



5. LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL - CHRISTCHURCH CITY COUNCIL SUBMISSION

General Manager responsible:	General Manager, Regulation and Democracy Services, DDI 941-8462
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PURPOSE OF REPORT

1. To summarise the proposed amendments to the Local Government Act 2002 proposed in the Local Government Act 2002 Amendment Bill (**the Bill**), and provide further information as requested at the workshop held with Councillors and Community Board Chairs on 6 July 2012. (The elected members attending the workshop were all Councillors except Councillors Livingstone and Carter (Mayor Parker left early) and Community Board Members Mike Mora, Linda Stewart, Helene Mautner, Islay McLeod, Val Carter and Pauline Cotter.)
2. To present a draft Council submission (**attached**) for approval. There were a divergent range of views expressed at the workshop. The attached submission has been based on what staff present at the workshop believed was the consensus of elected member's feedback at the workshop.
3. To have Council nominate one or more Councillors to present the Council's submissions to the Local Government and Environment Select Committee (if desired).

EXECUTIVE SUMMARY

4. In March 2012, Government released a discussion document entitled Better Local Government. The document foreshadowed 8 principle reforms for the local government sector:
 - refocusing the purpose of local government;
 - introducing fiscal responsibility requirements;
 - strengthening council governance provisions;
 - streamlining council reorganisation procedures;
 - establishing an efficiency taskforce;
 - developing a framework for central/local government regulatory roles;
 - investigating the efficiency of local government infrastructure provision; and
 - reviewing the use of development contributions.
5. The first four reforms are addressed in the Local Government Act 2002 Amendment Bill, which was introduced on 30 May 2012, and has been referred to the Local Government and Environment Select Committee. The government has said it wants the Bill passed and enacted no later than November 2012. The submissions due date is 26 July 2012.

Summary of the proposals in the Bill

New Purpose statement

6. The Bill proposes a new purpose statement for local government. In place of the current reference to promoting the social, economic, environmental and cultural well-being of communities, the Bill proposes changing this second limb of the purpose to be "to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses".
7. The phrases "most cost-effective", "local public services" and "good quality" are considered by many commentators on the Bill as providing the areas for most future debate, and, potentially litigation (judicial review challenges to Council decisions). There are no definitions for "most cost-effective" and "local public services" or for "local infrastructure". The Bill includes a definition for "good quality", which applies to each of local infrastructure, local public services, and regulatory functions. "Good quality" means efficient, effective, and appropriate to present and anticipate future circumstances.
8. There are also numerous consequential changes to the various sections in the Act that refer to the four well-beings.

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Introduction of fiscal responsibility requirements

9. A new regulation-making power has been added to section 259 of the Act. It allows for regulations that will prescribe "parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings".
10. The Bill makes it clear that the regulations can express those parameters and benchmarks in a range of ways, and that different parameters and benchmarks can be set for different classes of local authority. Two examples of possible benchmarks and parameters that are given in the Bill are:
 - a local authority's debt in a financial year must not exceed a fixed sum per resident; and
 - a local authority's expenditure in a financial year must not increase by more than the ratio of population growth multiplied by the rate of increase of the Consumers Price Index (CPI).
11. The second example, making reference to CPI may be difficult for local authorities', and their costs, especially land and infrastructure costs, continue to increase more quickly than many costs measured through the CPI. The Local Government Cost Index, developed by LGNZ, is considered by SOLGM and LGNZ (and other commentators on the Bill) to be a more relevant measure for local authorities.
12. However, the general public would understand and relate to CPI more easily. Population growth is also not necessarily the best measure of increased demand for local authorities' services, as many costs are not dependent on population growth (eg meeting drinking water standards and other new standards and requirements imposed by central government, or where there may be negative population growth but new infrastructure is still required).
13. The Minister can only recommend regulations after consulting with LGNZ, so local government could try and ensure appropriate benchmarks are set in this way, but there is no requirement for the Minister to have LGNZ approval.

Strengthen Council governance provisions – employment policy, mayoral powers and assistance and intervention

14. Clause 24 of the Bill introduces an optional power for a local authority to adopt policies on employee staffing levels and the overall remuneration policy of employees. Local authorities will have to publish information on employee numbers and remuneration in annual reports.
15. Salaries are to be disclosed in bands, with the first band being \$0 - \$60,000, and the remaining bands being in \$20,000 lots starting from \$60,000 - \$80,000. Bands can be merged where there are less than five employees in the band, so as to protect individuals' privacy.
16. The Bill also includes a new provision allowing the Remuneration Authority to approve rules created by a local authority for reimbursing members' expenses.
17. Additional mayoral powers are proposed in clause 16 of the Bill. The powers include appointing the Deputy Mayor and Committee Chairpersons, as well as establishing committees. The Mayor is also able to lead the development of plans, policies and budgets. These changes are similar to the increased powers given to Auckland's Mayor but unlike that legislation there is no statutory entitlement to a budget to support the Mayor's enhanced role.
18. The Bill inserts a new part into the Act, bringing together intervention powers previously spread out in Part 10 and Schedule 15. The Bill now provides for the Minister to appoint Crown reviewers, observers, and managers, in addition to the existing power to appoint commissioners, and call elections.

