

14. LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL - CHRISTCHURCH CITY COUNCIL SUBMISSION

General Managers responsible:	General Manager, Regulation and Democracy Services, DDI 941-8462 General Manager, Strategy and Planning, DDI 941 8281
Officers responsible:	Unit Manager, Legal Services, Strategy Support Manager, Strategy and Planning Group
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PURPOSE OF REPORT

1. To inform Councillors about the proposed amendments to the Local Government Act 2002 proposed in the Local Government Act 2002 Amendment Bill (**Attachment 2**).
2. To seek approval for a Council submission on the Local Government Act 2002 Amendment Bill to go to the Local Government and Environment Select Committee (**Attachment 1**).
3. If desired, to nominate one or more Councillors to present the Council's submission to the Local Government and Environment Select Committee.

EXECUTIVE SUMMARY

4. On 29 April 2010 a Bill to amend the Local Government Act 2002 was introduced to Parliament. The proposed Bill looks to implement Cabinet's decisions on a package of reforms to improve the transparency, accountability and financial management of local government. For a summary of the context of the development of the Bill please see the Background section of this report.
5. The Bill amending the Local Government Act 2002 is currently before the Local Government and Environment Select Committee. Submissions can be made until 18 June 2010. The Committee is required to report back to the House with their recommendations by 4 November 2010. If approved, the amendments are likely to come into force early in the New Year (although the need for a pre-election report is not due to come into effect until 1 July 2011).
6. On 26 May 2010, Jonathon Salter (Partner, Simpson Grierson), briefed the Council on the history and content of the Local Government Act 2002 Amendment Bill at the Regulatory and Planning Workshop. At that workshop, Councillors provided advice on a number of matters raised in the Bill and that advice is reflected in the attached draft submission.
7. The underlying policy for the proposed Bill, as set out in the explanatory note of the Bill, is informed by the following principles:

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

8. The provisions of the Bill are intended to operate at two levels:
 - (a) At a strategic level, the Bill has provisions that:
 - Reinforce the need for local authorities to focus on core services;
 - Introduce a pre-election report;
 - Introduce a financial strategy to the Long-Term Plan (LTP) (currently the Long-Term Council Community Plan (LTCCP) but which is renamed by the Bill);
 - Integrate the community outcomes and long-term planning processes (currently the LTCCP process);
 - Focus community outcomes on the role a local authority intends to play in its district or region; and
 - Alter the financial and non-financial information required in the LTP (currently the LTCCP).

- (b) At an operational level, the Bill has provisions that:
- Remove a number of operational policies out of the Long-Term Plan;
 - Remove certain consultation requirements; and
 - Enable the private sector to potentially deliver local authority services.

9. The Bill reduces restrictions on private sector involvement in the delivery of water services. This Bill enables 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; 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.

Under the Bill 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.

10. Local Government New Zealand (LGNZ) is working alongside New Zealand Society of Local Government Managers (SOLGM) and the Financial Working Party as they prepare their submission. LGNZ has tended to focus on the policy components of the Bill with SOLGM leading on the technical provisions. Draft submissions by LGNZ (**Attachment 3**) and SOLGM (**Attachment 4**) are attached to this report for Councillor information. If Council's submission is to be integrated into the LGNZ and SOLGM submissions the approved submission will need to be circulated by 11 June 2010 to SOLGM and LGNZ. The draft Council submission identifies where support for the draft LGNZ submission and draft SOLGM submission provisions are recommended.
11. The draft submission (**Attachment 1**) provides a thorough clause by clause analysis and proposed recommendations for the Local Government and Environment Select Committee. The submission does not comment on every clause of the Bill. A number of clauses relate to consequential amendments or contain provisions that are not considered to pose particular difficulties for the Council, for example, the transitional provisions. The draft submission make s no comment regarding the timing of implementation proposed in the Bill as staff expect that all timing requirements can be meet by the Council.
12. The following are matters that Council need to pay particular attention:
13. *Core services (new s11A)* –This clause introducing the concept of “core services” is regarded by some as being largely symbolic, but staff have concerns about the use of the words "have particular regard to". SOLGM and LGNZ both want the provision deleted but this seems an unlikely result given the Minister's insistence on the need to focus on core activities. Staff do not support this provision in the Bill and recommend its deletion. The submission also contains an alternative recommendation should the Select Committee consider that recognition of core services should remain in the Bill, seeking the removal of the words “have particular regard to”. Those words may compromise a range of Council decisions as a result of special interest groups bringing judicial review actions on the basis of an argument that a Council did not have particular regard to a certain core service in making a decision. A solution may be to change this to a local authority “must recognise the contribution” of the core services to communities, and to move the recognition of core services to section 14 as a principle for local authorities.
14. *Consultation Amendments (Repeal of Sections 78(2), 88, 91, 92, and 97(1)(c) and (d), 107)* – a number of consultation requirements are proposed to be repealed from the current Local Government Act 2002. Together the repeal of these sections could potentially be considered to contribute to a reduction in community input into Council business. However, it is considered that other sections in the Local Government Act 2002, e.g. section 78(1) provides adequately for the consideration of community views. Accordingly, the draft submission supports the repeal of sections 78(2), 88, 91, 92, though it recommends against the repeal of sections 97(1)(c) and (d),and 107.

