

16 February 2004

NEWSLETTER: ISSUE 6: LOCAL GOVERNMENT ACT 2002

INTRODUCTION

There are four matters discussed in this issue of the Newsletter. They are:

- The Local Government Act 2002 and Competitive Tendering;
- Good Practice for Local Bills and Local Legislation Bills;
- Fines Retained by Local Authorities;
- Rates Resolutions.

We trust the following information is of use to you all.

LOCAL GOVERNMENT ACT 2002 AND COMPETITIVE TENDERING

We have been asked by Local Government New Zealand to clarify the application of section 88 of the Local Government Act where a local authority undertakes a competitive tendering process in respect of the delivery of a function or service. The issue has arisen where a council is due to renew a roading maintenance contract, and it is therefore subject to Transfund requirements to qualify for the subsidy. However the issues are the same if a council wishes to commit to a competitive tendering or similar process for any reason.

Section 88 requires that a local authority must follow the special consultative procedure (SCP) where it is proposed to alter the mode by which a significant service is undertaken and the alteration would reduce the council's direct control over the activity. The requirement thus applies to a change from in-house to CCO delivery, or from either of these modes to contracted private sector delivery. The issues that have arisen are whether section 88 applies where such a change is the result of a competitive tendering or similar process and, if so, at what stage should the SCP be undertaken.

Sections 88(1) and (2) refer specifically to a proposal for an alteration in mode of delivery, and contemplates consultation on a specific proposal to change the mode of delivery. In the competitive tendering context, this would apply after the results of a tender process were known. We have discussed this issue with the Office of the Auditor-General and believe that this may not be appropriate. The uncertainty that this would bring to the tendering process may well affect the willingness of private contractors to compete for tenders and could impact on prices. It would also be inappropriate to conduct consultation during the tender as this risks revealing commercial information provided by the tenderers and again affects the willingness of private contractors to participate.

We believe that section 88(3) can be used to avoid these situations if local authorities include in their draft LTCCP's a proposal to adopt, and abide by, a competitive tendering process for the significant activity. The statement in the draft LTCCP should be explicit and cover:

- the proposal to commit to and abide by the competitive tendering (or similar) process;
- the reasons for the proposal (and an assessment against other options);
- the activity or activities covered by the proposal;
- the fact that the proposed process could (subject to any relevant conditions) commit the council to the transfer of responsibility for the delivery of the activity e.g. from a business unit or CCO to contracted private sector delivery;
- an assessment of the financial and other implications if the process does result in the transfer of the activity;
- an assessment of the financial and other implications if the competitive tendering process is not adopted.

This approach will clearly meet the spirit of the Act, and allow communities to comment on the potential consequences of adopting or not adopting the competitive tender process. At the same time, it avoids the disadvantages of consultation on the specific outcome after the tender process is completed.

It is therefore important that in preparing their draft LTCCP, local authorities consider carefully whether they are likely to wish to commit to the competitive tender process or any similar review of delivery options in respect of any significant activity during the life of the plan. While the need to do so in relation to roading activities to qualify for Transfund subsidies will be clear and of general application, there are a range of other circumstances that may lead local authorities to consider such options.

GOOD PRACTICE FOR LOCAL BILLS AND LOCAL LEGISLATION BILLS

Included, as an appendix to this newsletter, is an outline of the preliminary procedures specified under Parliament's Standing Orders for the promotion of Local Bills and clauses for inclusion in Local Legislation Bills. Many of you will be thoroughly familiar with these requirements. Nevertheless we thought it might be timely to include an outline of the current requirements, as we understand that a number of Bills are either in the pipeline or under active consideration.

Those of you who are contemplating the promotion of a Local Bill may also be interested to note that the Department is available to provide advice to councils, in relation to both process and drafting. As some of you will also be aware, the Department would, in the normal course of events, act as the advisor to the Local Government and Environment Committee when considering Local Bills. This role involves strict neutrality and could not be prejudiced by prior advice or assistance to a local authority. However, the experience acquired by the Department in this role may be of assistance to councils and the understanding of the objective and background gained by the Department should also facilitate the process.

If you are contemplating the promotion of a Local Bill, we would suggest that you contact us at the earliest opportunity.