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19. The Bill provides a new trigger for the Minister to intervene: a "significant problem". Both "significant" and "problem" are defined in the Bill, with "problem" meaning "a matter or circumstance relating to the management or governance of the local authority that detracts from, or is likely to detract from, its ability to give effect to the purpose of local government within its district or region". A "problem" will also include the consequences of a state of emergency, and a failure to meet the financial parameters and benchmarks set through regulations.
20. The new powers give the Minister a very wide discretion to intervene. There is no link between the extent of the problem and the level of intervention that the Minister can decide to use nor are there any criteria for determining if an intervention should cease.

Streamlining council reorganisation procedures

21. Schedule 3 of the Act, setting out the provisions that apply to reorganisation proposals, is to be entirely replaced. There is a new Ministerial power to direct the Local Government Commission on the priority and timing of reorganisation proposals. Through a Gazette notice, the Minister can specify the timeframes within which the Commission must deal with matters, and which reorganisation applications are to be given higher priority.
22. The new Schedule 3 proposes to alter the threshold for seeking a reorganisation proposal, essentially making it easier. Any person or organisation may make an application not just one or more affected local authorities. The Commission simply has to be satisfied that an application has "significant community support" for it to proceed. At this stage the phrase means "support from a large proportion of the community, or of the leaders of the community".
23. Before developing a final reorganisation proposal, the Commission again needs to satisfy itself that there is "significant community support". In this context, there needs to be "substantial support from a large proportion of the community or the leaders of the community". The definition means a proposal could proceed if it has sufficient support from leaders of the community, even if a large proportion of the people in the community are not in support.
24. The Bill also provides that a poll of electors will be held only if it is demanded through a petition signed by at least 10 per cent of electors in the affected area.

Further information sought at the workshop

25. At the workshop on 6 July the above proposals were explained, and discussed by the Councillors and community board chairs present. The workshop provided staff with a selection of views that were taken into account in preparing the draft submission. Several requests for further information were also made during the workshop.
26. The requests sought information regarding the draft Bill:
 - what applications for community grants funding have been received for things that are considered to be central government activities
 - a comparison of intervention provisions in the Bill with interventions in other sectors
 - whether the BPDC reorganisation would be able to happen under the Bill provisions as proposed.

Funding applications

27. A total of 144 funding applications to Council's Metropolitan Strengthening Communities Fund for 2012/13 were recommended for Council approval at the 13 July 2012 meeting. Applications are declined/not accepted for projects that are considered to be the primary responsibility of central government or other funding bodies (among other reasons). For 2012/13, 25 applications were declined for such reasons, most of which were in the health, education, and arts areas.

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Comparison with other intervention powers

28. Attached as **Appendix 2** is a comparison of the intervention powers proposed in the Bill and those currently in use in the compulsory schooling and tertiary education sectors. In general terms the framework of progressively intrusive interventions proposed in the Bill is similar to that used in schools since 2001.
29. When the powers of intervention set out in the Bill are contrasted to those in schools and tertiary institutions the greatest differences relate to the requirements in the Education Act 1989 for interventions to:
 - be the minimum reasonable to deal with the risk without intervening more than necessary
 - be reviewed at least every twelve months
 - cease once no longer required.

Would BPDC reorganisation be possible?

30. Amalgamation of the Banks Peninsula District and the Christchurch City Council district in 2005/6 is an interesting example of reorganisation under the previous and current legislation. In 1999, under the Local Government Act 1974, a group of Banks Peninsula District electors initiated a review of their District by the Local Government Commission. As a result of the review, and submissions on a draft scheme, the commission decided to issue a re-organisation scheme in which Banks Peninsula District and Christchurch City would form a new Christchurch City.
31. Separate polls of electors in the Banks Peninsula District and Christchurch City were held, requiring over 50 per cent of the votes cast in each poll to be in favour of the scheme, for it to proceed.
32. Whilst the scheme was supported by over 50 per cent of the votes cast in the Banks Peninsula District a majority of voters in Christchurch City voted against it. The proposal therefore failed.
33. Under the Local Government Act 1974 a poll was mandatory. The Amendment Bill requires a poll to be taken only if it is demanded by 10 per cent or more of electors in the affected area. However, in the case of Banks Peninsula District and Christchurch City the result would have been the same. The large number of electors in the city would have outvoted the Banks Peninsula electors and the proposal would still have failed, if the Amendment Bill provisions had been in force back in 1999.
34. The matter came back to the commission in 2003 under the Local Government Act 2002. This time the proposal involved the abolition of the Banks Peninsula District and its inclusion in the Christchurch City District. It was able to proceed because the proposal was supported by at least 10 per cent (14.8 per cent in fact) of the electors of the District proposed to be abolished, in this case Banks Peninsula.
35. A re-organisation scheme was approved by the Commission. Schedule 3 of the Local Government Act 2002 required a poll to be held in each District that was directly affected by the scheme. Because it provided for the abolition of the Banks Peninsula District only that District was deemed to be affected. More than 50 per cent of the electors voted in favour of the scheme. Apart from being involved in the consultation and submissions process Christchurch City residents had no say in whether or not the re-organisation scheme was implemented.
36. If a re-organisation scheme of this nature had proceeded under the provisions of the Amendment Bill it would not have been put in place. Electors in Christchurch City could have petitioned for a poll to be taken (10 per cent or more of electors in the affected area). If less than 50 per cent of votes cast were in favour of the proposal then it would have failed.

