

***Council Agenda – Open
28 July 2016***

***Item 8 – Consideration and Approval of HCC’s Draft 2
Submission to the Local Government Act 2002
Amendment Bill (No 2)***

Attachment 1

DRAFT 2**Submission by
Hamilton City Council****LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO 2)****28 July 2016**

1.0 INTRODUCTION

- 1.1 Overall Hamilton City Council (HCC) supports the 'Better Local Services' provisions outlined in the Local Government Act 2002 Amendment Bill (No 2), particularly the intent for the Bill to provide increased value to ratepayers and residents through more cost-effective services and infrastructure such as water and transport.
- 1.2 The opportunity for the Bill to create conditions for local innovation, local collaboration and local solutions is welcomed.
- 1.3 However, HCC does have concerns around a number of the provisions outlined in three key areas of the Bill i.e.:
- **Council Controlled Organisations** (Income Tax; ~~Debt Secured Against Water Assets~~; Development Contributions; Rates Rebate Scheme; 10-Year Service Delivery Plan; Infrastructure Strategy; ~~Consistent Treatment of CCOs – Distribution of Surplus~~; ~~Joint Committee for Water CCO Bylaws~~; CCO Transport Bylaws; Establishment of CCOs; Long-Term Plans).
 - **New Powers of the Local Government Commission** (Commission Initiated Investigations; Requirement for Polls (Community Support) on Reorganisations; Transfer of Functions; ~~Committees and Joint Committees~~; Appointment of Directors; Funding Arrangements).
 - **Benchmarking and Performance Reporting** (Performance Measures; ~~Disclosure of Accountability Information~~; Fiscal Benchmarks).
- 1.4 Sections 3.0, 4.0 and 5.0 in our submission outline HCC's position/recommended changes it would like to see made to these three key sections of the Bill.
- 1.5 The full list of HCC's concerns on the Bill's provisions and our position/recommendations for these under the same three heading areas is outlined in **Appendix 1** of this submission.
- 1.6 We felt it would be helpful to the Local Government and Environment Committee that **Appendix 1** also shows the relationship of HCC's position/recommendations on these particular concerns to the sector's lead organisations i.e. LGNZ's initial analysis of the Bill and SOLGM's position on the same provisions in the Bill.

2.0 COUNCIL CONTROLLED ORGANISATIONS

2.1 INTRODUCTION

- 2.1.1 HCC is particularly interested in the Bill's provisions around Council Controlled Organisations (CCOs). We see these provisions as being of immense assistance to HCC, Waikato District Council and Waipa District Council, especially around the current work being undertaken into the possibility of forming a jointly owned Water and Wastewater CCO.
- 2.1.2 In May 2015, a report commissioned by Cranleigh Consultants was presented to the above three councils. It made two recommendations:
- That Hamilton City, Waikato District and Waipa District Councils transfer their water and wastewater assets into a jointly-owned not-for-profit CCO.
 - That the councils retain ownership of their urban stormwater assets, but outsource management of those assets to the CCO on a cost-recovery basis.
- 2.1.3 Cost savings over the next 28 years for the three councils are estimated to be \$468.4 million, with savings for HCC over that period accounting for 60.2% of the total i.e. \$282.1 million.
- 2.1.4 On 14 July 2016, HCC voted to adopt a draft agreement which outlines how a water and wastewater CCO for Hamilton City Council, Waikato District Council and Waipa District Council might be structured.
- 2.1.5 All three councils have agreed to support the formation of the CCO in principle, subject to the outcome of public consultation. This consultation is unlikely to happen before 2017. It has been acknowledged that no decision to form a CCO has been made or could be made for some time.
- 2.1.6 Further information on potential this Water CCO investigation can be accessed at www.waterstudywaikato.org.nz

2.2 INCOME TAX

- 2.2.1 **HCC's Recommendation:** That the Bill be amended to ensure that CCOs that are deemed to be core Council business and whose activities are not in competition with the private sector be treated the same as local authorities for income tax purposes i.e. they are not subject to income tax.
- 2.2.2 This position is also shared by SOLGM.
- 2.2.3 The transfer of a non-taxable activity to a taxable activity adds a considerable barrier to entering efficient shared services arrangements. While CCO structures are effective, the additional cost of paying tax would potentially add to the cost of the water and wastewater service provided by the CCO.
- 2.2.4 Like SOLGM, HCC has also sought independent advice around the issue of income tax for CCOs from PWC. The advice for Hamilton reinforces our recommendation and identified other associated tax matters related to the CCO. Refer **Appendix 2** for PWC's submission to the Local Government and Environment Committee, which focuses around the current work being undertaken into the possibility of forming a jointly owned Water and Wastewater CCO.

~~2.3 DEBT SECURED AGAINST WATER ASSETS~~

- ~~2.3.1 **HCC's Recommendation:** That the Bill be amended to ensure the CCO has a full ability to function as a company i.e. to raise debt against its assets.~~

2.3 DEVELOPMENT CONTRIBUTIONS

2.3.1 HCC's Recommendation:

- Given that amendments will be made to the stakeholder council policy, that stakeholder councils should retain the ultimate decision-making authority over the content of their own policy.
- That as this section of the Bill contains a number of areas that require further refinement; the sector-led Development Contributions Working Group work with the Bill's drafting team to make the necessary adjustments. We also endorse SOLGM's position on these provisions.

2.4 RATES REBATE SCHEME

2.4.1 HCC's Recommendation: That the Bill be amended to ensure that water and wastewater charges levied by a CCO are included within the domain of the Rates Rebate Scheme.

2.4.2 This position is also shared by SOLGM.

2.5 10 YEAR SERVICE DELIVERY PLAN

2.5.1 HCC's Recommendation: Option A

- That the 10-Year Service Delivery Plan for substantive CCOs (that provide core council services) should seek and consider shareholder comments.
- That there should **not** be a requirement for the Service Delivery Plan to be consulted with the community by the CCO if it has been approved the CCO member councils i.e. we **agree** with proposal in the Bill, rather than with SOLGM's position on this matter.

