

Date: 2 August 2016

**Committee Secretariat
Local Government and Environment
Parliament Buildings
WELLINGTON 6011**

Dear Sir/Madam

Subject: Waikato District Council's Submission on the Local Government Act 2002 Amendment Bill (No 2)

The Waikato District Council (WDC) welcomes the opportunity to make a submission on the Local Government Act 2002 Amendment Bill (No 2).

WDC concurs that local government must respond and adapt to an increasing range of challenges if it is to deliver modern, cost-effective services that meet the evolving needs and expectations of ratepayers. We would also like highlight that, to give effect to this objective, we have already started or are involved in a number of sub-regional and regional initiatives. Some examples include:

- The Waikato Mayoral Forum is in the process of implementing an integrated work programme to help boost the regional economy and deliver multi-million dollar cost savings
- The Waikato Plan, an initiative of the Waikato Mayoral Forum, is the first time all the councils and agencies in the Waikato are working together to create one plan that gives us all a single collective voice about issues that affect the region and for interacting with central government.
- The Waikato Local Authority Shared Services (LASS) (of which WDC is a shareholder) has achieved significant operational efficiencies, shared services, collaboration and procurement savings.
- A sub-regional Waters CCO – WDC is working with Hamilton City Council and Waipa District Council in the creation of a self-funding Waters CCO to service the combined territorial authority areas thereby bringing significant financial and non-financial benefits to the sub-region.
- The Waikato Road Asset Technical Accord (RATA) - which was established in July 2014 and of which WDC is a participating Council – aims to achieve best practice road asset management within the Waikato by improving capability, capacity and outcomes through effective collaboration. This is an example of best practice in the country and is strongly supported by the New Zealand Transport Agency.

- The Waikato Roding Alliance is a collaborative contracting model established by WDC in July 2015 aimed at providing a more efficient and effective roading service for the district.
- An HR Shared Recruitment Service involving WDC and three other councils.

In addition to the above, WDC is a participant in many joint governance arrangements for areas of common and/or shared interest e.g. the Joint Management Agreement between WDC and Waikato-Tainui, the joint governance arrangement of the Waikato Mayoral Forum, and joint governance arrangements at a sub-regional level for integrated land use and infrastructure planning with Hamilton City Council, Waipa District Council and the Waikato Regional Council through the Future Proof¹ Implementation Committee).

WDC is therefore pleased that it is already well advanced in giving effect to some of the key provisions of the Bill.

Whilst we support the general intent of the Bill there are a few specific matters we would like to highlight in our submission for the Select Committee's consideration.

In addition, whilst our submission is largely consistent with the submissions made by Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM) we have also provided our own views based on our work and experiences in setting up a Waters CCO with Hamilton City Council and Waipa District Council. We also support the submission made by PriceWaterhouseCoopers on tax.

I. Submission

I.1. General comments

WDC is supportive of the general intent of the Bill. In particular, the Council is supportive of the Bill providing more flexibility to collaborate and develop shared services; its advocacy for reorganisation processes that can be locally-led and driven; and its provisions for the greater use of council controlled organisations (CCOs).

WDC believes that the Bill creates new options for councils and communities to improve performance and better manage local services and infrastructure. However we believe that there are certain aspects of the Bill that are contradictory in that there are provisions which would result in more bureaucratic and administrative inefficiencies – something which the Bill was meant to address.

¹ Future Proof is a partnership between Waikato District Council, Waikato Regional Council, Hamilton City Council and Waipa District Council aimed at fostering integrated land use and infrastructure planning in the sub-region covered by the three territorial authorities. The New Zealand Transport Agency (NZTA) and Tangata Whenua are key stakeholders.

Like LGNZ, we are also concerned about the possible erosion of local democracy as some of the Bill's provisions, if enacted, could undermine our local democratic system by diminishing the decision-making ability of locally elected representatives and eroding the constitutional separation of local and central government. Therefore, we support LGNZ in highlighting that any legislative change must promote transparency and openness and ensure that elected representatives have sufficient decision-making authority and accountability. As such, the principle-based issues we are concerned with relate to the following:

Strengthening transparency and openness

- The ability of the Local Government Commission (LGC) to remove an activity from the direct oversight of a local authority and to corporatise it without the permission of, and potentially against the wishes of, the council and its community, contravenes transparency and openness and assumes that communities themselves have no view on these activities (many of which have been identified as strategic assets in councils' Significance and Engagement Policies).

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

Recommendation:

WDC supports the LGNZ recommendation that proposals by the LGC to create multiply-owned CCOs for major activities should have the support of the majority of councils involved or their communities if such proposals are to proceed.

