



SOLGM

NEW ZEALAND SOCIETY OF
LOCAL GOVERNMENT MANAGERS

TUNING UP THE ENGINE

Potential Changes to Local Government Law

A SUBMISSION TO THE HON RODNEY HIDE, MINISTER OF LOCAL GOVERNMENT
AND THE HON JOHN CARTER, ASSOCIATE MINISTER OF LOCAL GOVERNMENT

MARCH 2009



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FOREWORD

This submission to you as Minister and Associate Minister of Local Government responds to an invitation that the Minister issued to us in January 2009 to identify areas where legislative action could either reduce compliance costs or improve transparency and accountability (or both).

As a management organisation it is SOLGM's view that the legislation is not fundamentally broken and is certainly not in need of a 'blue skies' rewrite. Nevertheless from our perspective of sustainable management of communities it seems the legislative engine is in need of 'tuning up'.

Some of the key requirements of the Local Government Act may not be necessary in their present form – especially a blanket audit of all 85 local authorities every LTCCP. Some of the disclosure requirements obscure rather than clarify focus on the key issues.

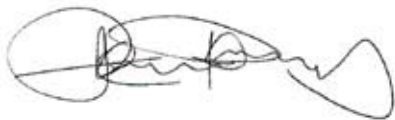
Tuning Up the Engine also picks up on a few key issues from the Local Government Rating Act. Many of these relate to volumetric charging and would support more sustainable management of water resources. Others such as non rateability and the rating of Maori freehold land have long been issues to the sector – and given your interest in transparency are probably no longer sustainable.

Our Financial Management Working Party and Strategic Planning Working Party have reviewed existing SOLGM policy for currency, and have also added some further suggestions based on their own experiences in the current LTCCP round.

The result is a submission that makes 39 recommendations to eight different pieces of legislation and associated regulations.

Of course, this submission far from the end of the story as far as discussion and debate on local government legislation goes. You will have your own thoughts on requirements such as audit, the content of LTCCPs, and financial management within local government. We look forward to discussing these with you.

I commend this submission to you.



Steve Parry
President
SOLGM

March 2009

SUMMARY OF RECOMMENDATIONS

SOLGM recommends that:

1. the requirements in clause 15(c), Schedule 10 of the Local Government Act to report results of any monitoring of community outcomes undertaken during a year in the Annual Report be deleted (pages 10-11)
2. the future audit approach for LTCCPs be moved to a risk managed approach and that the Department of Internal Affairs be directed to discuss future options for a risk managed approach with the sector and with the Audit Office (pages 12-13)
3. the detailed specification of steps in a decision-making process where a local authority need consider community views in section 78(2) of the Local Government Act be removed, leaving local authorities with a general obligation to consider community views and preferences subject to other provisions of the Act (pages 14-15)
4. section 107 of the Local Government Act be deleted or alternatively that this be amended to require preparation of a policy on public private partnerships if and only if a local authority wishes to enter into these arrangements (page 17)
5. section 108 of the Local Government Act requiring preparation of a policy for remission and postponement of rates on Maori land be deleted (page 17)
6. provisions governing remission and postponement of rates on other land be amended to require consideration of the matters relating to rates on Maori freehold land (page 17)
7. an enhanced revenue and financing policy remain in the LTCCP (page 19)
8. requirements to disclose borrowing limits and policies on security be included in the revenue and financing policy (page 19)
9. other requirements of the present liability management policy and investment policy be retained but removed from the LTCCP (page 19)
10. local authority rates remission and postponement policies be retained but removed from the LTCCP (page 19)
11. policies on development contributions be retained but removed from the LTCCP (page 19)
12. consultation via the special consultative procedure remain a procedural requirement for the policy on development contributions (page 19)
13. the LTCCP be required to disclose that the liability management, investment, development contributions, remission and postponement policies have been prepared and are available for public inspection and (where required) consultation (page 19)
14. section 97(1)(d) of the Local Government Act be amended to require amendments only significant activities are involved (page 21)
15. section 102(6) of the Local Government Act be amended to require an LTCCP amendment for only significant changes to a funding and financial policy (page 21)
16. section 141 of the Local Government Act be amended to allow for the alienation of endowment land where the donor or their successor has been consulted, or where this is not possible, the purpose of the proposed alienation is not inconsistent with the purpose of the original endowment (page 21)

17. representatives from the accounting profession, local and central government undertake a standard by standard review of NZ IFRS to determine what modifications are necessary to make them appropriate for public sector needs (page 23)
18. section 88 of the Local Government Act which requires consultation on proposals to change modes of service delivery be deleted (page 24)
19. section 136 of the Local Government Act which places restrictions on contracts for operating water services be deleted (page 24)
20. section 138 of the Local Government Act which places restrictions on the disposal of parks be deleted (page 24)
21. sections 2(d)(iii) and 2(d)(vi) of Schedule 10 of the Local Government Act be deleted these require disclosure of "how" additional capacity will be provided to services and "how" maintenance, renewal and replacement will be undertaken (page 24)
22. responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards (pages 25-26)
23. requirements for local authorities to conduct assessments of water and sanitary services be deleted from the Local Government Act (pages 25-26)
24. requirements for the inclusion of summaries of an assessment of water and sanitary services be deleted from the Local Government Act (pages 25-26)
25. the requirement to include a summary of the local authority's current Waste Management Plan in the LTCCP be deleted (page 27)
26. clause 34(1) – 34(6) of Schedule Seven of the Local Government Act be repealed and replaced with provisions that:
 - a limit the term of a Chief Executives contract to five years
 - b allow the Council to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion
 - c require the review of performance (as provided for in clause 35 of the Act) no less than six months before the completion of any term (pages 28-29)
27. the mandatory requirement to review each bylaw made under the Local Government Act at least once every ten years be repealed (page 30)
28. the Department of Internal Affairs develop infringement regulations as a priority. This may require an amendment to section 259 of the Local Government Act to clarify that a category approach to infringement offences is within regulation making power (page 31)
29. either section 3(B)(b) of the Securities Act be
 - replaced with a requirement that where a local authority has amended an LTCCP, the amendment and its impact on financial statements be disclosed or
 - amended to extend the period from nine to twelve months or
 - amended to require interim financial statements only where the date of allotment is more than nine months from the date of receipt of the last audit opinion (page 33)

30. the present set of rating exemptions in the Rating Act be removed in toto (page 35)
31. section 19 of the Local Government (Rating) Act be amended to allow wastewater disposal to be rated for on the basis of either the volume of water consumed or the volume of wastewater leaving a property (page 36)
32. section 193(1) of the Local Government Act be amended to permit local authorities to restrict water supply for unpaid water rates, where those rates are more than 4 months outstanding (page 37)
33. the Local Government (Rating) Act be amended to place all Maori freehold land in economic or residential use, or where the property is held for purposes other than for the preservation of land of conservation or historical value, on the same enforcement regime as exists for general titled land (page 38)
34. all remaining prescription of specific fee levels in legislation be amended to allow for recovery of actual and reasonable cost (page 39)
35. the Government give priority to identifying and resolving the policy and implementation issues around the introduction of 24/7 road pricing (page 40)
36. as an intermediate step, that the Government remove the requirements for Ministerial approval of road tolling in respect of new roading projects (page 40)
37. section 26 of the Land Transport Management Act be amended to widen the exemption for professional services to circumstances where one local authority is provided services to another (page 41)
38. the Government commit to review the present mandatory set of drinking water standards for cost effectiveness and practicability (page 42)
39. pending completion of the review that regulations setting effective dates for drinking water standards be revoked (page 42).

LOCAL GOVERNMENT LEGISLATION: SOME GENERAL COMMENTS

- 1 SOLGM does not consider that the three pieces of local government legislation are fundamentally “broken”. In the past six years the sector has worked hard to ‘bed in’ the legislation, with local communities starting to see the benefits of the change in terms of:
 - a greater strategic focus
 - improved asset and financial planning, and better financial forecasting in general
 - some improvement in the level of public understanding of the process and
 - greater clarity and certainty over council plans.

- 2 With two exceptions, this submission does not generally reflect major dissatisfaction with the policy objectives that underpin the legislation. Those exceptions are the continued existence of rates exemptions (which undermine rating equity and serve no purpose other than blatant cross-subsidisation of central government activity and it’s ‘pet causes’) and current policy around Maori freehold land.

