

Covid-19 Response (Further Management Matters) Amendment Bill
Appearance at Environment Committee
Opening Statement

Thank you, Mr Chairman for the opportunity to appear before the Epidemic Response Committee to discuss the Covid-19 Response (Further Management Matters) Amendment Bill.

As this is the first time SOLGM has officially met many of the Committee, I'd like to say a few words about us. We're an organisation of nearly 900 Chief Executives, managers and other employees of local authorities. For those who've not met us before we work closely with Local Government New Zealand, but we are a separate and apolitical organisation.

Simply put our job is to support local authorities to do the best job they can for their communities – including input to the technical, practical and managerial aspects of legislation.

SOLGM is one of the members of the Local Government Covid-19 Response Unit alongside our colleagues in LGNZ, the Department of Internal Affairs, and the National Emergency Management Agency. In that capacity we have elevated to the Unit the technical and practical issues that the sector have raised with us. In many cases the issues have been resolved with a little legal or practice advice – others however required other intervention and each the matters raised in the Bill addresses these in some way.

We therefore support what the Bill is attempting to achieve with its amendments to the system legislation, the Food Safety Act, and the RMA. We do have a couple of substantive amendments to put forward.

Public Notice

We start with the provisions relating to public notice. The Bill makes a temporary change to the definition of public notice to require publication of notices on websites, and slightly soften what is currently a "hard" requirement to publish in one or more newspapers in circulation

in the community. There is a risk that disruption to local newspaper distribution during the COVID-19 response may make it unreasonably expensive or ineffective to publish in newspapers.

We add, that while now is not the time to contemplate a permanent change, the print media is becoming less relevant as a means of providing public notice. Circulation is dwindling in many areas as people turn to the internet. We accept for now, that there are people without access to the internet or with slow internet speeds, but this is something that needs to be revisited within the next few years.

Consultation and Planning

We now turn to the changes to the special consultative procedure. Providing robust, well-reasoned, practical advice on planning, engagement and rate-setting under level 4 conditions has been one of the major areas of work that the Covid-19 Response Unit has undertaken in the last six weeks. We take this opportunity to thank the Department and our advisors Simpson Grierson for their sterling work in the last seven weeks.

Local authorities generally accept that the economic situation means there is no such thing as business as usual and that all are reprioritising spending. The Covid-19 Response Unit's second Finance report demonstrates that amply.

I use the word reprioritising as there are competing pressures. In addition to the pressures I mentioned above, we also have central government looking for 'shovel ready projects' which come with a need to find a local funding contribution.

The Covid-19 response might involve any or all of the following:

- starting, stopping or cancelling major projects (noting the ones that might be started are the so-called shovel ready ones)
- making changes to levels of service (e.g. reducing opening hours at community facilities, reducing community grants and the like)

- making reductions in expenditure that don't have significant consequences for levels of service
- changing council policies on the remission and postponement of rates
- changing council's revenue and financing policy and policies that rely on this such as the borrowing management policy.

However, and without going too much into the legal technicalities our ability to respond is limited by the Act and by case law. To take some examples, local authorities that want to make changes not signalled in draft annual plans to respond to Covid-19 might need to consult communities again (most are proceeding on the assumption there will be some further consultation)

In our discussions with the sector after introduction of the Bill a concern has been raised. Local authorities are using best endeavours to respond to Covid-19 in the annual plans under preparation, which does mean significant or material change to the plans they may have had in March. At the same time and given the nature of these changes they are (wisely) doing their best to engage the community, including a reasonable opportunity to provide feedback in written formats and to interact with decision-makers in spoken/NZSL formats. Several contacted us expressing concerns they might not be able to engage fully and meet a 30 June deadline

We submit that the Bill has allowed some leeway for those councils that are making changes that trigger an amendment to the LTP – significant changes to levels of service, transfers of strategic assets etc. These will support expeditious change to support those shovel ready projects that get selected for central government funding. They also appear to deal with significant amendments to revenue and financing policies. In circumstances where a degree of nimble action is required this is appropriate. An LTP amendment of any size requires amendments in a variety of places – the financials not least. These can take a good couple of months to prepare and audit even with a consultation period of seven days

However the Bill has tied this to the amendment being necessary for adoption of an annual plan before the 30th of June. While the annual plan is one vehicle for making an LTP it isn't the only vehicle. In circumstances where third-party funding might suddenly be on offer it is very easy to conceive of circumstances where amendment arise quickly. We recommend removing 93DA(2)(b) and amending 93DA(3) to 31 August 2020. (That will also mean a consequential change of timeframe in clause 11).