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37. Under the Amendment Bill any person or organisation may initiate a re-organisation proposal. The criteria to be considered by the Commission in determining whether or not to proceed with the proposal now includes the level of community support as well as whether or not it would promote good local government.
38. However if a poll was to be held, the fact that it is to be held over the areas affected means that there is the opportunity for a larger district to frustrate the wishes of a smaller one.

FINANCIAL IMPLICATIONS

39. There are financial implications for the Council if the amendments to the Local Government Act 2002 as proposed in the Bill are approved by Central Government. The financial implications are discussed in this report and the draft submission. They primarily concern the risk of increased litigation due to the change in the purpose statement, the cost of any intervention by the Minister (given that these could be made more easily under the Bill) and the need to make changes to the Council's financial systems if the fiscal responsibility changes proceed.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

40. Not applicable.

LEGAL CONSIDERATIONS

41. Relevant legal considerations in relation to changes in the Bill are discussed in this report and the draft submission.

Have you considered the legal implications of the issue under consideration?

42. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

43. Not applicable.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

44. Not applicable.

ALIGNMENT WITH STRATEGIES

45. Not applicable.

Do the recommendations align with the Council's strategies?

46. Not applicable.

CONSULTATION FULFILMENT

47. There has been internal consultation across a number of units within the Council and a workshop held with Councillors and Community Board chairs. The Council is aware of community views on related issues as a result of recent Annual Plan consultation, and members of the public are able to make their own submissions on the Bill.

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RECOMMENDATIONS

That the Council resolve to:

- (a) Adopt the draft submission.
- (b) If the Council wishes to be heard in support of its submission, nominate a Councillor(s) to present the Council's submissions to the Local Government and Environment Select Committee.

Appendix 1

Date: 26 July 2012

To: **The Local Government and Environment Select Committee**
Parliament Buildings
Wellington

From: Christchurch City Council

Local Government Act 2002 Amendment Bill**1.0 Introduction**

- 1.1 The Council thanks the Select Committee for the opportunity to make a submission on the Local Government Act 2002 Amendment Bill.
- 1.2 The Council's submission includes an overall position statement and context for the Council's submission and then makes specific comments on the six areas of change contained in the Bill.
- 1.3 The Council [wishes/does not wish] to appear in support of its submission.

2.0 Context of Council's submission and overall statement on the Bill

- 2.1 The Christchurch City Council has its community at its heart. It believes in its community, and the important contribution that the community makes to the Council in performing its role.
- 2.2 The Council is aware that this Council and its community are different from other councils. Although there are similarities across all councils, each council has fundamental local differences, and different priorities and goals that it wishes to achieve. In Christchurch, at present, the differences are more striking than normal, as the community recovers from the earthquakes. Some key recovery challenges include land supply for housing, impacts on services of population movement, rebuilding of physical and community infrastructure, and repairing of waterways.
- 2.3 The Council recognises, as stated in the explanatory note to the Bill, that local government has a role to play in building a more competitive and productive economy, and improving the delivery of public services. The Council acknowledges the competing pressures it faces: its Annual Plan 2012/13 includes the following opening statement:

*"This is perhaps the most significant budget this Council will ever consider — at what other time would a local council be faced with the rebuild of so many major facilities and infrastructure repairs. It has not been an easy task to put together this proposal for the future and all our work over past months has been carried out **with the aim of keeping rates as low as possible**. Many of our residents are facing challenging times and any rates increase is going to affect them."*

- 2.4 The Council has always strived to keep rates low at the same time as providing quality infrastructure and services for its community. The Council considers it strikes the right balance with its community. Despite the impact of the series of Canterbury earthquakes the rates that residents in its district pay are some of the lowest in the country. For 2012/13 the average rates for Christchurch residents, including GST, is \$4.85 per day. This includes \$3.91 for the 'core' council services set out in section 11A of the Local Government Act 2002.

