

## Section 122—Strategic management plans (rates oversight scheme)

*This information sheet relates to the commencement of section 79(2) and 79(8) of the Statutes Amendment (Local Government Review) Act 2021, inserting section 122 (1c)-(1k) and 122 (9) and (10) of the Local Government Act 1999. The changes will commence on 30 April 2022.*

### 1. Background

A key focus of the State Government during development of financial management reforms for the local government sector was ‘rate capping’, a system whereby councils would have a limit set on the revenue able to be collected each year to fund local services. Through evidence-based advocacy, including promoting current practices which demonstrate transparency and accountability of councils, the LGA was able to achieve a number of changes to financial management reforms and resulting legislative change.

The changes to section 122 of the *Local Government Act 1999* (the Local Government Act) are collectively and generally referred to as the ‘rates oversight scheme’, which includes a role for the designated authority, to provide advice to councils on the appropriateness of ‘the relevant matters’ (i.e., proposed revenue sources and material amendments made or proposed to be made) in the context of council’s long term financial plan (LTFP) and infrastructure and asset management plans (I&AMPs).

The Essential Services Commission of SA (ESCOSA) is the designated authority for the purposes of section 122. Costs associated with the role of ESCOSA will be recovered from councils.

Councils will be required, on a four yearly rotating schedule, to provide information relating to their LTFP and I&AMPs to ESCOSA on or before 31 September in the relevant financial year. ESCOSA must provide any advice to the council on or before 28 February. Councils must include the advice received, along with any response from the council, in both the draft and adopted annual business plan for the relevant year and each subsequent financial year for that council.

### 2. Section 122 changes

An extract of section 122 is provided below, with the ‘rates oversight scheme’ provisions marked in **green**. These provisions will commence on 30 April 2022. Changes relating to the requirement to include a funding plan within the LTFP (in section 122 (1a)) are marked in **orange**, however, these do not commence until 30 June 2023. Provisions appearing in **light blue** commenced on 6 January 2022. Provisions appearing in **red** have not yet been proclaimed for commencement.

To support the staged commencement of the ‘rates oversight scheme’ regulation 13 of the *Local Government (Transitional Provisions) Regulations 2021* commenced on 6 January 2022. This regulation recognises that amendments to section 122(1a)(a) will not commence until 30 June 2023 and sets out how requirements for the provision of information to the designated authority will be satisfied prior to the obligation to include a funding plan within the LTFP commencing.

## Chapter 8—Administrative and financial accountability

### Part 1—Strategic management plans

#### 122—Strategic management plans

- (1) A council must develop and adopt plans (which may take various forms) for the management of its area, to be called collectively the *strategic management plans*, which—
  - (a) identify the council's objectives for the area over a period of at least 4 years (the *relevant period*), and provide a clear indication of—
    - (i) the extent to which the council has participated with other councils, and with State and national governments, in setting public policy objectives, and the extent to which the council's objectives are related to regional, State and national objectives; and
    - (ii) the extent to which the council has given consideration to regional, State and national objectives and strategies which are relevant to the economic, social, physical and environmental development and management of its area; and
    - (iii) the extent to which the council intends to co-ordinate with State and national governments and councils or other regional bodies in the planning and delivery of services in which there is a common interest; and
  - (ab) provide assessments that relate to the following matters (with particular reference to the relevant period):
    - (i) the sustainability of the council's financial performance and position; and
    - (ii) the extent or levels of services that will be required to be provided by the council to achieve its objectives; and
    - (iii) the extent to which any infrastructure will need to be maintained, replaced or developed by the council; and
    - (iv) anticipated changes in its area with respect to—
      - (A) real property development; and
      - (B) demographic characteristics of its community to the extent that is reasonable taking into account the availability of appropriate and accurate data; and
    - (v) the council's proposals with respect to debt levels; and
    - (vi) any anticipated or predicted changes in any factors that make a significant contribution to the costs of the council's activities or operations; and
  - (b) identify the principal activities that the council intends to undertake to achieve its objectives; and
  - (d) state the measures (financial and non-financial) that are to be used to monitor and assess the performance of the council against its objectives over the relevant period; and
  - (e) identify the means by which its activities are to be carried out and its objectives achieved; and

