



Notice of Meeting

An Extraordinary Meeting of the Tararua District Council will be held in the Tararua Business Network Training/Seminar Room, 40 Denmark Street, Dannevirke on **Friday 22 July 2016** commencing at **11.00 am**.

Blair King
Chief Executive

Agenda

1. Present
2. Apologies - Cr S A Hull
3. Reports
- 3.1 Submission on Local Government Act 2002 Amendment Bill 3
4. Appointment of a Replacement Representative to Vote on the Council's Behalf at the Local Government New Zealand Annual General Meeting

Recommendation

That the Council, being a member of Local Government New Zealand, appoint the Chief Executive – Mr B King as the presiding delegate to vote on its behalf at the Annual General Meeting of Local Government New Zealand to be held on the 24th day of July 2016 and at any adjournment thereof.

Advisory Note

This resolution supersedes the previous resolution passed regarding this matter at the Council meeting of 30 March 2016. The reason for appointing a substitute representative to vote on the Council's behalf at the Local Government New Zealand Annual General Meeting is that the earlier intentions have changed.

The Mayor is now not attending the Local Government New Zealand Conference and Annual General Meeting, and the Chief Executive shall be the Council's replacement representative.

The Deputy Mayor is unable to attend the Annual General Meeting as he arrives in Dunedin after the Annual General Meeting is held.

5. Closure

Report

Date : 20 July 2016

To : Mayor and Councillors
Tararua District Council

From : Malcolm Thomas
Strategy and Policy Adviser

Subject : **Draft Submission on Local Government Act 2002 Amendment Bill (No 2)**

Item No : **3.1**

1. Reason for Report

- 1.1 The government introduced the Local Government Act Amendment Bill (No 2) into Parliament on 9 June 2016. This amendment is under the banner 'Better Local Services'.
- 1.2 The Local Government and Environment Select Committee has called for submissions on the LGA 2002 Amendment Bill - submissions are required by Thursday 28 July. The Bill proposes substantial changes to four aspects of the LGA 2002 by:
- Providing a more comprehensive accountability framework for the Local Government Commission.
 - Introducing a new model of local government reorganisation.
 - Creating new substantive and multiply-owned Council Controlled Organisations, including models designed specifically for water and transport services.
 - Giving the Minister of Local Government the authority to set performance measures for councils.
- 1.3 Aspects of the Bill may result in significant impacts on the way Council services are delivered, and as such the Bill warrants a submission by Council to cover points of concern.

2. Background

- 2.1 The government has been implementing a programme to improve local government performance for a number of years. This started with Transparency, Accountability and Financial Management (TAFM) reform in 2010, followed by the Better Local Government amendment in 2014, which included the introduction of the Infrastructure strategy and the s17A service review process.
- 2.2 The purpose of the Bill appears to have been driven by the following assumptions:
- Infrastructure, particularly three waters is “challenged” in terms of meeting standards and funding future renewals,
 - Acquisition of scale seen as one part of the solution – Auckland model,
 - Pricing seen as the most efficient way to allocate resources (including meters),
 - The inability of communities to except structural change.

3. Description

- 3.1 The Bill would potentially result in the removal of major functions of Council services against the wishes of the Council and / or the community. Based on previous consultation processes it is likely that a majority of residents would be opposed to the proposed processes.

4. Significance Assessment

- 4.1 This matter is not significant in itself in terms of the Significance and Engagement Policy. Enactment of the Bill as it stands would result in the potential for a matter of significance to occur.

5. Options

- 5.1 Council has discretion as to whether to make a submission. LGNZ and SOLGM will be making submissions (copies of working drafts attached) on behalf of the sector. If Council feels strongly about parts of the Bill then it should make a submission on behalf of the residents of the district.
- 5.2 The draft submission for Tararua District Council has focused on the major parts of the Bill that would directly impact on the Council, with a specific focus on rural council impacts. A number of the wider issues and many detailed operational issues (such as tax implications) have been left to the SOLGM submission.

6. Assessment of Options

6.1 While many of the proposed changes appear to be largely technical, a number appear to have the potential to seriously undermine the viability of local councils, the quality of local democracy and establishes an undemocratic process. These are outlined in detail in both the LGNZ draft submission and the draft submission from the Society of Local Government Managers, SOLGM. The Bill has the following key issues:

- The ability of the Local Government Commission to transfer functions, particularly water, transport and resource management functions, into multiply-owned Council Controlled organisations, without the approval of the councils or their communities. Elected members are expressly prohibited from becoming directors of CCOs
- The mandatory requirement to have a poll for full amalgamations.
- No specific requirement for the LGC to consult with councils or communities when undertaking an investigation, including the analysis of cost and benefit assumptions.
- No consideration of the impacts on councils from transferring functions to a CCO, especially the impacts on:
 - Balance sheet
 - Financial viability
 - Overhead cost impacts
 - Debt and depreciation reserves
- The degree to which the new CCO models are able to require shareholding councils to amend a development contribution policy (there are no requirements to consult with affected local authorities) and the manner in which they are funded, which limits the fiscal accountability of elected members.
- The high level of discretion given to the Local Government Commission to determine whether or not to initiate a reorganisation investigation.
- Extends the powers of the Department of Internal Affairs (DIA) to regulate for mandatory performance measures.

6.2 The two critical changes are that the LGC can initiate an investigation process on its own, and that there is no poll required for the establishment of a regional CCO by the LGC. While local authorities are required to send the LGC all information that it requires, the LGC is not required to seek comments or consult on a proposal.

- 6.3 The Minister of Local Government can set expectations for the LGC including:
- Issues, problems or opportunities that LGC give high priority for investigation
 - Geographic areas that the LGC must give high priority for investigation
 - Geographic areas that the LGC must not investigate
- 6.4 While the Bill introduces three ‘off the shelf’ regional CCO models, there is no new structures in the Bill that cannot be established under the current legislation. The Bill does set out how these regional CCO structures would be governed, and gives them considerable powers and responsibilities. The details of the CCOs differ between Roading and Water to some extent. The Water CCO is prohibited from distributing profits back to shareholders. CCOs will have:
- A shareholders joint committee (councils) that hires the CEO and can set bylaws, delegate the responsibility to appoint enforcement officers and commence enforcement actions.
 - Service Delivery Plans - Equivalent of a long-term plan in a local authority, but there is no obvious consultation process for this.
 - Infrastructure Strategies for CCOs

7. Consultation

- 7.1 The Local Government Act 2002 Amendment Bill (No 2) is open to submissions from all residents. Submissions close on 28 July 2016. Little time has been given for submissions and as such Council is not able to carry out any information or consultation with the community.

8. Recommendation

That the report from the Strategy and Policy Adviser dated 20 July 2016 concerning the Draft Submission on the Local Government Act 2002 Amendment Bill (No 2) (as circulated) be received, and

That the draft submission to the Local Government Select Committee on the Local Government Act 2002 Amendment Bill (No 2) be approved, thereby conveying the Council’s concerns about the Bill as it is currently worded, and

That the submission emphasise the importance of continuing to retain at a local level the authority and power to make decisions on the delivery of community services provided by the Council.

Attachments

Appendix 1: TDC Submission on the Local Government Act 2002 Amendment Bill (No 2)

Appendix 2: LGNZ Draft Working Submission to Local Government Act 2002 Amendment Bill (No 2)

Appendix 3: SOLGM Draft Working Submission on the Local Government Act 2002 Amendment Bill (No 2)

Tararua District Council Submission on the Local Government Act 2002 Amendment Bill (No 2)

The Tararua District Council (TDC) thanks the Local Government and Environment Committee for the opportunity to submit on the Local Government Act 2002 Amendment Bill (No 2) ('The Bill').

TDC is a rural Council with 17,400 residents and 9,062 rateable properties. TDC takes a pragmatic approach to the delivery of services. A number of services are delivered through shared services through Manawatu Whanganui Local Authority Shared Services. TDC also delivers its largest activity (Roading) through a non-incorporated Joint Venture with Downer called the Tararua Alliance. This arrangement has been so successful that the three waters reticulation services have been added to the JV over the last year.

TDC accepts and supports the obligation to provide fit for purpose infrastructure that underpins the potential for economic and environmental improvements. Since 2012, TDC has embarked on an extensive programme of water and wastewater upgrades to fully comply with the drinking water standards, and to meet new resource consent standards administered by Horizons Regional Council. These upgrades also help to achieve our goals as a partner to the Manawatu River Accord.

We therefore welcome any initiative that allows for greater flexibility in the delivery of services, and to better empower the sharing of capability across the sector if the objective is to enhance the delivery of services to local communities.

TDC **supports** providing a wider range of options to enhance the delivery of local services that gives local authorities and their communities the right to initiate their own solutions.

TDC **strongly opposes** the Bill as currently worded, as it does not allow for a poll or Council resolution where the Commission proposes a Council Controlled Organisation (CCO).

TDC **supports** the submission of LGNZ and the wider issues around democracy that are raised.

TDC **supports** the submission of SOLGM including the issues around tax implications, bylaws and development contributions. TDC has specifically resolved to not charge development contributions and objects to the ability of a CCO to impose this policy on Council.

TDC strongly supports the concepts of local democracy, and the opportunity for local residents to be involved in local decision making in the delivery of Council services. Councils are required to act in a transparent and open manner, as outlined by section 14 of the LGA 2002, which states "a local authority should conduct its business in an open, transparent, and democratically accountable manner".

Ratepayers that are rated and charged for a service must be able to have an input into any proposed structural changes to the governance, funding and delivery of a service. This is a fundamental right that exists in our democracy. This Bill contains provisions that will remove this right by enabling the Local Government Commission to establish new CCO structures for significant services regardless of the views of the community or the Council.

TDC **submits** that the principle of democratic accountability should also apply to all of the processes employed by the Local Government Commission ("LGC"), and Central Government in general. TDC **proposes** to add the requirement for Council agreement through resolution, or a poll, before any LGC led proposed regional CCO structure can proceed.

The Bill states that it will "enable improved service delivery and infrastructure provision arrangements at the local government level", and that "New Zealand's local authorities need to adapt their governance arrangements and structures to lift performance and respond to emerging challenges. Councils need more options to co-ordinate and combine networks and scarce resources across regions and towns, especially for large-scale infrastructure. However, current models and the existing council reorganisation process are not flexible enough."¹

TDC **submits** that the current models offer a wide range of options, including many that are not CCOs. Providing more flexibility and improving the capability of the LGC to reduce roadblocks is supported, but not at the expense of democracy.

TDC is **opposed** to the fixation on CCOs. The LGC should be encouraged, in partnership with affected Councils and communities, to identify the most efficient and effective option for each investigation that occurs. This may be a shared service, a Public Private Partnership, a joint venture, or a range of contracting type options.

TDC has concerns that the main assumptions for this Bill have not been clearly thought through for smaller and rural councils, and that a range of current processes have yet to be completed that may well address many concerns.

1. Infrastructure is in a poor state and / or there are challenges in future renewals

TDC, like many rural Councils, is part way through a major upgrade in water, wastewater and stormwater infrastructure. Measures that record this infrastructure as non-complying do not reflect these current upgrades. All urban water and wastewater networks in Tararua will be fit for purpose in the next three years. TDC is financially capable of achieving this within low rate increases with modest debt.

Possible regional CCOs will not increase the speed of these projects, and will in fact likely slow down the process as a new governance and operational structure is established.

¹ Explanatory Note LGA Amendment Bill (No 2)

TDC fully funds renewals and depreciation reserves are in place. Asset management processes are being improved and significant improvements in asset knowledge are occurring. TDC has confidence that, while further improvements are required, the future sound condition of Council infrastructure is not under threat.

2. The need for more scale to deliver efficiencies and management

The ability of large corporates to deliver services more efficiently than small councils is not proven or obvious. A number of rural councils deliver multiple dispersed infrastructure networks at very affordable levels. There can be a dis-economy of scale as some business processes are encumbered by more specialised resource requirements and higher communication costs. Aggregation of demand and joint procurement is already undertaken by councils, including the use of All of Government procurement processes. Distributed geographic based activities will remain.

What is appropriate for Wellington City has little in common with the services delivered to Eketahuna or Dannevirke. The risk with larger regional companies is that the ability to deliver small scale local services at the appropriate level of service is lost. The costs of supporting a larger corporate is also often higher as technology, layers of management and overhead costs can deliver diseconomies of scale. While cost is only one part of being effective services, the following is of note:

	Residential Connections full charge 2016/17 year	
	Wastewater	Water
Tararua (8 urban supplies)	\$400	\$357
Watercare services (Auckland)	\$627 non-metered	\$1.444 per 1,000 litres
Hutt City Council	\$443	\$381
Hamilton	\$404 Plus a rate in the dollar of land value	\$422 Plus meter rate above set amount

TDC is already considering the most effective way to deliver better project management, asset management and strategic planning services for three waters. The collaborative procurement model with Council staff seconded into Downer NZ is already delivering best practice for Roothing.

TDC is of the view that there is a possible benefit in a shared service arrangement to deliver some technical management services for three waters. This can be explored through the s17A process of the Local Government Act 2002 and can be established without the need of a CCO (for example through the existing MW LASS structure). The existing CCO structure of MW LASS Limited does not preclude the establishment of joint service delivery for water or roading. There is already a number of services being delivered by MW LASS with the most mature and prominent being the award winning Archives Central service.

Furthermore, the Section 17A process has not yet been completed and has not yet been given the opportunity to determine the need for regional CCO's.

3. The need for more pricing to efficiently allocate resources

TDC is a rural council currently with minimal growth. In the past 20 years the population has declined. Demand management for water is manageable in the District, and metering has not been economic in Council's modelling for its small communities, given the priority to improve treatment.

4. The need to review existing services to ensure efficiency and effectiveness.

The government has already addressed this issue with the 2014 LGA amendments by requiring a periodic review of all Council services (s17A LGA 2002). The first round of reviews is to be completed by August 2017. Most Councils are in the process of reviewing their services and additional shared service arrangements across New Zealand are likely as an outcome.

TDC will be considering service delivery for three waters over the next year, however this is on hold until the Bill is enacted as this impacts on future options.

The TDC **submits** that this Bill is unduly rushed, and that processes already in place are addressing the concerns of government in the delivery of Infrastructure.

- S17A service reviews due by August 2017
- Infrastructure upgrades already being actioned / planned and funded.
- Improvements to infrastructure management are continuing
- The new Infrastructure Strategy was first completed in 2015. Councils need time to bed these in and improve them during the next Long Term Plan process in 2018.

The TDC **submits** that the above processes are underway and that the Committee needs to understand that these take time and in many cases cannot be accelerated. The reality is that delivering services across geographically dispersed networks to small urban areas has no quick fixes or easy answers. Giving powers for the LGC to impose regional CCOs is actually likely to slow down the delivery of improved infrastructure. Any new regional CCO will be providing services at a distance from most of its customers and with no ability for those who are charged for the service to directly influence the levels of service.

The Bill states that the new LGC powers come with appropriate checks and balances. This is true for full amalgamations and the transferring of services between Councils. The Bill lacks any clear checks and balances on the degree to which the LGC can shift activities out of the direct control of a local authority through the establishment of CCOs. There are clearly insufficient checks and balances for setting up regional or sub-regional CCOs.

The Three Waters and Rooding make up 55.4% of total operating expenditure and 60.5% of total income for TDC. Any action by the LGC to remove these from direct Council control will be of significant community interest and also have major financial implications for the ongoing sustainability of the Council.

