28 July 2016

The Secretariat
Local Government and Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

Dear Sir/Madam

LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO.2) 2016

Thank you for the opportunity to present this submission.

The submission is in two parts, the first being this document. The second is a table with detailed comments on particular clauses of the Bill (attached as Appendix 1). This also contains suggested amendments should the Bill proceed.

Initially, given its likely impact on local government and the very short time frame for making submissions, the Council's preferred option was for the Government to withdraw the Bill and start again.

The Council is now advised that the Minister of Local Government has offered an opportunity for Local Government New Zealand to work with the Select Committee on ways in which the Bill can be improved. The Council supports this approach, but notes that the involvement of local government at an earlier stage would have avoided much of the largely negative response received to date.

The Council also hopes that major concerns about some of the aspects of the Bill will be properly addressed.

The Council wishes to be heard in support of its submission.

Yours sincerely

Karleen Edwards
CHIEF EXECUTIVE

Hon. Lianne Dalziel
MAYOR

Civic Offices, 53 Hereford Street, Christchurch, 8011
PO Box 73016, Christchurch, 8154
Phone: 03 941 8554
www.ccc.govt.nz

1. Introduction

1.01 The Council has had the opportunity to consider other responses to the Bill, in particular the submissions from the Canterbury Mayoral Forum, Local Government New Zealand (LGNZ), the Society of Local Government Managers (SOLGM) and the Development Contributions Working group (DCWG). The Council wishes to make the following comments in respect of those submissions.

Canterbury Mayoral Forum

1.02 The Council supports and agrees with the statement on page one of the Forum's submission that "Canterbury councils have serious concerns and are unable to support provisions in the Bill which would undermine local democracy and local governments' 'contracts' with their communities".

1.03 The Council supports the Forum questioning the need for this legislation as an enabler of local authorities working together. This is already happening in Canterbury and other areas, under existing legislative provisions.

1.04 The Council supports and agrees with the statement that the Bill is complex and appears to disguise an intention to give central government more control over local arrangments.

1.05 The Council supports and agrees with the concerns expressed by the Forum about the proposed role of the Local Government Commission. The Council opposes the Commission having the additional powers imposed in the Bill, in particular the power to itself decide to undertake a reorganisation investigation.

1.06 The Forum recommends that the Committee allocates adequate time to work through the Bill with affected stakeholders to address the issues and concerns raised in submissions.

1.07 The Minister's offer to include LGNZ in discussions with the Committee is a positive step, but the Council strongly believes that what is required is a much more collaborative approach to assessing the nature, and extent, of any reforms that may or may not be necessary to meet the Government's focus on effectiveness and efficiency.

LGNZ – draft submissions

1.08 The Council supports and agrees with LGNZ's view that some of the Bill's provisions, if enacted, would undermine the fundamental nature of our local democracy by diminishing the decision-making ability of locally elected representatives and eroding the constitutional separation of local and central government.

1.09 The Council supports and agrees with the statement that councils are not, unless legislation expressly provides for it, a provider of central government services.

1.10 The Council supports and agrees with the statement that 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. Any action by the LGC to remove these from direct council control will be of significant community interest and will also have major financial implications for the ongoing sustainability of the local authority.

1.11 The Council supports and agrees with LGNZ's recommendation that the Bill is amended to give councils better mechanisms, including the right to appoint elected members as directors, for ensuring that multiply-owned CCOs are required to meet local priorities.

1.12 The Council supports and agrees with LGNZ's view that the following provisions in the Bill breach the principle that decision-makers should be held accountable for their decisions:

1.12.1 The ability of multiply-owned and substantive CCOs to require their shareholding councils to amend a development contributions policy without any specific

consultation or engagement with them. Ultimately it is the elected members of those councils who will be held to account by the community, not the CCOs; and

1.12.2 The extent of the discretion given to the Minister of Local Government to set performance measures for activities funded by communities, which effectively diminishes the accountability of local representatives.

1.13 The Council supports and agrees with LGNZ's view that the following provisions of the Bill breach the principle that local government should have the policy and decision-making freedom to represent the interests and needs of their communities:

1.13.1 The proposed power of the Minister to direct the LGC, providing future Ministers with an unprecedented ability to intervene in the affairs of a local authority; and

1.13.2 The proposed power for the Government to set benchmarks for CCOs and performance measures for discretionary activities. Potentially this could undermine the unique nature of the local authority/community relationship.

1.14 The Council supports and agrees with the statement that one of the strengths of local government is its proximity to users, knowledge of preferences and the ability to tailor services to local needs and preferences. While it may be appropriate for some services to be operated at a level of scale, in some areas this is not always the case. It is important that the LGC is prepared to assess options with an open mind given local circumstances.

SOLGM

1.15 In general, SOLGM's submissions are reflected, and largely supported, in the detailed comments contained in appendix 1 of this submission.

1.16 The Council supports and agrees with SOLGM's recommendation that the LGC be required to consult during an investigation in accordance with s.82 of the LGA 2002 and that polls be held for the establishment of a CCO if any of the affected local authorities disagree with the proposal.

1.17 The Council also supports and agrees with the recommendation that the LGC must consider the financial impacts of any transfer of assets, including tax consequences and the transfer of debt.

DCWG

1.18 The DCWG represents and coordinates the efforts of local government development practitioners. Its submission enlarges upon comments made by LGNZ and the Council.

1.19 The Council supports and agrees with the DCWG's view that water services and transport services CCOs should be able to utilise development contributions as a funding source for growth-related capital expenditure, if the Bill was to proceed. However, like the DCWG, the Council does not support the way in which the Bill enables this.

1.20 The Council supports and agrees with the DCWG's concern about the lack of ability for a local authority to influence and approve the manner in which a CCO utilises development contributions and is able to amend a development contributions policy. LGNZ has expressed a similar concern in its submission.

The Council's Submission

2. Previous efforts to reform local government

2.01 In 1998 the then Government developed a proposal for improving the efficiency of the country's roading system under the title "Better Transport Better Roads". This proposed a "simpler, commercially-focused system of road management involving fewer, specialised organisations that are more directly responsive to users' needs". Local road companies would be accountable to communities through local authorities – the sole shareholders of the companies. The system would "encourage innovation and efficiency".