- 3 All of the other changes fall into one or more of the following categories:
 - removal of unnecessary and duplicative disclosure requirements (for example, the removal of two unnecessary section 102 policies and the requirement to assess water and sanitary services)
 - amendments to processes where there is no longer a case for the level of compliance and associated cost (for example the recommendation around the scaling back of the LTCCP audit)
 - changes that quickly and effectively support policy goals that your respective parties have (for example the three recommendations around volumetric charging) and
 - correction of what appear to be drafting errors, and provisions based on misunderstandings of the way the sector operates (for example section 97 triggers for amendment, section 3(B)(b) of the Securities Act).

- 4 Some commentators have claimed the Local Government Act 2002 (the LGA02) has seen an explosion of local authorities extending their roles into new and expensive areas of activity. Both the Central/Local Government Funding Project Report, Local Government Funding Issues, and the recent Local Government Commission report on its review of the LGA and LEA, have examined this claim but have been unable to find evidence to substantiate it. Many of the commonly raised examples are roles or functions local authorities were doing before 2002, in the few cases where a new function dates post 2002 it is ‘small in scale and operational in nature’ such as providing subsidies to keep doctors in small communities.

Local Government Legislation: Some General Comments (continued)

- 5 The asset and financial management requirements of the LTCCP push local authorities to focus on the costs of maintaining core infrastructure¹ as a priority. Both the Rating Inquiry and the Funding Project identified expenditure on infrastructure as the major driver of local authority expenditure as a whole, and of rates levels. While many local authorities have taken an interest in what might be called 'social issues' this appears primarily to have been at the level of advocacy and facilitation to achieve better local co-ordination among existing service providers.

- 6 We believe the LTCCP and the disciplines that are associated with it have provided the first truly robust information about the cost of local services. This is beginning to build community understanding that costs do not incur themselves, but are related to a level of service. This process of debating and trading off the options is exactly the kind of debate that the Local Government Act was designed to promote. The changes we recommend in this document will serve to clarify that focus, and sharpen the presentation of key issues.

¹ Infrastructure in the local government context means more than the traditional 'network' infrastructure, it also includes community infrastructure such as libraries and recreational facilities.

COMMUNITY OUTCOMES

- 7 The sector is divided in its view on the usefulness of the community outcomes process. On the one hand some suggest that outcomes are predictable, that there is little variation in outcomes between communities, and that the outcomes did not play much of a role in the 2006-16 LTCCPs. Some elected members are under the impression their council is obligated to “do” outcomes and perhaps some resent that they are a community document and thus the council cannot necessarily control the end result.
- 8 The alternative view, and the one we support, is that there is some misunderstanding of what the outcomes process was intended to achieve. The purpose of the outcomes process was to provide a mechanism where central government, local government, the voluntary sector and the private sector could agree upon the desired outcomes, prioritise them (if desired), and agree upon actions to promote the desired outcomes. The important result out of the outcomes process is not the piece of paper that records outcomes, but the relationships that are built in the process, and the coordination of action to progress outcomes that result. We believe that understanding of this is growing in the sector – and some of the better practice is being shared on how to work with others to advance community outcomes.
- 9 We have two issues to raise around the community outcomes process.

Frequency of the Outcomes Process

- 10 Community outcomes represent the community defining what it considers social, economic, environmental and cultural wellbeing to look like. By definition outcomes contain an element of the “ideal world” and therefore can be expected to take a number of years to achieve, and that there will be a large degree of similarity between the community outcomes of 2006 and subsequent (though priorities amongst those outcomes are likely to be different).
- 11 With this in mind, we are uncertain as to whether legislation should prescribe a wholly new community outcomes process every six years. We consider the six yearly requirement should be solely to identify those parties who are capable of influencing outcomes, and determine whether or not the community outcomes need review in the light of external change.

Monitoring and Reporting Community Outcomes

- 12 Local authorities are required to monitor and report progress towards the achievement of community outcomes. There are two levels of monitoring requirement:
- section 92 requires that local authorities monitor and report on progress not less than once every three years; and
 - clause 15, schedule 10 requires local authorities to report the results of any measurement undertaken during a particular year, in the relevant annual report for the year.

Community Outcomes continued

- 13 As their name implies, community outcomes belong to the community not just the local authority. A local authority is one party working towards the achievement of community outcomes, thus all who have worked together to identify community outcomes should have joint responsibility for their achievement (or otherwise). The three yearly reports can be released as a joint report of all agencies (and it appears most will be done in this way) but the annual report is a statutory document of the local authority. The requirement to report any measurement of community outcomes in a local authority's report is an unnecessary additional cost and compliance issue. It also creates public confusion as to which agencies have responsibility for achieving outcomes i.e. achieving outcomes will be seen as entirely as a local authority responsibility. The annual reporting requirement should be deleted.

Recommendation

1. That the requirements in clause 15(c) of Schedule 10 of the Local Government Act to report results of any monitoring of community outcomes undertaken during a year in the Annual Report be deleted.

AUDIT OF LONG-TERM COUNCIL COMMUNITY PLANS

- 14 The audit of the LTCCPs was not designed to be a tool that would primarily generate benefits for the local authority. The intended beneficiary of the process was the local community:
- “The auditor’s report would contribute to the information necessary for communities to assess the quality of the long-term plan (sic) in the draft stage and after adoption. ²”
- It is highly arguable whether the community would be willing to pay for this contribution – in some smaller local authorities the audit fee can account for \$10 per ratepaying property.³
- 15 The insertion of this requirement appears to have been based, in part, on concerns about the quality of forecasting and estimating approaches taken to developing long-term financial strategies (the precursor to LTCCPs in the Local Government Act 1974). In particular the requirement may have been motivated by concerns that some local authorities were not making effective provision for infrastructure. There was an expectation that the audit requirement would aid in the development of good practice approaches and over time generate further improvement in the robustness of documents.
- 16 All of these objectives have been achieved. In the past six years the sector has made considerable strides in the standard of its asset management planning, and in the transparency of information that it provides to the community about what they are paying, and what they can expect to receive in return. Realistically, some of the improvements would not have occurred without having an independent agency examining LTCCPs for robustness.
- 17 The discipline imposed by audit has been a useful one, and maintenance of some form of external check is essential to ensure that present standards of transparency and accountability are maintained. However, it is not clear that maintenance of these standards require a full audit of all 85 local authorities every three years with the cost that this imposes. We would favour moving from a full audit of all local authorities every three years to an approach that is based on the identification and management of risk.
- 18 A risk managed approach would begin with the following two principles:
1. the Auditor-General would be required to audit the LTCCP of any local authority that received an adverse opinion⁴ on its preceding LTCCP. This ensures that poor performance is sanctioned, and that both elected members and managers have incentives to maintain standards

² Local Government and Environment Select Committee 2002, Report on the Local Government Bill 2001, page 14.

³ For example, Hurunui District Council has completed its draft 2009-19 LTCCP and expects to receive an audit bill of around \$67K with 7,500 rateable properties in its district this equates to \$8.90 per property. And of course, this does not include the indirect cost of staff time in responding to auditor enquiries.

⁴ A local authority that receives an except for opinion would not necessarily qualify for an automatic audit under this section, but depending on the issue might will be picked up as a ‘high risk’ local authority. For example, a minor breach of statute, such as a missing policy summary might not indicate a high degree of risk, but a concern about prudence of financial strategies would.

Audit of Long-Term Council Community Plans *continued*

2. the Auditor-General would be empowered to audit other LTCCPs based on an assessment of risk, and would be free to develop procedures for assessing the likely degree of risk (for example, using the so-called self-assessment and control review techniques that the Office of the Auditor-General currently employs as well as looking at the standard of annual reports). This encourages local authorities to be proactive, to maintain standards, and to plan their LTCCP processes effectively.
- 19 From that point there are several options. For example the Auditor-General could be required to audit an agreed sample of the remaining local authorities each triennium. Any local authority selected in this way, that receives a tag would then be subject to audit in the next round (as in 1 above), with a guarantee that any council sampled in one round that receives a clear opinion would not be sampled in the next. This would mean that a local authority that meets the standards could expect to incur an audit cost no more than once every nine years.
- 20 Alternatively local authorities with a record of past performance, and where no risks have been identified might be moved from a full audit engagement to a review engagement. As we understand it the basis of the opinion would shift towards an opinion that is along the lines of "based on the evidence we have seen, we found no evidence of ...". There are a number of different options available for a review engagement, each with different levels of cost. The scope of any review engagement would need to be defined, at central level, by agreement of the Auditor-General and the sector (with the Auditor-General having the final say).
- 21 We are aware that some are promoting an option where central government funds local authorities for the costs of the audit. While we are not opposed to this, we note minimising the cost of the audit is one of the biggest incentives for local authorities to maintain appropriate standards of planning and accountability. Careful thought about incentives would be needed to support such an arrangement.

