

Extraordinary Council 09/04/2018

Public Excluded Session

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TO: COUNCIL
FROM: CHIEF EXECUTIVE
MEETING DATE: MONDAY 9 APRIL 2018

IN COMMITTEE

Reason for Exclusion:
Local Government Information and Meetings Act 1987 –

(7) *Other reasons for withholding official information:*
(2)(a) *To protect the privacy of natural persons.*

SOUTHLAND MUSEUM AND ART GALLERY

Report Prepared by: Clare Hadley, Chief Executive

SUMMARY

This report discloses the current information held regarding the earthquake prone nature of the buildings at the Southland Museum and Art Gallery. It is appropriate for the Invercargill City Council to work quickly and concurrently with the Southland Museum and Art Gallery Trust Board, staff and the media.

RECOMMENDATIONS

It is recommended that Council:

Endorse the Chief Executive's proposal to withdraw staff from the Southland Museum and Art Gallery building;

AND

Note that a report detailing the financial implications of this situation will be provided to a subsequent Council meeting;

AND

Signal to Southland Museum and Art Gallery Trust that Council sees the establishment of a temporary and limited museum presence within the City as desirable, but that it will need to consider this further against other priorities set out in the 2018-28 Long-term Plan Consultation Document.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> No.
2.	<i>Is a budget amendment required?</i> The implications on the budget are as yet unknown, it is anticipated that higher costs and lower revenue at the Southland Museum and Art Gallery will result.
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No – see analysis below.
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> There is the potential for impact on Council's draft 2018-2028 Long-term Plan from decisions flowing from the decisions recommended in this report.
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Public consultation is inappropriate at this stage. A communications plan has been developed for working with the Southland Museum and Art Gallery Trust Board to brief the media.

FINANCIAL IMPLICATIONS

It is anticipated this matter will lead to an increase in cost alongside an associated decrease in revenue, because the i-SITE, which currently provides a significant revenue stream to the Southland Museum and Art Gallery, will need to relocate. Council staff cannot currently quantify the likely financial impact; a subsequent report will be provided to Council detailing the financial implications of this matter when more information is available.

LEGISLATIVE CONSIDERATIONS

The Local Government Act 2002 provides that a local authority should be a good employer. The Act further defines “good employer” to include provision of good and safe working conditions.

This report is being considered “In-Committee” in accordance with section 7(2) of the Local Government Official Information and Meetings Act 1987. The reason for the exclusion of the public is to protect the privacy of natural persons, specifically the staff at the Museum. Following the meeting of the Southland Museum and Art Gallery Trust Board and notification of their decision, the Museum staff will be advised. This matter will then be made public via a media briefing.

The immediate focus is supporting all Invercargill City Council employees that are based at the Southland Museum and Art Gallery, especially those whose roles may be affected.

SPECIFIC LEGISLATIVE POWER

The Health and Safety at Work Act 2015 came into force in September 2015 and establishes requirements for the Invercargill City Council, through the Chief Executive, to secure the health and safety of workers and workplaces. This is discussed further in the report.

The Building Act 2004 (through its 2017 amendments) contains the earthquake-prone building provisions and sets out the scope of buildings to which those provisions apply. In 2017 Invercargill City was identified as a medium seismic risk area. This identification has meant that building owners have 12½ years to either fix or demolish their building following its identification as earthquake prone. It is the local territorial authority that must determine if a building is earthquake-prone.

The Invercargill City Council has identified priority areas for investigation (refer to **Appendix 1**). This shows that the Museum building will likely be considered by Council staff to determine whether it is earthquake-prone by the end of 2020. The process for identification of an earthquake prone building by the Invercargill City Council is likely to be that the Development Liaison Manager assesses the engineers report against a checklist to determine if the building is earthquake-prone. The Council has not yet delegated the authority to make this decision to an officer of the Council and, as the Government is still providing guidance and updating the checklists to be used, the Council is not yet in a position to classify a building as earthquake-prone.