2.02 Essentially this was to be a 'pay as you go' system, with road user and vehicle levies being the main source of revenue rather than local rates. Local authorities would continue to have an important part to play in the management of roads and have the ability to comment on or change a local road company's statement of intent (which would define the company's accountabilities).

2.03 The proposal suggested that a shift to more business-like pricing, funding and management structures would force road companies to focus on what new developments their users wanted, and the prices they were prepared to pay to get them. The idea was that this would drive greater efficiencies.

2.04 A draft Bill was prepared and there was to be a further round of consultation, but the proposal didn't advance much beyond that stage. This may have been because it was quite a radical ideological approach to the way roads were managed and paid for.

2.05 Back in power in 2008 the Government took up where it had left off and continued its programme of reform, starting with changes to Auckland's governance structures. Then it was the turn of other local authorities, this time under the banner "Smart Government – Strong Communities". According to the Minister, Rodney Hide, the Government was committed to a major step-up in service levels, fiscal discipline, transparency, and accountability.

2.06 While the more efficient delivery of services was clearly an objective, the Minister emphasised that the reforms were also designed to improve the ability of local authorities to "set their direction" and for ratepayers to "influence and assess their councils".

2.07 Somewhat presciently, and relevant to this Council's response to the current Bill, is the comment from the Minister in July 2010 that "we cannot afford to chuck out what is good and great about local government simply on a political promise of something better. We need public discussion of the principles and criteria that should govern reform".

2.08 As far as the Council is aware, that has not occurred in respect of this Bill.

2.09 It is worth noting also, the Minister's acknowledgement that "too often local government is required to act like a government department owned and directed by government. They are not. To be a vital part of our constitutional make-up and democracy, local government must be recognised as an autonomous level of government fiercely independent of central government".

2.10 It is the Council's view that the sentiments expressed by the Minister appear to have been lost in the reforms that followed.

2.11 The step-up came after the 2011 election, but perhaps not in the way the previous Minister may have intended. A new Minister and a programme developed to "provide better clarity about council's roles, stronger governance, improved efficiency and more responsible fiscal

management". The broad assumption made (and never properly explained) was that the then purpose of the Local Government Act 2002 created "false expectations about what councils can achieve and confusion over the proper roles with respect to central government and the private sector".

2.12 The result was that references in the Act to the social, economic, environmental and cultural well-being of the community were replaced with a new purpose for local government – providing good quality local infrastructure, public services and regulatory functions at the least possible cost to households and business.

2.13 This was a significant change and removed one of the foundations of local government in New Zealand – the wellbeing of communities. To rely on a relatively small number of examples to justify such an extreme response was loudly condemned at the time. And there is still no clarity about what exactly constitutes a "core service".

2.14 That is not to say there shouldn't have been a renewed focus on the services provided by councils, nor greater regulation of matters such as financial accountability and prudent debt levels. No-one can argue with a desire to be more effective or efficient, particularly with regard to the provision of services. It's how to achieve that objective which clearly has been (and continues to be) challenging for the Government.

2.15 The 2012 amendments were also aimed at streamlining council reorganisation procedures. A new process was introduced that included a number of issues that are also relevant to this Council's response to the Bill.

2.16 The first was that, when assessing a reorganisation proposal, the Commission must be satisfied there was "demonstrable community support" for local government reorganisation in the district of each affected territorial authority.

2.17 Secondly, the Commission's preferred option (where there is more than one) must be the option that "best promotes good local government".

2.18 The Bill now requires the Commission to only have regard to "the likelihood of significant community opposition" to any reorganisation it is investigating. The purpose of the reorganisation provisions is merely to "promote good local government by enabling and facilitating improvements to local governance and the provision of infrastructure and services".

2.19 Both of these changes have been made without any explanation from the Government justifying why this is deemed to be necessary.

2.20 The 2012 amendments also contained for the first time, powers for the Minister to assist with and/or intervene in the performance of local authorities. It is interesting to note that in the booklet promoting the "Better Local Government" programme, the proposed framework was included as one of the additional tools being provided by the Government to "strengthen **council** governance provisions".

2.21 "Assisting" a council means getting it to provide information about a problem that might exist, appointing a Crown reviewer, or appointing a Crown observer. "Intervening" includes the appointment of a Crown manager and/or a Commissioner, or the calling of a general election of a council.

2.22 The exercise of these powers provides a graduated approach to problem solving, with "assisting" at the lower end of the scale and "intervening" at the higher end.

2.23 The Government has been reluctant to use the powers in a way that could provide positive assistance to local authorities at an early stage. The definition of a "problem" in the Act

includes a governance matter that is "detracting from, or is likely to detract from" the ability of a council to give effect to the purpose of local government in its district or region (s.256).

2.24 One of these purposes, referred to earlier, is to provde good quality local infrastructure, public services, and regulatory functions at the least possible cost to households and business (s. 10). "Good quality" means efficient, effective, and appropriate (s.10(2)).

2.25 The Council would encourage the Government to exercise powers it already has to assist a council that may be struggling to provide, maintain, or pay for core services, effectively and efficiently. Done early, and at the lower end of the scale, this might mean a low-level issue doesn't become a bigger, more costly problem further down the track.

2.26 The Council's view is that the 'sledgehammer" approach in the Bill is unnecessary – a slight adjustment may be all that is required to meet the Government's concerns.

2.27 The second half of the "Better Local Government" programme was introduced through the LGA 2002 Amendment Bill, enacted in August 2014. This included a provision that enabled a regional council and a territorial authority to agree on the transfer of responsibilities from one to the other. Community consultation was required and each of them had to agree that the benefits of the transfer would outweigh any negative impacts.

2.28 The Amendment Act also stated that "a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes".

2.29 The Government extended the definition of "core services" to include "libraries, museums, reserves, and other recreational facilities and community amenities", no doubt recognising there had been some difficulties with interpretation.

