

Submission

By



to the

**Local Government and Environment
Select Committee**

on the

Local Government Act 2002 Amendment Bill

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LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL
SUBMISSION BY BUSINESSNZ¹

1.0 INTRODUCTION

1.1 BusinessNZ welcomes the opportunity to make a submission on the Local Government Act 2002 Amendment Bill (“the Bill”) and supports the Bill proceeding.

1.2 BusinessNZ is very supportive of the Bill’s underlying policy as outlined in the Explanatory Note:

- *“that local authorities should operate within a defined fiscal envelope:*
- *that local authorities should focus on core activities:*
- *that local authority decision-making should be clear, transparent, and accountable.”*

1.3 Notwithstanding the above, BusinessNZ is somewhat disappointed that the Bill excludes some of the most important issues raised in relation to local government by both the business community and “Shand” Report. Furthermore, attempts to rein in local government through focusing on “core” activities and requiring more discipline when making investment decisions, while well intentioned, need to be clarified if they are to have the desired effect of encouraging local government to return to its core functions.²

1.4 While individuals, business organisations and ratepayer representatives all have different views on local government, one common thread is a concern over the increasing rates burden (with aggregate rates burdens running at close to twice the rate of inflation), and in some cases, over significant inequities associated with the rates burden. This is generally a nation-wide issue, although the problem is greater with some councils, than with others.

1.5 The business sector pays about half the country’s rates bill with the level of rates businesses pay often entirely disproportionate to the level of services received. The situation is exacerbated by the generally wide use of business/commercial rating differentials despite strong evidence supporting their removal. Where councils have agreed to reduce such differentials, they have often been tardy in doing so, tending towards incremental change due to “expenditure pressures”.

¹ Background information on BusinessNZ is attached as Appendix 1.

² BusinessNZ has been constructive in advocating reform of local government through a number of submissions and publications including its principle publication on local government entitled “*Local Government – the business case*” (BusinessNZ 2007)

- 1.6 Local Government has a vital role to play in advancing the overall well-being of New Zealanders. However, that role is not all-encompassing but needs to be established on a principled basis and properly circumscribed.
- 1.7 Local authorities' core business should be the funding and – in justifiable circumstances – the provision of local public goods and services that cannot be better provided by firms, households and non-profit organisations, plus the administration of appropriate regulations. Stated core services indentified in clause 5 (New section 11A inserted) are a mixture of both public and private goods. Clearer definitions are required to ensure local government focuses on providing “core” public goods rather than on the broad list set out in clause 5.
- 1.8 BusinessNZ would highly recommend the Select Committee pursue a publication by the Local Government Forum,³ *“Democracy and Performance – A Manifesto for Local Government” (February 2007)*, which describes in some detail the major issues facing local government and includes suggested solutions for dealing with local government's expansionary role, funding issues, and future directions. BusinessNZ considers it is crucial that all issues surrounding local government are investigated if a robust framework is to be developed, including funding systems in which both business organisations and the wider community of ratepayers have confidence. The Bill more represents tinkering around the margins, rather than a comprehensive investigation that provides solutions to the major issues currently affecting local government.
- 1.9 The submission is in two parts. Part one indentifies issues which BusinessNZ considers should be dealt with in the Bill. Part two focuses on specific clauses in the Bill which require further clarification to ensure they achieve the intended policy principles outlined in the Bill's explanatory note.

BusinessNZ **recommends** that:

the Bill proceeds.

³ The Local Government Forum comprises organisations that have a vital interest in the activities of local government. Its members include Business New Zealand, the Electricity Networks Association, Federated Farmers of New Zealand, New Zealand Business Roundtable, New Zealand Chambers of Commerce, and the New Zealand Forest Owners Association. The Forum was established in 1994 to promote greater efficiency in local government and to contribute to debate on policy issues affecting it.

