

# Managing for community well-being

The Taituarā Briefing to the Hon Nanaia Mahuta, Minister of Local Government  
November 2020





## Our Key Messages for You

Taituarā — Local Government Professionals Aotearoa welcomes you back to the local government portfolio. This briefing provides you with information about who we are and how we can help you implement your Government's agenda.

This is the first of two briefings we will provide for you. This briefing focuses on the 'big issues' facing the sector, where we stand, and how we in Taituarā can assist you to meet your and your Government's objectives. We will deliver a second briefing before Christmas that provides a list of recommendations for reform of the legislation that sits within your portfolio.

Our key messages for you are:

- 1. Central and local government are partners in promoting the well-being of New Zealanders. Restoring well-being to the statutory purpose was a good first step, but more needs to be done at the policy and practice levels.***

Governments, whether or central or local, are the means through which communities make collective decisions and act to promote community well-being. Finding solutions for a multi-faceted issue such as housing affordability requires the best thinking and resources from both.

The last Parliament recognised this reality by restoring the promotion of well-being to the statutory purpose of local government, and by inculcating well-being into the public finance framework.

But more can be done to infuse well-being into the way both spheres of government operate. First, both parties need to set a vision for local government and its role within New Zealand's governance arrangements. The upcoming Future of Local Government project is an opportunity for this to happen. Principles such as subsidiarity, community of interest, the presence of spill over effects, and location of capability and information should all play a role in determining who should take responsibility for what.

Such a conversation would support the wave of sectoral reforms in progress at the present time including three waters, RMA reform (both the fundamental reform and the plethora of reforms to related instruments), Building Act reform and the like. It may also have a payoff as the Government considers matters such reform of the health sector, potential reforms to electricity pricing and (not least) initiatives to reform the public service.

The recent report of the so-called Randerson inquiry offers another exciting opportunity for both central and local government to work together on a strategic plan for communities. The Auckland Plan could provide a template of a place to start – if appropriately linked to statutory planning (such as the long-term plan).

**2. *A relationship with Taituarā has a payoff in better quality policy advice, and the implementation of your Government’s legislative and regulatory changes.***

We are an independent, apolitical organisation of 887 members from all councils (including almost all the Chief Executives) that works proactively on the technical and practical aspects of legislative and regulatory change. Quality policy and legislation processes require active, genuine, and early engagement with those versed in the technical and practical issues involved in making legislation work. Taituarā and its network of members in New Zealand, and alliances with like organisations overseas, are your best source of this sort of advice.

We may not always tell you what you want to hear, but we will always tell you what you need to know to make your policies work most effectively.

**3. *The sector is open to exploring different options for delivering three waters services. Any reforms must take account of the role these services play in supporting community well-being as a whole.***

Every local authority has signed the Memorandum of Understanding agreeing to participate in the co-design of possible options for reform of three waters services.

Most recognised and supported the need for the reforms that led to the establishment of Taumata Arowai as future independent regulator for drinking water (and some related functions). They also recognise the costs involved in bringing small-medium schemes to the point where they comply with existing and planned future drinking water and environmental regulations.

The case for reform is primarily an economic one i.e. larger entities will be better able to bear these costs. Work done to support the reform process has established that a small number of larger entities is likely to generate economies of scale, though these findings need further exploration in the New Zealand context.

These entities are likely to have better balance sheet capacity (i.e. ability to borrow) and to implement some degree of network pricing (though the politics of this will be challenging).

At the same time though, three waters services meet a variety of objectives such as promoting a sustainable urban form and environmental sustainability objectives. The assets these entities manage are the result of many years of accumulated community investment. It will be important to ensure that local authorities are able to influence the direction that any new entities take – yet at this time it appears no significant policy work has been done.

**4. *Climate change is a major challenge to the strength and resilience of existing and future communities. Local government is at the forefront of assisting communities to transitioning to living in a disrupted climate and needs central government support to do so.***

While sea level rise has (arguably) captured the most public attention, rising temperature, more frequent extreme weather events, and changing rainfall will affect different areas to different extents and in different ways. The sector has strengthened its understanding of the effects of climate change on the community and on specific council activities. The upcoming 2021-31 long-term plans will see a greater level of information on these effects and the costs of action to mitigate or adapt to them.

As the impacts of climate change become more widely felt, communities will increasingly conclude that the cost of ‘defending’ assets is unsustainable. Managing retreat (withdrawing land from use) will increasingly become the policy response. There is no coherent policy framework that informs judgments as what to defend, how to adapt and where to retreat by space and time and, how to equitably fund the transition over decades. Taituarā supports the need for legislation in the area – and therefore welcomes the Randerson report’s recommendation that Parliament enact a Managed Retreat Act. We also support the Productivity Commission’s view that a Climate Change Adaptation Fund should be established.

**5. *Central and local government should take a partnership approach to the development of the nation’s stock of social housing.***

Effective housing outcomes are essential for the nation’s social, economic, environmental, and cultural well-being. Local authorities play roles in frontline delivery (the sector is New Zealand’s second largest landlord); a regulator and as a broker of solutions.

The demand for public housing is increasing – Kainga Ora tell us the number of people on the public housing register trebled between 2016 and 2019. With a growing number of elderly people, a failure to invest in social housing now will have significant negative consequences in future.

Much of the nation's stock of social housing was developed in partnership – with central government focussing on family housing and local government focussing on housing for the elderly. Yet the most recent round of housing reforms have largely ignored local government's role. This is one area where a joined-up approach will have a significant result.

**6. *The Government and the sector should co-design the improvements needed to local government funding and accountability.***

The Productivity Commission's report on local government funding and financing stated *"in some situations, the current system is either failing to provide councils with adequate revenues or is unlikely to be sufficient soon. These situations are:*

- *adapting to climate change*
- *passing of unfunded mandates from central to local government*
- *meeting the demand for infrastructure in high growth areas and*
- *coping with the growth in tourism."* (while written pre-COVID, there is still an opportunity to put facilities in place to meet future demand)

Progress has been made in some areas – most notably in the establishment of the legal framework for special purpose vehicles and in the 'one-off' funding released for three waters.

But the Commission's basic conclusions remain unchallenged. This is especially true of those around the funding for climate change adaptation, the costs of unfunded mandates and the regulatory and policy processes that create them, and on infrastructure in growth areas. Many of the Commission's recommendations for enhancements to the set of funding tools (such as value capture, road tolling) are persuasive, not least because they align well with other policy objectives.

There has been no substantive discussion between central and local government as to the next steps. While this was appropriate during the level four alert, the fact is there had been no discussion before the alert and there has been none since. The sector is expecting an outcome from this review.

**7. *Enhanced participation in local democracy will come from a combination of civics education, better engagement practice, better information about processes and candidates and the removal of barriers to participation.***

Turnout is one indicator of the health of civic society. Research suggests that lower turnout begets even lower turnout in future elections. Research into the drivers of turnout at elections point to some lack of civic awareness or to outright disengagement from local democracy.

A strategy to improve participation in elections needs to look more broadly at the drivers of disengagement and within the context of participation across the whole of the democratic process. Enhancing the local government elements of the civics curriculum will build public understanding of local government and why participation is important. The sector will need to invest in better promotion and better information about candidates.

And by no means least, the Local Electoral Act creates some unnecessary procedural blockages to registration and voting. We have been working with your officials to identify these and will present you with a set of proposals in our legislative briefing.

**8. *There is an opportunity for central and local government to work together to jointly develop the public sector workforce.***

The public sector and local government managers operate in different authorising environments, but to similar values and in a similar manner. Each deal with similar challenges with recruitment and retention of key skills and competencies, leadership not least. There are many other workforce issues where local government and central government would benefit from a joined-up approach such as open government and access to official information; Te Tiriti O Waitangi and working in partnership with Māori; well-being, health and safety; diversity and accessibility.

Taking a joined-up approach to workforce planning is in the interests of central government, local government and ultimately the people paying the bill. As Minister of Local Government, you could advocate the case for joining up of the workforce planning to your colleagues and (especially) to the State Services Commissioner.

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## What is Taituarā?

Taituarā is an incorporated society of 887<sup>1</sup> local government Chief Executives, senior managers, and other managers and staff.

You will not find us on the front page of any newspaper – we are not a political organisation. That is the role filled by Local Government New Zealand (LGNZ), with whom we collaborate on matters of mutual interest and benefit. Taituarā’s unique contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of the initiatives your Government is pursuing.

Our vision is:

*“Professional local government management, leading staff, and enabling communities to shape their future.”*

Our primary role is to help local authorities perform their roles and meet their responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities, from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important support activities such as running local elections and collecting rates.

