

# LOCAL GOVERNMENT FORUM

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## SUBMISSION TO

### LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE ON LOCAL GOVERNMENT ACT AMENDMENT BILL

18 June 2010

#### 1. INTRODUCTION

- 1.1 The Local Government Forum ('the Forum') welcomes the opportunity to make a submission to the Local Government and Environment Select Committee on the Local Government Act Amendment Bill ('the Bill').
- 1.2 The Bill arises from concerns expressed by ratepayers about the strong growth of local government expenditure and the resulting increases in rates. It also arises from the need for local government, which is a significant component of the economy, to positively contribute to the Government's economic goals.
- 1.3 To this end the Forum strongly supports focusing local government on core services and to give ratepayers greater ability to influence local government decision-making. The Forum therefore supports reform of the Local Government Act 2002.
- 1.4 The Forum also strongly supports the three underlying principles set out in the Bill's explanatory note:
  - That local authorities should operate within a defined fiscal envelope;
  - That local authorities should focus on core activities; and
  - That local authority decision-making should be clear, transparent and accountable.
- 1.5 However, while supporting these underlying principles and agreeing with much of what is contained in the Bill, we have concerns about some of the Bill's provisions, which we feel do not go far enough in satisfying these principles.
- 1.6 Following a summary of recommendations (section 2 of this submission), there is a short discussion on the need for reform of local government (section 3); a discussion on the Forum's concerns about the Bill including our proposed solutions (section 4); a discussion on the need for reform of local government funding (section 5); and a more detailed clause-by clause analysis attached as an appendix.
- 1.7 The Forum acknowledges the submissions of its individual members.
- 1.8 The Forum would appreciate the opportunity to appear before the Committee to present its submission.

## 2. SUMMARY OF RECOMMENDATIONS

- 2.1 The Forum recommends that the Local Government Act Amendment Bill should **proceed**.
- 2.2 Subject to our primary recommendation above, the Forum also recommends improvements to the Bill in order to make it more likely to achieve the three underlying principles discussed in paragraph 1.4 above. Discussion on these recommendations follows in sections 4 and 5 of this submission.

## 3. REFORM OF LOCAL GOVERNMENT

- 3.1 Local government is an important part of the economy. It owns significant infrastructure and other assets, worth around \$84 billion, and it provides important services to the community. In the 2009 calendar year the sector's operating expenditure was almost \$7.0 billion and operating revenue was more than \$6.7 billion (of which \$3.9 billion came from rates). Local government is also responsible for much local regulation impacting on people and on businesses.
- 3.2 Over the past decade, local government spending has increased substantially, with particularly rapid growth since 2003, the year the Local Government Act 2002 came into force. This growth is shown in the following table:

Year Ended December	Total Operating Expenditure	% Increase over the previous year
1999	3,531.8	+3.9%
2000	3,502.5	-0.8%
2001	3,704.8	+5.8%
2002	3,930.7	+6.1%
2003	4,183.2	+6.4%
2004	4,539.6	+8.5%
2005	5,061.2	+11.5%
2006	5,407.4	+6.8%
2007	5,923.3	+9.5%
2008	6,482.4	+9.4%
2009	6,989.1	+7.8%

Source: Statistics NZ Local Authority Statistics

- 3.3 Statistics for the March 2010 quarter (not included above) indicate that there might be a slowing in spending growth but we are unclear whether this recent restraint is temporary or something more enduring. And nor is there much evidence of spending being reduced following several years of such rapid growth.
- 3.4 Concerned about the growth in local government spending and the resulting impact on rates and on the economy, the Forum published in 2007 *Democracy and Performance: A Manifesto for Local Government* which sets out the Forum's perspectives on local government. It also outlined "policy directions that would assist local government to make a better contribution to the overall welfare of all New

Zealanders”<sup>1</sup>. It suggests that councils should focus on the efficient provision of public goods and to maintain order.

3.5 Key conclusions are summarised below:

- *Local government has a vital but limited role.*
- *The activities of some councils presently extend well beyond their proper role, thereby threatening private property and prosperity through excessive and inappropriate spending and regulation.*
- *The level of rates is excessive and the distribution unfair.*
- *Local government should focus on activities that cannot be undertaken efficiently by individuals, firms and voluntary groups, and that are not performed by central government. It should administer appropriate regulation at the local level.*
- *Core activities of local government should be enumerated in the Local Government Act 2002. Other significant activities could be undertaken provided that more than a simple majority of ratepayers approve of such activities in a referendum.*
- *A first principles review should be undertaken of the Resource Management Act 1991, the Building Act 2004 and other regulations that councils administer.*
- *A first principles review of the funding of local government should be undertaken.*
- *Part 6 of the Local Government Act 2002, which relates to planning, decision making and accountability, should be revised to reduce the cost to councils and ratepayers of financial management.*<sup>2</sup>

3.6 The Forum is pleased that a number of these points are under active consideration by the Government.

3.7 Two further publications are also relevant to any discussion on focusing councils on core activities. The Forum’s 2008 publication *Local Government and the Provision of Public Goods* states that councils should focus on the efficient provision of local public goods and examines council activities as to whether they are public or private goods (or a mixture), suggesting that councils should exit from the provision of private goods<sup>3</sup>.

3.8 Meanwhile, the Forum’s 2009 publication *Income and Wealth Redistribution, Should it be a Role for Local Government?* states that central government has prime responsibility for income redistribution and recommends that local government should not engage in explicit income redistribution<sup>4</sup>.

3.9 Copies of these and other Forum publications are freely available from its website [www.localgovtforum.org.nz](http://www.localgovtforum.org.nz).

3.10 The Minister of Local Government is on the public record sharing the Forum’s wish for councils to focus on core activities. The OECD also made similar observations in its 2009 Economic Survey on New Zealand. We therefore submit that the Forum’s papers provide a good starting point for proposals to reform the Local Government

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<sup>1</sup> *Democracy and Performance: A Manifesto for Local Government*, Local Government Forum, February 2007, pg 2.