Recommendations

1. BusinessNZ **recommends** that:

The Bill proceeds. (See p.3)
2. The Bill be amended in line with the further recommendations set out below:
 - The core business of local authorities be prescribed and involve the funding of and – in justifiable circumstances – the provision of, local public goods and services that cannot be better provided by firms, households and non-profit organisations, plus the administration of appropriate regulations. (See p.8)
 - Councils receive better guidance on the use of available funding tools to ensure greater consistency across the country, underpinned by an economically principled approach to funding their various activities. (See p.8)
 - There be greater clarity in distinguishing among the following:
 1. A user charge that constitutes an appropriate price for services supplied by a local authority;
 2. A tax on a subset of a local authority's ratepayers justified as funding local public goods of clear benefit to them;
 3. An appropriate tax to fund local public goods that benefit all residents; and
 4. Justified charges to internalise external costs imposed on people or firms. (See p.9)
 - Differential and targeted rating be permitted only where a clearly identified community (such as a remote rural area) is provided with a distinctly different level of public goods from that provided to other ratepayers and the differential or targeted tax reflects the difference in service level. There should also be an objective test in respect to "benefits received" to ensure consistency of approach. However, rates differentials, if used at all, should be used sparingly and not, as some councils have done, as a general revenue raising device, on unprincipled and unsubstantiated grounds. (See p.10)

- **Narrowly based taxes on particular sectors without clear identification of use (benefit) be recognised as highly undesirable since they defy good tax principles, namely, economic efficiency, administrative simplicity, flexibility and fairness (equity). (See p.11)**
- **Developers have the right to appeal against a requirement to fund public goods. This is presently the case for financial but not for development contributions. (See p.11)**
- **The 30% cap on the Uniform Annual General Charge (UAGC) be increased, if not completely removed (although BusinessNZ supports much greater use of user charges, where practicable). (See p.12)**
- **Consideration be given to whether continued local authority ownership of many current assets is justified. (See p.12)**
- **Local councils (in many cases) make much more use of debt. Clear funding principles based on intergenerational equity are required in order to ensure that funding reflects the real costs and benefits derived from assets which have a long life and high sunk costs. (See p.12)**
- **The roles and responsibilities of both central and local government be clarified with a view to ensuring local authorities focus on the provision of local public goods. (See p.14)**
- **Rates mechanisms and funding not be used as a redistribution device. Ability to pay issues are more properly dealt with by central rather than local government. (See p.14)**
- **The funding and use of rates postponement options be undertaken by the private sector through the use of reverse mortgages and the like, although BusinessNZ is not opposed, in principle, to rates postponement options. (See p.14)**
- **The rating valuation method used by councils be either Capital Value (CV) or Annual Value (AV). CV and AV methods give the most equitable outcomes. Land Value Rating (LV) is no longer a fair or equitable method of rating for NZ in the 21st century. (See p.14)**
- **Core local public goods activities be enumerated in the Local Government Act 2002. Other significant activities may be undertaken provided a referendum approves them by more than a simple ratepayer majority. (See p.17)**

- The Select Committee consider a very recent and substantial report commissioned by the Local Government Forum (LGF) and Property Council of NZ, *“Taxing Growth and Development – A Critical Review of the Role of Development and Financial Contributions”* (March 2010), which looks at some of the concerns arising from the current approach to development and financial contributions. (See p.20)
- No time limit be placed on the term of a PPP contract, with each situation to be assessed on a case by case basis (clause 32). (See p.21)
- The costs of a *levy for performance measures* (clause 39), (which Business NZ supports) be borne out of general taxation rather than being a levy on local authorities (ultimately ratepayers). (See p.22)
- It be made clearer how *performance measures* will operate in practice. (See p.23)

2.0 **PART 1: Issues which require addressing within the broader context of local government reform**

Role of local government in the provision of public goods

- 2.1 BusinessNZ is concerned that the Bill does not provide an adequate context for the role of local government in the community apart from the Explanatory Note's broad statement that the Bill's underlying policy is informed by the following principles:
- that local authorities should operate within a defined fiscal envelop
 - that local authorities should focus on core activities
 - that local authority decision-making should be clear, transparent, and accountable.
- 2.2 BusinessNZ believes greater consideration should be given to the proper role of local government, which is principally the provision of local *public goods*. Funding is equally important, given the current wide array of public and private goods delivered by local authorities.⁴
- 2.3 If each of the important issues referred to above were put in context, then the structure of local government would flow logically. In the absence of a clear context in which to operate (particularly reinforced by the wide powers of general competence under section 10 of the Local Government Act 2002), local government will continue to struggle to decide on which specific functions it should be involved in on ratepayers' behalf.
- 2.4 While the Bill could be considered an attempt to constrain local authorities into focusing on "core" activities (clause 5), requiring more discipline in undertaking commercial activities, the fundamental question of whether local authorities should be involved in particular activities is not covered at all.
- 2.5 While BusinessNZ is aware of arguments that suggest specifying "core services" which local government should deliver is problematic (for example "boundary issues" surrounding services that could be considered to have elements of both public and private goods), most arguments opposing greater specification of core public goods do not stand up to any serious analysis.

