

Priority Urgent

THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

Local Government Briefing

Hon Rodney Hide
Minister of Local Government

Copy to: Hon John Carter
Associate Minister of Local Government

Title: Powers and Process for Ministerial Intervention in a local authority under the Local Government Act 2002

Date: 14 September 2009

Key issues

This briefing outlines options and process for Ministerial intervention in the operation of a local authority under the Local Government Act 2002.

Action sought	Timeframe
Note the contents of this briefing.	At your convenience

Contact for telephone discussion (if required)

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Purpose of briefing

1. This briefing outlines options and process for Ministerial intervention in the operation of a local authority under the Local Government Act 2002 (LGA02) and for a combined intervention with the Resource Management Act 1991 (RMA).

Background information

2. On 9 September 2009, you met with the Associate Minister of Local Government and Department of Internal Affairs officials to discuss options for responding to concerns raised by Canterbury mayors about the operation of the Canterbury Regional Council (known as Environment Canterbury). Issues for the region include its RMA consenting performance and the upcoming vote of no confidence in the regional council chair.

Options for Ministerial intervention

3. The LGA02 provides the options for intervention outlined below.

Institute a review by the Local Government Commission

4. You may require the Local Government Commission to consider, report on, and make recommendations to you on matters relating to a local authority. The local authority is required to respond to the Commission's recommendations. If, following the review, you consider that the local authority continues to perform inadequately, you could appoint a Commissioner to replace the local authority, as outlined below.

Appoint a Commissioner or person to act on behalf of local authority

5. You may appoint a Commissioner to perform and exercise the powers and duties of a local authority or call a general election of the local authority. A Commissioner can only be appointed if:
 - the local authority is unable to perform and exercise its duties and powers because it cannot hold meetings due to the lack of a quorum; or
 - the local authority requests the appointment of a Commissioner to perform and exercise its duties and powers.
6. This provision of the LGA02 has not been used. The equivalent provisions under earlier legislation were used in 1999/2000. In that case the Rodney District Council requested the appointment of a Commissioner because it considered it was at risk of not meeting its statutory obligations.
7. You may appoint a person to act on behalf of a local authority, or initiate a review. The local authority must be refusing to perform and exercise its duties and powers, and thereby impairing good local government or endangering public health or safety.

Appoint a review authority

8. Under the as yet unused section 254 of the LGA02, you may appoint a review authority to review, consider and report on the performance of a local authority, either generally or in respect of any particular matter. There is a high threshold for the appointment of a review authority, however, the grounds are less specific than for the appointment of a Commissioner. A review authority can be appointed if:
 - there has been a significant or persistent failure by the local authority to meet its statutory obligations;
 - there has been significant and identifiable mismanagement of the resources of the local authority; or
 - there is a significant and identifiable deficiency in the management or decision-making processes of the local authority.

9. We understand that you favour using this option. Part 1 of Schedule 15 of the LGA02 sets out the statutory process for appointing a review authority, which is outlined below.

Process for appointing a review authority

Consultation

10. Before appointing a review authority, you are required to allow 20 working days for comment from the local authority in question, Local Government New Zealand (LGNZ), and the Society of Local Government Managers (SOLGM).
11. You must also consult with any relevant Ministers and/or the Auditor-General if there are specific matters to be reviewed that are likely to concern them.
12. The local authority may comment on the need for the review, matters proposed to be reviewed, and any steps it is taking, or intending to take, that may remove the need for the review. After considering comments, you are required to give the consulted parties written notice of your final decision.

Appointment of review authority

13. A review authority may consist of one or more of the following: the Secretary for Local Government; Local Government Commissioners; the nominees of LGNZ or SOLGM; or persons with relevant expertise.
14. Notice of the appointment of a review authority and its report deadline must be published in the *Gazette*. While each case will need to be considered on its particular circumstances, we would generally consider two months to be a reasonable minimum timeframe for a review authority to investigate and report on issues. You must provide for the appointees' remuneration as you think fit, and any reasonable expenses incurred in the course of a review.

Report of review authority

15. A report by the review authority may contain any recommendations that it thinks fit. You may, by written public notice, require the local authority to implement any of the recommendations in the report. You must first obtain the local authority's views on the practicability of implementing the recommendations and on the time within which they may be implemented.
16. If you consider that any of the report's recommendations have not been satisfactorily implemented, you may appoint a person to assist the local authority or take over its functions to ensure they are implemented. You may, on the recommendation of the review authority, appoint a Commissioner to act in place of the local authority, and/or call a general election of the local authority.

Comment

17. The Department has not assessed whether Environment Canterbury's performance is poor enough to meet the statutory grounds for intervention. We consider that we need to do so before you make any decisions on intervention. A decision to appoint a review authority can be legally challenged by the local authority.
18. If intervention in the form of a review authority is considered for Environment Canterbury, there may be similar requests for Ministerial intervention in other local authorities who are perceived to be performing poorly.

Consideration of combined review of LGA02 and Resource Management Act functions

19. A combined review under the LGA02 and RMA is possible. Following the 2007/2008 survey of local authority consent processing performance, the Minister for the Environment agreed to exercise his powers under section 24A of the RMA to investigate Environment Canterbury's resource consent processing functions. This investigation is on hold so that the option of a combined review can be considered.

Resources and next steps

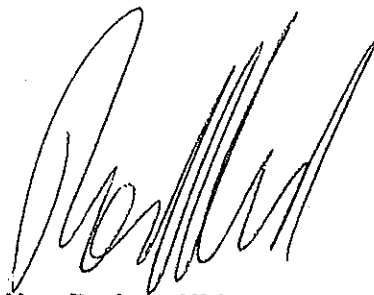
20. The Department would need to divert staff and resources to support the appointment and activities of a review authority, with subsequent impacts on the current work programme. As the review authority provisions have not been used before, there is no existing operational and process guidance, and this would have to be developed. It is not clear at this stage what level of resources would be required.
21. If you ultimately wish to pursue appointing a review authority, the Department can provide advice on the grounds for review, the scope of the review, the consultation process, and detailed advice on establishing a review authority. We would work with the Ministry for the Environment to consider a process for a combined review under the LGA02 and RMA.
22. If you proceed with the review authority option, we recommend that you take an initial paper to Cabinet that outlines your intention and the review process and then a further Cabinet paper, seeking agreement, should you decide to proceed. Depending on the outcomes, you may also want to seek Cabinet decisions on whether to require the local authority to comply with the review authority's decisions.

Recommendations

23. The recommendations are that you:
 - a) **note** that the Department has not yet assessed whether Environment Canterbury's performance meets the statutory grounds for an intervention, such as appointing a review authority;
 - b) **note** that a combined review of Environment Canterbury under both the Local Government Act 2002 and the Resource Management Act 1991 is an option;
 - c) **direct** the Department to investigate whether Environment Canterbury's performance is poor enough to meet the statutory grounds for intervention; and Yes/No
 - d) **note** that the Department would need to divert staff and resources to support the appointment and activities of a review authority, with subsequent impact on the current work programme.



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Local Government & Community



Hon Rodney Hide
Minister of Local Government

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