



Background Paper for Council Workshop on proposed Public Consultation Policy 26.4.18

Introduction

WACRA believes the changes proposed to the Public Consultation Policy have profound implications for elected members, council staff and the community. Council has shown it can conduct successful public consultations. The extensive involvement of the community in planning the Henley Square redevelopment is a classic example, as are the second round Henley Library community engagement and the new West Lakes Hub consultation. On the other hand, Coast Park and the Henley Square parking meters were examples of consultation processes which produced community disenchantment. Successful outcomes were achieved when the principles and procedures set out in the current Policy and Procedures (“guidelines’ or ‘steps’) were followed. These in turn are mirrored in the LGA’s model Public Participation Policy and Community Engagement Guidelines. These are based on the IAP2 model which is accepted as global best practice in community consultation.

But community anger and protest resulted when the consultation process diverged from the IAP2 approach and became more of an ‘announce and defend’ situation. We fear that the existing broad-based community engagement model is under threat from the new minimal proposal that is drafted with only legal considerations at the forefront, not the necessary relationship-building between Council and its residents.

Justice Blue's Judgement calls for better implementation- not changed policy

The following is a summary of the 168 page Coast Park Judgement by Justice Blue. Given that the Judgement is argued as the reason for the proposed changes to Council’s Public Consultation Policy (PCP) we think it is important to get a clear understanding of the decision. We hope that as an elected member, you will take the time to work through this complex matter because of its implications for the future of a successful working relationship with residents. Your voice will ensure community engagement is properly valued as part of your decision making.

Where reference is made in what follows to a particular paragraph from the Judgement its number in the Judgement and page number precede it. Where an actual quote is used it will be in italics.

Why Charles Sturt lost in the High Court

The City of Charles Sturt lost the court case because the CCS position as put by its lawyers was found to be untenable for non-compliance with the LG Act and their own policies.

Nowhere does the Judgement state that there is a problem with the existing PCP and

Public Consultation Implementation Procedure (PCIP). The case was lost because of the failure to follow and implement the procedures. Nowhere in the Judgement is the existing PCP criticised.

Our first question is then, **why is the PCP being amended?**

At item 64 on P18

In March 2000 the Council adopted a Public Consultation Policy (the Policy) and Public Consultation Implementation Procedure (the Procedure). The Policy and Procedure cross refer to each other and it is common ground that the two documents in conjunction comprise the Council's Public Consultation Policy within the meaning of the Act. Having established that the PCIP forms part of the PCP Justice Blue refers thereafter to the Consultation Policy.

Item 381 on P 89 states

By adopting a public consultation policy including steps not required by the Act to be included therein, a council holds itself out to its constituents as being obliged to follow the steps it has chosen to set out therein and attracts a statutory obligation to do so.

At item 391 on P 91

The Council points to the use of the word "may" in section 50(2)(b). However, this indicates that a council is not required to set out steps that it will follow in other cases involving council decision-making: it does not connote that, if the council elects to set out such steps, it is not obliged to follow them. On the contrary, the use of the word "will", being the same word that is used in section 50(2)(a) addressing mandatory consultation, indicates that it is mandatory for the council to follow the steps if it elects to set them out in its policy.

These two opinions led Justice Blue to interpret this middle paragraph below from the current PCP Clause 3.4 differently to the lawyers used by City of Charles Sturt.

In these instances Council must comply with the Act and/or follow the steps outlined in the Public Consultation Implementation Procedure.

At item 411 on P 94 Justice Blue's view is

The plain intent of the middle paragraph is to cover three situations: if the Act alone imposes a requirement to consult, the Council must comply with the Act; if the Consultation Policy alone imposes a requirement to consult, the Council must comply with the Consultation Policy; and if both the Act and the Consultation Policy impose a requirement to consult, the Council must comply with both.

This sets the tone for his damaging findings that the Council failed to comply with its policy/procedure.

At item 429 on p. 98: In the first round of consultation, Justice Blue found, "Further, no determination by either the Council in general meeting or the Chief Executive Officer was made as to the form of consultation. This was in breach of the Consultation Policy.