⁴ See Local Government Forum (LGF) publication "Local Government and the Provision of Public Goods" (2008) for a fuller description on the role of local government and provision of both public and private goods.

Business NZ **recommends** that:

The core business of local authorities be prescribed and involve the funding of, and – in justifiable circumstances – the provision of, local public goods and services that cannot be better provided by firms, households and non-profit organisations, plus the administration of appropriate regulations.

Funding Policy

2.6 BusinessNZ considers there is a need for greater clarity in distinguishing among the following:

- A user charge that constitutes an appropriate price for services supplied by a local authority;
- A tax on a subset of a local authority's ratepayers justified as funding local public goods that clearly benefit them;
- An appropriate tax to fund local public goods that benefit all residents; and
- Justified charges to internalise external costs imposed on people or firms.

BusinessNZ **recommends** that:

Councils receive better guidance on the use of available funding tools to ensure greater consistency across the country, underpinned by an economically principled approach to funding their various activities.

User charges

2.7 Charging for the use of private goods and services would bring greater efficiencies. For example, charging for waste disposal out of general rates and supplying every ratepayer with a rubbish disposal bin takes no account of the amount of rubbish generated by ratepayers. To a certain extent this may actively encourage waste generation because effective cross-subsidisation means the full costs of waste disposal are not sheeted home to every household. Water is another good example, where clear user-pays pricing principles would encourage greater efficiencies.

- 2.8 While some councils charge for water and waste on a user-pays basis, many still fund such activities out of general rates, sending strictly limited signals to consumers as to the real costs associated with their behaviour.⁵

BusinessNZ **recommends** that:

There be greater clarity in distinguishing among the following:

- 1. A user charge that constitutes an appropriate price for services supplied by a local authority;**
- 2. A tax on a subset of a local authority's ratepayers justified as funding local public goods of clear benefit to them;**
- 3. An appropriate tax to fund local public goods that benefit all residents; and**
- 4. Justified charges to internalise external costs imposed on people or firms.**

Differential and targeted rating

- 2.9 Differential and targeted rating should only be permitted where a clearly identified community (such as a remote rural area) is provided with a distinctly different level of public goods from that of other ratepayers and the differential or targeted tax reflects the difference in the level of services supplied. There should also be an objective test for "benefits received" to ensure a consistency of approach. However, rates differentials, if used at all, should be used sparingly not, as some councils have done, as a general revenue raising device, on unprincipled and unsubstantiated grounds.
- 2.10 Sometimes differential rating is applied to the business sector on the unsubstantiated ground that the business sector benefits more than proportionately from its services. A number of reports have found such thinking to be groundless, yet councils continue to apply significant differentials simply because they can, rather than on any principled economic basis. Where councils have agreed to reduce such differentials, they have generally proceeded at a snails pace, being mindful not to upset the majority of residential ratepayers who enjoy the advantages of a lower rates burden courtesy of the business sector.

⁵ Refer to the Local Government Forum's publication "*Democracy and Performance – A Manifesto for Local Government*" (February 2007) which has a very useful section on Funding of Local Government (p.15-24) explaining the appropriateness of different funding tools. Clearly, given that most local government supplied goods and services are of a private good nature, user-pays, where possible, is the most appropriate tool to use.