TDC **submits** that the LGC must include the impact on the balance of Council from any investigation into the establishment of CCOs or other structures.

Specifically, the TDC has concerns around the impact on Council's balance sheet that may occur if regional CCOs are established. The Bill is not clear on how existing debt and depreciation reserves will be handled. Each council has different levels of debt and reserves, with some councils having high debt and no or little reserves. There is the potential for those communities who have had prudent financial and infrastructure management to end up subsidising those councils who are not in a sound position.

Setting up new regional CCOs will require extensive investment and result in major information technology costs. Government has a long history of grossly under-estimating these costs, both in central government ministries and for Auckland Council. These costs, along with office and other setup costs, can easily offset any benefits gained from increased scope and scale. These costs are, of course, passed on to customers who have no ability to shift providers.

TDC **submits** that the LGC consider the following issues when undertaking an investigation:

- Use of depreciation reserves and the proportional ownership of a regional CCO,
- The treatment of debt and the impact on financial viability and debt costs of the Council,
- The impact on the balance sheet of each Council,
- The treatment of current overhead costs within each Council and the impact on the ability of Councils to deliver the remaining services in an affordable manner,
- The realistic costs of delivering operational services from a regional CCO, including distance from any management office,
- The realistic costs of setting up the CCO, including IT and other overheads,

**We are.
LGNZ.**

< Local
Councils play
an active role
in keeping our
communities
healthy. >

LGA 2002 Amendment Bill (No2)

Local Government New Zealand's submission to the Local
Government and Environment Select Committee

28 July 2016

**We are.
LGNZ.**

Contents

DRAFT

We are. LGNZ.

Local Government New Zealand (“LGNZ”) represents the national interests of local authorities and promotes excellence in performance. The organisation provides advocacy and policy services, business support, advice and training to its members so as to assist them build successful communities. Our purpose is to deliver our sector’s Vision: Local democracy powering community and national success.

The Bill before the Local Government and Environment Select Committee raises significant and potentially far-reaching and fundamental matters that cut to the heart of local democracy and the role of local government in New Zealand. That these matters are disguised within a very technical piece of amending legislation does little credit to the New Zealand’s membership of and commitment to the Open Government Partnership (the Open Government Partnership was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens).

Accordingly, the leadership of LGNZ wishes to appear before the Local Government and Environment Select Committee to talk to the matters canvassed by this submission.

Summary

[To come]

Introduction

In preparing our submission LGZ has worked collaboratively with our colleagues in the Society of Local Government Managers (“SOLGM”). SOLGM’s submission provides the Committee with a detailed clause by clause analysis of the Bill. LGNZ’s submission provides a strategic analysis that addresses the significant impact of the Bill on our overall system of local government.

Our submission takes a principles-based analysis of the Bill and its potential impact on the ability of councils to meet the needs and preferences of their communities. The submission discusses the strengths and weaknesses of the proposed measures in relation to the principles of good local government and recommends a number of changes.

Some of the Bill’s provisions, if enacted, would undermine the fundamental nature of our local democracy by diminishing the decision-making ability of locally elected representatives and eroding the constitutional separation of local and central government.

That said there are a number of provisions in the Bill that LGNZ supports but these do not obviate our broader concerns.

The nature of local government

Like central government local government is established by Parliament, which determines the framework of rules and the powers within which local authorities operate. Councils are not, unless legislation expressly provides for it, a provider of central government services, rather they exist to allow citizens to make collective decisions about local and regional matters.

The international literature defines true local government as existing when democratically elected bodies have well defined discretionary powers to provide services to their citizens and finance them with the proceeds of one of more exclusive local taxes of which those elected representatives are empowered to set.

The critical characteristics of a local government system are the ability of elected members to make decisions about levels of services and how they are funded. Should these be compromised, a local government can cease to be either local or government becoming, in essence, no more than a decentralized central government agency. In such circumstances the constitutional structure will have been fundamentally changed and local democratic representation will, to all intents and purposes, have ceased.

Principles of good local government

In order to provide a basis for our analysis we have identified six principles which are critical to the effective operation of a local government system. We have based these on the principles in the Local Government Act 2002 and the Draft United Nation's Charter for Local Self Government (which is based on the European Charter). They are:

1. Processes are transparent and open;
2. Decision making powers are adequate to enable elected representatives meet community expectations and statutory requirements;
3. Accountability is clear and unambiguous;
4. The constitutional status of local government is recognised; and
5. Allocative efficiency is achieved.

For New Zealand's communities to flourish LGNZ believes that it is important that any legislative change promotes transparent decision-making; strengthens the decision-making capacity of elected members; results in clear and unambiguous accountability; recognises the constitutional role of local government and promotes allocative efficiency. Some provisions in the Bill fail to promote these principles.

Analysis of the LGA 2002 Amendment Bill (No 2)

The following analysis, which is principle based, does not look at the Bill in detail, for a detailed analysis of the clauses within the Bill we recommend that the Committee read the SOLGM submission, which has been prepared in consultation with LGNZ.

Strengthening transparency and openness

Councils are required to act in a transparent and open manner, as outlined by section 14 of the LGA 2002 which states "a local authority should conduct its business in an open, transparent, and democratically accountable manner". It is important that this principle should also apply to the processes employed by the Local Government Commission ("LGC"), however some aspects of the Bill are inconsistent with this principle, for example:

- The ability of the LGC to remove an activity from the direct oversight of a local authority and to corporatise it without the permission of, and potentially against the wishes of, the council and its community, contravenes this and a number of other important principles and assumes that communities themselves have no view on these activities, many of which have been identified as strategic assets in councils' Significance and Engagement Policies; and
- The proposal to exclude certain information, such as that related to an investigation, from the scope of the Local Government Official Information Act 1987 is unnecessary and may undermine community confidence in the LGC process.

The Bill lacks any clear checks and balances on the degree to which the LGC can corporatise and shift activities out of the direct control of a local authority. Given that water and transport services constitute such a large degree of a council's operational expenditure, particularly in rural districts, any action by the LGC to remove these from direct council control will be of significant community interest and also have major financial implications for the ongoing sustainability of the local authority. This issue will be particularly acute in rural and provincial New Zealand. We suggest that either council or community approval should be required before major activities are corporatised and removed from the direct control of the local authority.

Proposals to create multiply-owned CCOs for major activities (as defined in the Bill) should have the support of the majority of councils involved or their communities.

Ensuring elected representatives have sufficient decision-making authority

An effective democracy enables citizen to vote for representatives on the basis of a policy platform with the expectation that, if elected, the platform will be implemented (should it have the support of a majority of members). It is not clear how an individual council will be able to require a multiply-owned CCO to abide by a local policy for which they have an electoral mandate.

This principle is highlighted within the European Charter for Local Self Government which states that "local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority". A number of provisions within the Bill, if enacted, may undermine this principle. For example:

- The mechanism for funding a multiply-owned CCO requires councils and elected members to raise property taxes for levels of expenditure over which they have little control. The proposed funding formula will, in practice, make it difficult for an individual council to exercise judgement and discretion over what may be a large part of its income;
- In addition to the lack of discretion with regard to the funding of multiply owned CCOs individual shareholding councils have limited opportunities to influence levels of service within their districts, as these decisions must be agreed by all shareholders and, in practice, will be determined by the joint committee;
- Councils make decisions and adopt policies for the benefits of their communities today and for the future. An unanswered question in the Bill is how an individual shareholding council require a multiply owned CCO to apply specific levels of service or policies within its specific jurisdiction, for example;

- Implementing a buy local procurement policy to strengthen local businesses;
- Adopting policies to promote better transport such as electric cars, cycling and walking; and
- Implementing a strategy to improve streetscapes, from slow roads to extensive urban tree planting.

The Bill fails to provide individual councils with sufficient levers to ensure that substantive, and especially multiply-owned, CCOs deliver services that meet local policies and priorities. Over time this will have a detrimental effect on the willingness of people to participate in local government, either as candidates or voters, given the range of significant decisions likely to be placed outside direct democratic control if this Bill proceeds.

LG NZ recommends that the Bill is amended to give councils better mechanisms, including the right to appoint elected members as directors, for ensuring multiply-owned CCOs are required to meet local priorities.

Promoting clear and unambiguous accountability

An important governance principle requires that decision-makers should be able to be held accountable for their decisions. This enables citizens and consumers to exercise both voice and exit if they are unhappy with the outcomes of those decisions. It is a principle reinforced in the Productivity Commission's 2013 report on Better Local Regulation. Some proposals in the Bill fail to meet this principle. For example:

- The ability of multiply-owned and substantive CCOs to require their shareholding councils to amend a development contribution policy, even though the CCO has undertaken its own consultation, fails this principle as voters will ultimately hold the specific councils and their elected members to account; and
- The extent of the discretion given to the Minister of Local Government to set performance measures for activities which are funded by communities themselves effectively diminishes the accountability of local representatives. The same discretion can also result in 'cost shifting' where, for example, a performance measure is set at a level of service which is greater than the level of service agreed between the council and its community.

The impact of the measures addressed above is such that they contravene the fundamental principle that we (correctly or otherwise) attribute to the Magna Carta that there should be no taxation without representation. This is a highly probable outcome in some districts should extensive use of the multiply owned CCO model be implemented as currently prescribed.

If councillors are to be held accountable for the performance of multiply-owned CCOs then additional mechanisms for holding them to account must be introduced. The situation is exacerbated by the proscription preventing the appointment of elected members as directors of the new CCOs. If councils are funding organisations which operate services owned by the local authority, such as water and waste water services, then the relationship should be a contractual one that allows the local authority, as owner, to change providers.

LG NZ recommends that the Bill be amended to provide shareholding councils in a multiply-owned

CCO with additional mechanism to hold the CCO for its performance, including the right to appoint elected members as directors.

Ensuring that the constitutional role of local government is not undermined

Although not written in a single document New Zealand does have a constitution, which is made up of a collection of statutes and conventions. Local government plays a role in our constitutional arrangements, a role that is often not appreciated. The nature of this role was clearly described by Prof. John Roberts, former professor of Public Administration at Victoria University when he stated:

the growing power of government ... constitutes another reason for the existence of an efficient system of local government. ... Local government is not solely a matter of the management of local services; it provides the democratic machinery for the expression of local opinion on all matters of public policy (Local Government in the Wellington Region 1968)

As Professor Roberts noted, it is important that local government has the policy and decision-making freedom to represent the interests and needs of their communities. Some provisions in the Bill run counter to this principle, for example:

- The proposed power of the Minister to direct the LGC provides future ministers with an unprecedented ability to intervene in the affairs of a local authority. There is no guarantee that such a power will be used responsibly and, given the current intervention framework in the LGA 2002, is unnecessary; and
- The proposed power for the Government to set benchmarks for CCOs and performance measures for discretionary activities similarly erodes constitutional distinction between the two spheres of government as it undermines the contract that exists between local elected members and their communities. Of similar concern is any requirement that Transport CCOs report on the achievement of Government objectives.

Local government is not simply a provider of local services. It is an intrinsic part of a strong and healthy democracy. We must be careful and watchful that its democratic role, including its role to encourage participation of citizens, is not lost without a clear public debate. This Bill is very complex and disguises that it contains a debate of this kind.

LGNZ recommends that the Minister of Local Government's power to direct the LGC is removed.

Allocative efficiency

Allocative efficiency exists where the quality and quantity of public services matches the needs and preferences of those people receiving them. One of the strengths of local government is its proximity to users, knowledge of preferences and ability to tailor services to local needs and preferences. While it may be appropriate for some services to be operated at a level of scale in some areas this is not always the case. It is important that the LGC is prepared to assess options with an open mind given local circumstances.

There are also some provisions in the Bill which, as currently described, may not lead to improved efficiency, for example:

- The multiply-owned CCO model, despite additional accountability requirements such as the

service delivery plan, lacks the commercial disciplines to ensure efficient performance. In practice councils will be unable to sign off levels of service and CCO budgets through their LTP process as agreement is required by all shareholding councils – an agreement that does not appear to reflect the weight of different councils shareholding interests as well as undermining the purpose of the LTP; and

- In 2014 the Government amended the LGA 2002 to require that council services are reviewed at least once every 6 years to ensure they are delivered in an efficient manner. The substantive and multiply-owned CCO models appear to be outside the scope of these reviews. In other words there is no clear way of dis-establishing a multiply-owned CCO should, as a result of new technologies or poor performance, it be found to provide inefficient services.

LGNZ is concerned that the LGC process and resulting decisions will effectively ‘lock in’ service delivery models and seriously constrain the ability of future councils and communities to redesign their governance and service delivery approaches to meet changing needs and technologies.

LGNZ recommends that the establishment of a substantive or multiply-owned CCO be accompanied by a time frame, say 5 years, after which they will be subject to the provisions of s.17A. If this is not accepted then consideration may need to be given to the establishment of an external regulatory agency.

Conclusion

There a number of provisions in this Bill that have LGNZ’s support. For example, we are pleased with the reintroduction of mandatory polls in relation to certain reorganisation options and we support the greater discretion given to the LGC to develop bespoke reorganisation models. It goes without saying that we support the modernisation of the LGC’s accountability framework.

However there are a number of proposed changes that cause us considerable concern for their potential impact on the ability of local authorities to properly fulfil their democratic and governance responsibilities. Those of most concern are:

- The ability of the LGC to establish multiply-owned CCOs without the agreement of either local affected local authorities or their communities;
- The open-ended authority given to the Minister of Local Government to direct the LGC;
- The new power for the Minister of Local Government to establish performance measures for discretionary activities which are fully funded by local communities.

These powers are simply unacceptable in a modern democratic society. They run directly counter to the Government’s own public commitment to, and membership of, the international Open Government Partnership.

The themes we have stressed in our submission concern the need to ensure that elected members have a broad range of decision making powers, as the international evidence shows that as local governments lose salience there is a strong drop off in the willingness of people to vote and similarly the willingness of people with talent to stand. The submission also highlights the need to reinforce the distinction between local and central government. They are different but complementary

spheres of government and we need to respect their particular roles. Finally we ask whether or not the changes will necessarily improve efficiency. There is a risk that the creation of multiple CCOs will fragment local governance and diminish the ability of local governments to develop local policies in order to attract investment and the talent we need to grow not only local economies but the national economy as well.

One conclusion we have come to in our analysis is that the Bill is 'under done'. Much of the detail necessary to understand the implications of the proposed changes is missing and as a result it is difficult for us to properly comment or give support. It is disappointing that this detail was not prepared in advance and LGNZ would note that the local government sector has had no involvement in the preparation of these proposals. The Regulatory Impact Statement drew particular attention to the lack of consultation. This is unacceptably poor process which leads to bad law.

Our concerns are partly summed up by the following comments by the former Minister for Local Government in the United Kingdom.

There was once a time when local government was at the centre of local decision-making. Councils had the power and authority to make a difference. They could bring about dramatic, positive improvements to the local area. Decades of centralisation, however, left councils distracted by bureaucracy and targets and often powerless to make changes. This government will restore local government to its former glory because we believe this is the best way to build a stronger economy and fairer society. – Rt Hon Eric Pickles MP, June 2011 (House of Commons Political and Constitutional reform Committee)

In contrast, New Zealand continues to centralise power in Wellington.

In this Bill the Government is saying that it does not trust local communities to make the right decisions for them.

We reject that position. But that does not mean that we do not agree that local government should not be accountable for the delivery of effective and efficient services to local communities. Of course they should. But the way to address that issue is to improve accountability of local representatives to their communities (LGNZ's recently launched Local Government Excellence Programme is design to do precisely that) not to remove that accountability or lessen the democratic input of those communities' citizens. That is a slippery slope that any progressive liberal democracy should shun, not embrace.