### ***Taituarā works proactively on the technical and practical aspects of legislative and regulatory change.***

Taituarā represents your, and your Government colleagues, best source of independent advice on the managerial, technical, and practical implications of legislative and regulatory change. As a managerial organisation we are entirely apolitical – we concern ourselves solely with ‘what works’ and ‘how things could work’.

Our core expertise lies in the system legislation that sits within your local government portfolio – the Local Government Act 2002 (and 1974), the Local Government Rating Act 2002 and the Local Electoral Act 2001. We have recently broadened our capabilities into the other more functional legislation such as the Building Act 2004 and the Resource Management Act 1991.

To take a range of examples, from the past year:

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<sup>1</sup> Correct as at 30 September 2020.

- we are working with officials to advance the reforms of three waters to the point they have reached pre-election
- we worked with the Productivity Commission throughout its inquiry into local government funding and finance
- we have submitted to the Justice Select Committee on the technical, administrative, and practical issues that arose in the 2019 local elections. We made 17 substantive recommendations to the Committee and look forward to picking these up with you and your officials
- we helped your officials iron out the legislative kinks in early drafts of what became the Infrastructure Funding and Financing Act both before introduction and during the Parliamentary process
- we provided the Governance and Administration Select Committee with a substantive submission explaining how linkages between the central government and local government workforces could be strengthened
- we have submitted to a variety of regulatory legislation and reviews on matters as diverse as RMA reform, fire service funding and a review of the Building and Cremation Act and
- (not least) we interact with your officials daily on issues and concerns arising. The cross-Government collaboration to respond to Covid-19 was a result of the relationships established in this way.

### ***Taituarā is 'future proofing' the local government sector.***

Taituarā takes a futures perspective and identifies issues and trends that affect, or will affect, local communities in the future. We have identified five critical transitions to life in the 21<sup>st</sup> century that provide a basis our futures work.

The five transitions are:

- *the transition to low emissions living* – globally we need to halve our emissions of greenhouse gases by 2030 to have a chance of limiting global warming to 1.5 degrees Celsius. This will require rapid and far-reaching transitions in land, energy, industry, buildings, transport, and cities
- *the transition to living in a disrupted climate* – global temperatures are more than 1 degree warmer than pre-industrial age levels. Four of the five warmest years on record in New Zealand have occurred in the last six years. Aspects critical to this transition will include changing land use; updated building codes and standards; building community preparedness and resilience to climate-related events; more localised energy generation, water collection and food production; and different ways of working and learning that don't rely on physical proximity
- *the transition to a low waste society* – we need to change our mental models, systems and incentives so we can minimise waste creation in our production

and distribution processes, have high public awareness of waste choices and have clear responsibilities for end of use recovery and treatment

- *the transition to community interconnectedness* – community interconnectedness is both a generator of well-being and a key to making the other transitions. Yet trends such as growing mobility, rapid change, growing diversity and developments in media and technology that have the potential to connect or divide some groups
- *the transition to learning-empowered communities* – New Zealand will need to draw on a range of knowledge and experience to find solutions, councils will need to put a learning approach at the forefront of how they work with communities.

We attach the February 2020 report *Navigating Critical 21<sup>st</sup> Century Transitions* that launched this work.

### ***Taituarā champions good practice in the sector.***

We identify and champion good practice in the sector through our Managerial Excellence Awards. One of the seven categories, the award for Excellence in Council/Community Relations is sponsored by the Department of Internal Affairs and is titled the Minister of Local Government's Award.

### ***Taituarā helps develop the sector workforce, including the next generation of managerial leadership.***

One of Taituarā's 'traditional' roles is providing the sector with the technical training and professional development so that the sector can deliver its core business of promoting community wellbeing.

We assist local authorities to recruit, retain, and develop future managerial leaders and their staff through our Leadership Pathways, particularly through our Accelerated Leadership Programme. In conjunction with our colleagues in Australia we provide developing leaders with a unique professional development opportunity through the Australasian Management Challenge – a competition for council-based teams.<sup>2</sup>

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<sup>2</sup> New Zealand has a proud record in this competition. In recent years Western Bay of Plenty District Council, Hastings District Council and Bay of Plenty Regional Council have won the Australasian event, and Whakatane District and Dunedin City have finished in the top three at that same event.

***Taituarā provides cost-effective advice and other support to the sector.***

We provide the sector with cost-effective advice on the implementation of legislative and regulatory change. This promotes a consistent level of effective delivery of key democratic functions such as local elections, while saving the sector from reinventing the wheel or resorting to the consulting industry.

Much of this is showcased through our annual leading practice events and other training for managers and staff. We rarely get involved in providing professional development for elected members.

Our other major initiative in this area has been the establishment of our community well-being data service. The data service contains some 234 indicators spread across the four aspects of well-being and provides both the means to have a structured conversation with the community to define what well-being means locally, and to measure the community's progress. At the time of writing 40 local authorities are subscribed.

## **Central and Local Government: Partners in Well-being**

***The issues of the 21<sup>st</sup> century require a joining up of thinking and action between central and local government.***

Governments, whether central or local, do not exist for their own sake. Nor do Governments exist as a collection of services that operate on their own. Governments provide the collective means through which the community makes decisions and acts to promote community wellbeing.

Local government's role in contributing to community well-being has evolved over the years. Today, we can best summarise local government's main contribution to well-being as:

- a supporter and developer of strong, resilient communities
- an advocate on behalf of the community – for example, to central government for resources such as more police, to current and potential employers in the district and so on
- a provider of the network infrastructure that sustains life and supports economic growth and transformation; and of the community infrastructure that shapes our communities as places
- a manager of the nation's natural resources and
- a regulator of community safety and environmental sustainability.

The many and varied roles of local authorities mean that there is a considerable intersection and interdependence between central and local government. An issue such as affordable housing has many facets (social assistance, the provision of infrastructure, land supply, the availability of skilled labour and materials etc). Of these facets, local authorities can influence only the provision of infrastructure and land supply. Central government has more of a handle on the levers for social development and skilled labour, as well as having a role in infrastructure provision.

A successful and enduring relationship between central and local government would be grounded in a recognition of the interdependence between the two sectors, and the respective strengths. The proposed joint Department/LGNZ and Taituarā led Future of Local Government project provides a vehicle for such a conversation. As Minister of Local Government, you are uniquely positioned to champion a joining up of thinking both to central government and to the local government sector.

***Restoration of well-being to the purpose of local government and to central government's own processes were good first steps.***

Successful resolution of the challenges of the 21<sup>st</sup> century requires a shared commitment from both parties to join up the thinking and act as a collective. In the

final analysis, both central and local government are in the 'business' of promoting the well-being of the community.

The last Parliament recognised this fundamental truth by 'restoring' well-being to the statutory purpose of local government. That is to say that local government exists to promote the social, economic, environmental, and cultural well-being of local communities, in the present and for the future. Of course, there was an element of bowing to the inevitable in this decision – many local authorities might have stopped using the language of well-beings but never viewed themselves as a collection of services.

Central government has also inculcated well-being into its own processes. Aspects of each of the three budgets in the last term were presented using the language of well-being– even the last 'recovery' budget was about establishing a new normal for wellbeing.

The Government has woven well-being into the public finance framework by requiring the Treasury to establish and report against a set of well-being indicators. This echoes the work of Taituarā's community well-being service. The two initiatives complement each other. Our own well-being initiative is not only designed as a measuring tool but also as a device for local authorities and communities to have a conversation about what well-being means at local level.

In the last term of Parliament well-being re-entered the statute books. This term the focus should be to inculcate well-being into the way central and local government work together daily.

***There are multiple reforms affecting the sector under way at present. Taking a fresh look at the roles of central and local government would better align these important conversations.***

The sector is in the midst of a wave of reforms to the policy and legislative settings that underpin the way we deliver some of the functions that have historically been seen as the sector's "core business".

As Minister of Local Government, you are the Ministerial 'lead' for the reform of three waters services. Your colleague, the Minister for the Environment, will be considering whether and how to advance consideration of the recommendations of the Randerson report into reform of Resource Management. The environment portfolio is also driving fundamental change through the Essential Freshwater programme and work to review and extend the suite of National Policy Statements. Reforms to the Building Act are ongoing and have been described as "the most significant since the

Building Act was introduced”.<sup>3</sup> This is to say nothing of reforms to the public service, and their intent to establish a greater regional presence.

These reforms do not appear grounded in a clear consistent direction. For example, one of the drivers of three waters reform is to better support smaller communities comply with regulatory reforms by spreading the costs into larger communities. This explicit policy of cross-subsidisation appears somewhat at odds with reform in other utility industries (such as the transmission of electricity) that have more of a beneficiary pays focus.

