

LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL

SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT COMMITTEE

18 JUNE 2010

INTRODUCTION

This is a joint submission made by the Institution of Professional Engineers New Zealand (IPENZ) and Association of Local Government Engineering New Zealand Inc (trading as INGENIUM). Collectively we represent the views of New Zealand's local authority asset managers and professional engineers.

BACKGROUND TO IPENZ

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 11,500 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

BACKGROUND TO INGENIUM

INGENIUM is the brand name of the Association of Local Government Engineering New Zealand Incorporated and its membership, comprising mainly engineers, represents the technical/professional engineering expertise that services local authorities in New Zealand. INGENIUM's 900 members comprise mainly staff of local authorities, consultants and contractors who manage and operate the infrastructural assets of local authorities and are responsible for providing the following local authority services: roads, bridges, footpaths, water supply, sewerage, stormwater, land drainage, solid waste and flood protection. Therefore INGENIUM members will be in the position of implementing most of the proposed changes to the Local Government Act 2002 and as such are best aware of the consequences of the proposed changes.

CONSULTATION

A draft version of this submission was made available to all IPENZ Members via the IPENZ website, and interested Members were also sent it directly on request. All IPENZ Members were invited to comment on the draft submission, and their comments have been included in this final submission.

A draft version of this submission was also sent to INGENIUM Board Members and interested parties; feedback was sought from those people and this feedback was incorporated into this final submission.

EXECUTIVE SUMMARY

IPENZ and INGENIUM support the overall intentions of the Amendment Bill to improve transparency, accountability, and financial management in local government. The engineering profession is able to bring a particular perspective to the Amendment Bill that it is hoped will be seen as constructive and helpful.

However, the proposal to have a specific clause on core services that local authorities must have particular regard to seems to serve no particular purpose – noting that most of these are managed by engineers and are required to meet a community’s basic needs. It is recommended this Clause 5 be deleted from the Amendment Bill.

The Amendment Bill continues the requirement to assess water and other sanitary services in Section 125 of the Local Government Act, and this provision is considered unnecessary as a local authority’s responsibilities for managing assets are contained in the wider provisions of the Act. In particular, these wider provisions are reliant on asset management plans to provide the underlying information and analysis and these include the assessments required by the current Section 125. Therefore Section 125 is a duplication of other existing provisions and should be repealed.

There has been concern expressed that the changes to contracts for the provision of water services are some form of privatisation. As a matter of practice, local authorities throughout the country outsource a wide range of services to external providers, and still retain overall responsibilities.

For long-term contracts, whatever the mix of public/private provision or funding of infrastructure services the local authority needs to retain these core responsibilities. In addition to pricing and policy these responsibilities include the minimisation of the overall lifecycle cost, and ensuring risks are managed, there is good stewardship of assets over the long term, and that resources are efficiently used.

IPENZ and INGENIUM strongly support extending the allowable term of contracts from 15 years to 35 years. This extension is necessary to enable a local authority the option of seeking cost-effective bids for major capital works such as a wastewater treatment plant and outfall. 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 community.

IPENZ and INGENIUM fully support the development of standardised performance measures. However, these measures need to be outcome focused for accountability purposes, be linked to internal operational measures, be for key aspects of the service, and allow a local authority to select measures from a suite of measures to suit their circumstances.

It is also suggested that the “stormwater drainage” group of activities and the “protection from flooding and control works” group of activities be combined into one group of activities, as it is not always easy to separate these two issues.

IPENZ, INGENIUM and the National Asset Management Steering Group need to be involved in the preparation of these regulations.

SUBMISSION

This submission provides comment on four areas of interest to IPENZ and INGENIUM, in the order that those areas arise in the Amendment Bill.

CORE SERVICES

Core services are set out in Clause 5 of the Amendment Bill as network infrastructure, public transport, solid waste, avoidance or mitigation of natural hazards and community infrastructure. Most of these are managed by engineers. While it is agreed that these are core services that are required to meet a community's basic needs, Clause 5 of the Amendment Bill simply requires that a local authority must have particular regard to the contribution that these core services make to its communities.

The implication is that for other services the local authority does not have to have particular regard to their contribution. However, Section 14 of the Local Government Act 2002 ("the Act") requires a local authority, in performing its role, to make itself aware of and have regard to the views of all of its communities, to ensure prudent stewardship of resources, and to take account of the well-being of communities. Schedule 10 of the Act, which relates to groups of activities, requires a local authority to identify the rationale for the delivery of activities and the negative effects that an activity may have on communities.

Therefore, there does not seem to be any valid reason why the services outlined in Clause 5 of the Amendment Bill should be singled out for a local authority to have particular regard to.