<sup>2</sup> *Ibid*, pg 41.

<sup>3</sup> *Local Government and the Provision of Public Goods*, Local Government Forum, November 2008.

<sup>4</sup> *Income and Wealth Redistribution, Should it be a Role for Local Government?*, Local Government Forum, March 2009.

Act to improve local government transparency, accountability and fiscal management. The documents provide further background and analysis for the views expressed in the submission.

- 3.11 The Bill is a step in the right direction but it could be and should be bolder. Our comments in section 4 set out how the Forum considers the Bill could be improved to make local government legislation more likely to help achieve the Bill's three underlying principles.

#### **4. SPECIFIC COMMENT ON LOCAL GOVERNMENT AMENDMENT BILL**

##### **Role of Local Authorities and Community Outcomes**

- 4.1 The Forum's view is that local authorities can best serve their communities and support economic growth by being limited to what is in our opinion their proper role: the provision or funding, or both, of local public goods that cannot be provided efficiently by firms or individuals.
- 4.2 The Bill makes no changes to the purpose of local authorities (democratic decision making and the promotion of the four 'well beings') as set out currently in section 10 of the Local Government Act 2002. The role of local authorities (to give effect to its purpose and to perform duties and exercise rights conferred by the Local Government Act and any other act) is also unchanged (section 11).
- 4.3 Clause 5 of this Bill proposes that, in performing its role, a local authority must have particular regard to the contribution that certain core services make to its community (new section 11A). The core services are network infrastructure, public transport, solid waste collection and disposal, the avoidance or mitigation of natural hazards and libraries, museums, reserves, recreational facilities and other community infrastructure.
- 4.5 What constitutes 'core services' is not specified. The services identified could be broadly interpreted. They contain a mix of private and public goods. Private services that collect and dispose of garden waste from residential properties are available in Auckland City. The Auckland Council could presumably start a competing service which would fall within the definition of a core service (solid waste disposal) proposed in the Bill.
- 4.6 There is no mention of core services in the Bill or the principal Act other than in clause 5 of the Bill. There is no explicit mention of non-core services.
- 4.7 Local authorities would be required by the proposed section 11A to have regard to the contribution which core services make to their communities. This terminology does not reflect a principled approach to limited government. There is no focus on whether individuals, households or voluntary groups should undertake the activities or on efficiency. Nor is there any notion of the costs or benefits involved.
- 4.8 In our view clause 5 as it is currently written would have little substantive effect on councils. Most local authorities would claim to have regard to the nominated activities now. Public transport is a possible exception, with many provincial and rural districts outside of the main urban centres not providing public bus or train services. There is no explicit sanction for not focusing on core services.

- 4.9 If clause 5 were to be effective in limiting the role of local authorities it would need to state that they could only engage in the provision and/or funding of local public goods where public provision is efficient and in the performance of their statutory duties. There would also need to be limits on the ability of local authorities to engage in other activities, with transitional arrangements for existing non-core activities.
- 4.10 The requirement to identify community outcomes at least every six years is a closely related feature of the Local Government Act 2002 (section 91). We also think it encourages local authorities to expand their activities beyond those that are appropriate. The impact on community outcomes of options is required to be assessed as part of a local authority's decision-making process (section 77). Local authorities are required to report on progress in advancing community outcomes (section 92), to describe community outcomes in their LTCCPs (section 93) and to consider the community outcome to which each activity contributes in deciding how it is to be funded (section 101).
- 4.11 A key problem is that the community outcomes that are required to be described are not limited to those that the local authority is responsible for achieving. Full employment, appropriate health services and lower crime might, for example, be identified as community outcomes but the role of local authorities in achieving such outcomes is minor. The existing provision is largely ineffective because it requires local authorities to identify outcomes that have little bearing on their activities. Community outcomes tend to be defined broadly and they are costly to identify. Furthermore, the outcomes have limited connection with other aspects of the Local Government Act.
- 4.12 The Bill replaces the definition of community outcomes. The new definition defines community outcomes as "the outcomes that a local authority aims to achieve in order to maintain and improve the social, economic, environmental, and cultural well-being of its district or region." This is somewhat better focused than the present definition but still lacks the vital link to the proper role of local government. Local authorities would be required to identify community outcomes in their long-term plans and annual reports, and to identify the rationale for delivery of the group of activities (including the community outcomes to which each group of activities primarily contributes).
- 4.13 In the Forum's view, the proposed amendments relating to the role of local authorities and community outcomes are unlikely to have a discernible impact on the activities that local authorities undertake. In short, we are concerned that the Bill will not achieve one of its major aims, that is, to reinforce the need for local authorities to focus on core services.
- 4.14 What could be done to make the bill more effective in limiting the role of local government?
- 4.15 Firstly, all references to community outcomes should be removed from the Act. Although we support the Bill's repealing of the community outcomes process, we think it should go further for the reasons set out in the paragraphs above.
- 4.16 Secondly, the Bill should repeal the Act's activist purpose statement in section 10(b) which is to "promote the social, economic, environmental, and cultural well-being of communities..." and replace it with a statement that local government's purpose is to "provide local public goods that cannot be efficiently provided by individuals firms or voluntary groups and administer appropriate regulation at a local level". A hierarchy

of public and private goods (as set out in the Forum's 2008 paper on Public Goods) could be provided in a Schedule to the Act as guidance for councils.