Notwithstanding this legal process, the Chief Executive considers it inappropriate to continue occupation of the building without recognition of the engineers' advice. Council as occupier and service provider within the building should not delay decision making, purely on the basis that Council has not issued an appropriate notice under the Building Act.

The Southland Museum and Art Gallery building is owned by the Southland Museum and Art Gallery Trust.

SOUTHLAND MUSEUM AND ART GALLERY

Management Contract

In 2004 the Southland Museum and Art Gallery Trust Board entered into a contract with the Invercargill City Council to manage the Southland Museum on its behalf. The staff who operate and manage the Southland Museum are employed by the Invercargill City Council. The Chief Executive is ultimately accountable for the staff at the Museum.

The i-SITE located at the Museum is operated by Venture Southland on behalf of the Invercargill City Council. Venture Southland does not employ staff; the employees of the i-SITE are also Invercargill City Council staff.

Seismic Assessment

In 2013 a seismic assessment of the museum building was undertaken by Opus International Consultants. The report described the museum as consisting of three older buildings which are enclosed by the fourth building, the pyramid. This assessment found that the seismic ratings of all four of the component buildings were less than 34% of the New Building Standard.

At the time of the report, the Invercargill City Council's 2012–2022 Long-term Plan included provision for the redevelopment of the Southland Museum and Art Gallery and funding was included. A longstanding funding commitment from the Community Trust of Southland was also in place. The Southland Museum and Art Gallery Trust Board considered that it was acceptable to be aware of the report's seismic rating and that undertaking the planned upgrade was an appropriate step in resolving the issue.

With the introduction of the new health and safety legislation and the amendment of the Building Act in regard to earthquake-prone buildings, the Southland Museum and Art Gallery Trust Board requested that a peer review of the original report be undertaken. A structural engineer, Win Clark (advisor to Heritage New Zealand), undertook the peer review requested. His review determined that the report provided a fair and supportable assessment, which is essentially aligned with the methodology published by the Ministry of Business, Innovation and Employment, to meet the requirements of the Building Act 2004. His conclusion was that the Southland Museum and Art Gallery building is probably 'earthquake-prone'.

Health and Safety at Work Act 2015

The Chief Executive of the Invercargill City Council is considered a person conducting a business or undertaking for the purposes of the Health and Safety at Work Act 2015. The legislation imposes a duty on the Chief Executive to provide a safe workplace. Legal commentators have observed that if, after an earthquake-related serious harm incident, it became clear that a person conducting a business or undertaking had failed to take all practicable steps to ensure the safety of employees and other people in or near the building, they could face enforcement action under the Act.

The Museum has a total staff of 32 and receives visitor numbers in excess of 230,000 each year (248,463 in 2015/16; 232,580 in 2016/17). As a part of the visitor numbers, through the Learning Experience Outside the Classroom programme, the Museum hosts over 4,000 students from 58 different Southland schools.

Withdrawal of Staff

The funding for the upgrade of the Museum, expected to be received from the Community Trust of Southland, has been withdrawn. The Council's proposed 2018-2028 Long-term Plan, currently being publicly consulted on, has identified that the upgrade of the Museum is ten years away. In considering these two details, the peer-reviewed report as well as the implications of the changes in the legislation, the Chief Executive has determined that it is no longer acceptable in the medium to long-term to have staff remain in the building.

The Chief Executive has advised the Chair of the Southland Museum and Art Gallery Trust Board that she proposes to withdraw staff from the building. The Chair has indicated informally that the Board recognises the difficulties any withdrawal of staff will bring. The Southland Museum and Art Gallery Trust Board will also be meeting the day that this report is considered by the Council.

There are precedents for the withdrawal of staff from other centres around New Zealand and also with the Council's own response to the potential earthquake-prone buildings at Anderson House (2015) and the Water Tower (2012).

The Rotorua Museum has been closed indefinitely and non-essential staff were removed when a detailed seismic assessment saw the building as being below 33% of the New Building Standard. The Grey District Council closed its History House Museum due to earthquake prone building concerns. The Grey District Council considered it had no option but to close the building for the safety of its staff and the public.

