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Submission to the Local Government and Environment Select Committee

on the

Local Government Act 2002 Amendment Bill 2012

From Tasman District Council

June 2012

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Introduction

1. Tasman District Council (the Council) thanks the Local Government and Environment Select Committee for the opportunity to make this submission on the Local Government Act 2002 Amendment Bill 2012(the Bill). The Council makes this submission on behalf of itself and the community of Tasman District that it represents.

2. This submission prepared by Councillors and staff and was approved by Council at a Council meeting on 19 July 2012.

3. Council wishes to present this submission to the Select Committee.

Executive Summary

4. The Local Government Act 2002 Amendment Bill 2012 contains a number of amendments that the Tasman District Council supports and a number that are not supported and should be removed or at least substantially amended. Details of these matters have been outlined in the body of our submission.

5. The areas of greatest concern to Council are:
    - The changes to the purpose of local government.
    - The requirement for a petition to require a poll on a final reorganisation proposal, rather than a poll being required automatically; the requirement for any poll to be over the whole affected area, rather than each area affected by a reorganisation proposal; and any potential poll being at the final reorganisation proposal, rather than at the time of the final reorganisation scheme.
    - The exclusion of “effective local community representation” and consideration of “representing communities of interest” as key criteria for assessing reorganisation proposals. These need to be added into the criteria.
    - The loss of local democracy as a result of the Ministerial intervention options, the processes for how and when they will be used, the definitions of “problem” and “significant”, and the potential for the options to be used inappropriately.
    - The provisions enabling the development of parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments and general financial dealings.

6. The Council’s views on these key provisions and other comments are outlined in the Specific Comments section of this submission.

Overview Comments

7. Our overall view on the Bill is that irrespective of the merits of what it may be trying to achieve, it is not certain that the changes proposed will deliver on what the Government is trying to achieve. There has been inadequate policy analysis, problem definition or analysis of whether the proposals in the Bill are the best solutions to the perceived problems (this statement is supported by the Regulatory Impact Statement accompanying the Bill). The Bill has not been based on sound data and information. Council has serious concerns about this lack of sector-wide analysis and use of unsound information and data. Council is of the view that these factors will lead to negative unintended consequences and inappropriate and

ineffective requirements on councils, with associated costs on ratepayers and potential rates increases.

8. A considerable amount of staff and councillor time has gone into the preparation of this submission. Local Government New Zealand (LGNZ), Society of Local Government Managers (SOLGM) and other councils will also have spent considerable time on their submissions. The lack of analysis and use of unsound data and information that has gone into the policy positions and proposals underpinning this Bill means that the local government sector has had to spend a great deal of effort on preparing submissions and trying to solve some of the problems inherent in the Bill. Proactive engagement between Government and the local government sector would deliver much more constructive policy development and improved legislative change.

9. A major problem for the efficient operation of councils is the continual changes in legislation. Such changes cause disruption and diversion of staff and councillors away from delivering services to communities and they require additional staff time and resources to get up to speed and implement, with associated costs to ratepayers.

10. In order to remedy the flaws in the provisions in the Bill, the Council recommends that the Select Committee directs the Department of Internal Affairs to work with local government sector representatives (through LGNZ and SOLGM) to improve the workability of the legislation for the Select Committee's consideration. Council considers that if this does not happen, then it is probable that the legislation will have negative unintended consequences and add inappropriate and unnecessary compliance costs for councils and their ratepayers.

Specific Comments

Clauses 4 and 7 (and related amendments) – Amended Purpose of Local Government

11. Council does not support the amendment to the purpose of local government as proposed in the Bill.

12. The Bill makes amendments to Sections 3 and 10 of the Local Government Act 2002 (LGA 2002), along with numerous other amendments to delete references to "social, economic, environmental and cultural wellbeing". The Government's justification for these changes appears to be that reference in the purpose of local government to social, economic, environmental and cultural wellbeing has created confusion about the proper roles of local government and has resulted in councils undertaking a new range of activities that caused rates to increase at unprecedented levels.

13. Council is concerned at the lack of robust analysis and evidence on which to base the view that the purpose statement in the legislation needs changing. There does not appear to have been use of sound data, or robust problem definition and analysis on this matter. No clear causal link has been established to show that the current purpose has in fact caused councils to increase their range of functions, which in turn has led to rates increases.

14. Rates increases for Tasman District and other councils are more the result of the provision of infrastructure, addressing historical deferred maintenance and additional

regulatory responsibilities imposed on councils by Government, than they are a result of the purpose of local government in the LGA 2002. The Regulatory Impact Statement (RIS) accompanying the Bill states "there is no clear quantitative evidence to suggest that the LGA02 has resulted in a proliferation of new activities, or that local government is undertaking a wider group of functions". The RIS goes on to quote from the Local Authority Funding Issues: 2006 Report of the Joint Central Government/Local Authority Funding Project Team (page 18) that:

> "*no evidence to date has been produced to suggest that local government as a whole is undertaking a wider group of functions that it had prior to 2003. In cases where councils have taken on additional responsibilities these have proved to be quite small in scale and operational in nature*".

15. The benefit of the current purpose of local government stated in the LGA 2002 is that it focuses councils and communities on ensuring council activities and services provide community wellbeing. It enables councils to identify what is important to their specific communities and to meet the needs and preferences of those communities. In some small rural communities a critical issue to their viability is retaining a local doctor and some councils have enabled this by providing facilities for a doctor to use. In some large cities crime is an important issue and councils can work with local police to implement crime prevention initiatives through their activities. These matters may be as important to the long term economic growth, development and viability of the community, as the provision of infrastructure. The amount of ratepayers' money that goes into more social issues is minor when compared to the investment councils make in provision of infrastructure. Further, the provision of social and recreational facilities can also be seen to facilitate growth and provide economic benefit.

16. The purpose of having local governance arrangements is to enable communities to shape their own destiny and to reflect their own diversity, needs and preferences.