2.30 Another 2014 addition to the LGA 2002 was the requirement that local authorities prepare and adopt an infrastructure strategy, covering a period of at least 30 consecutive financial years.

2.31 Finally, the Amendment Act changed the way a local authority consulted before it could amend or adopt its long term plan, alter significantly the intended level of service for any significant activity, or decide to transfer the ownership or control of a strategic asset.

3. Using existing legislation to achieve the same result as intended by the Bill

3.01 In 1998 a number of territorial authorities in the Canterbury region established the Canterbury Waste Joint Standing Committee. The initial purpose was to undertake a competitive process to identify the best private sector partner for a joint venture with the councils to develop and manage a regional landfill.

3.02 The joint committee then entered into a memorandum of understanding with the successful tenderers to form a company in which half the shares were owned by the private sector partners and half by the participating councils. This became a Council-controlled organisation (CCO) for the purposes of the LGA 2002.

3.03 The company was responsible for site selection (the final decision was to be made by a 75% majority of board members), design and development work, and the obtaining of resource consents. Once completed the company was also (and still is) responsible for managing the operation of the facility.

3.04 The 50% share held by the participating councils is apportioned according to their size and likely use of the landfill. On this basis, the Christchurch City Council owns 38.9%, Waimakariri District Council 3.90%, Selwyn District Council 3.00%, Ashburton District Council

3.00% and Hurunui District Council 1.20%. The remaining 50% is held by the joint venture partner.

3.05 A shareholders' agreement was entered into for the purpose of regulating the procedural operations of the company. This provided that all rights of the councils under that agreement and the company's constitution were to be exercised on their behalf through a sub-committee established by the joint committee. They include the right to appoint and remove directors, vote at shareholder meetings, sign shareholder resolutions and to pass any resolutions required by the shareholders' agreement.

3.06 Other councils in the region with an interest in waste management but not in the development of the landfill are represented on the joint committee only. The agreement constituting the committee reflects this.

3.07 For landfill matters, the Christchurch City Council is entitled to 50% of the votes able to be cast at a meeting of the sub-committee, with the other participating councils having one vote each. The chairperson has a casting vote.

3.08 Each council delegates to the sub-committee all matters relating to participation in the landfill joint venture including performing the obligations of the participating councils under the shareholders agreement, exercising voting rights at meetings of the joint venture company, and appointing directors. The constituting agreement also covers funding arrangements.

3.09 It was a complex and detailed set of documentation to negotiate and put in place but, in the end, all affected councils agreed to take part. And the process (and outcome) is not too far away from what the Council believes the Government is now trying to apply to all local authorities irrespective of their size or the views and preferences of their communities.

3.10 Further examples of Canterbury councils operating in partnership across the region can be found in Appendix A of the Mayoral Forum's submission.

4. So, are the latest changes really necessary?

4.01 The Council is aware there are other local authorities around the country entering into similar joint venture arrangements for the purpose of achieving efficiencies through the sharing of resources or delivering services. It is not a new phenomenon. If there is a commitment to making such arrangements work (which there was in Canterbury) and no affected party is likely to be disadvantaged, then it should be possible to achieve most of the outcomes sought by central Government, without what seems to be a heavy-handed approach in the Bill.

4.02 It should also be noted that the process for progressing the Canterbury waste management initiative met the requirements of the 1974 and 2002 Local Government Acts - before the 2002 Act was amended in 2012 and 2014, and without the latest reforms.

4.03 The LGA 2002 requires the Christchurch City Council, like all other territorial authorities, to deliver and manage water services in its district. The Act also states that in performing its role, the Council should be actively seeking to collaborate and co-operate with other local authorities to improve effectiveness and efficiencies (s.14).

4.04 It is possible therefore that the Council could agree with Selwyn District Council that they share the responsibility for providing water services to (say) the increasing number of urban-style residential developments in previously rural areas of both districts.

4.05 s.17A of the LGA 2002 requires both councils to review the cost-effectiveness of current arrangements for meeting the needs of communities within their districts for good-quality local infrastructure, local public services and performance of regulatory functions.

4.06 They are also able to consider options for governance, funding, and delivery, including the delegation of responsibility for governance and funding (to a joint committee established for those purposes) and delivery (to a CCO owned by both councils). This could be the structure agreed to.

4.07 The infrastructure for delivering and maintaining water services is a strategic asset. To enable the CCO to provide these services in a particular area it may be necessary to transfer the control of some elements of that infrastructure to it. Both councils would therefore need to comply with s.97 of the Act and seek the views and preferences of people affected by or with an interest in the proposal, by undertaking a special consultative procedure. (s.83).

4.08 The responsibilities, functions and powers to be delegated to the joint committee would need to be agreed and documented. Also required would be a service agreement with the CCO (including performance measures and targets, funding, and accountabilities), a statement of intent, shareholders' agreement and constitution. Both councils would need to comply with the statutory accountability and reporting requirements contained in the LGA 2002 and any other relevant legislation.

4.09 The point of this is to emphasise to the Select Committee that much of what the Government seeks from the Bill is achievable already under existing legislation. And there are two significant differences:

4.09.1 The first is that the decisions in each situation were, or would be, capable of being made at a local government level.

4.09.2 Secondly, the LGA 2002 gives local authorities the capacity to carry on or undertake any activity or business (s.12). Balanced against that is a requirement that before most decisions are made, they identify and assess all reasonably practicable options and seek the views and preferences of those people likely to be affected by, or to have an interest in, the matter (ss.76 and 77).

4.10 It appears that very little thought has been given to either of these existing rights and obligations in the Bill. Instead it proposes limiting the involvement of affected local authorities in an investigation undertaken by the Local Government Commission. This has the potential to erode the commitment to seeking community views, which is a key part of participatory democracy. It is also an essential component of effective and inclusive local government.

5. Where to from here?

5.01 The Council believes there may be merit in extending the provisions of s.17 to include the transfer of responsibilities to a CCO, and using the Commission to work with local government to facilitate (not force) some of the reorganisation the Government (and communities) wants to see happen. There may be other ways to achieve efficiencies, not yet identified or assessed.

