

Coversheet: Regulatory Impact Statement – options for improving the way local government is reorganised

Advising agencies	<i>Department of Internal Affairs</i>
Decision sought	<i>Support Cabinet policy decisions</i>
Proposing Ministers	<i>Minister of Local Government</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

The current framework for local government reorganisation is not fit for purpose. Between 2012 and 2016, five large-scale reorganisations were proposed but did not proceed because of a lack of community support. These were costly, divisive, and opposed by local people concerned about the loss of local democracy.

An independent review reported in February 2018, that the role and function of the Local Government Commission (LGC) does not meet the current and future needs of the local government sector. The review recommended further work on the future of the LGC. Interim measures are needed to minimise the likelihood of large-scale local government reorganisations considered by the LGC while this work is undertaken. This will mitigate the risk of new large-scale reorganisation proposals taking up LGC resources and allow the LGC to wind up its existing work programme, and alleviate local government sector concerns about 'the threat of amalgamation.'

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

Under current provisions in the Local Government Act 2002 (LGA02) any person can initiate a LGC reorganisation investigation, with limited grounds for the LGC to refuse to investigate. The Minister of Local Government proposes to restore a previous requirement for a petition of 10 per cent of affected electors to initiate an investigation. This was in place before changes were enacted to the LGA02 in 2012. This would constrain large-scale reorganisations where reasonable local support cannot be demonstrated.

This proposal is to be implemented through a current Bill that was the subject of a previous regulatory impact statement

The Local Government Act 2002 Amendment Bill (No 2) (the Bill) was introduced in 2016 by the previous Government to implement the Better Local Services reform package. This included changes to provisions in the LGA02 relating to LGC structure and the local

government reorganisation processes; council-controlled organisations (CCOs); and non-financial performance measures. A regulatory impact statement (RIS) was completed for the Bill (titled *Options for improving local government services*) and is provided at Appendix A.

This RIS is supplementary to the analysis in the previous RIS where it relates to local government reorganisations. The earlier analysis largely still applies, including the analysis relating to more flexible reorganisation processes and the ability for locally-led reorganisations, where local authorities can investigate reorganisation proposals and make final decisions themselves.

However, some of the analysis in the previous RIS no longer applies where elements of the preferred option in the earlier RIS are proposed to be removed. The provisions to be removed relate to increased powers for the LGC (such as the ability to initiate investigations) that was mitigated through increased accountability of the LGC to central government. Amending the Bill to introduce interim measures provides an opportunity to remove these provisions which give the LGC an enhanced role and are therefore inconsistent with the wider reform programme.

The previous RIS and the Bill also covers CCOs. Planned changes to CCOs will be covered in a separate RIS if it is determined under regulatory impact processes that this is required.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Local authorities and communities will benefit from these interim measures. Allowing breathing space for the development of changes made as part of the reform will allow for better engagement with the sector, and improvement of existing processes so they better meet the needs of local authorities and their communities. The local government sector will also benefit from avoiding costs associated with ineffective reorganisation processes.

Interim measures will save potential costs for the LGC and costs to applicants, local authorities and other relevant stakeholders. Constraining who can initiate an LGC investigation will avoid costs associated with future investigations that may proceed without this constraint. Since 2012, five major local government reorganisation investigations were not successful due to a lack of local support. These resulted in \$6.1 million in direct costs to the LGC with further costs to applicants, local authorities and the other relevant stakeholders.

The local government sector will also benefit from the improved reorganisation process covered in the previous RIS, including the introduction of a locally-led reorganisation process. These will enable processes to be more responsive to local preferences.

Where do the costs fall?

There is a potential that some non-monetised costs fall on small unrepresented groups, or

even single individuals, who will no longer be able to initiate an LGC investigation. Where the affected local authority/authorities do not agree, these groups will need to provide a petition of 10 per cent of affected electors. While costs associated with organising a petition may be low relative to investigation costs for the LGC or a local authority, these may be high for a single individual or a community group. However, under current settings organisational change has not eventuated due to a lack of community support. Therefore, reintroducing the petition requirement is unlikely to negatively impact these individuals ability to initiate change to the structure of local government.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

We have identified four specific risks with the interim measures. We assess the likelihood and impact of these risks as low.

