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The powers of General Competence in local and
regional government

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‘THE POWERS OF GENERAL COMPETENCE’

The coming of age of local government
Or the rise and rise of bureaucratic control

By

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EXECUTIVE SUMMARY

Perhaps the most controversial aspect of the Local Government Bill before parliament relates to the increase in power given to local government to be involved in a wide range of activities. This power has been termed the “Powers of General Competence” and allows councils to be involved in any lawful activity. The emphasis is on local decision making, rather than the imposition of limitation by central government.

The rural ratepayer comprises an electoral minority of 6%, but pays an estimated 20% of total rates because the rating system is based on capital or land value. Therefore any increase in local council activity will have a major financial impact on the rural sector.

Under this Bill, local government is required to undertake an extensive consultative process before making major decisions. Such a consultative process could be seen as “participatory democracy”. However in the absence of binding referenda the decision making remains “representative”. An overwhelming number of submissions against a proposal does not necessarily ensure a participatory outcome.

The requirement for an open consultative process and a full disclosure of information becomes problematical in a private/public partnership. Successful private enterprise often relies upon commercially sensitive information remaining confidential. The partnership between six Canterbury councils and a private waste management company, is an example of a consultative process which was inadequate and has largely left the local community powerless. When the consent process under the Resource Management Act began, the participating councils received 7,000 submissions opposing the landfill. There were only 17 in favour. The details of the agreement, which committed the local council to the venture, was signed before the document was available to the public. The Resource management process is only concerned with whether the landfill will meet the requirements of the Act, not as to whether the community wanted to participate in the partnership in the first instance.

The ultimate control by the community over the local government body lies in the democratic process. The policy makers can be voted out if the community does not agree with their policies.. The issue of governance and the importance of the democratic process are detailed in the Proposed Bill.

However a report written by the Controller and Auditor General in 2002 indicates that the difference between governance and management roles within local government is the area least understood by both staff and elected members. The governance and management issue within the Canterbury Regional council was publicly aired early this year when a staff member changed a policy direction during a court hearing. If the elected members are allowing staff to make policy, then the democratic process is not working.

The functions of local government have changed dramatically in recent times. This new Bill should it become law will allow local government to enter into areas previously the domain of central government. Unless the rural sector becomes involved in Local government either through standing for office or being actively involved in decision making, there exists the potential for an increasingly large financial burden to fall on landowners.

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INTRODUCTION

The rural ratepayer comprises an electoral minority in New Zealand. However because the industry is land intensive, and the rating system is based on land and capital value, they often represent the largest financial contributors to Local Government through the rating system. It is also often argued that the services directly received from councils to the rural sector is minimal. Therefore any changes to the role of Local and Regional councils can have extensive implications for the rural sector.

In 2001 the Government released the draft Local Government Bill. This Bill represents a major revision of the general law relating to local government. Part of this revision relates to what has been termed the “Power of General Competence”. The purpose of this power is “...to enable local authorities to play a broad role in promoting the sustainable social, economic, environmental, and cultural well-being of their communities...” [Local Government Bill P2] This bill removes many of the prescriptive restrictions previously imposed on local government by central Government and allows a much broader community based decision making process.

The paper explores the implications of these changes from two perspectives.

- (1) The controls which exist in the Bill on the Powers vested to Local government. And whether these controls are enforceable.
- (2) The clear definition and implementation of the difference in the roles of Governance and Management lie at the heart of the democratic process. This paper looks at the process of policy decision making within local councils

The new Bill allows councils to enter into a wide range of activities. The emphasis is on local community decision making. To illustrate the degree to which this is possible, this paper has explored the private/public partnership, which was formed between five local authorities and a private company to build a regional landfill in the Canterbury District. Although this partnership was formed under the present local government Act, it has been looked at in the light of the requirement for consultation, and decision making by local communities.

The relationship between governance and management in the Canterbury Regional Council was recently publicly aired between Sir Kerry Burke, regional councillor, and the General manager Ian Cumming. This paper looks at the relationships which exist between elected representatives and staff and to consider the democratic process as a means of giving communities control over decisions by councils.

BACKGROUND

In the past, the roles of Central Government and Local Government were well defined. Local Councils were the service providers for the local community in areas such as water, roading, sewage disposal, waste management, building standards. The rating system represented a fee for services. The difference in roles was defined by a prescriptive local government Act which defined the areas local government were to be involved in, and the processes by which this was to be achieved.

In 1989, major reforms were promulgated which reduced the number of local bodies from 800 to 86. Peter Windere, chief Executive of Local Government New Zealand in his speech to the 2001 Local Government conference referred to these changes as delivering "...Major advances in Professionalism, governance, Transparency, Accountability, Public consultation, Asset management and depreciation, Fiscally responsible management, operational efficiencies, and more modern business systems." The days of the little local council were gone. However the prescriptive nature of the relationship, and the defined areas of responsibility between central and local government was not.

This new Bill introduces the concept of local community decision making, providing councils "with a broad discretion over the activities that they can become involved in.." (Local Government bill p 2]

The defining consideration for the councils when considering new areas of responsibility is, will it "...promote in a sustainable way, their social, economic, environmental, and cultural well being." {Local Government Bill p1]

The bill provides for prescriptive law for the areas council must be involved in, and broadens the areas they can be involved in.