Some appear to have contradictory intent. For example, the recent National Policy Statement on Urban Development has been touted as better enabling urban areas to “grow up and out”. Yet at the same time a National Policy Statement on Highly Productive Land encourages local authorities to treat land with versatile soils as a precious resource. With no real guidance as to how to reconcile the two, its little wonder the Randerson report noted local authorities and others struggle to find a way through the thicket of competing objectives,

We also detect some shift in the balance of decision-making from local to perhaps more of a regional (a better word might be provincial) level. The last Cabinet documents on three waters reform speak of a preference for multi-regional service providers. The Simpson review recommends decreasing the number of District Health Boards from 20 to between eight and twelve.

There is no clear coherent vision for local government and its role within New Zealand’s governance arrangements. The size and scale of the reform programme would benefit from a conversation between central and local government. Again, the Future of Local Government project would provide a vehicle for such a conversation.

This would provide an answer or (more likely) a range of answers to longstanding questions around the appropriate balance between central and local level decision-making and provide for some consistency in approach. Principles such as subsidiarity, community of interest, the presence of spill over effects, and location of capability and information should all play a role in determining who should take responsibility for what.

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<sup>3</sup> Ministry of Business Innovation and Employment (2019), Building System Reform Public Consultation, last retrieved from <https://www.mbie.govt.nz/have-your-say/building-system-legislative-reform-programme-public-consultation/> on 28 September 2020.

***The Randerson report provides a means for central and local government to engage in strategic planning for communities.***

Shortly before Parliament rose, the Government released the report of the Randerson inquiry into resource management. If implemented, the recommendations would deliver fundamental change to the way environmental and land-use planning is undertaken.

One of the key recommendations is to repeal the Resource Management Act in its entirety and replace it with two acts – a Natural and Built Environments Act and a Strategic Planning Act. The main feature of the latter is that all local authorities would be required to adopt what the report refers to as a regional spatial strategy.

As envisaged by Randerson, the Strategic Planning Act would require that these strategies set long-term objectives for urban growth and land use change, responding to climate change, and identifying areas that are inappropriate to develop.

While we welcome this as a step forward on what exists at present, we think even this is too focussed on one set of outcomes or issues. The provisions for the spatial plan for Auckland provide a more rounded basis for planning. For example, s79(3) of the Local Government (Auckland Council) Amendment Act 2009 requires that the plan

- (a) set a strategic direction for Auckland and its communities that integrates social, economic, environmental, and cultural objectives and*
- (b) outline a high-level development strategy that will achieve that direction and those objectives and*
- (c) enable coherent and co-ordinated decision making by the Auckland Council (as the spatial planning agency) and other parties to determine the future location and timing of critical infrastructure, services, and investment within Auckland in accordance with the strategy; and*
- (d) provide a basis for aligning the implementation plans, regulatory plans, and funding programmes of the Auckland Council.*

That is, such a plan provides the vehicle for local and central government, the private sector, the voluntary sector, and the wider community to engage in real community planning. By which we mean determining an overall direction for the community and what each party can do to bring it about. This is an exciting opportunity to empower communities with a greater say in service design and delivery at local level.

The plan would serve as the means for integrating all planning within the community – if appropriate attention is given to the legislative linkages between this and other planning. That is, the spatial plan would provide an overall direction for documents such as the present-day district plan, land transport planning and (of course) the LTP.

The spatial plan might then replace elements such as the community outcomes process, and the LTP becomes the device for marrying the spatial plan and more detailed service planning.

Some issues to consider are:

- *the scale* – Randerson saw these plans as coming together on a regional level. While we can appreciate the transactions costs in 78 plans, we also think catchment boundaries may not always be the most appropriate ‘cubbyhole’. The interests of South Canterbury are distinct from those of the Greater Christchurch conurbation
- *the lead agency* – previous attempts to mandate spatial planning have foundered in a morass of competing portfolio and departmental interests. And, bluntly, the Department of Internal Affairs does not have the credibility in central government or the sector. We suggest responsibility be given to Department of Prime Minister and Cabinet, or perhaps Treasury.

***Public service reforms are a step towards better joining up at official’s level.***

The Public Service Legislation Bill currently before Parliament, and the wider civil service reform process, are encouraging. The 21<sup>st</sup> century challenges require the public service to think and act as a single entity. The Bill established means by which groups of Chief Executives may be held accountable for a particular objective and creates the legal framework for joint vehicles to resolve issues. Both are sensible, and there is potential for the latter to be applied to central/local government relationships.

The other aspect of civil service reform that gave us cause for optimism was the establishment of regional leads in the public service. These roles support the joining up of central and local perspectives, allow for better communication and building of understanding of the different needs of local communities. The reforms are an important first step. In the long-term local communities will expect a greater level of say in the direction central government investment takes and in the design of local services. That will mean some devolution of decision-making to the regional leads.

***Stronger guidance for central government on engaging with the sector needs better implementation.***

Quality engagement is a vital part of the policy development process. Quality engagement:

- improves the understanding of the objectives underpinning a change
- provides the decision-maker with a better understanding of the practical issues and impediments to their proposals

In the last term of Parliament Taituarā and LGNZ worked with the Department of Internal Affairs and the Department of Prime Minister and Cabinet (DPMC) to develop a set of guidelines for departments when engaging with the sector. The Prime Minister introduced these guidelines at the 2019 Central/Local Government Forum noting that observance of the guidelines was an expectation not an exception.

One of the core elements of that guide is that officials should understand that relations between central and local government play out at two levels. The first is between Ministers, Parliament and with LGNZ as the organisation that represents councils as bodies corporate. The most formal manifestation of this relationship is the annual Central/Local Government Forum that sets the general direction for the relationship and focuses on the headline 'is the general intent of this policy a good idea'.

There is a second level to the relationship. This is between officials and focuses on how the headline policy can be made to work to best advantage.

From our standpoint, when central government engages successfully with the sector it usually has the following attributes:

- clear objectives for a proposal or a clear statement of the problem or issue at hand
- a clear statement of what the engagement is intended to achieve (for example stating that the objective is a technical input), and what elements are open to feedback and what might be a Ministerial bottom line
- engagement occurs early and throughout the policy and legislative development process
- the process allows sufficient time for dialogue between central and local government. All too often 'slippage' and outright poor project management mean engagement is squeezed, even your own Department has on occasion expected the sector to 'drop what it is doing' to engage
- recognition that 'how' a policy works and is implemented is critical to the success of a particular policy or piece of legislation. In the Appendix to this brief we set out eight principles of effective implementation. Techniques such as engaging on an exposure draft of legislation can be an effective means of identifying glitches (such as new provisions that don't interact well with existing provisions) and other issues that may not surface until a Bill is put into legislative language. This can help save scarce time in Select Committee and in the House
- the officials have sufficient subject knowledge both the specifics of the proposal and of the sector. For example, officials engaging with the sector should be aware of the local government budget cycle and the optimum timing for proposals to 'arrive on local authority desks'

- the process involves a sufficiently representative grouping within the sector. When time is short it is common for officials rely on one or more of Auckland Council, Wellington City Council, or Christchurch City Council as being representative of the sector as whole. These councils generally have the resource to devote to implementing a particular matter and often have staff who specialise in a particular area. Neither attribute is shared in smaller local authorities
- good information about the costs and benefits of the proposals for communities – including local authorities. Cost-benefit analysis tends to focus on the impact on businesses – not realising that a cost to a local authority is ultimately a cost on customers or residents (be they a business, household, or some other agent).

Often the nature of the engagement is dictated by the expectations of Ministers in terms of the timing of any engagement process, the time available for any engagement process, and the scope of the process. We can better help you meet your objectives if we:

- are involved in the process early
- have sufficient time for a full technical analysis of the legislation or policy (which can involve a line by line comparison of a Bill with existing law) and
- know what the Government's 'bottom lines are' i.e. what's 'off the table' and what can be changed.

## Water Services Reform

Water services reform is quite probably the single largest potential change to the sector since the council amalgamations of 1989. Every territorial authority has agreed to the so-called memorandum of understanding committing them to participating in a co-design of options for reform.

***The sector generally agrees that stronger regulatory oversight is required.***

The Inquiry into the Havelock North Contamination incident found that there was inadequate system oversight at policy and regulatory levels with multiple agencies having roles and responsibilities with no overall leadership.

Taituarā concurred with this finding and supported the decision to establish an independent regulator with broadly the range of functions that Cabinet have allocated to Taumata Arowai.

We have also been pleased to note that the Water Services Bill before Parliament gives Taumata Arowai statutory independence from Ministers when exercising its compliance, monitoring and enforcement powers. This was an omission from the original legislation in our view.