1. The wider local government sector may not support the interim measures. We have discussed the interim measures with Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM). Both LGNZ and SOLGM raised no objections to the suggested approaches. Support of the local government sector will be critical to the success of the wider reform programme and implementation of the other measures in the Bill.
2. Changes are planned to be implemented through the Bill via a Supplementary Order Paper. There is a risk that the changes are ruled out of scope if these are inconsistent with the Bill's principles and objects. While this is a matter for the Clerk of the House to determine, we consider that the changes proposed are consistent with the Bill, which currently includes changes to the LGC and the local government reorganisation process.
3. Announcing interim measures triggers reorganisation applications before measures are enacted. This is possible, but transitional measures will limit the number of applications.
4. Reinstating the petition requirement may not be as effective as anticipated and fail to prevent large-scale reorganisation investigations. We believe that a petition of 10 per cent of affected electors will be a sufficiently high threshold that it should constrain applications that do not have a reasonable amount of local support. However, it is possible there may still be applications for large-scale reorganisations that meet this threshold for an investigation but do not lead to organisational change.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

N.A.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The Department is confident that interim measures should be introduced as outlined above. This is in order to provide breathing space for the wider reform of the LGC to develop and avoid unnecessary expenditure on reorganisation investigations that have proven not to be successful in the past. Based on the findings of a recent independent

review of the LGC and consultation with sector organisations we are confident that change is required to the LGC.

We are also confident that there will not be significant adverse effects of constraining large-scale local government reorganisations. As previously noted, since 2012 the LGC has investigated five large-scale reorganisation applications. None of these applications eventuated due to a lack of community support. The current settings have not resulted in actual change, therefore constraining such applications is not likely to impact the structure of local government.

Quality Assurance Reviewing Agency:

Treasury

Quality Assurance Assessment:

The Treasury Regulatory Quality Team considers that this Regulatory Impact Assessment **meets** the Quality Assurance criteria.

Reviewer Comments and Recommendations:

Although consultation was limited to targeted stakeholders, these are interim measures while a wider review is undertaken in 2019. It will be important to consult more widely on enduring measures.

Impact Statement: Options for improving the way local government is reorganised

Section 1: General information

Purpose

The Department of Internal Affairs is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:

- key (or in-principle) policy decisions to be taken by Cabinet; and
- final decisions to proceed with a policy change to be taken by the Minister of Local Government.

Key Limitations or Constraints on Analysis

The changes must align with Ministerial and Government priorities for the sector

At the Central and Local Government Forum 2018, central and local government leaders agreed to work together effectively for the social, economic, environmental and cultural benefit of citizens and communities. This reflects a key priority the Minister of Local Government has expressed to the Prime Minister, to build “a truly collaborative relationship between central and local government”. Partnering with local government offers a way to achieve the Government’s policy objectives more quickly, and with greater and more enduring effect and most importantly will reduce the risk of regulatory failure.

Keeping with this approach, officials have discussed the options considered in this analysis with LGNZ and SOLGM. This collaborative approach will continue as further changes to the LGC’s functions are considered.

The changes are a response to a recent independent review of the Local Government Commission

The Minister intends to introduce interim measures that support a wider work programme to disestablish the LGC in its current form. This is a response to an independent review of the LGC’s purpose, role and functions that was undertaken by the consultancy firm RDC. Further detail on the review’s findings and recommendations are included under section 2.2. This review provides the basis of our analysis and we have assumed that its findings are a robust starting point for why there should be a reform of the LGC and consequently why interim measures should be implemented.

Changes must be in scope of the Local Government Act 2002 Amendment Bill (No 2)

The Bill provides a legislative vehicle to introduce interim measures. It was introduced in 2016 by the previous Government to implement the Better Local Services reform package.

The general scope of the analysis is based on the Minister of Local Government's direction to reassess provisions in the Bill to consider how they can be aligned with her priorities for the local government portfolio.

Only changes to the Local Government Act 2002 can be considered

The response to the independent review will involve assessing the wide range of functions carried out by the LGC alongside alternative arrangements. These functions are provided for under a number of statutes whereas the Bill only makes changes to the LGA02. Therefore, interim measures can only involve changes to this Act.