17. Taking the focus of councils away from community wellbeing runs the risk that councils will take a narrow focus to their roles and, as a result, matters critical to those communities and their wellbeing will not be dealt with. There was also no analysis that identified if certain facilities and services were no longer provided, who would pick up the funding gaps, especially facilities and services that the community has identified as essential.

18. Council submits that the purpose of local government should be retained as it currently is in the LGA 2002, as there is benefit in councils' focus being on community wellbeing, and the case for change has not been demonstrated. What councils do is ultimately determined in consultation with their communities. Any council not reflecting the needs, wishes and preferences of their communities will not last long.

19. A few councils may say that a more restrictive or limited purpose for local government enables them to push back against community requests to do activities or provide services that the council may not be able to afford or think the community needs. However, making those tough decisions on behalf of communities is what councils have to do. The same tough decisions need to be made on what infrastructure or local public services are needed in communities. A request by a few councils to make it easier for them to make these tough decisions is not a good enough reason to amend the legislation.

20. However, if the "purpose of local government" is retained as per the Bill then the wording needs amending. While we note that "local government" includes both regional councils and territorial authorities, Council is concerned that the references to "local infrastructure" and "local public services" may cause some confusion when it comes to delivery of regional infrastructure and public services by regional councils. It may also raise questions about whether two or more councils can deliver shared services across territorial or regional boundaries. The potential confusion may give rise to potential legal challenges and unnecessary costs to councils. Council considers that it may be beneficial to add wording into the clause stating that "for the avoidance of doubt "local" in this context enables regional councils to deliver infrastructure and public services within their regions and for two or more local authorities to deliver shared services across territorial and/or regional boundaries".

21. Council is also of the view that using new terminology like "local public services" could lead to potential challenges to activities councils undertake and risks of litigation.

22. If the purpose of local government is retained as per the Bill, Council supports the definition of "good quality" covering "efficient", "effective" and "appropriate to present and anticipated future circumstances". Infrastructure and services provided by councils generally last many years and decisions relating to infrastructure and service provision need to take these factors into account.

23. The Select Committee may receive submissions from some groups requesting that the "purpose of local government" is changed to something along the lines of the purpose contained in the Government's "Better Local Government" document dated March 2012, which used the words "…at least possible cost to households and businesses". Council is of the view that such a definition would be extremely problematic and would risk cheap, inefficient and ineffective infrastructure being provided. This would not be in the interests of providing sound infrastructure on which to base the future economic growth of this country. We can provide evidence if required of a previous Council decision to put in "low cost" infrastructure only to have it replaced much earlier than expected.

Clauses 10 – 12 and Schedule 3 – Reorganisation proposals

24. Tasman District Council has recently been through a reorganisation proposal under the current provisions in the LGA 2002. Council, therefore, has a useful perspective to bring to the discussion on the reorganisation provisions in the Bill. There are opportunities to learn from the proposed Nelson-Tasman amalgamation process, however, as yet no one has come to ask us our views on how the process and legislation could be improved. For brevity, not all aspects are included within our submission, so accordingly the offer is still on the table.

25. The proposal to amalgamate Nelson City and Tasman District was extremely divisive – such a divisive process is not healthy for communities. The process needs to be constructive and inclusive, not adversarial. Council supports re-consideration of the reorganisation process in the LGA 2002. Council does, however, have major concerns with some aspects of the reorganisation proposals contained in the Bill.

26. Council has developed some views on the reorganisation process following its recent experience. These views are outlined in the following bullet points. Council is pleased that the Bill addresses some of these matters.

- A proposal for structural reform of councils needs to start with a good problem definition. If the problem is not clearly identified then the right solution will never be found.
- If a reorganisation proposal is put forward, the Local Government Commission needs to invest time in identifying what the issues are within a community, whether they are real or imagined, in order to identify what the problems are that any structural reform may address. This means the Commission needs to start from an independent position, which means no fixed ideas or agendas.
- The Commission's role needs to change from one of advocating for a proposal to one of a facilitator of a robust and inclusive process.
- The Commission needs to have the power to identify options to address the issues and not be confined to only examining a proposal put before it. The examination of options should also include refinements of the status quo and alternatives to structural reorganisation, for example if shared services are an option to achieve benefits.
- Effective local community representation and consideration of representing communities of interest need to be key criteria for assessing proposals.
- The Commission needs to identify the potential scope of any structural reform early on so it can identify what communities need to be consulted with.
- In order to identify potential problems and the scope of the structural reform, the Commission needs to get out into the relevant communities, with an open mind, to listen to community views. It should not rely on hearsay from a few vocal people who often have specific agendas of their own to push.
- The effect of any proposal on adjoining areas needs to be considered. For example, a proposal to form a unitary council from part of a regional council area would need to ensure that the remaining area would be effectively governed.
- The reorganisation process needs to offer councils affected by the proposal the opportunity to participate in the design of any proposal, and not just as submitters to the Local Government Commission. It is considered that the affected councils are more likely to design a proposal that would win favour with the local community.
- There needs to be proven community support for the proposal, not just an individual, a small group or a few community "leaders" (however they may be defined) putting forward a proposal.
- The mechanisms that test community support need to ensure that support is wide spread, not just the business community for example.
- The Commission **must** hold hearings of submissions to enable submitters to present their views in person and to enable questioning and clarification of the content of submissions.
- In Council's view a poll **must** be held on the final reorganisation scheme developed by the Commission. Having a poll will have a financial cost, but it is worth it to enable communities to have their democratic right to determine the governance of their communities.
- The affected communities need to have the democratic right to have their say in the future governance and representation of their communities (i.e. a vote). Effective representation was a key issue for the Tasman community in the unsuccessful amalgamation proposal with Nelson.