Recommendation

2. That the future audit approach for LTCCPs be moved to a risk managed approach and that you direct the Department of Internal Affairs to discuss future options for a risk managed approach with the sector and with the Audit Office.

CONSULTATION AND DECISION-MAKING

- 22 Concerns are being expressed in the sector about the prescriptive nature, complexity, cost and effectiveness of the decision making and consultation provisions of sections 76-81 of the Act.
- 23 Some elected members take the line that consultation is unnecessary and “if the community don’t like what I’ve done they can throw me out at the next election”. While we have some sympathy with this point of view, we submit that accountability based solely on representative democracy is imperfect. Elected members will, in the course of their term, make dozens of decisions, some of which are irreversible or reversible only at great cost once actioned. Consultation in those circumstances is merely a reflection of a community’s right to provide input into such a decision before it is made. We observe that there is a certain amount of bravado in discussions around consultation – everyone thinks local authorities should just get on and do things, until their own interests are potentially affected.
- 24 Read in their most favourable light the consultation and decision-making provisions are a set of steps that a local authority could (and in some cases should) take when making major decisions, and a set of considerations that are matters that should be taken into account when making decisions. The tolerances that were built into the Act were intended to reflect the real role of consultation as described above.
- 25 Consultation is not, and was never intended to be a device for ensuring decisions are not made, or a device to “trip-up” otherwise sound decisions . The result however is that consultation and decision making processes take longer and cost more, but don’t necessarily result in better decisions or outcomes. The manner in which the provisions are drafted, especially section 78, create a series of points where local authorities must decide whether consultation is needed. This creates multiple places where a concerned citizen or group could potentially challenge a decision⁵. And like any exercise involving judgement, others can and do see things differently, which means there is always ground for argument⁶.
- 26 While it was intended that section 79 of the Act would provide some degree of flexibility and thereby allow local authorities to tailor a decision-making process to the importance of the decision and the circumstances in which the decision is made. In practice however, local authorities manage public money, and therefore it is understandable that in most circumstances a local authority will take a risk averse approach.
- 27 In today’s fast-paced world, opportunities arise and have to be dealt with in much tighter time-frames, and with more flexibility, than in the past. If the ability to do this is hampered by a prescription on process, then the local authorities – and potentially the country – may miss out on a valuable opportunity. We are competing with places which do not necessarily have to go through similar processes. It is a question of balance, but we consider further thought, and possible legislative amendment, needs to be given to how nimble decision making (including responsive changes between favoured options), and matters such as commercial sensitivity and responsibilities to staff under employment legislation, can be dealt with most effectively in the LGA context.

5 For example, in *Council of Social Services vs Christchurch City* (2008) the plaintiffs alleged that the council should have consulted at all four steps, while the Court disagreed with their assessment in three of four, the one case where the Court did agree was held to have been fatal to the process.

6 For example, the learned judge in the *Council of Social Services* case saw fit to develop his own definition of the issue that Christchurch’s decision-making process “should have considered”.

Consultation and Decision-Making continued

- 28 While this is an issue that can be resolved with some degree of good practice advice (for example in defining and assessing the significance of decisions), we consider that greater clarity and certainty in legislation would avoid much ongoing debate.
- 29 As a starting point, section 78(2) appears to create more room for confusion and debate than the remainder of Part Six of the Act. Some members of the public and some in the judiciary are interpreting this as creating a “consult/no consult” decision point at each of four steps in the process – thus the risk averse are engaging with communities more than once on the same issue (e.g. Dunedin stadium).
- 30 We submit that the three really significant decisions – adopting an LTCCP, an annual plan or a bylaw already have their own unique obligations to consult and prescribed processes for doing so. We find it hard to think of examples of other decisions that would not have some reflection in one or more of these documents and thus be subject to consultation.
- 31 The detailed specification of section 78(2) is therefore both unnecessary and fertile ground for challenge. We consider that this provision could be repealed in its entirety without significantly undermining the letter or spirit of the remainder of the Act. Removal of section 78(2) would leave local authorities under an obligation to consider community views and preferences when making decisions (which few could argue against), with the nature of that consideration and the degree to which local authorities consult being proportional to the size and scale of the decision and appropriate for the circumstances in which the decision is made. The special consultative procedure remains as the backstop for the three really big decisions a local authority takes.

Recommendation

3. That the detailed specification of steps in a decision-making process where a local authority need consider community views in section 78(2) of the Local Government Act be removed, leaving local authorities with a general obligation to consider community views and preferences subject to the other provisions of the Act.

FUNDING AND FINANCIAL POLICIES

- 32 Section 102 of the LGA02 requires the adoption of a set of seven funding and financial policies. These include:
- a revenue and financing policy
 - an investment policy
 - a liability management policy
 - a policy on development contributions or financial contributions
 - an optional policy for remission and postponement of rates on general land
 - a policy on remission and postponement of rates on Maori freehold land and
 - a policy on partnerships with the private sector (PPPs).
- 33 Although we consider that the first five of the above documents are necessary, we believe that the policy on Maori freehold land and the policy on PPPs are adequately dealt with by other provisions in the legislation and therefore could be deleted. We also have doubts as to whether some of the content of the remaining policies are matters of policy (and thus should be open to consultation) or are day to day management matters.

Public Private Partnerships

- 34 The policy on PPPs sets out circumstances under which local authorities intend to commit resources to partnerships with the private sector. The areas where local authorities are most likely to enter into public private partnerships (PPPs) involve the provision of network infrastructure (e.g. roads, water) and some types of community facility (e.g. stadia). There have been several high profile “issues” with PPP in overseas jurisdictions that carried unexpected cost and other consequences for the public sector, despite many PPPs in overseas jurisdictions working well. The policy ensures that local authorities and their communities have thought about the risks involved before entering into these arrangements⁷. While this is a laudable objective, local authorities are under already under obligations to:
- give effect to their priorities in an effective and efficient manner (section 14(1)(a)ii LGA)
 - exercise prudent stewardship and the effective and efficient use of resources (section 14(1)(g) LGA) and
 - take into account the reasonably foreseeable future needs of future generations (section 14(1)(h) LGA).

⁷ The requirement to have a PPP policy may also have been a reflection of the policy views of the then Minister of Local Government which could be summarised as supporting private financing of such projects but being wary about private ownership of the infrastructure in the long-term.

Funding and Financial Policies continued

- 35 We are unconvinced that a mandatory policy on PPPs is necessary at all, but if there is concern about risks then another option may be to require adoption of a policy if and only if a local authority wants to engage in these. We also note that roading PPPs (especially those involving tolling) are partially regulated by the Land Transport Management Act 2003, and certain conditions are placed on water PPPs by the Local Government Act 2002. We recommend removal of both at a later point in the document.

Recommendation

4. That section 107 of the Local Government Act be deleted or alternatively that this be amended to require preparation of a policy on public private partnerships if and only if a local authority wishes to enter into these arrangements.

Policies on Maori Freehold Land

- 36 Local authorities must have a policy on remission and postponement of rates on Maori freehold land. The scope and requirements of this policy are not well understood by the general public. The requirement is only to have a policy and explain what the policy is in terms of the matters listed in Schedule 11 of the LGA. There is no requirement to remit or postpone rates on this category of land (although some clearly see it as such an obligation).
- 37 The requirement appears to stem from central government's desire to ensure that further alienation of Maori freehold land does not occur and that local authorities should take account of the differences in tenure, ownership and cultural context when making rating decisions (which are captured in the matters listed in Schedule 11). The policy documents the local authority's judgements with respect to those matters and decisions on remission and postponement.
- 38 It is not clear what debate was ever held with the public regarding the importance of the objective, in the context of the Local Government Act, and what local government can or should be doing.
- 39 The 2008 Local Government Commission report noted that a local authority that wishes to remit or postpone rates on this category of land could do so through a general remission or postponement policy. We agree. The Commission saw value in the list of matters in Schedule 11 and thought this was a useful guide. We agree with this too, but only to the extent that it should be a consideration in developing a remission and postponement policy. These could be linked to sections 109 and 110.

Recommendations

5. That section 108 of the Local Government Act requiring preparation of a policy for remission and postponement of rates on Maori land be deleted.
6. That provisions governing remission and postponement of rates on other land be amended to require consideration of the matters relating to rates on Maori freehold land.