- 2.5 This has been achieved by having good management practices and structures in place, and the Council has done this under both the former Local Government Act 1974, and the current structure in the Local Government Act 2002. The Council acknowledges that there are Councils in New Zealand that may not be performing as well, but this is not the fault of the current Local Government Act, and is not the result of Councils undertaking “non-core” functions.
- 2.6 The Council agrees with Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM) that there are serious concerns about the evidence base that underpins the Bill, and that based on several previous reports there is no real evidence that the sector as a whole is undertaking functions they were not undertaking prior to 2002 (see page 6 of the discussion document published by LGNZ and SOLGM on the Bill.)
- 2.7 The regulatory impact statement that informs the Bill includes several alarming statements. The first page of the regulatory impact statement suggests insufficient work has been done in preparing the Bill because of the timeframes involved:
- “There is limited evidence to inform the development of these proposals, and the timeframes within which the proposals have been developed have restricted the ability to assess multiple options. As a result, the problem analysis and option assessments of specific proposals rely on assumptions that are not, or are only partially tested”....*
- “The short timeframe for formatting and drafting the legislation creates some risk that interventions could be incorrectly aligned, and/or require subsequent amendment to address unforeseen circumstances.”*
- 2.8 Local government bodies would not be able to proceed with such a major decision, such as the changes being made by this Bill, based on “limited evidence”. Neither should central government proceed with the decision to enact this Bill, in light of the limited evidence noted in the regulatory impact statement.
- 2.9 While the Council supports some of the amendments proposed in the Bill, it believes the Bill should be delayed to enable the additional evidence to be compiled for the regulatory impact statement. It should also be delayed until the Government has completed the other phases of its proposed Better Local Government Reforms. The reviews being carried out as part of phases 5-8 of the reforms will assist the government in determining what changes are required to the current Act.
- 2.10 In addition, the changes made by the Local Government Amendment Act 2010 also need time to take effect, through the Long Term Plans only just adopted by councils in June 2012¹ and through other changes to Council processes. A delay in implementing this Bill will allow time to properly investigate what effect the previous changes to the Act have made that assist in achieving the Government’s current aims.
- 2.11 A delay for all 3 of these reasons can only result in the development of a more relevant and carefully prepared Bill.
- 2.12 While the Council’s primary submission is to delay the Bill, the submission also makes recommendations for changes to the Bill, in the event it is not delayed, that it believes will help the government better achieve its policy aims. Some of the changes being proposed may only hinder local government in its delivery of good infrastructure and services to local communities. They will also increase costs for local government, which would need to be addressed in some way, and could lead to rates increases or the reduction in services to communities.

¹ All councils except Christchurch City Council, which will consult on its long term plan in 2013

Submissions on the key proposals in the Bill

3.0 Refocusing the purpose of local government

- 3.1 The Council submits that the purpose of local government should not be changed. As mentioned above, there is little evidence that local government has expanded the range of its activities in the last 10 years, or there is excessive spending by local government that is of little benefit to their communities. The perception of the public, often fuelled by media stories focussing on the worst problems do not provide a representative picture of what is actually happening in relation to local government spending. The biggest drivers increasing local government costs over the past 15 years have been the cost of providing and upgrading network infrastructure in the current environment.
- 3.2 Council spending has also been required as a result of central government increasingly requiring Councils to meet various new standards (such as water and wastewater), or requiring Council to be involved in new regulatory areas (gambling and brothels). Smaller councils can find it difficult to meet these requirement and the inequity of services that are able to be delivered in communities, and the differences between Councils is an area of great concern. However, changing the purpose statement is not the “fix” for these problems.
- 3.3 The Council is very concerned about whether the change to the purpose statement would mean it could not carry out activities it currently provides for its community. Council believes that local government should continue to have the capacity as it does under the current legislation to deliver an agreed mix of services and rating levels appropriate to local circumstances and preferences. The Bill runs the serious risk of undermining this capability, for example Council’s rates neutral provision of some 2469 units of social housing. The provision and support for well supported events and festivals, which generate economic and social benefits for the community, could also be put at risk under the Bill. It is of interest to note that the V8 races which has been cited as an example of poor Council spending, is an activity that Auckland Council is now getting involved in, and seemingly with the support of central government,
- 3.4 The references to the wellbeings that are currently in the Act, send a statutory signal to local authorities and their communities, that service provision is focussed on achieving community wellbeing. Good decisions and consultation by local government identifies the value that communities will get from proposed spending. Value is determined by the cost of something (i.e. the rates payable) as well as the benefit the community receives (or the impact it has on their wellbeing).
- 3.5 The Council accepts there is a need for checks and balances but submits that other changes proposed in the Bill (and already made by the Local Government Amendment Act 2010, particularly the introduction of core services in section 11A) will ensure that local government focuses on the provision of those services, without any need to change the purpose statement. In fact the recent changes need time to be given effect, as mentioned above.
- 3.6 If the purpose statement is to be changed then there needs to be clear definition of the terms “local public services”, “local infrastructure”, and “most cost effective”. These new terms could lead to uncertainty and unnecessary litigation.
- 3.7 If there is no clear definition there will be a real and increased risk of challenge to Council decisions by judicial review proceedings. Ratepayers end up picking up the tab of expensive litigation, even when the Council is proved not to have acted improperly. The change in the purpose statement arguably runs counter to the Government’s stated aims.