Ensuring elected representatives have sufficient decision-making authority and accountability

- The proposed power of the Minister to direct the LGC provides the ministerial position with an unprecedented ability to intervene in the affairs of a local authority. There is no guarantee that such powers will be used responsibly;
- The proposed power for the Government to set benchmarks for CCOs and performance measures for discretionary activities similarly erodes constitutional

distinction between the two spheres of government as it undermines the contract that exists between local elected members and their communities. Of similar concern is any requirement that Transport CCOs report on the achievement of Government objectives. Performance measures and benchmarks should be agreed to between the shareholding councils and the CCO and this can be done through discussions between these entities and formalised through a Letter of Expectations and the Statement of Intent.

- Councils make decisions and adopt policies for the benefits of their communities today and for the future. An unanswered question in the Bill is how an individual shareholding council would require a multiply-owned CCO to apply specific levels of service or policies within its specific jurisdiction.

Recommendation:

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

WDC recommends that set benchmarks and performance measures for discretionary activities for the CCO be done between the shareholding councils and the CCO.

WDC recommends that the Bill clarifies how an individual shareholding council would require a multiply-owned CCO to apply specific levels of service or policies within its specific jurisdiction.

The specific comments/recommendations on various clauses of the Bill are provided below.

I.2. Specific comments/recommendations

I.3.

Clause	Comment	Recommendations
Clause 7(g)	The test for demonstrable community support has been largely removed from the Bill. This test previously showed a minimum expectation for public support. This test has also helped the Commission conclude whether proposals for political amalgamation would succeed at a poll.	<p>WDC recommends that the Select Committee:</p> <ol style="list-style-type: none"> 1. Agrees that proposals for reorganisation initiatives should be required to show demonstrable community support 2. Agrees that the clause 7(g) be amended by deleting the phrase “ of significant community opposition to” and replacing this with “that there will be demonstrable community support for ...”
Clause six, Schedule Three	Local authorities can provide insight into investigations. Under the principle that the Commission can initiate investigations of its own motion, local authorities do not have the right to comment on proposed matters to be investigated. The Commission does not need to discuss the proposed scope of the investigation with the affected local authorities.	<p>WDC recommends that the Select Committee:</p> <ol style="list-style-type: none"> 3. Agrees that the proposed new Clause Six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process. 4. Agrees that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds).

Clause	Comment	Recommendations
<p>Sub clause 23(1)(e), Schedule Three</p>	<p>Under the proposed clause, proposals to establish CCOs are not required to go to a poll. Whilst WDC is not against consulting with the community (in fact we have set ourselves a 2020 challenge of having the most engaged community in New Zealand) we are supportive of not having a poll for the establishment of CCOs for the following reasons:</p> <ul style="list-style-type: none"> • It minimises the risk of uninformed decision-making with regards to determining the best way to deliver a service when seeking efficiencies, cost savings and non-financial benefits. The recent 'Brexit' debacle in the United Kingdom is a good example of a complex issue where in hindsight many of those who made the decisions did not understand the future economic and social impacts. This situation could have been avoided if the responsibility for decision-making remained in the hands of elected members instead of the public to make the informed decision. • It will make for responsible and stable administration based on decisions made by elected members. • Elected representatives have a working knowledge of council, services, activities and other factors important to a community's well-being, identity and needs. <p>Notwithstanding the above, there is still the option of using the Special Consultative Procedure to engage with the community on a CCO proposal which our Council (or shareholding councils) can use.</p>	<p>5. WDC is supportive of proposals to establish CCOs <u>not</u> being required to go to a poll and recommends that the Select Committee retain this clause.</p>

Clause	Comment	Recommendations
<p>Sub sections 31A(2)(b), 31A(2)(c), 31A(3)</p>	<p><u>Relevant Clause:</u></p> <p><i>With regards to the Minister’s expectations of the Commission in relation to local government reorganisation</i></p> <p><i>(1) The Minister may, by notice in writing to the Commission, specify expectations relating to the Commission’s performance of its functions and exercise of its powers under Schedule 3.</i></p> <p><i>(2) Without limiting subsection (1), the Minister may specify</i></p> <p><i>(a) any issues, problems, opportunities, or reorganisation objectives that must be regarded by the Commission as having a high priority for investigation:</i></p> <p><i>(b) any geographic area or areas that must be regarded by the Commission as having a high priority for investigation: 5</i></p> <p><i>(c) any matters or geographic areas that must not be the subject of an investigation by the Commission.</i></p> <p><u>Comment:</u></p> <p>WDC would expect that as a minimum the Minister would be required to consult, the Commission, the local government sector (through Local Government New Zealand) and any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister’s proposed expectations, when considering priorities for investigations. We consider that ministerial powers should be used transparently.</p>	<p>WDC recommends that the Select Committee:</p> <ol style="list-style-type: none"> 6. Agrees that the proposed new subsections 31A(2)(b) and subsections 31A(2)(c) be deleted. 7. Agrees that the proposed new subsections 31A(3) be amended to require the Minister to consult the Local Government Commission, Local Government New Zealand, and any interested or affected Ministers.