For many local Authorities this bill may be seen as merely a formalizing of what already exists in local Government. Local authorities have entered into areas such as tourism, provision of medical facilities, provision of pensioner housing. This bill expands the requirements for financial management and consultation processes.

THE RATING POWERS ACT.

Any changes to the Powers of Local councils also need to be considered in the light of the power of councils to set Rates.

Rates have been described in two ways (a) A fee for services (b) a tax. There is a notable difference however in the rating system and the income tax system. The income tax system takes into account liabilities as well as assets, and allows for income tax minimization. The rating system based on land and capital value, considers only the government valuation on the property, not the liabilities of debt level on that valuation. The Rates as struck by the council are compulsory in their entirety.

A review of the Rating Powers Act was undertaken and was passed as law in March 2002. This Bill was therefore considered and passed before the Local Government Bill was fully considered

Changes under this new Act include allowing for a Targeted Rate i.e. a rate directed at the beneficiaries of an activity, and a Differential Rate which targets a geographical area. A uniform charge i.e. an equal charge per property has formed part of the rating system in the past, and continues to do so under the new Act. The council is limited to gathering a maximum of 30% of the total rateable income from these uniform charges. So the majority of rates collected still remain based in capital or land value.

Federated Farmers had hoped that a major reform of the Rating Powers Act would have occurred to allow more targeted rating i.e. those who benefit pay. However they believe that this did not occur. In an article written for Straight Furrow magazine, Nigel Billings policy analyst for Federated Farmers comments “ the Local Government Rating Act 2002, is really just a tidy-up of a hopelessly outdated range of property taxes. “

“ Of interest are the provisions allowing property value as a basis for setting a rate differential, which could be used to even up the allocation of rates for social and amenity services between land-intensive businesses, and other residents in a district.”

The power of Regional Councils to set rates have been increased. They now have the power to apply differential rating and a flat per-property charge. These powers will come into force in March 2003.

Of concern there fore for the rural sector is the ability of territorial and regional authorities to enter into areas previously the domain of Central Government paid for by income tax, to be funded through a land based tax.

PART 1

CONTROLS ON POWER OF GENERAL COMPETENCE WITHIN THE BILL

The major requirements on local government with regard to decision making involve (1)consultation with their community.(2) Commercial Decisions must be made in accordance with sound business practices.

Part 5 of the Bill deals with “planning, decision making, and accountability by local Authorities ”Local Govt bill p38. The emphasis is on decision making by and for the local community. There is a requirement for consultation with the local community. The principles of this consultation in the Act are

- (a) The provision of adequate information.
- (b) The information to be delivered in ways that are appropriate.

© Consultation with Maori

- (d) The views expressed by the community must be given meaningful consideration.
- (e) People must have a reasonable opportunity to give written submissions.
- (f) Reasons for the decisions are to be given to submitters.

The local authority has the power to determine its own consultation procedures, providing it is not prescribed by this or any other enactment.

The special consultative procedure must be adopted if required by this or any other Act However in matters which do not require this special procedure the local authority has the power to “.determine its own consultation procedures” Local Govt bill p41

An article in the NZ Local Government Magazine April 2002 entitled “Time for a Reality Check” by David McGregor Linda O`Reilly and Michelle Smith, refers to these principles as acting as a real check on the Power of General competence. However the real test of these controls is – if the consultation principles and procedures are not adhered to, what are the consequences.? The article states “in relation to its every activity, local government will have to scrutinize its own activities to an extent never before required.” There are three key points to be noted

1. The council decides as to whether it has met these principles

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2. The ultimate decision lies with the councillors. There is no requirement for binding referendum on major issues.

3. An open and clear process with full disclosure of information is not possible in many private/public ventures because of commercial sensitivity issues.

The issue of accountability of Local Government under the new Bill, is addressed in an article by Sir Geoffrey Palmer written for Local Government NZ entitled “Where to from Here?. Local Government in New Zealand after the New Local government Act.”

“ As a broad principle it can be said that accountability means that local authorities should be answerable to the public who elected them. But with the Local Government Bill there appears to be a blurring of the lines between accountability under a system of representative democracy and accountability more in line with a system of participatory democracy.”

The emphasis on consultation points to a participatory system i.e. decision making by the community, not decision making by the elected representatives on behalf of the community. However as Sir Geoffrey Palmer rightly points out in his article “consultation does not connote agreement”. Therefore in the absence of binding referenda, the process may be participatory, but the decision making is representative. It is difficult to see therefore how the council can be accountable for unpopular decisions providing the process has been adhered to.

The intention of the Bill is decision making by the community for its welfare. Yet the Bill does not define what a community is. The questions arise as to who can participate in the consultative process. Will it be limited to ratepayers and residents. The rural ratepayer comprises 6 per cent of the population but pays 20 per cent of the rates. Will the amount of money they contribute, be reflected in the weighting of a decision.

The stated purpose of the Act Part 1 3© “enable local authorities to play a broad role in promoting the sustainable social, economic, environmental and cultural well-being of their communities” is a very broad role indeed. For example it is difficult to define or limit the power of local government in an area termed Cultural Well-being. An individual or groups attempt to contest the local councils involvement in any new area given this definition would indeed be difficult.

