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Identifying and Preparing Amendments to Long-term Council Community Plans

SOLGM Financial Management Working Party
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What Constitutes an Amendment?

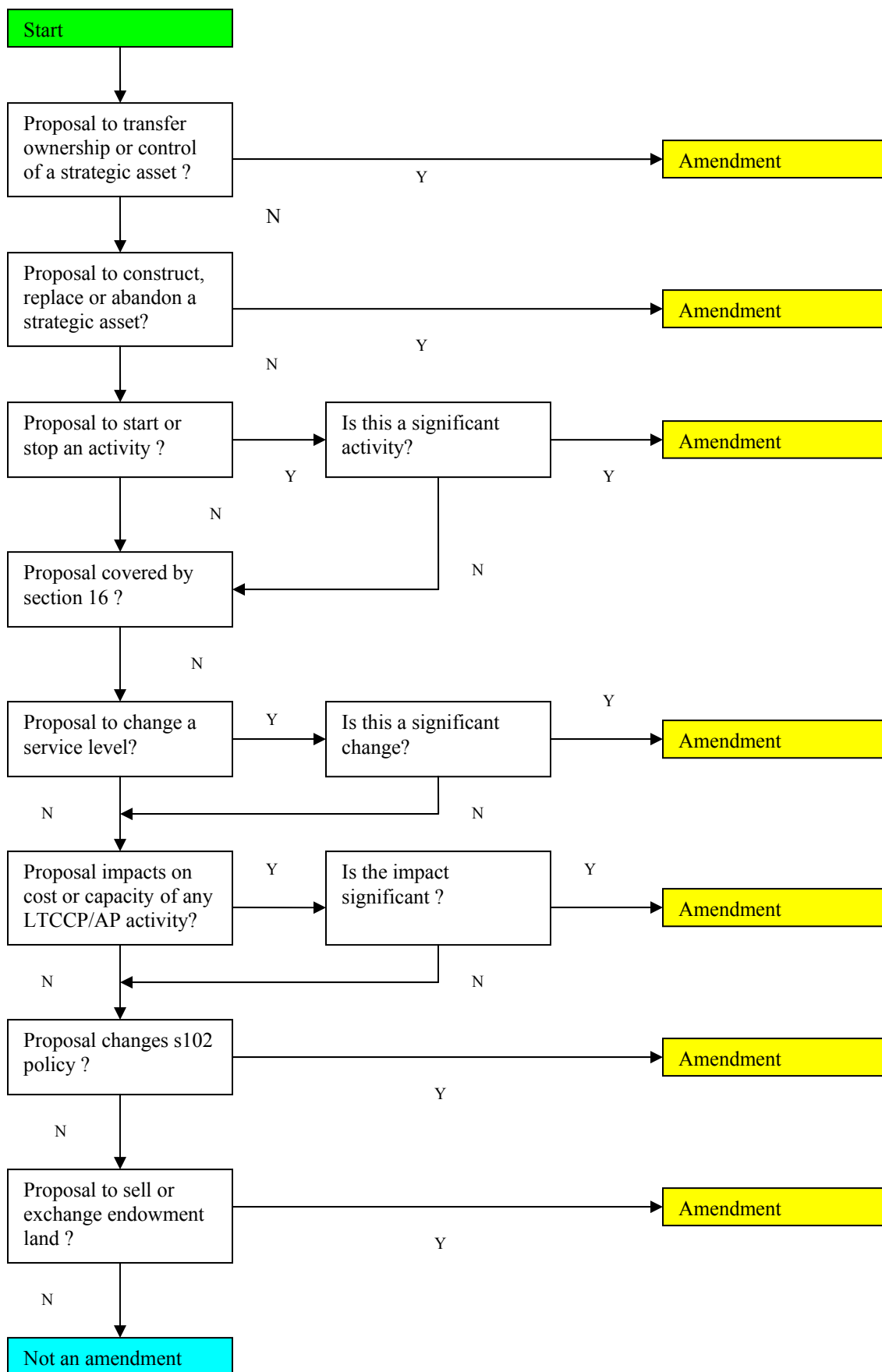
1. A long-term council community plan (LTCCP) is a public statement of a local authority's current intentions at the time the plan is adopted. The legislation does contemplate that some change will occur over the life of the plan. For example, section 96 clarifies that a local authority is not bound to any course of action identified in an LTCCP, and section 80 sets out disclosure requirements where a local authority makes a decision that is "significantly inconsistent with" the contents of an LTCCP.
2. The Local Government Act 2002 (LGA) provides that certain decisions may only be made by way of an amendment to the LTCCP. These include the following:
 - a decision to *significantly* alter the intended level of service provision for any *significant* activity undertaken by or on behalf of the local authority, including a decision to commence or cease such activity (section 97(1)(a));
 - a decision to transfer the ownership or control of strategic asset to or from the local authority (section 97(1)(b));
 - a decision to construct, replace or abandon a strategic asset (section 97(1)(c));
 - a decision that will, directly or indirectly, *significantly* affect the capacity of the local authority, or the cost to the local authority, in relation to any activity identified in the LTCCP (section 97(1)(d));
 - an amendment to any of the funding and financial policies in section 102 of the Local Government Act¹ (section 102(6));
 - the sale or exchange of land vested in trust or as an endowment (section 141); and
 - regional councils undertaking *significant* new activities that are currently performed by territorial authorities (section 16).

