

# Significance and engagement policies



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## FOREWORD

This guidance was prepared to assist local authority managers with the development of their council's first Significance and Engagement Policy as required under the new *section 76AA* of the *Local Government Act 2002*.

Of course, your choice of engagement tools is something that is very specific to your community. What works in a council with an active community board structure and a large community of elderly people, is likely to be entirely different from a council with a high youth-age population and a high take-up of the internet.

This guide therefore steers clear of providing detailed recommendations as to which engagement methods should be included in policies. A great deal of material already exists on these matters. The guide provides principles and guidelines on the issues that need to be covered, and the process for developing a policy.

We thank those councils that made drafts of their policies available to us. They have greatly assisted with our thinking. We also thank Elizabeth Hughes (Elizabeth Hughes Communications) for her assistance with earlier drafts of the guide. We also thank the following for their helpful comments: Cindy Kent, Tegan McIntyre, Jenni Cochrane, Andrew Boyle, John Sutton, Sarah Lineham, Kathryn Mclean and Jonathan Salter.



**Barbara McKerrow, President**

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## WHAT IS A SIGNIFICANCE AND ENGAGEMENT POLICY?

“The purpose of a significance and engagement policy is

- (a) to enable the local authority and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities; and
- (b) to provide clarity about how and when communities can expect to be engaged in decisions about different issues, assets, or other matters; and
- (c) to inform the local authority from the beginning of a decision-making process about –
  - (i) the extent of any public engagement that is expected before a particular decision is made; and
  - (ii) the form or type of engagement required.”<sup>1</sup>

A Significance and Engagement Policy (SEP) is a device for letting the public know what decisions or matters the council and the community consider to be particularly important, how the council will go about assessing the importance of matters, and how and when the community can expect to be consulted on both. It replaces and extends the Significance Policy formerly required under *section 90* of the *Act*.

Amendments elsewhere in the *Local Government Act 2002 (LGA)* have provided a degree of flexibility in how and when local authorities consult on a range of decisions taken under that *Act*. In these cases local authorities are required to consult on the decision “in a manner that gives effect to the requirements of *section 82*”. In other words, it’s up to your local authority to determine how to apply the principles of consultation in *section 82* when deciding what process to follow when consulting on a particular decision. The SEP is the partner to the greater flexibility, in that the policy advises the public of your “house rules” – that is how your local authority will utilise the flexibility.

A caution about the interrelationship between the *LGA* and other *Acts*. If other legislation instructs you to consult using the special consultative procedure (as is the case with some regulatory and other function-specific legislation) then you must use the special consultative procedure. Relaxation of the consultation requirements applies only to those decisions in the *LGA* where consultation “in accordance with *section 82*” is permitted.

### Transition

The first SEPS must be in place by 1 December 2014. Your existing significance policy continues to apply until such time as the SEP has been adopted.

<sup>1</sup> *Section 76AA, Local Government Act*

## WHAT ARE SIGNIFICANCE AND SIGNIFICANT – A REFRESHER

The definition of significance has not been changed to any real degree by this set of amendments to the Act. The only change is a change in section reference to the new *section 76AA*. That is to say that the definition of significance remains –

*“significance, in relation to any issue, proposal, decision, or other matter that concerns or is before a local authority, means the degree of importance of the issue, proposal, decision, or matter, as assessed by the local authority, in terms of its likely impact on, and likely consequences for –*

- *the district or region*
- *any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter*
- *the capacity of the local authority to perform its role, and the financial and other costs of doing so.*

The term significant has likewise not changed and remains:

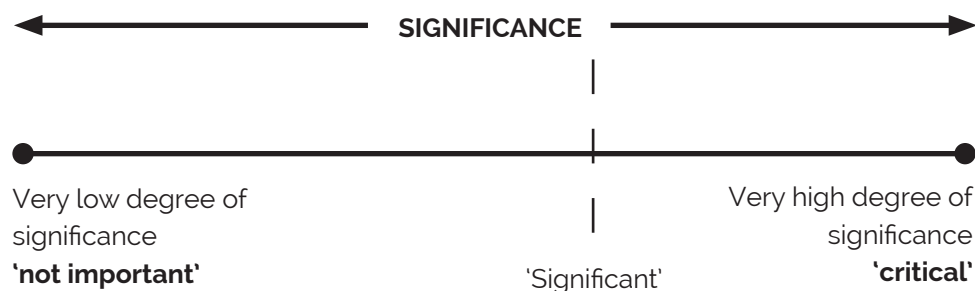
*significant, in relation to any issue, proposal, decision, or other matter, means that the issue, proposal, decision, or other matter has a high degree of significance.”*

The distinction between significance and significant is important. *Section 76AA* refers to “degrees of significance”. This reinforces the sector’s long-held understanding that significance is a continuum – ranging from the day to day matters with low impact on the community, right up to those with a very high significance.