Democracy must be nurtured not legislated away.

We look forward to discussing our concerns with the Committee.

Better Local Services?

**Submission of the Society of Local Government Managers (SOLGM)
on the
Local Government Act 2002 Amendment Bill (No. 2) 2016**

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Table of Recommendations

	Comment	Recommendations
Subsections 24(m) and 24(n)	The scope of a reorganisation has been widened to incorporate transfers and the establishment of CCOs. As currently worded this places committee structures within councils as a matter that can be reorganised in its own right.	1. That the Commission agree to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).
Clause 7(g)	The test for demonstrable community support has been largely removed from the Bill. This test previously showed a minimum expectation for public support. This test has also helped the Commission conclude whether proposals for political amalgamation would succeed at a poll.	That the Committee: 2. agree that proposals for reorganisation initiatives should be required to show demonstrable community support 3. agree that the clause 7(g) be amended by deleting the phrase " of significant community opposition to" and replacing this with "that there will be demonstrable community support for ..."
Clause 2, Schedule Three of the Principal Act	The promotion of ' good local government ' has been referred to as a requirement for reorganisation. However, the nature of 'good local government' does not have a single clear legislative statement of what it actually constitutes.	That the Committee: 4. agree that term good local government be defined and added to clause 2, Schedule Three of the principal Act 5. agree that proposals for reorganisation initiatives should be required to show demonstrable community support 6. agree that reorganisation investigations should be required to demonstrate how they promote good local government.
Clause six, Schedule Three	Local authorities can provide insight into investigations . Under the principle that the Commission can initiate investigations of its own motion, local authorities do not have the right to comment on proposed matters to be investigated. The Commission does not need to discuss the proposed scope of the investigation with the affected local authorities.	That the Committee: 7. agree that the proposed new clause six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process 8. agree that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds).

	Comment	Recommendations
Subclause 23(1)(e), Schedule Three	Under the proposed clause, proposals to establish CCOs are not required to go to a poll .	9. That the Committee agree that the proposed new subclause 23(1)(e), Schedule Three be amended by adding the words "local authority or to a council controlled organisation" after the word "another". This amendment would require polls for transfers of transport services, water services and RMA to CCOs.
Clause four, Schedule Three of the principal Act	The Bill appears to propose repeal of the present clause four, Schedule Three of the principal Act. This clause prohibits what the Bill would refer to as reorganisation initiatives and investigation requests where a local authority has been the subject of a reorganisation and the scheme contains a time limit on new initiatives. Continual reorganisation can impact on organisational morale, retention of staff, community perception of the value of democracy etc.	That the Committee: 10. agree that clause four, Schedule Three of the principal Act be retained with amendments to provide for the wider scope of reorganisation. 11. agree that the proposed new clause seven, Schedule Three be amended by adding a new subclause (b) that would read "the time elapsed since the last investigation of the same, or substantially similar nature, and any relevant changes in circumstance in the intervening period"
Subsections 31A(2)(b), 31A(2)(c), 31A(3)	We would expect that as a minimum the Minister would be required to consult, the Commission, the local government sector, through its representative organisation Local Government New Zealand and any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister's proposed expectations, when considering priorities for investigations. We consider that ministerial powers should be used transparently.	That the Committee: 12. agree that the proposed new subsections 31A(2)(b) and subsections 31A(2)(c) be deleted 13. agree that the proposed new subsections 31A(3) be amended to require the Minister to consult the Commissions, the Local Government Association of New Zealand Incorporated ¹ , and any interested or affected Ministers 14. agree that the Commission be required to publish any statements of Ministerial expectations as part of its statement of intent.

¹ This is the legal name of the organisation currently trading as Local Government New Zealand, and is the name used elsewhere in legislation (such as the Rating Valuations Act 1998).

	Comment	Recommendations
Subsection 33(2A)	The proposed amendment allows for the appointment of up to two further Commissioners . However, there is no requirement on a Government to appoint or even consider people with a background in local governance, the management or delivery of local services or infrastructural management and delivery.	That the Committee: 15. agree that a new subsection 33(2A) be added to the Bill requiring that at least one member must have served as a member or Chief Executive of a local authority 16. agree that the proposed new subsections 33(2A) be amended to require the Minister to consult the Local Government Association of New Zealand Incorporated before making an appointment to the Local Government Commission.
Subsections 31H(4) and (5)	We note the importance of the proposed provisions that empower the Commission to resolve disputes where authorised in the Bill, and where one or more of the parties to the dispute refer the matter to the Commission. However, we have also noted that as currently worded regional councils may not be recognised as a party in a dispute. Furthermore, there may be additional information created in the course of the local authority's supply of information during a dispute that may not be explicitly removed from the scope of the Official Information Act 1982.	That the Committee: 17. agree to extend protection under official information law to include information about a dispute that is supplied to the Commission and 18. agree that the proposed new subsections 31H(4) and (5) be amended by adding the words " or Chair of a Regional Council, ..." after the word Mayor.
Section 56J	The proposed section allows for the creation of a joint committee with responsibility to appoint and 'warrant' enforcement officers and commence enforcement actions, essentially overseeing bylaws. It is unclear to us whether the creation of a joint committee specifically to oversee bylaws is necessary.	19. That the Committee agree that the proposed new section 56J be removed from the Bill.

	Comment	Recommendations
Clause 6	The proposed schedule provides the Commission with extensive powers to transfer bylaw-making powers from local authorities to transport services CCOs . However, we cannot find any particular rationale that would see a joint committee required for bylaw and enforcement powers in water but not in roads. Furthermore, powers transferred to transport CCOs to make bylaws may cover matters from solid waste, bee-keeping to cemeteries. These go beyond transport issues relevant to the particular type of CCO.	20. That the Select Committee agree either to constrain the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B or (our preference) deletes clause 6 of this same schedule.
Section 56C(2)	We support the requirement that substantive CCOs prepare a service delivery plan . However, the wording of this section could be improved, particularly around "environmental factors."	<p>21. That the committee agree that the proposed new section 56C(2) be deleted and replaced with the "the service delivery plan must set out:</p> <ul style="list-style-type: none"> (i) the shareholders' objectives and how the organisation contributes to the achievement of these objective (ii) the intended levels of service (iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service (iv) demographic, economic and other factors that give rise to the need for expenditure." <p>22. That the Committee agree that substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.</p> <p>23. That the Committee agree that substantive CCOs be required to consult the community while preparing a service delivery plan.</p>

	Comment	Recommendations
Section 56D(3)	The proposed section requires that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. However, there is no requirement to consult with shareholders or adopt it as part of the CCO's service delivery plan.	That the Committee: 24. agree that CCO infrastructure strategies after the transitional should be adopted as part of the CCO's service delivery plan 25. agree that the proposed new 56D(3) be amended by deleting the phrase "Subsections (3) and (4)" and replacing it with "Subsections (3), (4) and (6) ...". 26. agree that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.
Section 56W(3)	Under the proposed section regarding exemption local authorities do not need to form shareholder committees if "each" of the shareholding local authorities resolves to separately perform its duties as a shareholder. The intent of the word "each" may need to be clarified.	27. That the Committee agree to replace the term "each" with the term "all individually."
Section 56W(4)	The proposed section requires that in circumstances where shareholding local authorities resolve to exercise their shareholders duties individually then the obligations can only be resolved by unanimous agreement, the unanimous requirement may prove to become difficult for CCOs that may be large entities.	28. That the Committee agree to delete the term 'unanimous agreement' in section 56W(4) and replace with 'by resolution of two-thirds of the shareholding authorities'.
	Water services CCOs have been expressly prohibited from distributing a surplus to any of its shareholders under the Bill, however this rationale has not been applied to transport CCOs. Public concern about any charging for road use is likely to be of equal concern.	29. That the Committee agree to add a provision prohibiting transport services CCO from distributing a surplus to shareholders as part of the Bill.

	Comment	Recommendations
Subsection 57(3) and 57(5)	We support the new provision that prohibits members of local authorities, community boards or local boards from serving as directors of multiply owned CCOs. We also note that local authority staff are still able to become board members on a CCO.	That the Committee: 30. agree to add a new (c) to the proposed new subsection 57(3) that prohibits employees of a local authority from acting as a director of a multiply-owned CCO 31. agree to add a new subsection 57(5) that reads “ <i>A director of a council controlled organisation that is appointed as a staff member of a shareholding local authority must first resign his or her position as a director of the council controlled organisation before taking up the position as an employee.</i> ”
Section 31H	Setting development contributions is an important policy choice for local authorities and part of other funding considerations. We are unclear that an unelected board of a CCO should be able to simply “require” a local authority to amend its development contributions policy, and without a direct requirement to consult the affected local authorities.	That the Committee 32. agree that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and 33. agree that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H.
Section YA 1 of Income Tax Act 2007	Any reorganisation that results in local authority core activities being transferred to a CCO mean that these activities will become subject to income tax at the CCO level , as will any income received by a local authority from a CCO. It should be noted that core activities do not compete with the private sector and should be treated as if they were provided by a local authority.	34. That the Select Committee agree that CCOs that are wholly owned by local authorities, provide core functions, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.

	Comment	Recommendations
Section YA 1 of Income Tax Act 2007	It appears that a water services council-controlled organisation will be subject to income tax if it is a company or an "entity" that has a profit purpose (i.e. it is a CCTO). Due to the proposed prohibition on water services council-controlled organisations being able to pay a dividend or distribute any surplus to any owner or shareholder then any profits will be subject to income tax wholly within the water services council-controlled organisation.	35. That the Select Committee agree that water services council-controlled organisations should be exempt from income tax.
Schedule Three of the Bill and Schedule Nine of the Principle Act	The rules in Schedule Three of the Bill will apply when there is a reorganisation under proposed section 24 of LGA 2002. However, we note that pre-existing tax rules applicable to the transfers of undertakings to CCOs already exist within Schedule Nine of the Principal Act.	36. That the Select Committee agree that officials be directed to review the Schedule Three provisions against Schedule Nine of the principal Act.
Clause 55 (1) of Schedule 3	Breadth of general rules proposed under schedule 3 could extend beyond what is intended.	37. That the Select Committee agree that the ambit of the General Rules be restricted to matters associated with assets, liabilities or voting/market interests referred to in proposed clause 55 (1) of Schedule 3.
Clause 57	The proposed clause 57 is ambiguous as it seeks to specify that income and expenditure incurred by a transferring entity before the date of transfer does not become that of the receiving entity simply because of the transfer of assets and liabilities. Additionally, <i>expenditure</i> on financial arrangements, depreciable property, trading stock etc. are dealt with elsewhere.	38. That the Select Committee agree that all references to "expenditure" in Clause 57 be replaced by the term "expenses."

	Comment	Recommendations
Clause 58(2)(a), Section EE 58(1) of Income Tax Act 2007	Proposed clause 58(2)(a) specifies that where such depreciable property is transferred to a receiving entity and will not be used for deriving exempt income then the transfer occurs on the transfer date at <i>accounting carrying value</i> on that date. We submit that the transfer value in this circumstance should be the <i>market value</i> . It is our understanding that this would be consistent with section EE 58(1) of Income Tax Act 2007.	39. That the Select Committee agree to seek further advice as to whether transfer values for the purposes of clause 58 should be market values.
Clause 59	It is possible that only a part of the operations of a transferring entity is transferred to a transferring entity . In this instance, it is possible that only a portion of a tax loss, loss balance or imputation credit balance should be available to the receiving entity.	40. We submit that the Committee consider whether an apportionment of losses and/or imputation credits may be required and determine a mechanism to achieve this.
Clause 60(2)	The intent of clause 60(2) is unclear and at the very least requires a minor amendment.	41. That the Select Committee agree that Clause 60 should be clarified. In the event that the Committee determines that no such clarification is required, it should be amended so as to insert "output" prior to "tax payable".
Clause 11, Schedule Three	The proposed new clause 11, Schedule Three does not specifically place the Commission under a duty to consider other implications, including tax costs to ratepayers .	42. That the Select Committee agree that that clause 11, Schedule Three be amended to ensure that the Commission is required to ensure that tax costs to ratepayers are identified in reorganisation plans.
Section 24, 56J, 56W	As a matter of clarity we submit that proposed schedule 3 specify that committees/joint committees established for the purposes of a schedule 24 reorganisation are exempt from income tax .	43. That the Select Committee agree that committees and joint committees be treated the same as local authorities for income tax purposes.

	Comment	Recommendations
Paragraph 39 of the associated Cabinet paper	Paragraph 39 of the associated Cabinet paper appears to contemplate change to the rates rebate scheme to ensure water and wastewater charges fall within the ambit of the scheme. We can find no such amendment in the legislation and suggest that one is needed.	44. That the Committee agree that water and wastewater charges levied by CCO should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.
Section 261	We have previously expressed concerns that the performance measures that are currently required under the authority of sections 259 and 261A are focus only on network infrastructure and therefore do not reflect the total ambit of local authority activity. The existing measures have required guidance and supporting material, with local authorities considering how best to collect the data. Furthermore, consistent benchmarking requires quality data, with quality data infrastructure provided by local authorities. However, the proposed sections do not consider implementation guidance or whether there should be a lead time for the introduction of new regulations.	That the Committee 45. note that the effectiveness of additional measures under s261 would be dependent on amendments to clause 2(2) of Schedule 10 46. amend s261B of the principal Act to require the Secretary to allow at least 18 months lead time on any new regulations made under s261 47. amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B 48. amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must".
Sections 259 and 261 of the principal Act	While we agree that the Minister should consider the effectiveness of local authorities' performance, we have expressed concerns about the relevance and usefulness of some of the current mandatory performance measures that sit within the present regime. It is our view that the effectiveness of the fiscal parameters and benchmarks, reporting against measures set under the authority of section 261A, be considered before the introduction of further performance measures.	49. That the Committee amend the Act by adding a requirement to review the effectiveness of existing regulations made under sections 259 and 261 of the principal Act before making new regulations.

	Comment	Recommendations
Clause 32, section 259(d)(f)	Clause 31 of the Bill prescribes the corporate accountability information that local authorities must disclose in any or all of their accountability documents, as presently drafted this power is excessively vague. We are unclear as to what corporate accountability information may include.	50. That the Committee amend clause 32 by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.
Section 259(4) of the principal Act	The Bill provides the Minister with the power to establish parameters or benchmarks for assessing the financial management within CCOs. Our concern is that poorly set parameters or benchmarks could generate frequent 'false positives' (i.e. a result that falsely indicates an issue) or (worse) 'false negatives' (i.e. a result that indicates a false 'green light'). These risks could be mitigated by requiring consultation with the experts in financial management in local authorities and their associated entities.	51. That the Committee amend section 259(4) of the principal Act by deleting all words after "consultation" and replacing with "with: (i) the New Zealand Local Government Association Incorporated; and (ii) the Society of Local Government Managers; and (iii) the Auditor-General."

Introduction

The New Zealand Society of Local Government Managers (SOLGM) thanks the Local Government and Environment Committee (the Committee) for the opportunity to submit of the Local Government Act 2002 Amendment Bill ('the Bill').

SOLGM generally supports the underlying intent of this Bill in that it provides a wider range of options to enhance the delivery of local services, and gives local authorities and their communities the right to initiate their own solutions. We have one substantive concern of a policy nature - that the Bill as currently worded does not allow for a poll where the Commission proposes a Council Controlled Organisation (CCO)

The remainder of our submission contains recommendations that will make the Bill more workable to implement, and in some cases correct issues of a technical nature.