If the area of consultation was to be contested, the requirements under the Act may be met, but there is no requirement for the decision to reflect the consultation outcome. If the consultation is not up to the required standard, the only real recourse is to approach the minister. However these powers are only used in extreme circumstances.

Part 8 of the Local Government Bill deals with the “Powers of Ministers to act in relation to local authorities.” The minister can order that a review authority is set up if the “local authority is persistently failing to meet its statutory obligations or is mismanaging its resources.” The Minister also has the power to call an election. This power would only

be used if the local authority “... willfully or substantially refuses to perform its statutory duties and powers.”

For a local community whose members may be concerned about the areas their council is entering into, active involvement in local councils affairs is essential. Residents require knowledge about their activities and need to be involved in the annual plan submission process. There appears to be little recourse in law to limit their powers.

THE LOCAL GOVERNMENT BILL AND THE RESOURCE MANAGEMENT ACT.

This Bill cannot be looked at in isolation. All local authorities must continue to abide by other statutes including the Resource Management Act.

The issue of local decision making is problematic when it involves the RMA. Section 5 of this Act deals with its purpose

“(1) The purpose of this Act is to promote the sustainable management of natural and physical resources

(2) In this Act ‘sustainable management’ means managing the use development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social economic and cultural well being....”

The purpose as stated would appear to fit in well with the purpose of the Proposed Bill. “To promote the social, economic, environmental and cultural well-being of communities in a sustainable manner”. Local government Bill Page 21

However issues under the RMA are contestable by any person or group. This is not limited to those directly affected or to persons within the local community. Any person or group has the right to submit and to take the issue to an Environment Court Hearing. The Environment Court is primarily concerned with meeting the intention of the Act. i.e. sustainable management rather than the wishes of a local community.

The local community may have gone through the required process, and be in full agreement, but that decision is fully contestable by individuals or groups outside of that community.

The Local Government Bill allows councils to become involved in a wide range of projects. It is probable that many of them will involve the RMA process..

CONSULTATION AND THE PRIVATE PUBLIC PARTNERSHIP

Private/public partnerships could well become commonplace under the proposed Bill. Many ventures require considerable capital input, and councils may look to commercial ventures to increase revenue.

To consider the possible implications of such partnerships, this paper looks at the partnership between six local councils, and the private company Waste Management. The partnership was formed to build and operate a regional landfill for Canterbury. Although this venture occurred before the introduction of the new Bill, the principles of consultation did exist as part of the requirements for Local Government at the time the contract was signed.

THE JOINT VENTURE FOR A REGIONAL LANDFILL IN CANTERBURY.

In 1995 a meeting of Canterbury Councils was held to discuss a regional approach to waste disposal. The background to that decision is included in an article by Jamie McFadden Hurunui District councillor. Information was obtained from Minutes of Council Meetings.

“ in understanding the reasoning behind the joint venture landfill, a report to the Waimakariri District Council, April 5 2002 is helpful. ...”Through the 1990’s private waste companies were successfully objecting to local authority resource consent application for new landfills or upgrading of landfills...” One of the main objectors was Waste Management. Through their submission to Waimakariri’s proposed Eyre landfill, Waste Management said they were developing a ‘state of the art’ fully engineered Canterbury regional land. Immediately after this the Waimakariri Council initiated the first meeting of the councils. The conclusions reached at the meetings were:

1. That local authorities in the Canterbury area would benefit from a joint waste management initiative.
2. that co-operation with the private sector is imperative in this respect
3. That to be cost effective there should be only one large landfill to serve the wider area.”

A Canterbury waste Joint-Standing Committee was formed This committee comprised representatives from 8 Canterbury councils. Subsequently the Timaru District Council and the McKenzie Council withdrew from the process and decided to deal with their own waste streams.

On February 10 1997 an advertisement appeared in the local papers announcing the public consultation process including a request for written submissions. The subject was a broad overview of the need for a joint approach to waste disposal in Canterbury. Public

meetings were also held to discuss this issue. (Appendix 1} The meetings in general were poorly attended, many with as few as 15 people. The detail of the proposal was not available at this time. The benefits of a combined approach to waste disposal was discussed and endorsed by those present. There were 36 submissions on the broad proposal.

On 31st March 1999 the constitution and shareholder agreement (memorandum of understanding) for the private/public venture of a regional landfill was signed. The contents of this document were not made publicly available until 2000.

Some of the key aspects of that agreement included

1. The landfill will operate as a commercial business with a fair rate of return.
- 2, The host Council i.e. the area where the landfill was to be sited, cannot object to the landfill.
3. Each council is committed to paying for disposal of a certain tonnage of waste whether it was placed in the landfill or not.
- 4 . The M.O.U. binds all partnership councils for a significant period of time. This binds councils and their elected representatives whether or not individuals oppose the landfill.

The reasons behind these provisions to the agreement according to Transwaste the landfill company, are to ensure a viable commercial operation. “ The councils made the decision to set the joint venture up as a commercial entity... They determined that a commercial model was the best way to ensure operating efficiency.”

By having a guaranteed waste stream for a specific length of time, the commercial model had every chance of success.