15. Staff support the repeal of section 78(2). A range of views were expressed by Councillors on this particular provision of the Bill at the Regulatory and Planning Workshop. The repeal of part (2) of section 78 does not mean that Councils do not have to consider community views when making decisions. That requirement is provided for by section 78(1). What the repeal does is remove the very prescriptive stages at which those views must be considered, which provides better alignment with the provisions of section 79. What is reasonable for a Council to do for any particular decision will still be open to investigation by the Courts. This means Councils should have well developed processes for identifying, at an early stage, the significance of decisions so they can make reasonable decisions in relation to when community views need to be considered.
16. Regarding the repeal of section 88, staff recommend an endorsement of the LGNZ submission which notes that this section is “too prescriptive” and seldom used. Staff advise that the deletion of section 88 removes the prescriptive use of a special consultative procedure for the alterations described in section 88 (2) while appropriately leaving the consideration of community views (which may include undertaking consultation) regarding those changes to be undertaken consistent with other relevant provisions of the Local Government Act, e.g. section 78(1), 79, and the principles outlined in section 14 together with the Council’s significance policy. Accordingly, the draft submission recommends supporting the repeal of section 88.
17. Removing sections 91 and 92 does not prevent Councils from continuing with a collaborative approach when identifying community outcomes. The proposed amendments will provide a greater focus on the outcomes the Council aims to achieve, and strengthen the relationship between community outcomes and the Council’s activities. The amendments will also give Councils greater freedom to determine how best to consult their community and to monitor and report on community outcomes. The submission also contains a recommendation that the Long-Term Council Community Plan should not be renamed to be the long term plan, as that removes the word “community”. If the community outcomes process is to remain an integral part of this planning process then it is appropriate that it still reflects that it is a community process and plan.
18. It is not clear why sections 97(1)(c) and (d) are proposed for repeal but not sections 97(1)(a) and (b). Questions arise as to why significantly affecting the capacity of the local authority, or the cost to the local authority, is being treated differently from significantly altering intended level of service provisions of significant activities of local authorities. Staff consider that support cannot be given on the repeal of section 97(1)(c) and (d) at this stage and consider more work should be done on whether any or all of these subsections should be repealed. The submission therefore contains a recommendation that the Council not support the repeal of section 97 (c) and (d).
19. Staff recommend that the Council not support the repeal of section 107 (policy on partnerships with private sector) (PPPs) and considers that Council should state its position, through a policy, to residents and ratepayers. Staff recommend that the requirement for a policy on PPPs be retained but that there not be any requirements to consult on the policy using the special consultative procedure.
20. *Performance Measures (Repeal of Section 94(1)(c) and New Sections 259A, 261A-261G)* - Staff agree with the removal of subsection 94, but consider that it is unlikely to have any real effect because the deleted requirement for auditors to consider whether the performance measures adopted by the Council provide for the meaningful assessment of service provision is effectively replaced by AG-4 in the audit of the Annual Report. The practical consequence of this is that some of the work done in an LTCCP audit will shift to the audit of the Annual Report.
21. It is not considered appropriate for Councils to be levied for regulations that the Government wishes to make and that are to be “imposed” on Councils under new sections 259A, 261A-261G. There are also concern that providing for “standard” performance measures may not be a fair result across all Councils, as some may need to be provided with a different performance measure because of the unique characteristics of the region in which the service is being provided. The Council submission recommends that clause 39 (imposing the levy on Councils)

be deleted and that the development of performance standards be met through Crown appropriations. The submission also recommends an endorsement of the draft LGNZ submission that the performance measurement programme operate as a pilot programme featuring a sample of Councils and that it only be extended to the full sector following a successful evaluation.