The sector generally acknowledges the importance of stronger regulatory oversight but is concerned about the cost of complying with these requirements and their affordability. The estimated cost of removing the 'all practicable steps' clauses of the Health Act and abolishing the secure groundwater classification system for supplies serving 25 or more people is estimated at \$560-830 million capital and \$11-21 million operating cost per annum. The cost for all other supplies is estimated at \$2.4 – 3.6 billion capital and some \$470-730 million operating per annum.

There are some 48 sewage treatment plants that discharge to the ocean. Upgrading these is expected to cost between \$1.0-1.5 billion capital, and \$73-110 million per annum in operating cost. Upgrading those plants discharging to freshwater is estimated at \$1.5-2.2 billion capital cost and \$45-73 million per annum operating cost.

***We remain concerned that the governance of Taumata Arowai lacks knowledge of the three waters industry.***

*"In terms of the qualifications of board members, I consider it beneficial that they have an understanding of the regulator's work - both in relation to water regulation, and in*

*governing a regulatory body more generally. It is also important that the board, and the organisation more broadly, includes people who understand Te Ao Maori.”<sup>4</sup>*

We consider the above paragraph is a succinct statement of the overall skill sets that the governing body should have. The minute of the Cabinet discussion on this proposal record that Cabinet agreed *“that members of the governance board would collectively have knowledge and experience that includes: the work of the regulator, including public health knowledge, and the broader environment in which the regulator operates”<sup>5</sup>* (emphasis supplied).

That, very wise, decision has not been carried through in the legislation. Nowhere is the Board required to have any knowledge or understanding of the operation of a drinking water supply or wastewater operation. Taumata Arowai needs an understanding at governance level of the impacts of the regulations it is proposing – practicability, capability, and cost implications not least.

A Board missing these skill sets will struggle for credibility. Bringing on the skill sets as a matter of course could be done by either requiring expertise in the provision and management of drinking water services, or by requiring appointment of at least one representative from the regulated community.

The Water Services Bill currently before Parliament provides an opportunity to amend the primary legislation to make knowledge or understanding of three waters services a mandatory skill set for the board. If not, then the appointment of at least one candidate with this knowledge is a ‘must’ when board appointments are made.

***The case for three waters reform is primarily an economic and public health case.***

The sector is concerned about the future costs of meeting regulatory standards, especially as there is now the power to regulate all supplies above a domestic self-supplier. The costs identified above will be felt most in small-medium sized schemes where there are much smaller numbers of residents or users to meet these costs.

We are aware that some in local government and in the community have expressed concern that the cost of water services will increase.<sup>6</sup> In fact, work undertaken by the

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<sup>4</sup> Minister of Local Government (2019), *Three Waters Reform: Institutional Arrangements for a Drinking Water Regulator*, page 10 (at para 55).

<sup>5</sup> Minister of Local Government (2019), page 3 (at para 11,1).

<sup>6</sup> For example, Far North District Councillor (and former MP) David Clendon claimed “Research has already shown people will be facing significant increases in their average customer water bills”. Quote from RNZ (2020), *Three Waters Reforms Will Mean Extra Costs for Consumers, Councillor Warns*, last retrieved from <https://www.rnz.co.nz/news/ldr/425066/three-waters-reform-will-mean-extra-costs-for-consumers-councillor-warns> on 7 September 2020.

Three Waters Steering Group strongly suggests that the combination of increased costs to meet regulatory standards and some degree of historic investment in the network, is likely to result in significant cost (especially for small-medium supplies).

One of the claims made about aggregation is that larger entities are better able to generate economies of scale. Modelling work undertaken by the Water Commission of Scotland (WCS) for the reform process provides evidence to support this, though these findings need further exploration in the New Zealand context. We have previously seen claims that economies of scale would be muted by New Zealand's relatively low population density (large numbers of small schemes). However modelling work undertaken by the Water Commission of Scotland (WCS) for the reform process suggests that there is strong evidence of scale economies.

A second, and related aspect, is a greater ability to harmonise charges for water services across consumers through network pricing. Water is charged on the basis that it is a common good with those in larger or more mature schemes meeting all or part of the cost of other schemes. Indeed, without some element of network pricing, meeting increasing drinking water and environmental standards will be unaffordable in many smaller communities.

However, any move to harmonise water charges is going to advantage some water users and disadvantage others. The present set of mechanisms for funding water are the results of consideration of decisions of 67 elected bodies and can be complicated to understand. For example, in Wellington, water is paid for by the general rate and includes a substantial differential for residential ratepayer. Harmonising charges would most probably see that disappear. It may be that complete harmonisation will require some transitional period and mechanisms to ensure the change is made in a staged fashion.

Larger entities are more likely to have a greater balance sheet capacity, and a therefore a greater ability to borrow. One of the fundamentals that the sector will have is that debt should follow assets i.e. if assets are being transferred to the new entities then debts incurred to construct those assets should likewise transfer. This is not a second-order issue - arriving at a solution where local authorities operate 'corporate' borrowing models will be particularly complex.

There is a tendency to treat the public health case and the economic case for reforms as two separate matters. In fact, they are intertwined – were there no need to enhance regulatory standards for public health reasons the economic case would be a great deal weaker. Indeed, the only real rationale without a public health case would probably centre in the acquisition of strategic capacity in any new entity.

Reforms are likely to founder if there is any suggestion that water users are being 'overcharged' for their service, or that the funds raised are not being spent 'appropriately'. Overseas jurisdictions rely on a framework of economic regulation to exercise some control over price, quality, and investment. Typically, this regulation is based on requirements to disclose key information about charges, costs, and investments (a good example are the disclosure regulations that apply to various parts of the energy sector in this country).

Currently New Zealand has no economic regulation of three waters services beyond general consumer law and the activity level disclosures required under the Local Government Act and associated regulations. As far as we are aware, economic regulation has not featured significantly in the policy development process to date.

We understand that officials consider that this is consequential on decisions around the shape of the industry – yet having the ability to benchmark performance (and therefore needing multiple providers) is an important design element.

Further, economic regulation is likely to play an important role in securing overall consumer confidence in any change proposals. The groundwork for an economic regulator needs to be laid now. It will be a critical element of the proposals that are taken to communities next year.

***Any reform package must ensure that the wider contribution three waters makes to community well-beings not lost.***

Access to three waters services is a vital consideration in meeting several objectives alongside public health. Along with road and transport infrastructure, access to three waters services are a vital element in providing for a sustainable urban form. They support development of local economies. Three waters are also vital for environmental sustainability.

These assets these entities manage are the result of many years of accumulated community investment.

Ensuring that local communities, through their local authorities, can influence the direction of these entities is therefore a fundamental design question. The latest Cabinet paper appears to rule out the possibility that these agencies would be council-controlled organisations, but at the same time expresses a preference for local authority ownership.

The three most significant means that local authorities have for influencing the direction of related entities are: the ability to influence the statement of intent; the ability to vote at an annual meeting of the entity; and the ability to appoint and

remove directors. It is currently unclear to us how the Government intends these would operate within these new entities (if they would operate at all) – especially as the latest Cabinet paper appears to hold out the option of the Crown taking an ownership interest.

## Climate Change

***Climate change is a major challenge to the strength and resilience of future communities.***

Few serious scientists now doubt the existence of climate change, and there is also general agreement that is largely anthropogenic in nature.

Climate change and its impacts are one of the largest challenges to the strength and resilience of our future communities. While sea level rise has (arguably) captured the most public attention the impacts of climate change go well beyond this aspect. Other anticipated effects such as rising temperature, more frequent extreme winds, and changing rainfall will affect different areas to different extents and in different ways.

The impacts of climate change will put more pressure on local government infrastructure, particularly on the three waters. Much of this infrastructure was not designed to cope with the greater frequency and intensity of flooding events caused by climate change. LGNZ estimates that a 1m rise in sea levels will expose about \$5.1 billion of council infrastructure.

But the impacts of climate change cannot be measured solely in physical infrastructure. Changing weather patterns are likely to be felt by some primary industries – for example by changing which land is suitable for use some forms of agriculture. Patterns of economic activity will change. Some land around the coast or on flood plains may need to be withdrawn from use.

As a sector, local government has taken considerable steps to gain a better understanding of the likely impacts of climate change, and the effects on the community and on specific council activities. You are likely to see this information woven into the 30-year infrastructure strategies and the financial strategies in the upcoming 2021-31 long-term plans – especially as related to resilience.<sup>7</sup>

***Declaring climate change emergencies were intended as an internal and external spur to action.***

In the last 18 months, 17 councils have declared climate change emergencies and several others have publicly stated that there is a need for urgent action. In some local authorities the declaration was intended to provide a signal to the community that the council had recognised and/or shared community concerns.