- 4.17 If this approach goes too far for the comfort of the Committee, the Forum proposes retaining section 10(b), replacing the list proposed in Clause 5 to be more focused on public goods, and providing a Schedule for guidance. Such an approach would not prevent local authorities from undertaking private goods but it would provide them with a clearer steer of what they should be focusing on without the need for a potentially contentious list of 'dos and don'ts'.
- 4.18 A further alternative for the Committee to consider would be to retain the proposed new section 11A but raise the bar for non-core activities by inserting a new section 11B that would require local authorities wishing to undertake non-core activities to demonstrate that such activities are necessary to maintain or enhance the social, economic, environmental, and cultural well-being of their region or district.
- 4.19 Consistent with the Bill's objective of improving transparency and accountability through providing better information to ratepayers, the Forum also considers that local authorities should be required to report aggregate operating spending and aggregate capital spending on core services and other services (i.e. non-core services), with this spending identified separately for each year in which financial data is disclosed in long-term and annual plans, and annual reports. This would be done by amending the proposed Schedule 10.

### **Recommendations on Role of Local Authorities and Community Outcomes**

- (a) All references to community outcomes should be removed from the Local Government Act 2002; and
- (b) Either
- (i) **The Bill should repeal the Act's activist purpose statement in section 10(b) which is to "*promote the social, economic, environmental, and cultural well-being of communities...*" and replace it with a statement that local government's purpose is to "*provide local public goods that cannot be efficiently provided by individuals firms or voluntary groups and administer appropriate regulation at a local level*", with a hierarchy of public and private goods provided as a Schedule;**
- or
- (ii) **Amend Clause 5's section 10(b) but replace the list to make it more focused on public goods;**
- or
- (iii) **Clause 5 of the Bill should be amended to include a new section 11B stating that "*In performing its role, a local authorities may undertake activities other than the core activities identified in section 11A and in performing duties required to be undertaken by this act or any other enactment under section 11(b), if the local authority can demonstrate that such activities are necessary to maintain or enhance the social, economic, environmental, and cultural well-being of its region or district*";**

and

- (c) **Amend the proposed Schedule 10 to require aggregate operating spending and aggregate capital spending on core services and other services (i.e. non-core services) to be identified separately for each year in which financial data is disclosed in long-term and annual plans, and annual reports.**

### **Constraints on Spending**

- 4.20 Another key objective of the Bill is to require local authorities to operate within a 'defined fiscal envelope'. The suggestion of a spending cap was floated early in the policy development process but was subsequently abandoned. There is nothing in the Bill which directly constrains local authority spending. Instead the Bill aims to improve the transparency of activities. The proposals, while a step in the right direction, are likely to be of modest benefit.
- 4.21 The Forum has advocated for a spending cap but with local authorities able to ease it via referenda. We believe that the arguments advanced in the Bill's Regulatory Impact Statement (RIS) for not proceeding with this option are weak. In particular, the potential benefits to ratepayers and the broader community from lower rates, less waste, and better focused spending than otherwise are ignored in the RIS.
- 4.22 One of the main provisions contained in the Bill is the introduction of a financial strategy into the long-term plan (clause 17). The Bill would require a local authority to prepare and adopt a financial strategy for all of the consecutive financial years covered by the long-term plan. The purpose of the financial strategy is to facilitate prudent financial management by providing a guide for the local authority to consider proposals for funding and expenditure against. It is also to further consultation on the local authority's proposals for funding and expenditure by making transparent the overall effects of those proposals on the local authority's services, rates, debt and investments. This is a worthwhile proposal, although it is not apparent that the information to be provided would be significantly different from that contained in many existing LTCCPs. Moreover, as with all the local government reforms since 1989, the way in which local authorities apply the proposed legislation would affect the efficacy of the proposal.
- 4.23 Another main provision is the introduction of a pre-election report to be prepared by the chief executive (clause 16). While this idea is based on the Crown's Pre-Election Economic and Fiscal Update (PREFU), the provisions surrounding the proposed local version are not as strong. For example, Section 26U of the Public Finance Act 1989 provides:

#### ***26U Disclosure of policy decisions and other circumstances that may influence future fiscal situation***

*(1) An economic and fiscal update prepared under ... section 26T must incorporate, to the fullest extent possible that is consistent with section 26V all Government decisions and all other circumstances that may have a material effect on the fiscal and economic outlook.*

*(2) If the fiscal implications of Government decisions and other circumstances referred to in subsection (1) can be quantified for particular years with reasonable certainty by the day on which the forecast financial statements are finalised, the quantified fiscal implications of those Government decisions and other circumstances must be included in the forecast financial statements.*

*(3) If the fiscal implications of Government decisions and other circumstances referred to in subsection (1) cannot be quantified or assigned to particular years with reasonable certainty by the day on which the forecast financial statements are finalised, those Government decisions and other circumstances must be disclosed in the statement of specific fiscal risks of the Government required by section 26Q(3)(b).*

- 4.24 This is mitigated by section 26V which allows information that would, for example, prejudice the substantial economic interests of New Zealand, national security or international relations, commercial negotiations or litigation to be withheld.
- 4.25 There is no equivalent provision to section 26U of the Public Finance Act in the Bill. The information to be disclosed in the pre-election report, which is contained in Schedule 10, Part 4, comprises certain historical and forecast financial information, a funding impact statement, a summary of the balance sheet and information on the major projects planned for the next three years. None of the forecast financial information is required to be updated from the relevant long-term or annual plan of the local authority. There is no requirement to identify subsequent spending commitments or risks (aside perhaps from major projects). A similar provision to section 26U should be included in the Bill.
- 4.26 Three-year forecasts also provide too short a timeframe. A major capital project, for example a new sewerage plant, might take three years to construct but could have a major impact on future operating spending, rates and debt. While detailed item-by-item forecasts for, say, a 10-year period may not be warranted, key aggregates such as rates and total revenue, operating spending, operating balance, assets, debt and other liabilities, and ratepayers' equity are desirable to counter the incentive for councillors and candidates to make promises that appeal to voters but have long-term implications that may not be obvious to them.
- 4.27 The easiest way to make progress in this regard might be to propose that a summary of the financial strategy report be included in the pre-election report and require the chief executive of the local authority to report whether existing policies of the local authority are consistent with the fiscal strategy and, if not, to identify any significant divergence between them.
- 4.28 Another omission is a statement of responsibility for the accuracy of the information supplied. Indeed inclusion in the report of any statement by an existing elected representative is expressly prohibited (clause 16). The chief executive of the local authority should be required to make a statement of responsibility similar to that made by the Secretary to the Treasury in respect of the PREFU. There is an arguable case for the council or the mayor to make a similar statement to that made in the PREFU by the Minister of Finance.
- 4.29 The third main provision is the introduction of a beefed-up funding impact statement. The RIS puts considerable store on such information being meaningful to ratepayers and citizens.