Soon after we entered lockdown the Covid-19 unit sought and provided legal advice that the lowest-risk course of action in these circumstances was to engage fully and adopt the annual plan late. There is some judicial support in case law for this proposition. Administrative law recognises that decision-making bodies may take as many attempts to comply with a legal requirement as is needed. And by the way our own Auditor-general has observed that adequate engagement is more than simply meeting a statutory timeframe.

Local authorities will struggle to undertake the kind of reprioritisation, documentation, engagement, decision-making and final revisions by 30 June – even with the relief the Bill provides. Late adoption of an annual plan is a statutory breach – and while, to date, no council has had a plan challenged on this ground there is a risk. We have drafted a provision that extends the deadline for the 2020/1 annual plan to 31 August 2020.

- (1) Subsection (2) applies instead of section 95(3) to any annual plan for the financial year commencing on 1 July 2020.**
- (2) An annual plan to which this section applies must be adopted not later than 31 August 2020.**
- (3) This section is repealed on 1 July 2021.**

In the first reading debate some speakers expressed concerns at the possibility LTP amendments may be made without an audit report. We remind the Committee that the next long-term plans are due by 30 June 2021 and those will be audited to the usual standards. That includes an opinion on the robustness of the information and assumptions used to

prepare the plan, and on the quality of performance framework. The audit report also includes an assessment of the council's financial and infrastructure strategy. Councils will be restarting the LTP process once clear of the annual plan – that is to say there is no incentive to 'cut corners' as any heroic assumptions will be found out in 6-8 months time.

Bylaws

Parts One, Three and Six of Schedule 15 amend bylaw review provisions under various Acts. These all do the same thing. Officials explained this to us as "extending the deadline to 30 June 2021 so that councils have a reasonable opportunity to replace those bylaws before they are revoked".

Councils have contacted us expressing concern that they weren't able to consult on bylaws in a way that did justice to the issue. To quote one correspondent *"We have deferred consultation as the Council do not feel we can meet the requirements of consultation. We can't provide spoken interaction easily and providing hardcopies to interested parties would currently be very difficult. It is looking less likely that we will be able to fully complete the process before they lapse."* And others that did go out to consult received a message from the community that now was not the time to engage on matters like this.

While we have the opportunity we should also note that the bylaw provisions are in need of a tune-up. They are confusing and therefore not easy to apply. We'll raise this with the relevant Minister after the election along with other bylaw changes that have no Covid element.

By-elections

Part 2 of Schedule 15 amends the Local Government Act to allow:

- the Governor-General to make orders-in-council that extend due dates for steps in the processes that govern the conduct of local by-elections and local polls and
- allow Chief Executives to defer giving notice of an extraordinary vacancy while an epidemic preparedness notice is in force. In practice we think this is the provision that will be used in preference should a 'new' extraordinary vacancy arise between now and the lifting of the epidemic preparedness notice.

In our discussions with the Department we expressed concerns that the restrictions on movement and assembly, and limitations on commercial activity could impact on the ability to cast an informed vote and to nominate or accept nomination. Limits on meeting size and physical distancing will impact on the ability to campaign, particularly campaigning in person. We have concerns that options such as mobile collection, and even opening council offices to receive votes on the last day may be impractical or may not have public confidence (we suspect some will avoid queues for some time to come). If we stay in level 3, council offices will stay closed making it difficult to arrange a special vote.

We understand there are approximately five extraordinary vacancies at present. That is to say that the concerns that are raised are not academic.

RMA

There are changes to the RMA that enable conduct of hearings by audio-visual link and softens the requirements to provide hard copies. Both align with changes made elsewhere in the Bill and in the legislation passed on 25 March. Again these are both things we'd like to see made permanent at some future point.

Conclusion

There is a lot to be worked through in this Bill. Our particular 'in house' expertise is in the system legislation, in the context of this Bill - that's the Local Government Act, the Local Electoral Act and the Rating Act. We have a network of 873 local professional and 78 local authorities to draw on. We stand ready to assist the Committee and officials as you prepare your report – and would like to start that process by taking your questions.