The timeframe for any withdrawal of staff is continuing to be worked through with the Director of Works and Services, the Museum Manager and Human Resources; it will need to be timely. A further report will be provided to Council.

The withdrawing of staff and the potential closure of the Southland Museum and Art Gallery by the Trust Board will impact on the employment of all employees based in that building, but in particular will impact on those involved in front of house, retail and café operations. It will be important to retain a core of employees to continue essential museum operations. A comprehensive management plan to identify essential roles and activities that ensure risk and safety mitigation will be developed.

Further Implications

Whether to establish an interim museum presence in the City is the decision of the Southland Museum and Art Gallery Trust Board; the Trust Board also owns the collection. The Council needs to consider whether this is something that it would support. In determining whether to support such an occurrence, Council will need to consider the costs of establishing the inner-city museum presence and whether a museum presence of this scale would be valued by the community and valuable to the City. The costs of establishing any museum presence are not yet known.

Venture Southland has been asked to locate suitable premises for relocation of the i-SITE. This investigation has already commenced and the i-SITE will be located within the City Centre when staff are withdrawn from the Southland Museum and Art Gallery building. Additional funding for this may also be required.

The withdrawal of staff from the Southland Museum and Art Gallery building will have impacts on the budget. The shop and café are expected to hold a neutral operating position, as although the revenue from these areas will not be realised, the cost of operating will also cease. The income from the i-SITE will be lost, yet some curatorial expenses will remain; this will have a negative impact on the budget.

Within the Consultation Document is a proposal to develop an Arts Centre in the heart of the city, a Living Dinosaurs experience, the construction of a regional storage facility and the redevelopment of the Museum. It would be most appropriate for Council to consider the funding for any temporary or limited presence of the Museum within this context, as part of the Long-term Plan considerations.

PROCESS

Significance and Engagement Policy

The Council is required to consult on issues as determined by it. To help with the determination and to guide the level of consultation, Council has adopted a Significance and Engagement Policy. Using the categories contained in that policy, the decisions recommended above are not significant. Should Council disagree with the analysis below, the Policy allows that where an urgent decision must be made, Council will tailor its decision-making process to include as much consultation and evaluation as is practicable within the specified timeframe. If, due to time limitations, a potentially significant decision is made without consultation, Council will communicate the details of the decision to the public at a level appropriate to the nature of the matter. Post-decision communication is planned for this issue.

Analysis:

- a. Community outcomes
The recommended decisions contribute to the Community Outcomes adopted by Council. *Low significance.*

- b. Consistency with Long-term Plan
The recommended decisions have not been included in the Long-term Plan. *Greater significance.*
- c. Net cost to Council
There will be a financial impact on Council; this is not considered to be significant and will be discussed in future reports. *Low significance.*
- d. Variation of options
Should Council determine to make a contrary decision to the recommended decisions the variation in impact of the options would not be significant in financial terms and for impact on the community. *Low significance.*
- e. Reversibility
The recommended decisions would be easily reversible should different information come to pass. *Low significance.*
- f. Level of controversy
The overall issue is likely to be controversial within the community. The recommended decisions are likely to be less controversial within the community. *Moderate significance.*
- g. Precautionary approach
There is little uncertainty around the outcomes of this decision. *Low significance.*
- h. Impact on funders
The impact on rates or user charges is unknown. *Unknown.*

INCONSISTENCY

The decisions recommended above are not inconsistent with any existing bylaw, policy, plan or other legislation.

RISKS

As mentioned previously in this report, the Chief Executive does not consider that it is an acceptable risk in the medium to long-term to have staff remain in the building. At this time Council staff have had no advice that there is an imminent threat. If the building is earthquake-prone, which is what the engineers' reports conclude, this means that it is considered to be of such strength that it would have its ultimate capacity exceeded in a 'moderate earthquake' and if it were to collapse, would likely cause injury or death to persons in the building.