Funding and Financial Policies continued

Location and Content of Other Section 102 Policies

- 40 The matters that local authorities must include in section 102 policies all provide disciplines that create effective financial management, however we are unconvinced that all of the detail of these policies are matters that should be included in the plan itself and hence open to consultation. We consider that much of the detail of these policies could be removed from the LTCCP, while still requiring preparation of the documents. Removal from the LTCCP removes much, though not all of the audit test in respect of these documents.

Liability Management Policy

- 41 This is an instrument for implementing a local authority's judgements about intergenerational equity. In our view however the policy takes in aspects of liability management that are beyond the understanding of the general public. In an LTCCP we believe the only two issues that are of importance are the existence of borrowing limits (where the local authority has these) and policies on security (so that ratepayers know the circumstances in which a local authority will charge an asset or rates revenue as security on borrowing). The matters in section 104 (a) – (d) are day to day management issues.

Investment Policy

- 42 In a similar vein to our comments on the liability management policy, this policy provides a mix of important information and day to day management issues. The revenue and financing policy could contain a disclosure of the local authority's objectives for holding investments, and the expected returns. Other items are day to day management and reporting procedures.

Remission and Postponement Policies

- 43 These documents let the ratepayer know of the circumstances in which a local authority is prepared to waive payment of rates, either permanently or temporarily. Transparency in the setting of local tax requires that such a document be adopted. However as a general rule very few, if any submissions are ever made on these documents leading us to conclude that the main purpose for inclusion in an LTCCP is to notify the public. There are other means for achieving that objective – and we note that in any case, rating assessments must state what relief is available.

Development Contributions Policy

- 44 The development contributions policy is effectively a device for ensuring that local authorities document the analysis of the drivers of their capital expenditure and their assessment of the growth component. It also acts as a schedule of the levels of contribution - changes to this schedule have been the most common of the LTCCP amendments
- 45 A local authority's intent to use development contributions, and its expectations of revenue must be disclosed in the LTCCP as part of the Funding Impact Statement. This is the same level of disclosure as is required for a local authorities rating decisions, given that rates are assessed over a far wider section of the community, and in far greater aggregate amounts, it seems strange a policy on a specific revenue tool would be included in the LTCCP.

Funding and Financial Policies continued

- 46 We agree that it is important that developers be given a formal opportunity to review the local authority's assessment, and for that reason propose that the LTCCP refer to the policy, and that this policy must be adopted through special consultative procedure.

Revenue and Financing Policy

- 47 This is the preeminent of the section 102 policies. In our view this document sits alongside levels of service as the two vital components of an LTCCP and Annual Plan. If a level of service defines what a community gets then this document explains how and what the community pays and how the council arrived at this judgement. Removal of this policy moves debates on rates to becoming little more than "rates are too high", with no upfront explanation of how the council determined its rates, charges and the like. This policy must stay.

Recommendations

7. That an enhanced revenue and financing policy remain in the LTCCP.
8. That requirements to disclose borrowing limits and policies on security be included in the revenue and financing policy.
9. That other requirements of the present liability management policy and investment policy be retained but removed from the LTCCP.
10. That local authority rates remission and postponement policies be retained but removed from the LTCCP.
11. That policies on development contributions be retained but removed from the LTCCP.
12. That consultation via the special consultative procedure remain a procedural requirement for the policy on development contributions.
13. That the LTCCP be required to disclose that the liability management, investment, development contributions, remission and postponement policies have been prepared and are available for public inspection and (where required) consultation.

AMENDMENTS TO AN LTCCP

- 48 The world is a dynamic place – circumstances can change rapidly and may necessitate changes to even the most robust of plans. With this in mind, the LTCCP was designed to be nothing more than a statement of intentions at a particular point in time. The mechanism through which a local authority can change its intentions and communicate to the public is known as an LTCCP amendment. Amendments are subject to public consultation and must also have an audit opinion.
- 49 The amendment process was also designed to ensure that local authorities retained a strategic focus throughout the three year “life” of the LTCCP and that tradeoffs continued to be made in full knowledge of the service level and financial consequences. The requirement ensures that LTCCPs retain their robustness over the three years.
- 50 The following circumstances automatically give rise to an LTCCP amendment:
- significant changes to service levels of a significant activity (including starting or stopping an activity) (section 97(1)(a) LGA)
 - transfer of ownership or control of a strategic asset (section 97(1)(b) LGA)
 - construction, replacement or abandonment of a strategic asset (section 97(1)(c) LGA)
 - decisions that directly or indirectly, significantly affect the capacity of the local authority, or the cost to the local authority, in relation to any activity identified in the LTCCP or annual plan (section 97(1)(d) LGA)
 - any amendment of a section 102 policy or
 - any sale of endowment land (section 141, LGA).
- 51 In the year following adoption of the 2006-16 LTCCPs there were 45 amendments of which half came through the fifth of the above triggers (many of which involved changes to policies on development contributions).
- 52 “Significance” is a key determinant of the circumstances where amendments to LTCCPs are required. The Act, quite correctly, draws a distinction between decisions that require an amendment to the LTCCP and day to day circumstances that give rise to change from what was in the LTCCP that do not require amendments. To do otherwise for example, might give rise to documents that are reproduced frequently with trivial changes at each amendment.
- 53 However, three of the so-called triggers for amendment appear to encompass any change regardless of scale.
- 54 Section 97(1)(d) applies to any activity identified in an annual plan or LTCCP regardless of the size of the activity or its importance to the community. Limiting this section to ‘significant’ activities ensures consistency with section 97(1)(a) and is more in keeping with the intent of the provision.

Amendments to an LTCCP continued

- 55 Section 102(6) specifies that any amendment to a funding and financial policy may only be made as an amendment to an LTCCP. Unlike many of the other categories of amendment there is no qualifier for significance attached i.e. all amendments to these policies are treated as an amendment and must for example have a summary and an audit opinion regardless of their size or scope. This is an extremely costly process for making changes of a minor nature. The requirement to undertake amendments to the LTCCP should be tied to the test of significance, where a proposed change is not significant then the special consultative procedure will be sufficient.
- 56 Section 141 of the LGA allows local authorities to sell or exchange endowment properties (that is property gifted to the community by private individuals usually with some specific objective or purpose in mind). However, any sale or exchange must either be part of an LTCCP or an amendment to an LTCCP. This leads to the farcical situation where local authorities may be required to amend an LTCCP because they wish to sell or exchange quite small pieces of property. Local authorities can only sell endowment property if they are satisfied that the proceeds of the sale/exchange will be used in a way that is consistent with the endowment and have offered the donor or their successor a chance to comment. Beyond this all that should be required is a special consultative procedure – so that for example, users of a park, can make their views known.
- 57 The audit costs of some amendments can be as high as \$20,000 – limiting what qualifies as amendment to the truly significant issues is a good practical step for reducing compliance costs by reducing the frequency of amendments
- 58 Consistent with our recommendations on the audit of LTCCPs we would also add that where a local authority has had the LTCCP audited, amendments for the following three years would also be audited⁸.

Recommendations

14. That section 97(1)(d) of the Local Government Act be amended to require amendments only where significant activities are involved.
15. That section 102(6) of the Local Government Act be amended to require an LTCCP amendment of significant changes to a funding and financial policy.
16. That section 141 of the Local Government Act be amended to allow for the alienation of endowment land where the donor or their successor has been consulted, or where this is not possible, the purpose of the proposed alienation is not inconsistent with the purpose of the original endowment.

⁸ An audit of an amendment does not mean that the whole LTCCP is re-examined, an audit of an amendment covers only the subject matter in the actual amendment itself, and any consequential impacts (for example, that a change in funding policy has been reflected in the prospective financial statements).

INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

- 59 Section 111 of the LGA02 places a mandatory duty on local authorities to ensure their financial statements are prepared in accordance with Generally Accepted Accounting Practice (GAAP). In New Zealand, GAAP standards are set so they are generally equivalent to International Financial Reporting Standards (IFRS). IFRS took effect in this country in 2006, although local government generally began reporting on this basis from 1 July 2005.
- 60 Increasingly standards are focussing on the needs of investors, financiers and creditors in American and European jurisdictions, and are heavily focussed on cash flows. The 'credit crunch' has exacerbated this trend. It seems somewhat ironic that local government is bound to adhere to financial reporting standards developed to meet the needs of a capital market that it is prohibited from accessing under section 113 of the LGA 02.
- 61 For example, an IFRS discussion paper that is currently out for comment on the presentation of financial statements is proposing a mandatory change to the presentation of balance sheets. Rather than the more traditional presentation of assets, liabilities and equity, the balance sheet would instead classify assets and liabilities into operating and financing assets and liabilities with disclosure of a net asset figure. These kinds of changes serve only to totally confuse the lay user of a local authority's financial information.
- 62 Some types of non-commercial transactions that are common in local authorities receive scant recognition in IFRS (or, on occasion, no recognition at all making it difficult to apply IFRS). Some examples include:
- development contributions – where the accounting treatment is essentially done on the basis of a 'gentleman's agreement' between the sector and the Office of the Auditor-General
 - making loans to unrelated entities (for example various types of community groups) with no interest and/or no fixed repayment term and/or flexible interest options and
 - providing funds documented as a loan, but otherwise exhibiting the same characteristics as equity.
- 63 Some standards, especially around certain types of financial instrument, require additional disclosure even though they deal with instruments and options that either are not available to, or are of no interest to, local authorities. These disclosures add to the length of an annual report, and to the cost (they must be audited).
- 64 Our concern is that the drive to comply with international, sector-neutral standards means that the purpose of what is meant to be a tool for demonstrating accountability to the community is being lost.