- If the current reform proposal in the Bill is followed and a poll is held only if a petition of 10% of electors asks for one, sufficient time needs to be allowed for a petition to collect the signatures. The 40 working days in the Bill is insufficient, we recommend a minimum of 80 working days. Alternatively, if the time is not to be extended then a petition of 5% of electors should be required to trigger the poll provisions. However, Council's view is that a poll **must** be held on any final reorganisation scheme and should not need to go through a petition as it should happen automatically.
- The Bill states that a majority of votes in any poll is needed across all affected districts. This poses the risk that smaller communities are going to be taken over by big communities without them having the ability to have a meaningful say in determining their future. Smaller communities will always have the potential to be out-voted by the bigger ones, or territorial authority areas to be out-voted by regional council areas. Smaller communities need to be able to have determination over their future. Therefore, Council supports the retention of the current provision in the LGA 2002 to have a poll in each of the affected areas and that in order for the proposal to proceed, it must have more than 50 percent support in <u>each</u> area.
- Existing shared services between the councils involved need to be given recognition in an amalgamation proposal. Shared services can lead to better services and efficiencies without loss of representation or the cost of a merger. For example, it could be a recommendation of the Commission that more shared services are implemented..
- The powers of the Transition Committee and Transition Manager need to be clear and practicable. For example, the current powers do not enable the Transition Committee or Transition Manager to put in place a new organisational structure or to appoint staff into new roles within a new council. In fact, the relationship of the transition manager to an incumbent chief executive officer is unclear in the legislation.
- There needs to be an independent body to provide factual information to communities, including the pros and cons of the proposal. It should not just put out information that supports the proposal. It is unlikely that the Commission would be sufficiently independent to provide unbiased information on a proposal that it is putting forward and supports.
- Ratepayers will always be concerned about the impact of any reorganisation scheme on their rates bills. Although the methods of funding services following a reorganisation will be subject to amendment over time by an elected Council, the recent proposal for Tasman and Nelson Councils highlighted that more objective information and transparency on any proposed change is required.

The following is an analysis of clauses of the Bill relating to council reorganisations and of Schedule 3, outlining areas of concern Council has with the Bill.

27. Clause 11 – Council supports the amendment in the Bill to enable transitional modification or suspension of certain statutory requirements after issue of a final proposal for a reorganisation. Council notes and supports the need for the agreement of the affected local authority being sought before this can happen.

28. Clause 12 – Council is unsure what is meant by the words, in the proposed new section 25(6), "…amendments that are of a verbal or formal nature…". These words should be re-written to make their intent clearer and more understandable.

Proposed Schedule 3:

29. Clause 3 “Prohibition on making certain reorganisation applications” – there should be a transition clause to cover proposals considered prior to clause 30 coming into force. It would seem appropriate for the legislation to include a “stand down” period, rather than having to rely on the provisions of a reorganisation scheme.

30. Clause 6 “When Commission may decline to assess reorganisation application” – this clause should be amended to state that the Commission should not be able to assess a reorganisation application if a substantially similar application has been declined within at least the last 3 years. The words “may decline” should be amended to “must decline”.

31. Clause 7 “Assessment: significant community support” – what constitutes significant community support is unclear. Is it support across the whole area affected? In the case of a proposal to deamalgamate, is it only across the area wishing to separate or the whole area? Is it about numbers of supporters or supposed standing within the community?

32. Clause 8 “Assessment: promotion of good local government” – “Effective local community representation” and consideration of “representing communities of interest” need to be key criteria for assessing proposals. These criteria must be added to the criteria as proposed in clause 8. They are very important matters in relation to the reason for having local governance and to communities, as was evidenced in the proposed amalgamation of Nelson-Tasman. It is important that these aspects are properly assessed

33. Clause 8(1)(b)(iii) presupposes simplified planning comes about by reducing the number of planning processes. This is a leap of faith when the very nature of a reorganisation scheme will cause, at some stage, the costs of creating new plans (and accepting the loss of all the sunk costs invested in the prior plans). While some plans will be across any newly formed geographic area, there will still be reasons why parts of communities will have different expressions of vision and policy, leading to different rules. Any potential benefits from combining plans can be achieved by neighbouring councils aligning policies and rules through shared services arrangements. If (iii) was deleted the matter could still be addressed under any assessment by the Commission.

34. Clause 9 “Commission must consider other options” – Council supports this clause.

35. Clause 10 “Other things Commission may do when assessing reorganisation application” – Council supports the ability for the Commission to assess a reorganisation application in conjunction with any other reorganisation application as provided for in clause 10(1) provided those applications have areas in common, are located adjacent to each other or are within the same region. This clause should be amended to reflect these circumstances.

36. Clause 15 “Representation” – Clause 15(b) states that in determining the representation arrangements of a local authority for a proposal, the Commission must comply with the requirements of the Local Electoral Act 2001. Council notes the urgent need to amend the Local Electoral Act representation provisions relating to the plus or minus 10 percent rule. Council requests that Parliament urgently process the Local Electoral Amendment Bill which was introduced into Parliament on 11 October 2011.

37. Clause 17 “Consultation on proposal” – Council questions the need under clause 17(1)(c)(vii) for the views to be sought of the chief executive of Te Puni Kokiri, when under 17(1)(c)(viii) the views of any affected iwi and Maori organisations identified by Te Puni Kokiri have to be sought. Council supports the need for the views of local iwi and Maori organisations being sought when considering a reorganisation scheme, but we are not sure how the views of the chief executive of Te Puni Kokiri are relevant.

38. Clause 17(2) – Council considers that there should be a minimum period specified for inclusion in the public notice to enable people to submit to the Commission on a proposal. Council suggests that a minimum time of six weeks should be specified. This is based on Council’s experience through the proposed Nelson/Tasman amalgamation.

39. Clause 17(3) – Council considers that the Commission must hear any submitters that wish to be heard, so the wording in this subclause should be amended from “may” to “must”.

40. Clause 21 “Petition to require poll” – as stated above Council considers that a poll **must** be held. Holding a poll may have a financial cost, but it is worth it to enable communities to have their democratic right to determine the governance of their communities. The affected communities need to have the democratic right to have their say, via a vote, in the future governance and representation of their communities. Further, there is more likely to be acceptance of a reorganisation scheme if people feel that they had an opportunity to be involved in the decision-making process.