2.5.2 HCC's Recommendation: Option B

- That the 10-Year service delivery plan for substantive CCOs (that provide core council services) should seek and consider shareholder comments.
- That there **should be** a requirement for the Service Delivery Plan to be consulted with the community by the CCO, even if it has been approved by the CCO member councils i.e. we **disagree** with proposal in the Bill, and agree with SOLGM's position on this matter.

2.6 INFRASTRUCTURE STRATEGY

2.6.1 HCC's Recommendation: That the Bill be amended to ensure that a CCO Infrastructure Strategy is in a format that is prescribed in the LGA.

2.7 CONSISTENT TREATMENT OF CCOS - DISTRIBUTION OF SURPLUS

2.7.1 HCC's Recommendation: That there is consistent treatment across the transportation and water CCOs (e.g. Bylaws) and that water and transportation CCOs are defined as not being CCTOs (Council Controlled Trading Organisations).

2.8 JOINT COMMITTEE FOR WATER CCO BYLAWS

2.8.1 HCC's Recommendation: That the delegation to enforce a bylaw should not require the establishment of a Joint Committee but a direct delegation.

2.9 CCO TRANSPORT BYLAWS

2.9.1 **HCC's Recommendation:** That the Select Committee agree either to constrain the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B or (our preference) deletes clause 6 of this same schedule.

2.10 ESTABLISHMENT OF CCOs

2.10.1 **HCC's Recommendation:** That clause 22C (2)(b)(ii) be deleted.

2.11 SCHEDULE 8A POWERS, DUTIES AND RESPONSIBILITIES

2.11.1 **HCC's Recommendation:** That local authorities be given the ability to endow the Schedule 8A powers, duties and responsibilities on water services CCOs.

2.11.2 **HCC's Recommendation:** That for consistency of outcome, the powers listed on Schedule 8A be available to CCOs regardless of whether a local authority uses the current methodology for establishing a CCO or the local-authority-led reorganisation route amending a Long-Term Plan not be required as part of establishing a CCO under the current methodology.

2.12 LONG-TERM PLANS

2.12.1 **HCC's Recommendation:** That local authorities be permitted to establish a CCO and transfer significant assets to that CCO without those decisions being explicitly provided for in a Long Term Plan.

3.0 NEW POWERS OF THE LOCAL GOVERNMENT COMMISSION

3.1 COMMISSION INITIATED INVESTIGATIONS

3.1.1 **HCC's Recommendation:**

- That the LGC needs to demonstrate that a Reorganisation Plan delivers the outcomes sought at the outset of an investigation.
- That the LGC must expressly consult with the local authorities impacted by the investigation.
- That the LGC should only be able to reorganise a council committee where the committee's role relates to a particular function being reorganised.
- That the additional criterion for approval of a reorganisation plan in a local-authority-led reorganisation be removed.

3.2 REQUIREMENT FOR POLLS (COMMUNITY SUPPORT) ON REORGANISATIONS

3.2.1 **HCC's Recommendation:** That the Bill is amended to expressly include a requirement for the LGC to consult on the Reorganisation Plan with the impacted local authorities.

3.2.2 **HCC's Recommendation:** That the Bill is supported as proposed i.e. a poll is mandatory except for CCOs and where the Reorganisation Plan has the support of the affected local authorities.

3.3 TRANSFER OF FUNCTIONS

3.3.1 **HCC's Recommendation:**

- That the Bill be amended to clarify the decision process for transfer of non-statutory functions.
- That the Bill be amended to remove the power for the Minister to set levels of service.

3.4 COMMITTEES AND JOINT COMMITTEES

3.4.1 **HCC's Recommendation:** That the Commission agree to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).

3.5 APPOINTMENT OF DIRECTORS

3.5.1 **HCC's Recommendation:** That the rules for governance of CCOs be fully outlined in the Bill.

3.6 FUNDING ARRANGEMENTS

3.6.1 **HCC's Recommendation:** That the rules for the funding allocation and debt allocation be fully outlined in the Bill.

4.0 BENCHMARKING AND PERFORMANCE REPORTING

4.1 PERFORMANCE MEASURES

4.1.1 **HCC's Recommendation:** That the Committee

- Note that the effectiveness of additional measures under s261 would be dependent on amendments to clause 2(2) of Schedule 10
- Amend s261B of the principal Act to require the Secretary to allow at least 18 months lead time on any new regulations made under s261.
- Amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B.
- Amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must".

4.2. DISCLOSURE OF ACCOUNTABILITY INFORMATION

4.2.1 **HCC's Recommendation:** That the Committee amend clause 32 by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.

4.3 FISCAL BENCHMARKS

4.3.1 **HCC's Recommendation:** That the Minister consults with local government through the sector's two lead organisations (LGNZ and SOLGM) on any future reporting requirements.

5.0 FURTHER INFORMATION AND HEARINGS

5.1 Should the Local Government and Environment Committee wish to discuss the points raised by Hamilton City Council, or require additional information, please contact Sean Hickey (General Manager Strategy and Communications) on 07 838 6432, email Sean.Hickey@hcc.govt.nz in the first instance.

5.2 Hamilton City Council **does wish to speak** in support of this submission at the Local Government and Environment Committee hearings.