This paper will now consider how this Private/Public partnership employed the principles of consultation as laid down in the Local Government Bill. Those principles include

1. The provision of adequate information.

Throughout February and March of 1997, a series of public consultation meetings were held. The subject of these meetings was the broad issue of a joint approach to waste management. The details of consultation meeting are contained in a document published by the Canterbury Waste Subcommittee, i.e. the committee comprising representatives from the participating councils. This document was written in response to an objectors advertisement in the Christchurch Press (appendix 1) This portion of the document chronicles the public consultation from August 1995 to October 1988. However the

details of the final agreement and the implications for the host council, were not finalized until the end of 1998. The contents of the final agreement were not available until after the agreement was signed and it became binding. All the contents of these agreements were subject to confidentiality provisions during their formation because they were seen to be of a commercially sensitive nature. In 2000 two versions of the Memorandum of Understanding were released. One was for public viewing. Several sections were left out on the grounds of commercial sensitivity. The other version was released to the elected councillors. This included the commercially sensitive passages. The councillors were bound by the confidentiality agreements not to disclose the contents to the public.

Confidentiality is often a key component in the setting up of a commercial enterprise. In a public/private venture such as this it would appear the balance between providing adequate information and maintaining confidentiality was not achieved. In 2002 Canterbury Waste Services applied under the Resource Management Act for a consent to build and operate the regional landfill at Kate Valley near Waipara North Canterbury. Over 3,500 submissions opposing the landfill were received. There were 12 in favour. Yet the Hurunui District Council had signed into the joint agreement as representatives of the residents of the Hurunui District. The question is Where did their mandate come from?

2. The views expressed by the community must be given meaningful consideration

The proposal for the Regional Landfill has met with considerable opposition from the host community. The response to this opposition from some councillors and staff has been to tell those opposing to become involved in the submission process through the Resource management Act. They argue that in this way their views will receive ‘meaningful consideration’. However the RMA process is concerned only with whether the applications for a consent to build and operate the landfill, meet the requirements of the Resource Management Act, not as to whether the community wanted to be a party to the joint agreement in the first place.

The agreement has bound elected representatives. Some councillors who were elected after the agreement was signed object to the landfill proposal and voiced their opposition during the election campaign. However they are bound to the provision that the host and participating councils cannot object to the landfill. Any expression of opposition must be done as individuals not as councillors representing their electorate.

3. People must have a reasonable opportunity to give written submissions.

This requirement is met within the RMA process but as has been already discussed the submissions are in relation to the consent applications.

The written submissions received following the public meetings in 1997 were done without the full disclosure of the details of the proposed agreement the councils were entering into.

It would seem the intention of the Local government bill, is to make councils more accountable when using public money. However when entering into commercial partnerships, there appears to be a difficulty in maintaining the balance between confidentiality requirements to ensure financial viability, and the need for full disclosure of information to the public to enable them to make an informed contribution to the discussion.

Sir Geoffrey Palmers Article P11 and his reference to participatory democracy is relevant in this context. There can be no real participatory democracy unless the community has full knowledge. In public/private ventures the democracy must be representative. However the nature of these partnerships is often lengthy and encompasses many election terms. The community therefore is often left with the legacy of previous administrations, with no ability through the democratic process to change that.

PART 11

GOVERNANCE AND MANAGEMENT

“Democracy is not government by the people, but it’s the people’s ability to change the governance if they are not happy with it” (anon)

THE DEMOCRATIC PROCESS

The difference between the roles of governance and management are the cornerstone of the democratic process. Within the New Zealand system of government, management remains as a constant i.e. the employment of staff is not related to elections. They do not have to reapply for their jobs at each election. Therefore the knowledge base within the staff generally remains at a constant. In contrast, there is often a high turnover of elected representatives. “Each election since 1989 has resulted in about one-third of all mayors being replaced. In 1998, over 40% of elected representatives had not previously held the position that they were elected to” Report of the Controller and Auditor General 2002. This could be used as evidence that indeed democracy is alive and well. The people are changing the governance they are not happy with.

However if policy decisions are being made by management and not the elected representatives, then the democratic process is not effective. Staff within councils have the pool of knowledge which elected representative rely on. they must rely upon staff for advice.

In general participation in Local Government elections has been low. When postal voting was introduced there was some increase however in Christchurch city 2001 elections 50% of eligible people voted. In some rural areas the turn out is as high as 75%. A survey was done by the Christchurch City council following the 2001 elections. The findings included the following -. Those who did vote did so as they saw it as a duty and responsibility. Many of those who did not vote sited the fact that they did not know the candidates. People under the age of 35 were nearly three times less likely to vote than those between 45 and 54. They were 16 times less likely to vote than people over 65. From this survey it could be concluded that younger people do not see Local Government Issues as important or accessible.

In rural areas with smaller populations, the chances of knowing the candidates would be higher, and the issues involving local government are more apparent. Everyone knows

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when their road is not being graded, or the water supply is not constant. The sense of being able to have an influence must be greater in a smaller community. However as at 1996 85% of New Zealanders live in urban areas. The rural sectors influence even within a mostly rural area is limited by numbers.

THE GOVERNANCE AND MANAGERIAL STRUCTURE WITHIN LOCAL GOVERNMENT

Each local authority must have the following structure

GOVERNANCE

Elected Representatives

MAYOR OR CHAIRPERSON

ELECTED COUNCILLORS

MANAGEMENT

Chief Executive

Staff Members

The Chief Executive is the principle administrative officer. He is the only staff member the elected representatives have the power to employ. The employment of other staff members is the role of the Chief Executive.