41. Council’s view, however, is that the poll should be held at the end of the process (i.e. on the reorganisation scheme), not on the reorganisation proposal. There is potential for significant changes to occur between the final proposal and reorganisation scheme phases, which may alter the community support or opposition to a scheme.

42. If the current reform proposal in the Bill is followed and a poll is only held if a petition of 10% of electors ask for one, sufficient time needs to be allowed for a petition to collect the signatures. The 40 working days in the Bill is insufficient, we recommend a minimum of 80 working days. Alternatively, if the time is not to be extended then a petition of 5% of electors should be required to trigger the poll provisions.

43. Clause 22 “Poll to be held” - The Bill states that a poll is to be held across the whole of the affected area and that a majority of votes in any poll is needed across all affected districts. This poses the risk that smaller communities are going to be taken over by big communities without them having the ability to have a meaningful say in determining their future. Smaller communities will always be out voted by the bigger ones. Small communities need to be able to have determination over their future. Therefore, Council supports the retention of the current provision in the LGA 2002 to have a poll in each of the affected areas and that in order for the proposal to proceed, it must have more than 50 percent support in each area. The clauses in the Bill need to be amended to reflect this.

44. Clause 27 “Advertising in relation to polls” – The constraints on advertising on an affected local authority from the commencement of the poll period does not appear to carry any sanction if for any reason material is published that is deemed to oppose or promote the proposal. This may reduce the likelihood of compliance with this clause. Also, who determines whether material opposes or promotes a view? Subclause (2)

seems redundant as there does not appear to be further opportunity to make submissions after commencement of the poll period.

45. Clause 29 “Preparation of reorganisation scheme” – A concern Council has with this clause is that people may have been asked to vote on a reorganisation proposal, which given all the matters that could be included in a reorganisation scheme could be quite different. For instance, all the transition provisions including the associated costs and logistics may not be apparent until the scheme is developed.

46. Clause 30 “Provisions for inclusion in reorganisation schemes” – Given the power to appoint an interim chief executive, we suggest there should be some legislative guidance on how this affects any obligations, functions, etc, of incumbent chief executives and the relationship between the interim and incumbent chief executives.

47. Clause 31 “Provisions to be included if necessary or desirable” – While the list is not meant to be exclusive, Council considers that fees and charges, which are not an insignificant source of local authority funding, should be mentioned here.

Clause 14 – Minister’s expectations of Commission in relation to local government reorganisation

48. Council has concern about the ability for the Minister to decide which reorganisation applications should be given priority where several new applications may be received at one time. Coucnil’s concern about this provision would be if a reorganisation application was part way through a process and then the Minister specified that the Commission should stop work on that process and start work on a higher priority reorganisation application. The cost and uncertainty created by such as situation would be problematic for the affected local authorities.

49. Council does not support the Minister having the ability to specify timeframes for the Commission to complete specified matters. The new process outlined in Schedule 3 enables the Commission to examine options and to ensure community support for proposals at each stage in the process. Putting the Commission under time pressure to complete proposals is likely to compromise the process and the quality of the outcome unless the Commission is provided with additional resources to undertake the work.

50. In Council’s view the Commission should be independent and operate without political interference.

Clause 16 – Role and powers of mayors

51. Council has concern about the extension of the role and powers of the mayor, particularly with regard to the risk that it may pose to the collaborative working relationship between the mayor and councillors. Council notes that the risk will vary depending on local circumstances and the personalities involved. The additional powers are likely to create a demand for separate mayoral staff, along the lines of the mayoral office in Auckland Council, which would add operational costs to councils and their ratepayers.

Clauses 17, 18 and amendments to Schedule 7

52. Council is of the view that the changes proposed in the Bill to enable councils to prepare a remuneration and employment policy will not solve the perceived problem

that the Government is trying to fix. It appears that the reason behind this provision being included in the Bill is the perception that local government staffing costs have increased disproportionately over recent years. The evidence in the LGNZ/SOLGM submissions indicates this is not in fact the case. Where some councils have increased staffing costs it may be for several reasons. For example, in Tasman District Council's case increases in staffing levels in recent years have been due to a range of factors including added regulatory functions imposed by Government legislative changes (e.g. Building Act changes), and changing the mix between use of contractors/consultants because of potential tax risks and bringing activities back in-house using staff to achieve cost savings.

53. Councils already determine the services, activities and projects that they undertake as they set the budgets to undertake that work. In so doing Councillors already have control over the work programme, and effective control over the staffing costs. Currently councils can change budgets, add or delete services, set levels of service and set inflation figures for salaries or inputs to control staff costs. It is Councillors' governance role to determine what is undertaken and the role of management to determine how the activities are undertaken.

54. There is a risk of a perverse outcome from this clause where more expensive consultants are used to undertake work that would normally be undertaken by staff in order to keep within staffing levels set in any remuneration and employment policy.

55. Council's preference is for the proposed clause 36A Remuneration and employment policy in the new Schedule 7 to be removed. If it remains, however, Council supports leaving it as optional, rather than making it compulsory. The policy needs to be at the strategic level and not detailed.

Clause 21 – New Part 10 Powers of Minister to act in relation to local authorities

General comments on the intervention provisions

56. Council is concerned at the potential use of the intervention options proposed in the Bill. While Council can support appropriate Government intervention if there is a real and significant problem with a local authority, these provisions should not enable the Government or Minister to intervene because they disagree with a local decision or a community's priorities. Such intervention would, in Council's view, be an abuse of the process. Given that the policy decisions which underpin this Bill were made without evidence or robust analysis, what is the guarantee to the local government sector and local communities that the Government will not intervene without suitably just cause?

57. In an effort to be constructive and objective on the intervention provisions, Council considered what intervention or assistance may be useful to it if it was deemed to have or be heading towards having a "problem" and whether the interventions proposed would be beneficial. Council's view was that there are other assistance options which would be of more value, particularly for reducing the risk of problems occurring.