Yours faithfully

Richard Briggs
CHIEF EXECUTIVE

APPENDIX 1

Hamilton City Council’s Position/Recommendations on Key Aspects of the LGA 2002 Amendment Bill (No 2)

1. Council Controlled Organisations

TOPIC/CONTEXT	LGNZ’S INITIAL ANALYSIS	SOLGM’S POSITION	HCC’S POSITION/RECOMMENDATIONS
<p>Income Tax The Bill states any CCO will be subject to income tax if it’s a company or an entity that exists for a profit purpose.</p> <p>Water CCOs may be structured as companies and therefore incur income tax on surplus that are generated to fund capital renewal.</p> <p>Tax There are other tax matters addressed in the Bill and other matters omitted that should be addressed.</p> <ul style="list-style-type: none"> • Expenditure definition – clause 57. • Transfer value clause 58. • Appointment clause 59. 	<p>LGNZ and SOLGM have sought specific advice from tax experts on the efficacy of this sub-part</p>	<p>That the Select Committee agree that water services CCOs should be exempt from income tax.</p> <p>That the Select Committee agree that CCOs that are wholly owned by local authorities, provide core functions, and do not compete or are unlikely to compete with private sector enterprises should be subject to the same tax treatment as a local authority.</p> <p>That the Select Committee agree that all references to “expenditure” in Clause 57 be replaced by the term “expenses”.</p> <p>That the Select Committee agree to seek further advice as to whether</p>	<p>Recommendation That the Bill be amended to ensure that CCOs that are deemed to be core Council business and whose activities are not in competition with the private sector be treated the same as local authorities for income tax purposes i.e. they are not subject to income tax.</p> <p>Explanation/Comment Services that are core council services (but conducted by a CCO) to provide a more effective structure, should not be subject to taxation.</p> <p>Refer Appendix 2 for PWC’s submission on the LGA 2002 Amendment Bill (No 2) on the issue of income tax for the potential Waikato Water and Wastewater CCO.</p> <p>The use of alternative, more complex structures to manage taxation requirements would be in defeat of the Bill purpose.</p> <p>Support SOLGM’s position.</p> <p>There are a number of additional areas such as the treatment of vested assets transferred to the CCO from developers and development contribution income collected by Council and passed to CCO which currently would be treated as taxable income. If the tax status is not resolved these could create additional tax</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<ul style="list-style-type: none"> • Goods and service tax clause 60. • Duplicate of tax rules re transfers of undertakings to CCOs Schedule 3 and Schedule 9 of the Act. • Transfer of vested assets • Transfer to DC income 		<p>transfer values for the purposes of clause 58 should be market values.</p> <p>We submit that the Committee consider whether an apportionment of losses and/or imputation credits may be required and determine a mechanism to achieve this.</p> <p>That the Select Committee agree that Clause 60 should be clarified. In the event that the Committee determines that no such clarification is required, it should be amended so as to insert "output" prior to "tax payable".</p> <p>That the Select Committee agree that officials be directed to review the Schedule Three provisions against Schedule Nine of the principal Act.</p>	<p>liability for the CCO.</p> <p>Clarification is required on the taxation issues.</p> <p>Support SOLGM's position.</p>
<p>Debt Secured Against Water Assets There is a lack of clarification in regard to the security that the CCO can use to raise debt, in particular the ability of the CCO to borrow against its water and wastewater assets to fund growth requirements.</p>	<p>No comment.</p>	<p>No comment.</p>	<p>This level of detail was not covered in SOLGM's submission but is an important issue in ensuring the CCO structure can work efficiently.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>Development Contributions s63 The Bill provides that substantive CCOs can require a local authority who is a shareholder in the CCO to amend its Development Contribution Policy.</p>	<p>Undermines the accountability of Elected Members.</p> <p>Diminishes the ability of councils to take an integrated approach to their finances.</p> <p>Not integrated within a council's overall strategy for their district e.g. one council may have a zero rates DC policy in order to encourage development.</p>	<p>That the Committee:</p> <ul style="list-style-type: none"> • Agree that substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies and; • Agree that disputes between substantive CCOs and their shareholding local authorities regarding the content of any proposed amendments should be resolved by the Local Government Commission under the proposed new section 31H. 	<p><u>Recommendation</u> Given that amendments will be made to the stakeholder council policy, that stakeholder councils should retain the ultimate decision-making authority over the content of their own policy.</p> <p><u>Recommendation</u> That as this section of the Bill contains a number of areas that require further refinement; the sector-led Development Contributions Working Group work with the Bill's drafting team to make the necessary adjustments.</p> <p><u>Explanation/Comment</u> Generally support the proposal to empower substantive CCOs to access DCs though the DC policies set by the shareholder local authorities. We also support the following two SOLGM submission recommendations (32 and 33) regarding DC policies.</p> <p>Firstly, substantive CCOs and their shareholding local authorities should agree on the necessary amendments to DC policies (rather than the imposition of a requirement to amend the policy as is currently proposed). Amendments to existing stakeholder local authorities' DC policies should be collaboratively developed in order to work through the variations in existing policy and assist with the integration between the multiple DC policies affected by the CCO empowerment.</p> <p>HCC foresees that there will be challenges in balancing the policy constancy and certainty which will be sought by a new CCO and the range of existing policy and funding frameworks, and the variations in DC methodologies, which</p>

