Further Round of Local Government Act Amendments Passed; New Council Processes Required

The past few years have seen a series of amendments to the Local Government Act 2002. Some changes have been fundamental such as the changes to the purpose of Local Government from a focus on the wellbeing of the community to a restricted focus on core services. Late on Tuesday 29 July Parliament passed the Local Government Act 2002 Amendment Bill (No 3) ("Amendment Bill") in this last week of the House sitting before rising for the general election. This amendment does not have the fundamental changes of former amendments but does include some significant changes for all councils and developers in some parts of the country.

These latest changes relate to: development contributions; a requirement for a long-term infrastructure strategy; a new requirement for reviews of council services; simplification of some of councils' consultation requirements in conjunction with new requirements for explanation of impacts of decisions on rates; and provision for local boards, similar to those in Auckland, for larger councils.

The most contentious aspect of this reform is the restriction on development contributions. The changes that relate to local boards have been interpreted by some political parties as a step towards further amalgamations. Councils will also have to review operations regularly and this could be a substantive undertaking. These review provisions have changed, via the Select Committee process, to include a number of exceptions and the trigger for review is no longer the triennial election.

Some of the amendments will require swift changes to council delegations, e.g. providing for the new objection process for development contributions. Templates for Part 6 decision making will also need to be amended because there are a number of changes including a simplification of section 77 (requirements in relation to decisions). Development contribution policies that do not align with the reforms have until 30 June 2015 to be amended (clause 6 of new Schedule 1AA). The new schedule of assets for development contributions and reconsideration process must be incorporated within a month (from when the Act receives Royal Assent); this updating does not require consultation (see new clause 6A to new Schedule 1AA inserted by Supplementary Order Paper No 457).

The Amendment Bill was supported by Labour and opposed by the Greens, NZ First, Mana and the Māori Party.

Development Contributions

In March 2013 the Government called for submissions on an options paper on development contributions that included some proposals that would have gutted the current system. Instead of radically changing the current provisions there is some clarification and restrictions around what developers pay. In addition there is a new review process and a detailed process for objections by an independent commissioner.

The current section 199 (which is not substantively amended) establishes what development contributions can be required for, being: reserves; network infrastructure; and community infrastructure. The main limitation comes with the amendment to the definition of "community infrastructure". Currently the definition is for land or assets to provide "public amenities". The Amendment Bill removes this general reference to "public amenities" and specifies what is included being: community halls; play equipment on "neighbourhood reserves"; and public toilets (clause 49 amends section 197). This is an important change and means that fewer assets will be able to have a development contributions component to their funding.

There are new purpose provisions that set the scene for development contributions (clause 48) relating to a proportional and fair "portion of the total costs… necessary to service growth over the long term". Development contributions are only to be required "if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity". Section 200 prohibits double dipping but will clarify that councils are not prevented from requiring a development contribution when other income from: rates; fees and charges; interest

and dividends from investments; borrowings; and proceeds from asset sales are "used to meet a portion of the capital costs" (clause 54).

A development contribution can, in addition to building consent, resource consent and authorisation for a service connection, now also be trigged by a certificate of acceptance under the Building Act if provided for in the policy (clause 50 amends section 198). A further trigger (or clarification) is a change to a resource consent condition under section 127 RMA. Another change is that inflation can specifically be included in some of the calculations (see clause 58 and clause 36 that amends section 106).

The development contributions policy must now include a schedule of infrastructure for which development contributions will be used. This schedule must list the asset, estimated capital cost, the proportion to be paid by development contributions and the proportion to be paid by other sources (clause 55 inserts a new section 201A).

Provisions are included that provide for a council and developer to come to an arrangement between themselves regarding the provision of infrastructure (clause 60 inserts new section 207A – F). The Select Committee included a clarification that a development agreement prevails over a policy.

If a developer is unhappy with a requirement for a development contribution then they will have a right for the council to reconsider if they believe the calculation to be incorrect (clause 53 inserts a new section 199A). A council has 15 working days to decide on a reconsideration. In addition a comprehensive objections process is also provided for (new section 199C – N). The objector cannot challenge the development contributions policy but can object to its application. A decision will be made by a development contributions commissioner, a pool of whom will be appointed by the Minister. Council can recover its costs associated with the objection (clause 45 inserts a new section 150A). The new procedure for objections is similar to a RMA council hearing.

Infrastructure strategy

A new requirement is for an infrastructure strategy in the long-term plan that plans for at least 30 years of asset management (clause 34 inserts new section 101B). It must include the 3 waters, flood protection and footpaths / roads; other assets can be included at the council's discretion. The Select Committee included a specification that the strategy identify projected costs over the first 10 years of the strategy and then in five year increments.

Triennial agreements and delivery of services

Section 15 requires a triennial agreement between councils within a region. More detail is included as to what they must include and how they can be amended (clause 8).

A new requirement for a review of the "cost-effectiveness of current arrangements" was in the Bill as introduced but significantly amended by the Select Committee (clause 11 inserts new section 17A). The need for review is now triggered by: a significant change in service levels; within two years of a relevant contract; and at a council's discretion with a maximum time between reviews of six years. Exceptions for review are also included for circumstances where services cannot be altered. Even with the Select Committee's changes these reviews have the potential to be a substantive undertaking. The first review is required within three years (clause 1A of new Schedule 1AA).

Consultation requirements and general simplification of processes

The requirement for the special consultative procedure is removed for a number of processes including: establishment of a council-controlled organisation (clause 16 amends section 56); amendment of the significance (and engagement) policy (clause 18 inserts new section 76AA(5)); review of the development contributions policy (clause 36 amends section 106(6)); reviews of rates remission and postponement (clause 37-39); and prescribing fees in a bylaw (clause 44 amends section 150(3)(b)). Section 77(1)(b) is simplified for decision making to simply assess "options in terms of their advantages and disadvantages" (clause 19).

Section 90 requires a policy on significance and this will be repealed and replaced with a new section 76AA requiring a "significance and engagement policy". This is to be adopted no later than 1 December 2014 (see clause 3 of new Schedule 1AA). Like the current section 90 all strategic assets have to be identified.

There are a number of other changes to this decision making part of the Act that aim make the requirements both more helpful for the public and simpler for councils. The consequences of decisions and impacts on rates are to be included in consultation documents (i.e. new section 93C(2)(b)(iii)). Schedule 10 is amended so that rating base information is included in the annual report as is the insurance of assets (new clauses 30A and 31A).

There are new provisions to allow audio and audio visual links at council meetings (new clause 25A inserted into Schedule 7). Standing orders must provide for these audio links, although members who are not physically present do not count for forming a quorum.

Local boards

Provision is made for a reorganisation proposal to provide for local boards that could be delegated most (but not all) non-regulatory decision making powers of the council for its area (see clause 15 and Schedule 4). A local board is able to develop bylaws for its area.

The Bill can be found at:
http://www.legislation.govt.nz/bill/government/2013/0165/latest/DLM5706806.html#DLM5706810

If you would like further information please contact our Local Government Specialists:

Michael Garbett, Partner Owner
P: 03 467 7173
M: 027 668 9752
E: michael.garbett@andersonlloyd.co.nz

Rachel Brooking, Associate
P: 03 467 7183
M: 027 334 4258
E: rachel.brooking@andersonlloyd.co.nz