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Committee Wellington Regional Strategy
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Consideration of Proposal to Establish a Creative HQ Council Controlled Organisation

1. Purpose

To provide feedback on submissions regarding the proposal to establish a Council Controlled Organisation (CCO) for Creative HQ, and for the Committee to make a decision as to whether the proposal should be confirmed.

2. Significance of the decision

The Local Government Act 2002 specifies that the Council is required to follow the special consultative procedure before it may establish or become a shareholder in a council-controlled organisation. The decision of this meeting is part of the special consultative procedure process.

While the special consultative procedure is required to be followed, officers consider that the ultimate decision, to establish a subsidiary company, will be a matter of low significance in terms of the Local Government Act 2002 and the Council's policy on significance.

3. Background

At its meeting on 25 February 2010 the Committee agreed to ask Greater Wellington to initiate a special consultative procedure to seek the community's views on the proposal to establish a CCO for Creative HQ. Such a consultation process is required prior to the establishment of any CCO, under section 56 of the Local Government Act 2002.

Greater Wellington included the Creative HQ CCO proposal in its Proposed Annual Plan documents and invited submissions on the proposal. The submission period started 23 March and closed on 23 April 2010.

The consideration of submissions, and any changes to the proposal, will be the responsibility of the Committee. The final decision on the establishment of the CCO is required to be made by Greater Wellington.

4. Submission process

In total 33 submissions were received on the proposal. Submitters were required to provide their submissions in writing. A transcribed copy of the submissions and officer recommended responses are in **Attachment 1**.

4.1 Oral submissions

Submitters were given the opportunity to present their submissions in person. Two submitters took up this opportunity and presented their submissions to the WRS Committee at its meeting on the 29th April 2010.

Mr Frank Cook (submitter #24) spoke to the Committee and provided a printed copy of his presentation (see **Attachment 2**). Mr Cook challenged the consultation process, and in particular expressed concerns about the proposal being consulted through an Annual Plan process, rather than as an amendment to the Greater Wellington Long Term Council Community Plan. He also claimed that there was insufficient publicity about the proposal.

Michael Taylor (submitter #30) also spoke to his submission. He expressed general support for the proposal, although said he was surprised that the proposal enables private sector shareholders. He suggested the level of 3rd party shareholding be limited to 20%.

4.2 Consideration of issues raised in submissions

The Committee must consider all written submissions, regardless of whether or not an oral submission has been made.

The principles of consultation, set out in section 82 of the Local Government Act 2002, apply to the submission process. It is important that Committee members retain an open mind in the consideration of submissions.

5. Analysis of submissions

5.1 Issues raised in submissions

A number of submitters supported the proposal. A number of these submitters identified it as an opportunity to reduce rates funding with external investors in the CCO.

Of those not supporting the CCO the following issues were raised:

- Concern about accountability/the company being too far removed from the council/loss of democracy
- Increased operating costs/burden on ratepayers
- Increased bureaucracy
- Economic development not a priority for ratepayer spending

- Investment of this nature best left to the private sector/councils should focus on core services
- Need to limit shares held by private investors.

Questions were also raised about the process followed by Greater Wellington to consult on the proposal, suggesting the Local Government Act requirements were not met.

5.2 Responses to submissions

Draft responses to the 33 submitters are included in **Attachment 1**. Each submitter will receive a letter with a response to the matters they have raised. This will be done once Greater Wellington has considered the Committee's recommendation and made a final decision on the CCO.

The following outlines officer responses to the matters raised.

5.2.1 Accountability/the company being too far removed from the council/loss of democracy

The proposal that Creative HQ be established as a CCO and a subsidiary of Grow Wellington Ltd is designed to ensure that the proposed restructure maximises accountability. Greater Wellington would retain control over Creative HQ Ltd through its shareholding in Grow Wellington Ltd, a tailored constitution, statement of intent, and influence over the appointment and removal of directors.

A number of safeguards will be put in place, including providing for the approval of any share issue to a third party to be a Council (via the WRS Committee) decision. The Council (through the WRS Committee) will also closely monitor the company and its parent company Grow Wellington, through Grow Wellington's annual Statement of Intent and its six-monthly reports. Greater Wellington will retain ultimate control over Creative HQ through its shareholding in Grow Wellington Ltd.

5.2.2 Increased operating costs/burden on ratepayers/ opportunity to reduce rates funding with external investors in the CCO

The only additional cost of the proposal is the initial establishment costs. This will be met from Grow Wellington's budget already designated for Creative HQ. As a separate legal entity, Creative HQ Ltd will secure ongoing funding from New Zealand Trade and Enterprise and is the entity that is most likely to attract other external investment. It therefore is likely to reduce rate-funded operating costs over the medium to long term.

5.2.3 Increased bureaucracy

Changing Creative HQ from a business unit of Grow Wellington Ltd to a company that is a subsidiary of Grow Wellington Ltd will create no significant additional bureaucracy. While there will need to be appointments of directors, this will not increase bureaucracy.