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			<p>currently exist between stakeholder councils. Consequently any amendments to existing stakeholder local authorities DC policies should be collaboratively developed in order to strike a balance between the variations in existing policy and smooth the integration between the multiple DC policies affected by the CCO empowerment proposed.</p> <p>Secondly, clear provision must be made for the resolution of disputes which may arise between substantive CCOs and stakeholder councils concerning the required (or agreed) amendments to DC policies and, given that stakeholder councils will be responsible for the application or administration of the policy amendments and issues or disputes which may arise between the two parties e.g. regarding transfers, objections, remissions and refunds etc.</p> <p>We also endorse SOLGM's position on these provisions.</p>
<p>Rates Rebates Scheme It is implied in the associated Cabinet paper that rates rebates schemes could be applied to water CCO rates/charges. However no change has been signalled to the Rates Rebate Scheme.</p>		<p>That the Committee agree that water and wastewater charges levied by CCOs should be included within the ambit of the Rates Rebate Scheme and amend the Bill accordingly.</p>	<p>Recommendation That the Bill be amended to ensure that water and wastewater charges levied by a CCO are included within the domain of the Rates Rebate Scheme.</p> <p>Explanation/Comment HCC would wish to apply rate rebates to water and wastewater charges levied by the CCO.</p> <p>Support SOLGM's position.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>10-Year Service Delivery Plans s56C Substantive CCOs require service delivery plans.</p> <p>Service delivery plans must be approved by the shareholders. However there is no requirement to consult with community on the service delivery plan (such as there is with the LTP) Section 56C(2).</p>	<p>No distinction for size.</p> <p>No consultation with communities.</p> <p>May be hard to get unanimous agreement.</p>	<p>That the committee agree that the proposed new section 56C(2) be deleted and replaced with the “the service delivery plan must set out: (i) The shareholders’ objectives and how the organisation contributes to the achievement of these objectives. (ii) The intended levels of service. (iii) Programmes of capital expenditure and maintenance necessary to achieve the intended levels of service. (iv) Demographic, economic and other factors that give rise to the need for expenditure.”</p> <p>That the Committee agree that substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.</p> <p>That the Committee agree that substantive CCOs be required to consult the community while preparing a service delivery plan.</p>	<p><u>Recommendation</u></p> <p>Option A That the 10-Year Service Delivery Plan for substantive CCOs (that provide core council services) should seek and consider shareholder comments.</p> <p>That there should not be a requirement for the Service Delivery Plan to be consulted with the community by the CCO if it has been approved the CCO member councils i.e. we agree with proposal in the Bill, rather than with SOLGM’s position on this matter.</p> <p>Also support the other aspects of SOLGM’s position on this issue.</p> <p>Option B That the 10-Year Service Delivery Plan for substantive CCOs (that provide core council services) should seek and consider shareholder comments.</p> <p>That there should be a requirement for the Service Delivery Plan to be consulted with the community by the CCO, even if it has been approved by the CCO member councils i.e. we disagree with proposal in the Bill, and agree with SOLGM’s position on this matter.</p> <p><u>Explanation/Comment</u> Also support the other aspects of SOLGM’s position on this issue.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>Infrastructure Strategy s56D Water and Transport CCOs must have an infrastructure strategy. However, there is no requirement to consult with the shareholders or adopt it as part of the service delivery plan.</p>	<p>No distinction for size. No consultation with communities. May be hard to get unanimous agreement.</p>	<p>That the Committee: -agree that CCO infrastructure strategies after the transitional should be adopted as part of the CCOs service delivery plan. - agree that the proposed new 56D(3) be amended by deleting the phrase "Subsections (3) and (4)" and replacing it with "Subsections (3), (4) and (6) ...". - agree that substantive CCOs be required to seek and consider shareholder comments while preparing an infrastructure strategy.</p>	<p>Recommendation That the Bill be amended to ensure that a CCO Infrastructure Strategy is in a format that is prescribed in the LGA.</p> <p>Explanation/Comment The Infrastructure Strategy is an essential strategy for a CCO and must be endorsed by shareholders. Support SOLGM's position.</p>
<p>Consistent Treatment of CCOs - Distribution of Surplus s56H The Bill prohibits water CCOs from distributing a surplus to its shareholders. However, the same provisions are not applied to transport CCOs. If road user charging is a component of a transport CCO, it may also generate a surplus.</p>	<p>Not sure why this does not also apply to transport CCOs.</p>	<p>That the Committee agree to add a provision prohibiting transport services CCO from distributing a surplus to shareholders as part of the Bill.</p>	<p>Recommendation That there is consistent treatment across the transportation and water CCOs and that water and transportation CCOs are defined as not being CCTOs (Council Controlled Trading Organisations).</p> <p>Explanation/Comment Both water and transport CCOs should have the same provisions applied, that is, the surplus should not be available for distribution. As the water and transportation CCOs are unable to make a distribution, the Bill should also clearly state they are not Council Controlled Trading Organisations, so as to avoid any doubt. Support SOLGM's position.</p>
<p>Joint Committee for Water CCO Bylaws s56J The Bill proposes Joint Committees to be established for bylaw and enforcement where the water CCO covers more than one local authority.</p>	<p>Involves interesting transfer of democratic accountability. Not sure that this can't be left with councils.</p>	<p>That the Committee agree that the proposed new section 56J be removed from the Bill.</p>	<p>Recommendation That the delegation to enforce a bylaw should not require the establishment of a Joint Committee but a direct delegation.</p> <p>Explanation/Comment A CCO should be able to draft a bylaw that can be</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>The joint committee must consult with the shareholding local authorities on the bylaw.</p> <p>The shareholding local authority must delegate responsibility to the joint committee for enforcement actions.</p>			<p>endorsed and adopted by the shareholding local authorities, and enforced by the CCO.</p> <p>Support SOLGM's position.</p>
<p>CCO Transport Bylaws s56J</p> <p>The Bill proposes the transfer for bylaw making powers to transport service CCOs.</p> <p>This authority is not duplicated for water CCOs.</p>		<p>That the Select Committee agree either to constrain the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B or (our preference) deletes clause 6 of this same schedule.</p>	<p>Recommendation Support SOLGM's position.</p> <p>That the Select Committee agree either to constrain the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B or (our preference) deletes clause 6 of this same schedule.</p> <p>Explanation/Comment Consistency of treatment for CCOs even if they deliver different functions.</p>
<p>Establishment of CCOs</p> <p>If the Bill is enacted, CCOs can be established under any of (i) the current process, (ii) local authority-led reorganisation or (iii) Commission-led reorganisation.</p> <p>For local authority-led reorganisation, the Commission may not approve the reorganisation plan if the plan does not have the support of affected communities (clause 22C(2)(ii) of Schedule 3).</p>			<p>Recommendation That clause 22C (2)(b)(ii) be deleted.</p> <p>Explanation/Comment The standard of "does not have the support of affected communities" is unclear and potentially a very high bar, and is an additional criteria to which the Commission is not subject in a Commission-led reorganisation.</p> <p>The Commission is able to reject the reorganisation plan if it believes that a local authority has not complied with the criteria that applied to the Commission itself when considering reorganisation plan, and HCC believes that this is appropriate.</p>
<p>Schedule 8A Powers, Duties and Responsibilities</p>			<p>Recommendation That local authorities be given the ability to</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>A reorganisation can provide for the exercise by a water services CCO of any of the responsibilities, duties and powers listed in Schedule 8A.</p> <p>A water services CCO can exercise any of those Schedule 8A functions that are conferred on that CCO by an Order in Council.</p> <p>Accordingly, these powers are only exercised if the CCO is established through a reorganisation process.</p>			<p>endow the Schedule 8A powers, duties and responsibilities on water services CCOs.</p> <p>Recommendation</p> <p>That for consistency of outcome, the powers listed on Schedule 8A be available to CCOs regardless of whether a local authority uses the current methodology for establishing a CCO or the local-authority-led reorganisation route amending a Long-Term Plan not be required as part of establishing a CCO under the current methodology.</p> <p>Explanation/Comment</p> <p>The powers, duties and responsibilities listed in Schedule 8A are those that are considered necessary or desirable for a water services CCO to conduct its business.</p> <p>Accordingly, those powers, duties and responsibilities should be available to all water services CCOs, no matter how established.</p> <p>If necessary, the Bill could list mandatory considerations that a local authority must take into account when deciding whether those powers, duties and responsibilities should be transferred. We note there appear to be no additional criteria to be considered by the Commission or the Minister that are directed towards the transfer of those Schedule 8A functions and accordingly the decision as to their transfer could be left to local authorities.</p>
<p>Long Term Plans</p> <p>A local authority cannot make a decision to establish a CCO that involves a transfer of a significant asset unless that is explicitly provided for in the local</p>			<p>Recommendation</p> <p>That local authorities be permitted to establish a CCO and transfer significant assets to that CCO without those decisions being explicitly provided for in a Long Term Plan.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>authority's long term plan.</p> <p>A reorganisation that establishes a CCO is not subject to the same constraint, because the decision is the Commissions, not the local authority.</p>			<p>Explanation/Comment</p> <p>The Bill establishes a new method of establishing a CCO that does not require the amendment of a local authority's Long Term Plan.</p> <p>We believe there is no reason in principle why a decision by a local authority to establish a CCO should involve material expense and effort to amend its long term plan when the Commission-led reorganisation does not have a corresponding impact.</p> <p>Certain high level information about the impacts on a local authority of the decision could be mandated.</p>

