

Submission Re Local Government Funding & Financing Draft Report

I have a Ph.D. in economics from the LSE and have worked for or with various government agencies in NZ (inc. the Productivity Commission) and overseas.

My experience of dealing with governing levels of local councils is:

- Casual use of “commercial in confidence” to avoid disclosure under the OIA
- Use of consultants’ reports to bolster executive decisions – the reports lacking substance (or even common sense) when closely examined.
- Poorly informed Councillors uncertain how to proceed with contentious or complex issues.

The first two are not unknown in central government agencies.

My submission relates only to Chapter 5 - “Improving Decision Making” - of the draft report, where I have two concerns.

Governance Framework

The governance framework adapted from Martin Jenkins is unduly limited and creates blind spots in your analysis. Essentially, it is an endogenous model that does not allow for shocks and assumes that participants ‘play nicely’ and that there are no strong incentives exogenous to the system itself for them to harshly manipulate, cheat, or otherwise break the rules. This leads to the optimistic view that good design, more information and training etc. will resolve problems and transparency will be just that.

Consequently, risks and barriers to effective implementation are understated.

For example, local authorities have a critical role in relation to property development, in terms of zoning, consents and conditions for developments, and also in terms of who pays what and when for services and associated costs arising from new developments. Release of council owned property can also be an issue.

It is no surprise that property developers tend to be well represented on councils; they have a significant role to play in a community, particularly when new developments are occurring or likely. Councillors, CEOs etc may be registered property developers, or closely connected to property developers.

In many cases, I’m, sure developers on Council or council executive will proceed with integrity, but one cannot assume that always to be the case and there is risk of drift into minor irregularities and beyond. And because NZ rates low on corruption does not mean it does not or might not take place. Developers may have strong incentives not to ‘play nicely’ when it comes to questions which will affect their personal wealth. Influence at council level can help shift costs and risks to the ratepayer, impact planning decisions, and sustain monopoly or cartel positions.

Particular developments may present a ‘once-in-a-lifetime’ opportunity, making a council’s gatekeeper role strategic. When it comes to major asset sales or major plans or rescheduling of areas for development, commercial considerations can give Council good reason to keep some

matters commercial-in-confidence. There can also be bad reasons for doing so. Disputes and suspicions arising from withheld information can have adverse reputational impact.

Therefore, systems and transparency need to be designed with exogenous factors in mind and be resilient against strong incentives to undermine or capture them. Your report has a long way to go in this respect and makes too many soft assumptions. I fear it is not robust for the real world.

Enforcement

A related question is enforcement. Existing legislation (and that which may result from your Report) contains various fine statements of principles as well as detailed requirements. I suspect that most Councils drift over the line on some matters. The draft report notes the variety of bodies involved with oversight and compliance but has little to say about actual enforcement, emphasising instead transparency, engagement and reporting issues. This assumes a fairly benign environment – which may not exist outside the model deployed.

Think of it as policing. Possible priorities are: (a) actively patrolling minor misdemeanours and applying penalties before they grow into wider lawlessness, (b) building rapport with the policed population over non-compliance issues; (c) reserve forces for major crimes; (d) identifying danger areas and trying to pre-empt ‘bads’ there.

The Audit Office has the key role in patrolling against finance related misdemeanours. My impression would be that they endeavour to work with Councils, identifying areas for improvement, those needing priority attention, etc. A question is whether a slightly tougher line (without in any way taking over) along with disclosure of key findings might not help (i.e. moving toward priority type (a).)

Given the importance of local councils’ role in issuing resource and building consents, their potential link to developers’ interests, and the frequency of anecdotes about stupidity, abuse etc. in consent practice (and the failures at several levels exposed in Christchurch), is some national leadership and oversight needed here? That is: a dedicated body separate from Engineering NZ or other trade bodies, tasked with leadership / oversight of consent activities by councils (often contracted out) and the professional staff involved.

This leaves the issue of compliance with broader brush requirements. As with many statutory bodies, the assumption seems to be that saying nice things in the legislation achieves them and there is no effective compliance regime, until TSHTF. Can’t we do better than that? A system which encourages compliance with the broader themes and which spotlights and tackles weaknesses before they exacerbate and require Ministerial intervention could be beneficial. The draft report gives no indication of the frequency of ‘near misses’ for requiring Ministerial intervention or whether DIA actually has much active engagement on individual Council’s compliance.

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