International Financial Reporting Standards (IFRS) continued

- 65 Many of these concerns are shared by the Office of the Auditor General. The Auditor-General has noted that
- “(The Office is) becoming increasingly concerned about the credibility of the NZ IFRS for the public sector. If appropriate and sensible changes are not made to NZIFRS in the near future, there is an increasing risk that the resulting set of standards will not be of high quality, nor ultimately fit for purpose for the public sector⁹.”
- 66 This will also be of interest to you in your capacity as Minister for Regulatory Reform – this is a good example of “one size fits all” approaches that has negative impacts on the public sector as a whole, and the local government sector in particular. We note that compliance with IFRS accounts for an average 10 percent of the average cost of an audit of an annual report and that IFRS compliant disclosures can add 20 or more pages to an annual report.
- 67 The sector has recently been successful in getting an individual with substantial knowledge of local government onto the New Zealand Accounting Standards Review Board (the agency that reviews international standards for application here), and another onto the Financial Reporting Standards Board. Nevertheless they remain a minority. We consider that a review of standards for applicability not just in local, but central government is necessary. We ask that you raise this with your colleague the Minister of Commerce.

Recommendation

17. That representatives from the accounting profession, local and central government undertake a standard by standard review of NZ IFRS to determine what modifications are necessary to make them appropriate for public sector needs.

⁹ Office of the Auditor-General (2008), Report to Parliament – Results of the 2006/7 Audits of Local Authorities.

SERVICE DELIVERY

- 68 Some parts of the LGA are fixated with public service delivery. In particular
- local authorities cannot sell water and wastewater assets or even enter into many types of alternative service delivery arrangements for these services (section 136)
 - similarly there are restrictions on the disposal of parks (section 138)
 - some Schedule 10 disclosures require the local authority to specify “how” the addition, maintenance, replacement and renewal of assets will be done
 - obligations to consult on proposals to change the mode of delivery of a significant activity (section 88).
- 69 These provisions appear to be an overreaction to the privatisation and commercialisation of public services that had characterised the period 1984-1993¹⁰. SOLGM considers that provisions of this nature are inconsistent with the remainder of the Act. These provisions appear to confuse “means” with “ends”. They effectively place barriers in the way of any alternatives other than conventional local authority delivery (shared services, PPPs and the like) and therefore impede innovation and the seeking of cost-efficiencies. The provisions also run counter to the “outcome” focus that central government wants to instil into its own activities, and that the Act instils into local government.
- 70 Local authorities are already under obligations to:
- give effect to their priorities in an effective and efficient manner
 - exercise prudent stewardship and effective and efficient use of resources and
 - take into account the foreseeable future needs of future generations.
- 71 It is, therefore, questionable whether there is a need for prescription where local authorities are already obligated to consider the impact of delivery decisions.

Recommendations

18. That section 88 of the Local Government Act, which requires consultation on proposals to change modes of service delivery, be deleted.
19. That section 136 of the Local Government Act, which places restrictions on contracts for operating water services, be deleted.
20. That section 138 of the Local Government Act, which places restrictions on the disposal of parks, be deleted.
21. That sections 2(d)(iii) and 2(d)(vi) of Schedule 10 of the Local Government Act, which require disclosure of “how” additional capacity will be provided to services and “how” maintenance, renewal and replacement will be undertaken, be deleted.

¹⁰ They also reflect the views of the then Minister of Local Government.

ASSESSMENTS OF WATER AND SANITARY SERVICES

- 72 These sections require territorial authorities to undertake an assessment of the state of all water and sanitary services (not just those publicly owned/operated) within the district. This includes the following:
- water supply
 - wastewater disposal
 - “works for the collection and disposal of refuse, nightsoil, and other offensive matter¹¹”
 - public toilets and
 - cemeteries/crematoria.
- 73 The assessment is essentially a document that assesses the :
- quantity and quality of the supply (whether public or private) of services provided
 - likely future demand for the services and the options for meeting those demands (including any role the territorial authority has) and
 - risks from the provision or non-provision of any service.
- 74 The assessment must be adopted via the special consultative procedure, with a summary going into the LTCCP. Local authorities are also required to consult the nearest Medical Officer of Health.
- 75 This is a transfer of responsibility from central government without compensatory resourcing. The assessment must include services not owned/operated by the local authority, for which there is not necessarily any asset management, growth forecasts and the like from which to draw information to perform the assessment.
- 76 The only statement of policy rationale for this requirement we are aware of appears in the Select Committee report on the Local Government Bill which noted that:
- “Territorial authorities have a duty under the Health Act 1956 to improve, promote and protect public health within their districts. This requirement implies that councils need to identify the essential service needs of their communities and either provide those services themselves or maintain an overview if the service is provided by others. The Bill makes this role explicit.¹²”
- and:
- “We consider that the assessment and reporting provisions bring the information on water and sanitary services into the public domain ... This is in accordance with the Government’s statement of policy direction which says communities should have greater scope to make their own choices about what local authorities do and how they do it.¹³”

11 Section 25 (c) Health Act 1956

12 Local Government and Environment Select Committee 2002, Report on the Local Government Bill, page 26.

13 Local Government and Environment Select Committee 2002, pp 26-27

Assessments of Water and Sanitary Services continued

- 77 While it is correct to say that local authorities have the Health Act responsibility identified above, the same is equally true of the Ministry of Health (see section 3A of the Health Act 1956) and of the District Health Boards (DHB) (section 22(1)(a) of the New Zealand Public Health and Disability Act 2001). Section 22(1)(h) also sets out another objective for DHBs, namely:
- “to foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services”
- In and of itself the Health Act offers no justification for the allocation of this responsibility to local government.
- 78 Further the obligations and powers placed on DHBs seem to suggest that assessing the state of water and sanitary services seems to fit more within the scope of these organisations. Section 23(1)(g) of the New Zealand Public Health and Disability Act 2001 requires DHBs:
- “to regularly investigate, assess, and monitor the health status of its resident population, any factors that the DHB believes may adversely affect the health status of that population and the needs of that population for services”
- 79 An assessment of water and sanitary services sits more logically inside what appears to be a wider process of identifying health needs and risks. While we do not disagree that territorial authorities will hold information that is relevant (such as growth forecasts, water quality indices and the like) this is best viewed as an input to the process not as an excuse to place this requirement on local authorities. DHBs appear to have a wider and more appropriate range of powers regarding the collection of information to prepare an assessment.

Recommendations

22. That responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards.
23. That requirements for local authorities to conduct assessments of water and sanitary services be deleted from the Local Government Act.
24. That requirements for the inclusion of summaries of an assessment of water and sanitary services be deleted from the Local Government Act.

WASTE MANAGEMENT PLANS AND THE LTCCP

- 80 Local authorities must include a summary of their current Waste Management Plans in the LTCCP. While the Waste Management Plan is an important document – it is no more preeminent than other statutory planning instruments such as a District Plan and the like. We see no reason why a summary of the Waste Management Plan is of such importance that it deserves to be included in an LTCCP when many other documents are not. Checking a summary is included and that it is a fair representation of the full Waste Management Plan is ‘one more thing’ that adds to audit costs.

Recommendation

25. That the requirement to include a summary of the local authority’s current Waste Management Plan in the LTCCP be deleted.