4.0 Introducing fiscal responsibility requirements

4.1 The Council agrees with the Government that local authorities must be prudent stewards of their finances and ensure that their decisions and operations, and the consequences for rates and debt, are sustainable. The Council notes that fiscal responsibility and prudence requirements are already set out in the Local Government Act, including:

- an obligation to manage all financial dealings prudently and in the current and future interests of the community
- an obligation to balance the operating budget (unless it can be demonstrated that it is prudent not to)
- an obligation to adopt a financial strategy including self set limits on rates and debt
- a requirement for strategies to be audited for compliance with legal requirements (including financial prudence) and on the quality of forecasting assumptions
- an obligation to report prior to elections and show whether the authority has complied with its self set limits.

4.2 It appears to Council that there is an unclear problem definition in the Bill and a lack of real evidence of failure in this area apart from misleading and unrepresentative examples. As noted in the Regulatory Impact Statement there is no clear evidence to suggest that there has been a proliferation of activities performed by local government or in their cost. Equally, it is unclear if or how the introduction of regulations that set benchmarks for prudent income, expenditure and debt levels will strengthen the existing self imposed limits on rates and debt.

4.3 Council does support prudent and relevant benchmarks and possible interventions as part of a checks and balances approach to financial decision-making. In addition to interventions, however, Council would welcome greater support for local government. For example, improved guidance and support for newly elected councils, particularly where a large proportion of a council are first term councillors. Also, the auditing of councils could be strengthened to improve the focus on fiscal responsibilities. Alongside this, better recognition in the Bill is needed for the long term planning that Councils are required to take, especially in regard to infrastructure, in order to mitigate the tendency to want to make short term savings by deferring maintenance and expenditure which inevitably comes at a long term investment.

4.4 However, the local government sector is diverse and regulatory benchmarks for prudent income, expenditure and debt levels will need to appropriately reflect this diversity. For example, rural authorities with geographically spread communities and correspondingly high infrastructure costs cannot realistically be benchmarked against their urban counterparts. The choice of inappropriate benchmarks can have a number of counterproductive results, including:

- an unsustainable focus on the short term
- a long term decline in infrastructure provision, quality and resilience
- an unintended decline in the levels of service being provided to the community
- intergenerational in-equality
- a restriction on community choice where regulatory benchmarks hold greater weight than local decision making

4.5 The Council has particular concerns about the benchmark examples provided relating to population growth and Consumer Price Index (CPI) growth. These measures are inadequate and often irrelevant, given that population increase is not always a driver of expenditure, and that cost increases in the local government environment are mostly driven by infrastructure costs rather than consumer costs. The use of these benchmarks could set unobtainable targets that some councils would struggle to meet, particularly those with rural or declining populations, and may result in merger by stealth.

- 4.6 The Council also has reservations about the assumption implicit in the Bill that debt is bad. The Council agrees that excessive and unserviceable debt is bad, but notes that local government has been criticised for imposing unnecessary rates increases on ratepayers because of its reluctance to borrow. This criticism has come from a number of sources including the 2006 Report of the Central/Local Government Funding project Team, the 2007 Report of the Independent Inquiry into Local Government Rates, and the Government initiated 2009 Jobs Summit.
- 4.7 The Council is disappointed that a fundamental review of local government funding mechanisms has not been undertaken. There are likely to be better, more equitable, and more efficient ways to fund local government apart from the current property based wealth tax. Income tax and petrol tax are possible alternatives where Central government could collect and redistribute local government taxes. The application of Goods and Services Tax to rates should also be reconsidered as it is a consumption tax on a tax collected to fund public services.