Part 3 of the Local Government Bill deals with Governance and Management within Local Authorities. It sets out principles to ensure "...that elected members are responsible, open, transparent, and democratically accountable in their decision-making, and make clear the role of the chief executive." Local Government Bill Page 3

Part 3 Paragraph 24 and 25 of the bill refer to Governance and management Principles.

Paragraph 24 Governance Principles

A local authority must endeavour to ensure that the following principles apply to the governance of that local authority;

- (a) the elected members of the local authority are responsible and democratically accountable in their decision making and
- (b) the governance role and expected conduct of elected members is clear and understood by elected members and the community; and
- © the governance structures and processes are effective, open, and transparent; and
- (d) so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities and
- (e) the local authority is a good employer, and
- (f) the relationship between elected members and management of the local authority is effective and understood.

Paragraph 25 Management Principles

- (a) the management role is clear and understood by elected members, management and the community, including in relation to the employment of staff, implementation of decisions, and provision of advice; and
- (b) so far as is practicable, the management structure of the local authority –
 - (i) reflects and reinforces the separation of regulatory responsibilities and decision-making processes from other responsibilities and decision-making processes; and
 - (ii) is capable of delivering adequate advice to the local authority to facilitate the explicit resolution of conflicting objectives.”

The Bill refers to the necessity for the governance role to be clearly understood, but does not define the parameters of that role.

A Canadian report entitled “Beyond Compliance: Building an Governance Culture” lists the functions a board should perform. Although this report is aimed at corporate governance many of the principles equally apply to local government. The following is an excerpt from that report

The role of the Board

- :selecting, appointing, evaluating and (if necessary) terminating the CEO position.
- : adoption of a strategic planning process, approval of strategic plans, and monitoring performance against plans
- : approving annual capital and operating plans and monitoring

performance against those plans.

: policies and processes to identify business risks, to address what risks are acceptable to the corporation and ensure that systems and actions are in place to manage them”

In July 2002 the Controller and Auditor General released a report entitled “Managing the Relationship Between of Local Authority’s Elected member and its Chief Executive”

The report was primarily concerned with addressing the high turnover among chief executives. In the forward to this report he states “The key aspect that we examined was how elected members and their chief executive manage their relationship in the grey area between governance and administration”. He sites a major contributor to tension between the chief executive and the elected representatives as “a failure on the part of both elected members and the chief executive to observe the distinctions between governance and management”

The Auditor General refers to the fact that the Local Government Act refers to the Chief executives responsibilities, but that there are none that indicate directly the role of the elected members to differentiate governance and management. Paragraphs 4.8 to 4.10 give an overview of the Auditor Generals understanding of the two roles.

CHIEF EXECUTIVE

(A) provide leadership to the administration of the local authority’s affairs,

.....

(b) act as a link between the elected members in their governance capacity and the executive and administrative staff

© discharge particular responsibilities set out in section 119D;

(d) discharge whatever other responsibilities have been delegated to her or him by the council

ELECTED MEMBERS

(A) Represent residents and other members of the local community

(b) set the strategic direction for the local authority and determine policies consistent with that strategic direction

© delegate the management and administration of the local authority to the chief executive; and

(d) monitor and evaluate the performance of the local authority against council policies and plans.

From the results of the questionnaire sent out to councils to aid in the compiling of the Auditor General's report, it was clear that the roles of governance and management are generally not clearly understood or implemented. One of the contributing factors to increasing tension between Chief Executives and Elected Representatives was "a failure on the part of both elected members and the chief executive to observe the distinctions between governance and management" Para 2.4

GOVERNANCE AND MANAGEMENT WITHIN ENVIRONMENT CANTERBURY

In May 2002 a public debate occurred between Sir Kerry Burke, councillor for Environment Canterbury and the chief executive Ian Cumming. Sir Kerry Burke's concerns were partly fuelled by an incident in the Environment court in June 1999. Environment Canterbury had decided to appeal a decision on a proposal for a new town. The policy of the council was to appeal the decision on transport and energy grounds. A staff member, contrary to the expressed policy direction of the council, added Tangata whenua matters. The court decision on the matter was particularly scathing about the actions of the staff member. The chief executive denied responsibility. Further to this Environment Canterbury commissioned a report from a group of Wellington consultants to look at the effectiveness of the councils policy and planning processes. This report was not made public initially. It was critical of staff management and states "the perception of a culture of tolerance of poor performance is "...deeply embedded in the organization" "Decisive action" is needed to remedy faults, as is better communication within Ecan and with the public" (the press editorial May 22 2002)

The chairman of Environment Canterbury Richard Johnson, came out in support of the staff pointing to the successes as he saw them of the council.

In an interview the writer had with Sir Kerry Burke he said the issues of governance and management were poorly understood in Environment Canterbury. The issue with the environment court hearing was not brought before the council. The review of the councils planning and policy processes was initiated by the Chief Executive with public money, but the findings were not put before the council.

Environment Canterbury has recently been undertaking a process for introducing a Natural Resources Regional Plan. This is a major undertaking with huge implications for

the whole of Canterbury. It involves water quality and quantity and air quality as well as soil conservation issues. Sir Kerry Burke said in the interview that the Chief Executive took a stand on the clean air provisions of the proposed plan. Staff made political comments in the media about this issue and two councillors who shared the staff's views worked closely with staff in an effort to have their view become policy. Sir Kerry stated that when he asked a certain councillor why she had made that decision the answer was "Because the staff advised us to do so".