Utilising the risk framework from the Council's Activity Management Plans (refer to **Appendix 2**) it can be ascertained that, as the consequence is either Extreme (6) or Major (5) and the probability is Unlikely (D) or Rare (E), the unmitigated risk is, at best, high.

Likelihood	Consequences					
	1	2	3	4	5	6
A	H	H	C	C	C	C
B	M	H	H	C	C	C
C	L	M	H	H	C	C
D	L	L	M	H	H	C
E	L	L	L	M	H	H
F	L	L	L	M	H	H

The primary duty of care requires a person conducting a business or undertaking, in our circumstances the Chief Executive, to ensure health and safety 'so far as is reasonably practicable'. When used in this context, something is reasonably practicable if it is reasonably able to be done to ensure health and safety, having weighed up and considered all relevant matters, including:

- How likely are any hazards or risks to occur?
- How severe could the harm that might result from the hazard or risk be?
- What a person knows or ought to reasonably know about the risk and the ways of eliminating or minimising it?
- What measures exist to eliminate or minimise the risk?
- How available and suitable is the control measure(s)?

Following the considerations above, lastly weigh up the cost:

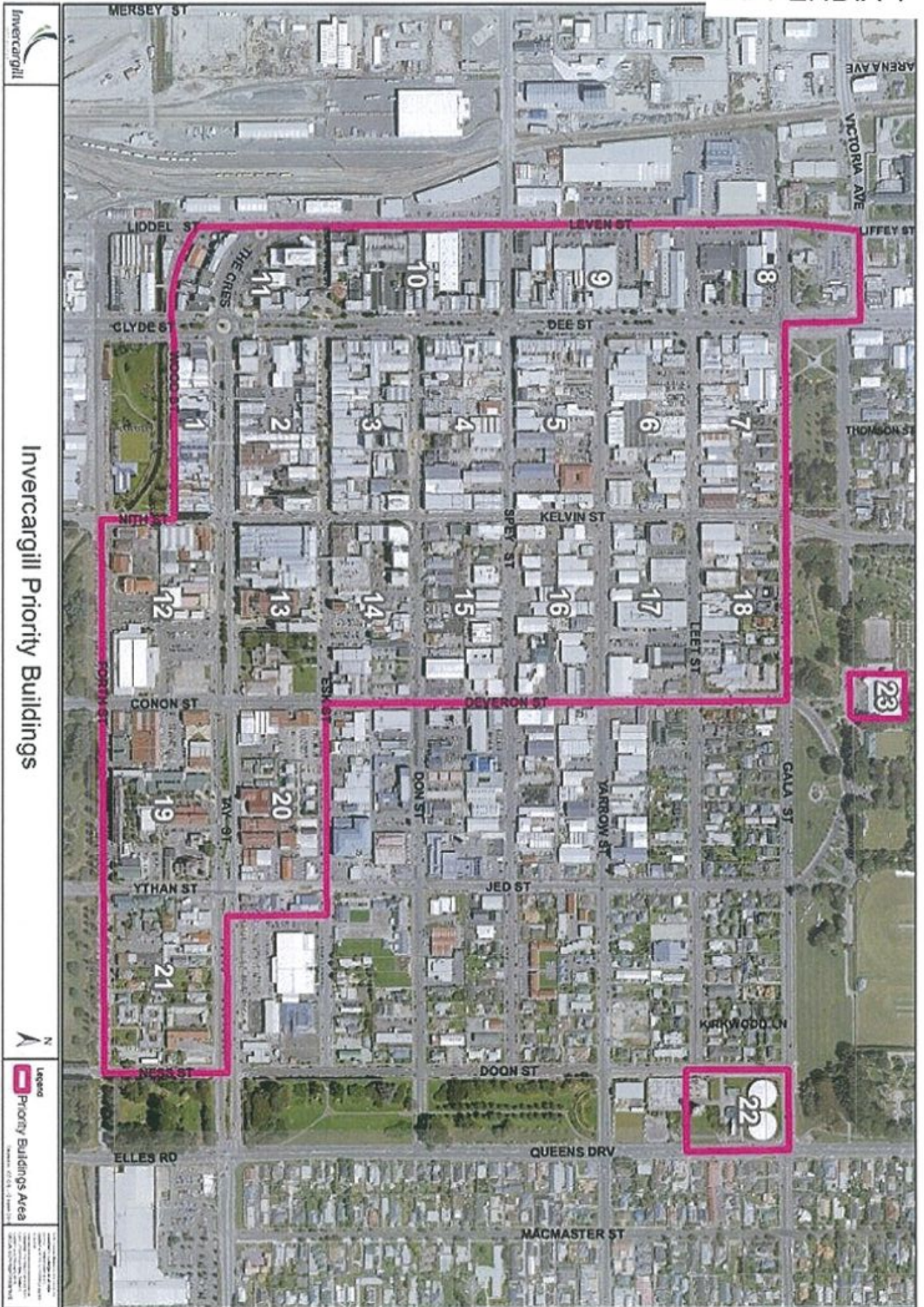
- What is the cost of eliminating or minimising the risk?
- Is the cost grossly disproportionate to the risk?