¹ These include the revenue and financing policy, liability management policy, investment policy, policy on development contributions, policy on partnerships between the local authority and the private sector, remission policy, postponement policy, and policy for the remission/postponement of rates on Maori freehold land.

3. The Financial Management Working Party has prepared these guidelines to help local authorities assess a whether particular decision or action requires an amendment. While there are examples later in the guidelines, these are focused more on process for getting “an” answer, rather than giving “the” answer.
4. As the list in paragraph 2 shows, several of the statutory triggers for an amendment rely on significance as the key point of decision.
5. Therefore the local authority’s approach to determining “significance” in plays an important role in determining what changes require an LTCCP amendments. The things that will determine whether a particular action is significant include:
 - any thresholds or criteria that the local authority has set in its own significance policy; and
 - the local authority’s assessment of the degree of significance based on the statutory criteria in the definition of significance in section 5 of the Act.
6. Those criteria include the likely impact on, and likely consequences for:
 - the current and future social, economic, environmental and cultural well-being of the district;
 - any people who are likely to be affected by, or interested in the issue, proposal etc; and
 - the capacity of the local authority to perform its role and the financial and other costs of doing so.
7. In determining whether a decision or action requires an amendment a local authority must also pay heed to the decision making processes of sections 76 to 83 of the Act.
8. The flowchart overleaf sets out one process for determining whether a particular decision or action an amendment.

Example 1: Sale of Port Company Shares

The Eastland Regional Council has decided to accept an offer for the shares it holds in the Kakapo Port Company. Will this require an amendment to the LTCCP?



9. Section 97(1)(b) provides that the transfer of ownership or control of a strategic asset is a decision that can only be undertaken as part of an LTCCP. The definition of strategic asset on section 5 of the Act expressly includes port companies (as defined in the Port Companies Act). Note that the definition of strategic asset also includes any airport company shares and social housing owned or controlled by the local authority, and *any other asset that the local authority has identified as a strategic asset in its significance policy*².

Example 2: Starting a Significant New Activity

The four councils in the Eastland region (Eastland Region, Kiwi District, Weka District and Kakapo City) have been exploring mechanisms for greater coordination of their economic development activities. As a result they have concluded that the best means of doing so is if economic development is handled by the regional council, and all have therefore agreed to transfer the activity to the regional council. This would be a significant new activity for the regional council. Will this require an amendment to the LTCCP for Eastland Regional Council?

