

STAFF REPORT

TO: Mayor and Councillors

FROM: Susan Edwards

DATE: 23 June 2010

SUBJECT: Submission to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill – **RCN10-06-19**

PURPOSE

The purpose of this report is to notify Mayor and Councillors of the submission made on behalf of the Tasman District Council to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill.

DISCUSSION

The Local Government Act 2002 Amendment Bill is currently before the Select Committee and all members of the public had been given the opportunity to submit on the Bill. The final day for submissions to be received was the 18th June 2010.

Following correspondence with Councillors, Mayor Kempthorne and Councillors King and Norriss agreed to review and approve a submission prepared by Council staff, on behalf of Council.

The submission is attached to this report.

RECOMMENDATION

That the Tasman District Council receives the submission made on behalf of the Tasman District Council to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill.

Susan Edwards
Strategic Development Manager

**Submission to the Local Government and Environment Select
Committee**

on the

Local Government Act 2002 Amendment Bill

From Tasman District Council

17 June 2010

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Introduction

1. Tasman District Council (the Council) thanks the Local Government and Environment Select Committee for the opportunity to make this submission on the Local Government Act 2002 Amendment Bill (the Bill). The Council makes this submission on behalf of itself and the community of Tasman District that it represents.
2. This submission was approved by the Mayor, Richard Kempthorne, the Deputy Mayor, Tim King, and Cr Trevor Norriss.

Executive Summary

3. There are a number of provisions in the Bill which the Council supports, including:
 - the changes proposed to the process for developing community outcomes, clauses 4 and 12
 - clause 8 – community views in relation to decisions
 - clause 45 – community board funding
 - changes that will reduce the unnecessary levels of prescription on councils, such as clauses 11, 14 and 33.
4. There are also a number of provisions the Council does not support or that it is concerned about in their current form. The key clauses in the Bill that the Council is concerned about are:
 - clause 5 Core services – should be deleted or at a minimum needs rewording to make it clear and remove the nebulous wording
 - clause 16 Pre-election report – should be deleted or at least amended to make it workable
 - the performance management framework – amend clause 4 of schedule 10 and delete clause 39 of the Bill.
5. The Council's views on these key provisions and other comments are outlined in the Specific Comments section of this submission.

Overview Comments

6. The Council wishes to support the detailed submission made by the Society of Local Government Managers (SOLGM). The only exception being the recommendation in that submission for an additional subclause (3) to be added to clause 37 requiring a statement of compliance by the Mayor and Chief Executive on the Pre-election Report.
7. Our overall view on the Bill is that irrespective of the merits of what it may be trying to achieve, the legislation is unclear in terms of both intent and effect. The Council has serious concerns about this lack of clarity. The Council is of the view that the unclear provisions will lead to confusion and therefore litigation, with associated costs on ratepayers and potential rates increases. Aspects of the Bill are likely to raise ratepayer expectations, which could put pressure on councils to make unnecessary rates increases. Specific examples of these issues are outlined in subsequent sections of this submission.

8. There are a few provisions which may help reduce the costs to councils, however, there are other provisions which will add significant additional costs. In our view, the Bill gives with one hand and adds back even more cost with the other hand!
9. In order to remedy the lack of clarity and workability of the provisions in the Bill, the Council recommends that the Select Committee directs the Department of Internal Affairs to work with local government sector representatives (through *Local Government New Zealand* and SOLGM) to improve the workability of the legislation for the Select Committee's consideration. The Council considers that if this does not happen, then it is probable that the legislation will have unintended consequences (including raising community expectations – refer to the core services discussion below) and add significant compliance costs for councils and their ratepayers.

Specific Comments

Clause 4 – New definition of Community Outcomes

10. On balance, the Council supports the amended definition of Community Outcomes as proposed in the Bill. It should help clarify to communities the role that councils aim to achieve and what the Council's contribution will be towards the community outcomes. However, we do not see it leading to a great financial saving to councils, as it appears that the community outcomes will now need to be reviewed every three years through the Long Term Plan process, rather than every six years.