5.02 For example, in 2015 SOLGM began a project to look at ways in which local authorities in New Zealand could become more innovative in increasing and improving service delivery to the community. It is looking at four concepts used by English councils – service design and

identification, co-production, increased community engagement, and shared service arrangements.

5.03 Before simply imposing the Auckland governance structure on all local authorities (and ignoring regional differences), the Council suggests that the Government step back and give consideration to the consequences of what it is proposing. Larger councils may resist being directed to assume responsibility for providing, and paying for, services that a smaller neighbouring council is unable to provide or pay for itself.

5.04 The Council also suggests that it might be helpful for the governent to look at the level of regional collaboration that already exists (particularly in Canterbury) under current legislation.

5.05 More thought needs to be given to matters such as the proposed transfer of assets from local authorities to CCOs. It seems reasonable for the associated debt to be transferred as well, but there would be tax requirements to be met. The problem for larger councils is that they borrow on a programme basis and it would be impossible to identify which debt should be transferred. The result may be CCOs having to borrow new debt and retire the old, which could involve expensive breakout costs.

5.06 Finally, in August 2015 the Rules Reduction Taskforce prepared "The loopy rules report: New Zealanders tell their stories". It found that one of the top ten issues to be addressed was that departments should introduce a stakeholder engagement approach to developing local government policies and regulations.

5.07 The Government responded in July 2016. It had been encouraging such an approach, it said, by "promoting greater use of exposure drafts of proposed bills and regulations. The exposure draft process is intended to enable stakeholders to provide feedback on proposed bills or regulations before they are introduced or gazetted".

5.08 That did not happen with this particular Bill, and the Council believes the Select Committee should feel sufficiently concerned to advise the Minister that more work, and more meaningful and effective engagement with submitters, is required before any proposed legislation is reported back to the House.

6. Final comments

6.01 It's hard to get away from the perception that the Local Government Act 2002 Amendment Bill (No.2) 2016 is a knee-jerk response to the failure of recent reorganisation proposals to deliver what the Government was expecting. A source of frustration for local authorities is that they are not being given more time and greater opportunities to understand and make the best use of the reforms introduced in 2012 and 2014.

6.02 The first service delivery reviews under s.17A are not due to be completed until August 2017. A proper assessment of whether the Act should be amended to encourage further improvements in service delivery can only be made once all reviews are completed.

6.03 The Government already has the power to assist local authorities with performance issues.

6.04 Water services CCOs are prohibited from paying any dividend or distributing surpluses to their shareholding local authorities. Transport services CCOs are not, which might mean the Government still harbours the idea that these organisations could become the more business-like pricing, funding, and management structures envisaged in 1998.

6.05 The wellbeing of communities should be restored to the LGA 2002 as one of the purposes of local government.

6.06 When investigating or assessing a reorganisation plan, the Commission should be required to be satisfied the plan has demonstrable community support and that its preferred option (if there is more than one) best promotes local government.

6.07 Much of what the Government is seeking from the Bill is achievable under existing legislation. There may be improvements that need to be made, but not on the scale currently proposed.

7. Conclusion

7.01 The Council remains strongly of the view that:

7.01.1 The Bill gives too much power to the Local Government Commission;

7.01.2 It erodes local governance and decision-making;

7.01.3 There is too much emphasis on corporatising the delivery of local government services;

7.01.4 The Minister should not have the power to set performance measures for the delivery of services funded by local ratepayers; and

7.01.5 Significant improvements must be made to the Bill following discussions between the Committee and LGNZ to reflect the issues raised in this and other submissions made by and on behalf of local government.

Appendix 1

Christchurch City Council - Detailed comments on Local Government Act 2002 Amendment Bill (No.2)

Should the Bill proceed, these comments represent the Christchurch City Council's submission to make the Bill workable and sensible, and to address statutory interpretation issues.

Abbreviations:

Local Government Act 2002 = LGA 02

Local Government Act 1974 = LGA 74

TA = Territorial authorities

Clause	Issue	Suggested change
Cl 4. Section 5 amended (Interpretation)	New definition of corporate accountability information included but what does "corporate governance" mean? Inserts a new definition of permanent committee which "means a committee of 1 or more local authorities that is established or continued by an enactment and that cannot be disestablished or discharged by the local authority or local authorities". Permanent committees may be a feature of a reorganisation plan – see clause 21 of the Schedule. It is very restrictive for local authorities to have "permanent committees" outside of their control. Council requirements change over time, and the requirement to have a permanent committee could limit the way in which this Council wishes to carry out its governance role.	Clarify the meaning of "corporate governance". Delete references to permanent committees.

Clause	Issue	Suggested change
Cl 5, Section 6 amended (Meaning of council-controlled organisation and council organisation)	Meaning of 'substantive council-controlled organisation' is not sufficiently tight to capture just those CCOs that are relevant – those that deliver infrastructure-related core services to the community. In particular, the definition could include the CCC's holding companies by virtue of the size of their investment in the CCTOs. It is possible the holding companies will be excluded from the definition if they are classified as CCTOs, but whether they are or not is unclear. The additional accountability measures proposed in section 56 for an infrastructure strategy and a service delivery plan are not applicable to the Council's holding companies since they neither deliver public services or own or control infrastructure. Other additional accountability measures in the Bill are consistent with what the Council already requires of its CCTOs and holding companies notwithstanding the LGA does not impose the obligation. Legislative powers should not be provided to the Commission beyond what is needed to solve the problem as it is presented in the Explanatory Note – "…reforms to enable improved service delivery and infrastructure provision arrangements at the local government level" and "Councils need more options to co-ordinate and combine networks and scarce resources across regions and towns, especially for large-scale infrastructure". The Explanatory Note, and the Bill itself, indicate that the encompassing of CCOs other than infrastructure-based ones is not intended. The creation of uncertainty as to future actions and impacts on the business of a CCO may lead to increased financing costs to compensate the lender for potential detriment to the business's profitability. This detriment arises from the Commission's possible reorganisation of the way in which the Council manages its commercial businesses, including the potential for amalgamations with businesses or assets owned by other local authorities.	Clarify the meaning of 'substantive CCO' so that it pertains only to those CCOs that own, control or manage large scale public infrastructure or infrastructure that delivers key council services (i.e. water and transport services). Clarify the definition of CCTO now that this definition results in the differential treatment of a CCO.