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<sup>7</sup> Taituarā guidance has emphasised that plans should contain an evidence-based assessment of the impacts of climate change and have started a conversation with the community about the wider impacts on council activities and the wider community.

But almost without exception, the councils concerned also wanted to expedite mitigation action both internally and externally. While central government generally has access to a wider range of policy levers to influence climate change mitigation, there are policy and investment options available to local authorities to assist mitigation. These range from regulatory interventions such as land use regulation (e.g. putting information onto Land Information Memoranda) to investment decisions such as the construction of walkways and cycleways.

Parliament focussed on getting the legislative and institutional architecture in place to best support a response. This has now been achieved with:

- the passage of the Zero Carbon Bill (putting targets in legislation and establishing the Independent Climate Change Commission) and
- changes to the Emissions Trading Scheme (which, among other things, finally introduced a cap to the cap and trade scheme).

The Climate Change Commission is now at work on the first emissions budget. We commend them for the steps they have taken to engage with the sector to date. Much can be done alongside this work. For example, the National Adaptation Plan can proceed, policy settings for retreat will be needed, building regulations can be future-proofed and the science can be always be improved.

***Local government must adapt to, and support others to adapt to, the impact of climate change.***

We know that some degree of climate change is already 'locked in' regardless of the future path. Local government must therefore ready communities for the effects of climate change. There are opportunities for local government to help with:

- building community understanding and preparedness
- developing practical processes and tools to help New Zealand's adaptation and
- building strong resistance against adverse impacts.

***Legislative and policy support for managed retreat is an essential support for adaptation to climate change.***

As the impacts of climate change become more widely felt, communities will increasingly conclude that the cost of 'defending' assets is unsustainable, especially when engineering solutions are ineffective. Communities will increasingly come to decisions that the use of land in response to the environmental risk or threat (in this case from climate change), or to remove the land from use entirely.

This *managed retreat* conversation can be a challenging one to have with a community because of its potential impact on property rights and people's connection to land use. People will have strong opinions, particularly when their investment is involved and when there is a degree of uncertainty in our knowledge of future risks.

Yet managed retreat raises a host of policy, legal, technical, and practical matters, not least the issue of compensation. Those managed retreat options implemented to date have invariably involved buying the owners out with little or no compulsion (e.g. the residential red zone areas impacted by Canterbury earthquakes, the retreat from Matata etc).

There is no coherent policy framework that places managed retreat in its proper context as an adaptation option. Taituarā supports the need for legislation in the area – and therefore welcomes the recent report from the Randerson Commission on RMA reform that Parliament enact a Managed Retreat Act.

We also support the Productivity Commission's 2019 recommendation that a Climate Change Adaptation Fund should be established. We do not support all the Commission's detailed proposal. For example, we consider the fund could be administered by the Climate Change Commission, and we suspect that \$100 million per year for 20 years is unlikely to be much more than a small fraction of the true cost (even on a matching funds basis).

## Housing

While this Briefing focuses on the issues you are likely to encounter in the local government portfolio, Taituarā notes that you have been reappointed as an Associate Minister (Māori Housing). We therefore include a short discussion of the areas of intersection between the two portfolios.

### ***Housing outcomes are central to the achievement of a high level of community wellbeing.***

The Government's Housing agencies will have provided you with briefings emphasising the centrality of good housing outcomes in achieving individual and community well-being. An inability to access affordable, healthy homes has a flow on effect to well-being – including but not limited to:

- social – homelessness, health issues, poor educational and labour market outcomes
- environmental – environmentally less friendly transport choice, building over highly productive land/versatile soils, unsustainable urban form
- economic – high house prices hinder labour mobility, create issues with ease of access to transport networks, skew investment and can have wider macroeconomic impacts.

There is a significant intergenerational element to housing policy. Declining rates of home ownership today have long-term social policy implications. It is estimated that by 2036 there will be some 1.2 million New Zealanders aged 65 or older, falling home ownership means a substantial increase in elderly in poverty and/or requiring access to income support (such as the Accommodation Supplement).

In our submission on last year's Kainga Ora-Homes and Communities Bill we observed that

*"We particularly support the notion that Kāinga Ora is not just about building homes, but is about building communities – a lesson well learned from some of the less successful approaches to housing policy from overseas."*<sup>8</sup>

Housing cannot be divorced from the wider place in which it is situated. Successful housing policy recognises housing is part of the network of community infrastructure to support place-making.

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<sup>8</sup> Taituarā (2019), Submission of the Society of Local Government Managers in the matter of the Kainga Ora – Homes and Communities Bill, p2

### ***The local government sector is a key partner in delivering housing outcomes.***

The local government sector plays multiple roles to support housing policy objectives and deliver housing outcomes. The sector is the second largest landlord in New Zealand – with approximately 12,850 (mostly) social houses (in local authority ownership as of the time of writing).<sup>9</sup> The sector provides the infrastructure necessary to support the provision of housing including roads, three waters and community infrastructure (such as neighbourhood parks). The sector has a regulatory role through the district planning and building inspection functions.

And, by no means, least – there is a role as a broker, that is bringing parties together to find joined-up solutions. You have recently been involved with one such partnership agreement between Hutt City Council, Te Rūnanganui o Te Atiawa, and Kahungunu Whānau Services. The partners have committed to a joint strategy and action plan for developing safe affordable housing for mana whenua in Hutt City and committed to developing policies, practices, and systems to ensure successful social housing outcomes.

During 2019 you sought Cabinet approval to *“explore whether there is scope to expand the role of councils in providing, facilitating or informing the design and targeting of public good housing services”*.<sup>10</sup> We are uncertain if this particular aspect of the so-called Local Governance and Community Well-being project was ever started, and suspect this may have been set aside in the lead up to during the level four COVID-19 alert.

The linkages between housing and community well-being are such that there would be considerable sector interest in pursuing this project and considering how both spheres of government might work together to improve housing outcomes. Taituarā would participate in such a conversation.

### ***A partnership approach to investment in social housing is essential.***

*“We believe that councils are perfectly positioned to provide really good, affordable public housing in their communities, that's why we will work with councils and provide finance for them to do that. Central government would provide funding at the cheapest possible rate that only it could access. In return, councils would need to commit to building units that they would not on sell.”*

Hon Phil Twyford, then Opposition Spokesperson on Housing, August 2017

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<sup>9</sup> We are advised that more than 90 percent of the residents of these houses are superannuitants.

<sup>10</sup> Minister of Local Government (2019), *Working with Local Government on Community Well-being– Paper to the Cabinet Social Well-being Committee*, page 10.

For almost 60 years (covering the period 1936 – 1991 (approximately)) central and local government operated as partners to meet New Zealand’s differing social housing needs. Central government prioritised the needs of families and councils largely targeted the needs older citizens (leading to the development of the so-called ‘pensioner housing’).

By any measure, the overall demand for public housing is increasing. Figures from the latest Statement of Intent for Kainga Ora suggests the number of people applying for public housing (i.e. on the register) trebled between September 2016 and 2019.<sup>11</sup> Looking at the Statement of Intent as a whole, Kainga Ora’s main focus appears to be very much aligned with central government’s ‘historic’ role in social housing for low income families. We see little specific focus for the elderly.

The present housing portfolio was progressively developed in partnership over a longer-term period. Yet local government’s role in housing has largely been ignored in the most recent set of housing reforms. While low interest loans may not be a preferred mechanism in today’s environment central and local government should consider how the full range of social housing needs can be adequately catered for.

***Policy around income related rentals undermines local government involvement in public housing.***

Local authorities that are involved in or have considered involving themselves in the supply of public housing cite government policy around the Income Related Rental Subsidy (IRRS) as a potential barrier to involvement. In short, IRRS is automatic for clients of Kainga Ora, and for other providers of social housing but not for those clients whose provider is a local authority.

This, somewhat unusual, stance has been cited as a factor in some decisions to withdraw from social housing or transferring their asset to a community trust or other agency. The housing shortfall is such that government should be looking to all options for delivery and not maintaining policies that favour some providers over others.

***The law on joint and several liability needs reconsideration.***

No discussion of local government’s role in housing provision would be complete without a discussion of liability matters. All 67 territorial authorities act as Building Consent Authorities with the resultant roles as building inspectors. It has long been established law that if building work is faulty, local authorities can be among the parties held jointly and severally liable for any loss or damage.

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<sup>11</sup> Kainga Ora (2020). Tauāki Wkakaumaunga Atu – Our Statement of Intent 2020 – 2023, page 14.

The issue with joint and several liability is that many of the firms and other agencies are transitory. They can be (and are) wound up, and without the ability to pierce the corporate veil, those responsible can avoid liability, often altogether. This leaves local government in the position of being the 'last one standing' and liable for the entire debt.