The proposed withdrawal of staff from the Southland Museum and Art Gallery building is the most suitable control measure for eliminating the risk of injury or death from occupation of a potentially earthquake-prone building. The withdrawal of staff will have a financial impact, but the cost of doing so is not grossly disproportionate to the risk.

CONCLUSION

Not all information is available at this time and there are aspects of any withdrawal of staff from the Southland Museum and Art Gallery building that still need to be worked through. Future reports will be presented to Council to keep them informed. This report seeks that Council endorse the Chief Executive's proposal to withdraw staff from the Southland Museum and Art Gallery building, note that a subsequent report detailing the financial implications of this situation will be provided and, while noting that an interim museum presence is the decision of the Southland Museum and Art Gallery Trust Board, signal the desirability of establishing a temporary museum presence within the City, subject to further consideration within Council's Long-term Plan deliberations.

APPENDIX 1



Risk Framework / Standard

The adopted risk management process is consistent with Australian/New Zealand Standard AS/NZ 4360 which defines risk assessment and management.

Risk Management Context – The key risk criteria adopted for assessing the consequences of identified risks are:

- Community Health and Safety.
- Loss of Service – Extent/Duration.
- Service Deliver – Customer Impact.
- Invercargill City Council Financial Impact.
- Financial Community.
- Corporate Image and Reputation.
- Legal Compliance.

Risk Analysis – The likelihood and impact ratings used to determine initial risk ratings are defined in Tables 1 and 2 respectively.

Code	Descriptor	Description (probability)
A	Almost Certain	The event could occur in most circumstances, eg 90%+ chance of occurring in the next 12 months (or in 9 out of every 10 years).
B	Very Likely	The event will probably occur in most circumstances, eg 70% chance of occurring in the next 12 months (or in 7 out of 10 years).
C	Likely	The event should occur at some time , eg 50% change of occurring in the next 12 months (or in 5 out of every 10 years).
D	Unlikely	The event could occur at some time, eg 20 – 30% change of occurring in the next 12 months (or in 2 – 3 out of every 10 years).
E	Rare	The event may occur only in exceptional circumstances , eg up to 10% chance of occurring in the next 12 months (or once in 10 years).
F	Extremely Rare	The event may occur only in extremely exceptional circumstances, eg up to 2% chance of occurring in the next 12 months (or once or less in 50 years).

