

What councils need to know about the LGA amendment Act

The Local Government Act 2002 Amendment Bill was passed by Parliament on November 29 and commenced (in part) on December 5, 2012.

Overall, this amendment clearly signals the Government's intent to constrain councils' activities, to more closely monitor the performance of councils and to benchmark councils' performance to a greater extent than has happened in the past. Encouraging amalgamations and reorganisation of councils is also a key focus. We assess that the Bill will create uncertainty for councils about what is and is not within their purpose and will add more compliance costs when new benchmarks are established by regulations.

Key changes

The most fundamental and invasive change for councils is that the purpose of the Act and of local government has been amended by removing the four well-beings (to promote the social, economic, environmental and cultural well-being of communities). In its place it is a council's role to: 'Meet the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.'

"Good quality" is defined as being efficient, effective and appropriate to present and anticipated future circumstances.

This new purpose of local government is deliberately intended to be narrower than the previous four well-beings; this focus from the Government on 'core services' will be seen by the Court as an objective test. This means that any person can seek a judicial review of

a decision or project on the basis that it falls outside the purpose of local government. The "objective" purpose contains a range of subjective elements such as: what are the future needs of communities? What is most cost-effective? What is efficient, effective, or appropriate? All these terms lead to an element of uncertainty that exposes councils to the risk of legal challenge. Councils need to amend their decision-making templates to make it clear that they have considered the purpose of local government and are satisfied in a particular case that a project or decision falls within the council's purpose. Doing so will not remove the risk of challenge, but provides the Court with evidence a council has turned its mind to this question and rationally analysed whether it has the power to do what it proposes.

Reorganisation

A large portion of the Act now focuses on the ability for any person to request reorganisation of councils. The procedures to commence a reorganisation are more simple. It is for the Local Government Commission to decide whether a reorganisation proposal can be pursued. The Commission needs to determine whether there is demonstrable community support for a proposal for it to be assessed and publicly notified.

This easier process will enable more people to suggest reorganisation proposals which, in turn, will involve councils spending more time on forming a view on whether a proposal is supported or not.

One feature of the reorganisation provisions is that the Minister, by supplementary order paper, has introduced the ability for the Commission to establish local boards, similar to what has happened in Auckland. Once a final

reorganisation proposal is prepared by the Local Government Commission it needs to be advertised. A total of 10 per cent or more of persons in a district are entitled to demand a poll. They have 60 working days to do so. If a poll is demanded then the final reorganisation can only proceed if more than 50 per cent of the votes cast in that poll support the reorganisation. If the 50 per cent mark is not reached then the reorganisation cannot proceed. This gives a degree of control to smaller districts that might face 'takeover' by larger councils. The voters in a smaller council will be able to reject an amalgamation if 50 per cent of them prefer that outcome.

Mayor's powers

The provisions that give mayors of territorial local authorities additional powers is delayed, and will come into force following the next local body elections on October 12, 2013. The Act specifically states it is the mayor's role to provide leadership to the council and the people of the district, including leading the development of plans, policies and budgets, to appoint the deputy mayor and establish committees and their chairs. Once the mayor has appointed a deputy and committees, it remains possible for the elected council to change those positions in the future. This change largely reflects the conventions that have existed in councils for many years and provides certainty that the mayor occupies a special position in a territorial local authority. The CEO's functions are slightly amended to require that employment of staff needs to be in accordance with any remuneration and employment policy adopted by the council. This, for example, enables councillors to cap the number of staff or cap salary increases if they wish.

Other changes

Councils' long term plans are now required to be audited by the Auditor-General, removing any choice from councils.

There is a range of new powers available to the Minister

for Local Government to monitor and intervene in the affairs and management of councils. The Minister is not able to intervene into the operation of CCOs, CCTOs or council subsidiaries. Depending on the severity of the problem identified, the Minister can take a range of steps such as: requiring information, appointing a Crown review team, appointing a Crown observer, appointing a Crown manager, appointing a commission in the place of the elected members, or calling a new election.

These options range in severity, depending on the significance of the problem the Minister considers exists. The Minister is required to produce a document establishing guiding principles likely to be adopted when making decisions on intervention in a council's affairs. This will need to be produced following consultation with Local Government New Zealand and is to be produced on or before March 31, 2013.

The Minister has the power to create regulations that establish a range of parameters and benchmarks that councils will be required to report against. The purpose is to enable comparisons between councils and for the Minister to monitor performance and potentially intervene. This will lead to further compliance and information-gathering costs for councils.

Conclusion

Overall, this amendment signals a clear intent by the Government to focus councils on core services and to provide a range of means to ensure they do so. The legislation does not offer many carrots to councils to behave this way. Rather it is littered with sticks to force councils to do so, otherwise the Government can intervene to require that councils are managed in a way more consistent with what the Government expects. This is a fundamental change to the statutory basis on which councils operate and no doubt will require time, internal changes and potentially litigation to bed in.

(Article by Michael Garbett, partner, Anderson Lloyd; michael.garbett@andersonlloyd.co.nz; Rachel Brooking, associate, rachel.brooking@andersonlloyd.co.nz). LG

Metering nostalgia in New Plymouth

Don't scrap your city or district's old parking meters, sell them to nostalgic ratepayers who may want to preserve a piece of their past.

The New Plymouth District Council recently installed a new system of issuing parking space and time, rendering the coin-operated meters pretty much obsolete.

But hundreds of New Plymouth residents saw the opportunity for a topic of conversation at the next barbecue in the garden and bought one of the meters for \$70 including a \$10 pole to mount it on.

The council says 400 of the meters have gone to people who saw the retirement of the old meters as a kind of time-lapse back to the bad old days when the "coin-hungry meters" as the local newspaper described them, tormented motorists without the

correct change.

The new system allows people to pay via their cellphone and the meters also give change to those who still venture out without the correct coins in the glove box.

One resident told the local newspaper his wife wanted one of the meters for a garden ornament and another bought two for her father, who already has a shed full of various memorabilia but wanted to add to his collection.

Apparently a number of the meters became Christmas presents - although we don't know how many subsequently ended up on Trade Me as 'unwanted gifts'.

By the way, New Plymouth District Council says the money raised from the sale of the meters will help to offset the cost of the new parking system. LG

Pocket-edition libraries for Aucklanders

Auckland Council is talking boldly about a future which will see "a library in every pocket". Changes in library services over the next 10 years to meet the demands of population growth, demographic change, and the digital revolution are covered in a major report to the council.

The Regional Development and Operations Committee has heard that while physical libraries will continue to be important, the 'digital library' will see the most significant growth and change, putting the library 'in every pocket' by 2023.

The report says the publishing shift to downloadable media is already shaping the nature and delivery of library services. Library spaces are also changing to become multi-purpose community facilities that

contribute to place-making and community connections, offering space for people to share ideas and create new knowledge.

There will be a focus on children and young people so that every child in Auckland has the opportunity to experience the magic of reading and discovery that libraries offer, the report says.

"Auckland's libraries are among the best-loved and respected of all council services," says committee chair, councillor Ann Hartley.

"With an eye toward creating the world's most liveable city, this project shows how we can continue to make library services available to all while recognising changing demographics and the dramatic shifts society is adopting." LG