Justice Blue is clear that the policy itself is not to blame.

At item 440 on P 100 In relation to a second stage of consultation Justice Blue found:
The 2017 Path Decision was in clear breach of the Consultation Policy because, having resolved to consult with the community at the engagement level of Consult in relation to the options, the Council did not engage in any consultation in relation to option 2B.

The section D of the Judgement titled Public Consultation on pgs. 85 - 101 concludes the section on breaches of the Consultation Policy with the following statement at item 444 on P 101: *Each of the Path Decisions was made in breach of the Consultation Policy.*

In other areas of the Judgement, Justice Blue found that Council had failed to comply with the Local Govt Act in developing the Management Plan for the Coast Park, and did not comply with its own Southern and Northern Vegetation Management Plans.

One further suggested failure highlighted by Justice Blue is relevant to the current discussions of the Draft Public Consultation Policy. We believe the same error has occurred in the recent consultation on the draft PCP. He states in item 426 on p. 97:

While it is hypothetical what level of engagement would have been appropriate given that no selection was made, the Consultation Policy sets out the criteria for the level of engagement. It was clear that the Management Plan involved high political interest, affected the broad community, had moderate to high impact, and involved divided community views and multiple issues such that it would have been inevitable that an appropriate level of engagement would have been at least at the level of Involve if the Council had turned its mind to the appropriate level of engagement.

It is hard to see why the City of Charles Sturt should now be accepting legal advice, from the same firm who lost the court case, to alter its current PCP, the content of which was not in any way criticised by Justice Blue, to a proposed policy which appears to provide a bare minimum of consultation with the community on all future issues.

Further, Council is being asked to ratify the proposed policy with no accompanying guidelines on how implementation of the policy shall occur, including who will set the levels of consultation. The community is being asked to trust the Council to change the PCP without the PCIP, or some equivalent set of Guidelines, being presented for scrutiny concurrently. This is in the clear context set by the Judgement, that the Guidelines will be as legally enforceable as the overarching Policy. Council may incur significant risk by endorsing the Policy without seeing the Guidelines.

Why the urgency?

The preceding sections should provide an impetus to delay the PCP decision and move forward slowly. Council and Senior Management have some significant questions to seek appropriate answer to. One hopes that the forthcoming workshop for elected members will be the place where this may occur. It will be a wise Council, and wise elected members, who ensure the workshop environment is of both: a sufficient length of time; and an atmosphere of civilised exchange of view by anyone entitled to do so.

Many individuals and groups within CCS wish to be constructive partners of Council making the whole community stronger. We ask that you make every effort to assist the community

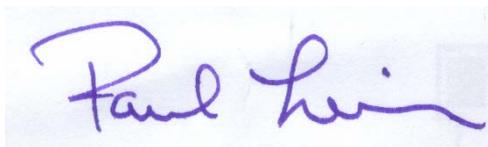
to continue to be valid partners by supporting actions to retain and improve community engagement/consultation in the City of Charles Sturt.

The City of Charles Sturt has 5 new matters seeking community input on its "Your Say" web site, only two of which are subject to legislation requirements. Public Consultation is not going to go away and will never be just Public Consultation as required under legislation.

Our position

- There is no urgency in completing this review of the PCP. This is a major issue with big implications for Council's continuing relationship with the public. It should be done with care and reflection and not in haste.
- There is important information available from the Local Government Association and neighbouring Councils
- Barbara Chappell, the international and national recognised leader and trainer on the IAP2 Community Consultation and Engagement Model adopted by the State Government and the Local Government Association, could provide an assessment of the current draft and the International Association for Public Participation (IAP2) model to elected members.
- Finally the amended draft PCP needs to go out again to Public Consultation when the City of Charles Sturt has got it sorted, with the implementation guidelines included, so it complies not just with the minimum in the LG Act but fits all Public Consultation scenarios.

WACRA wishes you every success in discussions about the proposed policy and in future actions to improve community engagement/consultation in the CCS. Many individuals and groups within CCS wish to be constructive partners of Council. I ask that you make every effort to enable that!



Paul Laris

President

WACRA