This has effects both on the cost of insurance and the sector's ability to get public liability insurance. It also manifests in a greater degree of risk aversion in the inspection process as well as the cost.

The sector seeks to instal some equity for the homeowner and the ratepaying public. Proportionate liability needs to be put back on the table. This is a matter with cross-portfolio implications. As Minister of Local Government, you could raise this with the circle of Ministers with interests in the Building and Construction portfolio.

***A skilled sizeable building inspectorate supports housing supply.***

Local authority functions as BCAs require a pool of building inspectors who are knowledgeable in building methods and products as well as the building legislation and regulations. The best building inspectors are generally able to call on significant experience within the building sector itself. There is a shortage of skilled building inspectors, and therefore considerable competition for those within the sector. As Minister of Local Government, you could work with Building Ministers and the Minister of Education to develop the pipeline of people skilled in the building trades – ensuring the inspectorates of tomorrow.

## Costs and Funding

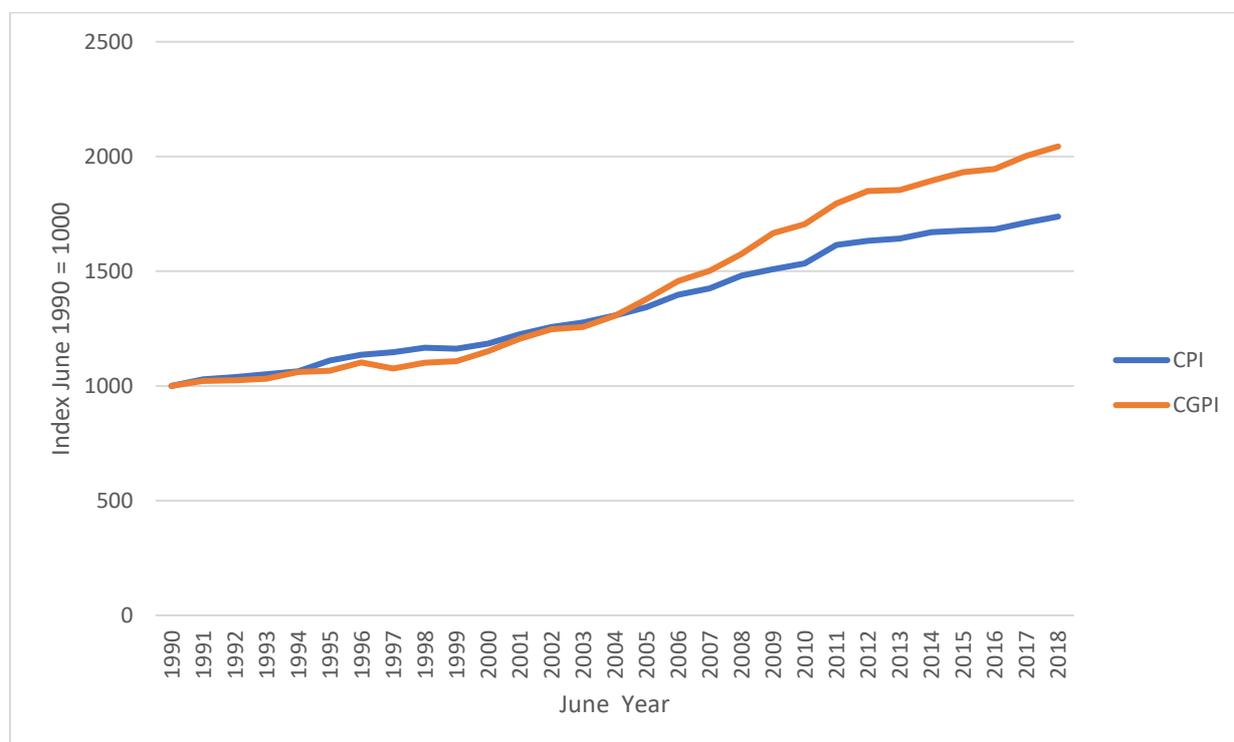
Your Government will be asked to make some decisions around the Government response to the 2019 Productivity Commission’s Inquiry into Local Government Funding and Financing. In this section we provide some context on these matters and a recommended way forward.

This is one of Taituarā’s core areas of expertise. We attach our 2019 submission to the Commission’s scoping paper both as a more detailed analysis of the funding pressures the sector is facing and a more detailed case for change.

### ***The costs of infrastructure have increased at a faster rate than inflation.***

One of the key findings from the Commission’s report on this inquiry, and its inquiry Using Land for Housing, is that the costs of infrastructure provision have increased at a faster rate than the Consumer’s Price Index (CPI). To illustrate the chart below shows movements in the Consumers Price Index (CPI) and the Capital Goods Price Index – Civil Construction (CGPI).<sup>12</sup>

### **CPI vs CGPI – Civil Construction 1990 - 2018**



<sup>12</sup> Both series are produced by Statistics New Zealand i.e. independently of TAITUARĀ and the local government sector.

Except for a 'blip' around 2012 the CGPI Civil Construction has been increasing at a faster rate than the CPI since around 2003. In some years, 2005 and 2009 particularly, the rate of increase in the CGPI was more than double the rate of increase in the CPI.

***The Commission's conclusions about other cost drivers should give policymakers pause for thought.***

The Commission's basic conclusion was that *"in some situations the current system is either failing to provide councils with adequate revenues or is unlikely to be sufficient in the near future. These situations are:*

- *adapting to climate change*
- *passing of unfunded mandates from central to local government*
- *meeting the demand for infrastructure in high growth areas and*
- *coping with the growth in tourism."*<sup>13</sup> (While written before the Covid-19 pandemic there is an opportunity to put tourism infrastructure in place ahead of the return of international tourists).

The passage of the Urban Development Act and the Infrastructure Funding and Financing Act each go some way to addressing the funding of growth needs. Of course, both were in progress well before the Commission even began work. The processes for establishing these and the economics of these arrangements are such that there are not likely to be many developments come to fruition.

Of course, the other area where there has been progress has been with the funding allocated to accelerate investment in three waters. This has enabled the sector to bring forward investments in renewals and upgrades to meet drinking water standards. To the extent that the latter occurs then it can be said to be a response to an unfunded mandate.

On the other hand, there have been no developments of any note on the recommendations in support of a climate change adaptation fund. The costs of climate change adaptation will probably be the biggest single expenditure item, within the life of next infrastructure strategies. The Randerson Inquiry into the resource management system has now added its voice in support of such a fund.

And we can report no real progress either on filling the gaps with unfunded mandates, or on any steps to improve the processes that create them. Matters such as the cost of meeting the requirements of the essential freshwater package have been left to sit.

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<sup>13</sup> Productivity Commission (2019), *Local Government Funding and Financing*, page 6

***The Crown and its statutory creations are increasingly being given access to the rating system.***

Central government, its agencies and statutory creations are increasingly looking to the rating system as the means for funding activities central government provides or acts as sponsor for.

In the last year there have been two pieces of legislation that have provided third parties with access to the rating system. The Urban Development Act provided Kainga Ora with the power to build infrastructure within a defined project area and recover that through a levy administered through the rating system. The Infrastructure Funding and Financing Act provides the legal framework for special purpose vehicles to do likewise.

There are two further reviews that will have the same result. Earlier in the year the outgoing Minister of Internal Affairs consulted on a proposal to change the system for funding Fire and Emergency New Zealand from the present levy on insurance policies to a levy on property. And last, but not least, the latest Cabinet paper on three waters reform Investing in Water Entities contains the following:

*"... I anticipate consumers would continue to be charged on a similar basis to their existing arrangements, at least in the initial years of the entities' operations. Volumetric charging is something that could be considered in future, but only when it makes sense to do so. I note that Scottish Water still raises its charges via local council rates notices."*<sup>14</sup>

It is entirely possible that a ratepayer might find themselves paying up to three new levies through the rating system – though one is in some part a replacement for rates. Human nature being what it is, the focus will be on the 'bottom line' of the rates assessments and invoices (i.e. the total amount of all the 'rates'). These have all come as the Government has yet to make a formal response to the Productivity Commission's findings.

And as an aside, no central government agency has taken responsibility for identifying the cumulative effects of these initiatives on the ratepayer and on the sector.

***Enhancements to the set of funding tools should not be dismissed 'out of hand'.***

Taituarā also agrees with the findings that, in some instances, local authorities could make better use of existing tools. Though this finding also predated COVID-19, there are many small-medium sized councils where there is the opportunity make better

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<sup>14</sup> Minister of Local Government (2020), *Investing in Water Infrastructure to Accelerate Reform and Support Economic Recovery post Covid-19*, page 15.

use of the council's balance sheet. More than a few also take a risk-averse approach to the use of development contributions. Others could consider rating in such a way as to better approximate benefits – though these recommendations don't increase the amount of funding available – but reappropriation it.