CHIEF EXECUTIVE EMPLOYMENT AGREEMENTS

- 81 Clause 33-35 of Schedule Seven of the LGA regulate the employment of Chief Executives. Like a departmental Chief Executive, a local authority Chief Executive is appointed for a term of five years. Unlike a departmental Chief Executive, the council cannot reappoint a Chief Executive without advertising, though it can provide a one-off extension to a contract for up to two years. No less than six months out from the completion of a five year term the council must complete a review of the Chief Executive's employment including an assessment of performance and the incumbent's skills and attributes.
- 82 SOLGM and Local Government New Zealand opposed any regulation of Chief Executive contracts when the Local Government Act was passing through Parliament. We believed then, and still do believe that this was a legislative overreaction to a high profile governance dispute within a local authority that had also become an employment issue.
- 83 From our 2006 research¹⁴ also notes that:
- increased job uncertainty may decrease the number of qualified and experienced persons prepared to apply for a Chief Executive position. In some small rural local authorities it is difficult to attract and retain managers, and the fixed term regime is a further disincentive to apply.
 - the nature of the employment process also makes it more difficult to retain Chief Executives. In the last four years 51 of the 85 local authorities have changed their Chief Executives for reasons other than ill-health. To give an example of the kind of unintended consequences that arise out of this provision, in 2002 the then Chief Executive of North Shore City told his council that as they required to go to the market, he would also be doing so. The council went through the recruitment process and offered the position to the incumbent, only to find that he had subsequently found an alternative Chief Executive's position. Thus the council, and the sector, lost an extremely competent Chief Executive for no reason other than the council had to adhere to a legislative requirement.
 - a requirement to readvertise can make Chief Executives risk adverse and discourage "free and frank" advice and innovation and make them very conscious about offending political groups or factions on council. Local authority Chief Executives are in a very different position from a Departmental Chief Executive, in that their political masters are their employers, there is no State Services Commissioner to intercede and for example, remind elected members that advice should be politically neutral.
 - a requirement to readvertise can cause a period of managerial and political instability, which may impact on a Council's performance. Instability at the Chief Executive level often reflects in organisational instability at the second tier level.

¹⁴ See Thomas (2006), Local Authority Chief Executives 'Five and Two' Employment Agreement Term.

Chief Executive Employment Agreements continued

- 84 Quite apart from these factors, the requirement to readvertise creates an additional (and quite unnecessary) cost on communities. A council that does nothing other than advertise can expect a cost in the low five figures, a council that gets outside assistance with a search can expect a bill of around \$50,000 (a very significant impost for a smaller community).
- 85 Last but not least, this provision is inconsistent with the general intent of the Local Government Act. Local authorities are empowered to promote community wellbeing, and in pursuit of that purpose make day to day decisions involving millions of dollars (including powers to tax, borrow, build or acquire assets). How does this sit with a provision that effectively says that they cannot be trusted to assess their Chief Executive's performance and attributes.
- 86 The present clause 34 of Schedule Seven was inserted to ensure that Chief Executives had no expectation that, all other things being equal, a failure to reappoint on completion of a term would give grounds for a personal grievance under employment legislation. We submit, however, that clause 34 in its entirety is overly prescribed and that all that is required for that purpose is clause 34(7) which requires a review of the incumbent's performance and a determination whether the incumbents skills and attributes are what the council needs moving forward.

Recommendation

26. That clause 34(1) – 34(6) of Schedule Seven be repealed and replaced with provisions that:
- (a) limit the term of a Chief Executives contract to five years
 - (b) allow the Council to reappoint the incumbent for a further term of up to five years on completion of contract without readvertisement, or to advertise at its discretion
 - (c) require the review of performance (under clause 35 of Schedule Seven) no less than six months before the completion of any term.

BYLAWS

- 87 Section 158 of the LGA requires local authorities to review each of their LGA02 bylaws at least once every ten years. We understand that the provision was inserted to ensure that bylaws that are of only historic value do not remain on the books (for example various bylaws related to horse drawn traffic and the provision of facilities to support these). The review must go through many of the same analytical procedures as for setting a bylaw including an analysis of:
- whether a bylaw is the most appropriate way of addressing a problem
 - whether the bylaw is the most appropriate form of bylaw
 - the implications under the Bill of Rights Act 1990.
- 88 Given the purposes for which bylaws can be made under the Local Government Act (protection the public from nuisance, maintenance of public safety, and minimising potential for offensive behaviour) these matters will generally either remain current or will require reasonably frequent amendment. Where bylaws become dated they cease to lose their relevance and thus do little harm in terms of their impact on individual rights (an irrelevant bylaw is unlikely to be tested because no-one ever tests it).
- 89 We submit that the ten year review requirement is unnecessary.

Recommendation

27. That the mandatory requirement to review each bylaw made under the Local Government at least once every ten years be repealed.

INFRINGEMENTS

- 90 The LGA provides for regulations to be made prescribing breaches of bylaws that are infringement offences, along with an infringement fee. Without these regulations no bylaw breach is considered an offence, and no infringement fees are payable. Consequently this means that breaches of bylaws under the Local Government Act must either be prosecuted through the courts or ignored altogether. The former is a time-consuming and costly enforcement tool, which makes prosecution inappropriate for all but the most significant of breaches.
- 91 Regulations prescribing infringement offences have not proceeded in part due to difficulty with the wording of section 259 of the Act which sets the scope of the regulation making power. As council bylaws differ to suit their local situation, the possible breaches of bylaws will differ from local authority to local authority. The practical solution is for the infringement regulations to be based on categories of offences, rather than specifying every offence in every council bylaw. We support a category approach and understand that Crown Law has confirmed that a category approach can be taken under section 259 but that this is not supported by other government advisers. Clarification in s259 would assist. An alternative would be to amend s259 to specify any bylaw breach as an infringement offence (this is the approach in the Dog Control Act 1996) or to amend s259 to enable local authorities to specify their own infringement offences (this is the approach in the Litter Act 1979).

Recommendation

28. That the Department of Internal Affairs develop infringement regulations as a priority. This may require an amendment to section 259 of the Local Government Act 2002 to clarify that a category approach to infringement offences is within regulation making power.

AMENDMENTS TO BORROWING POWERS

- 92 Contrary to the public perception, local government borrowing should generally be viewed as a 'good' rather than a 'bad' approach, within the limits of prudent financial management. Borrowing allows local authorities to spreading the cost of assets over their useful lives, and ensure that tomorrow's ratepayers meet some of the costs of their consumption and that today's ratepayers do not cross-subsidise future consumption.
- 93 An effective set of local authority borrowing powers is vital to ensure that the cost of servicing debt is kept at the lowest possible level. Parliament may be under the impression that this has been 'fixed' by last year's Securities Amendment Act, however the Securities Act amendment gave rise to a further issue that needs resolution.
- 94 In 2008, Parliament unanimously enacted the Securities Amendment (Local Authority Exemption) Amendment Act. This excellent initiative made it easier for local authorities to issue debt securities to the public in two ways:
- waiving requirements that all elected members sign the investment statement and
 - allowing local authorities some exemptions from content requirements of a prospectus (which are the subject of disclosures which local authorities must already make in either a LTCCP or an Annual Report).
- 95 Unfortunately, during the Select Committee process a provision was inserted that undermined the usefulness of the legislation to local authorities. Section 3(B)(b) of this Act requires that where a local authority proposes to issue debt securities to the public and the date of allotment is more than nine months after the last balance date then GAAP compliant interim financial statements must accompany the investment statement. Unlike a private company, local authorities do not prepare interim financial statements and requiring their preparation therefore greatly reduces any cost saving that a local authority might have made from not having to prepare a prospectus. This effectively means that issuing debt securities between March and September becomes less of an economic proposition.
- 96 We understand that the provision was inserted by the Select Committee out of concern that local authority intentions can change and that financial information in an LTCCP and an annual report can date. This is true to some extent, but, any change in intentions that is significant enough to make a material difference to the local authority's financial prospects will almost without exception have been made through the process for amending the LTCCP including public consultation and disclosure of the change and its impact. This means that the information local authorities are reliant on as an alternative to the prospectus must be updated.
- 97 This well-meaning, but ill designed, provision could be amended in one of several ways. Options include:
- replacing the present section 3B(b) with a requirement that where a local authority has amended an LTCCP, the amendment and its impact on financial statements be disclosed

Amendments to Borrowing Powers continued

- amending the present section 3B(b) to either extend the period from nine to twelve months – this limits the period in which borrowing becomes less cost-effective from six to three months or
- amending the present section 3B(b) to require interim financial statements only where the date of allotment is more than nine months from the date of receipt of the last audit opinion. These are typically given in October each year.

