



Report 10.304
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Committee Council
Author Jane Davis, General Manager, Strategy &
Community Engagement

Proposal to establish a Council Controlled Organisation - Creative HQ Limited and proposed amendment to the constitution of Grow Wellington Limited

1. Purpose

To consider approving the establishment and incorporation of Creative HQ and to consider amending the constitution of its proposed shareholder (Grow Wellington Limited).

2. Consideration by committee

The matters raised in this report were considered by the Wellington Regional Strategy Committee at its meeting on 2 June 2010 (**Report 10.264**). The Committee confirmed the recommendations contained in **Report 10.264**.

3. 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 (CCO). The decision of this meeting concludes 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.

4. Background

At its meeting on 25 February 2010 the Wellington Regional Strategy Committee (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 identification of any changes to the proposal, was delegated to the Committee. The final decision on the establishment of the CCO is required to be made by Greater Wellington.

5. Submission process

In total 33 submissions were received on the proposal. Submitters were required to provide their submissions in writing.

5.1 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 29 April 2010.

5.2 Consideration of issues raised in submissions

The Committee considered all written submissions.

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

6. Analysis of submissions

6.1 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.

6.2 Responses to submissions

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.

6.2.1 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.

6.2.2 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.

6.2.3 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.

6.2.4 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.

6.2.5 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.

6.2.6 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.

7. Chief Executives' consideration of the proposal and proposed constitution for Creative HQ

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.

Attachment 3 contains the proposed constitution for Creative HQ Ltd.

8. Grow Wellington Limited's constitution

To address some of the issues raised in submissions, and also the concerns of some WRS Committee and Greater Wellington members have previously expressed, officers recommend that the constitution of Grow Wellington Limited be amended to require the approval of Greater Wellington (via the WRS Committee) before any shares are 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 Limited.

9. Approval process

The Committee has recommended to Greater Wellington that it approve 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.

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 Creative HQ Limited'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.

10. Communication

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

11. Recommendations

That the Council as sole shareholder of Grow Wellington Limited:

1. ***Receives*** the report.
2. ***Notes*** the content of the report.
3. ***Resolves*** by way of the written resolutions included within attachment 2 to amend the constitution of Grow Wellington Limited as set out in section 8 of this report.
4. ***Resolves*** by way of the written resolutions included within attachment 2 to approve the establishment of a Council Controlled Organisation for Creative HQ.
5. ***Includes*** in the written notice approving the establishment of Creative HQ as a limited company, the condition that Grow Wellington must at all times hold at least 51% of the shares in the company once established.
6. ***Authorises*** the Chief Financial Officer to affix the Council's Common Seal to the resolutions of the sole shareholder (Attachment 2).
7. ***Consents*** to Grow Wellington Limited, as sole shareholder of Creative HQ Limited adopting the proposed constitution as set out in attachment 3.
8. ***Requests*** that the Chair of the Council confirms this consent in writing to Grow Wellington Limited.
9. ***Notes*** that the amendments to the constitution of Grow Wellington Limited will be registered with the Companies Office.

Report prepared by:

Report approved by:

Report approved by:

Jane Davis
Group Manager, Strategy and
Community Engagement

David Benham
Chief Executive

Fran Wilde
Deputy Chair, Wellington
Regional Strategy Committee

Attachment 1: Proposed constitution for Grow Wellington Limited

Attachment 2: Shareholder resolutions

Attachment 3: Proposed constitution for Creative HQ