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326/01-005

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Submission on Local Government Act 2002 Amendment Bill 2 (2016)

Submitter details

I Wayne Guppy, Mayor of Upper Hutt City Council, make this submission on behalf of Upper Hutt City Council. I wish to appear before the Committee to speak to my submission.

I can be contacted on 04 5272 156.

1. Introduction

- 1.1. Upper Hutt City Council (UHCC) has a proven record of operating efficiently and effectively, focused on providing those services that only councils can perform. UHCC is also committed to contributing, within its legal parameters, to support economic growth and the development of affordable housing (well before the Housing and Accords and Special Housing Areas Act was passed) and resilient 'good quality' infrastructure in Upper Hutt.
- 1.2. UHCC is a medium sized Council, in the context of territorial authorities in New Zealand. Due to its size all members of the Council, officers and politicians alike, relate closely to the city's ratepayers and are acutely aware of the ratepayers expectations. This close relationship would also apply to other local authorities whether small or medium in size.
- 1.3. UHCC has been actively involved in joint council operations for many years. On both a regional scale (emergency management, rural fire, and the Wellington Regional Strategy), and through Wellington Water - a Council Controlled Organisation (CCO), for the provision of water, wastewater and stormwater services. On a smaller scale Council works with one or more neighbouring councils (solid waste, environmental health, dog pound facilities, and cemetery operations). In all cases, functions have been transferred, but Upper Hutt City Council retains overall responsibility for the delivery of services and is able to rate on the basis of acceptable service levels and investment.

- 1.4. These initiatives reflect the will of Upper Hutt residents who have opposed recent amalgamation proposals, outlining a clear preference for shared service arrangements, such as CCO's that reduce costs and preserve local accountability and representation. The Bill largely ignores those wishes, by introducing model CCO provisions with reduced financial accountability and public representation. These are not the types of CCO's that UHCC contemplated in previous submissions on amalgamation. They will, instead, become 'out of control organisations'.
- 1.5. UHCC focuses strongly on delivering core services and currently plans for infrastructure over time horizons considerably longer than ten years through its asset management plans. This includes planning for new infrastructure, renewals, inspection, and maintenance of combined assets valued at nearly \$1 billion, and with up to a 100 year lifetime. The Council's work on asset management has been specifically cited by Audit New Zealand as being an example on how others should do it. The quality of work undertaken by UHCC shows that the Council is not attempting to avoid its obligations or responsibilities with regards to longer term planning horizons.
- 1.6. UHCC supports the concept of "Better Local Government" and the intent of the Bill where this enables Councils to adopt reorganization proposals, such as transfer of responsibilities or CCO's of their own accord. However, UHCC has significant concerns with many parts of the Bill. Council considers that the powers provided to the Local Government Commission in directing outcomes go too far, and will provide for the amalgamation of Councils or establishment of CCO's without the necessary democratic accountability. UHCC is also concerned that the Local Government commission lacks the necessary expertise to warrant its new powers.
- 1.7. UHCC also considers that the transfer of some responsibilities, without the need for a poll, will result in the privatization of Council infrastructure in all but name and remove any control by Council – effectively undermining local representation. The responsibilities, duties and powers of water and transport CCO's appear to be based on the Auckland approach, which has significantly decreased overall ratepayer satisfaction, and provides no evidential financial benefits over the types of CCO arrangements, such as Wellington Water, that are in place at Upper Hutt City.
- 1.8. The model CCO provisions presented in the Bill will increase costs to ratepayers and developers, reduce overall satisfaction with infrastructure provision, and reduce local representation.

2. Key issues with the Bill

2.1. Reorganisation applications

- 2.2. Given the level of public interest, and significant consequences to service levels, responsiveness, and overall cost associated with the transfer of responsibilities identified, Upper Hutt City Council considers that proposals for reorganisation initiatives should be required to show demonstrable community support. The test for demonstrable community support within schedule 3 clause 7(g) has been largely removed from the Bill. This test previously showed a minimum expectation for public support and has also helped the Commission conclude whether proposals for political amalgamation would succeed at a poll.