Clause	Issue	Suggested change
Cl 7. Section 17 amended (Transfer of responsibilities)	Section 17 continues to provide for a regional council to transfer a function to a territorial authority and a territorial authority to transfer a responsibility to a regional council. It will now allow for the transfer of non-statutory functions. However, there is no provision for a territorial authority to transfer a responsibility to another territorial authority. New subclause (3B) refers to the transfer of water, wastewater, stormwater or transport services **but** because of the application of subclause (8) which effectively limits the transfer of statutory functions to those in the LGA 02, **there is actually no way in which transport functions can be transferred under section 17**. Transport functions are not contained in the LGA 02. These are contained in such Acts as the Land Transport Act 1998 and LGA74. Similarly, many responsibilities relating to water are in the Health Act 1956, and wastewater/drainage responsibilities are contained in local drainage acts or the LGA 74. Why is it necessary for the Commission to consent to these transfers? Section 17(5) is not being amended and this still provides that a local authority must notify the Minister of its intention to transfer a responsibility or accept a transfer of responsibility under section 17. Isn't this requirement sufficient?	If the purpose of the Bill is to enable improved service delivery and infrastructure provision arrangements at a local government level, then territorial authority to territorial authority transfers should be authorised (and not just be possible through a reorganisation process). Delete the requirement to obtain Local Government Commission consent. If this requirement is retained, delete the requirement to notify the Minister. Remove the restriction that transfers of functions are limited to those statutory responsibilities contained in the LGA 02, otherwise the provisions will simply not work.
Cl 9- section 24 replaced **24. Scope of local government reorganisation**	Section 24 is replaced by a new provision which expands the definition of local government reorganisation. This provision now includes the transfer from one local authority to another of a responsibility, duty or power conferred by an enactment or a non-statutory function. It also includes the establishment of one or more committees of a local authority and the delegation of responsibilities, duties, and powers to those committees, as well as the establishment of 1 or more joint committees of a local authority and the delegation of responsibilities, duties, and powers to those committees.	Clarify the meaning of clause 24(1)(g). What does this actually mean? How is this different from a transfer of a function? Clauses 24(1)(k) and (l) are not required and can be deleted because these will come into force by virtue of establishing a water services CCO or a transport services CCO through a reorganisation plan and subsequent Order in Council. Clauses 24(1)(m) and (n) should be deleted as these should not be a trigger for reorganisation in their own right.

Clause	Issue	Suggested change
	Committee structures and committee delegations run to the very heart of the governance structure of a local authority and these matters should not be the subject of a local government reorganisation. There is no mechanism for frivolous reorganisation applications to be declined. This should be reinstated in either section 24 or Schedule 3 of the LGA 02	Insert a new provision allowing the Commission to decline frivolous reorganisation applications (eg refer existing clause 7(a) of Schedule 3 of the LGA 02)
16. Section 31A replaced – Minister's expectations of Commission in relation to local government reorganisation	The Minister has very wide ranging powers to specify expectations to the Commission. However, there is no requirement for the Minister to consult with local government before he or she specifies these expectations.	Insert an obligation to consult with local government representatives before expectations are issued.
17. New sections inserted – 31H. Commission to resolve disputes	This new clause sets out the dispute resolution process to be used by the Local Government Commission. If one party to a dispute refers the dispute to the Commission, then no other parties to the dispute may question that referral, and the parties are bound by the decision of the Commission. Furthermore, the clause provides that the Commission may apportion the actual and reasonable costs incurred by it between the parties to the dispute as it thinks fit, having regard to the merits of the initial positions of those parties. The process which the Commission must follow in settling the dispute allows it to make any inquiries that it considers appropriate and may (but is not obliged to) hold meetings with any party to the dispute, or with any other person. This clause forces all parties to use the Commission as an arbitrator when not all of the parties to the dispute may agree to this. The process which the Commission must follow potentially raises questions of natural justice. There is no requirement for the	Amend clause 31H to provide that the dispute resolution mechanism is only available if all parties to the dispute agree to it being referred to the Commission for determination. Amend the clause so that it provides that - • Parties to the dispute have an opportunity to meet with the Commission and comment on any allegations made against them: • The Commission's costs should be shared equally between the parties.

Clause	Issue	Suggested change
	Commission to meet with all parties and there is no requirement for the Commission to give each party the opportunity to respond to allegations made by another party to the dispute. Finally, all parties would seem to be bound by the decision of the Commission but it is not clear whether the decision of the Commission is reviewable.	
33. Membership of Commission	The Bill proposes providing for the Commission to have a membership of a minimum of 3 members and a maximum of 5 members.	We agree with the SOLGM recommendations in that at least one member must have served as a member or Chief Executive of a local authority. We also agree that the Minister should be required to consult with LGNZ and SOLGM before making an appointment to the Local Government Commission.
Cl 22 – Inserting new section 56A to 56W		
56A. Establishment of water services CCO or transport services CCO	If a council is proposing to become a shareholder in a multiply-owned CCO for the purposes of delivering water, wastewater, stormwater, or transport services, or any combination of those, the council must obtain the written agreement of the Commission before commencing the consultation required in section 56(1). Why must the Commission consent to councils becoming shareholders in such CCOs? This does not '*enable improved service delivery and infrastructure provision arrangements*' or provide Councils with more options. It limits and complicates an existing option that Councils use. In any event, it is also not clear what considerations the Commission would take into account in deciding whether to grant consent. Clause 56A(1) only refers to a local authority becoming a shareholder of a multiply owned CCO. It does not refer to a local authority establishing a CCO. By way of comparison, section 56(1) states that "before a local authority may establish or become a shareholder in a council-controlled organisation, the local authority must undertake consultation in accordance with section 82."	It is not clear how this clause interacts with section 56. New clause 56A should either be deleted or clarified as to whether or not it also applies to the establishment of a multiply-owned CCO. If it is retained, the requirement for the written agreement of the Commission should be deleted.