Responsible Manager (signature and date):

Raj Krishnan

General Manager Policy

Policy, Regulation and Communities

Department of Internal Affairs

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Overall structure of local government

There are 78 local authorities in New Zealand made up of regional councils, unitary authorities, district councils and city councils.¹ The diverse and localised structure of local government means that decisions, services and regulations can vary significantly from city to city, district to district, and region to region. The organisation of local government reflects its dual roles to provide local public services and enable local democracy.²

Role of the Local Government Commission

The LGC is an independent decision-making body, provided for under the LGA02. Set up in 1947, the LGC's main role is to make and implement decisions on the structure of local authorities in response to reorganisation applications.

The sector was reorganised in 1989, when the Government directed the LGC to cut the number of local authorities (850 local bodies were amalgamated into 86 local authorities, representing distinct geographic communities). In 2009, further reform occurred outside the LGC process when the Government enacted legislation that amalgamated Auckland councils into a unitary authority.

In 2012 the LGC's reorganisation process was amended to allow any person to initiate a proposal (before, it required a petition of 10 per cent of electors). This is a very low threshold, and it is not difficult to meet the criteria for an LGC investigation.

As previously noted, since 2012 five major local government reorganisation proposals have been initiated but failed to progress. These were costly (just over \$6.1 million in direct costs to the LGC), and opposed by local people concerned about the loss of democratic representation. Of the five proposals for Northland, Hawke's Bay, Wellington, and Wairarapa, all failed because proposals were either voted down by the public or failed to gain sufficient community support to proceed to a poll.

With no change to the current system, applications for large-scale amalgamation that meet the low threshold will continue to be investigated. These investigations will continue to use significant resources and risk causing division in communities. Based on the outcome of the previous five large-scale reorganisation investigations, future investigations are not likely to result in any change due to a lack of public support.

The LGC has other functions, such as representation reviews, boundary changes and determining disputes between local boards and the governing bodies of unitary authorities. The first two functions are still required whilst the last is rarely used.

¹ A unitary authority combines the functions and powers of a territorial authority and a regional council.

² New Zealand Productivity Commission, *Towards better local regulation*, May 2013.

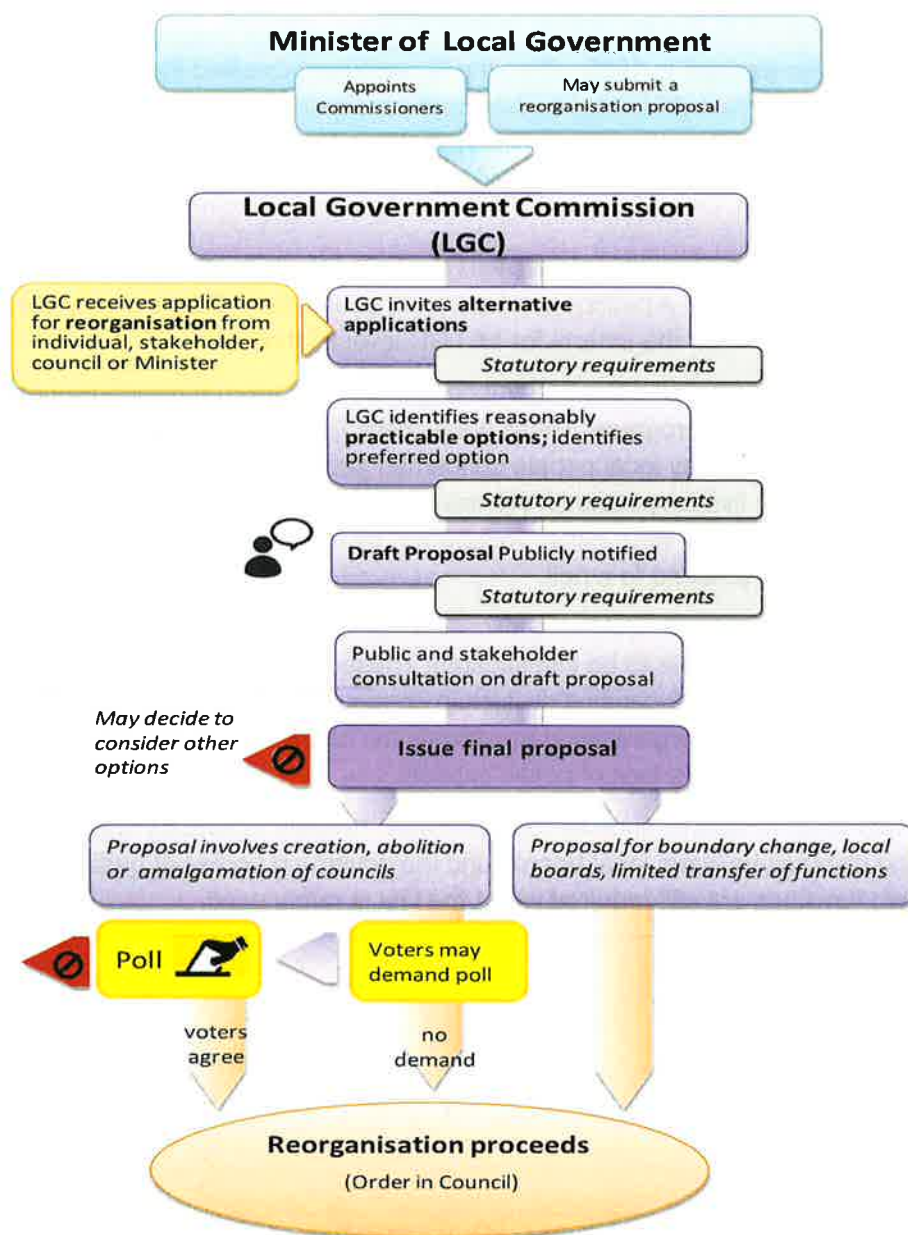
2.2 What regulatory system, or systems, are already in place?