There appeared to be two factions within the elected council – the chairperson Richard Johnson and several councillors who supported the staff, and Sir Kerry Burke and another group of councillors who were attempting to differentiate the role of governance. The chief executive Ian Cumming, according to Sir Kerry frequently had input into the council meetings in the form of direct intervention and interruption. Several of the councillors have a definite policy not to criticize staff. In Sir Kerry Burke's opinion, councillors need to have access to a greater range of advice, and difficulties arise when staff members have strong opinions on certain matters, and an agenda to make their opinion on a particular matter form part of policy.

The chairperson of the council Richard Johnson was keen to put forward a united front, and offered to take Sir Kerry Burke "back into the fold".

If we look at the responsibilities of a chief executive under the Local Government Act i.e. to implement the decisions of the local authority". And again at the responsibility of the elected representatives as stated in the Auditor General's report "set the strategic direction for the local authority and determine policies consistent with that strategic direction" it is clear that within Environment Canterbury the roles of Governance and Management have merged. Unless the roles remain clearly defined democracy is not happening.

CONCLUSION

This paper for the most part has not focused specifically on the implications for the rural sector with regard to the reforms to the proposed powers to be given to Local Government. The discussion on the general nature of these reforms needs to be seen in the context that the rural sector comprises 6% of the population, but pays an estimated 20% of the total rates. The rating system based on capital or land value assumes assets mean wealth and ability to pay, when unlike the taxation system no account is taken of liabilities. The implications therefore for the rural sector should local authorities choose to become involved in a wide range of new issues are large in monetary terms.

The principle intention of the Bill is to allow decision making by and for local communities. The intention in the requirements for an extensive consultation process is for a participatory democracy. However the results of this consultative process are tempered by the fact that the representatives are the final decision-makers. In the absence of binding referenda, there is no compulsion for decisions to be made reflecting the consultative process.

The door is open under the proposed Bill for Local authorities to enter into private/public partnerships. In entering into corporate relationships, the need for confidentiality relating to financial dealings is necessary. However when looking at the process of the Regional Landfill for Canterbury it is clear the need for this confidentiality compromises an open consultative process.

The issue of a clear understanding within local authorities of the difference in the roles of governance and management lie at the heart of democratic government. Staff members of councils necessarily hold information as a constant through election terms. They are employed full time in their positions. In contrast to this the elected representatives are people in the main employed in other jobs. They rely for information on staff. If those staff members have their own agendas then there must be strong governance and decision making to make the differential in roles clear.

The object of this paper is to encourage interest in local government affairs. The possibility for many of the responsibilities of central government to be taken over by local authorities paid for by rates is real under this new act. Unless the rural sector has strong representation in local government affairs the financial burden to rural ratepayers can be enormous.

The object of the Local Government bill is to allow for decision making for and by the community. This may sound an admirable aim. However it presupposes several things. (1) The consultation process is going to mean the decision reflects the wishes of the community (2) members of the community are going to have the time and energy to become involved in often complex issues. It is often small pressure groups that have the

loudest voice (3) the elected representatives will consider the opinion of the residents ahead of their own opinion on a matter.

The concern for the rural ratepayer is that local interest groups within the urban areas will demand projects involving large financial input, and the rural ratepayer will pay a disproportionate amount towards it. Central government is allowing local authorities to take over many areas previously paid for through the tax system. There appears to be no provision for any of that tax revenue to be given to local government to pay for these projects.

Should this Bill be passes in its entirety without any further controls over the Powers of General Competence, the face of local government will indeed be changed forever. This change may herald a whole new financial burden on the rural sector.

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Canterbury Regional Landfill Project

Timeline of Key Meetings and Decisions – Initial Meeting to Transwaste Formation

August 1995 to March 1999

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|------------------|--|
| 10 August 1995 | <p>Meeting of Canterbury Local Authorities at Waimakariri District Offices to discuss the potential for a regional approach to solid waste disposal in Canterbury. All 7 territorial local authorities north of the Rangitata River, plus Canterbury Regional Council attended.</p> <ul style="list-style-type: none"> • Canterbury Regional Waste Management Working Party formed |
| November 1995 | <p>Local Government elections.</p> |
| 1 May 1996 | <p>Meeting of Canterbury Regional Waste Management Working Party at Christchurch City Council. Timaru, Mackenzie and Waimate Districts joined the Working Party.</p> <ul style="list-style-type: none"> • Draft constitution for a Joint Standing Committee requested • Report on feasibility of potential legal structures requested • Report on feasibility of possible co-operative joint venture landfill requested • Terms of Reference, Objectives and Membership approved |
| 25 July 1996 | <p>Meeting of Canterbury Regional Waste Management Working Party at Christchurch City Council.</p> <ul style="list-style-type: none"> • Consideration of Coopers & Lybrand “Regional Landfill Feasibility Study” • Agreed to present feasibility study information to Councils to review objectives and confirm support for concepts • Consideration of legal structures report, with Joint Standing Committee recommended to Councils |
| 30 August 1996 | <p>Regional Waste Initiative briefing for all Canterbury Mayors and Canterbury Regional Council Chairman at Canterbury Regional Council.</p> |
| 9 September 1996 | <p>Meeting of Canterbury Regional Waste Management Working Party at Christchurch City Council.</p> <ul style="list-style-type: none"> • Councils confirmation of Joint Standing Committee concept and objectives • Councils requested to adopt recommended resolutions to form the Canterbury Waste Joint Standing Committee (CWJSC) |