Who are we?

SOLGM is a professional society of over 625 local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities.² We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation

Our vision is:

Professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as electoral management and the collection of rates.

² Numbers as of 1 July 2016.

Although we work closely and constructively with Local Government New Zealand, we are an independent body with a very different role. We have read, and generally agree with the submission that they have put forward on this Bill.

The Policy Context

It doesn't matter if a cat is black or white, so long as it catches mice.

- Deng Xiaoping

SOLGM supports this Bill

SOLGM welcomes the Bill. We see the Bill as having two key elements:

- removing barriers to the acquisition of scale and
- encouraging performance enhancements by making a potentially wider range of information available to local communities.

We have two reservations about this Bill. We have one headline concern of a policy nature – that the Commission's powers to establish Council Controlled Organisations (CCOs) are not accompanied by a requirement to have a poll. We consider the additional powers to regulate performance and accountability information may be too broadly drawn and suggest refinements, and that the existing regulation should be subject to a proper review of cost effectiveness. The remainder of the recommendations we make are enhancements and practical concerns.

Good quality service is what matters

Amendments to the Act during 2012 established that the purpose of local government is to "provide good quality local infrastructure, local public services and local regulation, in a manner most cost-effective for households and business".³ Good quality is defined as a service that is effective, efficient and appropriate to the present and future needs of the community.

SOLGM therefore takes a pragmatic approach to the delivery of services. We focus on ends as opposed to means; quality of service should be the first consideration. We therefore welcome any initiative that allows for greater flexibility in the delivery of services, and to better empower the sharing of capability across the sector if the objective is to enhance the delivery of services to local communities.

³ Section 10, Local Government Act 2002.

There is, as yet, relatively little evidence on the impact that the acquisition of scale has had in the New Zealand context. As far as we are aware, there has been only one report looking at the impact that the creation of Auckland's substantive CCOs has had on services and costs in Auckland. That report noted that

There is some concern that the restructuring of Auckland's governance has removed geographic siloes, creating instead – with the CCO model – functional services where assets and services operate independently from the rest of the council structure. This is particularly the case with Auckland Transport and Ports of Auckland Limited, which are further removed from council oversight than other CCOs, and whose scale and scope of operations are vital to the on-going development of Auckland. That said the CCOs model has meant that the council has been able to draw on commercial and professional expertise in managing these assets and delivering crucial regional services, and the CCOs have been able to focus on their core mission shielded from daily political concerns.⁴⁴

As we were putting the final touches to this submission the Department of Internal Affairs released the first round of reporting against the so-called mandatory measures of non-financial performance. The results show that local authorities are generally delivering high standards of service to their communities. For example:

- the vast majority of councils met their financial benchmarks (71% had a balanced budget, 71% met the essential services benchmark and 97% met debt servicing requirements)
- most councils (52 out of 61) delivered between 90 to 100 percent of building consents within the statutory time frames
- similarly, the overwhelming majority of councils (63 out of 68) delivered between 90 to 100 percent of resource consents within the statutory timeframes
- 94 percent of councils had a road condition index of 95 or greater (62 out of 66 councils), that is to say that roads are being maintained to acceptable standards
- requests for Ombudsman's intervention involving local authorities account for a small percentage of the total number of requests received by the Ombudsman. There were only 7 instances where the Ombudsman sustained a complaint involving a local authority.

We submit that the Local Government Commission should take a staged approach to exercising its new powers. It should begin by identifying two or three areas where the commitment to change is demonstrable and piloting a new CCO model with an evaluation

⁴⁴ Shirley et al (2016), *The Governance of Auckland, Five Years On* page 9.

after a couple of years. We agree that infrastructure is a key part of New Zealand's economic performance, and that it is important to make evidence based decisions and not rely on theory.

The cost of good quality service is increasing and will do regardless of which agencies deliver the services

Local government is frequently criticised *for the level of rates increases* – in particular that rates are increasing “faster than the rate of inflation”. Although this statement is correct, it ignores that the cost drivers for a local authority are quite different from those that a household faces. Simply put, using household inflation to measure local authority costs is wrong.

Local authority costs are driven by the costs of providing infrastructure – be it roads, water, or community infrastructure. By way of illustration, in the period between June 2005 and June 2015 the Consumers Price Index (CPI) has increased 25 percent, the Producers Price Index (Construction – Outputs) has increased 44 percent.⁵ Both measures are developed by an organisation that is independent of central and local government direction and can therefore be regarded as objective.

Each year BERL compile a set of forecast movements in the prices of the goods and services local authorities consume, using the same model BERL uses for its general economic forecasts. This local authority cost index is forecast to increase by around 29 percent over the coming years.⁶

Increases in the cost of infrastructure and increases in rates cannot be logically separated. Yet we are aware of only one substantial (but dated) piece of research that assessed and evaluated the drivers of cost increases, and that was limited to roading.⁷ That report noted that road construction input costs had increased 30 to 40 percent in the preceding five years, with the author of the report further noting both that the increase was unavoidable and that this trend was mirrored in other countries.

⁵ The Local Government Act refers to this index as a measure of movements in construction prices. The PPI index we consider most closely approximates movements in infrastructure costs – that for Heavy and Civil Construction increased 51 percent.

⁶ BERL 2015, *Forecasts of Price Level Change Adjustors – 2016 Update*. These are not forecast rates increases or expenditure increases, these are forecasts of the key producers cost and labour cost indices produced by Statistics New Zealand.

⁷ Ministerial Advisory Group (2006), *Ministerial Advisory Group on Roading Costs – Final Report*.

Movements in construction prices are largely beyond a local authorities control – noting that all but the most minor capital work, and much of the maintenance work is ‘market-tested’ i.e. put to competitive tender. The only real response available in these circumstances is to reduce the amount that is constructed, and this is not available in an environment where increases to service standards and demands for additional services on local government, often as a result of a policy direction from central government.

Sharing capability is a lot more prevalent than is commonly recognised

Local authorities do not compete with each other (in the sense that a private sector organisation would). One of the strengths of the local government sector is its ability to share capability. This takes many forms, ranging from something as informal as Hastings District (among others) assisting Christchurch City Council to clear the backlog of resource consents that existed in 2013, to more formal arrangements such as the establishment of Council Controlled Organisations (CCOs).

At the end of 2015 SOLGM undertook a short survey to determine how common shared capability arrangements were in the sector. The survey was done at short notice in December, but 35 councils still responded. All were involved in at least one such arrangement, with 80 percent stating they were involved in six or more. Shared capability arrangements also appear across most areas of local authority activity, not just in the network infrastructure. A summary of the results can be found in Appendix A.

The case study below highlights local government’s ability to share, and to innovate for successful outcomes.

Case Study 1: A Successful Shared Initiative - Project Helix

Selwyn District has been New Zealand’s fastest growing district for the past six years, and is a major player in the Canterbury rebuild. To ensure Council coped with sustained high levels of building activity it needed a better tool for managing demand and delivering service expectations.

Selwyn District Council in partnership with Alpha Group has developed and implemented an end-to-end, web-based building consent system (AlphaOne) to support its objectives of promoting excellence in service delivery and providing community and industry leadership as a territorial authority.

In an environment where central government is looking at national building consent systems, Selwyn and Alpha designed the product to address aspects such as shared services, faster consenting processes to stimulate the economy, and more efficient interactions with community and businesses. The results to date demonstrate a commitment to local government principles of territorial authorities working together to manage workloads, share resources and reduce compliance costs.

Project Helix was the winner of the Supreme Award at the 2015 McGredy Winder SOLGM Local Government Excellence Awards ® (as well as the Transforming Service Delivery category). At the time of writing this submission six councils have purchased the tool. To further demonstrate that innovation is a strength in local government, Kaipara District Council's adoption of AlphaOne received a highly commended citation in the same category.

Recent legislative changes will further encourage sharing capability

Changes made to the Local Government Act during 2014 will serve as a further spur to local authorities to explore options for sharing capability. The new section 17A of the Act requires local authorities to periodically assess the cost-effectiveness of the arrangements for funding, governance and delivery of those services, together with a list of options that must be considered.

Many of these options in these service delivery reviews involve delivery by some combination of local authorities (such as a council owned company or joint venture). SOLGM guidance strongly recommends that local authorities undertake these reviews as a group – for example it would not be an efficient use of resources if each of the 10 territorial councils in a region each did a separate review of the same services.

The case study below shows just a sample of arrangements for shared capability that exist amongst the four councils on the West Coast, together with their targets for review during the section 17A process.

Case Study 2: A Commitment to Regional Efficiency – The West Coast Memorandum of Understanding

The three West Coast territorial authorities and the West Coast Regional Council recently agreed to a unified approach to generate greater efficiencies in service delivery across the region. Guided by what is best for the community as a whole, the four councils agreed to a Memorandum of Understanding.

Over time the four councils have worked collaboratively on more than two dozen projects or approaches. Some of the projects of interest include:

- a recent restructure of civil defence staff so they are now joined up and delivering on regional priorities through a new organisation (Civil Defence West Coast)
- a very new project to jointly deliver economic development at regional level
- joint procurement of insurance has resulted in substantial savings
- adoption of a Regional Transport Plan focussed regional effort on improving a key strategic route and a key one-lane bridge replacement
- Westland, Buller and Grey District Councils have joined up their building permit services (using Selwyn's Alpha One technology)
- joined up library services and approximately twenty other initiatives.

The four councils may consider the following during the section 17A process:

- a shared RMA planning, consenting and compliance monitoring team for the region
- a regional advocacy and policy development advice team
- Asset Management Plan and corporate (Long Term) planning as a team
- joint back office services (payroll, valuation & rates collection, accounting services)
- common IT support services
- a shared Communications officer and sharing of community engagement expertise;
- a shared Regional Archive
- common HR and legal services offices
- a road maintenance centre of excellence
- a solid waste management centre of excellence
- a water supply centre of excellence and
- a wastewater treatment centre of excellence.

The acquisition of scale generates benefits but these are not uniform

One of the characteristics of much of the network and community infrastructure is that there are a number of small scale schemes and assets that are geographically dispersed. For example, Tasman District Council has no fewer than 15 water schemes and 12 wastewater schemes.

Cost structures are influenced not just by how many people live in a local authority, but also by how spread out they are. Claims that amalgamation of services will automatically generate economies of scale therefore should be treated with some caution as the actual size of economies of scale.

That is not to say that there are not advantages in agglomerating services. One available to owners of network infrastructure is the ability to "network price". That is to say, set up a funding system where the bigger or more mature parts of the network cross subsidise the new capital works needed in another, usually smaller, part of the district. There was an observable move towards network pricing in the 2012 LTPs, and still more local authorities consulted their communities on the issue during 2015.

The other benefit that usually comes is the generation of strategic capacity. It can be difficult to attract suitably skilled and experienced engineers and asset managers to local government as a sector, and to rural and provincial local authorities in particular. Agglomerating brings groups together which creates additional learning and sharing of expertise – and is the underpinning of the regional centre of excellence models.

At the same time though, the acquisition of scale can raise concern about potential loss of service and more particularly lack of responsiveness to local concerns.

The consultation process for this Bill was flawed

SOLGM would like to express concern over the nature of consultation with the local government sector, and the manner in which this Bill has been developed. The Disclosure Statement that accompanies this Bill provides Treasury's assessment that the Bill only "**partially meets** the (Government's set) quality assurance criteria" and further notes that:⁸

The importance of council willingness and capability and public acceptability, to the successful use of greater flexibility and choice is made clear. This highlights that the

⁸ Department of Internal Affairs (2016), Departmental Disclosure Statement, page 5

lack of wider consultation with local government and information about LGNZ and the reference group leaves a significant gap.⁹

SOLGM would like to highlight the importance of working with stakeholders in the development of legislation to ensure that issues of the technical nature are addressed early within the process. Our organisation represents highly knowledgeable senior management, Chief Executives and council staff throughout the nation. Our expertise could have helped aide and inform the preparation of this bill.

SOLGM was **not** consulted in the preparation of the Better Local Services package – we became aware of Cabinet papers at the same time as the general public. SOLGM has been consulted in the development of the last three Local Government Bills (those in 2010, 2012 and 2014), including sighting legislation in draft. SOLGM was not shown the legislation in draft. We understand that Local Government New Zealand likewise did not see the draft legislation, and, like us, became aware that this Bill was in the public domain only when contacted by a staff member from an opposition research unit.

We leave it to the Committee to judge whether this represents a best practice approach to the development of legislation, but note that many of the technical and practical issues we raise could have been resolved before introduction of the Bill. In short, officials could have saved a great deal of the Committee's time (and their own).

⁹ Department of Internal Affairs (2016), page 5.

Reorganisations

The Bill makes a large number of substantive changes to the provisions that govern reorganisations including changing the purpose of reorganisation, the types of reorganisation that can be made, and the processes through which the change is made. In preparing this submission we have worked through the provisions at micro level and have a number of amendments to recommend.

Scope

We note that the scope of a reorganisation has been widened to incorporate transfers and the establishment of CCOs. The proposed new subsections 24 (m) and (n) provide the Commission with the power to establish Committees and Joint Committees and delegate powers to these bodies.

We can easily understand why the Commission might need a power to establish these as part of giving effect to some types of reorganisation, for example a joint bylaws committee for a water CCO. As worded it seems to us that this provision places committee structures within councils as a matter that can be reorganised in its own right, for example by requiring a council with a Finance Committee and a Planning Committee to combine the two together.

If this is the case then it appears to be a very significant intrusion into the internal governance of local authorities with no apparent rationale. This appears to us to have been a drafting error.

Recommendation

- 1. That the Commission agree to add the phrase “but only where this is necessary to give effect to other reorganisation under this section” to the proposed new subsections 24(m) and 24(n).**

Community Support

Clause eight, schedule three of the principal Act currently requires that any reorganisation proposal must have demonstrable community support, and that this is one of two fundamental tests that a reorganisation currently has to meet. As it stands, the Bill would largely remove this test has been largely removed from the Act.

Under this Bill, a reorganisation initiative may, but does not have to include information that demonstrates the initiative has community support. As far as we can determine, the Commission is not empowered to decline a reorganisation that is missing this information.

As imperfect a test as demonstrable community support was, it at least established a minimum expectation and acted as a means of weeding out proposals that were unlikely to have public support. This test helped the Commission conclude that there were no proposals for political amalgamation that would succeed at a poll.

These reforms were predicated on a commitment that they would give local communities *"greater value for money in their service delivery arrangements without communities losing voice and choice"*.¹⁰ An initiative that does not start by showing it has demonstrable community support can hardly be said to protect community voice and choice.

We submit that the Bill must be amended to ensure that initiatives have demonstrable community support. In our view this should occur in two places:

- as one of the mandatory contents of a reorganisation initiative or investigation requests (this might be an additional (e) to the proposed new clause four of Schedule Three and reads "information that shows that the reorganisation initiative has demonstrable community support)
- as one of the steps in a reorganisation investigation (the wording of the present clause 7(g) refers to significant community opposition which, in our view, is not a sufficient standard of proof.

¹⁰ Minister of Local Government (2016), *Local Government – Better Local Services Reforms*, paper to the Cabinet Economic Growth and Infrastructure Committee, page 3.