5.0 Employment and remuneration policy

Reporting requirements

- 5.1 The proposal puts Local Government out of step with other public sector employers. Increased transparency of remuneration expenditure that does not compromise the privacy of individuals could be achieved by requiring a global figure to be published as well as the number of employees to which it applies.
- 5.2 Local Authority spending on remuneration would also be better understood if Councils were to publish the extent to which this global figure and number of employees have changed from the previous year to which the report relates. This would allow the public to see if a particular Council's spending on salaries had increased and to what extent.
- 5.3 In the alternative, public accountability could be achieved without compromising the privacy of individuals, by requiring disclosure of remuneration in bands of \$30,000 for those positions with remuneration above \$100,000. The intention of raising the threshold to \$100,000 would be to capture only those employees at management level roles, in line with the Crown Entities Act. The wide bands of \$30,000, however, would still effect individual privacy by making it more difficult to identify individual employees.
- 5.4 Either of these alternatives could also form the basis of a voluntary, rather than mandatory, disclosure regime.
- 5.5 It is difficult to see how an increased reporting requirement will actually achieve these stated policy goals and encourage more conservative Council spending.
- 5.6 If this is the aim, the key indicators are likely to be a Council's overall spend on remuneration and the number of employees it employs. It is not clear how breaking this figure down into numbers of employees who earn over an arbitrary figure, in bands of remuneration, encourages a curb on spending.
- 5.7 There is also an issue with regard to privacy. The Ombudsman has stated that in general, all salaries in public sector organisations should remain private except those of Chief Executives and second tier management. There are two competing considerations to be taken into account – an individual's right to have his or her salary kept private as a matter between the employer and employee and the public interest in judging whether a senior employee's performance is deserving of the remuneration he or she receives.

- 5.8 The Ombudsman considers that in relation to the Chief Executive and second tier management the balance falls in favour of public accountability over individual privacy. In relation to employees in positions below second tier management, however, the Ombudsman considers that privacy interests should be accorded greater weight than public accountability considerations. Employees below that level are not responsible for any of the organisation's major decisions and therefore their work does not have a direct impact on the public.

Remuneration and employment policy

- 5.9 One of the fundamental problems with this proposal is the absence of any definition of "remuneration and employment policy". The result is that the scope of the authority of Councils is not clear.
- 5.10 The effect of setting limits on employee numbers may be that Councils are unable to employ the staff they need, in the areas legitimately requiring resource. As stated in the Regulatory Impact Statement, rather than limit costs, a policy could result in the excessive use of contractors and increased costs when employment of staff could be cheaper.
- 5.11 It is also unclear what powers are actually being conferred on the Councils in relation to the ability to set "remuneration policy" and what details Councils could choose to include. It could be a broad power to set a maximum global figure to be spent on employees' remuneration, or it could be interpreted as a power to set more specific parameters.
- 5.12 Whilst it is acknowledged that adopting remuneration and employment policies is optional, it is submitted that the proposal should either be removed or "employment policy" and "remuneration policy" be defined more precisely. As the Bill is currently worded, Councils have discretion to adopt whatever employment and remuneration policies they choose, in as much detail as they like. This risks the emergence of detailed and rigid policies which undermine collective bargaining, increase the risk of industrial action and unnecessarily constrain Councils' ability to employ staff, while not necessarily ensuring that labour costs are kept to a minimum.

6.0 Mayoral powers

- 6.1 The public perception is that a mayor has more power than they have in reality. The proposals in the Bill could be viewed as turning the perception into reality.
- 6.2 However, the Council considers that the scope of the increased powers in the Bill go further than is needed, and could harm the efficiency and effectiveness of a Council. A "strong mayor" policy, such as is found in the United States, would not be desirable in New Zealand.
- 6.3 The majority of the Council supports the mayor being able to appoint the deputy-mayor, as there is a need for a level of trust to be established, so these two roles can work together.
- 6.4 The Council does not support increasing the mayoral powers to appoint committees or chairs of committees or take the lead on developing plans, etc. This would undermine local determination as to what structures are set. Until the elected body is established it will not necessarily be clear what the best structures for the new body should be. However, if these new powers were introduced into the Act, a prospective mayor could try and get elected on the basis of certain structures, that ultimately may not be support the effective operation of the Council.
- 6.5 What should be provided in the Bill, instead of increasing the Mayor's powers, is better support for new Councils/Councillors, and greater promotion of the Council as a whole, rather than just the mayor.

- 6.6 A training process that involves team building skills and consensus is desirable, together with some useful templates prepared by LGNZ or the Local Government Commission that provide information, generic examples and guidance on the committee system. What is missing in the Local Government Act at present is the fact that the Council as whole has a collective responsibility, and the Bill should promote this rather than additional powers for the mayor. It is not clear what evidence the Government has relied on as to what is wrong with the current structure, but if there is something wrong with the current structure, then the alternative options suggested above are a more appropriate response than increasing the mayoral powers.
- 6.8 If the government agrees to delay this Bill, as suggested in the Council's submission, then there would be the ability to ask the public by a referendum at the next election if they would like the mayoral powers to be increased.