As an example, the decision to waive an overdue penalty on rates outstanding on Mr Smith’s house might be important to Mr Smith, but generally won’t have much of an impact on the rest of the community, or the local authority. That decision probably has a low level of significance. On the other hand, a decision to build a major sporting facility in your central business district will have big financial and other impacts on the community, and the financial consequences of the decision will be with the community for some time to come. Such a decision probably has a very high level of significance. The SEP is your device for assessing just where on the continuum a particular issue, decision or matter sits – and that will be that issue’s degree of significance.

The Act uses the term significant in 49 different places, and the latest set of amendments add more to this list. As shown in Figure One overleaf, significance is a continuum and significant is any matter beyond a point on the continuum defined by your own local authority as being where there is a high degree of significance. In some cases the provisions of the Act apply if and only if a particular matter is significant (such as a requirement to disclose a significant item), while others require identification and reflection of the issues place on the continuum in Figure One. The assessment of each is performed following the statutory provisions; and the criteria or procedures in your policy.

**Figure One: Significance vs Significant**



As an issue moves from left to right along the spectrum you are assigning it a higher degree of significance, but past a certain point on the continuum the issue is deemed significant. Both the degree of significance and the point at which something is deemed significant are matters for you to determine, taking into account the law and your own policies.

The council's assessment of significance can be contested in court, typically as part of a wider challenge to the council's decision-making. The courts may (and in the past have) overturned council decisions for non-compliance with the council's own significance policy.<sup>2</sup> Remember that the council's assessment of the significance of a particular decision or issue is also open to judicial review on administrative law grounds.

In the event that a council wanted to make a decision that would be contrary to its policy, it may do so, provided it follows the process set out in *section 80* of the *Act*.<sup>3</sup> Use of *section 80* should be limited to the exceptional cases. If you find your local authority is using this a lot it's both a risk to your credibility with the community and a signal that something may be wrong with the SEP.

Your assessment of significance is important because it will drive the way your local authority makes decisions, and what analysis and engagement is required as your local authority does so. Under *section 79* of the *Act* (the so-called compliance provision) enables your local authority to exercise its discretion about how to comply with sections 77 and 78, dependent on the degree of in proportion to the significance of the matter or decision, including the following:

- the degree to which your local authority identifies and assesses options in respect of each decision or matter (including the identification of costs and benefits)
- the extent and detail of any information to be considered
- the extent and nature of any written record to be kept of the decision.

<sup>2</sup> For example, the decision of Chisholm J in *Council of Social Services vs Christchurch City Council* (2008).

<sup>3</sup> In addition, the council must be satisfied that the decision will not be caught under *section 97* of the *Local Government Act 2002*.



## WHAT IS ENGAGEMENT?

A full discussion of the nature of engagement is beyond the scope of this guide, and can be readily explored through other sources. Suffice to say that engagement is a wider concept than consultation. Consultation is but one of a suite of tools for engaging with the community – others include methods such as deliberative polling or citizens juries. Consultation can also imply a “one-shot” deal whereas engagement tends to imply more ongoing processes. So community engagement is not just about consultation, that’s an expectation or signal that has been conditioned into the sector by legislation. Consultation is but one level on the engagement spectrum.

Readers interested in more discussion of engagement or the definitions of engagement are referred to resources such as the International Association for Public Participation (IAP2) [website](#).

## SO WHAT SHOULD GO IN A SIGNIFICANCE AND ENGAGEMENT POLICY?

### Purpose of the SEP

It’s good practice to include a statement of purpose for all policy documents. They provide the reader with an indication ‘up front’ as to whether this policy deals with an issue of interest to them. Something like

*“to let you know how you can expect to be engaged in council’s decision-making processes”.*

A clear statement of purpose will also be useful when it comes to preparing the information required to support consultation on the draft SEP. It’s likely to give you one of the reasons for the proposal.