11 November 1996	<p>First meeting of CWJSC at Christchurch City Council.</p> <ul style="list-style-type: none"> • Constitution for CWJSC formally adopted by all Councils • Coopers & Lybrand report on Organisational Forms received, and recommendation to constituent Councils that the preferred organisational structure for a joint venture be adopted • Specification for Registration of Interest in a Joint Venture adopted for advertising nationally • Specification for Joint Venture Proposals adopted as a basis for public consultation • Draft public consultation documentation and pamphlets approved
12 February 1997	<p>Registrations of Interest close. Complying registrations received from Connell Wagner/Generale Des Eaux (Onyx), Perry Waste Services, Olivine NZ Ltd, Wastecare, Envirowaste Services Ltd, and Waste Management NZ Ltd.</p>
17 February 1997	<p>Meeting of CWJSC at Christchurch City Council.</p> <ul style="list-style-type: none"> • Final “Working together to find a new landfill for Canterbury” public consultation presentation, process and pamphlet documentation adopted • Resolved to support study award tour to USA and Europe landfills
18 February 1997	<p>Public consultation meeting at Rangiora, Waimakariri District.</p>
20 February 1997	<p>Public consultation meeting at Kaikoura, Kaikoura District.</p>
24 February 1997	<p>Public consultation meeting at West Melton, Selwyn District.</p>
25 February 1997	<p>Two public consultation meetings at Christchurch, afternoon for invited organisations, evening for public.</p>
25 February 1997	<p>Media briefing on regional waste concept and consultation process.</p>
26 February 1997	<p>Public consultation meeting in Amberley, Hurunui District.</p>
5 March 1997	<p>Public consultation meeting at Fairlie, Mackenzie District.</p>
6 March 1997	<p>Public consultation meeting in Ashburton, Ashburton District.</p>
7 March 1997	<p>Consultation meeting with Christchurch City Community Boards.</p>
10 March 1997	<p>Second public consultation meeting at Christchurch.</p>

12 March 1997	Public consultation meeting at Little River, Banks Peninsula District.
13 March 1997	Public consultation meeting at Waimate, Waimate District.
21 March 1997	Public submissions on "Working together to find a new landfill for Canterbury" consultation process close.
8 April 1997	<p>Meeting of CWJSC.</p> <ul style="list-style-type: none"> • Consideration of the 36 submissions received from the public consultation submission process, and feedback received from the public meetings • All public meetings endorsed the concept of the Councils working together on waste disposal, working with the private sector in partnership, and agreed that the site selection criteria were appropriate • Decision on registrants to go to Stage 1 selection level, with all six complying registrants invited to submit proposals • Final Request for Proposals (RFP) document adopted for distribution to successful registrants • Final Site Selection Criteria adopted • Evaluation process for evaluation of later proposals from final selection process participants adopted • Evaluation Panel of Crs O'Rourke, Close, and Tasker, Mayor Allan, staff James, Park, Morgan and Lees, consultant Williams of Coopers & Lybrand, chosen to recommend joint venture partner to CWJSC
June/July 1997	Study Tour of USA and Europe waste management systems by James and Park (James funded by NZ Society of Local Government Managers Study Award, Park by Christchurch City).
25 August 1997	<p>Meeting of CWJSC at Christchurch City Council.</p> <ul style="list-style-type: none"> • Tranzlink presentation • Study Tour presentation • Process for evaluation of joint venture proposals finalised
10 September 1997	Meeting of CWJSC Evaluation Panel at Christchurch City Council to hear half-day presentations from all successful registrants. Several CWJSC members also attended.
11 September 1997	Meeting of CWJSC Evaluation Panel at Christchurch City Council to hear half-day presentations from all successful registrants. Several CWJSC members also attended.
12 September 1997	Meeting of CWJSC Evaluation Panel at Christchurch City Council to hear half-day presentations from all successful registrants. Several CWJSC members also attended.

- 19 September 1997 Meeting of CWJSC Evaluation Panel at Christchurch City Council to shortlist successful registrants.
- Envirowaste Services Ltd (ESL) and Waste Management NZ Ltd (WMNZ) invited to submit final proposals
- 20 October 1997 Meeting of CWJSC at Christchurch City Council.
- Final presentations by ESL and WMNZ
 - Decision to request an independent consultant report on WMNZ and ESL site selection processes and sites suitability
- 19 November 1997 Meeting of CWJSC Evaluation Panel at Christchurch City Council.
- Consideration of independent consultant report of WMNZ and ESL site selection processes and sites suitability
- 27 November 1997 Meeting of CWJSC Evaluation Panel at Christchurch City Council.
- Three way joint venture idea floated to WMNZ and ESL
- 2 December 1997 Meeting of CWJSC Evaluation Panel at Christchurch City Council.
- 9 December 1997 Meeting of CWJSC at Christchurch City Council.
- Recommendation to Councils to offer a joint venture Canterbury Regional Landfill partnership to Waste Management NZ Ltd and Envirowaste Services Ltd on the basis of the local authorities having a 50% share and the two companies 25% each
 - Formation of CWJSC Negotiating Team of Crs O'Rourke, Wright, Mayor Allan, staff James, Stockwell and Park.
- 12 February 1998 Inaugural meeting of CWJSC Negotiating Team at Christchurch City Council.
- Brief from CWJSC
 - Working party for minor issues established
- 4 March 1998 Meeting of CWJSC at Christchurch City Council.
- 5 March 1998 Meeting of CWJSC Negotiating Team at Christchurch City Council.
- Report from working party on minor issues
- 12 March 1998 Meeting of CWJSC Negotiating Team at Christchurch City Council.
- 20 March 1998 Meeting of CWJSC at Christchurch City Council.
- Responses from Councils to December requests