Reorganisation process

The LGA02 contains a process for determining changes to the structure of local government, recognising that the organisation of local government may need to change over time for local authorities to work more effectively and efficiently. The current process was designed to have a focus principally on major institutional changes including on amalgamation (i.e. merging councils) and the creation or abolition of local authorities.

The LGC is an independent body of government-appointed Commissioners that oversees local government reorganisation. It considers and makes decisions about proposals for reorganisation (subject to the results of a poll where that is required). The diagram below from the previous RIS explains how the current reorganisation process works.

Current reorganisation process in LGA02



The LGC is required to identify the best option amongst all possible outcomes, and the evaluation criteria are weighted in favour of fewer, bigger local authorities. Other 'core' reorganisation options include setting up a new council, local boards³, changing council boundaries or transferring statutory obligations between councils.

Electors have an opportunity to demand (by petition) a poll (vote) on amalgamations and other major institutional changes.

Key stakeholders

Organisations that have a substantive interest in reorganisation are:

- leading local government sector bodies, LGNZ and SOLGM;
- the LGC and the LGC Commissioners;
- local authorities; and
- community organisations and individuals with a reorganisation agenda.

Independent review of the LGC

The fitness for purpose of the existing system was assessed through an independent review of the LGC. In December 2017, the Department commissioned an independent consultant, RDC, to review the LGC's purpose, role and functions. In its report of 28 February 2018, the reviewers found that the LGC's concept and rationale is "relatively weakly aligned" with the sector's current and future needs (in particular the need for a coordinated national approach to responding to big challenges, such as climate change and ageing infrastructure). Reviewers considered that the LGC's main function, to consider reorganisation proposals, is "no longer essential or useful". Other functions, such as adjudicating on disputes from representation reviews, remain relevant and could be done by a repurposed LGC or by central or local government bodies.

Reviewers also noted that there is demand for developing a "high-trust collaborative partnership approach" between central and local government.

The reviewers recommended that the Department consider disbanding the LGC, develop other ways of considering reorganisation proposals (when they arise), and consider how and by whom residual functions (e.g. representation review adjudications) could be delivered. They also suggested that the Department support central and local government to develop a partnership model.

³ A reorganisation proposal to establish a unitary authority may propose establishing local boards to provide for effective democratic governance at a community level, while achieving the benefits considered to result from establishing larger organisations.