Clause	Issue	Suggested change
	The way in which clause 56A is drafted raises a classic statutory interpretation question. Is it intended to cover the establishment of CCOs or not?	
56B Establishment of multiply owned CCO	Requires local authorities establishing a multiply owned CCO to each be responsible for ensuring compliance with the provisions of the LGA 02 in respect of the establishment of a CCO. The clause then goes onto provide for a dispute resolution provision should there be dispute between the local authorities about how to achieve compliance with the provisions of the LGA 02 in respect of the establishment of the CCO. The matter may be referred to the Commission for resolution. What is the need for a dispute resolution provision on this aspect of establishing a CCO? Why has this aspect been targeted? This clause is very unclear.	The deletion of new section 56B(3)-(4) or alternatively to clarify the meaning of these provisions. Is this to resolve policy disputes between local authorities when they are deciding on the formation of a water services CCO or does it only apply to arguments about how they carry out the consultation?
56C. Content of service delivery plan **And** **56D. Content of infrastructure strategy** **And** **56E. Adoption of service delivery plan and infrastructure strategy** **And** **56G. Water services CCO must have service delivery plan and infrastructure plan** **And** **56N Transport services CCO must have service delivery plan and infrastructure strategy**	Requires (including water and transport) CCOs to prepare service delivery plans and infrastructure strategies. The documents must be approved by the shareholders. There is no obvious requirement to engage with shareholding authorities over the development of service delivery plans and infrastructure strategies, other than the broad requirement for the plans to be approved by the shareholders in clause 56E. These plans amount to levels of service documents and there should be provision for the shareholders to comment along with some public consultation. What is not clear is the requirement of a local authority to still comply with sections 125 and 126 of the LGA 02 where a water services CCO operates. There is no provision which specifies what happens if a water or transport services CCO does not deliver on the intended efficiency and better outcomes. What happens then?	Sections 125 and 126 of the LGA 02 should be amended to provide that local authorities are not required to comply with these provisions in relation to water and wastewater if a water services CCO is in operation. Insert a requirement for engagement with shareholders and the public when these plans are developed.

Clause	Issue	Suggested change
56H. Prohibition on water services CCO distributing surplus	Water services CCOs are not permitted to make distributions but this restriction should also apply to transport service CCOs.	Amend clause 56H to also apply to transport services CCOs so that they must not pay a dividend or distribute any surplus in any way directly or indirectly to any owner or shareholder.
56I. Statutory powers of water services CCO and Schedule 8	This clause allows the water services CCO to perform or exercise any of the responsibilities, duties, and powers listed in Schedule 8A that are conferred on that CCO by an Order in Council under section 25. There is a major gap in this clause in that if the water services CCO is not established by virtue of an Order in Council under section 25 of the LGA 02, there is limited provision for the CCO to exercise any of the responsibilities, duties, and powers of the Council. Clause 30(5) of Schedule 7 of the LGA allows a local authority to delegate to any other local authority, organisation, or person the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters. However, the matters listed in Schedule 8B go well beyond the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters. Note that under the LGA 02, no delegation relieves the local authority, member, or officer of the liability or legal responsibility to perform or ensure performance of any function or duty. Section 179 allows a local authority to contract out to any other local authority or other person the administration of its regulatory functions, including, without limitation, the operational aspects of enforcement, inspection, licensing, and other administrative matters. However, again, the matters listed in Schedule 8B go beyond the operational aspects of enforcement, inspection, licensing, and other administrative matters. Schedule 8A sets out the responsibilities, duties, and powers which may be exercised by a water services CCO. There is a **significant gap** in the listed powers in this Schedule. There is no reference to local drainage Acts and this means that a Canterbury / Christchurch water services CCO could not rely on the Council's powers in the Christchurch District Drainage Act 1951 (which this Council uses on a daily basis) There is also no reference to the powers in the Land Drainage Act 1908 or the Soil Conservation and Rivers Control Act 1941.	Amend the clause to provide that any water services CCO may perform or exercise the responsibilities, duties, and powers listed in Schedule 8A. Compare with sections 63 and 64 of the Local Government (Auckland Council) Act 2009. Delete reference in Schedule 8A to the "*Commission may include in a reorganisation plan that includes the establishment of a new water services council-controlled organisation*." Amend Schedule 8A to refer to local drainage Acts, as well as the Land Drainage Act 1908 and the Soil Conservation and Rivers Control Act 1941. Where the water services CCO delegates to a shareholding Council, the following provision needs to apply "*no delegation relieves the water services council controlled organisation of the liability or legal responsibility to perform or to ensure the performance of any function or duty.*"

Clause	Issue	Suggested change
56J. Bylaws and enforcement for multiply owned water services CCO	This clause requires the shareholding local authorities to establish a joint committee to perform or exercise the responsibilities and powers of a local authority under sections 56K and 56L in respect of proposed bylaws that affect more than 1 district. However, there is currently no assurance around the membership on joint committees established by several local authorities of different sizes. There is also no clarity in relation to the position of the Mayor. Section 41A(5) of the LGA 02 provides that the Mayor is a member of each committee of a territorial authority. Is this intended to cover joint committees too? This clause also requires the shareholding local authorities to delegate to the joint committee responsibility for (a) the appointment of enforcement officers (b) the approval of enforcement actions (c) the delegation of enforcement powers to appointed officers. It is not clear what "enforcement actions" refers to. Does this mean taking prosecutions and bringing injunction proceedings? There is no need to delegate enforcement powers to appointed officers. Once a person is appointed as an enforcement officer, then the enforcement officer necessarily assumes the powers of enforcement officers by virtue of the LGA 02.	Provide clarity around the number of members of joint committees or make it clear that larger local authorities are permitted a greater number of members. Also clarify the membership of the Mayor(s) on joint committees. Clarify the meaning of "enforcement actions" in section 56J(4)(a) and delete section 56J(c). Compare with section 71 of the Local Government (Auckland Council) Act 2009.
56K. Water services CCO may propose bylaw **and** **56L. Water services CCO must consult on proposed bylaw**	Clause 56K allows a water services CCO to propose to a shareholding local authority that a bylaw relating to the management or supply of water supply, wastewater, or stormwater services be made by the local authority. The clause goes on to set out the considerations which the Council must take into account when considering the proposed bylaw. Ordinarily, when a Council is considering making a bylaw it will evaluate the need for a bylaw in terms of section 155. However, this clause raises quite different considerations to those set out in section 155.	Delete clauses 56K and 56L so that bylaw-making powers (including consultation requirements) remain with local authorities.