- 2.3. The Bill also appears to propose repeal of the present clause four, Schedule Three of the principal Act. This clause prohibits what the Bill would refer to as reorganisation initiatives and investigation requests where a local authority has been the subject of a reorganisation and the scheme contains a time limit on new initiatives. Continual reorganisation can impact on organisational morale, retention of staff, community perception of the value of democracy etc.
- 2.4. Clause 9 of schedule 3 outlines that the commission may require a local authority or CCO that is affected by the investigation or plan to provide information to assist the commission. The reorganisation process will require substantial time commitment from affected Councils or CCO's. This will pull resource away from the delivery of key infrastructure and affect Councils ability to deliver committed projects. Council is already subject to extensive audit and review requirements, and required to review the delivery of services under s17A.

2.5. Recommendations

- 2.6. That proposals for reorganisation initiatives should be required to show demonstrable community support and that 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 ..."
- 2.7. That, in order to minimise disruption caused by ongoing reorganisation reviews, clause four, Schedule Three of the principal Act be retained with amendments to provide for the wider scope of reorganisation. And that a minimum time is specified from a reorganisation for another investigation into a reorganisation. For example, the proposed new clause seven, Schedule Three be amended by adding a new subclause that would read "the time elapsed since the last investigation of the same, or substantially similar nature, and any relevant changes in circumstance in the intervening period'
- 2.8. That schedule 3, clause 4(1) and 7 specifically consider alternatives to reorganisation such as shared service arrangements or the establishment of CCO's that undertake responsibilities on behalf of local government. And that section 24(1) provide for shared service arrangements in the scope of local government reorganisation.

2.9. Local Government Commission responsibilities

- 2.10. Local authorities do not have the right to comment on proposed matters to be investigated by the Commission (under either of the new clauses 5 or 6 of schedule 3). The Commission does not need to discuss the proposed scope of the investigation with the affected local authorities. Councils have evidence that will influence the decision on whether to undertake a reorganisation investigation, such as on arrangements that could provide better outcomes than the transfer of responsibilities contemplated in the Bill.
- 2.11. Conversely, amended section 17 imposes a new requirement on local authorities to obtain the Local Government Commission's written agreement prior to embarking on consultation associated with any transfer of responsibilities related to water or transport services. It is unclear from the provision what matters the Local Government Commission could rely on when deciding whether or not to provide written agreement, and whether or not that agreement can be conditional.

2.12. Recommendations

- 2.13. That the proposed new clauses five and six, Schedule three be amended to require the Commission to allow local authorities the ability, with adequate time to comment on the scope of any investigation upon notification and before making any decisions on the investigation process.
- 2.14. That the proposed new clause seven, Schedule three require the Commission to recognise any relevant evidence that others hold (including local authorities and not just the evidence the Commission holds).
- 2.15. That there be improved clarity under section 17 on the reasons that the Local Government Commission may withhold agreement for a Council to consult on a reorganisation proposal.

2.16. Changes to Development Contributions

- 2.17. Development contributions are one of the outputs of a funding policy set out in section 101(3). Cost recovery for capital expenditure can either be through development contributions, financial contributions, or other sources. The proportion of cost recovery through development contributions is a matter that is informed by ratepayers expectations of growth and any other benefits potentially accrued from infrastructure investment.
- 2.18. Section 63A introduces the ability for substantive CCO's to require amendments to a Council's development contributions policy in order to fund capital expenditure by the CCO. The amendments must apply to the districts of all shareholding Council. Similar provisions relate to CCO's ability to enter into development agreements (s63D).
- 2.19. In reality, shareholdings Councils are likely to have quite different funding requirements. Removing the ability of any Council to set development contributions, or manage development agreements will undermine our ability to encourage growth. It will also remove the ability for Councils to adequately manage the overall effects of funding contributions based on the outcomes of community consultation. Councils should have the ability to decline any required changes in development contribution policy even if they comply with sections 63A(2) to (4). Disagreement should then be a matter for independent mediation.

2.20. Recommendations

- 2.21. That substantive CCOs and their shareholding local authorities should agree on the contents of amendments to development contributions policies.
- 2.22. That section 63D is amended to require a substantive CCO to obtain approval from an affected Council before entering a development agreement. In the event that there is dispute over approval, the dispute could be settled at mediation.

2.23. Minister's expectations

2.24. New section 31A provides the opportunity for the Minister to specify expectations relating to the Commissions performance. Upper Hutt City Council expect that as a minimum the Minister would be required to consult the Commission, the local government sector, through its representative organisation Local Government New Zealand and any other Minister who is likely to be interested in, or whose responsibilities might be affected by the Minister's proposed expectations, when considering priorities for investigations. We consider that ministerial powers should be used transparently.