10. Eastland Regional Council is planning to commence a significant new activity currently undertaken by the three territorial authorities in the region and thus is required to undertake an amendment by section 16. Starting a significant new activity also triggers section 97(1)(a). A “real life” example of such an amendment can be found in the presentations to the 2006 Financial Management Seminar (available at www.solgm.co.nz).
11. The three territorial authorities may also need to undertake amendments to their LTCCPs under section 97(1)(a) if they considered the economic development activity to be a significant activity. Depending on the circumstances this proposal may also trigger section 97(1)(d) in terms of significant changes to the capacity of the local authority to undertake the activity or the cost of the activity to the local authority. In the real life example the territorial authorities took advice from their auditors and established neither section was triggered *in those particular circumstances*.

² Most local authorities have taken quite wide definitions of strategic asset, including virtually all network and community infrastructure as strategic assets in their significance policy.

Example 3. Change to Revenue and Financing Policy

The Kiwi District Council has decided to amend its revenue and financing policy to change funding sources for roading from being funded by the general rate based on land value to funding by a targeted rate. The targeted rate will be made on the basis of differentiated capital value with farm properties paying three times the rate in the dollar as urban. Roading related costs account for approximately 40 percent of the total rate take in the local authority. Will this require an amendment to the LTCCP?

12. The revenue and financing policy is one of the section 102 funding and financial policies and thus changes to the policy can only be affected through an amendment to the LTCCP. Section 102(6) has no modifier (such as significant) so any change must be made as an amendment to the LTCCP. This example illustrates the need to be careful with the design of funding and financial policies – too great a level of detail may necessitate frequent amendments.

Example 4: Deferral of Capital Expenditure

The Weka District Council planned an upgrade of a sewage outfall to be completed in the second year of the LTCCP. The upgrade was to address the situation where largely untreated sewage is being deposited onto a local beach. However the second year of the plan is also an election year, and concerned at rates increases the council has decided to defer this expenditure to year four of the LTCCP. The change will result in an reduction in cost in the current year, with transferal of cost into future years, but will also reduce the level of service over those signaled for the next two years. Will this require an amendment to the LTCCP?

13. This example is a good illustration of one of the basic “principles” of determining what is an amendment – that determining what circumstances require amendments is a matter of judgement, informed by the law and by the policies of the local authority.
14. This decision could potentially trigger an amendment if the activity is a significant activity then the reduction in service levels could trigger an amendment under section 97(1)(a) if the reduction is assessed as a significant reduction in levels of service. The overall cost over the ten years of the LTCCP does not change as the local authority is merely

- putting off the expenditure for two years (although in the current contracting environment it is possible that when the project begins Weka District may need to make an assessment of the significance of any change in costs).
15. In considering whether or not an activity is a significant activity a local authority would typically need to consider factors such as:
 - the size of the activity relative to the local authorities operations (e.g. in terms of percentage of total expenditure, percentage of rates involved etc); or
 - impact of the activity in terms of the social, economic, environmental and cultural wellbeing (this should be available from LTCCP disclosures made under schedule 10 e.g. sewage disposal promotes community health and good environmental outcomes).
 16. The key points at issue in this case are the degree of the reduction in service levels *over those indicated in the LTCCP* (not the current levels) and whether these are significant. Again the degree of sensitivity that your significance policy has to changes in levels of service is critical in assessing what could be an amendment.
 17. In considering the impact on levels of service the council might have to consider the impact on well-being, especially environmental and cultural (i.e. the loss of visual amenity, odour issues, loss of recreational amenity, possibly impacts if the beach is or is near to local shellfish or fishing grounds) as well as the purely mechanical aspects of service levels (bacteria counts and the like).
 18. This has particularly important implications for annual planning processes (particularly those in election years) in that the scope of the changes elected members may be able to make may be more constrained than was the case with strategic plans, long term financial strategies and the like. Debate can no longer focus only on the rating implications but also needs to focus on the implications for service levels. Local authorities that have signaled potentially large rates increases in any year of the LTCCP are advised to begin annual planning processes as early as practicable so that the consequences of potential changes in rates on levels of service can be fully assessed and all are clear whether amendments are required.
 19. Now suppose that the local authority had intended to proceed with the project as indicated in year two, but for some reason beyond the council's control (lack of contracting resource, inclement weather etc) the project could not be completed until year three. This set of circumstances would probably not require an amendment. The council has taken no actual decision to defer the project and hence reduce service levels and/or cost, or no action that would have the same effect. The reduction is the result

of unforeseen consequences. However, the council is obliged (under Schedule 10, Clause 15(e)) to report the non-achievement of planned service levels in the annual report.

