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BILLS DIGEST

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Local Government Act 2002 Amendment Bill 2010

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Published: 04 May 2010 by John McSoriley BA LL.B, Barrister, Legislative Analyst P: (04) 817-9626 (Ext. 9626) F: (04) 817-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to amend the Local Government Act 2002 (the Act) " ... to improve transparency, accountability, and financial management in local government"¹.

Background

Principles

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;
- that local authority decision-making should be clear, transparent, and accountable.

¹ Local Government Act 2002 Amendment Bill, 2010 No 142-1, Explanatory note, General policy statement, p. 1.

Accountability

In particular, it is the intention of the Bill to:

- reinforce the need for local authorities to focus on core services;
- introduce pre-election reports;
- introduce a financial strategy to the long-term plan (as renamed by the Bill);
- "integrate the community outcomes and long-term planning processes to encourage better prioritisation of community aspirations";
- "focus community outcomes on the role a local authority intends to play in its district or region";
- "improve the financial and non-financial information in long-term plans by making it more useful and comprehensible to user's".

Management

This is to be achieved by:

- "remov[ing] unnecessary auditing by taking a number of operational policies out of the long-term plan";
- "remov[ing] unnecessary consultation";
- "level[lin]g the playing field to better enable the private sector to deliver local authority services".

Water services

The Bill also reduces " ... restrictions on private sector involvement in the delivery of water services" by enabling local authorities to:

- "enter into contracts for the supply of services for a period of up to 35 years";
- "delegate aspects of water services management to contractors";
- "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".

"However, 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"².

Main Provisions

This Bill and its explanatory note should be read carefully.

Community outcomes and community consultation

The Act at present defines "community outcomes as: " ... community outcomes, in relation to a district or region, ... means the outcomes for that district or region that are identified as priorities for the time

² Ibid., pp. 1 and 2.

being through a process under section 91 ["Process for identifying community outcomes"] ... and ... includes any additional outcomes subsequently identified through community consultation by the local authority as important to the current or future social, economic, environmental, or cultural well-being of the community".

The Bill replaces this with a new definition of " ... outcomes that a local authority aims to achieve in order to maintain and improve the social, economic, environmental, and cultural well-being of its district or region".

The Bill repeals Section 91 and Section 92 of the Act (Section 92 is headed; "Obligation [of local authorities] to report against community outcomes") (*Part 1, Clause 4(1) amending Section 5(1) of the Act by replacing the definition of "community services"; Clause 12, repealing Sections 91 and 92 of the Act; Clause 7, deleting Section 75(e) of the Act; Clause 8, repealing Section 78(2) of the Act; Clause 9, repealing Section 84(4)(c); and other provisions*).

"Core services" to be considered in performing role

The Bill inserts a new section into the Act. This provides that, in performing its role, a local authority must have particular regard " ... to 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; ... libraries, museums, reserves, recreational facilities, and other community infrastructure (*Part 1, Clause 5, inserting New Section 11A into the Act*).

Investment in equity securities or commercial activities

The Bill inserts a new principle amongst the principles in accordance with which a local authority is to act in performing its role. The new principle is that a local authority should periodically satisfy itself that the expected returns from investment in equity securities or commercial activities are likely to outweigh the risks inherent in that investment (*Part 1, Clause 6 amending Section 14(1) of the Act by inserting new paragraph (fa)*).

Long term plan

The Bill changes requirements as to what is required to be included in the plan. All the changes are described in the Bill's explanatory note. Some of the main changes seem to be as follows:

- a local authority's long-term plan now only needs to describe the community outcomes for its district or region (*Schedule 1, New Schedule 10, clause 1*);
- the long-term plan must group activities and disclose the amount of capital expenditure that a local authority has budgeted in relation to each group of activities for each financial year (*Schedule 1, New Schedule 10, clause 2 and 3*);
- a long-term plan must include:
 - a statement of the intended levels of service provision for each group of activities that specifies any performance measures specified for a group of activities in a rule made under Clause 41, New Section 261A (headed "Secretary may make rules specifying performance measures");
 - the performance measures that a local authority considers will enable the public to assess the level of service for major aspects of groups of activities for which there are no performance measures specified by a rule under New Section 261A;
 - the performance targets for each performance measure;
 - any intended changes to the level of service provided in the year before the first year of the long-term plan and the reasons for the changes;