Recommendations

That the Committee:

- 2. agree that proposals for reorganisation initiatives should be required to show demonstrable community support**
- 3. agree that the clause 7(g) be amended by deleting the phrase “of significant community opposition to” and replacing this with “that there will be demonstrable community support for ...”**

Good Local Government

There is a second test that reorganisation proposals must meet under current legislation. Clause 12 of the Third Schedule to the principal Act requires that reorganisations meet the so-called ‘good local government test’, which is specified at length.

The bottom line that reorganisations should promote good (dare we say better) local government lives in the Bill. The purpose of reorganisation (as amended in clause 8 of the Bill) refers to “*the (promotion) of good local government ...*” A reorganisation plan has to state how it will promote good local government. And we agree that many of the key elements of the present test of good local government have been incorporated in the Bill.

We submit however, that the fundamental, emblematic nature of ‘good local government’ merits a single clear legislative statement of what the term constitutes. This should be incorporated in the interpretation section of the Third Schedule (i.e. clause two, Schedule Three).

Under the principal Act as it stands, all reorganisation proposals provide description of the potential improvements that would result from the proposed changes and how they would promote good local government.¹¹ The Bill makes no such requirement beyond “an explanation of the outcome that the proposed changes are seeking to achieve.” We submit that having to demonstrate consideration of a test of good local government is a check on proposals that are being made for frivolous or non-substantive grounds. We submit that such a test should be inserted into clause four, Schedule Three.

¹¹ Clause 5(1) e, Schedule Three, Local Government Act 2002.

Recommendations

That the Committee:

4. **agree that term good local government be defined and added to clause 2, Schedule Three of the principal Act**
5. **agree that proposals for reorganisation initiatives should be required to show demonstrable community support**
6. **agree that reorganisation investigations should be required to demonstrate how they promote good local government.**

Investigations

The Commission can initiate investigations of its own motion.

We support this in principle but note that the Commission does not need to discuss the proposed scope of the investigation with the affected local authorities. The proposed new clause six, Schedule Three appears to require the Commission only to notify the affected local authorities.

We submit that natural justice requires that the notification to the local authority come with the right to comment on the proposed matters to be investigated, and provide an indication of any information that the local authority holds that may be relevant. Each will better enable the Commission as it develops the process document. The latter will also be a relevant principle under the proposed new subclause 8(3)(c), Schedule Three.

On a purely technical note, the term 'process document' that is used in the proposed new subclause 8(2) of this Schedule is a term that does not occur anywhere else in this Bill. We suggest that this term should be amended to read "the written record made under (1) above" (or similar).

Recommendations

That the Committee:

7. **agree that the proposed new clause six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process**
8. **agree that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds).**

Polls

SOLGM notes the amendment of the poll provisions to make the conduct of polls mandatory in cases where the Commission is proposing changes to political structures; to make a major transfer of water, transport or RMA functions between local authorities.

These seem to (correctly) reflect either:

- a practical realisation that changes to political structures would almost always go to a poll; or
- a policy decision such as major transfers of some functions are likely to be a matter of significant community concern.

As written the proposed new clause 23, Schedule Three does not include proposals to establish CCOs. That is, establishment of say a regional water or transport CCO is not required to go to a poll.

We submit that no case has been made in the Cabinet paper or regulatory impact statement to justify why the establishment of CCOs sits outside the democratic right to determine what is best at local level. It is also unclear to us what the practical difference between a transfer of roads, water or RMA to another local authority (which requires a poll) and what is effectively a transfer to a CCO (where no poll is required).

Local communities do care about the services they receive (as any local authority who has ever tried to close or transfer a small rural scheme will tell you). They are especially sensitive to a loss of responsiveness to local concerns, something that no amount of accountability documents will overcome.

Recommendation

- 9. That the Committee agree that the proposed new subclause 23(1)(e), Schedule Three be amended by adding the words “local authority or to a council controlled organisation” after the word “another”. This amendment would require polls for transfers of transport services, water services and RMA to CCOs.**

Time limits on reorganisation

The Bill appears to propose repeal of the present clause four, Schedule Three of the principal Act. This clause prohibits what the Bill would refer to as reorganisation initiatives and investigation requests where a local authority has been the subject of a reorganisation and the scheme contains a time limit on new initiatives.

However we submit that some protection is still needed. Even the unsuccessful reorganisation initiatives are unsettling for those involved ‘on the ground’. We suggest that continual reorganisation can impact on organisational morale, retention of staff, community perception of the value of democracy and the like. It is not obvious to us that continued undermining of any of these will promote quality service.

We also observe that any organisational change takes time to successfully implement and ‘bed in’. Systems and culture need to be developed, often from scratch. That is to say, that the full benefits of a reorganisation can take some time to materialise.

We would agree that the clause four of the principal Act does not sit well with the wider range of reorganisation proposals that the Commission may make. For example, the prohibition would prevent the Commission from investigating a transport services CCO in one year, and a water services CCO in the next. We submit that clause four, Schedule Three of the principal Act needs to be retained with rewording to reflect the wider range of reorganisation proposals. We would be happy to work with officials to develop appropriate wording.

We also recommend that the list of factors that the Commission has regard to when receiving an application should be extended to require it to have regard to the time elapsed since the last investigation of the same or substantially similar nature. This might also refer to any changes in circumstances since the last investigation.

Recommendation

That the Committee:

- 10. agree that clause four, Schedule Three of the principal Act be retained with amendments to provide for the wider scope of reorganisation.**
- 11. agree that the proposed new clause seven, Schedule Three be amended by adding a new subclause (b) that would read “the time elapsed since the last investigation of the same, or substantially similar nature, and any relevant changes in circumstance in the intervening period”**

Draft for consultation - not SOLGM

Local Government Commission

Much of the proposed new sections 31B to 31H relate to the reestablishment of the Local Government Commission as a largely separate entity. These provisions are largely mechanical, and relatively standard for Crown entities.

Ministerial Expectations

The proposed new section 31A provides the Minister with powers to set expectations for the Commission. These include powers to specify:

- a. issues, problems or opportunities that the Commission must regard as having high priority for investigation
- b. geographic areas that the Commission must regard as having high priority for investigation
- c. geographic areas that the Commission must not investigate.

We have no concerns about the first of these powers, as the government will have particular issues or concerns. This seems to provide a power for the Minister to state any particular concerns as a priority, for example a particular Minister might want to focus on improving transport services or the delivery of RMA functions.

We are more concerned about the second, and particularly the third. This power might simply be used to direct the Commission not to give priority to areas that have recently been the subject of an investigation. However it might also be used for more political purposes e.g. councils may not be able to investigate this or that area in an election year etc. Even used benignly this power is likely to see investigations in some of the smaller provincial areas placed at the back of the queue.

We submit that this power is too broadly drawn. We would be most comfortable if the proposed sections 31A(2)(b) and 31A(2)(c) were deleted altogether. A very much second best solution would be to delete the proposed section 31A(2)(c) or amend it to permit the Minister to require the Commission to assign investigations in some geographic areas a lower priority.

Where these powers are used, they should be used transparently. As currently worded, these powers come with no obligation to consult anyone (section 31A(3) says only that the Minister may consult anyone he or she feels it appropriate to). Similarly there is no

expectation that a communication given under this section would be notified, although such a communication would be discoverable under the Official Information Act.

We would expect that as a minimum the Minister would be required to consult:

- the Commission
- the local government sector, through its representative organisation Local Government New Zealand and
- any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister's proposed expectations.

The current section 31A requires the Commission to publish any statement of expectations on its website. This provision has not carried through into the proposed new section 31A. Transparent publication of any expectations is an important check on overtly political use of this power – we can therefore see no obvious rationale for removal of an obligation to publish. This might, for example, form part of a statement of intent or work programme.

Recommendations

That the Committee:

- 12. agree that the proposed new subsections 31A(2)(b) and subsections 31A(2)(c) be deleted**
- 13. agree that the proposed new subsections 31A(3) be amended to require the Minister to consult the Commissions, the Local Government Association of New Zealand Incorporated¹², and any interested or affected Ministers**
- 14. agree that the Commission be required to publish any statements of Ministerial expectations as part of its statement of intent.**

¹² This is the legal name of the organisation currently trading as Local Government New Zealand, and is the name used elsewhere in legislation (such as the Rating Valuations Act 1998).

Membership

We support the proposed amendment to allow for the appointment of up to two further Commissioners. There are times when the Commission has particularly high workloads and this is a sensible mechanism for managing workload, and ensuring the operation of the Commission is not unduly hindered by a sudden unavailability of a Commissioner.

There is no requirement on a Government to appoint or even consider people with a background in local governance, the management or delivery of local services or infrastructural management and delivery. Although past practice has always been that at least one member of the Commission to have been a former Mayor or Chairperson of a local authority, and often two, this needs to continue.

We submit that there should be a requirement to appoint at least one person who has served as a member of a local authority. Experience and pragmatism count. In the alternative, the Minister should be placed under a requirement to consult with the sector in making appointments to the Committee.

Recommendations

That the Committee:

- 15. agree that a new subsection 33(2A) be added to the Bill requiring that at least one member must have served as a member or Chief Executive of a local authority**
- 16, agree that the proposed new subsections 33(2A) be amended to require the Minister to consult the Local Government Association of New Zealand Incorporated before making an appointment to the Local Government Commission.**

Disputes

SOLGM notes the provisions that empower the Commission to resolve disputes where authorised in the Bill, and where one or more of the parties to the dispute refer the matter to the Commission. This is an important backstop, especially in the establishment phases of CCOs when shareholders are most likely to dispute over matters such as initial shareholding. We also note that the Commission will have powers to recover the costs of the dispute resolution process, and may apportion recovery based on the merits of the initial positions of the parties. This should act as a disincentive to push for untenable positions.

We have two issues with regard to the disputes provision. Local authorities are required to send the Commission all information that is relevant to the matter. This information is explicitly removed from the scope of the Official Information Act 1982 until the dispute has completed the resolution process. This is appropriate – but covers the information only at the point that it arrives in the Commission. There may be information created in the course of the local authority's supply of the information. Is there merit in extending the protection to information provided in the physical supply of information by the local authority?

Second, the proposed new subsections 31H(4) and (5) each contain references to giving notice to the Mayor and Chief Executive of each party to the dispute. The concept is fine, but as worded these provisions do not recognise that regional councils may be a party to this dispute. This may be a common circumstance, for example if a dispute involved a transport services CCO that was taking on passenger transport or transport planning activity, an economic development CCO or some of the shared services CCOs.

Recommendations

That the Committee:

- 17. agree to extend protection under official information law to include information about a dispute that is supplied to the Commission and**
- 18. agree that the proposed new subsections 31H(4) and (5) be amended by adding the words " or Chair of a Regional Council, ..." after the word Mayor.**

Bylaws

SOLGM considers that the bylaw provisions in this Bill are complex, inconsistent between the different types of CCO and therefore carry with them the potential to inadvertently

create issues similar to the traffic issue Parliament validated last year. Powers to regulate should be as clear and consistent as circumstance allows. We are uncertain that the differences between water and transport services CCOs are always warranted.

SOLGM notes and agrees with comments in the Cabinet papers to the effect that *“extending bylaw-making powers to CCOs would be ‘without precedent and unlikely to be justified. It is appropriate that this power and the power to appoint enforcement officers are exercised by fully democratically accountable governing bodies (i.e. parent councils and are separated from operational entities for constitutional reasons and to provide checks and balances).”*¹³

Joint Committees for a Water CCO

The proposed new section 56J of the Bill requires the shareholders in a water CCO to create a joint committee (in essence a bylaw committee) and delegate that joint committee the responsibility to appoint and ‘warrant’ enforcement officers and commence enforcement actions. In practice, this requirement will mean that what was meant to be an empowering provision around the establishment of a joint committee of shareholders (as per the new section 56W) becomes mandatory.

It is unclear to us whether the creation of a joint committee specifically to oversee bylaws is necessary. The relevant provision in the Local Government (Auckland Council) Act requires the Auckland Council to appoint enforcement officers to enforce compliance with bylaws, and requires the Council to consult Watercare to ensure sufficient officers are appointed.

We accept that this result is easier to achieve for a CCO that has but a single shareholder. In all honesty the water bylaw powers are largely about asset protection and the unauthorised taking or misuse of the water supply. It is not the interests of the asset owner or the general public for people to take the regulation and exercise of these powers seriously, after all it's the public health at risk.

Recommendation

- 19. That the Committee agree that the proposed new section 56J be removed from the Bill.**

¹³ Minister of Local Government (2016), *Local Government – Better Local Services Reforms*, paper to the Cabinet Economic Growth and Infrastructure Committee, page 38.

Bylaw Powers for Transport CCOs

It appears that this Bill provides the Commission with fairly extensive powers to transfer bylaw-making powers from local authorities to transport services CCOs. It appears in most instances the power to set and enforce the bylaw rests with the CCO. We invite the Committee to reflect on the incongruity between the Cabinet paper comments about the inappropriateness of transferring powers to make and enforce local legislation to bodies that are not democratically elected and what the Bill proposes with respect to the transport services CCOs. We cannot find any particular rationale that would see a joint committee required for bylaw and enforcement powers in water but not in roads.

Section 146 – What Happens in the Road Corridor?

On a lower level we note that powers to make bylaws under section 146 of the principal act can be transferred to transport CCOs. Our understanding of this section is that it covers such matters as:

- regulating solid waste, trade waste, on site wastewater disposal, bee-keeping, and trading in public places
- managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with 1 or more of water races, water supply, land drainage, reserves, recreation grounds and cemeteries.

With the possible exception of trading in public places we weren't aware the any of the other activities sit within the ambit of traditional road controlling agencies, passenger transport providers or public transport planners. It appears there is an element of transferring bylaw powers to the transport CCOs in what appear to generally be remote prospects that they might be required. We submit that the Committee should either constrain the transfer of section 146 powers that are transferrable to a roading company or remove this from Schedule 8B.

Recommendation

- 20. That the Select Committee agree either to constrain the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B or (our preference) delete clause 6 of this same schedule.**

CCO Accountability Documents

SOLGM would like to note the importance of strategic thinking for local authorities. Within the LGA, local authorities make strategic decisions through their service delivery plans, infrastructure strategy, financial strategy and long-term plan with a high level of community engagement through a consultation document. The integration of all of these elements is vital for the creation of a strategic and forward-thinking community that will meet "current and future needs." This responsibility is currently vested with local authorities. Through these key elements local authorities make considerations and trade-offs to optimise efficiency and effectiveness of service delivery looking at timeframes of 10 years, 30 years, with some local authorities choosing to look beyond at 100 years in the future.¹⁴

SOLGM therefore generally supports the new accountability provisions that apply to substantive CCOs. The amendments we propose here are generally of a technical and practical nature.

Service Delivery Plans

SOLGM supports the requirement that substantive CCOs prepare a service delivery plan. This document is, broadly speaking, the equivalent of a long-term plan in a local authority. These documents, and the infrastructure strategy, provide the CCO with a strategic direction, ensure that this is integrated with the parent local authorities own direction, and generally provide for sustainability of service.

We have two concerns with the provisions as currently worded. The first lies in the content. The proposed new section 56C(2) generally replicates the relevant parts of schedule 10 of the Act.

We think the wording of this section could be improved. Some aspects of the drafting appear unduly vague. The formulation in subsection (a) "how the organisation intends to ..." has been used previously elsewhere in the Local Government Act and has generally caused confusion. Similarly the use of the term "environmental factors" could easily be interpreted as a reference to the physical or natural environment. We suspect that the Government's intent was that a service delivery plan include the following:

- (i) the shareholders' objectives and how the organisation contributes to the achievement of these objectives

¹⁴ Waimakariri Infrastructure Strategy 2015-2115.