### **Recommendations on Constraints on Spending**

- (d) The Committee should consider whether local authorities should have a spending limit (for example, that spending and rates should not increase by more than population growth plus inflation) with discretion to ease it via referenda (this is the Forum's preferred position); and**

- (e) **Clause 16 of the Bill should be amended so that provisions on a pre-election report include a provision mirroring Section 26U of the Public Finance Act 1989; increase the period for forward forecasts beyond three years; include a summary of the fiscal strategy report and a statement from the local authority's chief executive on whether existing policies are consistent with the fiscal strategy; and include a statement of responsibility for the accuracy of information contained.**

### **Decision-Making**

- 4.30 A third major aim of the Bill is improve local authority decision-making processes. The changes in this area are generally supported but they are also modest. They include integrating community outcomes with long-term planning and focusing community outcomes on the role a local authority plays in its district or region.
- 4.31 A number of changes are being made to consultation provisions. On balance the Forum supports giving local authorities more discretion on consultation as we acknowledge that they have imposed often significant compliance costs on local authorities. We expect the Bill's other transparency and accountability measures will be effective in better constraining local authorities. The same principle applies for the changes being made to audit requirements.
- 4.32 Clause 6 of the Bill relates to investment returns and requires that local authorities need to assess expected returns from an investment and satisfy themselves that returns from an investment will outweigh the risks. The Forum considers that this should be standard practice – returns should certainly outweigh risks when considering investment decisions. However, a more fundamental approach would go further and require the local authority to consider whether an investment would be better left to individuals, firms, voluntary groups, or central government if the activities undertaken by the entity do not involve the provision of public goods. Also, the requirement for local authorities to specify their objectives for holding such investments in the proposed financial strategy should include the same criteria (clause 17 and the proposed section 101A(3)(d) refer).
- 4.33 The Forum also notes that the definition of an equity security in the Securities Act limits the proposed section fa(i) to investment in companies and thus excludes other business forms such as trusts or joint ventures. We suggest that there needs to be a broader stand-alone definition of investments.
- 4.34 Clauses 24-26 relate to reviews of rates remission and postponement policies. Currently such policies are mandatory for Maori freehold land but are optional for other purposes, for example financial hardship, farm land, etc. The Forum's view is that these policies should either all be mandatory or all be optional.
- 4.35 More significantly, clause 41 of the Bill provides for central government to specify performance measures for certain local authority activities, such as water, with a related central government cost levied on local authorities. Externally imposed performance measures could raise standards where service is poor and help identify laggards. There are risks, however, that central government will impose excessive standards and hence costs on ratepayers and citizens. The need to reform the Building Act, air quality standards, and drinking water standards because of excessive costs illustrate this tendency to impose excessive standards.

- 4.36 While generally supporting the adoption of performance measures, we believe that if the Government wishes to introduce such measures for the benefit of communities, then we believe there is a case for the cost of such regulation to be funded out of general taxation. Taxpayer funding would also be more likely to ensure greater scrutiny of the regulation itself, and the costs associated with it, to ensure these are reasonable and are subject to the normal fiscal and regulatory disciplines associated with Crown expenditure. Local authorities have already expressed widespread concern about alleged cost-shifting from central to local government and the proposed levy would be another example.

### **Recommendations on Decision-Making**

- (f) Clause 6 should be amended to add the words “*and satisfy itself that an investment would not be better left to individuals, firms, voluntary groups, or central government if the activities undertaken by the entity do not involve the provision of public goods*” (or words to that effect); and**
- (g) Clause 6’s proposed new section 14(fa)(i) should be broader than ‘equity securities’ to encompass other types of investments.**
- (h) The Forum recommends that rates remission and postponement policies should all be optional or they should all be mandatory; and**
- (i) The proposed levy provided for in clause 39 should not proceed.**

### **Transparency and Accountability**

- 4.37 The Bill makes a number of changes to the way information will be presented in plans and reports to help ratepayers get a better understanding of local authority performance. The Forum strongly supports these changes as many of them (for example disclosing the previous and current year’s amounts) should be standard practice but have not been adopted by some local authorities.
- 4.38 However, the best way for ratepayers to assess whether local authorities are performing to their expectation is for them to see what they are paying for each activity and then make their own assessment of whether they are getting value for money.
- 4.38 At present most ratepayers do not know how much they are paying for council activities. Too few local authorities provide this information either in their planning documents or in their rates assessments – although there are some exceptions.
- 4.39 Local authorities should be required to provide ratepayers with itemised rates assessments that break down the rates (including the general rate) by activity. Some councils do this voluntarily and we note that they are often the small ones (e.g., Wairoa District and Kaikoura District). Some large metropolitan local authorities have suggested that it is costly and complicated to do this, but we disagree: if small rural council can do this there is no reason why large urban local authorities cannot. A copy of an itemised rates assessment from Kaikoura District is attached.
- 4.40 The content of a rates assessment is specified in section 45 of the Local Government (Rating) Act. While this Bill does not make amendments to that Act, it is consistent with this Bill’s intention to improve accountability and transparency

- 4.41 Local authorities should also be required to provide in their long term plans and annual plans tables showing rates being paid by 'benchmark properties', a mix of residential, commercial and rural properties in different locations with different values. These tables could also be provided to ratepayers with the rates assessment. A number of councils already provide information in this way, but we believe it should be mandatory. A copy of tables from Waimakariri District Council's draft annual plan is attached.