- (g) address issues associated with arranging its affairs so as to separate its regulatory activities from its other activities, so far as this is reasonable to do so; and
  - (h) make provision for the regular review of the charters, activities and plans of any subsidiary of the council.
- (1a) A council must, in conjunction with the plans required under subsection (1), develop and adopt—
- (a) a long-term financial plan ~~for a period of at least 10 years; and that relates to a period of at least 10 years and includes a funding plan that—~~
    - (i) outlines the council's approach to funding services and infrastructure of the council; and
    - (ii) sets out the council's projected total revenue for the period to which the long-term financial plan relates; and
    - (iii) outlines the intended sources of that total revenue (such as revenue from rates, grants and other fees and charges); and
- NOTE: The orange text provisions do not commence until 30 June 2023 – also refer to Regulation 13 Local Government (Transitional Provisions) Regulations 2021*
- (b) an infrastructure and asset management plan, relating to the management and development of infrastructure and major assets by the council for a period of at least 10 years,
- (and these plans will also be taken to form part of the council's strategic management plans).
- (1b) The financial projections in a long-term financial plan adopted by a council must be consistent with those in the infrastructure and asset management plan adopted by the council.
- (1c) A council must, once in every prescribed period (which must be not less than a period of 3 years), in accordance with a determination of the designated authority, provide information relating to its long-term financial plan and infrastructure and asset management plan to the designated authority in accordance with subsection (1e).
- (1d) For the purposes of subsection (1c), the designated authority may determine a schedule relating to each prescribed period that requires different councils to provide information in different financial years of that period (and the financial year in which a particular council is required to provide information according to the schedule is the **relevant financial year** for that council).
- (1e) A council must, on or before 30 September in the relevant financial year for the council, provide to the designated authority all relevant information on the following matters (the **relevant matters**) in accordance with guidelines determined by the designated authority (if any):
- (a) material amendments made or proposed to be made to the council's long-term financial plan and infrastructure and asset management plan and the council's reasons for those amendments;
  - (b) revenue sources outlined in the funding plan referred to in subsection (1a)(a);
  - (c) any other matter prescribed by the regulations.
- (1f) Following the provision of information by a council under subsection (1e), the designated authority, on or before 28 February in the relevant financial year for the council—

- (a) must provide advice to the council on the appropriateness of the relevant matters in the context of the council's long-term financial plan and infrastructure and asset management plan; and
  - (b) may, if the designated authority considers it appropriate having regard to the circumstances of a particular council, provide advice in relation to any other aspect of the council's long-term financial plan and infrastructure and asset management plan.
- (1g) In providing advice under this section, the designated authority—
  - (a) must have regard to the following objectives:
    - (i) the objective of councils maintaining and implementing long-term financial plans and infrastructure and asset management plans;
    - (ii) the objective of ensuring that the financial contributions proposed to be made by ratepayers under the council's long-term financial plan and infrastructure and asset management plan are appropriate and any material amendments made or proposed to be made to these plans by the council are appropriate; and
  - (b) may have regard to any information or matter the designated authority considers relevant (whether or not such information or matter falls within the ambit of subsection (1e)).
- (1h) A council must ensure that the advice provided by the designated authority under this section, and any response of the council to that advice, is published in its annual business plan (both the draft and adopted annual business plan) in the relevant financial year and each subsequent financial year (until the next relevant financial year for that council).
- (1i) For the purposes of the preceding provisions, the designated authority must publish the following:
  - (a) advice provided to a council under this section;
  - (b) the schedule determined under subsection (1d);
  - (c) any guidelines determined under subsection (1e).
- (1j) The designated authority may, by written notice, require a council to give the designated authority, within a time and in a manner stated in the notice (which must be reasonable), information in the council's possession that the designated authority reasonably requires for the performance of the designated authority's functions under this section.
- (1k) The designated authority may recover from a council (as a debt due from the council) the costs reasonably incurred by the designated authority in performing its functions under this section in relation to the council.
- (2) Strategic management plans—
  - (a) should—
    - (i) address the strategic planning issues within the area of the council, with particular reference to (and in a manner consistent with) the Planning Strategy; and
    - (ii) set out the council's priorities for the implementation of planning policies,  
(although these matters may be satisfied by referring to the council's most recent *Strategic Directions Report* under section 30 of the *Development Act 1993*); and