Clause	Issue	Suggested change
	The clause provides that if the Council decides that the proposed bylaw does or does not meet the requirements of section 56K, then it must give written notice to the CCO. Clauses 56K and 56L largely reflect sections 61 and 62 of the Local Government (Auckland Council) Act 2009 however, these provisions could well create a tension between the Council, joint committees and any CCOs requiring that these bylaws be made. Furthermore, the Christchurch City Council considers that there is a fundamental issue with CCOs carrying out consultation when the CCOs are supposed to be running a business. Given that bylaws are a form of local legislation, bylaw making and consultation should remain within the control of elected members.	
56O. Statutory powers of transport services CCO	This clause allows the transport services CCO to perform or exercise any of the responsibilities, duties, and powers listed in Schedule 8B that are conferred on that CCO by an Order in Council under section 25. Again, there is a major gap in this clause in that if the transport services CCO is not established by virtue of an Order in Council under section 25 of the LGA, there is limited provision for the CCO to exercise any of the responsibilities, duties, and powers of the Council. Clause 30(5) of Schedule 7 of the LGA 02 allows a local authority to delegate to any other local authority, organisation, or person the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters. However, the matters listed in Schedule 8B also go well beyond the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters. Note that under the LGA 02, no delegation relieves the local authority, member, or officer of the liability or legal responsibility to perform or ensure performance of any function or duty.	Amend the clause to provide that any transport services CCO may perform or exercise the responsibilities, duties, and powers listed in Schedule 8B. Delete reference in Schedule 8B to the "*Commission may include in a reorganisation plan that includes the establishment of a new transport services council-controlled organisation*." Where the transport services CCO delegates to a shareholding Council, the following provision needs to apply "*no delegation relieves the transport services council controlled organisation of the liability or legal responsibility to perform or to ensure the performance of any function or duty.*" The reference in clause 56O(5) to "liquor control" should be to "alcohol control". The meaning of this provision also needs to be clarified. Delete the reference in Schedule 8B to the transport services CCOs being able to make bylaws (ie clause 6 of Part 1 of Schedule 8B.)

Clause	Issue	Suggested change
	Section 179 allows a local authority to contract out to any other local authority or other person the administration of its regulatory functions, including, without limitation, the operational aspects of enforcement, inspection, licensing, and other administrative matters. However, again, the matters listed in Schedule 8B go beyond the operational aspects of enforcement, inspection, licensing, and other administrative matters. Clause 56O(5) states that "Nothing in this section prevents a shareholding local authority from performing or exercising, for a purpose that is not transport-related, any responsibility, duty, or power that is conferred on a transport services council-controlled organisation (for example, to regulate the use of a footpath, public space, or road reserve for liquor control purposes, or to designate a corridor that passes through a road). The extent of this provision is not entirely clear. Does this cover the Council's Public Places Bylaw as it relates to roads or not? Which body will have responsibility for which powers? What is meant by "not transport related'? As mentioned above, the Council is opposed to a transport services CCO having the ability to make bylaws. This power should remain with local authorities, as consultation with the community and decisions on bylaws should be the function of the representatives elected by the community.	
56Q. Acquisition and disposal of land by CCO or shareholding local authority	Also reflects a similar provision in the Local Government (Auckland Council) Act 2009	
56S(3)(b) and 56T(3)(b), 56U(1)(a)	These clauses require shareholding councils to adopt an accountability policy for multiply-owned substantive CCOs. The policy must include a statement of the local authority's expectations in respect of each substantive council-controlled organisation's contributions to, and	The Council does not agree with these provision and asks that they be deleted. While the Council is happy to work with Central Government on any issue, there should not be a requirement for territorial authorities to include specific provisions regarding any relevant

Clause	Issue	Suggested change
	alignment with, any relevant objectives and priorities of central government. In addition the shareholders of a substantive council-controlled organisation may require the council-controlled organisation to describe in its statement of intent how the organisation will contribute to the shareholders' and, where appropriate, the Government's objectives and priorities. We query whether this will be workable. What will be the mechanism for central government providing its relevant objectives and priorities to local government? What happens if there is tension between community objectives and priorities and central government objectives and priorities? Both clauses refer to "any relevant objectives and priorities of **central government**" but section 56U refers to "**Government's** objectives and priorities".	objective or policy of Central Government in the accountability policy or statement of intent. If these provisions are retained, there should be consistent terminology throughout.
56W. Governance of multiply owned substantive CCOs	This clause requires the shareholders of a multiply owned substantive council-controlled organisation to establish and maintain a joint committee for the purpose of collectively managing their interests in performing or exercising their responsibilities, duties, and powers as shareholders of the council-controlled organisation. However, this requirement does not apply if, before 1 March immediately preceding that financial year, **each of the shareholding local authorities** resolves to separately perform or exercise its responsibilities, duties, and powers as a shareholder of the council-controlled organisation in respect of that financial year. It is not clear what the "each" means. Is this "one" or "all"?	Section 56W needs to be clarified so that it is clear whether 1 or all local authorities need to pass a resolution to trigger the exception. We agree with the SOLGM suggest that the term 'unanimous agreement' in section 56W(4) should be deleted and replaced with 'by resolution of two-thirds of the shareholding authorities'