The company structure is a requirement of continued New Zealand Trade and Enterprise funding. Also, by establishing the company as a subsidiary of Grow Wellington Ltd, there will be increased accountability and monitoring against the performance aspects of the Wellington Regional Strategy.

5.2.4 Economic development not a priority for ratepayer spending/investment of this nature best left to the private sector/councils should focus on core services

Promoting sustainable economic growth, an objective of Creative HQ in line with the Wellington Regional Strategy, was identified as a priority for the Wellington region through the consultative procedure leading up to the creation of the Wellington Regional Strategy.

This particular proposal will not affect expenditure on other Council activities as they have different funding sources. In fact, it is likely to minimise rates expenditure over the medium to long term through the attraction of external investment.

5.2.5 Need to limit shares held by private investors

The proposal is for external shareholding not to exceed 49%. This will ensure Greater Wellington maintains ultimate control through its shareholding in Grow Wellington Ltd. The written notice of Greater Wellington approving the creation of Creative HQ will include this condition.

The constitution will also state that any issue of shares to a third party will require the approval of Greater Wellington. This will ensure that Greater Wellington will have ultimate control over shareholding and puts in place safeguards from any inappropriate external influence.

5.2.6 Consultation process has not followed the Local Government Act requirements

Greater Wellington has followed the special consultative procedure for the proposal to establish the CCO. Under the Local Government Act consultation may be undertaken as part of another proposal and so Greater Wellington has consulted on the proposal for Creative HQ at the same time as its consultation on the Annual Plan. As well as complying with legal obligations, using a concurrent process was an efficient use of resources.

The Creative HQ proposal was clearly set out in the consultative documents, including the full Proposed Annual Plan and the Summary documents. A full discussion of the costs and benefits of the proposal was set out so those wishing to understand the proposal could do so.

Legal advice was provided by DLA PhillipsFox during the development of the proposal and prior to the publication of the Proposed Annual Plan documents. Officers are confident the Local Government Act obligations have been met.

6. Chief Executives' consideration of the proposal and proposed constitution

The Chief Executives have reviewed the matters raised in submissions and do not believe there are any significant issues that change the original assessment of the proposal. The CCO model will be the most effective option for Grow Wellington to operate Creative HQ and attract external funding.

To address some of the issues raised in submissions, and also the concerns of some WRS Committee and Greater Wellington members have previously expressed, the constitution of Grow Wellington will provide for Greater Wellington (via the WRS Committee) to approve any shares issued to a third party. In addition, approval will also be required by Greater Wellington and the WRS Committee for any changes to the constitution of Creative HQ.

Attachment 3 contains the proposed constitution for Creative HQ Ltd.

7. Approval process

The WRS Committee must recommend to Greater Wellington the final approval of the establishment of a new CCO. Under its terms of reference Greater Wellington must either accept the recommendation of the Committee, or refer the matter back to the Committee for further consideration.

Greater Wellington will consider a recommendation from the Committee at its meeting on the 8th June 2010.

If approved by both the Committee and Greater Wellington, then Grow Wellington will establish the company and adopt its constitution. The wording of the recommendations and Greater Wellington's final decision will require Grow Wellington to adopt particular wording for the constitution.

Under section 32 of the Companies Act a constitution can only be amended, revoked or adopted by special resolution of its shareholders. The recommended changes to Grow Wellington's constitution will mean that any amendment to the Creative HQ Ltd's constitution will need to be approved by the controlling shareholder (Greater Wellington/WRS Committee) before any special resolution can be passed by Grow Wellington.

8. Communication

Any communication regarding the establishment of a Creative HQ Ltd will be the responsibility of Grow Wellington.

9. Recommendations

That the Committee:

1. **Receives** the report.
2. **Notes** the content of the report.
3. **Considers** all written and oral submissions.
4. **Recommends** to Greater Wellington that it:
 - i. as sole shareholder of Grow Wellington Limited, amends the constitution of Grow Wellington as set out in section 6 of this report.
 - ii. agrees to the establishment of a Council Controlled Organisation for Creative HQ Ltd by Grow Wellington ; and
 - iii. consents to Grow Wellington Ltd, as sole shareholder of Creative HQ, adopting the constitution set out in Attachment 3; and
 - iv. includes in the written notice approving the establishment of Creative HQ Ltd, the conditions that Grow Wellington must at all times hold at least 51% of the shares in Creative HQ Ltd; and
5. **Agrees** that the Chair of the WRS Committee sign formal replies to submitters on behalf of the committee on the basis of the officers' responses set out in Attachment 1, or otherwise recommended by the Committee, subject to a final decision on the proposal by Greater Wellington.

Report prepared by:

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Report signed by:

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Barry Turfrey
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Attachment 1: Submissions and officer recommended responses

Attachment 2: Mr Frank Cook oral submission

Attachment 3: Draft Creative HQ Constitution