Never open an SEP with the words *“Pursuant to sections 93B and 93C of the Local Government Act”* (or similar). They send the signal that your local authority is doing the policy because it has to – not usually a good idea in a policy that is meant to be about how you’re working with the community!

### Determining significance

The legal requirements for the “significance” component of the SEP have been largely transferred from the former *section 90* of the *Local Government Act*. Your SEP needs to include a description of:

- a) the general approach to determining the significant of proposals and decisions
- b) any criteria or procedures that your local authority uses to assess the significance of issues, proposals, assets, decisions or activities and where decisions have a high degree of significance or may have significant consequences (this latter part is important and new, it’s not just the size and scale of the decision, but the size and scale of the consequences that make some matters significant)
- c) those assets your local authority considers as strategic assets.

Your local authority will already have an approach to determining significance in its existing significance policy. One of the first key decisions in preparing your SEP is to determine whether your existing approach to determining significance needs a minor review or a complete rewrite. There is some emphasis on assessing degrees of significance in the purpose for the SEP that suggests to SOLGM that most policies will need a moderate amount of work. In any case, be ready to further refine your approach in the light of any issues/feedback that arises out of consultation.



The Act refers to any criteria or procedures used to determine degrees of significance. Your local authority has the choice of which of these it wants to use to assess significance. You could potentially choose to include both criteria and procedures, if you considered that to be helpful.

At this point it's useful to note one subtle distinction between the old and new policies. *Section 76 AA* does not explicitly mention thresholds, but does not explicitly rule them out. This arises out of a wish to "de-emphasise" the dual "black/white, significant/not significant" approach in favour of a continuum (that is degree of significance) approach.

Thresholds are not precluded, and remain useful where size or quantity is involved. Be wary though – thresholds have the effect of dividing matters into two categories "significant" and "not significant" and while there's no expectation or limitation that your local authority will engage only on significant matters, this could be the way the public interprets it.

Similarly thresholds provide the reader (and your local authority) with certainty, though the counterpoint to this is that they reduce discretion. They work best in association with criteria based around the financial aspects of a decision, matter or issue (e.g. expenditure over \$x or an impact on rates of more than y percent). Hard and fast criteria set at a relatively low level may have unexpected consequences – for example that a lowish level decision (i.e. one that is less significant) is unexpectedly captured in your policy.

Be sure to test the criteria against decisions or issues of different sizes to make sure they are set at the correct level. That testing should take place before the policy goes to council for adoption. Also remember that with price changes, criteria based on expenditure, rates and so on may need a review to ensure they remain current.

Some common examples of criteria are:

- *the cost of the decision* – the higher the cost the greater the degree of significance (to avoid confusion you might specify that this is the cost to council)
- *reversibility* – once done, how easily could a decision be undone – the more difficult a decision is to reverse, generally the higher the significance
- *community interest* – the higher the degree of community interest in a decision the greater the likely degree of significance
- *the degree of impact on affected individuals and groups* – this one is useful because it points towards assessing the consequences of the decision, matter etc
- *the degree to which the decision or proposal promotes community outcomes or other priorities of council (and you might then identify what those are)*
- *the degree to which a decision or action is consequential to, or promotes, a decision or action that has already been taken by council*
- *the impact on levels of service* – the greater the impact, the higher the likelihood that a particular decision or proposal will be significant (to provide further clarity your local authority might wish to direct this to the key levels of service disclosed in the LTP)
- *the impact on rates or debt* – the greater the impact, the higher the likelihood that a particular decision or proposal will be significant
- *does the decision involve a strategic asset* (particularly so, if the decision involves transferring ownership or control of a strategic asset to or from the council)?

When using criteria you should also clarify:

- the criteria apply as a set and that a single criterion in isolation is not necessarily determinative of significance
- whether the criteria are of equal weight in determining degrees of significance, and if not then what the differences in weighting are
- that the application of the criteria is a matter of judgement for council.

As now, your reporting templates should ensure that each matter, issue, decision or proposal placed before council has some assessment of its significance and that you be prepared to answer questions about what your assessment might mean in each instance.