Clause	Issue	Suggested change
23. Section 57 amended (Appointment of directors)	The Council is strongly opposed to the new prohibition on current elected members being directors of multiply-owned CCOs. The requirements of s57(2) and the policy on the appointment of directors, required by s57(1), ensure the right calibre of directors is appointed. Elected members with the right skills should not be excluded from having a role in governing the Council's own organisations, if that is determined to be appropriate, by the whole Council.	Delete clause 23.
25. New sections 63A and 63B (development contributions (DCs) to fund capex by substantive CCOs)	A substantive CCO may require a shareholding territorial authority (TA) to include in its DC Policy a requirement for DCs to fund the CCO's capex, provided it is the same type of capex for which a TA could use DC funding. The CCO has to develop a draft amendment to the DC Policy that complies with the LGA 02 requirements for DCs/policies, consult on the draft amendment and then submit the draft amendment to the TA with a summary of the consultation (s63A(3)(c)(i)) and '*the feedback received and outcomes of that consultation*' (63A(3)(c)(ii)). It is not clear what is meant by (ii), as this is not a phrase found anywhere else in existing provisions of the LGA 02. Is the 'feedback' something different than a summary of the consultation undertaken in (i)? Is the 'outcomes' of the consultation when the CCO makes a decision on the final form of the amendment? Under s63B the TA's role is to decide if the requirements and process steps have been properly followed by the CCO, and if so it must '*incorporate and give effect to*' the draft amendment. The TA has no decision-making responsibility as it is simply a tickbox exercise to check the CCO has done the things it is supposed to. It does not have any ability for separate input in relation to the draft amendment, other than being able to submit on the consultation the same as any other member of the community. Once the amendment is incorporated it must then pay the DCs to the CCO, less the reasonable costs of administering that part of the policy.	The Council agrees CCOs should be able to receive DC funding for capex it will spend on infrastructure, that the TA would otherwise be required to spend, and could require DCs for, if there was no CCO managing the particular infrastructure. The Council **does not agree** that the proposed provisions achieve this in the right way. TAs should retain control over amendments to their own DC policies and consultation on those policies/amendments to the policies with their communities. The Council agrees with the SOLGM submission that substantive CCOs and their shareholding TAs should agree on the content of an amendment to a DC Policies (but see our comments above about the use of the dispute resolution process). However, the process to include any required amendments should be controlled by the TA in accordance with existing requirements, with the final decision being made by the TA. The CCO role should be to provide appropriate information to the TA so they can satisfy the requirements of the legislation but it is an elected Council role to consult with its community not the role of the unelected Board of a CCO. If these provisions are to be retained then there are serious flaws in s63A and 63B. There is no clear 'decision' made by anyone at any point on the consultation that is carried out, and on a final form of any amendment to the policy. 'Feedback received and outcomes of consultation' should be deleted and replaced with a reference to the CCO's decision on the draft amendment following consultation.

Clause	Issue	Suggested change
		Section 63B(2)(b) also needs to be clarified. At present, the consultation process might be pointless. The TA simply has to amend the policy to incorporate and give effect to the 'draft amendment', with no suggestion that the draft amendment is anything different than the draft amendment proposed before any consultation. It should be made clear that the TA must only incorporate an amendment to the policy that has been decided on after consultation. If these provisions are retained the Council also recommends a provision be included that only the CCO can be challenged by way of a judicial review, in respect of the consultation and decision-making process on a draft amendment, since the Council has no decision-making responsibility in respect of the amendment itself.
33. Sections 259 and 261B amended (additional performance measures)	The Council is concerned about the extent of the discretion given to the Minister to set performance measures for activities funded by communities themselves. This effectively diminishes the accountability of local representatives.	Support LGNZ submission in this regard.
Amendments to Part 1 of Schedule 3 of the LGA 02 – Reorganisation process – clause 3	The Minister has the power to make an investigation request to the Commission. However, there is no requirement for the Minister to consult with local government before he or she makes an investigation request	Insert a requirement for the Minister to consult with local government representatives before making an investigation request.
Amendments to Part 1 of Schedule 3 of the LGA 02 – Reorganisation process	We agree with the SOLGM submission on proposed new clause 6 that local authorities should be allowed to comment on the scope of any investigation on notification and before making any decisions on the investigation process.	
Amendments to Part 2 of Schedule 3 of the LGA 02 – clauses 8, 13, 20-22	We do not agree with the replacement of clauses 20-22 of Part 2 of Schedule 3. This removes the opportunity for the public and a large number of named persons and organisations to be consulted on a reorganisation plan.	The ability of local authorities and the public to comment on reorganisation plans needs to be retained and clause 8 (and/or 13) clarified to ensure this is the case.

Clause	Issue	Suggested change
	New clause 8 requires the Commission to explain in its process document "*how and when members of the public will be consulted on the investigation and any proposed recommendations or reorganisation plans that may result*". However, there is a lack of clarity around the ability of local authorities and the public to comment on a reorganisation plan given that clause 13 only refers to notification of the reorganisation plan. Is clause 8 intended to provide for a submission process on reorganisation plans?	
Amendments to Part 2 of Schedule 3 of the LGA 02 – clauses 23	Proposed new clause 23 sets out the matters on which a poll may be held. There is no provision for a poll to be held on reorganisations plans that provide for the transfer of functions to water and transport services CCOs. Note that a Council would be required to carry out consultation under the requirements of section 97 of the LGA 02 if it was intending to make either of the decisions below and use a CCO for these purposes: • alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the local authority, including a decision to commence or cease any such activity: • transfer the ownership or control of a strategic asset to or from the local authority. The Council is concerned that if there is no poll on these types of reorganisation plans, there is no clear mechanism which can show that such a plan has demonstrable community sppport (as would be the case if the Council acted under section 97.)	Amend clause 23 of Schedule 3 to provide, at a minimum, that polls be held for the establishment of a CCO if any of the affected local authorities disagree with the proposal.
Amendments to Part 1 of Schedule 8 – clauses 2 and 4	Requires a substantive CCO to give effect to the comments made by shareholders on its SOI. In our view this is a step too far from the current requirement for a board to 'consider' the comments. These additional powers raise questions about the merits of a CCO structure at the outset by potentially significantly shifting accountability from the board to the shareholders.	Amend the clause to require the substantive CCO to consider the comments made by shareholders on its SOI, and modified SOI.