2.3 What is the policy problem or opportunity?

The reorganisation process is inflexible and needs improvement

Issues with current reorganisation processes were outlined in the previous RIS submitted for the Bill (refer to section 1.3) provided at **Appendix A**. This includes that the current reorganisation process is inflexible as it provides a rigid, 'one-size-fits-all' process. It also does not enable local authorities to lead reorganisations, so they have little incentive to lead change discussions with their own communities. The previous RIS covers improvements to this process.

The legislative settings for the Local Government Commission are no longer fit for purpose

The Department considers that the LGC's main reason for being (reorganisation) no longer exists. The LGC's statutory process is weighted in favour of major changes, such as amalgamations and the creation and abolition of local authorities. There is no foreseeable need for these large-scale reorganisations or for centrally-driven reform, while minor administrative reorganisations or reorganisations that are locally driven will still be required. This is supported by the LGC independent review (28 February 2018), which found that the LGC's role in considering reorganisation proposals was no longer useful or necessary.

Local authorities will need a mechanism for making structural adjustments, such as boundary changes or transferring functions, where this makes sense. Other functions, such as representation review appeals, are also required. This is not enough to justify retaining the LGC in its current form. There are other ways of carrying out these functions, likely involving flexible arrangements which are locally-led and supported by partnership arrangements between local and central government.

The second stage of reform will be implemented by amending the LGA02, the Local Electoral Act 2002, and other Acts. We anticipate new arrangements are likely to take effect in 2020. However, while this work is underway, interim measures are needed to constrain applications for large-scale reorganisations. This will provide breathing space for new arrangements to be developed, and enable the LGC to wind up its existing work programme.

If no interim measures are introduced to constrain large-scale reorganisations

Not implementing measures to constrain large-scale reorganisations, and maintaining the status quo until legislation to implement the wider reform can be introduced, carries avoidable risks. Once the direction of travel (to disestablish the LGC) is known, this may incentivise applications under the current process and may lead to an increase in costly and divisive amalgamation debates as the current settings are relatively permissive. Not implementing measures to constrain large-scale reorganisations will also do nothing to alleviate the local government sector's concerns about the 'threat of amalgamation' impeding engagement on the wider reform.

We consider that change needs to begin sooner than is achievable through a standalone Bill and therefore interim measures to constrain large-scale reorganisation are necessary. Furthermore, if the Bill did not proceed the local government sector would not benefit from the changes covered by the previous RIS (an improved reorganisation process and locally-led reorganisations).

2.4 Are there any constraints on the scope for decision making?

The Minister of Local Government considers that the current local government reorganisation process does not provide substantive benefits and should be redesigned. The Minister has directed the Department to initiate a change programme to disestablish the LGC in its current form and develop new ways of carrying out necessary functions. The Minister has not ruled out any options as part of the reform, such as a re-purposed LGC.

The Minister of Local Government has directed interim measures to constrain large-scale reorganisation to be included in the Bill. The interim measures are therefore constrained by the scope of the Bill, which primarily amends the LGA02 in three broad areas:

- council-controlled organisations (Part 5 of the LGA02);
- LGC structure and local government reorganisation processes; and
- non-financial performance measures.

The interim measures proposed relate to the LGC's structure and local government reorganisation processes and are therefore expected to be in scope of the Bill.

2.5 What do stakeholders think?

There is support for removing provisions in the Bill that empower the LGC and central government

During its consideration of the Bill in 2016, the former Local Government and Environment Committee received 188 submissions on the Bill, including 66 submissions from local authorities.

The original intent of the Bill was to implement the previous Government's Better Local Services reform package. This package focused on cost effective service delivery and infrastructure provision arrangements within local government, including changes to the local government reorganisation process and the LGC. This reform package was designed to provide the option of central government intervention in relation to decisions about the structure of local government. The select committee submissions reflected that the local government sector is strongly opposed to the LGC having greater powers in relation to local government reorganisation.

In addition, local authorities have often raised concerns about the 'threat of amalgamation', most recently at this year's LGNZ conference. Therefore, removing the provisions of the Bill that empower the LGC and increase its accountability to central government is supported by the sector.

There is support for more flexibility for local government reorganisation

Some of the changes included in the Bill are supported by the sector. These include:

- provisions to enable the LGC to 'right size' the reorganisation process so that it is proportional to the scope and potential impact of an investigation;
- providing for a council-led reorganisation process which, while separate to the LGC-led process, also benefits from the more flexible process that enables them to 'right-size' investigations; and

- more flexibility for the LGC to decide what investigations it will undertake or decline by considering certain factors.