- 2.11 In the past, a number of people have argued (and many still do) that businesses are advantaged relative to residential ratepayers because they can deduct rates for income tax purposes and claim a credit for GST paid on them. These claims have been discredited by reputable economists for the following reasons. First a firm can only claim a tax deduction for rates because its income is subject to tax. Nobody could seriously argue it is an advantage to be subject to income tax. Second, a GST registered person or firm can claim a credit for GST paid on inputs because supplies (outputs) are subject to GST. The net GST collected is paid to Inland Revenue so there is no advantage for businesses.
- 2.12 BusinessNZ remains concerned about the use of targeted rates (taxes) mainly because there is a danger they can be used as another simple way of raising needed revenue without taking the full implications into account.
- 2.13 There may be isolated cases where levying additional rates (taxes) on a particular class of ratepayers is appropriate - for example, where specific local public goods benefit a clearly defined subset of ratepayers, such as schemes to control floods. However, for such taxes to be justified on both economic efficiency and equity grounds, the target group must be clearly identified, and share equally in the benefits. Ideally the consent of the affected group should be sought before any targeted taxes are considered. More importantly, targeted taxes should not be used for tapping previously untapped pockets of revenue-raising potential – a distinct danger without clear controls on when and how such tools are to be used.

BusinessNZ **recommends** that:

Differential and targeted rating be permitted only where a clearly identified community (such as a remote rural area) is provided with a distinctly different level of public goods from that provided to other ratepayers and the differential or targeted tax reflects the difference in service level. There should also be an objective test in respect to “benefits received” to ensure consistency of approach. However, in general, rates differentials, if used at all, should be used sparingly and not, as some councils have done, as a general revenue raising device, on unprincipled and unsubstantiated grounds.

BusinessNZ **recommends** that:

Narrowly based taxes on particular sectors without clear identification of use (benefit) be recognised as highly undesirable since they defy good tax principles, namely, economic efficiency, administrative simplicity, flexibility and fairness (equity).

Development contributions

- 2.14 Development contributions appear to be an increasingly used tool with property developers required to contribute either money, or land to be used as a reserve, or for network or community infrastructure. While local authorities wishing to levy development contributions must adopt a contributions policy and incorporate it into their long term community council plans (LTCCPs), again there is the potential for the contributions to be seen as another form of revenue-raising (although without strong justification). The possibility of development contributions being used for all sorts of activity unrelated to development costs is a concern. Requiring significant contributions from inner city residential developers is a case in point. There must be transparency between income derived from development contributions and the actual costs of development. In the absence of such information, there is a danger that development contributions may increase in line with the demands of residents not required to pay for such contributions (i.e. free-riders).

BusinessNZ **recommends** that:

Developers have the right to appeal against the requirement to fund public goods. This is presently the case for financial but not for development contributions

Uniform annual general charges

- 2.15 While BusinessNZ supports much greater use of user-charges where practicable, there is scope for increasing, if not completely removing, the 30% cap on the Uniform Annual General Charge (UAGC). It is noted that use of the UAGC varies widely across the country with some councils utilising it to the full 30% provided for, while others don't use a UAGC at all.

- 2.16 If much greater use were made of user charges for the provision of most services, then the current concerns expressed in respect to the UAGC might be lessened. It is noted that some councils do not make full use of the existing cap, thus sending distorted signals to ratepayers as to the costs associated with the provision of services to, and the benefits received by, individual households.

BusinessNZ **recommends** that:

The 30% cap on the Uniform Annual General Charge (UAGC) be increased, if not completely removed (although Business NZ supports much greater use of user charges, where practicable).

Investment income

- 2.17 While a number of councils obtain significant investment income from revenue-generating assets, the justification for continued local authority ownership is weak. While some councils try and justify their exposure as a mechanism to reduce the general rates burden, this potentially puts ratepayers at risk should returns on assets be less than anticipated. There is also the problem of funding the expansion of local authority owned assets, with a potential tension between the desire of councils for investment returns in the form of dividends and the need for reinvestment to increase a company's asset base. Moreover, given that, in general, private sector companies outperform state-owned companies, logically the private sector would be prepared to offer a "premium" on the current valuation of many local authority assets; hence ratepayers would receive a windfall gain from such asset sales.

BusinessNZ **recommends** that:

Consideration be given to whether continued local authority ownership of many current assets is justified.

Local councils (in many cases) make much more use of debt. Clear funding principles based on intergenerational equity are required in order to ensure that funding reflects the real costs and benefits derived from assets which have a long life and high sunk costs.