- (ii) the intended levels of service
- (iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service
- (iv) demographic, economic and other factors that give rise to the need for expenditure
 (Note : this formulation draws loosely on similar provisions in section 101A of the principal Act).

The second concern we have in this area is that there is no obvious process through which the CCO engages with the shareholding local authorities on the content of a service delivery plan. The proposed new section 56E provides that the plan cannot be adopted without shareholder's approval, but the process of working with shareholding councils should begin well before this point. A provision similar to that for statements of intent should be required (we direct the Committee's attention to clauses 2 to 4 of the present Schedule 8 as the model).

In a similar vein, there is no obvious requirement on the CCO to consult the community when they are adopting a service delivery plan. The community is almost certain to have views on matters such as levels of service and funding. This is, broadly speaking the LTP for the CCO, it seems unusual that it would not be open to consultation.

Recommendations

That the committee:

- 21. agree that the proposed new section 56C(2) be deleted and replaced with "the service delivery plan must set out:**
 - (i) the shareholders' objectives and how the organisation contributes to the achievement of these objective**
 - (ii) the intended levels of service**
 - (iii) programmes of capital expenditure and maintenance necessary to achieve the intended levels of service**
 - (iv) demographic, economic and other factors that give rise to the need for expenditure."**
- 22. agree that substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.**
- 23. agree that substantive CCOs be required to consult the community while preparing a service delivery plan.**

Infrastructure Strategies for CCOs

SOLGM supports the requirements that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. The strategy reconciles the long-term economic, demographic and environmental influences with asset needs and realities. SOLGM therefore regards the infrastructure strategy as critical to long-term planning and good asset management.

Parent local authorities prepared their first infrastructure strategies as part of the 2015 long-term plans. On the other hand, the infrastructure strategy for a CCO is a separate document. While this might be acceptable in the transition we consider that the infrastructure strategy and the service delivery plan must align and that the best means for doing this is to ensure they form part of the service delivery plan.

Section 101B(6) lists assets that are regarded as infrastructure assets for the purpose of an infrastructure strategy. This includes three waters infrastructure, roads and footpaths and flood protection and river control, and anything else a local authority decides to include. The issue is that section 101B(6) appears not to apply to infrastructure strategies for CCOs. This is more of an issue for a substantive CCO that is not a transport or water services CCO, and may discourage local authorities from asking other substantive CCOs to adopt an infrastructure strategy. We suspect that the Government would want to encourage local authorities and their CCOs to adopt infrastructure strategies.

And finally, we note that a CCO infrastructure strategy is prepared under the same requirements to consult with shareholders as the service delivery plan. We recommend this in a similar way.

Recommendation

That the Committee:

- 24. agree that CCO infrastructure strategies after the transitional should be adopted as part of the CCO's service delivery plan**
- 25. agree that the proposed new 56D(3) be amended by deleting the phrase "Subsections (3) and (4)" and replacing it with "Subsections (3), (4) and (6) ...".**

- 26. agree that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.**

Shareholder Committees

Section 56W requires shareholding local authorities to form a shareholder committee to “collectively manage the interests in performing or exercising their responsibilities powers and duties as shareholders of the council controlled organisation”. SOLGM can see the advantages of this approach as a means of providing some streamlining the processes and generating a unified for approving the documents set out in section 56W(3).

Exemption

Local authorities do not need to form shareholder committees if each of the shareholding local authorities resolves to separately perform its duties as a shareholder.

We interpret the use of the term ‘each’ in this context to mean that all the shareholding local authorities have to resolve in this way, or the committee, even one dissent means the shareholder committee must be established. The Select Committee might clarify that this is the intent. Given the intent of a shareholder committee is to streamline and unify the approval processes, a high threshold is justified.

Recommendation

- 27. That the Committee agree to replace the term ‘each’ with the term ‘all individually’.**

Unanimity

Section 56W(4) requires that in circumstances where shareholding local authorities resolve to exercise their shareholders duties individually then the obligations of sections 56W(3) can only be resolved by unanimous agreement. Some of the new CCOs might be extremely large entities, with numbers of shareholding local authorities. Although this provision is intended to safeguard the interests of smaller communities, it will mean in practice that

each of the documents required under section 56W(3) may sacrifice direction and specificity in the name of compromise. These are important documents, if a service delivery plan or infrastructure strategy is vague, full of pet projects to gain unanimous support etc., there is some possibility that the CCO's ability to generate a successful outcome may be compromised. We submit that adoption of these documents should require support of a significant majority of the shareholders (however measured) as opposed to unanimity.

Recommendation

- 28. That the Committee agree to delete the term 'unanimous agreement' in section 56W(4) and replace with '*by resolution of two-thirds of the shareholding authorities*'.**

Distribution of Surpluses

SOLGM notes that water services CCOs are expressly prohibited from distributing a surplus to any of its shareholders. The Cabinet paper suggests that this restriction is to 'head off' potential community opposition to the changes and undue complications to freshwater negotiations.

SOLGM agrees that both these concerns have validity. For example, in 2006 and 2007 this Committee considered two petitions from Auckland ratepayers over a 'charitable payment' that Metrowater (then an Auckland City Council subsidiary) made to Auckland Council.

However, we are also unclear why this same rationale has not been equally applied to the proposed transport services CCOs. Public concern about any charging for road use is likely to be of equal concern – especially when recovered via coercive taxes such as fuel excise and road user charges.¹⁵ Freedom of movement may not rank quite as highly as water, but is still one of the basic freedoms of New Zealanders. Equally it is unclear to us why a company with a power to charge and a power to distribute to shareholders might not attract interest of some parties during Treaty settlement negotiations.

¹⁵ Those with longer memories may recall the so-called Better Transport, Better Roads reform package of the late 1990s. Concern regarding the control that profit-oriented road companies might have over pricing decisions were prevalent, and ultimately one of the reasons this package did not proceed.

We are also unclear whether some common local government policies and practices would be regarded as a payment for the purposes of this clause. The Committee and officials should consider and clarify the ambit of clause 56H(a), including whether this will extend to the ability of a water services council-controlled organisation to:

- provide discounts to any owner or shareholder
- provide rebates to any owner or shareholder
- make subvention payments to shareholders or
- accept or receive tax loss offsets from its shareholders.

Recommendation

29. That the Committee agree to add a provision prohibiting transport services CCO from distributing a surplus to shareholders as part of the Bill.

Appointment of Directors

SOLGM supports the provision that prohibits members of local authorities, community boards or local boards from serving as directors of multiply owned CCOs. The potential for conflicts of interest are obvious and can be serious. To take the most obvious example, by law directors of companies must act in the best interests of the company. Imagine then the conflict of interest that an elected member will have in reconciling a request for a dividend from their council vis-à-vis the needs of the company.

We are also aware of some instances where local authority staff sit on the boards of CCOs. We submit that this can be an equally significant conflict of interest. It is regarded as "not good practice". Staff are under an obligation to implement the lawful instruction of their Chief Executive, who in turn is obligated to follow the lawful instructions of their local authority. Staff serving on boards can be put in an invidious position where their obligations as directors conflict with their obligations to their employer. Both the staff member and the Chief Executive place themselves in jeopardy.

We recommend that the Select Committee prohibit this practice, at least in relation to multiply owned CCOs.

Recommendations

That the Committee:

- 30. agree to add a new (c) to the proposed new subsection 57(3) that prohibits employees of a local authority from acting as a director of a multiply-owned CCO**
- 31. agree to add a new subsection 57(5) that reads *"A director of a council controlled organisation that is appointed as a staff member of a shareholding local authority must first resign his or her position as a director of the council controlled organisation before taking up the position as an employee."***

Development Contributions Policies

SOLGM generally supports the proposal to empower substantive council controlled organisations to access development contributions through the development contributions policies set by the shareholding local authorities.

Development contributions are not standalone documents. Setting development contributions is an important policy choice for local authorities. Some local authorities have 'growth pays for growth' policies and make the maximum use possible under law, some smaller local authorities have no development contributions at all. There will be tensions between substantive CCOs that have the interests of the CCO as their primary driver, and the shareholding councils that may have wider policy considerations.

Development contributions are one of the outputs of a funding policy process set out in section 101(3). In that process local authorities are required to consider and expose the following for each activity:

- the community outcomes
- who the beneficiaries of the activity are
- when benefits accrue
- whether there are any exacerbators¹⁶ and
- the costs and benefits of funding the activity separately.

¹⁶ An exacerbator is an individual or group whose action or inaction creates a need for expenditure. This consideration is often used as a part justification of a development contributions policy in that a development adds to existing demand that might require a capacity extension.

These policies are subject to public consultation. Although a development contributions policy also has to explain why development contributions are being used, with reference to the above, these policies do not need to (and usually don't) refer to other sources. Our point is that the judgements a CCO board might make in this area will effectively override the policy judgements of local authorities in a number of ways.

We are therefore unclear that an unelected board of a CCO should be able to simply "require" a local authority to amend its development contributions policy, and without a direct requirement to consult the affected local authorities. This should be a matter for agreement between the shareholding local authorities and the board of the CCO, possibly as part of the funding components of a service delivery plan or statement of intent. In the event that a dispute arises this might then be treated as a matter for the Commission to resolve under the proposed new section 31H.

Recommendations

That the Committee

- 32. agree that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and**
- 33. agree that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H.**

Taxation Matters

Note: SOLGM gratefully acknowledges and thanks Phil Fisher and Richard Toovey, PwC for their assistance with these aspects of our submission.

The taxation laws that apply to local authorities are complex and unusual. The taxation rules applicable to local authorities are complex and unusual in the New Zealand context. Local authorities are only subject to income tax on certain streams of income from CCOs (as specifically defined for tax purposes). Rules in relation to other taxes, such as GST, follow general principles with certain specific taxes rules being applicable to specific local authority related matters (e.g. rates, resource consents etc.).

The tax rules that apply to CCOs follow usual relevant tax rules (e.g. partnership tax rules apply if the CCO is a partnership). The historical context to the current tax rules as they apply to CCOs and local authorities is largely to ensure that commercial activities that are carried out externally from local authorities and which compete with private sector enterprises do not receive a tax advantage.

Because of the peculiarity of the rules applicable to local authorities, it is important that ambiguities are eliminated where possible, and the scheme and purpose of the tax legislation is maintained. Further, it is also imperative that the relevant tax legislation is easy to identify and interpret.

The relevant Cabinet decision determined that the establishment of CCOs would be tax neutral. We support this policy objective but are not certain that the Bill as presently drafted achieves this.

Tax Status of Multiply Owned or Substantive CCOs

Section 11A of Local Government Act 2002 (LGA 2002) establishes that local authorities must consider the contribution that a group of “core services” make to the community. These include:

- (a) network infrastructure:*
- (b) public transport services:*
- (c) solid waste collection and disposal:*
- (d) the avoidance or mitigation of natural hazards:*

(e) libraries, museums, reserves, and other recreational facilities and community amenities.

The Local Government Act 2002 Amendment Bill (No 2) aims to enable local authorities to work together to deliver these services in a more efficient and collaborative manner through more flexible reorganisation.

However, any reorganisation that results in local authority activities being transferred to a CCO mean that these activities will become subject to income tax at the CCO level, as will any income received by a local authority from a CCO. We agree that CCOs that are competing with the private sector, or are providing a service where public sector provision is possible should be paying tax.

However many of the CCOs that this Bill would create will not be competing with the private sector, often because a private provider would lack regulatory authority.

We submit that a CCO should be subject to the same tax rules *as a local authority*, where:

- the reorganisation involves the establishment of a CCO which is wholly owned by a local authority or local authorities; and
- the activities are core functions of a local authority; and
- the re-organisation involves the delegation or transference of local authority powers and/or core services; and
- the CCO is unlikely to compete with private sector enterprise, or a private sector enterprise is prohibited from providing the services as it does not have the regulatory authority to do so

There is already tax precedent in this area. We refer to the New Zealand Local Government Funding Authority and Auckland Transport, which are both included within the definition of a "local authority" in Section YA 1 of Income Tax Act 2007 ("ITA 2007").¹⁷

We further note that this outcome could possibly be achieved by including "a substantive council-controlled organisation" and a "multiply owned council-controlled organisation" within the definition of a "local authority" in section YA 1 of ITA 2007.

¹⁷ We note that the commercial port related commercial undertakings of Auckland Transport remain subject to income tax.

Recommendation

34. That the Select Committee agree that CCOs that are wholly owned by local authorities, provide core functions, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.

Water Services Council-Controlled Organisation

As alluded to above, it appears that a water services council-controlled organisation will be subject to income tax if it is a company or an "entity" that has a profit purpose (i.e. it is a CCTO).

Due to the proposed prohibition on water services council-controlled organisations being able to pay a dividend or distribute any surplus to any owner or shareholder then any profits will be subject to income tax wholly within the water services council-controlled organisation.

It would appear that the proposed amendments would not preclude subvention payments being made to other loss making entities within the group provided the required shareholding thresholds are maintained (i.e. 66%). However, this may not be available to multiply owned council-controlled organisations particularly where new shareholders are added over time. This potentially creates an inequity between similar entities¹⁸.

This could be achieved by water services council-controlled organisations being defined as a "local authority" in section YA 1 of ITA 2007.

If the Committee accepts our earlier recommendation that transport CCOs be similarly prohibited from distributing surpluses then the same treatment would apply. And we repeat that Auckland Transport is already treated as a local authority for ITA purposes.

Recommendation

¹⁸ Also, potentially between shareholding local authorities; for example, if one local authority (the majority shareholder) has a 70% shareholding interest, and others only minority shareholdings, the majority shareholder can potentially obtain a tax benefit.

35. That the Select Committee agree that water services council-controlled organisations should be exempt from income tax.

Structure of Local Government related tax rules

The rules in Schedule Three of the Bill will apply when there is a reorganisation under proposed section 24 of LGA 2002 (which can include the transfer of assets and liabilities from a "transferring entity" to a "receiving entity"). However, we note that pre-existing tax rules applicable to the transfers of undertakings to CCOs already exist within Schedule Nine of the Principal Act.

The two do not always cohere. For example, the non-application of sections CB6 to CB23 of ITA 2007 following a re-organisation. We consider that the officials should be directed to review Schedule Nine of the Principal Act to determine whether these should be replicated in Schedule Three of the Bill or consolidated to provide one definitive set of tax rules.

See also our comments on GST matters below.

Recommendation

36. That the Select Committee agree that officials be directed to review the Schedule Three provisions against Schedule Nine of the principal Act.

Schedule Three – General Tax Rules

Schedule 3 sets out *general* rules which will apply for the purposes of the Inland Revenue Acts when a reorganisation under proposed Section 24 of LGA 2002 takes place. These general rules (set out at proposed clause 56) state:

General treatment

(1) A receiving entity is treated from the date of transfer as if they were the same person as the transferring entity.

- (2) *A thing done by a transferring entity before the date of transfer is treated as if it had been done by the receiving entity on the date on which it was done by the transferring entity.*
- (3) *A receiving entity is treated as having held the voting interests and market value interests without interruption from the date on which the transferring entity acquired them.*

It appears to us that the breadth of these general rules could extend beyond what is intended. For example, where a transferring entity transfers some of its assets to a receiving entity (of which it may be a partial owner), an action done by the transferring entity before the date of transfer will be treated as if it were done by the receiving entity.