- the reasons for any material change to the cost of a service (*Schedule 1, New Schedule 10, clause 4*);
- a long-term plan must include a funding impact statement for groups of activities, the form of which is to be prescribed in regulations (*Schedule 1, New Schedule 10, clause 5*);
- the long-term plan must identify and explain any significant variations between assessments under Section 125 of the Act and the long-term plan (The old clause 3 of Schedule 10 requires a territorial authority's long-term plan to contain a summary of its assessment of water and sanitary services under section 125 of the Act and a summary of its waste management and minimisation plan in force under Section 43 of the Waste Minimisation Act 2008) (*Schedule 1, New Schedule 10, clause 6*);
- a local authority must include its financial strategy in its long-term plan (*Schedule 1, New Schedule 10, clause 9*);

Pre-election report

The Bill introduces a requirement for the chief executive of a local authority to prepare a report before each triennial general election to provide information to promote public discussion of the issues facing the local authority. The report must be published no later than two weeks before the date on which nominations close for candidates at the election and must not contain a statement by, or a photograph of, an elected member of the authority (*Part 1, Clause 16, inserting New Section 99A into the Act Schedule 10, Part 4*).

Financial strategy

The Bill provides that a local authority must, as part of its long-term plan, prepare and adopt a financial strategy for all of the consecutive financial years covered by the long-term plan. The purpose of the financial strategy is to facilitate:

- prudent financial management by the local authority by providing a guide for the local authority to consider proposals for funding and expenditure against; and
- consultation on the local authority's proposals for funding and expenditure by making transparent the overall effects of those proposals on the local authority's services, rates, debt, and investments.

The financial strategy adopted under this section must:

- include a statement of the factors that are expected to have a significant impact on the local authority during the consecutive financial years covered by the strategy, including:
 - the expected changes in population and the use of land in the district or region, and the capital and operating costs of providing for those changes; and
 - the expected capital expenditure on network infrastructure, flood protection, and flood control works that is required to maintain existing levels of service currently provided by the local authority; and
 - other significant factors affecting the local authority's ability to maintain existing levels of service and to meet additional demands for services; and
- include a statement of the local authority's:
 - quantified limits on rates, rate increases, and borrowing; and

- assessment of its ability to provide and maintain existing levels of service and to meet additional demands for services within those limits; and
- specify the local authority's policy on the giving of securities for its borrowing; and
- specify the local authority's objectives for holding and managing financial investments and equity securities and its quantified targets for returns on those investments and equity securities (*Part 1, Clause 17, inserting New Section 101A into the Act*).

Funding policies and auditing

The Bill provides that a local authority must, in order to provide predictability and certainty about sources and levels of funding, adopt certain funding policies. These are listed and are similar to existing provisions except that:

- a local authority no longer has to adopt a policy on partnerships with the private sector;
- a local authority no longer needs to use the special consultative procedure in adopting a liability management policy or investment policy;
- a local authority is no longer required to amend a policy specified in section 102 only as an amendment to its long-term plan.

The Bill also provides that if a local authority amends its revenue and financing policy then only a significant change to the policy is required to be audited in accordance with Sections 84(4) and Section 94(1) (*Part 1, Clause 18, substituting New Section 102 of the Act; Clause 19, amending Section 103 of the Act*).

Rates on Māori freehold land

In relation to a local authority's policies on remission and postponement of rates on Māori freehold land, rates remission, and rates postponement, the Bill provides that a local authority must review those policies at least once every six years using the special consultative procedure and the ability to revoke the rates remission policy and rates postponement policy if recommended by the review (*Part 1, Clauses 24-26, amending Sections 108-110*).

Water services

The Bill makes amendments to the provisions relating to a local authority's role in relation to water services) to provide that:

- a local government organisation may enter into contracts for the provision of water services for a period of up to 35 years instead of 15 years;
- where a local government organisation enters into a contract for the provision of water services, it continues to be responsible for providing the water services;
- the obligation on a local government organisation that enters into a contract for the provision of water services to retain control over the management of the water services is removed;
- the period that a local government organisation can enter into a joint arrangement for the purpose of providing water services is extended from 15 years to 35 years; and
- where a local government organisation enters into a joint arrangement for the provision of water services it must continue to be responsible for providing the water services (*Part 1, Clauses 31 and 32*).

Comment

"However, the local government organisation no longer has to retain control over the management of the water services or ownership of all of the infrastructure associated with the water services throughout the joint arrangement"³.

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³ Local Government Act 2002 Amendment Bill, 2010 No 142-1, Explanatory note, clause by clause analysis, p. 7.