Clause	Comment	Recommendations
Section 56	<p>We note the inconsistency between the ordinary process for establishing a CCO under s 56 of the LGA and the LGC-led or Council-led re-organisation processes. Essentially, under either re-organisation process there are two key advantages. First, there is no requirement to amend the LTP. Second, the CCO can be given the Schedule 8A powers (water) or Schedule 8B powers (transport). Given that neither s 56 or a re-organisation requires an SCP (although nothing prevents councils who want to establish a CCO from using it) and that a Council-led re-organisation leaves very little discretion for the Commission to overrule the plan, there is no reason that they should be inconsistent.</p>	<p>WDC recommends that the Select Committee:</p> <ol style="list-style-type: none"> 8. Amend the Bill so that the establishment of a (water/transport/joint/substantive) CCO under s 56 is exempt from the LTP requirements in s 97 meaning that no LTP amendment is required.

Clause	Comment	Recommendations
<p>Section 56J</p>	<p><u>Relevant Clause</u></p> <p><i>56J - Bylaws and enforcement for multiply owned water services council controlled organisation</i></p> <p><i>(1) The shareholding local authorities of a multiply owned water services council controlled organisation must establish a joint committee for the purposes of this section.</i></p> <p><u>Comment:</u></p> <p>The proposed section allows for the creation of a joint committee (which is in essence a bylaw committee) with responsibility to appoint and ‘warrant’ enforcement officers and commence enforcement actions, essentially overseeing bylaws. It is WDC’s view that the creation of a joint committee specifically to oversee bylaw enforcement is unnecessary. As noted in the SOLGM submission the relevant provision in the Local Government (Auckland Council) Act requires the Auckland Council to appoint enforcement officers to enforce compliance with bylaws, and requires the Council to consult Watercare to ensure sufficient officers are appointed. We expect consistency in this regard.</p>	<p>WDC recommends that the Select Committee:</p> <p>9. Agrees that shareholding councils be given the authority to appoint enforcement officers to enforce compliance with bylaws in consultation with the relevant CCO.</p>
<p>Clause 6 of Schedule 8B</p>	<p><u>Relevant Clause</u></p> <p><i>Schedule 8B - Statutory responsibilities, duties, and powers that may be conferred on transport services council-controlled organisations</i></p> <p><u>Comment</u></p> <p>The proposed schedule provides the Local Government Commission with extensive powers to transfer bylaw-making powers from local authorities to transport services CCOs. However, WDC does not see any merit in a joint committee for bylaw and enforcement powers in roads as such bylaws may be relevant to more than just transport issues relevant to the CCO. This view is consistent with our view that a similar committee is not required for the Waters CCO either.</p>	<p>WDC recommends that the Select Committee:</p> <p>10. Agrees that the proposed clause 6 be removed from the Bill.</p>

Clause	Comment	Recommendations
Section 56C(2)	WDC supports the requirement that substantive CCOs prepare a service delivery plan that is consistent with the Letter of Expectations from the shareholding councils and a Statement of Intent approved by the shareholders.	WDC recommends that the Select Committee: 11. Agrees that substantive CCOs be required to consider shareholder views that are consistent with a Letter of Expectations from the shareholding councils and an approved (by the shareholders) Statement of Intent while preparing a service delivery plan.
Section 56D(3)	The proposed section requires that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. However, there is no requirement to consult with shareholders or adopt it as part of the CCO's service delivery plan.	WDC recommends that the Select Committee: 12. Agrees that CCO infrastructure strategies should be adopted as part of the CCO's service delivery plan and that this inform Council LTPs. 13. Agrees that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.
56H	Water services CCOs have been expressly prohibited from distributing a surplus to any of its shareholders under the Bill; however this rationale has not been applied to transport CCOs. Public concern about any charging for road use is likely to be of equal concern.	WDC recommends that the Select Committee 14. Agrees to add a provision prohibiting transport services CCO from distributing a surplus to shareholders as part of the Bill.