FINES RETAINED BY LOCAL AUTHORITIES

We have received queries from local authorities about the ability to retain a portion of fines resulting from prosecutions taken under the Local Government Act 2002 (LGA). While the LGA has no specific provisions for this matter, there is a general provision in the Public Finance Act 1989 that provides the necessary authority. Section 73 – *Payment of fines to local authorities and other organisations that conduct prosecutions*, provides that a local authority that is specifically empowered to do so by any Act, prosecutes a person in a Court of law in respect of an offence and the prosecution results in the imposition of a fine, the amount of the fine recovered shall be paid to the local authority or other organisation.

There is a caveat, however. Sub-section (2) provides that a sum of ten percent is deducted from the amount payable and paid to the Crown, unless the money is awarded by a Court in respect of any loss or damage that is recovered as a fine, in which case no deduction is made.

Note that specific provisions in other statutes, such as section 84 of the Building Act or section 342 of the Resource Management Act 1991, will supersede section 73.

RATES RESOLUTIONS

To date, only one third of local authorities have sent a copy of their rates resolution to the Secretary of Local Government as required by Section 23(5) of the Local Government (Rating) Act 2002. The Department of Internal Affairs is unable to provide local authorities with a summary of information contained in the resolutions, as promised, until all resolutions have been received.

The address for sending them is:

The Secretary of Local Government
Department of Internal Affairs
PO Box 805
WELLINGTON

QUERIES

If you have any queries concerning the above information, please do not hesitate to contact Fiona Illingsworth, Principal Policy Advisor, Local Government Legislation and Projects, Department of Internal Affairs, either by telephone on (04) 495 9384, fax on 495 7270, or by email: Fiona.Illingsworth@dia.govt.nz .

Rosalind Plimmer

Manager, Local Government Policy

Appendix

Appendix C: Preliminary Procedures for Local Bills and Local Legislation (from Standing Orders)

Local Bills

Notice to be given

The promoter of a local bill must give notice in the locality of the intention to introduce the bill before the bill can be introduced.

Form and publication of notice

- (1) The notice must contain an adequate summary of the objects which the bill is intended to effect and state where copies of the bill may be inspected.
- (2) The notice must be published at least once in each of two successive calendar weeks in a newspaper that has a daily publication and circulation in the locality. If there is no newspaper in the locality which has a daily publication, then the notice is published in a daily newspaper in an adjoining district which has a daily circulation in the locality to which the bill relates.

Forwarding notices

A copy of each notice, together with the name of the newspaper in which it has been published and the date of publication of such notice, must be forwarded to the Clerk.

Deposit and inspection of bill

- (1) At the time of the first publication of notice of a local bill, a copy of the bill must be deposited in the District Court for the locality to which the bill relates, and another copy deposited at the public office of the promoter of the bill.
- (2) The copies of the bill deposited at the District Court and at the public office of the promoter must be open to public inspection during office hours without fee, for a period of 15 working days.

More than one District Court office in district

If more than one District Court office is situated within the locality to which the bill relates the bill is deposited at the court office that is nearest to the centre of that locality.

Certification of deposit

- (1) The fact that a copy of the bill was deposited and remained open for public inspection must be certified-

- (a) in the case of the copy of the bill that was deposited in the District Court, by the District Court Judge or the Registrar or a Deputy Registrar of the District Court, and
 - (b) in the case of the copy of the bill that was deposited in the public office of the promoter, by the principal administrative officer of the promoter.
- (2) Each Certificate shall-
- (a) state the first and last whole days on which the copy of the bill was open for public inspection, and
 - (b) be written directly on the copy of the bill and may not be separate from it.
- (3) In the case of the copy of the bill that was deposited in the District Court, the certificate must be signed by the District Court Judge or the Registrar or a Deputy Registrar of the District Court over his or her designation, and be stamped with the Court seal.
- (4) In the case of the copy of the bill that was deposited in the public office of the promoter, the principle administrative officer of the promoter must sign the certificate over his or her designation, and have the seal of the local authority affixed to it.
- (5) Copies of the deposited bills as certified are forwarded to the Clerk.