2. New Powers of Local Government Commission

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>Commission Initiated Investigations</p> <p>The current legislation allows reorganisations to be proposed to the LGC (Local Government Commission) by any person, body, or group including local authorities and the Minister. The Bill expands this to allow the LGC to initiate investigations on its own motion. The LGC must notify the local authority but there is no requirement to discuss the scope of the investigation with the local authority.</p> <p>Schedule 3, Part 1, clause 6(2)</p> <p>Consultation on Reorganisation Investigation and Plans</p> <p>Schedule 3 – Part 1 and Part 2</p>	<p>Gives LGC the power to investigate any council at any time (presumably within the context of its Annual Plan and SOI).</p> <p>May have implications for long term planning and investment decisions by councils if there is a constant risk of review.</p> <p>Some evidence of community support for changes should be a factor to be considered.</p> <p>The process is weak on consultation – “key stakeholders” are given preference by being given an</p>	<p>That the Committee:</p> <ul style="list-style-type: none"> Agree that the proposed new clause six, Schedule Three be amended to require the Commission to allow local authorities the ability to comment on the scope of any investigation upon notification and before making any decisions on the investigation process. Agree that the Commission should recognise any relevant evidence that others hold (and not just the evidence the Commission holds). 	<p>Recommendation</p> <p>That the LGC needs to demonstrate that a Reorganisation Plan delivers the outcomes sought at the outset of an investigation.</p> <p>Recommendation</p> <p>That the LGC must expressly consult with the local authorities impacted by the investigation</p> <p>Recommendation</p> <p>That the LGC should only be able to reorganise a council committee where the committee's role relates to a particular function being reorganised.</p> <p>Recommendation</p> <p>That the additional criterion for approval of a reorganisation plan in a local-authority-led reorganisation be removed.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>The current legislation requires a</p> <ul style="list-style-type: none"> • Reorganisation application. • A draft proposal that gives effect to the preferred option in the reorganisation application. <p>The Bill redefines the process as a two-step process:</p> <p>a) Investigation - to allow the LGC to initiate investigation rather than just process applications from other parties 4(A)</p> <p>b) Reorganisation Plan - outlines the reorganisation proposed s24</p>	<p>opportunity to engage with the LGC while the public will be consulted. The LGC is able to determine the extent of the consultation.</p> <p>A major change. "Demonstrable support" has been removed and petitions have gone. Requirement to seek 'alternative proposal' removed. (Possibly designed to remove risk of judicial review that existed in old provisions.)</p> <p>If a plan is adopted the LGC must "give public notice of a reorganisation plan" and take appropriate actions to "inform" persons and parties with an interest.</p> <p>There appears to be no requirement to consult on a reorganisation plan, only to inform (removal of current schedule 3, clause 20(1)(b).</p>		<p>Explanation/Comment</p> <p>We expect that under clause 8(2)(b), Schedule 3, local authorities will be key stakeholders and the process document will set out how and when they will be consulted, but given SOLGM's position this should be confirmed.</p> <p>We have concerns that the current wording allows for reorganisation of council committees e.g. the LGC could potentially reorganise council subcommittees. We assume this is a drafting error, albeit a significant one.</p> <p>Support SOLGM's position.</p> <p>There is no requirement for the LGC to consult with local authorities on matters being investigated. They merely have to inform. It raises questions about the wide ranging powers of the LGC, which could potentially be used to force councils into new structures.</p> <p>Councils need the ability to put forward an understanding of their community and the social, economic and environmental factors that impact on the way services are delivered.</p> <p>A local authority can provide insight into matters and therefore should be able to provide comment on investigations affecting them.</p> <p>Recommendation</p> <p>That the Bill is amended to include a requirement for the LGC to consult on the Reorganisation Plan with the impacted local authorities.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
			<p>Explanation/Comment</p> <p>The communities affected by a reorganisation should have the right to be informed and express a view on the reorganisation.</p> <p>The Bill does not provide for consultation on a reorganisation plan to seek the affected local authority's feedback.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>Requirement for Polls (community support) on reorganisations</p> <p>The Bill makes a poll mandatory where there is a reorganisation plan except where the transfer is:</p> <ul style="list-style-type: none"> not major - less than 50% of transferring local authorities operational expenditure, assets or staff for water, transport and RMA functions has the support of all affected local governments <p>Schedule 3, clause 23 and 25</p> <p>The Bill changes the emphasis of support from "demonstrated support" to "opposition of" a reorganisation.</p> <p>The Bill requires the LGC to have regard to "significant community opposition". Schedule 3, Part 1, clause 7(g)</p> <p>The current Act requires the LGC to have regard to "demonstrable community support". Schedule 3, Part 4, clause 3(b)(iii)</p>	<p>The impact of this measure is that no polls are required where the LGC makes changes to the organisational structure of a council, such as:</p> <ul style="list-style-type: none"> Introducing a new committee structure. Establishing CCOs. establishing joint CCOs Transferring functions between councils (except for major transfer). <p>As noted above, consultation with the community is required as part of the investigation – no consultation is required on the adopted reorganisation plan. Applications no longer need to show that there is community support for their application (Presumably designed to remove risk of judicial review where LGC can't show community support!)