### Strategic assets

Your SEP also needs to list the assets that your council considers as “strategic”. The definition of strategic asset has not changed beyond amending a section reference. Your strategic assets are therefore:

*“... an asset or group of assets that the local authority needs to retain if the local authority to maintain ... [its] capacity to achieve or promote any outcome that the local authority determines to be important to the current or future wellbeing of the community ...”.*

Don't forget that this includes any land or buildings your council owns and needs to provide any affordable housing as part of its social policy (if your local authority engages in this activity), and any equity securities in port or airport companies.

Development of the SEP provides your council with a good opportunity to review its list of strategic assets. Be sure to check these against your local authority's community outcomes and other priorities – especially where these have changed out of any review of activities against the changed purpose of local government.

### Mandatory consultation

Although you do not have to, SOLGM considers that it is good practice to remind readers that there are some circumstances when you have to use the special consultative procedure. You should describe generally what that means i.e. your local authority issues proposal which is open for the community to provide views and has to stay open for at least a month. Your SEP is also an appropriate place to set out what methods your local authority will invite or accept when offering the community the chance to present views, and how it intends to give effect to the requirement that an opportunity be given for spoken/sign language interaction.

### Engagement methods or techniques

Your SEP has to set out how you will engage with communities. SOLGM does not believe that the intent of the SEP is to specify every technique or method your local authority uses in every circumstance, in mechanistic detail. What's needed is an overview of what methods you use and enough information about when you'll use them to give the community an indication of what to expect.

The wording of *section 76AA(1)(c)* specifically mentions community preferences about engagement on decisions relating to specific issues. It would be prudent to specify some common decisions and comment on your proposed means for responding to community preferences. A good place to start with these might be to list the decisions where consultation 'in accordance with *section 82*' (e.g. amending one of the *section 102* policies, amending the SCP) is required and comment on how your local authority will

respond to preferences. You might also look for some other decisions where the level of community interest is (or has been) high and include these.

When consulting under *section 82*, you'll need to demonstrate how your local authority has had regard to the matters in *section 82(4)* of the LGA. Failure to overtly address these matters when determining the application of the *s82(1)* principles could leave a council vulnerable to claims that it has failed to take into account mandatory statutory considerations.

Your policy could be an opportunity for a council to mitigate this risk to some degree. For instance, if the policy sets out the type of consultation that council expects to engage in for *s82* consultation, then the council could simply rely on its policy without having to delve into the *s82(4)* considerations in every case (essentially, it would have addressed the *s82(4)* considerations in developing its policy).

There are different ways that your local authority might address *s82* consultation in its policy. For instance, it might set out a couple of processes that the council will choose between when consulting on a *s82* consultation matter (for example one process for significant matters, and one process for those matters that are not significant). Alternatively, you might set a single generic *s82* consultation process, where your local authority might deviate from only where it has good reason to do so. Or it might have different processes for the different types of matters for which *s82* consultation is required.

Where you specify more than one method or a range of methods, state that the council will select the exact method that it considers appropriate after considering criteria or circumstances such as:

- who is affected by, interested in, or likely to have a view on the issue, that is to say who is the target audience, who else might be affected by the issue or is likely to submit
- the significance of the matter, both to your local authority and those who are or may be interested in or affected by the issue
- the community's preferences for engagement
- what information already exists on community views on the proposal or decision and the circumstances in which that information was gathered (for example when was the information gathered, what changes in circumstances have there been since that time)
- the circumstances in which the decision is taken, or the issue arose.

Of course your local authority will already have some knowledge of, or views on, things that already work best, and your discussions with your elected members is likely to add or subtract from the list. One of the reasons you engage on an SEP is to get feedback from the community on "your list" and provide a chance for the community to give you 'new ideas'.

We suggest that your list of methods or techniques should be included as a schedule. They still form part of the policy and changes to schedule would require consultation in a way that gives effect to the principles of *section 82*. We suggest that you keep this relatively simple and open by setting this out as a menu or list of methods linked to common decisions. The more complex you make it, for example by specifying a set of methods or techniques most suitable for a particular form of engagement or audience, the more you compromise your ability to tailor an approach to particular circumstances.