### **Recommendations on Transparency and Accountability**

- (i) **Section 45 of the Local Government (Rating) Act should be amended to require local authorities to provide their ratepayers with itemised rates assessments.**
- (j) **Schedule 10 of the Bill should be amended to require local authorities to publish in their long term plans and annual plans tables of rates impacts on benchmark properties.**

### **Development Contributions**

- 4.42 The Forum has significant concerns about development contributions and financial contributions, as set out in the Forum's recently released publication *Taxing Growth and Development*.
- 4.43 Development contributions were introduced in the Local Government Act 2002 and most local authorities impose them when land is subdivided or developed. They are mainly used to fund capital spending on water, wastewater, stormwater, transport, and parks and reserves. Financial contributions are levied under the Resource Management Act 1991 to fund similar capital expenditure, particularly on parks and reserves, intended to mitigate the environmental effects of developments.
- 4.44 Both development contributions and financial contributions have been growing rapidly. Development contributions were expected to raise \$3.9 billion or 5.3% of all council revenue during 2006-16. For some local authorities with rapidly growing populations, the figure is up to 20%. Contributions of around \$30,000 for each residential section are common in some districts and they are a major reason for the excessive cost of housing in New Zealand.
- 4.45 The property sector has faced similar excesses, as the case taken by Neil Construction and some other developers against North Shore City demonstrated. Commercial projects are also subject to development and financial contributions. These costs are passed forward to homeowners and consumers, or backward to the owners of undeveloped land.
- 4.46 The Forum's report finds that development and financial contributions involve complicated formulas, lack transparency and weaken the accountability of elected representatives. It suggests that in many situations direct user charges would be superior mechanisms, that a value for money test should be applied to local authority requirements, or that development contributions should be capped like financial contributions, as is generally the case in Australia.
- 4.47 While we support the amendment to section 106 of the Local Government Act requiring three-yearly reviews of development contributions policies and financial contribution policies, the Forum also urges the Government to review both levies on a first principles basis.

- 4.48 Hard copies of *Taxing Growth and Development* were provided to all Members of Parliament when the report was released on 15 March 2010. It is also available from the Forum's website: [www.localgovtforum.org.nz](http://www.localgovtforum.org.nz).

### **Recommendation on Development Contributions**

- (k) The Forum recommends that the Government (or this Committee) should undertake first principles reviews of development contributions and financial contributions.**

### **Water**

- 4.49 The Forum notes that much water-related investment is planned by local authorities over the coming decade – around \$11.5 billion in capital expenditure and \$17 billion of operating expenditure according to Department of Internal Affairs' analysis of 2009-19 LTCCPs. With the current Act's onerous restrictions on private sector involvement in the provision of water services this burden will fall heavily on ratepayers.

- 4.50 The Forum is concerned by what we see as serious problems with the current provision of water services. For example:

- The inability of smaller district councils in particular to implement the Health (Drinking Water) Amendment Act 2007;
- The capital investment in infrastructure required to meet peak water demand running at 1,200 litres per person per day in un-metered supplies compared with 300 litres per day in supplies subject to metering and volumetric charging;
- The growing infrastructure deficit evidenced by significant increases in capital expenditure between the 2006 and 2009 LTCCPs;
- Challenges identified in audits undertaken by the Office of the Auditor General<sup>5</sup>; and
- Non-compliance with discharge consents applied to some wastewater treatment plants contributing to overall freshwater pollution.

- 4.51 The changes in this Bill are welcome but the Forum considers them to be modest. We note that the Minister of Local Government proposed a more 'comprehensive reform' to:

- Allow private supply of infrastructure to councils through schemes such as build own operate and transfer (BOOT) schemes;
- Private operation of local authority supplies by franchise arrangements; and
- Divestment of local authority supplies to the private sector.

- 4.52 Residual obligations would have remained on local authorities to maintain supply in the event of failure of the private supplier. The 'comprehensive reform' proposal would have required more substantial changes to sections 136 and 137 than envisaged in the Bill.

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<sup>5</sup> See *Local Government: Results of 2008/09 Audits*, Part 11 Planning to Meet the Forecast Demand for Drinking Water, Office of the Controller and Auditor General. This report found that only three of eight councils sampled were "managing their drinking water supplies effectively to meet future demand for drinking water".

- 4.53 The Government rejected the ‘comprehensive reform’ proposal and instead chose a ‘minimum change’ option which means that local authorities will retain control over pricing and policy. Although the changes will allow BOOT schemes, the Bill will continue to prevent franchise arrangements.
- 4.54 The Forum’s preference is for the more ‘comprehensive reform’ proposal. We believe that local authorities should be free to develop contracts for water services as they see fit, including matters of policy, management and pricing. Local authorities should be free to retain control over one or more of these functions or transfer responsibility for all operational and practical matters. However, we note that even under this more comprehensive proposal local authorities would still be ultimately responsible for the provision of water services, whether they elect to provide the services themselves or through a third party.
- 4.54 The Forum supports the increase in the maximum term for contracts on water services from 15 to 35 years but we believe that a maximum term should not be specified in the legislation and that local authorities should be free to agree terms on a case-by-case basis.