Table 1 – Risk Probability Ratings

Area of Impact	Weighting	Factor	6	5	4	3	2	1
			Extreme	Major	Moderate	Low	Minor	Insignificant
Legal – Compliance	0.20	Legal	Imprisonment, substantial fines or liable for damages > \$500K	Significant fines or liable for damages > \$100K - \$500K	Fines or damages or liable for damages > \$20K to \$100K	Fines or damages or liable for damages > \$5K to \$20K	Fines and minor offence prosecution	Complaints
		Environmental	Catastrophic environmental damage. Prosecution. Impact permanent	Serious environmental damage. Prosecution. Impact not fully reversible.	Serious environmental damage. Prosecution. Impact reversible within 10 years.	Environmental damage. Prosecution. Impact reversible 3 year.	Environmental damage. Prosecution probable. Impact reversible 1 year.	Minor localised damage. Prosecution possible. Impact reversible within 3 months.
Corporate Image – Reputation	0.10	Political	Appointment of a Commissioner	Decision process break down.	Council decision deferred.	Council decision delayed.	Breakdown in relationships.	Adverse local political comment.
		Image		Negative national media coverage > 2 days.	Negative local media coverage for >5 days.	Negative local media coverage for <5 days.	Local media coverage.	Customer feedback only.

Area of Impact	Weighting	Factor	Impact Level					
			6 Extreme	5 Major	4 Moderate	3 Low	2 Minor	1 Insignificant
Service Delivery – Customer Impact	0.15	Councillor – Management Time		Mayor – Councillors required to manage situation.	Senior Executive time required to manage situation.	Level 3 Managers required to manage situation.	Staff required to manage situation.	No formal response required.
		Service Delivery	Loss of water supply and sewerage capability for several days for large portion of city.	Water supply and sewerage out for several days for a catchment or area.	Water supply and sewerage out for one day.	Water supply and sewerage out for group <50 customers for greater than one day.	Water supply and sewerage out for <4 hours.	Supply limited but operating for water and sewerage service.
			Large portion (>50%) of customer base affected.	Affects large number of (>100) of customers.	Affects limited (<100) customers.	Affects limited (20 – 75) customers.	Small isolated group (<20) affected.	Small group (<5) affected.
				Loss of confidence in Council to operate.	Loss of confidence in Council staff.	Problem escalates to a number of surrounding areas.	Systematic customer complaints.	Isolated customer complaints.

Area of Impact	Weighting	Factor	Impact Rating					
			6	5	4	3	2	1
			Extreme	Major	Moderate	Low	Minor	Insignificant
Invercargill City Council Financial Impact	0.20	Financial	Unplanned loss or cost to reinstate >5M	Unplanned loss or cost to reinstate \$1M to \$5M.	Unplanned loss or cost to reinstate >\$250K to \$1M.	Unplanned loss or cost to reinstate >\$50K to \$250K.	Unplanned loss or cost to reinstate >\$10K to \$50K.	Unplanned loss or cost to reinstate <\$10K.
			Long term additional rate requirement >1M per year.	Long term additional rate requirement <500K per year.	Significant total loss of \$2M.	Significant total loss of \$500K.	Rates deferment of other projects to meet costs.	Budgeted work reorganised within year.
Financial Community	0.15	Financial	Multiple loss of life.	Single loss of life or widespread long term hospitalisation.	Hospitalisation of a small group.	Medical treatment required.	Minor injuries.	Complaints.
Community Health and Safety	0.20							

Table 2 – Impact Ratings

Risk Evaluation – The matrix of likelihood and consequence of failure ratings shown in Table 3 below is used to assess the level of risk, ranking events as low, moderate, high or critical risk.

Likelihood	Consequences					
	1	2	3	4	5	6
A	H	H	C	C	C	C
B	M	H	H	C	C	C
C	L	M	H	H	C	C
D	L	L	M	H	H	C
E	L	L	L	M	H	H
F	L	L	L	M	H	H

Table 3 – Risks Priority Rating Matrix

This allows all asset and corporate risks to be compared and ranked. The risk policy specifies the following broad treatment strategy for the levels of risk:

L = Low Risk

- Manage by routine procedures.

M = Moderate Risk

- Management responsibility must be specified.

H = High Risk *Risk and management strategy identified in AM plan*

- Failure management plans available

C = Critical Risk *Risk and management strategy identified in AM plan*

- Failure management plan specifically addressing event in place