</p> <p>Gives LGC greater ability to choose to undertake an investigation (even if request is frivolous).</p>	<p>That the Committee agree that the proposed new sub clause 23(1)(e), Schedule Three be amended by adding the words "local authority or to a council controlled organisation" after the word "another". This amendment would require polls for transfers of transport services, water services and RMA to CCOs.</p> <p>That the Committee:</p> <ul style="list-style-type: none"> Agree that proposals for reorganisation initiatives should be required to show demonstrable community support. Agree that the clause 7(g) be amended by deleting the phrase "of significant community opposition to" and replacing this with "that there will be demonstrable community support for". 	<p>Recommendation</p> <p>That the Bill is supported as proposed i.e. a poll is mandatory except for CCOs and where the Reorganisation Plan has the support of the affected local authorities.</p> <p>Explanation/Comment</p> <p>Currently consultation, but not a poll, is required to establish a CCO. We support the existing scheme and the wording in the Bill of this point.</p> <p>The LGC should consider community support for a reorganisation.</p> <p>The establishment of CCOs for water and transport where there is agreement of all affected local governments should not require a poll of electors.</p> <p>If there is not agreement and the transfer is major, a poll is required.</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>Transfer of Functions Schedule 3, clause 21</p> <p>The Bill allows the LGC to transfer, through a reorganisation plan, 'non-statutory' functions and to:</p> <ul style="list-style-type: none"> • Prohibit councils from which activities are transferred from undertaking activities or expenditure, and • Set levels of service for the council receiving the transferred functions. 	<p>Fixes the previous problem with 'statutory' functions, however, gives the LGC the ability to determine the levels of service of transferred functions without any time limit.</p> <p>If a function or part of a function is transferred it makes a council accountable for performance. How will this work if these areas are outside a council's jurisdiction (i.e. citizens will not be able to elect the councillors charged with providing the service)?</p> <p>Clause 22 requires the LGC to consider how this might occur, but is this enough - guidance is probably required.</p>		<p>Recommendation</p> <p>That the Bill be amended to clarify the decision process for transfer of non-statutory functions.</p> <p>That the Bill be amended to remove the power for the Minister to set levels of service.</p> <p>Explanation/Comment</p> <p>The Bill should clarify rules for the transfer of non-statutory functions in a similar manner as it has for statutory functions.</p> <p>The Minister should not set levels of services. This should be defined by the receiving local authority.</p>
<p>Committees & Joint Committees</p> <p>The Bill includes committees and joint committees in the scope of the matters than can be provided for under a reorganisation.</p> <p>s24(1)(m)</p>	<p>The LGC's ability to change the committee structure of a local authority (despite s.41A?) is a significant increase in its authority with quite far reaching implications.</p> <p>If this section stays it needs a time limit, such as three years, as circumstances change etc.</p>	<p>That the Commission agree to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).</p>	<p>Recommendation</p> <p>That the Commission agree to add the phrase "but only where this is necessary to give effect to other reorganisation under this section" to the proposed new subsections 24(m) and 24(n).</p> <p>Explanation/Comment</p> <p>The inclusion of committees and joint committees should only be included in the scope of reorganisation when they relate to other reorganisations e.g. establishment of CCOs.</p> <p>Support SOLGM's position.</p>
<p>Appointment of Directors</p> <p>Substantive CCO shareholding councils must have a joint committee with authority to adopt a policy on appointment of directors.</p>	<p>No public consultation on director appointment policy. What if councils fail to agree on directors?</p>		<p>Recommendation</p> <p>That the rules for governance of CCOs be fully outlined in the Bill.</p> <p>Explanation/Comment</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITION	HCC'S POSITION/RECOMMENDATIONS
<p>s56W</p>			<p>The rules for governance of CCOs should be fully outlined in the Bill.</p> <p>Request further clarification of this issue in the Bill.</p>
<p>Funding Arrangements Funding arrangements for multiply owned CCOs s61A – 61E</p> <ul style="list-style-type: none"> • Shareholders must agree a funding allocation formula. • Agreement must be unanimous, if not the matter may be referred to the LGC. • A shareholder's contribution can only be reduced with agreement of other shareholders. • Debt can only be incurred in line with the service delivery plan. 	<p>No public consultation on formula.</p> <p>Formula virtually a mandatory payment to the CCO (elected members lose control of that share of their revenue). This could have implications for long terms plans, consultation and undermines the decision making role of elected members – why vote?</p> <p>Councils must lend money if stated in service delivery plan. Not clear how debt is shared between shareholding councils (is this a risk for debt ceilings)?</p>		<p>Recommendation That the rules for the funding allocation and debt allocation be fully outlined in the Bill.</p> <p>Explanation/Comment The rules for the funding allocation and debt allocation should be fully outlined in the Bill.</p> <p>Request further clarification in the Bill re:</p> <ul style="list-style-type: none"> • Funding allocation. • Ownership of debt.