58. Council's view is that the Government's aim should be to improve governance and decision making, rather than getting to the point where Government considers it needs to intervene in council operations and processes. Council considers that the following assistance options (which would not require changes to the LGA 2002)

should be implemented through a combined Government, LGNZ and SOLGM approach and that these should be implemented before the intervention options in the Bill are implemented:

- In-depth training for elected members on core financial, governance or other matters. While LGNZ currently offers some training for elected members, there is scope to extend this further to ensure improved understanding and decision-making at the elected member level. This training would also provide a greater check on advice provided by staff to elected members. The "Making Good Decisions" training for councillors (and others) sitting on resource consent hearings is a good example of the success that can be achieved by in-depth training leading to improved decision making.
- More guidance materials and good practice examples on governance, financial matters, legislation, etc, to assist councils (both elected members and staff).
- A roving team of LGNZ/SOLGM/Government appointed experts to go into a council to provide expert advice and to help it work through concerns and any problems that may be arising or identified.
- Mentoring opportunities.

59. Council is of the view that the "Minister may require information", "Crown Review Team" and "Crown Observer" provisions do not need to be embedded in legislation. The requirement for information can be dealt with under the Local Government Official Information and Meetings Act. The Crown Review Team and Crown Observer options can be implemented collaboratively with a council, as evidenced by the recent Christchurch City Council appointed Crown Observer and the review team which worked with Waitomo District Council several years ago. A Crown Review Team or Crown Observer is likely to be more effective where the decision to put them in place has been made collaboratively with a council, than a situation where one is imposed on a council under a legislative provision.

60. Council considers that the Minister should go through the information request and review team steps before proceeding to any of the other four steps. The only exception may be where a matter is urgent and there is not time to take that approach, then the Minister may need to go directly to one of the other steps. An example of this would be circumstances where a number of elected members resign, as happened in the Rodney District Council many years ago.

61. While there may be a need for Government intervention where a council has a significant problem, Council has a general concern about the triggers and that there is a risk of intervention in inappropriate circumstances due to the potential for the triggers to be set off for minor matters. Intervention should not be undertaken lightly and without very good reason, as it threatens local democracy and democratic processes. As noted above, it should not be possible merely because the Government or a Minister does not agree with the decisions made or priorities identified for communities by a council.

62. There are already many checks on councils, for example the audit of council Long Term Plans, and the Ombudsman and the Auditor General have the ability to undertake enquires. Therefore, Council does not see the need for additional checks and interventions.

63. Hon. Dr Nick Smith commented at a recent meeting in Nelson that the Government will also be changing the LGA 2002 to enable it to appoint non-elected members to

regional councils. Tasman District Council does not support such appointments, as doing so undermines local democracy and democratic processes.

64. If councils have to pay for the interventions then the potential cost may delay a council requesting intervention or assistance, since the Bill proposes that the council would have to pay the cost of it. Council considers that, in order to reduce this risk, there should be a cost share between the local authority and central government.

65. Council considers that public notification in the *Gazette* is not sufficient notification to communities of Ministerial interventions. Public notification should be given in a manner that complies with the "public notice" requirements in the Local Government Act 2002.

Proposed section 254 - Definition of "problem":

66. Council is very concerned about the definition in the Bill of a "problem". This definition is very broad and acts as a very low level trigger for Ministerial intervention. Council is of the view that the trigger for intervention should be set higher and that there should be a scale measure incorporated into the definition. For example adding into (a)(i) a word like "significantly" before both occurrences of "detracts from" in the proposed definition and ensuring that the parameters or benchmarks referred to in (b)(i) are also set at a level that is material. If this is not done it risks intervention occurring in inappropriate circumstances and without sufficient justification.

Proposed section 254 - Definition of "significant":

67. Council is very concerned about the definition in the Bill of "significant". Almost anything that a council does could have "actual or probable adverse consequences for residents and ratepayers" – for example, the cost of doing anything could be seen as an adverse consequence. As councils are by nature subjective decision makers, there will always be those who believe a decision taken could be adverse. Council considers that a scale measure needs to be brought into the definition. For example adding in words like "widespread" or "major" before "actual".

Proposed section 255 - "Minister may require information"

68. As noted above, Council does not see the need for this intervention option to be provided in the Bill, as information can be requested under the Local Government Official Information and Meetings Act. Also, it is very unlikely that any council would refuse a request from the Minister for information.

69. If this provision stays in the Bill, then it needs some rewording. The proposed section 255 (2) enables the Minister to set any date by which information has to be provided by the Council. There is no requirement that the Minister's request is within a reasonable timeframe or that the timeframe is set following consultation with the council in question. In some cases, the information requested by the Minister may not be available in the form requested by the Minister. It may take a council time to prepare the information. Council is of the view that this provision should be amended to require the timeframe to be reasonable and set following discussion with the council which is the subject of the notice. This change is particularly important, as not providing information to the Minister by the requested date can trigger the other intervention options.

Proposed section 256 - "Minister may appoint Crown Review Team"

70. As noted above, Council does not see the need for this provision to be put in the legislation as it can happen without a legislative mandate. As a principle, Council supports review teams working with councils to address issues.

71. If the provision is retained in the Bill, Section 256(2) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 257 - "How Crown Review Team appointed"

72. If this intervention option is retained in the Bill, then proposed section 257 should be amended to require the Minister to work with LGNZ and SOLGM on suitable membership for the Team and to ensure that they are free of any conflicts (actual or perceived).

Proposed section 258 - "Minister may appoint Crown Observer"

73. As noted above, Council does not see the need for this provision to be put in the legislation as it can happen without a legislative mandate. If the intervention option is retained in the Bill, Section 258 should be amended to state that the Minister may appoint a Crown Observer to a local authority without having first appointed a Crown Review Team to the local authority only in circumstances where the problem to be addressed is a matter of urgency (unless a Crown Observer is requested by the council).

74. If the intervention option is retained in the Bill, Section 258(2) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 258A - "How Crown Observer appointed"

75. If this intervention option is retained in the Bill, then proposed section 258A should be amended to require the Minister to work with LGNZ and SOLGM when appointing a suitable Observer and to ensure that they are free of any conflicts (actual or perceived).