- (b) should (as far as practicable) be consistent with the Development Plan or Plans for the council's area, other than where the council proposes to amend the Plan or Plans in accordance with the procedures set out in the *Development Act 1993* and the council obtains an agreement with the Minister to whom the administration of the *Development Act 1993* is committed relating to the implementation of a program to undertake any relevant amendment or amendments; and
  - (c) should (as far as practicable) be consistent with any relevant statutory policy or plan (not referred to above).
- (3) In addition to the requirements of subsection (2), a council must, in formulating its strategic management plans, have regard to—
  - (a) the council's roles and responsibilities under this or any other Act; and
  - (b) the council's objectives for its area.
- (3a) The regulations may prescribe additional requirements with respect to strategic management plans.
- (4) A council may review its strategic management plans under this section at any time but must—
  - (a) undertake a review of—
    - (i) its long-term financial plan; and
    - (ii) any other elements of its strategic management plans prescribed by the regulations for the purposes of this paragraph,  
[as soon as practicable after adopting the council's annual business plan for a particular financial year on an annual basis](#); and
  - (b) in any event, undertake a comprehensive review of its strategic management plans within 2 years after each general election of the council.
- (4a) A council must, for the purposes of a review under subsection (4), take into account—
  - (a) in relation to a review under subsection (4)(a)(i)—a report from the chief executive officer on the sustainability of the council's long-term financial performance and position taking into account the provisions of the council's annual business plan and strategic management plans; and
  - (b) insofar as may be relevant—any other material prescribed by the regulations.
- (4b) A report from a chief executive officer under subsection (4a) must—
  - (a) address any matters required by the Minister; and
  - (b) be published in a manner and form, and in accordance with any other requirements, determined by the Minister.
- (5) A council may amend its strategic management plans or adopt new plans.
- (6) A council must ~~adopt a process or processes to ensure that members of the public are given a reasonable opportunity to be involved in~~ undertake public consultation in relation to the development and review of its strategic management plans (but nothing in this subsection is to be taken to limit subsection (5)).
- (8) A council must, for the purposes of this section, specifically declare which plans will constitute the strategic management plans of the council.



- (9) In this section—  
*designated authority* means—
- (a) if a person or body is prescribed by the regulations for the purposes of this definition— that person or body; or
  - (b) if a person or body is not prescribed under paragraph (a)—the Essential Services Commission established under the *Essential Services Commission Act 2002*.
- (10) The Minister must consult with the LGA before regulations are made prescribing a person or body as the designated authority.

## Local Government (Transitional Provisions) Regulations 2021

### Part 3—Further transitional provisions relating to *Statutes Amendment (Local Government Review) Act 2021*

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#### 13—Financial accountability

Until the commencement of section 79(1) of the Amendment Act, the requirement under section 122(1e)(b) of the Act (as inserted by section 79(2) of the Amendment Act) for a council to provide the designated authority with all relevant information on revenue sources outlined in the funding plan referred to in subsection (1a)(a) (of section 122 of the Act) will be taken to be satisfied if the council provides the designated authority with all relevant information on the intended sources of the council's projected total revenue for the period to which its long-term financial plan relates (such as revenue from rates, grants and other fees and charges).

*This resource has been prepared by the Local Government Association of SA (LGA) to assist councils with implementation of legislative changes arising from Local Government Reforms, incorporating advice from Norman Waterhouse Lawyers, for the guidance of and use by member councils.* **Last updated: 11/04/2022**

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