This report, and others like it from the Commission, has pointed to refinements such as value capture, congestion charging, volumetric charging for wastewater as tools to assist with the funding of infrastructure.

Effective management of infrastructure usually involves an element of managing user demand for the service, either to make optimum use of an existing asset, or to manage the use of scarce resource. Local authorities can and do use a variety of non-pricing strategies – for example rationing or other physical limits on use (such as prohibiting sprinkler use during dry periods).

Legislation constrains local authority access to pricing mechanisms. We are unconvinced that there is any sound policy rationale:

- for continuing to restrict local authorities' use of road-tolling
- explaining why options such as cordon tolling, electronic pricing and the like have sat in the "under further consideration" basket since the late 1990s and
- explaining why a local authority can meter water consumption but cannot do the same with wastewater (either by using water consumption as a proxy or by utilising new technology to directly meter wastewater) unless they change ownership or governance arrangements.

The current Minister for Transport describes 24/7 road pricing as '*the silver bullet*'. It promotes the kind of joining up of transport, land use and urban form outcomes that have cross-portfolio impact. Policy work in this area has gone round in circles for a generation (the first road pricing study took place in 1995 and 1996).

Likewise, the three waters reform will only accelerate calls to address gaps in powers to volumetrically charge for water and wastewater. Again, there is more than enough evidence both from NZ and overseas of the benefits to the environment and to infrastructure management.

***In its present form the long-term plan is no longer fit for purpose.***

We have long-considered the LTP to be too detailed to serve as a basis for accountability, and in need of a ground-up review. If the Government pursues spatial planning in the form outlined above, it should align its consideration of the future of the LTP and the introduction of strategic planning as a single piece of work.

There is a distinction to be drawn between long-term planning and the LTP. The former is a process and bluntly the disciplines involved are fundamental. The latter the plan, is the output of the process. The legislation muddles the two somewhat – disclosure in the plan has become the means for ensuring the planning process is ‘right’.

We will provide a more detailed set of recommendations for changes to the LTP regime as part of our legislative brief. For now, here are some of the things we would focus on:

- disclosure in a long-term plan should not be a backdoor method of getting local authorities to undertake asset management planning – detailed lists of capital programmes may be interest to some parties but for most readers just add extra detail
- the mandatory performance measures have not achieved their intended purpose, most are vague, some incentivise activity for its own sake, and they do not provide a rounded picture of local government performance
- having to produce two sets of financial information under slightly different rules adds to the length of an LTP and carries a risk of confusing the reader
- the financial prudence measures serve no purpose as a strategic control, and are too technical for most readers
- not all the required policies and information sets are strategic in nature, again disclosure in an LTP seems to be a back door means of ensuring local authorities do the work
- the role of audit needs further consideration, especially if the government pursues a spatial planning model. Audit is a means for ensuring that local authorities approach their financial and service planning with appropriate rigour and discipline. Auditors would be first to tell you they are not equipped to debate the merits of the communications elements of a plan.

## Local Electoral Reform

Research into elections at various levels of government suggests that voting is habit-forming, especially for younger voters. Lower turnout in an election begets even lower turnout in future elections. Turnout has been no more than steady in the last three local elections, hovering between 41 and 42 percent.<sup>15</sup> This represents a significant decline from 65 percent in 1989 (the first elections after amalgamation) and even the 49 percent turnout experienced in 2010.<sup>16</sup>

Turnout in elections is only one indicator of the health of civic society.<sup>17</sup> An engaged citizen knows when and how they can get involved (e.g. making submissions on a plan, attending council meetings or other 'meet the public' events, stays informed about civic affairs etc. For example, an engaged citizen can name the Mayor of the community. That is to say, the health of civic society is about access to the process and participation in the process in its entirety, not just the rate of participation in a single aspect of the democratic process.

### ***Potential changes to health sector governance could impact local elections.***

The Government is considering its response to the Simpson review of the health sector. One of central recommendations is that in future all district health board (DHB) members be appointed by central government i.e. election of DHB members would stop. We question how much governance is done at local level in DHBs – central government generally owns the assets, supplies most of the cash and, even under current arrangements, appoints up to four members.

We observe that the cessation of DHB elections may simplify voting in many local authorities. It will remove multiple voting systems from many, but not all, elections. It will also remove one 'issue' from the ballot paper.

There is, however, a substantial element of fixed cost in local elections such as information systems etc. DHBs currently share some of these costs – some increase in election costs for local authorities, licensing trusts, and those other bodies that elect through the local electoral process.

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<sup>15</sup> Source, Department of Internal Affairs. Note that this is total turnout, that is to say the total number of people in New Zealand who cast a vote divided by the total number of people enrolled to vote. The official turnout figure for the 2019 local elections was 41.7 percent, down from 42.0 percent in 2016.

<sup>16</sup> Turnout in central government elections has also decreased from levels experienced in the 1980s. At the 2017 election turnout was 79.8 percent, as compared with 91 percent in 1981 and 94 percent in 1984.

<sup>17</sup> To take an example, Matamata-Piako District Council experienced a 27.8 percent increase in turnout between 2016 and 2019. The 2016 Mayoral election in that council was uncontested – which probably depressed turnout.

### ***Better public education and engagement are required to build salience.***

Research undertaken after the 2013 local elections showed that one in five members of the non-voting public considered that voting in a local election would make no difference to them. This finding was largely replicated in 2018 research undertaken specifically in Auckland where one in six non-voters in the 2016 elections gave a similar answer. The Auckland research also indicated that 13 percent of non-voters did not know what their council did or was responsible for. And almost one in three indicated “they could not be bothered” (or similar sentiments).

These findings suggest local government and local elections struggle for salience with some voters. This is likely the result of the interplay of several factors – lack of awareness of many of the services local government provides<sup>18</sup>; lower visibility of elected representatives in many areas; some lack of representativeness in those elected to office and the like.

There appears to be some need for better voter education. Civics is not taught as a specific subject in the New Zealand curriculum, and is woven into the curricula for several subjects (most notably social studies). Local government related topics are not a mandatory element of what civics there is in the curriculum.

While improving, the take-up of the few programmes specific to local government is far from ideal. In 2019, the number of schools participating in the so-called Kids Voting programme was well below the 700 schools registered for the general election equivalent (at the time of writing). New Zealand equivalents of experiential learning programmes such as those offered in Scandinavian and American jurisdictions are almost unknown.

As Minister of Local Government, you could play a role as a champion of a stronger mandatory local government element to the civics curriculum, and for a greater local government component to those programmes that do exist. Recent changes placed the responsibility for facilitating representative and substantial participation in local elections on local authority chief executives. You might legitimately communicate such an expectation.

We generally consider that local authorities, and the sector in general, could do more to promote their own elections and improve the quantity and quality of information available to the public. However, better promotion is far from a panacea.

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<sup>18</sup> New Zealand local government tends to provide far fewer people-related services (such as health or aged care) than is the case in many jurisdictions.

***The sector and candidates could do more to inform voters.***

Another reason commonly given for not voting is that the electors 'don't know anything about the candidates' or 'what they stand for'. This also manifests itself occasionally as electors 'not knowing anything about the issues'.

There are two statutory means for electors to gather information. Candidates have the option of supplying a profile statement of up to 150 words providing electors with information about themselves and their policies and intentions. Councils are required to produce a pre-election report, providing a unified set of information on past and prospective future financial information.

The effectiveness of both means is a matter of debate. Most candidates supply a profile statement, but most tend not to comment on policies or are very general. Councils tend to produce reports that meet the legal requirements and go no further.

Taituarā and the sector in general are considering how we might improve the information available to electors. For example, this includes a centralised repository for candidates to disclose a wider set of information about themselves and their policies. This might also include promotional campaigns. This will require investment on the part of the sector. As Minister of Local Government, you could encourage individual local authorities to support the necessary investment.

***Enhancements to registration and voting processes would remove some unnecessary procedural blockages.***

The Local Electoral Act (LEA) is not fundamentally broken. However, the LEA predates developments in technology and reforms to the Electoral Act and changes in the conduct of Parliamentary elections.

We will provide you with more detailed recommendations in the legislative briefing to follow. We see considerable potential in changes to the Act and regulations that would clarify and support holding local elections using a combination of both postal and booth voting. Likewise, something as simple as being able to issue an elector with a replacement ordinary vote would make advance voting a great deal more accessible.

There is more that could be done to improve the accessibility of the electoral process. Some matters, such as the design of voting papers and information on websites is a practice matter. Legislation is needed for other things – for example aligning how people overseas can return votes in both the Electoral and Local

Electoral Act. Technology could make it easier for candidates and voters in remote areas alike.