IPENZ and INGENIUM recommend that core services not be separately distinguished from other local authority services and Clause 5 be deleted from the Amendment Bill.

ASSESSMENT OF WATER AND OTHER SANITARY SERVICES

Clause 29 of the Amendment Bill repeals Sections 126, 127, 128 and 129 of the Act. These Sections contain prescriptive requirements for the assessments including detailing the information required and processes for assessments.

Whilst removing these requirements, in Clause 28 the Amendment Bill retains the requirement to assess water and sanitary services (Section 125 of the Act) from time to time.

The sanitary services covered by Section 125 are¹:

- drainage works, sewerage works, and works for the disposal of sewage
- waterworks
- works for the collection and disposal of refuse, night soil, and other offensive matter
- sanitary conveniences for the use of the public
- cemeteries
- crematoria.

IPENZ and INGENIUM consider that this provision is unnecessary as a local authority's responsibilities for managing assets are contained in the wider provisions of the Act, in particular in Schedule 10. This Schedule, as amended by this Amendment Bill, requires

¹ Health Act 1956
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the long-term plan to outline the negative effects that an activity may have on the local community, and the capital expenditure required to meet additional demand, improve levels of service and replace existing assets. These requirements will be reliant on asset management plans to provide the underlying information and analysis. The long-term plan is required to be prepared every three years.

It is also noted that Schedule 10 (Clause 2 (2)) of the Act explicitly states that groups of activities are water supply, sewerage and the treatment of sewage, stormwater, protection from flooding, and the provision of roads.

Therefore Section 125 is unnecessary because:

- it singles out only a few council functions – water services, refuse collection, public toilets, cemeteries and crematoria, for no particular reason
- it does not specify a frequency of assessments
- it duplicates the provisions of Schedule 10 of the Act.

IPENZ and INGENIUM recommend that Section 125 of the Act be repealed.

CONTRACTS FOR WATER SERVICES

There has been concern expressed that the changes to contracts for the provision of water services are some form of privatisation. As a matter of practice, local authorities throughout the country outsource a wide range of services to external providers, without perceived limitations but still retain the overall responsibilities to provide services.

Most local authorities find it beneficial to differentiate between responsibilities for the delivery of capital works projects and maintenance services. However in both circumstances a balance needs to be struck between retaining the “smart client” skills and the connection with local communities, and with the benefits of private-sector skills and efficiencies.

Capital works are usually for discrete projects with known objectives, fixed timetables and fixed budgets. These are readily outsourced to alliances, design build, target cost or traditional design, bid, and build contracts.

Maintenance services are outsourced over a broad range of outsourcing philosophies. These range from retaining all services in-house to outsourcing most maintenance tasks over a five to 10 year timeframe. These services do not lend themselves towards public private partnership (PPP) type contracts.

It is suggested that in order to consider outsourcing long-term maintenance activities, local authorities must first have a good knowledge of the service level required and there must be a limited level of unknowns. Any variation of requirements within an existing contract term is usually results in paying a premium over the services procured in a competitive environment.

Most long-term maintenance contracts within local authorities are currently limited to around 10 years. When using a 10-year time horizon or longer, local authorities need the following:

- a good understanding of the asset’s existing performance and condition
- a good understanding of future demographic changes anticipated throughout the term of the contract
- a good understanding of future communities’ expectation of levels of service, willingness to pay, and ability to pay

- robust, repeatable, measurable and meaningful key performance indicators and knowledge of what these cost to deliver from a reasonable period of historical data
- to avoid the perception by the community they have been caught or held to ransom by monopoly pricing.

Overall, the preparation of the Long Term Council Community Plans has shown that local authorities have a good understanding of asset and community needs over the first five years with less understanding over the next five years. There is only a limited understanding and a high level of unknowns for contracting out beyond 15 years.

Training of local authority staff will also be needed for any local authority considering a PPP or a long-term contract over 15 years.

For long-term contracts, whatever the mix of public/private provision or funding of infrastructure services, the local authority needs to retain its core responsibilities. This not only relates to pricing and policy as referred to in the Amendment Bill but must include:

- minimisation of the overall lifecycle cost of the asset through optimized decision making
- ensuring that the financial, health, cultural and environmental risks are managed and communicated to the community in a transparent manner
- good stewardship of assets over the long term
- ensuring that resources are efficiently used. For example, demand management for water may be inconsistent with the commercial drivers of a private-sector provider.

IPENZ and INGENIUM support Clause 31 of the Amendment Bill which amends the Act 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 a lease under the concession arrangements in Section 63 of the Land Transport Management Act 2003.