3. Benchmarking and Performance Reporting

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITON	HCC'S POSITION/RECOMMENDATIONS
<p>Performance Measures s259 and s261A Performance measures currently required under section 259 and 261A relate to network infrastructure. The current sections do not provide consideration if there are changes or introduction of new regulations. The Bill allows the Minister to set performance measures for discretionary activities.</p>	<p>Allows the Government to set performance measures for activities as diverse as libraries, economic development and tourism promotion. Undermines role of citizens and elected members in setting levels of service. More administrative costs.</p>	<p>That the Committee - note that the effectiveness of additional measures under s261 would be dependent on amendments to clause 2(2) of Schedule 10 - amend s261B of the principal Act to require the Secretary to allow at least 18 months lead time on any new regulations made under s261. - amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B. - amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must".</p>	<p>Recommendation That the Committee</p> <ul style="list-style-type: none"> Note that the effectiveness of additional measures under s261 would be dependent on amendments to clause 2(2) of Schedule 10 Amend s261B of the principal Act to require the Secretary to allow at least 18 months lead time on any new regulations made under s261. Amend the principal Act by adding a new section that requires the Secretary to make implementation guidance with six months of making new regulations under s261B. Amend references to disallowable instruments in clause 33 by removing the word "not" from line 31 and replacing the words "does not have to" in line 32 with the word "must". <p>Explanation/Comment Clarification is required to ensure the performance measure requirements are clear for both the local authority and the CCO. Support SOLGM's position.</p>
<p>Disclosure of Accountability Information s259 The Bill prescribes corporate accountability information that must be disclosed. However, the accountability information is not defined.</p>	<p>Provisions are too vague – what is 'corporate accountability' information?</p>	<p>That the Committee amend clause 32 by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.</p>	<p>Recommendation That the Committee amend clause 32 by either deleting the proposed new section 259(d)(f) or deleting the term 'corporate accountability information' and replacing it with a list of the required information.</p> <p>Explanation/Comment Clarification is required to ensure Accountability</p>

TOPIC/CONTEXT	LGNZ'S INITIAL ANALYSIS	SOLGM'S POSITON	HCC'S POSITION/RECOMMENDATIONS
			<p>Information requirements are clear.</p> <p>Support SOLGM's position.</p>
<p>Fiscal Benchmarks s259 The Bill provides the Minister with the power to establish benchmarks for assessing the financial performance of CCOs. The benchmarks are not defined.</p>	<p>An unnecessary administrative cost that undermines the ability of citizens, elected members and CCO board members to exercise good governance.</p>	<p>That the Committee amend section 259(4) of the principal Act by deleting all words after "consultation" and replacing with "with:</p> <ul style="list-style-type: none"> (i) the New Zealand Local Government Association Incorporated; and (ii) the Society of Local Government Managers; and (iii) the Auditor-General". 	<p>Recommendation That the Minister consults with local government through the sector's two lead organisations (LGNZ and SOLGM) on any future reporting requirements.</p> <p>Explanation/Comment Benchmarks should be determined in consultation with the industry sector.</p> <p>Support SOLGM's position.</p>

***Council Agenda – Open
28 July 2016***

***Item 8 – Consideration and Approval of HCC’s Draft 2
Submission to the Local Government Act 2002
Amendment Bill (No 2)***

Attachment 2



Memo

To: / Location: Waipa District Council/Hamilton City Council/Waikato District Council

From: / Location: Phil Fisher / PwC

Date: 22 July 2016

Subject: Tax submission on the Local Government Act 2002 Amendment Bill (No 2)

Draft submission

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

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

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

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

Tax Status of Multiply Owned or Substantive CCOs

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

- (a) network infrastructure:*
- (b) public transport services:*
- (c) solid waste collection and disposal:*
- (d) the avoidance or mitigation of natural hazards:*
- (e) libraries, museums, reserves, and other recreational facilities and community amenities.*

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

However, any reorganisation that results in local authority activities being transferred to a CCO (that is a company or an entity that operates a trading undertaking for the purpose of making a profit) means that these activities will become subject to income tax at the CCO level, as will any income received by a local authority from a CCO. This is appropriate where CCOs are competing with the private sector, or are providing a service where private sector provision is.

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

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

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

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

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

Recommendation

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

¹ We note that that the commercial port related commercial undertakings of Auckland Transport remain subject to income tax.



Water Services Council-Controlled Organisation

As alluded to above, it appears that a water services council-controlled organisation will be subject to income tax if it is a company or an “entity²” that operates a trading undertaking for the purpose of making a profit (i.e. it is a CCTO). We note that this is consistent with outcome that would be arrived at under the current legislation.