7.0 Assistance and intervention framework

- 7.1 The Council accepts that there needs to be intervention provisions in the Bill, to deal with a Council that is failing to behave in accordance with its responsibilities, but these provisions enable the Minister to become involved in a Council's "business" much earlier than the current provisions. If the Minister is not satisfied with what is happening, s/he can also more easily escalate the level of intervention. The Council is concerned that these powers may be more draconian than is needed and could be used inappropriately.
- 7.2 Ministerial intervention should be a matter of last resort. Some Council members considered the powers should only be exercised in the event of a disaster/emergency, and that the Auditor-General should be involved when a problem is identified, before the Minister exercises any powers. Some members felt that when objective evidence demonstrates only one or two elected members are the cause of a Council problem there should be sanctions in the Act that can appropriately deal with the situation, such as an Independent Ethics Committee.
- 7.3 The Council believes that the definition of a "problem" or a "significant problem", which trigger an intervention, are insufficiently defined in the Bill. Both of these definitions appear to be subjective. The Council submits there should be objective evidence on the nature and seriousness of the problem.
- 7.4 The Bill should make it clear who can provide the Minister with advice about when a "problem" has occurred. The possibility of frivolous or vexatious requests being made for an intervention should be clearly ruled out in the Bill.
- 7.5 The Council considers the term "significant problem" may not provide the appropriate test. Council submits a higher threshold is required before there can be an intervention.
- 7.6 There is also a lack of clarity about the overall process. Provisions should be included in the Bill that will provide for an appropriate scale of "problems" leading to different assistance or intervention measures. The most serious problems are the only problems that should lead to the most serious interventions. However, even if a problem is at the more serious end of the scale the Minister should not be able to go straight to the appointment of a Commissioner; there should be a first step the Minister must put in place.
- 7.7 The Council also submits that an intervention by the Minister should not be paid for by a council and its community. If the Minister considers it is sufficiently important to intervene then this should be a cost on taxpayers generally, rather than the specific community who's Council is subject to the intervention.

7.8 The Council would like to see a “pool” of Crown observers, made up of retired mayors and the like, with no political leanings. A council could then call on one of the “pool” for assistance as needed, such as when there is a major change of councillors following an election. In addition the inclusion of conflict resolution provisions in the Bill might also provide a “prevention is better than cure” approach that can be utilised when a Council is having problems. Provisions in the Bill that provide assistance of this type would lead to a greater level of collaboration and partnership between local and central government, and could ultimately prevent the need for any intervention by a Minister.

7.9 The Council submits there should also be requirements in the Bill (or in separate regulations) setting out the skills and experience that an appointee must have. There should also be provision made for the Council in question to have input into the appointee process and their terms of reference. Different types of problem, and different Councils require different skills and experience to be applied. For example a problem could require an appointee to have a knowledge of Council infrastructure and finances but also be able to deal with a large number of iwi bodies concerned in a particular matter.

8.0 Streamlining council reorganisation procedures

8.1 The Amendment Bill proposes a change in the poll provisions currently in the Local Government Act 2002. At present any reorganisation requires a poll over the affected areas, and the proposal must succeed in each affected area to proceed. In the Bill, a poll is to be held only if a petition of 10% or more of the electors across the total affected area is received. 50% or more of the vote in support of a proposal is required.

8.2 Whilst the Government’s aim is to make reorganisation of Local Authorities easier to achieve, in fact the amalgamation of Banks Peninsula District and Christchurch City would not have proceeded had the Amendment Bill been enacted.

8.3 This is because a poll taken of Banks Peninsula District electors only, enabled the amalgamation to proceed. If the Poll had been held in the affected area as defined in the Amendment Bill (both districts) the Christchurch City vote would have clearly outweighed Banks Peninsula’s.

8.4 A potential flaw in the proposal is that smaller districts may be treated less fairly than larger ones and it may be appropriate to include a mechanism for ensuring that this did not happen.

8.5 The Council also supports the view that the criteria for making an application to the Local Government Commission for a re-organisation scheme should be more limited than is currently the case in the Bill. Residents, electors, the affected local authorities and the minister should have the right to make an application, for example, rather than “anyone with an interest”.

8.6 The Council supports the obligation to consider whether or no an application has significant community support as well as the promotion of good Local Government, provided the Local Government Commission is required to fully consult with residents and ratepayers on a reorganisation proposal. This is seen as a measure of protection against proposals being imposed on communities.

8.7 It is also submitted that the Minister of Local Government should remain independent of the re-organisation process and not have the power to direct the Local Government Commission with regard to specifying measures and expectations relating to the Commissions performance of its powers and duties. Clause 14 (new section 31A) of the Bill should be deleted. This is seen as unnecessary intervention in a democratic process in which local communities should have the final say.

- 8.8 The Council does not support the ability of the Government by Order in Council to delay an election by up to 12 months if a local authority is affected by a re-organisation proposal. It is considered that consistency with the nationwide election cycle is more important than delaying a re-organisation proposal, requiring such proposals to be lodged no later than a stipulated time before an election or obtaining the views and preferences of the community on a re-organisation proposal as part of the election process.