Rates rebates, local authority rates remission and postponement policies

- 2.18 Councils should not be in the business of income redistribution. Unlike central government (with the information it has through income tax), local authorities have no information on the incomes of their residents so any decisions they make to assist people in this regard have the potential to be flawed. If the Government wishes to provide relief through a Rates Rebate Scheme, then this should be administered centrally through Work and Income New Zealand rather than by Councils.
- 2.19 While the motivation behind increasing and expanding the rates rebate scheme is clearly understood, the wider business community is generally concerned that the scheme can be only a short-term stop-gap measure. It does not effectively address the real issue it is trying to address – protecting people from an ever-growing rates burden.
- 2.20 Clearly the focus needs to shift to ensuring local authorities contain their rate rises by focusing on core business, on having activities funded by those who benefit from them, and on providing ratepayers with transparent information.
- 2.21 In respect to rates remission and postponement notices, it is understood that while most local authorities offer some kind of rates postponement options, the number of ratepayers currently postponing their rates is low.
- 2.22 While conceptually BusinessNZ is not opposed to the use of rates postponement options, we would question the need for this to be undertaken by local authorities rather than by the private sector through reverse mortgages and the like. The private sector is increasingly providing arrangements of this kind for those who are effectively asset rich but income poor, as a means of ensuring such individuals can continue to live in their family home but in the knowledge that the payments are a debt against their property or assets.
- 2.23 As stated above, BusinessNZ sees some merit in the greater use of relatively new financial instruments such as reverse mortgages or home equity conversions as a means for people on lower incomes, but with an asset base, to deal with the many cost pressures which affect them at various times in their lives.

- 2.24 However, given a noticeable reluctance to adopt reverse mortgages (for a number of reasons), it might be desirable to market these to the general public as mechanisms to shift expenditure and revenue streams over time. But apart from providing general advice to ratepayers, BusinessNZ does not see this as a core role for councils. Councils should not become involved in the process of setting up reverse mortgages and the like. Private sector institutions, mainly banks, are in a much better position to market and manage such instruments.
- 2.25 Whether increasing numbers of people “buy-in” to rates postponement will depend on several factors, including: current and future income and assets held by ratepayers, the cost of delaying payment as opposed to up-front pay-as-you-go, household responsiveness to risk, financial literacy, threshold criteria for postponements and so on. It is quite likely, given the competitive nature of financial markets, that new and innovative products will come on to the market in due course and that these will meet consumer needs. Therefore it is possible that in future many more people will look towards different payment options depending on their particular circumstances.

BusinessNZ **recommends** that:

The roles and responsibilities of both central and local government be clarified with a view to ensuring that local authorities focus on the provision of local public goods.

Rates mechanisms and funding not be used as a redistribution device. Issues surrounding ability to pay etc are proper roles for central not local government.

The funding and use of rates postponement options be undertaken by the private sector through the use of reverse mortgages and the like, although BusinessNZ is not opposed, in principle, to rates postponement options.

The rating valuation method used by councils be either Capital Value (CV) or Annual Value (AV). CV and AV methods give the most equitable outcomes. Land Value Rating (LV) is no longer a fair or equitable method of rating for NZ in the 21st century.

3.0 PART 2: Comment on major specific clauses in the Bill

3.1 BusinessNZ supports the broad content of the Bill, and particularly those areas which:

- Reinforce the need for local authorities to focus on core services;
- Provide for long-term plans to contain a financial strategy so that local authorities and their communities can debate and resolve the key financial and service delivery trade-offs that must be made;
- Provide for the improvement of financial and non-financial information in long-term plans to make it more useful and comprehensible to users;
- Would better enable the private sector to deliver local authority services; and
- Provide local authorities and their communities with greater flexibility in choosing methods for delivering water services and developing water infrastructure.

3.2 While BusinessNZ supports the outcomes referred to above, we remain concerned that some clauses may fail to realise the Bill's intentions.

3.3 Below is a discussion of those clauses about which BusinessNZ either has particular concerns or of which it is particularly supportive.

Clause 5 New section 11A inserted

3.4 This clause provides that in performing its role, a local authority must have regard to the contribution made to the well-being of its communities by specified core services, classified as:

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

3.5 This list of so-called core services is problematic for a number of reasons.

3.6 First, and probably most importantly, the list includes goods which are largely of a private good nature so that the justification for their inclusion is weak.

3.7 Second, the specified ‘core’ services do not appear to include key public goods which should arguably be on the list (e.g. local regulation of nuisances, the environment etc).

