

Local Government Update

Local Government Act 2002 Amendment Bill

3 May 2010

Local government reform continues

INTRODUCTION

Minister of Local Government Rodney Hide has taken the next step in his suite of legislative reform to improve local government. Following on from the reform of Auckland governance, the Resource Management Act 1991 reform, reform of the Building Act 2004, and the progress of the Regulatory Responsibility Bill, the Minister last week introduced the Local Government Act 2002 Amendment Bill ("Bill") to Parliament.

The Bill proposes amending the Local Government Act 2002 ("LGA 02") to "improve transparency, accountability, and financial management in local government". The underlying policy for the Bill is informed by the following principles:

- that local authorities should operate within a defined fiscal envelope;
- that local authorities should focus on core activities; and
- that local authority decision-making should be clear, transparent, and accountable.

This Local Government Update summarises the key elements of the Bill. Submissions on the Bill have not yet been called for, but can be expected in due course.

Strategic Provisions

At a strategic level, the Bill aims to change the way that local authorities set their direction, and the way that this direction can be influenced and assessed by their communities. To achieve this, the Bill reinforces the need for local authorities to focus on the contribution that the following core services make to its communities:

- network infrastructure;

- public transport services;
- solid waste collection and disposal;
- the avoidance or mitigation of natural hazards; and
- libraries, museums, reserves, recreational facilities, and other community infrastructure.

Many will welcome this return to "core services".

The Bill also requires local authorities to satisfy themselves periodically that expected returns from commercial activities are likely to outweigh the risks inherent in the activity.

Further provisions relating to how councils and communities set their strategic direction include:

- requiring the chief executive of a local authority to prepare a pre-election report to encourage and inform election debate;
- introducing a financial strategy to the long-term plan (the current LTCCP, as renamed by the Bill) to help local authorities and their communities debate and resolve key financial and service delivery trade-offs that local authorities must make. The financial strategy must include, for example, quantified limits on rates, rate increases and borrowing, and an assessment of the authority's ability to provide and maintain existing levels of service within those limits;
- integrating the community outcomes and long-term planning processes to encourage better prioritisation of community aspirations; and
- improving the financial and non-financial information in long-term and annual plans to make it more useful and comprehensible to users. For example, the Bill requires annual plans to identify reserve funds set aside by a local authority, including the purpose of the fund, the activities to which the fund relates, and the amount expected to be in the fund at the commencement and end of the year.

Schedule 10, which sets out matters for inclusion in long-term plans, annual plans, and annual reports has been replaced in its entirety.

Operational Provisions

At a more operational level, the Bill aims to simplify local government decision-making processes. This is achieved by provisions that:

- remove unnecessary auditing by taking a number of operational policies out of the long-term plan;
- remove unnecessary consultation; and
- level the playing field to better enable the private sector to deliver local authority services.

For example, use of the Special Consultative Procedure will no longer be required in relation to:

- council proposals to change the mode of delivery of a significant activity; and
- adoption by council of liability management, and investment policies.

Similarly, decisions to construct, replace, or abandon a strategic asset will no longer need to be expressly provided for in the long-term plan. This could generate some concern as councils have, in the past, proposed the sale of strategic assets, but backed down following numbers of submissions in opposition. The current requirement in the LGA 02 for local authorities to have a policy on partnerships between the authority and the public sector will be repealed.

The Special Consultative Procedure will still have to be used to review certain council policies, including development contributions and financial contributions policies (at least once every three years), and rates remissions and rates postponement policies (at least once every six years).

Water services and infrastructure development

The Bill also proposes amendments to achieve the Government's objective of removing unnecessary barriers to water infrastructure development, by reducing restrictions on private sector involvement in the delivery of water services. The intention is to provide local authorities with greater flexibility in choosing methods for delivering water services and developing water infrastructure. The Bill achieves this by enabling local authorities to:

- enter into contracts for the supply of water services for a period of up to 35 years. Currently, local authorities may only enter 15 year term contracts for the supply of water services with private sector interests;
- delegate aspects of water services management to contractors; and
- lease water assets from the private sector, provided that the assets

are transferred to the local authority at the end of the period of the agreement.

Local authorities will still not be permitted to sell or privatise water services, or to enter into legal agreements that transfer the responsibility for delivering water services.

Performance measures

The Bill introduces provisions requiring the Secretary for Local Government to make rules specifying performance measures with which local authorities must comply in delivering the following key services:

- water supply;
- sewerage and the treatment and disposal of sewage;
- stormwater drainage; flood protection and control works; and
- the provision of roads.

In respect of other activities which a local authority undertakes, the local authority must specify in its long-term plan the performance measures that the authority considers will enable the public to assess the level of service provided. The long-term plan must also disclose the amount of capital expenditure that a local authority has budgeted in relation to each group of activities for each financial year.

Other

Also of interest, the Bill makes a minor amendment to Schedule 7 of the LGA 02 to clarify that local authorities can use a targeted rate to recover the expenses of community boards. This may have important ramifications in Auckland, where the role and functions of local boards is still not clearly defined.

Public consultation

The Bill has been introduced quietly, with little fanfare from a Government constantly under suspicion for its intentions in respect of public services and assets. While the Bill has not yet been read for the first time, it will surely attract a large number of submissions if referred to Select Committee. Especially for those already concerned at the corporatisation of council functions in Auckland, this Bill will be seen as evidence of Minister Hide's (if not the Government's) intent to privatise council assets.

The Bill would seem to ease the way for increased private sector involvement in local government operations. Those who have an interest in this type of opportunity should watch this Bill carefully, to ensure that the chance for input into the legislative process is not missed.

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