One final point, be careful when 'borrowing' from the policies of others, or downloading policies from external sources (such as the IAP2 [website](#)). Be sure you have the capacity (both actual numbers of staff and skills) to put a method, or group of methods together, into practice. It's one thing to see something in print and think it's a good idea, and quite another to operationalize it.

## Other things you could include

Local authorities have a wide range of choices available in meeting obligations to consult in a manner that gives effect to the principles of *section 82*. Although you do not have to, your local authority might consider whether it wishes to provide some certainty to its community around matters such as:

- the length of the engagement period (if you choose to do this be careful to specify that this will be proportional to importance of the issue, the nature of the audience, and the circumstances in which the issue or decision is taken)
- feedback – how and when your local authority will go about providing information about council decisions. Be careful not to raise unrealistic expectations. The 2014 amendments have clarified that it's not a legal requirement to provide every person consulted with personalised feedback, but it remains one of the principles of consultation is that people should have access to information about the decisions council made in response to their submissions
- review period – there is no obligation to regularly review your SEP. It is however good practice to do so (and generally soon after the start of the triennium). Don't forget that a summary of your SEP will be needed for the LTP (that is the final LTP not the consultation document).

## PROCESS

The SEP is a council wide document – it's not just for the planners!

Most of the “frontline” units of council (i.e. those that deliver services to the public) will need to consult at some point. The SEP must be designed with everyone's needs in mind. Some of the less frequent users, such as the engineers, might provide good examples for testing as part of reviewing your definition of significance.

Refine and test your definitions of significance and strategic assets internally before the policy goes out for consultation

Conduct the review of these definitions as signalled in the previous section.

If your local authority is contemplating changes to the SEP based on feedback received during the consultative process it's a good idea to test a second time. Even quite small amendments to a significance policy can have unexpectedly large consequences.

Identify and evaluate existing information on community needs and preferences

Your policy has to demonstrate to readers how your local authority will respond to community preferences about engagement. One place to start with this aspect of your policy is to review what information you already have on how and when your community prefers to be engaged. Some questions you might ask yourself during this process include:

- what are the big decisions the council will need to take in the next triennium?
- what are/have been the hot button issues to your community – where the expectation might be there will be more rather than less consultation. At the other end of the spectrum there are instances where the community might expect the council to “just get on with it”?
- what is the demographic and socio-economic profile of your community. This will shape your choice of techniques, and the form and content of the information you present to support your consultation process. For example an older, poorer community might be less amenable to consultation that relies on online methods?
- what techniques has your council previously used and how well did they work? Look for quality of feedback, not just quantity (and don't forget that both are dependent on the issue and the way it was presented)? It is always a good idea to conduct an evaluation of your consultative processes (even if it is only informal), this information will prove invaluable as you frame your SEP (and future reviews of your SEP).

The purpose of this step is to gather together and evaluate what information you already have. You do not have to (although could always choose to) take steps to create new information (for example, by surveying the community). Be sure to review existing information for currency, and for completeness (is there some group whose views are not reflected in the information you already have).

Have a conversation with the council

It's hard to develop a policy on engagement in the absence of clarity from your council about its expectations. Some councils might collectively take the view that “they were elected to make decisions” and therefore that they will move to “do the minimum” expectations, others might expect the council to take more collaborative approaches to engagement.

More likely, your elected members will sit somewhere between these two poles, and their views and preferences will vary depending on the issue, decision, asset etc.

Some useful questions to ask during this discussion:

- do you consider we engage too much, or not enough?
- what issues are so important that we should/must engage whether the law requires it or not? (Adding or removing fluoride is the textbook case)
- what are the issues or decisions where you as a council feel you need community input?
- what issues do you want to see council just get on with?
- what things has the council tried with engagement that you felt worked? What was it about them that worked?
- what has the community told you about the way it would like to be engaged?
- what resources are you prepared to allocate to engagement (engagement costs after all)?

In future years this is a conversation you would generally have with council not long after the beginning of each triennium. The policy would then be reviewed and used for the remainder of the triennium.

### Draft the SEP and supporting information

You'll need to make available:

- (a) a statement of the reasons for the proposal i.e. why you are adopting an SEP
- (b) an explanation of the reasonably practicable options
- (c) what key aspects of the policy are you wanting feedback on or choices did you make in the process
- (d) a draft of the SEP.

### Engage, review and adopt.



Professional excellence in local government

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