

Request for Consultative Draft District Plan

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(f)(i)
Agency	Gore District Council
Ombudsman	Sir Brian Elwood
Case number(s)	C5151
Date	February 1999

Consultative Draft District Plan refused under s 7(2)(f)(i)—information did not meet requirements of that section—no statutory prohibition in Resource Management Act which prevents information being made available before the date of notification—Resource Management Act 1991, s 35(2)

A journalist sought a review of a District Council's decision not to make available a copy of a Consultative Draft District Plan. The Plan was compiled by a committee established by the Council for the purpose of rewriting an earlier District Plan which had been the subject of much criticism. The committee circulated the Draft Plan to certain local organisations and others who had been critical of the earlier Draft Plan.

The journalist requested a copy of the revised Consultative Draft District Plan when it was in circulation but the Council refused the request under section 7(2)(f)(i) of LGOIMA. In addition the Council considered that section 35(2) of the Resource Management Act 1991 provided further grounds for withholding the revised Plan in that it provided a statutory regime for public consultation on proposals for District Plans. The Council also argued that Clause 2 of the First Schedule of the Resource Management Act permits the Council to consult with selected groups and to make the information at issue available to those groups.

In regard to section 7(2)(f)(i), the Council advised that the requested information was no more than a 'discussion document' and that it was consulting with only a limited group of 'key stakeholders ...[which] made many substantial submissions to the first District Plan'. The reason for this was to ensure that all those who had made major submissions to the initial District Plan were consulted. An examination of the documents showed that the information at issue comprised a discussion document containing factual information and well-informed comment and opinion. The information at issue could not be described as a 'free and frank expression of opinions', the withholding of which is necessary to 'maintain the effective conduct of public

affairs'. The consultation undertaken by the Council was designed to obtain carefully considered responses and opinion from selected groups. The release of the information at issue would not be likely to inhibit the provision of opinion from those groups. Release of the information at issue would not prejudice the future creation of Draft Plans as the Resource Management Act imposes a duty upon councils to prepare District Plans. Section 7(2)(f)(i) did not therefore apply.

Regarding the Resource Management Act, section 35(2) of that Act imposes a duty to make certain information available after notification. However, there is no statutory prohibition in that Act which prevents information being made available before the date of notification. In other words, whereas after notification a request for all information covered by section 35(2) may not be refused on any grounds, the section recognises that before that date, good reason for withholding certain requested information may exist. However, such good reason must be found in the LGOIMA and cannot be based on the existence of a statutory duty to make information publicly available after a certain date.

Clause 3(2) of the First Schedule to the Resource Management Act permits the Council to consult with anyone else in addition to those specified in clause 3(1) of the First Schedule. The information released by the Council in the context of such consultation cannot be regarded as inherently confidential or subject to any statutory limitation on disclosure. The fact that the Council chooses to consult with Group A and not with Group B does not mean that the information at issue can be withheld from group B if that group makes a request under the LGOIMA. When such a request is made, the issue is not one of who has been consulted by the Council, but whether further release of the information made available for consultation purposes, would prejudice a protected interest. If that is the case, then the information may be withheld pursuant to the LGOIMA. If not, it must be made available.

In light of the foregoing considerations, the Council released all the information together with a contextual statement outlining the relationship between the information at issue and the completed Draft District Plan.

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