



caring about you & your environment

Report 00.692

8 September 2000 (hp)

File: E/5/1/55

Report to Policy and Finance Committee
From: Councillor Mike Gibson

Legal Opinions

Introduction

1. This report is in response to a resolution of the Rural Services and Wairarapa Committee on 29 August 2000. (I remain of the view that a preferable course was to appoint a delegate or sub-committee to consider the matter and, if seen fit, to discuss the Council's situation with a lawyer who had already looked at it closely and carefully.)

Background

2. At the last Council meeting held on 3 August 2000, the Draft Minutes record as follows:

“Councillor Gibson said he would be seeking the assistance of the General Manager with framing questions about the legal position concerning Council's Funding Policy for Flood Protection.”

3. The questions which I drafted to be discussed with the General Manager were:

- “1. With regard to the Council's Funding Policy, Pages 40-44, are the following ranges (50% to 100%, etc.) and groups (group i, etc.) shown with sufficient precision to satisfy the requirements of the relevant legislation?

“Capital

- i) 50% to 100% via a works and services rate or scheme rate or direct contribution for the direct beneficiaries (group i).
- ii) 0% to 50% via a works and services rate or scheme rate for beneficiaries in the economic catchment (group ii).
- iii) 0% to 50% general rate for the community benefit (group iii).

Operations

- i) *40% to 100% via a works and services rate or scheme rate or direct contribution for the direct beneficiaries (group i.).*
 - ii) *10% to 40% via a works and services rate for beneficiaries in the economic catchment (group ii).*
 - iii) *0% to 50% general rate for the community benefit (group iii.)”*
2. Is sufficient justification provided in the Funding Policy (in terms of the legislation) for each of those percentages and groups?
 3. With regard to the Application of the Council’s Flood Protection Funding Policy is sufficient justification given either in the Funding Policy itself or in Report 00.435 dated 12 June 2000 (“Application of Flood Protection Funding Policy”) for the application of the policy for the year 2000/2001?
 4. If the answer to any of the above is equivocal should the Council seek a Declaratory Judgment on the matter particularly since it is embarking on a \$78,000,000 scheme on one river alone?
 5. If the answer to any of the above is negative what should the Council do to correct the situation for the year 2001/2002?”
4. As it was to transpire, the questions (which were designed to provide common ground for a Notice of Motion at the next Council Meeting) were not discussed and the General Manager wrote to me as shown in **Attachment 1** to this Report (see General Manager’s Memorandum dated 4 August 2000, attachments not included).
 5. As a result of the General Manager’s Memorandum I obtained two entirely separate legal opinions from absolutely impeccable and highly qualified legal sources.

Conclusion

6. At some stage Audit New Zealand or the Council might well obtain their own legal opinion.
7. The resolution of the Rural Services and Wairarapa Committee should therefore be seen in the light of any developments.

MIKE GIBSON
Councillor

Attachment 1: General Manager’s Memorandum dated 4 August 2000 (without the attachments)



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4 August 2000

MEMORANDUM

To: Councillor Mike Gibson

From: Howard Stone

You have submitted five questions for "Independent Legal Advice" in connection with the Council's flood protection policy.

YOU have asked similar questions before of Audit New Zealand. **YOU** were told then that

"As the Council's auditor, I have ensured that the policy has gone through the appropriate Local Government Amendment (No.3) Act 1996 process, and that the policy has been applied appropriately. I am satisfied that both of these tests have been met" - copy of letter attached.

Since the Audit response makes it clear that the Funding Policy **conforms** to the legislative requirements and that it also confirms that the whole issue "is a policy decision and is a matter for Councillors to consider" I see no reason for the commissioning of "independent legal advice" at the expense of the ratepayers.

Should you wish to **personally** pursue this line of enquiry at your own expense, that is of course, at your discretion

In the circumstances I do not intend to provide any other communication on the issue of "the Council's approach to rating for the provision of flood protection" as it is raised in your series of questions – copy attached.

HOWARD STONE
General Manager