Example 5: Change to Balanced Budget Policy

The incoming Weka District Council has inherited a policy from its predecessor in office of not funding depreciation on certain community halls. The new council has received advice from its officers that the non-funding of depreciation is expected to impact on levels of service from year two of the current plan to the point where they will be significantly below those signalled in the current LTCCP (and agreed by the community in the last consultation process). Maintaining present service levels is expected to add 25 percent to the cost of maintaining the halls each year after the decision takes effect.

20. Note that section 97(1)(d) refers to the cost to the local authority in relation to any activity identified in the LTCCP.
21. The council has two options here³. It can change the levels of service or increase the level of funding for the halls (or possibly some combination of the two). Making a significant change to levels of service of a significant activity is captured by section 97(1)(a). Assuming halls were a significant activity and not part of wider activity, the council would assess (among other things) the significance of the change in service levels by considering whether the community halls activity was still viable (e.g. will the halls deteriorate to the point where they are unsafe), what the impact on community well-being would be (for example, are the halls the only place available for rural communities to meet, hold cultural events and the like and what impact lower levels of service would have).
22. In considering the significance of any change in cost, Weka District would need to look at the total financial impact of the change in terms cost of the activity, on overall expenditure, and in terms of the impost that meeting a change in cost would create on ratepayers (and thus their economic wellbeing). For example, if Weka District had originally planned to spend \$200 K on community halls, and had 25000 ratepaying properties that would meet the charge. The resulting additional impost of \$2 per ratepayer is probably not going to be significant in terms of the statutory

³ The third “do nothing” option i.e. let the halls deteriorate and report variances against planned service levels may eventually require amendment if the levels of service decrease to the point where it becomes significant, or in the extreme if the halls close because they are unsafe. Again for the purposes of determining amendments to the LTCCP the relevant point of comparison is with the levels indicated in the LTCCP.

definition of significance. But if the same local authority was spending the same amount but say only recovering from 250 ratepayers then the impact is likely to be more towards the significant end of the scale, and if it transpired that the average rate per property in the area was say \$1000 (and hence the change in cost would create a 20 percent rates increase) then it may be more significant still. The key judgement in the latter case essentially boils down to is a “big financial impact on a small number of affected people significant”, and again is a judgement only the local authority can make informed by advice and in the light of the decision-making provisions (sections 76-79).

Example 6: Sale of Endowment Property

Ten years ago, the Kiwi District Council received a “quarter acre” block of coastal land from a deceased ratepayer as an endowment. Kiwi District is undergoing coastal development and the council has now received an extremely attractive offer from a developer. Having decided that the sale proceeds will be used in a manner consistent with the purpose of the endowment (and thus meeting the requirements of section 141(1)), it has been suggested that the sale requires an amendment to the LTCCP. Is this correct?

23. Yes. The sale or exchange of any endowment property may only be undertaken if the local authority has notified its intention to sell in an LTCCP and adopted the LTCCP. Thus the only way the council could make the sale is by making an amendment to the LTCCP.

Example 7: Change to a Policy on Development Contributions

Kiwi District Council is intending to make two changes to its development contributions policy to include provision for including interest charges in the calculation of development contributions. Currently the policy does not include interest.

In addition to the implications of these changes the council is proposing to change some of the amounts payable in development contributions in the schedule to its policy on development contributions.

Which of these proposed changes requires an amendment to the LTCCP?

24. Both of these proposals requires amendment to the LTCCP as both are changes to a section 102 policy and as example three demonstrated any change to these policies requires amendment to the LTCCP.
25. With regard to the second of the proposals, section 201 of the Local Government Act specifies that a policy on development contributions must have a schedule that meets the content requirements of section 202. Section 202 includes the amounts of each type of contribution payable in respect of reserves, network infrastructure, and community infrastructure. As an aside the schedule must also contain the trigger points when a contribution is assessed (i.e. resource consent, building consent, authorization for a service connection). It is therefore quite clear that the amounts payable form part of the content of a policy for statutory purposes.
26. This therefore is an amendment to a section 102 policy and therefore triggers an amendment to the LTCCP under section 102(6). As noted in example three, the requirement applies regardless of the scale of the change.