### **Recommendation on Water**

- (I) Clauses 31 and 32 should be amended so that sections 136 and 137 place no restriction on the maximum term for contracts on water services; and deletes the need for local authorities to retain control over pricing, management, and the development of policy on delivery of water services.**

## **5. UNFINISHED BUSINESS – LOCAL GOVERNMENT FUNDING**

- 5.1 The Forum believes that reform of local government funding should be a high priority. By ensuring that people face costs reflecting benefits received, funding reform would be a key element in satisfying the Bill’s three underlying principles.
- 5.2 *Democracy and Performance* makes the following recommendations on local government funding:
- *The core activities that councils can undertake would be enumerated in legislation governing local authorities.*
  - *Councils should be required to obtain the explicit consent of affected taxpayers before undertaking significant activities that extend beyond their core business. The principle of consent would usually take the place of the benefit principle in determining the funding of council activities. The benefit principle was emphasised by some councils following the implementation of the Local Government Amendment Act (No3) 1996. It is impossible to apply rigorously in most cases because councils cannot determine who ultimately benefits from council services.*
  - *The general rate would continue in the meantime to be the main tax available to raise revenue for councils. Councils would be permitted to apply an additional rate to a subset of ratepayers to fund a particular project (or projects) or a significant activity (or activities) provided that affected ratepayers consented to the additional spending before it was committed. Targeted rates would be permitted on a similar basis.*

- *Councils would also be permitted to apply a lower general rate to all ratepayers in a defined area where clearly specified services available to ratepayers in general were not available to those in the affected area (for example, services available to rural ratepayers and ratepayers on islands).*
- *Councils would continue to apply uniform annual charges with the current 30 percent cap removed.*
- *The power of councils to impose financial and development contributions should emphasise efficient pricing (for example, where contributions relate to services that developers elect to use) and taxing principles (where charges are compulsory and unrelated to the particular services supplied to the developer).*
- *All government-owned land used should be rateable.*

5.3 Although this Bill does not touch on the Local Government (Rating Act), the Forum submits that the Committee could make a number of amendments to that Act that would be consistent with the Bill's underlying principles.

5.4 For example, **removing the 30% cap** on revenue raised by uniform annual charges would assist local authorities to recover the costs of people-based activities more equitably; **abolishing business differentials** on the general rate would reduce the degree of cross-subsidy between businesses and residents; requiring local authorities to provide **itemised rates assessments** will give ratepayers a better understanding on where their rates are being spent; and **removing existing exemptions on rating** of government owned land will broaden the rating base and ensure a more level playing field.

### **Recommendations on Local Government Funding**

- (m) **The Forum recommends that the Local Government (Rating Act) should be amended to:**
- **Remove the 30% cap on revenue raised by uniform annual charges;**
  - **Remove the ability for local authorities to impose business differentials on the general rate (but continue to permit a lower general rate to all ratepayers in a defined area where clearly specified services available to ratepayers in general were not available to those in the affected area);**
  - **Require local authorities to provide their ratepayers with itemised rates assessments; and**
  - **Make all government owned land used rateable.**

## **6. ABOUT THE LOCAL GOVERNMENT FORUM**

6.1 The Local Government Forum comprises organisations that have a vital interest in the activities of local government. Its members include Business New Zealand, the Electricity Networks Association, Federated Farmers of New Zealand, New Zealand Business Roundtable, New Zealand Chambers of Commerce, and New Zealand Retailers' Association. The Forum was established in 1994 to promote greater efficiency in local government and to contribute to debate on policy issues affecting it.

6.2 Forum members are each significant representatives of ratepayers in their own right but the Forum's perspective is to advance community welfare through the advocacy of sound public policy. We believe that local government can best serve the interests

of the community and ratepayers by focusing on the efficient provision of public goods at a local level.

- 6.3 Forum members would welcome the opportunity to present our submission to the Select Committee. Please contact Nick Clark (ph 03 357 9459 or 027 217 6731, email [nclark@fedfarm.org.nz](mailto:nclark@fedfarm.org.nz)).

## APPENDIX – Comment on Specific Clauses

Clause	Provision	Comment
Clause 1	Title	No comment.
Clause 2	The Act will come into force the day after Royal Assent with the exception of section 16 which will come into force on 1 July 2011.	No comment.
Clause 3	Principal Act amended	No comment.
Clause 4	Change to <b>definition of ‘community outcomes’</b> to read <i>“the outcomes that a local authority aims to achieve in order to maintain and improve the social, economic, environmental and cultural well-being of its district or region.”</i>	The Forum recommends that all references to ‘community outcomes’ in the Local Government Act 2002 should be repealed.
Clause 5	New section 11A inserted on <b>core services to be considered in performing role</b> . States that <i>“In performing its role, a local authority must have particular regard to the contribution that the following core services make to its communities:</i> <ul style="list-style-type: none"> <li>• Network infrastructure</li> <li>• Public transport services</li> <li>• Solid waste collection &amp; disposal</li> <li>• The avoidance or mitigation of natural hazards</li> <li>• Libraries, museums, reserves, recreational facilities, and other community infrastructure.”</li> </ul>	<p>Either</p> <p>(i) The Bill should repeal the Act’s activist purpose statement in section 10(b) which is to <i>“promote the social, economic, environmental, and cultural well-being of communities...”</i> and replace it with a statement that local government’s purpose is to <i>“provide local public goods that cannot be efficiently provided by individuals firms or voluntary groups and administer appropriate regulation at a local level”</i>, with a hierarchy of public and private goods provided as a Schedule;</p> <p>or</p> <p>(ii) Amend Clause 5’s section 10(b) but replace the list to make it more focused on public goods;</p> <p>or</p> <p>(iii) Clause 5 of the Bill should be amended to include a new section 11B stating that <i>“In performing its role, a local authorities may undertake activities other than the core activities identified in section 11A and in performing duties required to be undertaken by this act or any other enactment under section 11(b), if the local authority can demonstrate that such activities are necessary to maintain or enhance the social, economic, environmental, and cultural well-being of its region or district”</i>;</p>
Clause 6	Insertion of a principle in section 14(1) that a council needs to	The Forum recommends that clause 6 should be amended to add the