Clause 5 – New section 11A: Core services to be considered when performing role

11. The Council is of the view that clause 5 should be deleted.
12. It is not clear what clause 5 is trying to achieve, therefore, it is unlikely to achieve the intent, whatever it may be. Instead it is likely to lead to confusion, litigation, unreasonable expectations, unintended consequences and increased costs to ratepayers.
13. The list of core services appears to be the services that metropolitan communities could expect from their councils, rather than a list of core services that could be expected across all areas of New Zealand, particularly rural areas. For example, public transport and museums are not provided in all communities, and it would not be appropriate or cost effective for them to be. By listing "core" services in the Bill it is likely to raise the expectations of some people in communities that all councils will be providing those services throughout their cities or districts. Some councils are likely to face increased pressure from lobby groups pushing particular interests, and may even face litigation from those groups using the list of "core" services as justification. Tasman District is one of the largest districts in the Country in terms of land area. We have 17 settlements within the District. There are a range of very vocal groups within those settlements stating that Council should provide public transport linking the settlements. The cost of doing so would be prohibitive. The way the Bill refers to core services, it will raise the expectations of those groups that the Council should be providing public transport. If clause 5 stays in the legislation then the word "core" should be deleted. Also, museums being referred to as core services could raise the expectation that councils will spend more money on this service than they currently do. For these reasons we would like this clause deleted.

14. There are also issues with specifying services like solid waste collection and disposal as core services. Some councils have elected not to run solid waste collection services and landfills, leaving these to the private sector to provide. The choice of whether or not to provide the service should be left to councils in consultation with their communities.
15. If clause 5 is to be retained and the intention of it is for councils to consider whether they need to be providing particular services to their communities and what role the council should have in providing that service, then the legislation should say that. The current wording is unclear and nebulous.
16. Clause 5 states that “In performing its roles, a local authority must...”. The time for councils to be making the decisions on whether they provide a particular service and what their role in provision of that service is, should be at the time when councils prepare their Long Term Plans and are making decisions on resource allocation. The clause should state this rather than using vague terms like “In performing its roles”.
17. If clause 5 is retained in the legislation in its current form it is likely to end up meaning councils will spend substantial sums of money on legal advice in order to understand Parliament’s intention and on unnecessary litigation.

Clause 8 – Community views in relation to decisions

18. The Council supports the repeal of section 78(2) of the Local Government Act 2002 (LGA2002). The provisions are too prescriptive and costly in some circumstances.

Clause 9 – Special consultative procedure in relation to Long-term Council Community Plan

19. The Council supports the repeal of section 84(4)(c) of the LGA2002. However, our understanding is that it is unlikely to reduce the scope of the audit in practice and therefore is unlikely to lead to any reduced audit costs to councils.

Clause 11 – Section 88 repealed

20. The Council supports the repeal of section 88 of the LGA2002. While section 88 is not often used, the section is overly prescriptive and the Council supports not being required to use the special consultative procedure before altering the mode of service delivery of significant activities. Councils may still choose to do so, but by repealing section 88 it leaves the decision to councils on the best process to use in relation to their communities.

Clause 12 – Sections 91 and 92 repealed

21. The Council supports the repeal of sections 91 and 92, for the reasons outlined in relation to clause 4 above.

Clause 13 – Section 94(1)(c) repealed

22. Comments as per clause 9 above.

Clause 14 – Section 97(1)(c) repealed

23. The Council supports the repeal of section 97(1)(c) of the LGA2002. While this section is not often used, the section is overly prescriptive and the Council supports its repeal.

Clause 16 – Pre-election Report

24. The Council is concerned about the provisions in the Bill dealing with the Pre-election Report (PER), particularly whether it will achieve the intent, the cost and value for money, the timing, the use of unaudited financial year-end accounts and the content of the PER.
25. The Council supports the comments by SOLGM on whether the PER represents value for money, the timing of the PER, the use of unaudited accounts and the report on compliance with the financial strategy.
26. SOLGM's comments about the risks that chief executives face when preparing the document are also acknowledged and supported by Council, however, Council does not support the recommendation to amend schedule 1, clause 37 by adding a subclause (3) requiring a statement of compliance by the Mayor and the Chief Executive. Council is concerned that the involvement of the Mayor carries the risk of the PER becoming more politicised. The Mayor may prefer the document to be approved by the full Council prior to signing a statement of compliance, which would open it up to greater political scrutiny.
27. The Council supports the recommendations, other than the one noted above, made by SOLGM in relation to the PER.

Clause 17 – New section 101A inserted – Financial Strategy

28. The Council notes that clause 17 repackages some existing financial information into the new Financial Strategy and adds some additional requirements. These new requirements will add additional compliance costs for councils.