98 Any of these options would need to be discussed with your colleague, the Minister of Commerce (as the Minister responsible for the Securities Act)

Recommendations

29. That either section 3(B)(b) of the Securities Act be

- replaced with a requirement that where a local authority has amended an LTCCP, the amendment and its impact on financial statements be disclosed or
- amended to extend the period from nine to twelve months or
- amended to require interim financial statements only where the date of allotment is more than nine months from the date of receipt of the last audit opinion.

RATING POWERS RELATED AMENDMENTS

- 99 The Local Government (Rating) Act is a largely well-designed piece of legislation – within the limitations that a system based on property taxation has. We would however like to raise four issues with you:
- rating exemptions
 - volumetric charging for wastewater disposal
 - enforcement of water rates and
 - enforcement of rates on Maori freehold land.

Rating Exemptions

- 100 Schedule One of the Local Government (Rating) Act 2002 contains an exemption from rates for 22 different categories of land. Some of the categories are quite small but others are quite significant in their scope (for example National Parks, the education sector, and the road network). The only rates these properties pay are targeted rates for water supply, sewage disposal and refuse collection.
- 101 In *Auckland City Council vs Royal New Zealand Foundation for the Blind (2006)* William Young P had this to say about rating exemptions
- “ Over the 130 years which have elapsed since a national system of rating was introduced, there have always been some statutory exemptions from rating. These exemptions have always been disparate in nature, and some of those which remain in the current Act seem distinctly odd.”
- 102 This is a good summary of the current set of exemptions – the policy rationale for many of the exemptions is non-existent or highly suspect, many seem to be the result of historical accident rather than any genuine policy rationale. The drafting of many is open to interpretation and debate. For example, the above case relates to whether land owned by a charity but rented to a third party to generate revenue for the charity meets the requirements of clause 21 of the Act. Another holds that property owned by a school board and let to a teacher is non-rateable while the same property let to any other person would be fully rateable.
- 103 In the most recent review of rating legislation (2001) the then Government’s policy decision was to roll over the existing set of exemptions while modernising the language and recasting the exemptions so they would be based on use not ownership (although in practice many still have some reliance on ownership – especially where Crown agencies are the landowner).
- 104 It appears the policy rationale for rates exemptions fall into one of five categories:
- properties are held for public good purposes (i.e. are meeting some purpose that is deemed to be a “national good”)
 - properties have little or no real economic use and thus may not be able to meet the cost of paying rates
 - properties do not consume services provided by local authorities or consume only limited amounts

Rating Powers Related Amendments continued

- some non-rateable properties provide benefits to the local authority that may not otherwise have been generated. For example it is claimed some national parks generate tourist visits which in turn provide centres like Ohakune with economic benefits they might not have captured otherwise
 - exempting properties avoids distortions in the market – this one is most commonly used to justify exemptions for ports, airports and the rail network (if roads are non-rateable then not exempting these properties provides road transport with a cost advantage).
- 105 Each of these is superficially attractive, but as the Independent Inquiry into Rates noted, these arguments fails on closer analysis. The national good argument is in reality an argument for national funding of the rates on these properties – to do otherwise effectively expects the local ratepayers in Westland or Dunedin to subsidise the benefits of others. Other properties provide benefits to local communities (for example in some towns the pulp and paper mill, or the freezing works are virtually the sole employer) yet these properties are fully rateable. The “level playing field” argument is possibly the strongest argument of the above – although it should be noted that (with the exception of suburban rail in Auckland and Wellington) ports, airports and rail compete with the state highway network rather than local roads.
- 106 It has been estimated that the amount of revenue foregone on non-rateable land lay between \$35 million and \$70 million nationally, of which between 66 and 75 percent is on Crown land (this is net of any rates already collected)¹⁵. This is equivalent to between 1 and 2 percent of the total rate take, but falls unevenly across local authorities.
- 107 In our view few of the current exemptions would survive a first principles review. In cases where a genuine rationale exists, then the exemption needs to be drafted in as clear a manner as possible to avoid providing loopholes and unintended consequences.
- 108 The sector would be willing to discuss arrangements for transition towards the removal of exemptions, and would be willing to help contribute to resolving some of the issues this might raise (such as valuation methods for land where there is no active market).

Recommendation

30. That the present set of rating exemptions in the Local Government (Rating) Act be removed in toto.

Volumetric Charging for Wastewater

- 109 Section 19 of the Local Government (Rating) Act (‘the Rating Act’) allows local authorities to set a rate for water supply that is based on a measurement of water used by or supplied to each rateable property. This is known as volumetric charging, or ‘metering’ by the general public. Around 20 local authorities make use of this power, in some individual cases up to 20 percent of the rate take comes from this particular tool.

¹⁵ This does not include residential areas of educational establishments and the Crown estate,

Rating Powers Related Amendments continued

- 110 However, the Rating Act does not contain a similar provision allowing local authorities to assess rates for wastewater disposal on the same basis. A volumetric charge may be a more equitable mechanism than other alternatives such as a pan charge or a value-based rate in that it is tailored to actual use¹⁶. Volumetric charging for both water and wastewater can also provide local authorities with incentives to manage the entire water cycle in an integrated fashion.
- 111 We note that the ACT election manifesto endorses the commercial provision of water and wastewater services. We consider that volumetric charging for water and wastewater is entirely consistent with this stance.
- 112 It is common in overseas jurisdictions for wastewater disposal to be charged on the basis of water consumption (a usual proxy is that wastewater costs are recovered on the assumption that a volume of 80 percent of water consumed on the property eventually leaves the property via the sewage systems). However, technology is becoming available to meter wastewater disposal directly – thus the legislation should be future-proofed to allow for recovery on either basis.

Recommendation

31. That section 19 of the Local Government (Rating) Act be amended to allow wastewater disposal to be rated for on the basis of either the volume of water consumed or the volume of wastewater leaving a property.

Enforcement of Water Rates

- 113 Historically, local authorities had the powers to restrict or stop water supply for non-payment of rates. These powers were removed in the move to the Rating Act in 2002. Although local authorities can bring proceedings to enforce rates and ultimately can seek rating sales these are costly and time-consuming and ineffective on some categories of land which cannot be sold. The stopping or restriction of water supply was an effective tool.
- 114 A lack of adequate enforcement powers for water rates is a barrier to efficient provision of the service, and means that the community is forced to pay for the consumption of those who refuse to pay water rates.
- 115 Section 193 of the LGA provides local authorities with powers to restrict water supply in instances where people fail to meet legal obligations, refuse to meet contractual obligations or obstructs people wishing to enter property to maintain services. The restriction is limited to the extent that it cannot create insanitary conditions on the property. We consider this provision should be extended to include non-payment of water rates.

¹⁶ For example, a volume based charge would reflect some of the equity concerns faced by schools, if a school is indeed largely vacant for 12 hours a day, and for 13 weeks per year, then this should reflect itself in use.

Rating Powers Related Amendments continued

- 116 Of course, it is not our intention that local authorities would have people out putting restrictors (devices that limit the supply of water) on supplies the day after the rates are due. Powers to enforce rates as a civil debt cannot commence until rates have been outstanding for four months, we propose a similar limitation.

Recommendation

32. That section 193(1) of the Local Government Act be amended to permit local authorities to restrict water supply for unpaid water rates, where those rates are more than 4 months outstanding.

Enforcement of Rates on Maori Freehold Land

- 117 Maori freehold land is land over which the Maori Land Court has made an order determining that the land has this status. Maori freehold land is a category of land not a category of owner - land does not qualify as Maori freehold land simply because the owner is Maori.
- 118 Maori freehold land is unevenly distributed around the country. The largest blocks are in Northland, on the East Coast of the North Island, and in the Central North Island. It appears this land is concentrated in about 10 councils.
- 119 The decision of the Court of Appeal in *Valuer-General vs Mangatu Incorporation* (1997) held that the restrictions on the alienability of Maori freehold land means that the normal presumption of 'willing buyer, willing seller' does not apply and that consequently every parcel of Maori freehold land should have had a reduction of between 5 and 15 percent in its ratable value. The sector generally considers this is reasonable recognition of the differences between general and Maori freehold title.
- 120 Enforcing rates on this category of land can be extremely challenging. Local authorities are statutorily barred from using the rating sale process. Maori freehold land is seldom mortgaged (consent of all owners is required) thus recovery from a mortgagee is usually not an option. Local authorities can go to the Maori Land Court to secure judgement for rate. The Court must have regard to the desirability of retaining land in Maori ownership and promoting the effective development, management and use of the land. As a consequence the Court is sometimes reluctant to issue a charging order, and in the event that it does the order extends only to the extent that income is derived from the land¹⁷. Some Maori even refuse to pay rates on grounds that rating is inconsistent with the Treaty of Waitangi, or in the case of one iwi group that they are an independent nation under the Declaration of Independence in 1835.
- 121 Many of the 10 councils have levels of rates arrears that are substantially above the national average (nationally more than 99 percent of rates struck are collected, in some of the 10 councils the level of arrears is 11-12 percent of rates).