- 3.8 Third, given that local authorities will still have the power of general competence under Section 10 of the Local Government Act 2002 (unchanged), there is little to suggest that inclusion of the so-called core services will necessarily result in councils changing their behaviour and focusing more on the provision of *core local public goods*.
- 3.9 In terms of possible solutions, there appear to be a number of options some of which may or may not be acceptable to the Government.
- (a) It could be made clear that local authorities are *required* to focus on the list of core services before looking at other possible activities. However, given that the list includes elements under (e) (in 3.4 above), such as recreational facilities, and “other community infrastructure” then unless these are adequately defined, they could mean all things to all people.
 - (b) The list could be peeled back by removing some of its vaguer elements (such as “other community infrastructure”);
 - (c) Each item under core services could be clearly defined in legislation to ensure there are boundaries associated with each so-called core service.
 - (d) While the above proposals may represent an improvement, a better and sounder solution would be to enumerate *core local public good* activities in the Local Government Act 2002. Other significant activities might be undertaken provided that more than a simple majority of ratepayers approved them in a referendum.⁶ Whether this would require the removal of the power of general competence from section 10 of the Local Government Act 2002 is a moot point, but probably its removal would ensure local authorities focused clearly on their main objective or mission. Obviously the Act could provide definitions of “core” and possibly “public goods” to avoid any doubt as to intent.
 - (e) However, if none of the above options is considered acceptable, a final option would be to amend the proposed list under clause 11A to read:

“In performing its role a local authority must have particular regard to the efficient provision of local public goods and the administration of appropriate regulation at the local level”

⁶ This was essentially a key conclusion of the local government forum (LGF) publication: “Democracy and Performance – A Manifesto for Local Government” (LGF, February 2007)

3.10 While on the margins there will always be debate about what constitutes a public or a private good, a diagram from a Local Government Forum (LGF) publication, “Local Government and the Provision of Public Goods” (November 2008), provides a very useful overview of some of the key goods and services many local authorities are currently providing. The intention is to categorise the goods and services as either relatively pure public goods, or private goods, based on the fundamental tests of *rivalry in consumption* and *excludability of consumption* (private good) and *non-rivalry in consumption* and *non-excludability of consumption* (public good). This table would provide a good basis on which to enumerate a list of core public goods.

Figure 1: Characteristics of local government services – rivalry and excludability

		Rivalry in consumption →		
		Public goods		
Excludability of consumption ↓		Low	Medium	High
	Low	Street lighting, street and traffic signs, parks and reserves, civil defence, public health and safety (eg security cameras), and democratic, representative and regulatory functions	Low-use roads, footpaths and cycleways	Remedying marine pollution, biosecurity (pests and noxious plants) and graffiti removal from public facilities and areas
	Medium	Flood protection	Sports grounds, public conveniences and bus ways	High-use roads, tourism promotion, economic development
	High	Museums and galleries	Public libraries, swimming pools, indoor recreation facilities and public venues	Ports, airports, public transport, water and waste water, rubbish disposal, cemeteries, car parks, cinemas and housing
				Private goods

Source: Local Government Forum (LGF, November 2008), “Local Government and the Provision of Public Goods.

BusinessNZ **recommends** that:

Core local public goods activities be enumerated in the Local Government Act 2002. Other significant activities may be undertaken provided a referendum approves them by more than a simple ratepayer majority.

Clause 6 Principles relating to local authorities

- 3.11 This clause amends section 14(1), which sets out the principles by which a local authority is to act in performing its role. The new clause will require a local authority to satisfy itself that the expected returns from investment in equity securities or commercial activities are likely to outweigh the risks inherent in the investment.
- 3.12 While it has no problem with the intent of such a clause, BusinessNZ has a fundamental issue with the clause itself which it would like to raise.
- 3.13 Putting aside the ability of local authorities to foresee the risks inherent in particular investments - and the likelihood that they will see them - the more fundamental question which needs to be addressed is whether there is justification for local authorities to be involved in commercial activities at all.
- 3.14 As BusinessNZ noted earlier, the proper role for local government is the provision of local public goods and services that cannot be better provided by firms, households and non-profit organisations, plus the administration of appropriate regulations.
- 3.15 This suggests that local authorities have a strictly limited part to play, if any, in the pursuit of commercial activities and that there may, therefore, be no justification for such a clause.
- 3.16 Notwithstanding the above, given that the Bill does not restrict the power of general competence, clause (6), combined with clause 5, might at least provide some discipline on local authority activity. However, the effect is likely to be very much on the margins.