Clause	Comment	Recommendations
<p>Subsection 57(3) and 57(5)</p>	<p>WDC supports the new provision that prohibits members of local authorities, community boards or local boards from serving as directors of multiply-owned CCOs. We also note that local authority staff are still able to become board members on a CCO.</p>	<p>WDC recommends that the Committee:</p> <p>15. Agree to retain the provision that prohibits elected members of local authorities, community boards or local boards from serving on directors of multiply-owned CCOs. This is consistent with the approach that WDC, Hamilton City Council and Waipa District Council are taking with regards to the establishment of a proposed Waters CCO.</p>
<p>Section 31H</p>	<p>Setting development contributions is an important policy choice for local authorities and part of other funding considerations. Section 31H implies that an unelected board of a CCO should be able to simply “require” a local authority to amend its development contributions policy, and without a direct requirement to consult the affected local authorities.</p>	<p>WDC recommends that the Select Committee:</p> <p>16. Agrees that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and</p> <p>17. Agrees that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H.</p> <p>18. Agrees that sub regional and regional CCO’s have their own development contributions policy and that charges are either notified by the individual council (where consenting is the logical charging trigger such as roading/parks etc.) or in the case of water & wastewater services on-charged by the CCO at the time of connection to the service.</p>

Clause	Comment	Recommendations
<p>Sections 63a to 63e</p>	<p>WDC's main concerns with sections 63a to 63e is that:</p> <p>a) It doesn't seem to contemplate the economies of scale through regional and sub-regional approaches (i.e. looks structured around an individual shareholding local authority), and</p> <p>b) It adds in a lot of administration (red tape) between the two entities. For example the catchments for water and wastewater would not necessarily be the same as the territorial authority boundaries (e.g. Rotokauri in Hamilton and Te Kowhai in the Waikato district may be banded together) so the underlying per lot charge would vary across the territorial authority boundaries which is obviously not the intention - we already have this issue in practice with the northern part of the district and having to have a development agreement between ourselves and Watercare (significant funding assumptions would also be different such as interest rates between the TA's and CCO's).</p> <p>Ideally the territorial authority would remove those elements from our DC policy but have an appended charging regime in our fees and charges that picks up on the work that the CCO has done to establish a DC of relevance for the various catchments that they have and the CCO would have to produce the capital works schedules for waters/wastewater and methodology on calculations etc.</p>	<p>WDC recommends that the Select Committee:</p> <p>19. Acknowledges the variability that could arise through a sub-regional or regional CCO having to work with numerous territorial authorities DCP's. And in order to support the economies of scale that could be derived from a sub-regional or regional approach to water services makes provision in the Bill that fosters efficiency gains through the requirement of CCO to administer their own DCP (e.g. water and wastewater).</p> <p>20. Have regard to the complexities and also opportunities for efficiency gains by enabling sub regional and regional CCO's to have their own development contributions policy and that charges are either notified by the individual council (where consenting is the logical charging trigger such as roading/parks etc.) or in the case of water & wastewater services, directly charged by the CCO at time of connection to the service (when the demand occurs).</p>
<p>Section YA I of Income Tax Act 2007</p>	<p>Any reorganisation that results in local authority core activities being transferred to a CCO mean that these activities will become subject to income tax at the CCO level, as will any income received by a local authority from a CCO. It should be noted that core activities do not compete with the private sector and should be treated as if they were provided by a local authority.</p> <p>The relevant Cabinet decision determined that the establishment of CCOs would be tax neutral. We support this policy objective but are not certain that the Bill as presently drafted achieves this.</p>	<p>WDC recommends that the Select Committee:</p> <p>21. Agrees that CCOs that are wholly owned by local authorities, provide core functions, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.</p>

Clause	Comment	Recommendations
<p>Section YA I of Income Tax Act 2007 and Clause 56H(a)</p>	<p>It appears that a water services council- controlled organisation will be subject to income tax if it is a company or an “entity” that has a profit purpose (i.e. it is a CCTO). Due to the proposed prohibition on water services council-controlled organisations being able to pay a dividend or distribute any surplus to any owner or shareholder then any profits will be subject to income tax wholly within the water services council-controlled organisation.</p> <p>There may be tax implications if assets are vested in councils and then transferred to CCOs. We would strongly advocate that consideration be given to the vesting of assets directly in CCOs.</p>	<p>WDC recommends that the Select Committee:</p> <ol style="list-style-type: none"> 22. Agree that assets can be vested directly in CCOs as there may be tax implications if assets are vested in councils and then transferred to CCOs. 23. Agrees that water services council-controlled organisations be exempt from income tax. As recommended in the PriceWaterhouseCoopers (PWC) submission this could be achieved by water services council-controlled organisations being defined as a “local authority” in section YA I of ITA 2007. 24. Agrees to clarify whether it is intended water services council-controlled organisations are able to operate through a limited partnership structure. 25. Confirm that as a water services council-controlled organisation is prohibited from distributing surpluses, this is akin to not operating with a purpose of making a profit so that it will not be a CCTO as defined in the LGA. 26. Clarify the ambit of clause 56H(a), including whether this will extend to the ability of a water services council-controlled organisation to: <ul style="list-style-type: none"> - provide discounts to any owner or shareholder - provide rebates to any owner or shareholder - make subvention payments to shareholders (in the event they are not exempt from income tax or- accept or receive tax loss offsets from its shareholders (in the event they are not exempt from income tax.