However, due to the Bill proposing that water services council-controlled organisations will be prohibited from being able to pay a dividend or distribute any surplus to any owner or shareholder, any profits will be subject to income tax wholly within the water services council-controlled organisation itself. This outcome is contrary to the underlying Cabinet paper that stated that the establishment of CCOs would be tax neutral.

Impact of the Bill on the proposed Waikato Water CCO

Waipa District Council, Hamilton City Council and Waikato District Council are currently considering establishing a CCO (the ownership of which is currently forecast to be Hamilton City Council 62.8%, Waipa District Council 19.2% and Waikato District Council 18.0%³) to deliver water and wastewater services. The intention is that the water infrastructure assets would be transferred to the CCO. The expected benefits from establishment of the proposed Waikato Water CCO include improved efficiency and substantial operating and capital savings (when compared to each of the individual Councils delivering the services in their own right).

It is likely that the proposed Waikato Water CCO will make surpluses for accounting purposes (as it will need to build reserves for future

² Being a CCO as defined in section 6(1)(b) of the LGA 2002.

³ It is possible that other Councils may become owners in the future, thus generating further efficiency gains for the regions ratepayers.

infrastructural development). For tax purposes a tax profit (or loss) could arise due to factors such as:

- differing accounting and tax depreciation rates;
- differing asset cost bases for accounting and tax (e.g. capitalised interest being deductible for tax); and
- timing differences relating to provisions.

The proposed Waikato Water CCO will suffer a tax impost in relation to any taxable income it derives (which must be funded – presumably by increased charges to ratepayers) and will suffer all of the compliance costs of being in the income tax net. Had these services been carried out by the respective Councils in their own right, they would not have been subject to income tax. Further, given that the proposed Waikato Water CCO is performing “core services” per section 11A of the LGA it seems counterproductive to make such an entity subject to income tax and to the associated compliance obligations. Such an approach is a potential barrier, and certainly does not aid in achieving the stated objective of the local government reforms of increased efficiency and better delivery of public services.

Further, the proposed Waikato Water CCO (assuming that it will be a company) will not be able to reduce its tax liabilities by utilising tax losses that exist in its Council shareholders as none of the shareholders is expected to meet the required common ownership threshold of 66%.⁴

Impact of the use of a limited partnership

We note that the proposed Waikato Water CCO could be structured as a limited partnership rather than as a company. This would enable surpluses/losses of the limited partnership to be “allocated” to the partners.

⁴ As required by section IC 3 of the Income Tax Act 2007.

As such, this would allow the respective limited partner Councils to directly offset tax losses against any profits allocated to them. This yields a different tax outcome compared to that which would arise if a company was used as the vehicle for the proposed Waikato Water CCO which is prohibited from distributing surpluses and cannot undertake loss offsets.

The fact that use of different structures for a CCO could give rise to a different tax outcome is sub-optimal from a tax policy perspective.

Recommendation

- **That the Select Committee agree that water services council-controlled organisations should be exempt from income tax. This could be achieved by water services council-controlled organisations being defined as a “local authority” in section YA 1 of ITA 2007.**
- **That the Select Committee should clarify whether it is intended water services council-controlled organisations are able to operate through a limited partnership structure.**
- **That the Select Committee confirm that as a water services council-controlled organisation is prohibited from distributing surpluses, this is akin to not operating with a purpose of making a profit so that it will not be a CCTO as defined in the LGA.**
- **That the Select Committee should clarify the ambit of clause 56H(a), including whether this will extend to the ability of a water services council-controlled organisation to:**
 - **provide discounts to any owner or shareholder**
 - **provide rebates to any owner or shareholder**

-
- **make subvention payments to shareholders (in the event they are not exempt from income tax or**
 - **accept or receive tax loss offsets from its shareholders (in the event they are not exempt from income tax**

Ability of a water services CCO to levy charges

Given that water services council-controlled organisations will take over the ownership and operation of substantial infrastructural assets and that these infrastructural assets will need to be replaced, improved and added to in the future, such organisations will likely need the ability to impose levies such as an infrastructure growth levy. Such a levy could be a substitute/replacement for Council development levies.

Recommendation

- **That the Select Committee confirm that water services council-controlled organisations are able to impose levies for the purposes of infrastructural replacements and renewals; and**
- **That the Select Committee confirm that such levies will not be taxable income of a water services council-controlled organisation (in the event that our earlier submission that water services council-controlled organisations should be exempt from income tax is not accepted); and**
- ***In the event that our submission that water services council-controlled organisations are able to impose levies for the purposes of infrastructural replacements and renewals is accepted, that the Select Committee consider the GST implications thereof. Similar provisions to those that currently apply to Local Authorities as set out in section 5(7B) and 5(7C) of the Goods and Services Tax Act 1985 should equally apply to water services council-controlled organisations.***

Vested Assets

Local Authorities are empowered to require the payment of development contributions. This can result in assets being vested in Local Authorities. If it is intended that such development contributions are related to water infrastructure, then water services council-controlled organisations should be able to impose development contributions and receive the resulting vesting assets directly from the developer rather than via the respective Local Authority. This would be simpler administratively and would also eliminate the risk of adverse income tax outcomes that might otherwise arise for both the Local Authority and the water services council-controlled organisation.

Recommendation

That the Select Committee consider empowering water services council-controlled organisations with the ability to levy development contributions for water infrastructural purposes and receive any resulting vested assets directly from the developer.

Clause 58 - Transfer Values

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

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

- (a) in deriving assessable income; or*
- (b) in carrying on a business for the purpose of deriving assessable income. Subsections (2) to (4) expand on this subsection.”*

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

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

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

Recommendation

That the Select Committee agree to seek further advice as to whether transfer values for the purposes of clause 58 should be market values (in the event that our earlier submission that water services council-controlled organisations should be exempt from income tax is not accepted).