Proposed section 258B - "Minister may appoint Crown Manager"

76. Council is concerned at the Government's possibly heavy handed approach that comes with appointing a Crown Manager, and the potential for the use of the Crown Manager to override local democracy. The appointment of a Crown Manager should only be undertaken in extreme cases.

77. If the intervention option is retained in the Bill, Section 258B(2) should be amended to state that the Minister may appoint a Crown Manager to a local authority without having first appointed a Crown Review Team or a Crown Observer to the local authority only in circumstances where the significant problem to be addressed is a matter of urgency (unless a Crown Manager is requested by the council).

78. If the intervention option is retained in the Bill, Section 258 B(3) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 258C - "How Crown Manager appointed"

79. If this intervention option is retained in the legislation, then proposed section 258C should be amended to require the Minister to work with LGNZ and SOLGM when appointing a suitable Crown Manager and to ensure that they are free of any conflicts (actual or perceived).

Proposed section 258D - “Minister may appoint Commission”

80. Council is concerned at the heavy handed approach that comes with appointing a Commission to replace the Council, and the potential for the use of the Commission to override local democracy. The legislation should state explicitly that the appointment of a Commission should only be undertaken in extreme cases. Council does note, however, that the use of a Commission (as currently provided for in the LGA 2002) has in the past only been used on one occasion, with special legislation being used in the Environment Canterbury situation.

81. Section 258D(2) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 258CE - “How Commission appointed”

82. If this intervention option is retained in the legislation, then proposed section 258A should be amended to require the Minister to work with LGNZ and SOLGM when appointing suitable Commissioners and to ensure that they are free of any conflicts (actual or perceived).

Proposed section 258F – Application of this and other enactments during the Commission’s term of appointment

83. This proposed section is supported.

Proposed section 258G – Minister may postpone general election when appointing Commission

84. Section 258G(3) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 258J - “Minister may appoint Commission”

85. Section 258J(1) and (3) should be amended to require notice of the appointment to comply with the public notice requirements in section 5 of the LGA 2002.

Proposed section 258K – Notice to local authority of proposed appointment of Ministerial body

86. This proposed section is supported.

Proposed section 258Q – Recovery of expenses from local authority

87. As noted above, if councils have to pay for the interventions then the potential cost may delay a council requesting intervention or assistance, since the Bill proposes that the council would have to pay the cost of it. Council considers that, in order to reduce this risk, there should be a cost share between the local authority and central government and that section 258Q should be amended accordingly.

Proposed section 258S – Protection from liability for Ministerial appointees

88. Council is very concerned that the inclusion of this section will mean that councils, and ultimately their ratepayers, will end up picking up the liability for acts done or omitted to be done by Ministerial appointees, and that appointees may not give the same weight to community views and preferences as a council would. If communities have not voted for Ministerial appointees they should not be liable for their actions or inactions. The Government should pick up the costs of any actions or inactions of Ministerial appointees given that it is making the appointments. This section should be amended to state that Government is liable and to ensure that councils and their communities are not liable for Ministerial appointees’ actions or inactions.

Clause 22 – Section 259 amended (Regulations)

89. Council considers that the Government is giving mixed messages relating to fiscal management within the local government sector. The Government is reducing its share of funding to the sector in areas like local road maintenance and renewals, while imposing additional functions and costs on the sector (e.g. additional liquor licencing and problem gambling functions), yet it is criticising the sector for increasing rates and debt to meet these additional costs.

90. While Council agrees that councils should be focused on good fiscal management, it has concerns about the setting of benchmarks and parameters because of the risk of unintended consequences. Council questions the assumptions that seem to underpin these changes (i.e. that councils are generally increasing rates and building up levels of debt that are not justified or prudent). Examples of poor fiscal management and financial decision making in local government are rare.

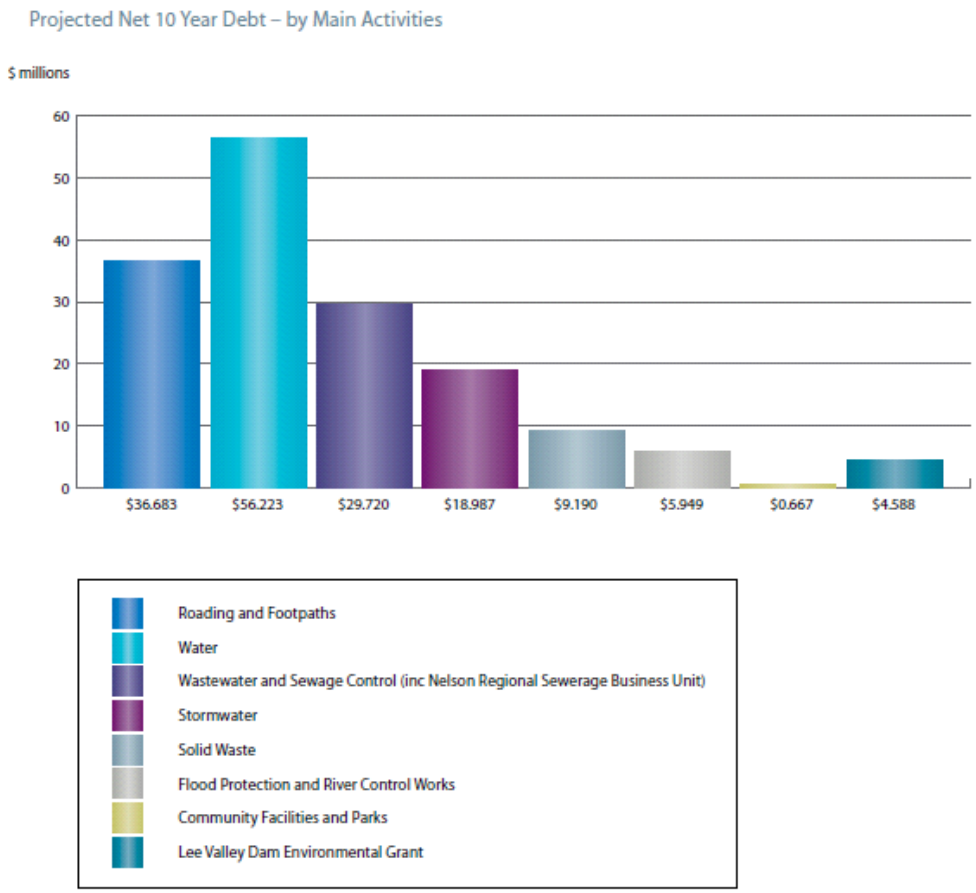
91. Council requests that clause 22 and the proposed amendment to section 259 are deleted. If the clause and amended section are not deleted, however, Council supports the need for the benchmarks and parameters to be developed with LGNZ, SOLGM and the wider local government sector.