	assess expected <b>returns from an investment</b> and satisfy itself that returns from an investment will outweigh the risks.	<b>words “and satisfy itself that an investment would not be better left to individuals, firms, voluntary groups, or central government if the activities undertaken by the entity do not involve the provision of public goods” (or words to that effect).</b>
Clause 7	Repeal of section 75(e) which refers to the process for <b>identifying and reporting on community outcomes</b> .	<b>Support.</b>
Clause 8	Repeal of section 78(2), which refers to the <b>specific stages a council needs to take to consult the community</b> .	<b>Support.</b>
Clause 9	Repeal of the requirement in section 84(4)(c) that a <b>statement of proposal for the special consultative procedure</b> needs to include the extent to which the forecast information and proposed performance measures will provide an appropriate framework for the meaningful assessment of the actual levels of service provision.	<b>Support.</b>
Clause 10	Use of <b>special consultative procedure for annual plan</b> , change in clause numbering for Schedule 10.	<b>No comment.</b>
Clause 11	Repeal of section 88 which requires the use of <b>special consultative procedure in relation to change of mode of delivery of significant activity</b>	<b>Support.</b>
Clause 12	Repeal of section 91 and 92 which relate to the process for identifying <b>Community Outcomes</b> and reporting against them.	<b>Support.</b>
Clause 13	Repeal of section 94(1)(c), the requirement for <b>audit of the LTCCP</b> to include the extent to which the forecast information and performance measures provide an appropriate framework for the meaningful assessment of the actual levels of service provision	<b>Support.</b>
Clause 14	Repeal of sections 97(1)(c) and 97(1)(d) which relate to <b>council decisions to be taken only if provided for in a LTCCP</b> . Repealed are decisions to construct, replace, or abandon a strategic asset; and decisions that will, 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 long-term council community plan.	<b>Support.</b>
Clause 16	A new section 99A is inserted to introduce a <b>pre-election report</b> to encourage and inform election debate.	<b>Clause 16 of the Bill should be amended so that provisions on a pre-election report include a provision mirroring Section 26U of the Public Finance Act 1989; increase the period for forward forecasts beyond three years; include a summary of the fiscal strategy report and a statement from the local authority’s chief executive on whether existing</b>

		<b>policies are consistent with the fiscal strategy; and include a statement of responsibility for the accuracy of information contained.</b>
Clauses 17	A new section 101A is inserted. It introduces a <b>financial strategy</b> to the long-term plan (as renamed by the Bill) to help local authorities and their communities debate and resolve the key financial and service delivery trade-offs that local authorities must make.	<b>Support.</b>
Clause 18	The existing section 102 on <b>funding and financing policies</b> is repealed and new section substituted. The main change is process-related where the council will no be longer to constrained to only using the LTCCP process to adopt a new policy, make amendments, etc.	<b>Support.</b>
Clause 19	Amendments to section 103 on <b>revenue and financing policy</b> , mainly consequential to new match with new section 102, but it also adds a new subsection (4) saying that only significant amendments to policies need to be audited.	<b>Support.</b>
Clause 20	Amendments to section 104 on <b>liability management policy</b> , the most significant being the repeal of the requirement for such policies to include statements of specific borrowing limits and the giving of securities.	<b>No firm view.</b>
Clause 21	Amendment to section 105 on <b>investment policy</b> , the most significant being the repeal of the requirement for such policies to include a statement of the objectives in terms of which financial and equity investments are to be managed.	<b>No firm view.</b>
Clause 22	Addition to section 106 on the <b>policy on development contributions and financial contributions</b> requiring three-yearly review of policy on development contributions and financial contributions.	<b>The Forum recommends that the Government (or this Committee) should undertake first principles reviews of development contributions and financial contributions.</b>
Clause 23	Repeal of section 107 which requires a <b>policy on partnerships with private sector</b> and specifies the considerations such policies need to factor in.	<b>Support.</b>
Clause 24	Amendment to section 108 on policy on <b>remission and postponement of rates on Maori freehold land</b> to require a six-yearly review of the policy. On remission and postponement of rates on Maori freehold land, rates remission and rates postponement. No allowance to revoke after the review.	<b>The Forum recommends that rates remission and postponement policies should all be optional or they should all be mandatory.</b>

Clause 25	Amendment to section 109 on <b>rates remissions policy</b> to require a six-yearly review. Enables the policy to be revoked on review.	<b>The Forum recommends that rates remission and postponement policies should all be optional or they should all be mandatory.</b>
Clause 26	Amendment to section 110 on <b>rates postponement policy</b> to require a six-yearly review. Enables the policy to be revoked on review.	<b>The Forum recommends that rates remission and postponement policies should all be optional or they should all be mandatory.</b>
Clause 27	Section 111 is amended to make it clear that a funding impact statement need not be subject to <b>generally accepted accounting practice</b> .	<b>No firm view.</b>
Clause 28	Amendment to section 125(1) on <b>assessments of water and sanitary services</b> to remove reference to sections 126 and 127 which are being repealed.	<b>Support.</b>
Clause 29	Repeal of sections 126-129 which set out information and process requirements for <b>assessments of water and sanitary services</b> .	<b>Support.</b>
Clause 30	Section 130(3)(d)(ii) on <b>obligation to maintain water services</b> is amended to remove reference to section 194 (already repealed) and replace with section 69S of the Health Act 1956.	<b>Support.</b>
Clause 31	The existing section 136 on <b>contracts relating to provision of water services</b> is repealed and replaced by a new section 136. The main changes are to increase the maximum term of any contract from 15 years to 35 years; and to remove the requirement for the council to continue to have control of management of water services (but councils will retain control over pricing of water services and policy related to the delivery of water services).	<b>The Forum recommends that clause 31 should be amended so that section 136 places no restriction on the maximum term for contracts on water services; and deletes the need for local authorities to retain control over pricing, management, and the development of policy on delivery of water services.</b>
Clause 32	The existing section 137 on <b>joint local government arrangements and joint arrangements with other entities</b> is amended by increasing the maximum term from 15 years to 35 years; removing consultation requirements; and removing the requirement for the council to continue to have control over the management of water services. It also removes the need for the council to retain ownership during the joint arrangement but states that the ownership will be retained by the council after the end of the joint arrangement.	<b>The Forum recommends that clause 32 should be amended so that section 137 places no restriction on the maximum term for contracts on water services; and deletes the need for local authorities to retain control over pricing, management, and the development of policy on delivery of water services.</b>
Clause 33	Section 141(1)(b) on <b>conditions applying to sale or exchange of endowment property</b> is to be repealed so that the sale of such property need not be notified in the LTCCP.	<b>No comment.</b>
Clause 34	Section 186 on <b>execution of works if owner or occupier</b>	<b>No comment.</b>