So, actions resulting in a loss of “good behaviour record” with Inland Revenue, for instance, will be considered to have been done by the receiving entity; as will any other matter covered by the Inland Revenue Acts (e.g. unrelated binding ruling applications, employment related matters etc.).

Recommendation

37. That the Select Committee agree that the ambit of the General Rules be restricted to matters associated with assets, liabilities or voting/market interests referred to in proposed clause 55 (1) of Schedule 3.

Clause 57 Income and Expenditure

The proposed clause 57 is ambiguous as it seeks to specify that income and *expenditure* incurred by a transferring entity before the date of transfer does not become that of the receiving entity simply because of the transfer of assets and liabilities. However we understand the tax losses arising from this same income and expenditure can become the tax losses of the receiving entity under proposed clause 59 (c). Explicit confirmation of this understanding would be appropriate.

In addition *expenditure* on financial arrangements, depreciable property, trading stock etc. are dealt with elsewhere. As a matter of clarity we recommend that references in this clause to “expenditure” be replaced with “expenses”.

Recommendation

38. That the Select Committee agree that all references to “expenditure” in Clause 57 be replaced by the term “expenses.”

Clause 58 Transfer Values

We note that proposed clause 58(2) deals with items establishing the transfer values of “depreciable property.” As a matter of clarity, we assume the definition contained in YA 1 of ITA 2007 applies:

“Depreciable property is property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use—

(a) in deriving assessable income; or

(b) in carrying on a business for the purpose of deriving assessable income.

Subsections (2) to (4) expand on this subsection.”

This means that property which is currently used for deriving exempt income can still meet the definition of “depreciable property.”

More specifically, proposed clause 58(2)(a) specifies that where such depreciable property is transferred to a receiving entity and will not be used for deriving exempt income then the transfer occurs on the transfer date at *accounting carrying value* on that date.

We submit that the transfer value in this circumstance should be the *market value*. It is our understanding that this would be consistent with section EE 58(1) of Income Tax Act 2007, which specifically deals with the situation where a person uses depreciable assets for the first time. This is particularly the case where the scheme of Schedule 3 is to assume the transferring entity and receiving entity are to be treated as if they were the same person. The Select Committee should seek official’s advice on this matter.

Recommendation

39. That the Select Committee agree to seek further advice as to whether transfer values for the purposes of clause 58 should be market values.

Clause 59 – Continuity

It is possible that only a part of the operations of a transferring entity is transferred to a transferring entity. In this instance, it is possible that only a portion of a tax loss, loss balance or imputation credit balance should be available to the receiving entity.

Recommendation

40. We submit that the Committee consider whether an apportionment of losses and/or imputation credits may be required and determine a mechanism to achieve this.

Clause 60 - Goods and services tax

The intent of clause 60(2) is unclear and at the very least requires a minor amendment.

Recommendation

41. That the Select Committee agree that Clause 60 should be clarified. In the event that the Committee determines that no such clarification is required, it should be amended so as to insert “output” prior to “tax payable”.

Tax implications and reorganisation plans

As alluded to above, reorganisations under proposed Section 24 of LGA 2002 can have far reaching tax consequences. Even minor alterations in which agency holds what voting rights can have an unintended economic impact.

For example, this could be the case where a re-organisation takes place and results in a corporate multiply owned council-controlled organisation being established between two local authorities. Tax losses are made over the first 5 years of operation and carried forward. After 6 years, additional local authorities become shareholders of the company.

This change in shareholding could compromise the ability of the tax losses to be carried forward.

Although the proposed new clause 11, Schedule Three requires that the Commission consider efficiencies and cost savings, it does not specifically place the Commission under a duty to consider other implications. Tax costs and implications could be just one example of this – at the minimum we would expect that the Commission would take advice to ensure that unintended tax costs to ratepayers do not arise.

Recommendation

42. That the Select Committee agree that that clause 11, Schedule Three be amended to ensure that the Commission is required to ensure that tax costs to ratepayers are identified in reorganisation plans.

Joint governance arrangements

The proposed Section 24 of LGA 2002 specifically contemplates the establishment committees/joint committees and the delegation of responsibilities, duties and powers thereto. In addition, a joint committee must be established:

- under proposed section 56J of LGA 2002 in respect of multiply owned water services council controlled organisations; and
- under proposed section 56W of LGA 2002 in respect of multiply owned substantive council controlled organisations.

Under section 6 of LGA 2002 a committee or joint committee of a council is specifically excluded from the definition of an "entity". The ramification of this is that such a committee cannot fall within the definition of a Council Controlled Organisation for tax purposes.

However an "entity" does include "unions of interest" and "cooperation" or "similar arrangements". Previous tax concerns have existed around the meaning and boundaries of these terms.

As a matter of clarity we submit that proposed schedule 3 specify that committees/joint committees established for the purposes of a schedule 24 reorganisation are exempt from income tax.

Recommendation

- 43. That the Select Committee agree that committees and joint committees be treated the same as local authorities for income tax purposes.**

Rates Rebates Scheme

One of the lessons from the Auckland reorganisation is that CCO charges are not legally regarded as rates and are therefore excluded from the coverage of the Rates Rebate Scheme. In other words, a metered water charge levied under the Rating Act and payable to a council is covered by the scheme, the same charge levied by a CCO is not.

The practical effect of this is to reduce entitlements of low income ratepayers under the scheme. We understand that Auckland Council now 'tops up' the entitlement that eligible ratepayers receive from its own revenues.

We suggest that this may be an issue that creates opposition to reorganisation proposals, in and of itself. We were therefore unsurprised that paragraph 39 of the associated Cabinet paper appears to contemplate change to the scheme to ensure water and wastewater charges fall within the ambit of the scheme. We can find no such amendment in the legislation and suggest that one is needed.

Recommendation

- 44. That the Committee agree that water and wastewater charges levied by CCO should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.**

Regulation of Performance Measures

Imagine entering the cockpit of a plane and seeing only one instrument there. How would you feel about boarding the plane after this conversation with the pilot?

Q. I'm surprised that you operate the plane with only one instrument. What's it measure?

A. Airspeed. I'm really working on airspeed on this flight.

Q. Good. Airspeed seems important. But what about altitude – isn't an altimeter helpful?

A. I worked on altitude for the last few flights. I'm good at it. Now I'll focus on airspeed.

Q. But I notice you don't even have a fuel gauge. Wouldn't that be useful?

A. You're right – fuel is significant, but I can't concentrate on doing too many things well at the same time. So, on this flight I'm focussing on airspeed. Once I get excellent at that, and altitude, I'll concentrate on fuel consumption¹⁹.

The Bill extends the powers of the Secretary to make regulations setting out mandatory performance measures into three areas. The first is that the Secretary must make regulations that set fiscal prudence benchmarks for CCOs. The second is to widen the net of 'corporate accountability' information that must be disclosed in an annual plan. And the third widens the range of functions that the Secretary can set mandatory measures of non-financial performance.

SOLGM agrees that comparing performance can provide local authorities and their communities with useful information. If approached with honesty of purpose and integrity of method, a well-designed, 'lean' comparison of performance can:

- identify leading practice
- provide ratepayers with information with which to compare the levels of service that they receive in return for the rates and charges they pay and
- provide signals about areas of focus (for example, the present regulations reflect a focus that two previous Ministers had on network infrastructure).

¹⁹ See Kaplan and Norton, 1996. *The Balanced Scorecard*.

There are few local authorities that do not undertake some form of formal or informal performance comparison, even if it is only asking the neighbouring local authorities for their planned levels of rates increase. As we have seen, many are involved in various initiatives that have some comparative elements as an aide to performance improvement.

But there are two common (and key) elements to these initiatives. The first is that the initiatives have a focus on performance improvement – that is to say managing performance as opposed to merely measuring it. An over-reliance on measurement is one of the common missteps that many agencies make when they first start their performance improvement journey.

The second core element, and an absolute fundamental to the sector in all of this is that the accountability is to the local community, not to others. Much has been made of the systems of benchmarking and standards that have been set in District Health Boards and in education. Accountability to the centre should exist in these circumstances as the Crown has both a purchase interest and an ownership interest, the Crown has a far more limited purchase interest and no ownership interest at all.

Poorly designed systems for comparing performance remove the focus on learning in a drive to manage to ones 'position on the table'. That is to say those poor comparisons can focus local authorities on activity rather than results. They can even throttle the very innovation that the Government wants to promote by making local authorities averse to making change in fear that the position on the table might suffer.

Additional disclosures in accountability document add cost in terms of the time to prepare them for disclosure in the document and the time and resource needed to collect them, and have them audited. We draw your attention to existing regulations around mandatory performance measurement. The so-called benchmarks of fiscal prudence, which include some measures that make for a meaningful comparison, currently take up five pages of an accountability document.²⁰

Territorial authorities currently report against as many as 17 measures under the existing regulations, in addition to reporting that is done under other legislation, for example resource consent processing times. We were therefore somewhat surprised that the

²⁰ Presentation of these is very tightly regulated. One of the authors of this submission has been contacted by a local authority that was advised by its auditor that it had to match the colours of graphics in this disclosure to the exact tone of the colours in the graphs in the regulation.

regulatory impact statement that accompanies this Bill is almost silent on these aspects of the Bill (other than an oblique reference to CCO performance measurement.

Additional Performance Measures

The bill provides the Minister with the power to direct the Secretary to make regulations adding new activities to the scope of the regulations or to review the effectiveness of existing regulations. Each of these is activated by a notice in the Gazette.

SOLGM has expressed concerns that the performance measures that are currently required under the authority of sections 259 and 261A are focus only on network infrastructure and therefore do not reflect the total ambit of local authority activity. We therefore welcome the opportunity to discuss whether and how additional activities might be added to the list.

SOLGM notes that performance comparisons are only as good as the information that supports them, which in turn is reliant on consistency of data definitions, measurement methodologies and so on. One of the cornerstones of consistency is ensuring that the same (or closely similar) activities fall within the scope of measurement.

Existing measures achieve this through requiring local authorities to treat each of the measured activities as a separate group in accountability documents. It is relatively easy to define so-called three waters activities; roads and footpaths ; and (to a lesser extent) flood protection and river control. In practice consistent benchmarking of other activities is likely to require amendments to clause 2(2) of schedule 10 (to require separate disclosure of these additional groups) and probably definitions of activities within the group. For example suppose the Government wished to benchmark regulatory activity.

Good implementation guidance is essential. The Department must be properly resourced to develop this guidance, in conjunction with the sector. There must also be sufficient lead time for local authorities to develop systems for collecting information. Ideally local authorities should have at least eighteen months before the first public disclosure of information to put systems in place, and establish a baseline for reporting purposes. We submit that the Committee should

- (i) require the Secretary to issue implementation guidance within three months of making any rules under s261 and

- (ii) prohibit the Secretary from requiring public disclosure against any new groups of activity falling into any new rules made under s261 for at least eighteen months after the rules are made.

One final comment on this aspect of the Bill. We see that a Ministerial notice under the proposed new section 261B(2) is not a disallowable instrument for the purposes of the Legislation Act 2012. Disallowance motions are a little used, and the debate that supports them is a means through which Parliament holds the Executive to account for the exercise of Ministerial powers. Non-disallowance should be used sparingly. We are uncertain what the case for not permitting disallowance is in this instance – especially when the regulations under section 261 are disallowable.

Recommendations

That the Committee:

- 45. **note that the effectiveness of additional measures under s261 would be dependent on amendments to clause 2(2) of Schedule Ten**
- 46. **agree that s261B of the principal Act be amended to require the Secretary to allow at least 18 months lead time on any new regulations made under s261**
- 47. **agree to amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B**
- 48. **agree to amend references to disallowable instruments in clause 33 by removing the word “not” from line 31 and replacing the words “does not have to” in line 32 with the word “must”.**

Reviews of Effectiveness

The bill provides the Minister with the power to direct the Secretary to make regulations adding new activities to the scope of the regulations or to review the effectiveness of existing regulations.

We agree that it is appropriate that the Minister be able to direct a review of the effectiveness of these regulations at any time. However, we consider that there should be review of the effectiveness of the existing

- a) fiscal parameters and benchmarks
- b) reporting against measures set under the authority of section 261A.

SOLGM has expressed concerns about the relevance and usefulness of some of the measures that sit within the present regime. Some incentivise activity for activities sake – for example, one measure requires disclosure of the percentage of the network that is resurfaced each year. Many are unclear. Some incorporate aspects that are wholly or partly beyond a local authority's control – for example a local authority must disclose the number of flooding events (SOLGM is unaware that local authorities have responsibility for the weather).

SOLGM considers that a suitable legislative model exists in the, now spent, section 32 of the principal Act (which required the Commission to report on the operation of the Act). We would be happy to work with officials to develop and appropriate provision.

Recommendation

49. That the Committee agree to amend the principal Act by adding a requirement to review the effectiveness of existing regulations made under sections 259 and 261 of the principal Act before making new regulations.

Disclosure of Corporate Accountability Information

Clause 31 of the Bill prescribes the corporate accountability information that local authorities must disclose in any or all of their accountability documents. This is defined as "information relating to the corporate governance of the local authority and indicators of the overall effectiveness of the local authority in performing its role and includes the extent to which the local authority satisfies the expectations of citizens and customers".

As presently drafted this power is excessively vague. We understand that the power to regulate the manner in which such information is presented would probably be regarded as incidental to this power.

We submit that authority to make delegated legislation should be clear, specific and limited and regard this as setting a bad precedent from a constitutional standpoint. The proposed new s259(1)(df) appears to give officials powers to regulate for matters that might be better in legislation.

In preparing this submission we referred back to the Cabinet paper to seek clarity around the type of information the Minister might use this power to incorporate. Beyond a reference to customer satisfaction information (which has made it into the definition), there was no other obvious reference to clarify how this power might be used.

We observe that the setting of a mandatory measure of citizen/customer satisfaction is deceptively simple. To achieve something comparable means a common methodology and common survey instrument, and to get information at the level of an individual local authority (say Carterton District Council) would require an extremely large sample size. To provide an idea of the size needed, the former Household Labour Force Survey had a sample size of around 15,000 households (about 30,000 individuals) and had some difficulties generating data of sufficient quality at *regional* level. Be sure that the cost of generating this information is justified!

We draw the committee's attention to Schedule 10 of the Act, which specifies contents of the four accountability documents. The schedule runs to more than twenty pages of legislation. We submit that successive Parliaments have considered contents of these documents should be clearly and specifically set out in the primary legislation.

We commend this approach to the Committee.

Recommendation

50. That the Committee agree to amend clause 32 of the Bill by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.

Fiscal Benchmarks for CCOs

The Bill provides the Minister with the power to establish parameters or benchmarks for assessing the financial management within CCOs. We understand that the intent is to make it easier for local authorities to detect potential issues with the financial performance of CCOs at an early point. While the governance of CCOs has been strengthened with the addition of shareholder councils and the advice that these bodies receive, these will support those doing the performance monitoring.

We do have one practical concern. These benchmarks apply to any substantive CCO. As we have seen that could take in a wide range of different types of entity acting in different industries. In practice it will be difficult to develop parameters or benchmarks that are attuned to the needs and practice of different CCOs other than the very general. Our concern is that poorly set parameters or benchmarks could generate frequent 'false positives' (i.e. a result that falsely indicates an issue) or (worse) 'false negatives' (i.e. a result that indicates a false 'green light').

These risks can be mitigated by requiring consultation with the experts in financial management in local authorities and their associated entities: the Society of Local Government Managers and the Auditor General. This is management as opposed to a governance issue.

