of deferring the oral hearings to a later time (such as, when an amended statement of proposal is before Council) – unless the proposal is withdrawn at a later time (in which case paragraph 4 applies).

Can Council complete the special consultative procedure and make a substantive decision to host a race 'in principle' but subject to further consultation on track location at a later date?

- 6 This would 'separate' into two parts matters which were inextricably linked in the statement of proposal. Such a decision could be challenged by people who did not make a submission on the proposal approved for consultation by Council on 15 March 2005 but may have done so given the proposed Stadium track location.

Can Council take into account the submissions received (and the analysis of them) when it considers whether to explore the Stadium track??

- 7 The decision in May to 'explore' an alternative proposal does not need to be consulted on using the special consultative procedure. However, it is a decision that must be made in accordance with the decision making provisions in sections 76-82 of the LGA 2002. Of particular relevance is section 78(1) which provides:

A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or have an interest in, the matter.
- 8 The submissions (and the analysis of submissions) will be highly relevant to the decision that Council makes in May. Failure to give consideration to the 'views and preferences' expressed through that process could be challenged. While it cannot be said that the submission process on the original proposal is the only source of views and preferences to be considered under section 78, in our opinion they would be very relevant to informing Councillors.

Can we hear oral submissions before deciding on whether to approve 'exploring' the Stadium Track proposal?

- 9 The LGA 2002 requires the Council to give people who want to be heard an opportunity to be heard as part of the special consultative procedure. The proposal is that Council 'suspends' the special consultative procedure. If later the special consultative procedure is 'reactivated' those people will be given the opportunity to be heard.
- 10 The decision to be considered in May is not a decision that requires special consultative procedure to be undertaken. While Council has an obligation to consider community views that does not require oral submissions or a public participation process. Council could, if it wished to, invite the people who wanted to be heard to address Council (orally) prior to it making its decision in May. However if it were to do so, because of the change in track location, the invitation would also need to be extended to:

10.1 Those who submitted on the proposal and expressed that they did not wish to be heard.

10.2 Those who did not submit on the proposal.

Conclusion

11 Please let us know if you require further clarification.

Yours sincerely

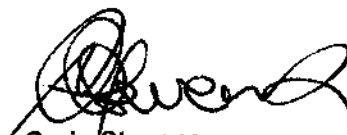


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