92. Development of parameters or benchmarks for assessing councils is inherently difficult as each council faces different circumstances. For example some councils face population growth while others don't, some councils have growth demand from non-resident (i.e. holiday home) demand while others don't, councils have differing ageing infrastructure, and some councils have numerous disparate settlements within their districts which cost more to provide infrastructure and services to than do homogeneous cities.

93. Council is of the view that the proposed regulations are likely to lead to under investment in much needed infrastructure and services within local communities. Such under investment can only be bad for our communities and the economy of New Zealand through stifled economic growth and a lack of security of supply from deferred maintenance of infrastructure and inappropriate levels of service. The electricity problems faced in Auckland several years ago are a classic outcome of that sort of thinking. For this reason we do not support clause 22. However, if the clause is retained any parameters and benchmarks will need to be carefully developed with input from the local government sector.

94. Even senior Government Ministers do not believe that councils have a debt issue. The Select Committee is referred to a recent article by the National Business Review "Local government carrying 'relatively low' debt levels: English" by Jonathan Underhill, Wednesday June 13, 2012. The article states "New Zealand's 78 local authorities are carrying a relatively low level of debt, Finance Minister Bill English has conceded when asked how councils could contribute to the nation's spending on infrastructure." A further comment in the article is "Primarily, that's a matter for ratepayers," Mr English said.

95. Council wishes to comment on debt levels and the assertions that council expenditure generally goes on non-essential infrastructure. As part of our Long Term Plan process, Council prepared a graph showing where the debt that it will be taking on over the next ten years will be spent. The graph is reproduced below for the Select Committee's information. The graph demonstrates that the vast majority of the debt that Council will be taking on is to be spent on core infrastructure.



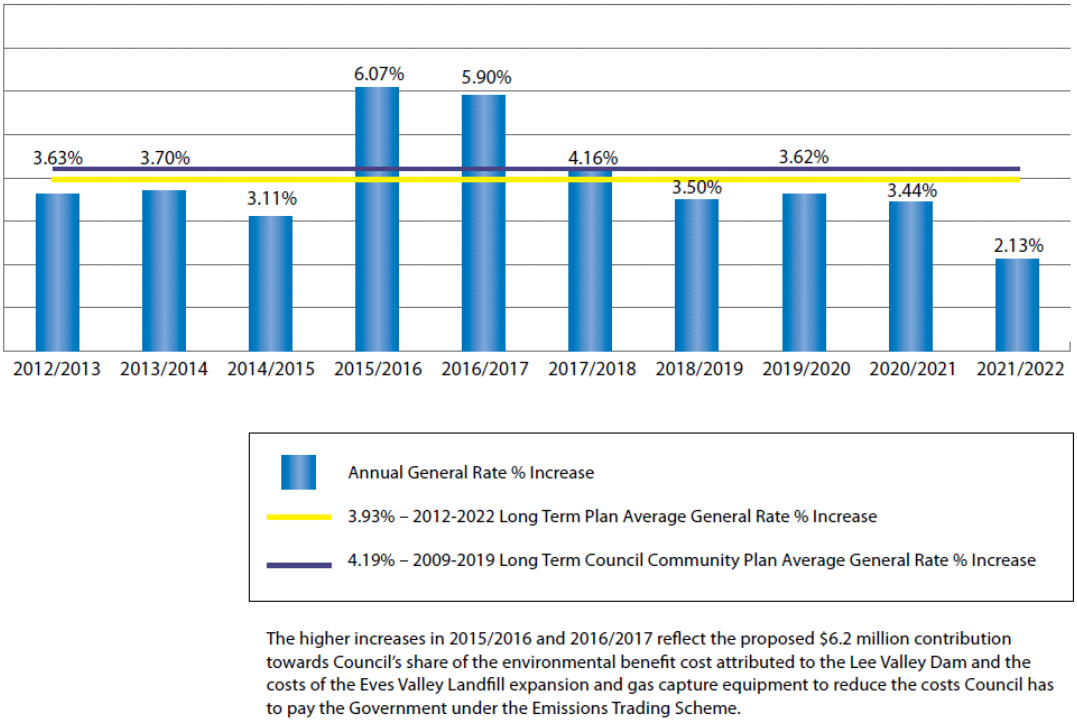
96. Some of the debt is a direct result of central government requirements, for example water supply upgrades to meet the Government's drinking water standards and gas capture infrastructure at the landfill to meet the Emissions Trading Scheme (ETS) and National Environmental Standard requirements. Another big component of our debt relates to the Lee Valley Community Dam project which is needed to provide security of water supply to agricultural activities in the Waimea Plains, water supply to Richmond and other major settlements on the Plains, and minimum environmental flows in the rivers to meet environmental and recreation requirements. If Council does not undertake the dam project, water cutbacks of approximately 70 percent are likely to existing water allocations. These cutbacks have been assessed as reducing the income to our region from agriculture to the value of $440 million over 25 years.

97. Tasman District Council does have a relatively high level of debt, however, we also currently have the highest growth rate in New Zealand. In order to enable that growth to occur we need to supply the infrastructure to provide for businesses, industry and residential activity. This costs money. In Tasman's case, we have a geographically large rural area with 17 key settlements, each of which requires infrastructure supply.