22. *Provisions relating to Financial Matters* (New or amended sections 99A, 101A, 103(1), 259, Schedule 10) – Staff largely support the Bill’s amendments to local government’s financial obligations. However there are a number of clauses which staff recommend altering or retaining as follows:
23. The new section 99A is generally supported by staff, provided recommended amendments (that the report should not be required to include financial information relating to Council Controlled Organisations) are included. Furthermore, staff advise that it should be noted in the submission that there may be risks involved in the use of un-audited financial information in the report, and amendments to the provisions should be considered to address this.
24. Regarding new section 101A (the Financial Strategy), the Council already provides a financial strategy in its LTCCP and considers this essential to enable ‘the right debate’. It therefore supports making this a legislative requirement, while also recommending that these provisions are relocated from section 101A to Schedule 10 as a component of the long-term plan, and that disclosure be required on all expected operating and capital expenditure (and not limited to capital expenditure on network infrastructure, flood protection, and flood control works only).
25. Regarding amendments to section 103(1)(revenue and financing policy), staff recommend supporting any change which clarifies the proposed amendments and reduces the need for an audit of minor changes. However, it would be useful if the term ‘significant amendment’, as used in this clause, was defined as the lack of clarity around ‘significant ’ may cause some confusion.
26. The implications of the amendment to section 259 (to provide for regulations to be made about items to be specified in financial statements and the form of funding impact statements) on Councils are unknown until the regulations are drafted. Staff recommend an amendment to clause 38 requiring that proposed regulations be consulted on with local authorities or their representative bodies before any regulations are made.
27. Staff are generally supportive of the changes to Schedule 10, though have made some specific comments regarding reserve funds and internal borrowing. Staff recommend that the reserve fund requirements be amended to provide for reporting on the reserve funds that make up 80% of a Councils total reserves funding budget. Staff also do not support the internal borrowing clause in Schedule 10. Staff recommend either the deletion of clause 28, or that the information be prepared on a council-wide basis.
28. *Water amendments* (Sections 28-32) - The Bill provides for an extension of the potential contract period from 15 to 35 years. It is, however, recognised that Councils can enter into shorter length contracts where appropriate. The Council already contracts out many functions to private enterprise for the operation and maintenance of essential services and the ability to set extended contracts where appropriate will enhance the ability to ensure that a contractor will face the full life cycle asset cost. Staff therefore support the provisions of the Bill that will allow Councils to utilise the capability of the private sector to deliver better water and wastewater services to its communities.

FINANCIAL IMPLICATIONS

29. There are some financial implications if the amendments to the Local Government Act 2002 are approved by Central Government. The financial implications of changes in the Bill are discussed in this report and the draft submission.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

30. Not applicable.

LEGAL CONSIDERATIONS

31. None in relation to preparing this report and the submission. Any relevant legal considerations in relation to changes in the Bill are discussed in this report and the draft submission.

Have you considered the legal implications of the issue under consideration?

32. As above.

Alignment with LTCCP and Activity Management Plans

33. Not applicable.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

34. Not applicable.

alignment with strategies

35. Not applicable.

Do the recommendations align with the Council's strategies?

36. Not applicable.

CONSULTATION FULFILMENT

37. There has been internal consultation across a number of units within the Council in the preparation of the draft submission, in particular Strategy Support Unit (Policy), Legal Services, Planning and Performance Unit, Corporate Finance, and the Community Support Unit. External consultation is not required. Any member of the public can make their own submission on the Bill.

STAFF RECOMMENDATIONS

It is recommend that the Council:

- (a) Approve the attached submission to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill with amendments as agreed by the Council; and
- (b) Nominate a Councillor(s) to present the Council's submissions to the Local Government and Environment Select Committee if it wishes to be heard in support of the submission.

BACKGROUND (THE ISSUES)

38. In April 2009 Minister of Local Government, Hon. Mr Hide's Cabinet Paper on 'Transparency, Accountability and Financial Management (TAFM) Review raised the following issues:
- Widespread concern at recent excessive growth in rates;
 - Over consultation and undue influence of pressure groups;
 - Costs of preparing and auditing LTCCP;
 - Community outcomes process extending Council roles beyond "core services";
 - Elections rarely focus on spending issues;
 - Financial information incomprehensible;
 - Limited comparative information; and
 - No mandatory requirements to seek ratepayer authorisations.
39. Cabinet's decision in April 2009 led to the approval of a review of the Local Government Act 2002. It also sought better tools to control council costs, rates and activities, guided by 3 principles:
- Local government should operate within a defined fiscal envelope;
 - Councils should focus on core activities; and
 - Decision-making should be clear, transparent and accountable.
40. As a result four papers were developed by the Department of Internal Affairs and went to Cabinet on 27 October 2009 for consideration
- Improving transparency and accountability;
 - Long-term planning and community outcomes;
 - Referendums; and
 - Removing barriers to water infrastructure development in the Local Government Act 2002.
- The first two papers were substantially approved by Cabinet, the referendum proposal was declined, and a "minimum change" was approved for water infrastructure.
41. On 29 April 2010 a Bill to amend the Local Government Act 2002 was introduced to Parliament. The proposed Bill looks to implement Cabinet's decisions on a package of reforms to improve the transparency, accountability and financial management of local government.
42. The following Members of Parliament are sitting on the Local Government and Environment Select Committee:
- Chris Auchinvole (Chairperson) National Party, West Coast-Tasman
 - Cam Calder, National Party, List
 - David Garrett, Act New Zealand, List
 - George Hawkins, Labour Party, Manurewa
 - Shane Jones, Labour Party, List
 - Rahui Katene, Maori Party, Te Tai Tonga
 - Nikki Kaye, National Party, Auckland Central
 - Sue Kedgley, Green Party, List
 - Phil Twyford, Labour Party, List
 - Louise Upston, National Party, Taupo
 - Nicky Wagner, National Party, List