Clause 17 New Section 101A inserted

- 3.17 BusinessNZ is very supportive of this clause which introduces a **financial strategy** to the long-term plan (as renamed in the Bill) to help local authorities and their communities debate and resolve the key financial and service delivery trade-offs that local authorities must make.
- 3.18 A requirement for a **financial strategy**, including expenditure and funding targets, should help encourage local authorities to focus on the provision of core local public goods and therefore is to be welcomed.

Clause 22 Policy on development contributions or financial contributions

- 3.19 BusinessNZ has previously raised issues concerning development contributions so they are not repeated here. Suffice to say that there is a considerable concern with how development contributions operate.
- 3.20 While BusinessNZ is not opposed to development and financial contributions per se, it is important that the contributions and their specific purpose are clearly defined to ensure developers are not simply seen as deep pockets that allow local authorities to expand public amenities.
- 3.21 The Bill requires the policy on development contributions to be reviewed at least once every three years.
- 3.22 While the review requirement should impose greater accountability on local authorities when setting policy on development contributions, BusinessNZ would recommend that the Select Committee consider a very recent and substantial report commissioned by the Local Government Forum (LGF) and Property Council of NZ, *“Taxing Growth and Development – A Critical Review of the Role of Development and Financial Contributions”* (March 2010). The report looks at some of the concerns arising from the current approach to development and financial contributions.
- 3.23 The report’s main recommendations are, in brief:
“Prices rather than development and financial contributions should be charged for goods and services where they are feasible and appropriate.

There are grounds for imposing the cost of some genuine local public goods on landowners who benefit. The cost of supplying public goods, such as neighbourhood parks, reserves, outdoor recreation facilities and stormwater systems that exclusively or predominantly service or enhance a development and are located within a development, may appropriately be imposed on relevant households and businesses by requiring the developer to pay for, or provide, the facilities. There should be a close connection between the subdivision or development on the one hand, and the relevant infrastructure and facilities on the other.

Developers should have the right of appeal against the requirement to fund public goods, as is presently the case for financial contributions but not for development contributions.

Consideration should be given to making a value for money test criterion for establishing the reasonableness of council requirements and charges. If that approach is not adopted, the maximum level of development contributions should be capped, as is generally the case in Australia, and the principle of capping financial contributions should be retained.”

Business NZ **recommends** that:

The Select Committee consider a very recent and substantial report commissioned by the Local Government Forum (LGF) and Property Council of NZ, “Taxing Growth and Development – A Critical Review of the Role of Development and Financial Contributions”, (March 2010) which looks at some of the concerns arising from the current approach to development and financial contributions.

Clause 31 New section 136 substituted and Clause 32 Joint local government arrangements and joint arrangements with other entities

- 3.24 BusinessNZ notes and supports this clause which will effectively extend from 15 to 35 years the period for which a local government organisation can enter into a joint arrangement to provide water services.
- 3.25 The clause will likely provide local authorities with greater flexibility, ensuring that services are provided in a timely and efficient fashion. However, BusinessNZ would question why the time limit of 35 years?
- 3.26 It is noted that such a change will not affect local authorities’ prime responsibility to provide water services. Rather, throughout the joint arrangement, local government will no longer have to retain either control over the management of water services or the ownership of the associated infrastructure.
- 3.27 Notwithstanding BusinessNZ’s support of clauses 31 and 32 of the Bill, the rejection of more comprehensive reforms to allow for the private supply of infrastructure to councils, through schemes such as the private operation of council supplies by franchise arrangements and the divestment of council supplies to the private sector, is disappointing.
- 3.28 It is noted that local government organisations will continue to retain control over the pricing of water services.

- 3.29 BusinessNZ alluded to the problem of many local authority services continuing to be funded out of general rates rather than on a user-pays basis. Waste and water are still largely funded from general rates, limiting incentives to use optimal amounts given the absence of pricing signals. BusinessNZ would not want to limit the ability to move towards a greater use of user-pays where goods and services provided by local authorities are clearly of a private good nature (e.g. water and waste collection).