Example Eight: Forming A CCO

Eastland Region, Kakapo City, Weka and Kiwi Districts are looking to form a joint CCO to undertake a shared services initiatives with regard to some “back-office” functions. The President of the Local Ratepayers Association and the local union representative have both suggested this change may require an amendment to the LTCCP. Are they correct?

27. Establishment of CCO does not, in itself, require an amendment to the LTCCP. But note that section 56(2) will require the councils to consult when establishing this CCO. The councils could also be required to consult by section 88 obligations in regard to transfer of an undertaking (noting of course that these are two potential triggers, but only one consultation process would also be required). Also note that there may be obligations under employment law.
28. As with many of the other examples in this note the key issue is the significance of the functions being transferred, in terms of any levels of service implications (section 97(1)(a)) and any cost implications (section 97(1)(d)). In this particular case, the functions being transferred are back office in nature and may well not have been identified as activities in the LTCCP or annual plan thus avoiding 97(1)(d). As back office functions the levels of service implications are unlikely to be significant.

Implications

29. An amendment to an LTCCP has to meet most of the same content and procedural requirements of the full LTCCP (at least in respect of the matters to which the amendment relates and any consequential amendments).
30. This means that making an amendment requires the preparation of a statement of proposal and a summary⁴ of the proposal (section 84). The statement of proposal must include a draft of the parts of the LTCCP which are the subject of the proposal, and any consequential amendments that would be required if the LTCCP is amended as set out in the proposal.
31. Statements of proposal for an amendment that involve section 97 decisions also have to meet the requirements of sections 84(3) i.e. the statement of proposal must include;
- the details of the proposal;
 - the reasons for the proposal;
 - an analysis of any options identified as being reasonably practicable under section 77(1);
 - *particular content requirements with respect to proposals to:*
 - *transfer ownership or control of a strategic asset (section 84(3)(d))* i.e. descriptions of arrangements for performance monitoring, assessment of conflicts of interest and proposals for managing any conflicts of interest
 - *cease or assume responsibility for an activity (section 84(3)(e))* i.e. assessment of the impact on current providers and assessment of conflicts of interest and proposals for managing any conflicts of interest
 - *sell or exchange endowment land (section 141)* i.e. the use to which the proceeds of sale or exchange will be put
 - *undertake significant new activities currently undertaken by territorial authorities (regional councils only – section 16)* i.e. a description of the expected effects on the territorials undertaking the activity and any objections the territorials have raised.
32. All amendments must meet the requirements of section 84(4) in terms of the auditor's report.

⁴ See the SOLGM publication *Good Practice for LTCCP Summary Documents* for further guidance on the preparation of summaries.

“Making Amendments” - Some Tips

Few amendments are made in isolation ...

33. Few amendments are made in complete isolation from the rest of the plan, for example including new capital work in one activity may mean some maintenance is deferred for a year in another. Consequential activities of decisions must be identified.
34. Even where circumstances like this do not occur, amendments are likely to have impacts on some of the content of the plan, most likely in the financials. Other important places to check for changes include:
 - the description of key issues that most local authorities placed “up front” in their LTCCPs – especially where the subject matter of an amendment reflects a change in the council’s view on a particular matter (for example if an LTCCP states that a council intends to build a museum facility, and the council subsequently decides not to proceed with this work);
 - lists of activities that make a group of activities (particularly where activities have been started or stopped);
 - CCO disclosures (especially with regards to policies and objectives with respect to ownership and control where things move into and out of CCO status); and
 - schedules and appended information (for example, schedules of the amounts of development contributions payable in a policy on development contributions).
35. The implication of this is that what might in and of themselves seem to be quite small matters for amendment, could generate large amounts of minor change to the LTCCP.