Clause 18 – New section 102 substituted - Funding and financial policies

29. The Council notes that clause 18 will mean that some of the existing policies required in the Long-term Council Community Plan will not be required to be contained in the Long Term Plan. Councils will, however, still be required to have these policies and most of them will still need to be prepared and reviewed using a Special Consultative Procedure, therefore, there is unlikely to be a cost saving to councils and their communities. The advantage the Council sees with the amendment proposed in the Bill, is that by taking these policies out of the Long Term Plan, they can be amended without triggering an amendment to the Long Term Plan.

Clauses 28 – 29 – Requirement to assess water and other sanitary services

30. The Council supports SOLGM's position on these clauses and the recommendations that clause 28 is amended to completely repeal section 125 of the LGA2002, and the deletion of clause 6 and 12 of schedule 1.

Clause 31 – Obligation to maintain water services

31. Clause 31 of the Bill amends the LGA2002 by increasing the maximum contract term for the operation of a water service from 15 years to 35 years. A maximum term of 35 years is consistent with other maximum timeframes in legislation, such as the term of concession arrangements in Section 63 of the Land Transport Management Act 2003.
32. This length of term is desirable to enable cost effective prices for major infrastructure such as a wastewater treatment plant and outfall. This term also enables a variety of procurement options including build-own-operate-transfer, design-build-finance-operate and concession arrangements for operational activities. These longer terms are often important to enable an adequate return on investment for the provider and at the same time ensure that the project is affordable for the local authority. Clause 31 also clarifies that the local authority remains responsible for service and retaining control over pricing and policy.
33. The Council supports the proposed amendment.

Clause 33 – Conditions applying to sale or exchange of endowment property

34. The Council supports the repeal of section 141(1)(b) of the LGA2002. While this section is not often used, the section is overly prescriptive and the Council supports its repeal.

Clauses 39 - 41 – Mandatory performance measures and the Benchmarking of non-financial performance

35. The Council endorses the comments made in the SOLGM submission on the performance management clauses in the Bill and the benchmarking of non-financial performance, and seeks the Committee's serious consideration of SOLGM's recommendations. Council particularly supports the recommendations seeking the deletion of clause 39 and the amendment of clause 41 to replace the references to "the Secretary" with "the Government Statistician".
36. The Council has concerns about the mandatory groups of activities and how these are to be defined. For example, what is meant by the "provision of roads"? Does this group of activities include public transport, carparks, cycleways, footpaths and curb crossings? In some cases cycleways are on the immediate edge of a road and in other cases they may run parallel separated by a landscape strip or at times go through a reserve area and link back onto a road. Do councils need to put these in different groups of activities? Many councils group all these activities under the heading of transportation. Tasman District has stormwater and flood control separated, which probably reflects our unitary council status. We link flood control and coastal structures together. Councils that are just territorial authorities and that have smaller flood control functions are likely to want to link flood control with stormwater. The approach taken in the Bill is unclear and confusing, and it is likely to require councils to set up groups of activities that do not adequately reflect the council's business and effort. The approach taken in the Bill needs to be re-thought and any wording that is retained needs to be clarified and re-written.

Clause 45 – Community Board funding

37. The Council supports clause 45 to clarify that councils can fund community boards through targeted rates. Tasman District has five wards. Only two of these have community boards. The three wards that do not have community boards do not want to pay for the wards that do have them. The ability to use targeted rates funding for those communities with community boards satisfies this concern.

Development Contributions - Clause 22 and Schedule 2

38. Council is aware of some debate about the possible interpretation of Clause 22 and it imposing an obligation on councils to review their financial contributions policies very three years. As financial contributions are enacted through district plans, having to change them every three years would be expensive, time consuming and potentially highly litigious. While no consequential amendments are made to the RMA to carry this through, Council supports the comments and recommendations in the SOLGM submission to address this matter.

Conclusion

39. The Local Government Act 2002 Amendment Bill contains a number of amendments that the Tasman District Council supports and a number that are not supported and should be removed or at least amended.
40. Our overall view on the Bill is that irrespective of the merits of what it may be trying to achieve, the legislation is unclear in terms of both intent and effect. The Council has serious concerns about this lack of clarity. The Council is of the view that the unclear provisions will lead to confusion and therefore litigation, with associated costs on ratepayers and potential rates increases. Aspects of the Bill are likely to raise ratepayer expectations, which could put pressure on councils to make unnecessary rates increases. These matters need to be addressed before the Bill is enacted.
41. The Council generally supports the submission and recommendations made by the Society of Local Government Managers.