Business NZ **recommends** that:

No time limit be placed on the term of a PPP contract should be specified in statute with each situation to be assessed on a case by case basis (clause 32).

Clause 39 **New section 259A inserted**

- 3.30 Business NZ notes that a new section 259A is to be inserted to allow a **levy for performance measures** to be imposed on local authorities. The Minister must consult LGNZ on any such levy.
- 3.31 While BusinessNZ makes some points below specifically in respect to performance measures (clause 41), we have some concerns with how the levy is to be controlled. BusinessNZ does not oppose the levy per se, but wants to ensure the size of the levy is reasonable given that ultimately the cost will fall on ratepayers.
- 3.32 A significant issue cutting across all government services is what constitutes an appropriate charging regime where there is no contestability in service provision. In normal competitive markets, individuals will make trade-offs between price and quality of service, along with a host of other factors. The matter is significantly different when legislation provides that in order to go about daily living (or in this in order for local authorities to provide certain goods and services), specific government standards must be met.
- 3.33 The incentives on the Minister of local government and his advisors (namely public sector employees) to provide for a “gold-plated” service (regulatory burdens) may well be driven by a desire to protect their own employment prospects in a particular sector.
- 3.34 From a Ministerial perspective there might well be incentives to minimise the risk of political fall-out from poor local authority performance, hence a desire to overstate performance requirements (thereby imposing costs on local authorities to achieve same).

- 3.35 It should be noted that the above is in no way intended to be critical of the current New Zealand public service. What it *is* intended to do is show that there must be incentives on Ministers and employees in government departments with large regulatory burdens (and the ability to pass on the costs associated with those regulatory burdens to local authorities) to ensure the burdens remain reasonable.
- 3.36 If the Government is committed to introducing performance measures for the so-called wider public good, which BusinessNZ would tend to support, then there is an arguable case that the cost of such regulation should be borne out of general taxation. This would also likely ensure much greater scrutiny of the regulation itself, and the costs associated with it, to ensure these are reasonable and are subject to the normal fiscal and regulatory disciplines associated with public expenditure. Local authorities have already expressed widespread concern about alleged costs shifting from central to local government.

Business NZ **recommends** that:

The costs of a *levy for performance measures (clause 39)*, (which BusinessNZ supports) be borne out of general taxation rather than being a levy on local authorities (ultimately ratepayers).

Clause 41 New headings and sections 261A to 261G inserted

261A Secretary may make rules specifying performance measures

- 3.37 BusinessNZ notes that this clause will require the Secretary for Local Government to make rules specifying performance measures with which local authorities must comply in delivering certain key services. These services are:
- water supply:
 - sewerage and the treatment and disposal of sewage:
 - stormwater drainage:
 - flood protection and control works:
 - the provision of roads.
- 3.38 While BusinessNZ is generally supportive of performance measures, there are a number of issues which need to be clarified in relation to the measures proposed above.
- 3.39 First, and perhaps most obvious, what exactly will the performance measures cover, in relation to water supply for example - the consistent supply of water (pressure, quality of water) etc?

- 3.40 Second, and very importantly, how would, presumably, national performance standards relate to the demands of local communities and the quality/risk/price trade-offs individual communities might be prepared to make?
- 3.41 Often individual demands can change significantly once individuals are faced with the costs associated with different options (particularly if the costs are ultimately sheeted home to users).
- 3.42 Third, how will the proposed performance measures be enforced – moral persuasion – public naming and shaming – fine/penalties etc?
- 3.43 Arguably the best way to assess whether councils are performing to their expectation is for ratepayers to see what they are paying for each activity and assess for themselves whether or not they are getting value for money.
- 3.44 At present most ratepayers do not know how much they are paying for council activities. Too few councils provide this information either in their planning documents or in their rates assessments – although there are some exceptions.

BusinessNZ **recommends** that:

It be made clearer how *performance measures* will operate in practice.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESSNZ

BusinessNZ is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 76 affiliated trade and industry associations, BusinessNZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.

The Tourism Industry Association (TIA), a Member of BusinessNZ's Affiliated Industries Group (AIG) does not support BusinessNZ's position in respect to its recommendation that local government be required to focus on the provision of local public goods (core services) which ideally should be enumerated in the Local Government Act 2002. To this end, TIA has made its own submission on the Bill.