Recommendation

- 51. That the Committee amend section 259(4) of the principal Act by deleting all words after "consultation" and replacing with "with:**
- (i) the New Zealand Local Government Association Incorporated; and**
 - (ii) the Society of Local Government Managers; and**
 - (iii) the Auditor-General."**

Wellbeing

"It's for local government to determine whether something is in their core and general area of responsibility or not."²¹

We'd like to conclude our submission with an observation that is something of *obiter dicta*.

The 2012 amendments changed the purpose of local government from "promoting the social, economic, environmental and cultural wellbeing of communities in the present and for the future" to the purpose of local government described earlier in this submission.

The sector strongly opposed this change. It was a response to local authorities undertaking activities that were somehow outside the alleged core business of local government. In fact, there is no evidence that local authorities were undertaking significant activity over and above what they did prior to 2002. In reality this was one Minister's view of the way the world should be.

We were therefore interested to see that community wellbeing has made something of a comeback in this Bill. There are four separate, new references to wellbeing, namely:

- the proposed amendments to section 48R(4)
- the proposed new section 56A(3)
- the proposed new section 56B and
- the proposed amendment to section 97.

Most of these references appear to relate to matters that the Local Government Commission has to consider when exercising its powers. It's unclear to us why a body that is charged with helping determine arrangements that are meant to promote good local government is then required to consider something that sits outside the purpose of local government?

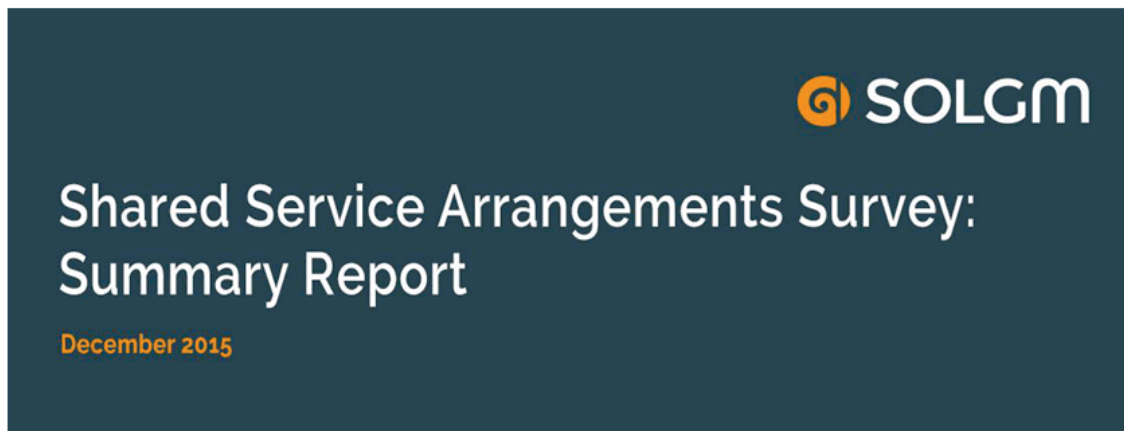
It's also worth noting that the proposed new section 56B is an obligation on local authorities to consider the current and future wellbeing when attempting to resolve disputes that relate to the establishment of multiply-owned CCOs. It seems somewhat strange that the legislation would require consideration of wellbeing in one minor aspect relating to one decision and not in others.

²¹ "Key: Up to Council to Justify V8 Outlay", as reported in NZ Herald of 12 July 2012.

We suggest that this Bill is on the right track and therefore recommend that the Committee amend the Bill by amending the purpose of local government to align it with these changes.

Draft for consultation - not SOLGM policy

Appendix



Executive summary

As part of an investigation into the central government project entitled, Fit for the Future, SOLGM conducted a survey of councils to obtain a better understanding of how widely shared service and other joined-up arrangements exist within the local government sector, including how many and where, the nature of the services or activities they provide, and the form and nature of the arrangement. Legislative or regulatory blockages encountered in establishing shared service arrangements have been noted within this report.

Key Findings

- 79% of respondents noted they were involved in more than six shared service arrangements with 18% noting they were in three to five arrangements.
- Two thirds of respondents cited there were no barriers to shared service arrangements. The majority of respondents who had encountered a barrier, found it in the operational aspect of a shared service arrangement, rather than the establishment of an arrangement.
- Some of the barriers encountered were legislative. Two respondents noted barriers in the Rates Rebate Act, while two noted New Zealand Transport Agency (NZTA) regulations, and two cited unspecified issues with the Local Government Act.
- All respondents were involved in a shared service arrangement with other councils, with 53% also involved with a company. Similarly, 85% used a contract for service as the form of shared service arrangement.
- Administration, economic development, roading/land transportation, libraries and tourism were the most common service areas for shared arrangements.

Purpose of the survey

The purpose of the survey is to ensure that policy makers are aware of the full range of options for shared service arrangements that are currently available to local authorities, and of the benefits these options have generated.

Disclaimer: other than some editing to preserve respondent confidentiality the quotes within this document are verbatim, they reflect the views of the individuals who made them and are not necessarily the views of the author or of SOLGM.

Survey design

The survey was made available through SOLGM's LGConnect discussion groups in December 2015. The survey was administered online through SurveyMonkey with electronic links to the questionnaires being sent.

Definition of shared services

The term 'shared services' has various interpretations. For the purpose of this survey, a shared service arrangement exists where two or more local authorities work together to deliver physical services or share capacity to undertake some administrative or support activity such as rate collection. These arrangements might be managed through a contract, joint venture, joint committee, trust, CCO or some other organisational form.

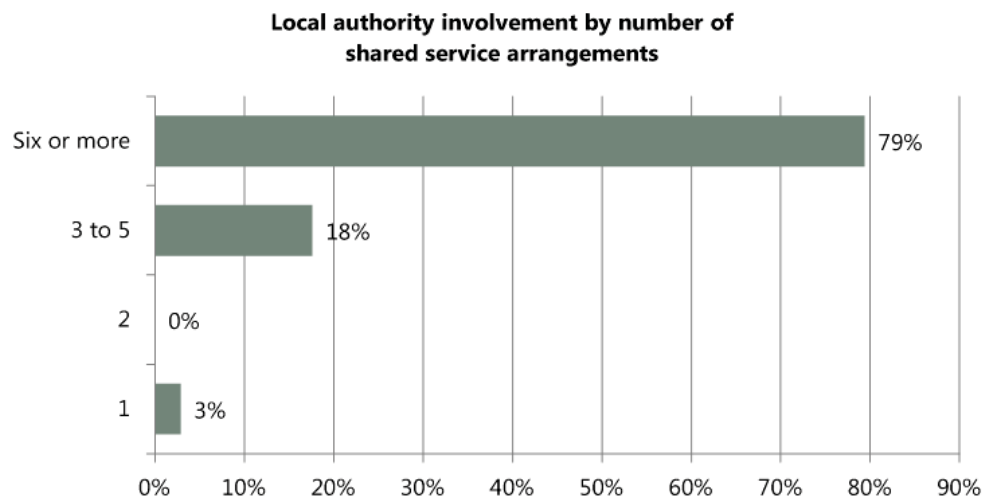
Please note cross-boundary or multi-district approaches to strategy, and arrangements that do not involve at least two local authorities (that is to say we are excluding arrangements that involve only one local authority and entities that are not local authorities) have been excluded as a shared service arrangement for the purposes of this survey. Examples of such exclusion would be in planning or policy development arrangements, such as SMARTGROWTH or the Canterbury Policy Forum.

Respondents

Of 78 local authorities we received responses from representatives of 35 councils. Of the respondents, metropolitan areas were poorly represented (only 2 councils from metropolitan areas responded). There are 16 provincial, 10 rural and 6 regional councils responses within the data gathered. Please note one council remained anonymous.

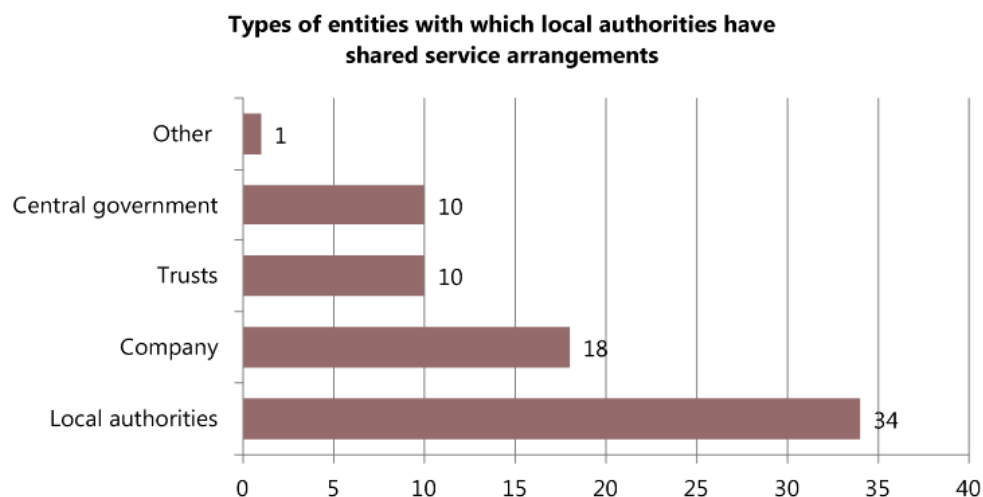
Shared service arrangements

An overwhelming majority of respondents (79%) were part of six or more shared service arrangements, with only one respondent (3%) noting they were in one shared service arrangement. 18% of respondents noted they were in three to five shared service arrangements. The results indicate that shared services are more prevalent than more commonly thought.



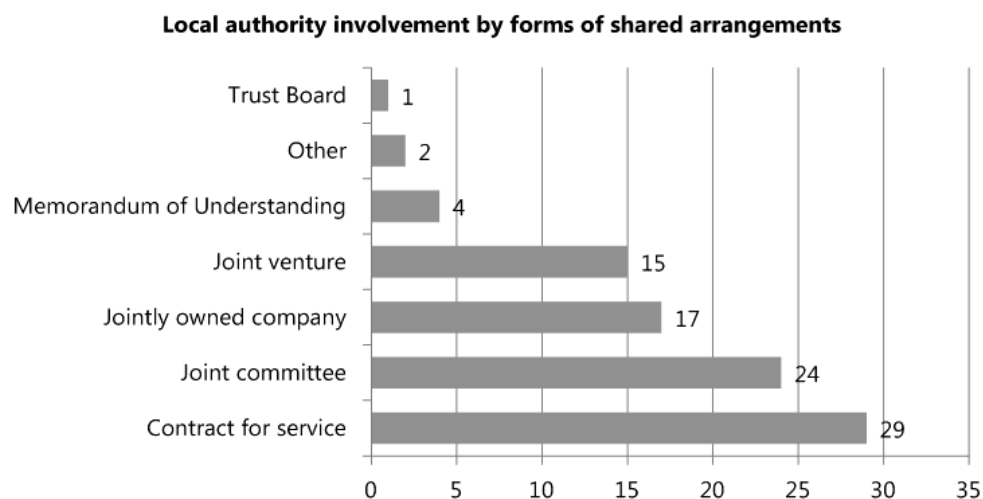
Local authority shared service arrangements with external entities

All but one of the survey participants responded to the question regarding local authority shared service arrangements with external entities. Of those survey participants that responded, all were in a shared service arrangement with other local authorities. 53% of respondents were involved with a company, 29% with trusts, and 29% with central government.



Forms of shared arrangements

The most common form of shared arrangement was through a contract for service, with 85% of respondents involved in a contract for service. This was followed with 71% involved in a joint committee, 50% in a jointly owned company, and 44% in a joint venture. A smaller proportion of respondents had a memorandum of understanding (12%), and one respondent noted their form of shared arrangement was a trust board. It is important to note that CCOs are not a necessary condition in establishing a shared service arrangement.



Service areas for shared arrangements

The areas in which the majority of shared service arrangements had been established were; administrative services, economic development, roading/land transportation, libraries, and tourism. 73% of respondents had used the shared arrangement for administrative services, 61% for economic development, 52% for roading/land transportation, 48% for libraries, and 48% for tourism. These results indicate that shared service arrangements occur in areas beyond infrastructure, encompassing the broad services that local authorities provide.

Services	Number of respondents
Administrative services	24
Economic development	20
Roading/land transport	17
Libraries	16
Tourism	16
Regulatory services	15
Solid waste/recycling	14
Water/wastewater	12
Sportsgrounds/stadiums	10
ICT services	10
Libraries/museums	8
Consent processing	8
Other transport	6
CDEM	6
Stormwater disposal/land drainage/flood control	5
Parks/reserves	4
Community centres	4
Total number of respondents	33 ²²

²² Two survey participants did not answer this question. Multiple options were allowed for respondents.

Barriers

Two thirds of respondents did not identify any barriers in establishing their arrangement. Of the respondents that cited barriers, comments were provided. The barriers noted varied to each other with most comments reflecting the operational aspect of shared service arrangements.

Two respondents cited NZTA regulations, with one respondent commenting that one of the participating local authorities has to be designated as a Road Controlling Authority (RCA) as the New Zealand Transportation Agency (NZTA) can only fund RCAs. One suggested NZTA rules in the future might create a barrier in sharing capability:

In the case of the roading asset management collective in order to qualify for NZTA funding we had to nominate a lead Council that qualified as a Road Controlling Authority. NZTA can't co fund an entity that isn't an RCA.

Two respondents cited the Rates Rebate Act. One of the respondents noted that charges legally deemed as rates fell within the scope of this scheme, however excluded water/wastewater charges. While not necessarily a legal impediment per se it creates a political disincentive to act within this particular legislation.

Two respondents raised unspecified issues with the Local Government Act. A third respondent noted that they were unclear regarding the role of the Chief Executive in creating a shared service arrangement.

One respondent commented that Kiwirail's governing legislation or practice act as an impediment:

Kiwirail is unable to enter into a contract of longer than 5 years under their legislation leaving us somewhat exposed in a multi-million dollar arrangement.

One council suggested that:

What councils are doing with shared services doesn't fully satisfy section 17a. It would be better if the shared services programmes and section 17a reporting demands were better aligned so work is not repeated. We foresee some difficulty with human resources where staff, under individual contracts, are required to change conditions due to work-place/work-scope changes or due to a non-alignment with other councils.

One respondent mentioned the Resource Management Act precludes a joint development code:

Establishment of Local Government Funding Agency establishment required specialist legal advice regarding tax and guarantees. RMA precludes the ability to have a joint Development Code (identical codes must be adopted by each Council)

Respondents cited non-legal barriers including; transferring assets and getting them valued is a political issue, contracting issues with staff, doubts that central government will honour the so-called 60/40 split where a service is shared and a disaster occurs.

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Benefits of shared services arrangements

By and large, respondents cited cost savings as the main benefit from sharing capability. This was followed by building capacity and enhanced cohesion or co-ordination in delivery.

Benefits cited by respondents ²³	Number of respondents
Cost savings	22
Building capacity	12
Enhanced cohesion or co-ordination in delivery	11
Better co-ordination in investments	8
Better management of risk	6
Improvements in service levels	6
Better relationships between councils	5
Standardisation of service	3
"Better practice" or "compliance"	3
Better access to funding	3
Miscellaneous	15
Total number respondents ²⁴	31

²³ We have categorised the comments made by respondents. Responses may be in multiple categories to reflect comments.

²⁴ Four survey participants did not answer this question.