98. Council also challenges the assumption which seems to underpin the policy positions in the Bill that there are not enough incentives on councils to hold rates and debt levels as low as possible. Through the Long Term Plan 2012-2022 process, Tasman councillors and staff were extremely conscious of the impact of rates on the Tasman communities and the Council's level of debt. Not to be cognisant of this would mean that Council did not listen to the views of its communities and that would have obvious consequences for Councillors at next year's elections. That being said,

community expectation generally sees more submissions for additional expenditure than it ever does for reductions. The graph below illustrates the projected general rate increases (these figures exclude targeted rates for specific services) for Tasman District over the coming 10 years (including an allowance of approximately 3 percent per year for inflationary cost increases). The highest increases are due to the Lee Valley Community Dam and ETS gas capture at the landfill, both proposed to commence construction in 2015/2016.

Projected General Rate



The higher increases in 2015/2016 and 2016/2017 reflect the proposed $6.2 million contribution towards Council's share of the environmental benefit cost attributed to the Lee Valley Dam and the costs of the Eves Valley Landfill expansion and gas capture equipment to reduce the costs Council has to pay the Government under the Emissions Trading Scheme.

99. These relatively low rates increases are a result of Council cutting back levels of service and the provision of some activities and services. While such cut backs have occurred in some areas to achieve these projected rate levels, there are very few non-essential areas left to cut back without leading to deferred maintenance and renewals, non-delivery of regulatory functions required by Government or not providing infrastructure to meet ongoing growth in our communities.

100. If the financial prudence benchmarks are developed along the lines of some of the examples outlined in the Bill, it is likely that Council will breach the levels in 2015/2016 and 2016/2017 and will, therefore, be deemed to have a "problem". Dealing with the "problem" by making further funding cuts would result in deferred maintenance and renewals, not meeting Government imposed regulatory requirements (e.g. ETS gas capture at the landfill or the Government's drinking water standards), not contributing to the Lee Valley Dam construction or not providing infrastructure to meet growth in our communities. None of these situations is desirable.

101. If clause 22 is retained in the Bill, then in the proposed section 259(3)(a) all the examples should be removed from (i), (ii) and (iii).

102. If clause 22 is retained in the Bill, the Council supports the retention of proposed section 259(4) and the involvement of LGNZ/SOLGM in the preparation of the benchmarks.

Clause 23 – Schedule 3 replaced

103. Refer to earlier comments on the reorganisation proposals.

Clause 24 – Schedule 7 amended

104. Council supports the amendments to the Remuneration Authority determinations. Council does wish to make the point, however, that the Government should undertake a full review of local authority elected members remuneration, as the current provisions are out dated and mean that some elected members are disadvantaged and are out of pocket for the privilege of representing their communities (e.g. members who have to pay childcare or who travel large distances to attend meetings or to travel around their large constituencies).

Clause 25 – Schedule 10 amended

105. Council does not support the amendments outlined in clause 25(1), (2) and (3).

106. Council does not understand the purpose of the proposal in (4) to insert a new clause 32A into Schedule 10 or what is trying to be achieved by the declaration of staff salaries in the Annual Report. This provision seems unnecessary and is unlikely to lead to a positive outcome.

107. The provision overlooks the fact that a lot of work is done for councils by contractors and consultants.

108. If the provision is retained in the Bill, Council recommends that the salary bands provided for in 32A(2)(b) are set at $40,000, not $20,000.

Conclusion

109. The Local Government Act 2002 Amendment Bill 2012 contains a number of amendments that the Tasman District Council supports and a number that are not supported and should be removed or at least substantially amended. Details of these matters have been outlined in the body of our submission.

110. The greatest areas of concern Council has relate to:

- The changes to the purpose of local government.
- The requirement for a petition to require a poll on a final reorganisation proposal, rather than a poll being required automatically; the requirement for any poll to be over the whole affected area, rather than each area affected by a reorganisation proposal; and any potential poll being at the final reorganisation proposal, rather than at the time of the final reorganisation scheme.
- The exclusion of “effective local community representation” and consideration of “representing communities of interest” as key criteria for assessing reorganisation proposals. These need to be added into the criteria.

- The loss of local democracy as a result of the Ministerial intervention options, the processes for how and when they will be used, the definitions of “problem” and “significant”, and the potential for the options to be used inappropriately.
- The provisions enabling the development of parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments and general financial dealings.

111. Our overall view on the Bill is that irrespective of the merits of what it may be trying to achieve, it is not certain that the changes proposed will deliver on what the Government is trying to achieve. There has been inadequate robust policy analysis, problem definition or analysis of whether the proposals in the Bill are the best solutions to the perceived problems (which is supported by the Regulatory Impact Statement accompanying the Bill). The Bill does not appear to be based on sound data and information. Council has serious concerns about this lack of analysis and use of unsound information and data. Council is of the view that these factors may lead to unintended consequences and inappropriate and ineffective requirements on councils, with associated costs on ratepayers and potential rates increases. A number of Council-specific examples of perceived “problems” have been cited in the media, but these do not necessarily reflect a sector-wide problem. A fulsome analysis of the sector is required to identify any problem prior to implementing a solution.

112. A major problem for the efficient operation of councils is the continual changes in legislation. Such changes cause disruption and diversion of staff and councillors away from delivering services to communities and they require additional staff time to get up to speed and implement, with associated costs to ratepayers. For example, some of the changes from the Local Government Act 2002 Amendment Act 2010 have not yet been implemented, so their impact and effectiveness cannot have been assessed before these proposals were put forward. The Government should see the outcome of its previous changes before implementing new ones. Council considers that all parties in Parliament should commit to delivering stability of the legislative framework for local government.

113. In order to remedy the flaws in the provisions in the Bill, the Council recommends that the Select Committee directs the Department of Internal Affairs to work with local government sector representatives (through LGNZ and SOLGM) to improve the workability of the legislation for the Select Committee’s consideration. Council considers that if this does not happen, then it is probable that the legislation will have unintended consequences and add inappropriate and unnecessary compliance costs for councils and their ratepayers.