9.0 Other submissions

- 9.1 The Council has several other submissions to bring to the attention of the Select Committee at this time, even though they may be the subject of consideration in the productivity and efficiency reviews being conducted.

- 9.2 All of these submissions support the Government's aims of building a more competitive and productive economy, and improving the delivery of public services, while creating an environment conducive to sustained economic growth. The suggestions also aim to reduce red tape and make cost savings, which will assist in minimising the rates burden on households and businesses.

Introduce a four yearly election cycle

- 9.3 The Council considers that a 3 yearly cycle for Council elections is too short for the Council to make headway with its long term plans, and the Council submits that this should become a 4 yearly cycle. Providing for a 4 yearly cycle would also result in cost savings for the community as there is a significant cost in running the election.

Give Councils greater choice as to when to undertake consultation using a special consultative procedure

- 9.4 A special consultative procedure (SCP) can be both time consuming and expensive compared to other forms of consultation. However, other more targeted consultation can be just as, or more effective, than an SCP. The Council suggests that a mandatory SCP be retained for the Annual Plan and Long Term Plan consultation but that it should be Council's choice as to the manner of consultation it uses on other matters. Such changes will not only reduce red tape but will also result in cost savings for the Council.

Enact regulations that will provide for an infringement regime

- 9.5 The Council, and Local Government generally, has continually submitted since 2002 that the infringement regime provided for in the Act must be made operative through the introduction of regulations. If the Council could enforce offences under the Act and when a bylaw provision is breached through the issue of infringement offences and the collection of instant fines, this would provide a number of benefits.

- 9.6 It would encourage better compliance with provisions of the Act and Council bylaws that might be ignored or openly flouted because it is too expensive for the Council to bring a prosecution in court for these relatively "minor" offences. Examples include water wastage and water race offences (ss224 and 228), obstruction offences (s229), failure to comply with notices or directions (ss230, 231 and 238), and damage to Council property (s232).

- 9.7 Councils already use infringement notices for breaches of traffic bylaws, freedom camping bylaws and for many Resource Management Act and Building Act offences. The delay in making the infringement regime operative places an additional burden on the community, both as a result of offences not being enforced due to the high cost of bringing a prosecution, and if a high cost prosecution is pursued. Council enforcement processes would become more cost effective and efficient with the introduction of an infringement regime.

10.0 Concluding Remarks

- 9.1 The Council looks forward to presenting its submissions to the Local Government and Environment Select Committee and will be represented by [Councillors' names].
- 9.2 Please contact Amanda Wall Democracy Services Unit to arrange for the Councillors to appear – amanda.wall@ccc.govt.nz or 03 941-8536.

Yours faithfully

P W Mitchell

General Manager, Regulation and Democracy Services
Christchurch City Council

DRAFT

Appendix 2
Comparison of Intervention Frameworks

	Proposed LGA Amendment Bill	Compulsory Schooling Sector	Tertiary Education Sector
Legislation	LGA Amendment Bill 2012	Education Act 1989 s78I	Education Act 1989 s195A to 195D
Power of intervention exercised by:	Minister	Minister or Secretary of Education	Minister or Chief Executive of the Tertiary Education Commission
Criteria for assessing risk			Set by the Secretary of Education after consulting institution councils.
Triggers for intervention			
	As set out below for each intervention type.	"...reasonable grounds to believe that there is a risk to the operation of the school, or to the welfare or educational performance of its students."	"... reasonable grounds to believe that an institution may be at risk" (or "serious risk" for appointment of a commissioner)
	At the request of the council	At the request of the Board or the schools Proprietors (in the case of integrated schools).	
Types of intervention			
Requirement for information	✓ A problem relating to the local authority may exist	✓	✓
Requirement to engage specialist help		✓	
Requirement to prepare and carry out an action plan		✓	
Crown review team	✓		

	A significant problem.		
Crown observer	✓ A significant problem exists and a Crown Observer is necessary.		✓
Crown manager	✓ A significant problem exists and a Crown Manager is necessary.	✓	
Commissioner	✓ A significant problem exists, that is impairing good local government or is endangering public health or safety.	✓	✓
Limits on powers		Intervention must be reviewed at least once every 12 months.	Appointment of commissioner must be reviewed at least once every 12 months.
		Intervention must be considered to be "reasonable to deal with the risk without intervening more than necessary in the affairs of the school."	As soon as the Minister is satisfied that the risk that gave rise to the appointment of the commissioner has reduced to such an extent that it is appropriate that the institution be administered by a council, a new council must be appointed.
		Intervention must end when the Secretary is satisfied it is no longer required.	
Other		The application of any one intervention does not preclude the application of any other intervention, either simultaneously or at any other time.	
	Intervention to be paid for by the council.	Intervention to be paid for by the school.	