2.25. Recommendations

2.26. That the proposed new subsections 31A(3) be amended to require the Minister to consult the Commission, the Local Government Association of New Zealand Incorporated, and any interested or affected Ministers

2.27. That the Commission be required to publish any statements of Ministerial expectations as part of its statement of intent.

2.28. Governance and Powers of CCO's

2.29. UHCC makes strategic decisions through its service delivery plans, infrastructure strategy, financial strategy and long term plan with a high level of engagement through a consultation document. The integration of all of these elements is vital for the creation of a strategic and forward-thinking community that will meet current and future needs. Through these key elements UHCC makes considerations and trade-offs to optimise efficiency and effectiveness of service delivery looking at timeframes of 10 years, and 30 years.

2.30. Proposed section 56D(3) requires that transport services and water services CCOs should have an infrastructure strategy in place, and notes that other substantive CCOs may be required to have a strategy. Similar requirements are set out in section 56C(2) for the provision of service delivery plans. However, there is no requirement to consult with shareholder Councils or adopt an infrastructure strategy as part of the CCO's service delivery plan. UHCC considers that substantive CCO's must be required to seek and consider shareholder comments when preparing an infrastructure strategy and service delivery plan. Councils and the communities that they represent will ultimately be the funders of these strategies.

2.31. Following creation of a water services CCO, proposed section 56J requires the creation of a joint committee with responsibility to appoint and 'warrant' enforcement officers and commence enforcement actions, essentially overseeing bylaws. It is questionable whether the creation of a joint committee specifically to oversee bylaws is necessary or practical.

2.32. Conversely, clause 6 of schedule 8B provides the Commission with extensive powers to transfer bylaw-making powers from local authorities to transport services CCOs. There is no rationale to require a joint committee for bylaw and enforcement powers in water but not in roads. Furthermore, powers transferred to transport CCOs to make bylaws may cover matters from solid

waste, bee-keeping to cemeteries. These go beyond transport issues relevant to the particular type of CCO.

2.33. The transfer of Council responsibilities, duties and powers to a CCO contemplated in Schedule 8A and 8B can take place without a poll. UHCC considers that such a transfer should rely on the consensus of affected Councils, or where this cannot be obtained, a poll should be required.

2.34. UHCC considers that the application of bylaws that are transferred under clause 6 of the proposed new schedule 8B should be constrained, or preferably clause 6 should be deleted.

2.35. Recommendations

2.36. That substantive CCOs be required to seek and consider shareholder comments while preparing a service delivery plan.

2.37. The minimum requirements of a service delivery plan be set out in the Act, and depending on the contents, that substantive CCOs be required to consult the community while preparing a service delivery plan.

2.38. That CCO infrastructure strategies after the transitional period should be adopted as part of the CCO's service delivery plan

2.39. 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) ...".

2.40. That the proposed new section 56J (joint committees for bylaws and enforcement) be removed from the Bill.

2.41. That clause 6 of the proposed new schedule 8B is deleted.

2.42. That the proposed new subclause 23(1)(e), Schedule Three be amended to ensure the transfer of responsibilities to a CCO would require a poll, unless the transfer has the support of the majority of affected Councils (with appropriate amendments to clause 23(2)).

2.43. Effect of provisions on existing service providers

2.44. UHCC currently engages Wellington Water to manage water assets on its behalf. It also employs a charitable trust to manage the Expressions Arts and Entertainment facility. In each case, the assets that these organisations manage exceed \$10 million. The definition of substantive CCO captures both of these organisations, and thereby requires the transfer of many duties, functions and responsibilities (considered above) to them upon commencement of the Act. The rationale for an immediate transfer of duties is not contained within the regulatory impact statement.

2.45. Recommendation

2.46. That the words 'or manages' be deleted from section 6(1)(a)(i).

2.47. Concluding Comments

2.48. UHCC has benefitted from shared service arrangements that are providing effective and efficient services to its residents. Introducing model CCO provisions and Commission powers that potentially undermine those arrangements and governance provisions will set back the significant progress that has been achieved, and will increase costs to Upper Hutt residents and reduce customer satisfaction.

Thank you for the opportunity to lodge a submission.

A handwritten signature in black ink that reads "Wayne Guppy". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Wayne Guppy

**MAYOR
UPPER HUTT CITY COUNCIL**