Take audit advice at an early point in the process

36. There are considerable advantages in getting advice on your judgements as to whether a proposal requires an amendment of the LTCCP at an early point in the process. Early advice helps manage the expectations of elected members and of the community, it saves the stress of having to prepare the necessary documents at the last minute, and allows for more thorough consideration of all of the “consequential” impacts in the LTCCP.

A review of the significance policy is a good place to start ...

37. The above examples have highlighted the role that the significance of the decision or action plays in determining what is an amendment. It may therefore be desirable to review the significance policy and associated procedures for determining significance at an early point in the process to ensure that the decisions and actions that the policy labels as “significant” are truly significant decisions in each particular context. In particular, any thresholds or other non-statutory triggers in the policy should be examined to see if they are truly necessary. This includes the list of assets that have been defined as “strategic” (apart from those regarded as strategic under legislation). Too low a level of significance will see a local authority amending LTCCPs for quite minor decisions, too high a level of significance circumvents or undermines the accountability of the local authority to its residents and ratepayers.
38. It should also be noted while changes to the significance policy do not constitute an amendment to the LTCCP, they must also be made via the special consultative procedure, and sufficient time should be allowed for this in the planning process, if change is required.

An early “reality check” of capital works programmes, and other expenditures which have direct impact on service levels may also be desirable ...

39. Capital works and their associated operational implications are significant drivers of expenditure levels in most local authorities, and are also the most sensitive to changes in circumstance (e.g. political pressure to “keep rates down in an election year” etc). Changes in capital works programmes and associated operational implications could potentially trigger amendments under section 97(1)(a) (significant changes to service levels) or section 97(1)(d).
40. It is therefore probable that these types of change will be the single largest trigger of amendments to LTCCPs (especially in the coming year and subsequent local election years).
41. Revisiting capital programmes at an early point in the process helps identify areas of potential change at an early point so that impacts on costs and service level can be quantified, and assessed for significance. This enables measured preparation of the documents for any change that does constitute an amendment rather than trying to do this and prepare a draft annual plan at the same time. Some amendments that are particularly significant may be better made outside of the annual plan

process (those that are likely to draw large volumes of submissions in their own right etc).

42. The opposite is also true (i.e. changes in service levels while not significant in terms of the level of service) could potentially generate large changes in cost, and trigger an amendment. This serves to highlight that it is important to work through all of the flow-on effects of a proposal at an early point in the process.

Document your judgements, especially how and why they were reached ...

43. Although the legislation gives a great deal of guidance on the circumstances that give rise to amendments much of this guidance is dependent on the significance of the proposal. Determining whether amendments are required is therefore often a matter for judgement, informed by the law, in part by the local authority's own policies, and in part by the local authority's knowledge of its community.
44. Because significance is highly circumstance-specific it is important to ensure that records are kept of the steps that the local authority followed in determining whether a particular proposal requires an amendment and the matters and circumstances that were taken into account. This is especially important where assessments of significance are required (such as in examples 4, and 5 above).

Don't forget summaries are required, even though the proposal may seem small ...

45. Section 83 is clear in its expectation that all statements of proposal must be accompanied by a summary, including amendments. Depending on the nature of the proposal the summary may be quite a short document – but must still be a fair representation of the major matters in the proposed amendment. Your auditor can help you decide what form your summary should take, but you cannot just rely on the statement of proposal being its own summary.

Don't forget to ensure that information on amendments is available for present and future users of the plan ...

46. The LTCCP is the primary document for promoting the accountability of the local authority to its community. It is of limited value if information about any amendments is not available to the community. This could take the form of:

- a complete revision of the LTCCP to reflect the amendment; or
 - preparation of an addendum to the LTCCP, for display alongside the electronic version of the LTCCP on the council website, and insertion inside hard copies.
47. Either approach is acceptable, although the former is perhaps most consistent with the principles of the Act. The key test is that a future visitor to the council website etc should be able to access a copy of the LTCCP and know that the adopted LTCCP has been amended, and what the nature of the amendments were.