Some of the opportunities to modernise the Act could include moving polling day, changing the process for enrolling as a ratepayer elector, casting special votes, access to supplementary rolls and the unpublished roll.

One potential avenue that we are not advancing *at this time* is the development of a system for online voting. We accept (reluctantly) the advice of the security agencies that New Zealand does not have the necessary infrastructure in place to conduct an online election securely. We also consider public confidence in governance online will have been undermined by the failure of the online aspects to the 2018 Census.

***The laws governing elected member conduct are no longer fit for purpose.***

Taituarā's members are responsible for the operation of the governance process day to day including providing advice to individual members and the council as a whole of their governance responsibilities. Our professional view is that the legislation is outdated, difficult to apply in any rational way and reflect a policy view that needs to be revisited.

The rules governing elected member conduct are spread over several statutes. This includes the Local Government Act 2002, the Local Government Members' Interests Act 1968 (LAMIA), and various criminal statutes such as the Secret Commissions Act 1908. Generally speaking we'd prefer that related provisions should be located together on the statute books.

LAMIA governs situations where an elected members' personal interests and governance role come into conflict. We support the policy intent. LAMIA in its current form is complex, outdated, and difficult to interpret and apply. It predates accrual accounting, the modern financial management provisions, and the introduction of mandatory competitive tendering for NZTA roadwork and its acceptance elsewhere. Core concepts, such as pecuniary interest are not defined. It's also silent on the notion of a register of interests.

Local democracy is founded on a free and frank expression of different points of view. Robust, but respectful, debate allows for challenge of the status quo, brings different perspectives into consideration, and generally enhances the sense that council is representative of its community.

The Local Government Act requires to set a code of conduct that sets out the council's expectations as to how elected members behave in the course of their duties. A large element of codes of conduct are provisions that set expectations for

the way elected members interact with other elected members, with staff and with the public. Enforcement of these provisions of codes is left to councils – including the investigation and resolution of any complaint. There is no statutory sanction for a breach (other than those that are criminal offences) leaving councils to apply sanctions such as removal from a committee etc.

These provisions were grounded in the view the then Minister had that elected members accountability was to the community through the ballot box. Having advised councils on codes of conduct and observed their operation for almost 20 years we find that codes lack genuine enforcement 'teeth' that can either themselves be seen as politically motivated or on occasion trivial or derisory (the literal 'wet bus ticket').

Collegiality and respect are critical to the successful operation of councils. Processes for enforcing codes do not often provide a vehicle for rebuilding trust and a sense of teamwork among elected members, or for supporting a culture of free, frank, and fearless advice amongst staff.

Sadly, factors such as the growth of social media, and generally adversarial portrayal that media take to reporting political debate has seen instances of poor behaviour increasing in severity and frequency.

We submit that the law governing elected member conduct needs a first principle review. That review should consider:

- identifying a set of values and expectations that make up good governance behaviour and the balance between identifying these in statute and what can be left to councils to determine
- the appropriate balance between education, moral suasion, and enforcement as tools for supporting these values and expectations
- how enforcement might operate – for example, gradations of enforcement action and the role of penalties, roles etc
- the role that an outside agency might play in encouraging and (where necessary) enforcing appropriate governance behaviours.

There are a range of different options that could be applied ranging from adding to the set of governance principles in the Local Government Act, through to providing for an independent body to investigate and resolve breaches of the code. A first principles review needs to establish whether a case for intervention exists and then proceed to looking at options.

## Workforce

***There are opportunities for central and local government to work together to jointly develop the public sector workforce.***

While the public sector and local government managers and staff have different authorising environments, they are expected to operate to similar values and in a similar manner. Both exist to provide their respect decision-makers with free and frank advice and to implement policy decisions.

The public does not necessarily draw a distinction between central and local government, especially when it comes to the respective workforces.

There is a significant degree of sameness about the types of challenge each workforce is facing. Each is dealing with similar issues with recruitment and retention, especially in the context of an aging workforce. The development of leadership capability is likewise common to both sectors – indeed as a sector we will be following the restoration of a sector-wide public sector senior executive capability. We will also be watching the development of the leadership strategy and the workforce policy with interest.

There are many other workforce issues where local government and central government would benefit from a joined-up approach. During 2018 Taituarā worked with the Serious Fraud Office and other Crown agencies on a cross-agency strategy to prevent and detect fraud and corruption. Other opportunities might include open government and access to official information; Te Tiriti O Waitangi and working in partnership with Māori; well-being, health, and safety; and diversity and accessibility.

This is to say nothing of the many skill and competency needs that are common to both sectors. Competencies that support the craft of policy advice and advising are common to both sectors – yet there is little attempt to join the professional development responses for both (at least at government level). There has been some recognition that there is commonality in the skills necessary in the regulatory workforce in the establishment of the Government Regulatory Practice Initiative (G-Reg).

One of the consequences of a failure to take a joint approach to workforce development is a bidding-up of costs. Last year, we were made aware that Kāinga Ora were aggressively recruiting for skilled building inspectors and other building regulatory staff. The result was a bidding up of costs for local authorities to retain basic expertise. We have concerns that the establishment of Taumata Arowai could have a similar impact. A failure to plan for skill needs across government is in no-one's interest long-term.

As Minister of Local Government, you could play a role as an advocate for a joining up of the workforce planning. The support of the Prime Minister and the Minister of State Services would be critical amongst Ministers. Our previous experience trying to establish and operate a joint forum of Chief Executives in the past also demonstrated that the support and active involvement of the State Services Commissioner is likewise essential. The Commissioner's role as the employer of public service Chief Executives will ensure involvement in this Forum and its work programme are important.

## Appendix: Eight Principles of Effective Implementation

1. **Start early** - officials should not turn up in the office the day after the enactment of the legislation and start thinking about what to do about implementation. While the roll-out of implementation support programmes necessarily follows enactment (which in turn follows the policy advice), the design and development of the implementation programme should start earlier. Elements of this should be concurrent with the policy and legislative processes. Indeed, it is difficult to see how a rigorous assessment of policy options can be undertaken without commencing the identification of the costs and practicalities of their being implemented.
2. **Work with the stakeholders** - for any legislative initiative impacting on local government there will be a range of groups with a stake in successful implementation. This includes not only the national sector organisations such as LGNZ and Taituarā but also related professional organisations, and a variety of occupational institutes and associations. Engagement with these stakeholders can do a lot towards achieving effective implementation.
3. **A separate process** - Taituarā has been pleased to see the increasing willingness of central government to engage with local government during the process of policy development. While engagement with local government on implementation is likely to involve many of the same stakeholders, it should be set up as a separate project.
4. **A single shared plan** - Taituarā and other sector stakeholders will often see it as part of their role to support the implementation of the new legislation by local authorities (they may for instance have existing good practice guidance they will need to revise). If the actions of central government agencies and local government sector organisations are not co-ordinated in some way however, then there are risks that some work on some issues will be duplicated while others fall between the cracks. A single agreed common plan of action around the implementation process avoids these risks and is likely to lead to the most effective use of the available resources.
5. **Use the proven technology** - stakeholder organisations will generally have established and effective channels of communication with their constituents within local authorities. They may already have tools and guidance material that are widely known, recognised, and used within local authorities. Government agencies should be encouraged to use these rather than establishing competing channels and tools.
6. **Clarity about audiences and needs** - there are a range of audiences, spanning elected local authority members, managers, and hands on practitioners in the specific affected areas of work. Their needs and the best means of addressing them are likely to differ. For instance, we would argue that the technology developed by our Legal Compliance Programme would often be the best

available technology for meeting the needs of managers and practitioners, but it does not address the needs of elected members.

7. **Linkage to Select Committee process** - if work on developing guidance material as part of an implementation programme is started early enough there are opportunities for this to feed back in a positive way into the Select Committee process. This reflects our experience with the development of the legal compliance programme modules. The detailed work undertaken to identify the practical means of complying with legislation sometimes highlights technical shortcomings in the legislation that is being worked on – gaps and disconnects, inconsistencies and contradictions, and areas requiring clarification. If the effort is made to start this work early, there is the opportunity for these sorts of issues to be addressed prior to enactment.
8. **Life-cycle approach** - once legislation is enacted there is a necessary ongoing maintenance task for the administering department. New issues may arise, areas of uncertainty or contradiction may come to light, provisions may be interpreted in unexpected ways by either practitioners or the Courts or both. The ability of a department to respond effectively and properly maintain the legislation depends on the strength of its feedback systems from users. Engaging openly with stakeholders on implementation can assist this by establishing the foundation of relationships that can ensure open information flows into the future.



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