Clause	Comment	Recommendations
<p>Ability of a water services CCO to levy charges</p>	<p>Given that water services council-controlled organisations will take over the ownership and operation of substantial infrastructural assets and that these infrastructural assets will need to be replaced, improved and added to in the future, such organisations will likely need the ability to impose levies such as an infrastructure growth levy. Such a levy could be a substitute/replacement for Council development levies.</p>	<p>WDC recommends that the Select Committee:</p> <p>27. Confirm that water services council-controlled organisations are able to impose levies for the purposes of infrastructural replacements and renewals; and</p> <p>28. Confirm that such levies will not be taxable income of a water services council-controlled organisation (in the event that water services council-controlled organisations should be exempt from income tax is not accepted); and</p> <p>29. In the event that water services council-controlled organisations are able to impose levies for the purposes of infrastructural replacements and renewals is accepted, that the Select Committee consider the GST implications thereof. Similar provisions to those that currently apply to Local Authorities as set out in section 5(7B) and 5(7C) of the Goods and Services Tax Act 1985 should equally apply to water services council-controlled organisations.</p>
<p>Clause 57</p>	<p>The proposed clause 57 is ambiguous as it seeks to specify that income and expenditure incurred by a transferring entity before the date of transfer does not become that of the receiving entity simply because of the transfer of assets and liabilities. Additionally, <i>expenditure</i> on financial arrangements, depreciable property, trading stock etc. are dealt with elsewhere.</p>	<p>WDC recommends that the Select Committee:</p> <p>30. Agrees that all references to “expenditure” in Clause 57 be replaced by the term “expenses.”</p>
<p>Clause 11, Schedule Three</p>	<p>The proposed new clause 11, Schedule Three does not specifically place the Local Government Commission under a duty to consider other implications, including tax costs to ratepayers.</p>	<p>WDC recommends that the Select Committee:</p> <p>31. Agrees that that clause 11, Schedule Three be amended to ensure that the Local Government Commission is required to ensure that tax costs to ratepayers are identified in reorganisation plans.</p>

Clause	Comment	Recommendations
Section 24, 56J, 56W	Committees/joint committees established for the purposes of a schedule 24 reorganisation should be exempt from income tax.	WDC recommends that the Select Committee: 32. Agrees that committees and joint committees be treated the same as local authorities for income tax purposes.
Sections 259 and 261 of the principal Act	While we agree that the Minister should consider the effectiveness of local authorities' performance, we have concerns about the relevance and usefulness of some of the current mandatory performance measures that sit within the present regime. The effectiveness of the fiscal parameters and benchmarks, reporting against measures set under the authority of section 261A, needs to be considered before the introduction of further performance measures. We are also of the view that there is significant scope for the performance measures to be streamlined.	WDC recommends that the Select Committee: 33. Amends the Act by adding a requirement to review the effectiveness of existing regulations made under sections 259 and 261 of the principal Act before making new regulations.
Clause 32, section 259(d)(f)	Clause 31 of the Bill prescribes the corporate accountability information that local authorities must disclose in any or all of their accountability documents. However it is unclear as to what corporate accountability information may include.	WDC recommends that the Select Committee: 34. Amends clause 32 by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.
Paragraph 39 of the associated Cabinet paper	Paragraph 39 of the associated Cabinet paper appears to contemplate change to the rates rebate scheme to ensure water and wastewater charges fall within the ambit of the scheme. We can find no such amendment in the legislation and suggest that one is needed.	WDC recommends that the Select Committee: 35. Agrees that water and wastewater charges levied by the CCO should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.

Thank you once again for the opportunity for WDC to make a submission. We would like to speak to the submission.

Yours faithfully

Cr Allan Sanson
MAYOR