Local bills dealing with land

- (1) Where it is intended in any local bill to take power to deal with any land, each deposited copy of the bill must be accompanied by a description of the land together with a true copy of the plan of the land, both certified to be correct by Chief Surveyor of the District within which the land is wholly or partially situated.
- (2) A true copy of the plan is not required where it is proposed to deal-
- (a) with the whole or the residue of the land comprised in any certificate of title issued under the Land Transfer Act 1952:
 - (b) with the land previously dealt with and separately described in any statute, ordinance, Proclamation, declaration, notice or Order in Council;
 - (c) with the whole of the land comprised in a separate lot or other surveyed subdivision which is shown on a plan deposited in the relevant Land Information New Zealand office in accordance with the provisions of the Land Transfer Act 1952 or lodged in the office of the Chief Surveyor.
- (3) The plan is to be-
- (a) drawn on such plan form as may be approved by the Surveyor- General.

- (b) of a suitable metric scale that will make the optimum use of the drawing area, and
- (c) lodged with the Chief Surveyor and endorsed “approved for parliamentary purposes”.

Plans to be forwarded

All such plans shall be certified and stamped by the District Court Judge or Registrar or a Deputy Registrar of the District Court, and by the principal administrative officer of the promoter, in the same manner as the deposited copy of the bill to which they refer, and shall be forwarded, together with that copy to the Clerk.

Constituency members of Parliament to be informed of local bill

- (1) The promoter of a local bill must give to every member of Parliament for a General or Maori electoral district whose constituents may be affected by the provisions of a proposed local bill, notice containing an adequate summary of the objects of the proposed bill and of the intention of the local authority to proceed with the bill.
- (2) The notice is given to such a member by personal delivery, post, delivery by courier, delivery to a document exchange which the member uses, or by sending it by facsimile machine to a telephone number used by the member for transmission of documents by facsimile.
- (3) The local authority must forward to the Clerk a certificate signed by the principle administrative officer of the local authority certifying that each member, by name, has been given notice of the bill at least three days before the date of the certificate.

Fees

- (1) The fee payable by a local authority promoting a local bill is \$2000 (including Goods and Services Tax)
- (2) The fee is paid to the Clerk of the House of Representatives, and applied in defraying printing and general administrative expenses incurred in respect of the promotion of local bills.

Local Legislation Bills

Initiation of clauses in Local Legislation Bills

- (1) Any local authority may apply to the Minister of Local Government for preliminary consideration and provisional approval of a clause or clauses to be included in a Local Legislation Bill.

- (2) Every application must be accompanied-
 - (a) by a draft of the proposed clause or clauses, and
 - (b) by a certificate signed by the principle administrative officer of the local authority certifying that every member of Parliament, by name, for a General or Maori electoral district whose constituents may or are likely to be affected by the proposed legislation, has been furnished at least three days before the date of the certificate, with a copy of the proposed clause or clauses, together with a notice in writing stating that it is the intention to apply for their inclusion in a Local Legislation Bill.
- (3) A copy of the proposed clause or clauses and the notice is given to such a member by personal delivery, post delivery by courier, delivery to a document exchange which the member uses, or by sending it by facsimile machine to a telephone number used by the member for transmission of documents by facsimile

Repeal of spent local legislation

The Minister may also include in a Local Legislation Bill, a clause or clauses repealing any spent local Act, any spent Local Legislation Act or any spent provisions contained in a Local Legislation Act.

Objections

- (1) Objections to such proposed legislation on public or private grounds may be made by any person in writing addressed to the Minister.
- (2) The Minister must transmit to the select committee that considers a Local Legislation Bill copy of any objection received by the Minister to any clause included in the Bill.

Clauses provisionally approved by the Minister may be included in bill

When the Minister has provisionally approved a clause or clauses these may be included in a Local Legislation Bill.

How further clauses dealt with

If a Local Legislation Bill is already before the House, a further clause or clauses for inclusion in the bill may, after being provisionally approved by the Minister, be placed upon a Supplementary Order Paper by the Minister, and referred directly to the select committee that is considering the bill.

Provisional approval by the Minister and report by committee essential

- (1) No Local Legislation Bill may be passed by the House and no clause or clauses added to any Local Legislation Bill unless they have been provisionally approved by the Minister and reported on by the Local Government and Environment Committee.
- (2) Notwithstanding paragraph (1), a new clause may be inserted that is in substitution for, incidental to, or consequential upon a clause, which has been provisionally approved by the Minister or reported on by a select committee.