¹⁷ One local government commentator has stated that "enforcing rates through the Maori Land Court is like complaining to your Mother-in-Law about your wife".

Rating Powers Related Amendments continued

- 122 Local government is, frankly, “the meat in the sandwich” on this issue. Central government has decided it is important that Maori land should remain in Maori ownership and that such land should be effectively developed, managed and used. Those policy decisions have been motivated by the Crown’s obligations under the Treaty of Waitangi. But by the same token, every dollar local authorities cannot collect, is a dollar that has to come from somewhere else in the community. This is perhaps one of the less well-known cases where central government policy decisions impose costs on local communities.
- 123 Few in the sector would doubt that there are some categories of Maori freehold land that have spiritual, historical or conservation significance to Maori and will genuinely never be placed into economic or residential use. Similarly there is doubtless land that cannot physically be used, such as land without road access. But, on the other hand, there are tracts of Maori freehold land that is farmed or is otherwise in economic use and/or being used for residential purposes. These lands are undoubtedly using local government services or otherwise contributing to a need for expenditure, the owners are enjoying either an income or other pecuniary benefit from their use of the land¹⁸, and enjoying a 5-15 percent reduction in their values and hence value based rates.
- 124 If the Government really believed Treaty obligations justify this, then it should have the courage of its convictions and compensate local authorities. We do not seek this, we seek to be able to enforce rates on land that is demonstrably using our services and where there are no other extenuating circumstances that would justify what is effectively an exemption by another name.

Recommendation

33. That the Local Government (Rating) Act be amended to place all Maori freehold land in economic or residential use, or where the property is held for purposes other than for the preservation of land of conservation or historical value, on the same enforcement regime as exists for general titled land.

¹⁸ And even if no income or pecuniary benefit is being returned is the rating system really a policy tool for supporting uneconomic land use.

FEE-SETTING POWERS

- 125 There are a large number of pieces of legislation and associated regulations that confer powers on local government to set fees. Many of these involve regulatory functions. Some of the more well-known of these include the Sale of Liquor Act 1989, the Building Act, the Food Act 1981, Amusement Devices Regulations, Hawkers, Peddlers and Itinerant Traders Regulations, the Impounding Act 1955, and the like.
- 126 More recently enacted legislation tends to have more flexible charging powers. However these powers generally tend to allow for recovery of the cost of processing applications, undertaking inspections and the like.
- 127 However a review of fee-setting powers in 2008 found some specific instances where fees had been set at a particular maximum level. These include:
- liquor licensing and bar manager certificate under the Sale of Liquor Act 1981
 - amusement device permits under the Amusement Devices Regulations 1978 and
 - overweight vehicle permits.
- 128 It is not clear that legislators have access to the right information, or the right incentives to be able to set a price that bears relationship to the cost of a service. The obvious result is that the maxima become dated and over time bear less and less relationship to the cost of the activity. An often repeated story is that of the official who made a round trip of four hours to inspect an amusement device for which the council could recover the princely sum of \$12.
- 129 If pricing powers do not allow for recovery of full costs then local authorities are left with no alternative other than to fund from the general rate. Some have sought to defend this on the grounds that regulation protects the public and thus there is a public good element to these services which local taxation should meet. On the other hand, judgements about the public and private good elements of services are made through the processes under the Local Government Act 2002 and statutory prohibitions of this type ride roughshod over these disciplines.
- 130 While the above three items are small in scale, they are hard for local authorities to justify to communities. But in addition to these, we would ask that as the Minister for Regulatory Reform you commit to the principle that local authorities should be able set fees to recover actual and reasonable cost of any activity delegated by central government.

Recommendation

34. That all remaining prescription of specific fee levels in legislation be amended to allow for recovery of actual and reasonable cost.

LAND TRANSPORT MANAGEMENT ACT

- 131 We have two issues to raise in respect of the Land Transport Management Act. Both are matters that would need to be discussed with your colleague, the Minister of Transport.

Road Pricing

- 132 Much of the local government sector has long supported the introduction of road pricing¹⁹ both as a means of generating funding for the land transport network and, just as importantly, as a demand management tool. As long ago as 1993 the then Local Government Association and representatives from the Automobile Association and the Road Transport Forum supported the introduction of 24/7 road pricing.
- 133 A 24/7 Road pricing regime is a natural development in demand management with a focus on controlling congestion and other environmental impacts from road use.
- 134 Road pricing will require some technological development over the short-medium term but in our view the necessary legislative changes can be made in advance of the technology so the tool can be made available when technology has caught up.
- 135 Quite apart from questions of technology, its introduction will also raise very challenging policy questions on issues such as when and how to introduce it (nationally or in selected areas such as New Zealand's main urban centres), should it be revenue neutral or revenue raising, what existing tax or taxes would it replace (and how would it be phased in, especially if 24/7 Road pricing applied only in parts of the country), and what does it imply for existing governance, funding and ownership arrangements for New Zealand's roads and public transport networks?
- 136 As an intermediate step, we would further recommend a review of the restrictions on tolling for new infrastructure in the Land Transport Management Act 2003. Effectively tolling can only be used if central government agrees with the proposal to toll (in that tools require an Order-in-Council made on the recommendation of the Minister of Transport). The Minister is empowered to place any conditions on an such order, and need not give reasons for the decisions they make to recommend or reject a proposal. In short, proposals can be rejected on purely political grounds. This kind of restriction cuts across the principles of central-local partnership, local empowerment and subsidiarity of decision-making that underpin the Local Government Act.

Recommendations

35. That the Government give priority to identifying and resolving the policy and implementation issues around the introduction of 24/7 road pricing.
36. That as an intermediate step, that the Government remove the requirements for Ministerial approval of road tolling in respect of new roading projects.

¹⁹ See for example. LGNZ, AA and RTA (1993) Land Transport Funding A Submission to Government, LGNZ (1997) Corridor Management: The Option That Works, LGNZ (1999) Streets Ahead, LGNZ (2003) Submission to the Transport and Industrial Relations Select Committee on the Land Transport Management Bill.

Land Transport Management Act continued

Competitive Pricing Procedures and Shared Service Arrangements

- 137 The local government sector is becoming increasingly interested in shared services as a means of pooling a finite amount of expertise. Manawatu District and Rangitikei District have gone further along this path than most organisations with exploring shared services for land transport. Other local authorities are looking to this with some interest in terms of the impact of economies of scale on cost and the like.
- 138 In the course of their discussions the two councils have discovered a 'glitch' in the Land Transport Management Act. With certain limited exceptions, all expenditure that is subsidised by the Government must be subject to competitive pricing procedures (CPP) – including what are known as in-house professional services (design etc) other than those that a local authority provides to itself (which have a legislative exemption). It transpires however that one local authority cannot provide professional services to another with going through a CPP other than by one local authority hiring the other's staff part-time. It appears that the authors of this Act never contemplated the likelihood of shared services between local authorities.
- 139 We submit that if the Government is serious about encouraging local authorities to explore shared services than 'nuisance value' restrictions such as this. This particular issue can be resolved with a minor widening of the present exemption for professional services.

Recommendation

37. That section 26 of the Land Transport Management Act be amended to widen the exemption for professional services to circumstances where one local authority is provided services to another.

DRINKING WATER STANDARDS

- 140 Local authorities are required to observe drinking water standards set by the Ministry of Health.
- 141 We are concerned that few, if any, of these have been subject to the kind of rigorous cost benefit analysis of the nature that say a road safety project might receive. Many have little tolerance for local circumstance, for example a rural water supply will require upgrading even though most of the water will ultimately be used as stock water
- 142 While the state is providing funding to assist the sector to undertake the activities necessary for compliance, there has been an ongoing debate as to whether the funding provided is adequate, or even sufficient.
- 143 We submit that in a time when government at all levels is looking for value for money in its spending, this policy is not justifiable either on policy or cost/benefit grounds.
- 144 We understand that the recent Jobs Summit has called for a moratorium on these standards pending review. We agree with this position, and we note that Local Government New Zealand has likewise agreed with the concept of a moratorium.

Recommendations

38. That the Government commit to review the present mandatory set of drinking water standards for cost effectiveness and practicability
39. That pending completion of the review that regulations setting effective dates for these standards be revoked.



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