	<ul style="list-style-type: none"> • Report of Negotiating Team
27 March 1998	<p>Meeting of CWJSC Negotiating Team at Christchurch City Council.</p> <ul style="list-style-type: none"> • Memorandum Of Understanding (MOU) negotiations
30 March 1998	<p>Meeting of CWJSC Negotiating Team at Christchurch City Council.</p> <ul style="list-style-type: none"> • MOU negotiations • Re-consideration of issues raised in February 1997 public consultation
7 April 1998	Presentation of CWJSC investigation report to Waimate District Council.
14 April 1998	Presentation of CWJSC investigation report to Waimakariri District Council.
15 April 1998	Presentation of CWJSC investigation report to Kaikoura District Council.
16 April 1998	Presentation of CWJSC investigation report to Christchurch City Council.
17 April 1998	Presentation of CWJSC investigation report to Ashburton District Council.
20 April 1998	Presentation of CWJSC investigation report to Banks Peninsula District Council.
22 April 1998	Presentation of CWJSC investigation report to Mackenzie District Council.
23 April 1998	Presentation of CWJSC investigation report to Hurunui District Council.
27 April 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council.
MOU	
28 April 1998	Presentation of CWJSC investigation report to Selwyn District Council.
6 May 1998	Presentation of CWJSC investigation report to Timaru District Council.
12 May 1998	<p>Meeting of CWJSC Negotiating Team at Christchurch City Council.</p> <ul style="list-style-type: none"> • MOU

19 May 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council. <ul style="list-style-type: none"> • MOU
26 May 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council. <ul style="list-style-type: none"> • MOU
May 1998	Canterbury Waste Services Ltd (CWS) formed, a joint venture between Waste Management NZ Ltd and Envirowaste Services Ltd.
3 June 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council. <ul style="list-style-type: none"> • MOU negotiations
12 June 1998	Meeting of CWJSC at Christchurch City Council. <ul style="list-style-type: none"> • Appointment of Local Authority Entity (LAE) Formation Team
23 June 1998	Meeting of LAE Formation Team at Waimakariri District Council. <ul style="list-style-type: none"> • Options for LAE structure discussed • Councils requested to review options and report back to Team
6 July 1998	Meeting of LAE Formation Team at Christchurch City Council.
13 July 1998	Meeting of LAE Formation Team at Christchurch City Council. <ul style="list-style-type: none"> • Discussion of options for LAE
27 July 1998	Meeting of LAE Formation Team at Christchurch City Council.
27 July 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council. <ul style="list-style-type: none"> • MOU negotiations
28 July 1998	Meeting of CWJSC at Christchurch City Council.
5 August 1998	Meeting of CWJSC at Christchurch City Council. <ul style="list-style-type: none"> • MOU adopted and recommended to Councils for final adoption • LAE Constituting Agreement adopted and recommended to Councils for adoption
12 August 1998	Meeting of CWJSC Negotiating Team at Christchurch City Council. <ul style="list-style-type: none"> • Resolution of minor issues

14 August 1998	Final MOU submitted to Councils for approval.
24 August 1998	Constituting Agreement for LAE submitted to Councils for approval.
24 September 1998	Meeting of LAE Formation Team at Christchurch City Council. <ul style="list-style-type: none">• Discussion on Shareholders Agreement, Constitution and Statement of Corporate Intent
24 September 1998	Inaugural meeting of JVCO Steering Group at Christchurch City Council, consisting of LAE Formation Team and CWS.
5 October 1998	Meeting of LAE Formation Team at Christchurch City Council. <ul style="list-style-type: none">• Discussion on Shareholders Agreement, Constitution and Statement of Corporate Intent
9 October 1998	Meeting of CWJSC at Christchurch City Council. <ul style="list-style-type: none">• JVCo Shareholders Agreement and Constitution approved• JVCo Statement of Corporate Intent approved• Consultancy Agreement between CWS and JVCo approved• Recommendation to Councils of resolutions to be passed by each Council to finalise all arrangements
10 October 1998	Local authority elections.

- 10 November 1998 Meeting of CWJSC at Christchurch City Council.
- Final wrap up of process
 - Six Councils (Christchurch, Banks Peninsula, Waimakariri, Hurunui, Selwyn, Ashburton) resolve to become joint venture partners
 - Timaru, Waimate, Mackenzie to look at joining forces in South Canterbury
- 31 March 1999 Inaugural meeting of Transwaste Canterbury Limited.