This length of term is necessary to enable a local authority the option to seek cost effective bids for major capital works such as a wastewater treatment plant and outfall. This term also enables a variety of procurement arrangements including build-own-operate-transfer, design-build-finance-operate and concessions 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 community.

Clause 31 also makes it clear that the local authority remains responsible for providing the service and retains control over prices and policy and these provisions are fully supported.

IPENZ and INGENIUM support extending the maximum contract term for the operation of a water service from 15 years to 35 years.

PERFORMANCE MEASURES

Clause 41 sets out various provisions for Rules on performance measures for:

- water supply
- sewerage and the treatment of sewage
- stormwater drainage

- protection from flooding and control works
- the provision of roads.

IPENZ and INGENIUM fully support the development of standardised performance measures and consider that these can be a very powerful tool through which communities can influence the quality of services.

The Controller and Auditor-General has in the past been very critical of performance measures in local government. For example, in the results of the 2007/08 audits it was reported that “they [local government performance measures] often do not work as an effective tool for assessing public accountability”².

In addition, as part of their central government 2008/09 audit work, auditors appointed by the Auditor-General reviewed entities’ 2009/10–2011/12 Statements of Intent, 2009/10 Forecast Statements of Service Performance, and associated information. Guidance³ was provided to auditors to capture the aspects that are expected to be seen in these documents. In summary, that guidance is that:

- the performance framework should identify outcomes at an appropriate level and the relationship of outputs to outcomes
- outcomes should be supported by measures and targets
- output classes should be consistent between financial and non-financial information and between reporting documents
- outputs should be for significant services, and should not relate to internal processes and milestones
- performance measure information should show current/historical trends and comparisons with other organisations.

This guidance will be very useful in the design of standard performance measures and they need to be designed for public accountability reasons, not for internal operational management. While operational performance measures are a valuable management tool, they should not be the subject of this regulation. However, the services in question are not simple and the levels of service have many dimensions. Consequently, it is appropriate to develop integrated and cohesive sets of measures that link the external level of service with internal operational measures and targets.

It is also important that these measures are key performance measures. For example, we are aware of one major local authority that has 17 performance measures for roading. The key elements of roading will be safety, pavement quality and possibly congestion (for some local authorities). Similarly for drinking water the key elements are water quality, frequency of interruptions to supply, and water pressure. Clause 4 of Schedule 10 of the Amendment Bill attempts to deal with this issue by stating that performance measures will enable the public to assess the level of service for “major” aspects of groups of activities. The term “major” implies large and is vague as it may refer to major impact, cost, or public interest. It is suggested that the term “key aspects” be used as this is in common usage and leaves sufficient flexibility to refer to the aspects that are most important to users or customers.

The Regulations also need to provide some flexibility to the use of performance measures and the ability to select from a suite of measures to suit their circumstances – potentially a menu of performance measures is required in the regulation. For example,

² Local Government: Results of the 2007/08 Audits, Report of the Auditor General, June 2009

³ Forecast non-financial performance information reports: Guidance for Entities, Auditor General, March 2009.

some local authorities would prefer a measure for unsealed road pavement quality, but some local authorities have no unsealed roads. Similarly, some might prefer a measure for coastal water quality (relating to stormwater discharges) and some local authorities have no coastline.

It is noted that it is proposed to have separate performance measures for stormwater, drainage and for protection from flooding and control works. It is not always easy to separate these two issues – most local authorities manage stormwater reticulation including open drains, and this provides flood protection. Regional councils have responsibilities for flood management related to major water ways. It is suggested that rather than prescribing two sets of measures for these two inter-related functions, they be combined into one “group of activities”.

These comments highlight that it is critically important that the potential for unintended consequences is minimised by developing the standards with the involvement of those who have the best experience in how performance measure frameworks influence the operations of the core services. Consequently, we would like to highlight the need to involve IPENZ, INGENIUM and the NAMS Group (the National Asset Management Steering Group – a wholly owned subsidiary of INGENIUM) in the preparation of these regulations.

IPENZ and INGENIUM recommend that performance measures be for public accountability reasons, be at the outcome level, and be described as key performance measures.

IPENZ and INGENIUM recommend that performance measures link with internal operational measures and targets.

IPENZ and INGENIUM recommend that the “stormwater drainage” group of activities and the “protection from flooding and control works” group of activities be combined into one group of activities.

CONCLUSION

IPENZ and INGENIUM appreciate the opportunity to make this submission and are able to provide further clarification if required.

Both IPENZ and INGENIUM wish to appear in person before the Select Committee to speak on our submission and the contact details of our representatives are:

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