	<b>defaults</b> is to be amended by substituting the words 'local' for 'territorial' and a subsection (2) instead of (1).	
Clause 35	Section 299(a)(iii) on <b>obstruction of enforcement officers</b> is to be amended by inserting the word 'of'.	<b>No comment.</b>
Clause 36	A Part heading is amended.	<b>No comment.</b>
Clause 37	A new heading ' <b>Regulations</b> ' is inserted before section 259	<b>No comment.</b>
Clause 38	Section 259 on <b>regulations</b> is amended by inserting enabling the prescription of matters that need to be specified in a financial statement and a funding impact statement.	<b>Support.</b>
Clause 39	A new section 259A is inserted to allow a <b>levy for performance measures</b> to be imposed on local authorities. It states the Minister must consult LGNZ on any such levy.	<b>The Forum recommends that clause 39 be deleted.</b>
Clause 40	A new heading ' <b>Other Orders in Council</b> ' is inserted before section 260.	<b>No comment.</b>
Clause 41	A new heading and new sections 261A to 261G on <b>rules for performance measures</b> . It will require rules to be made specifying performance measures for water supply, sewage, stormwater drainage, flood protection and control, and roads.	<b>Support.</b>
Clause 42	Section 279 on the <b>LTCCP</b> is to be repealed	<b>Support.</b>
Clause 43	Sections 281 and 282 on the <b>Annual Plan</b> are to be repealed	<b>Support.</b>
Clause 44	Section 288 on <b>decision-making before enactment</b> is to be repealed.	<b>Support.</b>
Clause 45	Clause 39 of Schedule 7 on <b>local authorities, community boards and their members</b> is to be amended to enable community boards to be funded by targeted rates.	<b>No firm view.</b>
Clause 46	Schedule 10 on information that must be included in <b>council plans and reports</b> is to be repealed and replaced by a new Schedule 10.  The main changes to plans are: <ul style="list-style-type: none"> <li>• Community outcomes determined by the local authority.</li> <li>• Specifies a number of activities that are 'groups'.</li> <li>• Requires long-term plan to specify capital expenditure budgeted for each group of activity.</li> <li>• Requires long-term plan to have a statement of intended levels of service level for each group of activity.</li> <li>• Requires long-term plan to include a funding impact</li> </ul>	<b>The Forum recommends that the proposed Schedule 10 be amended to require aggregate operating spending and aggregate capital spending on core services and other services (i.e. non-core services) to be identified separately for each year in which financial data is disclosed in long-term and annual plans, and annual reports.</b>  <b>The Forum recommends that Schedule 10 of the Bill should be amended to require local authorities to publish in their long term plans and annual plans tables of rates impacts on benchmark properties.</b>

	<p>statement for groups of activities.</p> <ul style="list-style-type: none"> <li>• Requires the long-term plan to only identify and explain any significant variations between water and sanitary assessments and the long-term plan.</li> <li>• Requires a financial strategy to be included in the long-term plan.</li> <li>• Only the revenue and financing policy need be included in the long-term plan.</li> <li>• Requires numerical information in long-term and annual plans to include the financial year before the first year to which the plan relates.</li> <li>• Requires a funding impact statement for the whole council to be included in the long-term and annual plans, with the form to be prescribed in regulation.</li> <li>• Requires identification in the long-term and annual plans of reserve funds, purpose of the funds, the activities they relate to, and their opening and closing balances.</li> </ul> <p>The main changes to annual reports are:</p> <ul style="list-style-type: none"> <li>• Requires audited statement comparing capital spending budgeted compared to amount spent.</li> <li>• Requires audited statement comparing level of service achieved compared to targets, changes achieved, and reasons for variations.</li> <li>• Requires funding impact statement comparing information from long-term plan and annual plan with amount of funds provided from each source of funding and amount of funds applied.</li> <li>• Include details of internal borrowing.</li> <li>• Must include numerical information from the previous financial year.</li> <li>• Requires identification of reserve funds, purpose of the funds, the activities they relate to, and their opening and closing balances.</li> </ul> <p>New Part sets out information to be included in pre-election report:</p> <ul style="list-style-type: none"> <li>• Funding impact statement for three years preceding and</li> </ul>	
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	<p>following three years.</p> <ul style="list-style-type: none"> <li>• Summary balance sheet for three years preceding and following three years (with debt and assets separately disclosed).</li> <li>• Statement setting out extent to which council has complied with financial strategy for three years preceding.</li> <li>• Major projects [planned for three years following the election.</li> <li>• May be based on estimated information and need not be audited.</li> </ul>	
Clause 47	Sets out where the words ' <b>council-community</b> ' are to be deleted (so transforming 'long-term council community plan' to 'long-term plan').	<b>Support.</b>
Clause 48	As above in clause 47. 'LTCCP' becomes 'LTP'.	<b>Support.</b>
Clause 49	Transitional provision for existing LTCCPs.	<b>No comment.</b>
Clause 50	Transitional provision for existing annual plans.	<b>No comment.</b>
Clause 51	Transitional provision for audit of information in annual report and summary.	<b>No comment.</b>
Clause 52	Transitional provisions for pre-election report.	<b>No comment.</b>
Clause 53	Transitional provisions for review of certain funding and financial policies.	<b>No comment.</b>