Consultation by the RDC Group for the independent review

As part of the independent review of the LGC, reviewers spoke with key Government officials and:

- the Minister of Local Government;
- LGC Commissioners and staff;
- SOLGM executive members and officials;
- LGNZ chief executive; and
- a locally-elected representative with experience of the local government reorganisation process.

Agency consultation on the proposed changes

The following agencies have been consulted on the proposed changes set out in this Regulatory Impact Statement:

- Department of Prime Minister and Cabinet (Policy Advisory Group);
- Ministry of Transport;
- Ministry for the Environment;
- Treasury;
- Land Information New Zealand;
- Te Puni Kōkiri;
- Ministry of Business, Innovation and Employment;
- Ministry of Housing and Urban Development;
- Office of Treaty Settlements;
- State Services Commission; and
- Ministry of Health.

We did not receive any substantive comments from the above agencies on the proposed changes.

The rationale and options for interim measures are supported by the sector

LGNZ and SOLGM has been informed of the recommendations in the independent review and have participated in discussions about the wider work programme to disestablish the LGC in its current form, and on the interim measures to support this. On 6 August 2018, officials presented the options to LGNZ's Governance and Strategy Advisory Group. There were no objections to the proposals to constrain large-scale reorganisations.

The consultation plan for the next stages of the reform programme is yet to be developed. However, the Department will continue to consult with stakeholders and, as part of this, consider any feedback received on the interim measures.

Section 3: Options identification

3.1 What options are available to address the problem?

Improving the local government reorganisation process

Options for improving the reorganisation process were outlined in the previous RIS submitted for the Bill. Refer to section 3.5 of the previous RIS at **Appendix A**.

Interim measures to constrain large-scale reorganisation

We identified two options for constraining large-scale reorganisations:

1. **Target the way the reorganisation process is initiated:** ensure that investigations (of issues and proposals) occur only in special circumstances by restricting who can request investigations; or
2. **Target the scope of reorganisation proposals:** remove large-scale reorganisations from the LGC's remit by ensuring these can only be progressed through locally initiated and led processes.

Option 1: Restricting who can initiate an LGC investigation

This option would see LGC investigations (of issues and proposals) only occurring when there are compelling reasons by restricting who can request investigations. For this option, we propose restricting who can initiate a reorganisation by reversing the 2012 changes to local government reorganisation. This would reinstate the previous requirement that proposals are made by a petition of 10 per cent of electors of the area or areas subject to the proposed reorganisation. The petition of 10 per cent of electors is difficult to achieve, but not impossible. It would effectively constrain large-scale reorganisations but it will be applied to all investigations for consistency.

Under current legislation, there is provision for the Minister of Local Government and affected local authorities to initiate investigations, which would be retained.

Under this option, local choice is not limited. The reintroduction of a petition requirement will ensure that proposals where there is significant local support will be investigated, but that a reorganisation investigation cannot be initiated by a small, unrepresentative group, or even a single individual. It would also not impact the other routine work of the LGC, such as boundary adjustments and transfer of functions, as these can also be initiated by the affected local authority or by the Minister of Local Government, or by 10 per cent of the electors in an affected area.

Option two: Limit the scope of reorganisation proposals the LGC can investigate

This option would target the scope of reorganisation proposals considered by the LGC by removing large-scale reorganisations from the LGC's remit.

As currently drafted, the Bill introduces a locally-led process, where local authorities can investigate reorganisation proposals and make final decisions. Under the 'scope' approach, large-scale reorganisations could only be progressed through the new locally-led process.

Individuals or community groups could propose reorganisations but would have to convince local authorities these are worth investigating, for example by demonstrating wide public support.

This approach would more definitively constrain large-scale reorganisations and may therefore better alleviate the local government sector's concerns of the 'threat of amalgamation'. It may also signal a move to empower local government to address local challenges themselves. However, enactment of community aspirations may be weakened as a community group would have to convince a local authority on the merits of the proposal.

Other non-regulatory options have not been considered as the existing process for local government reorganisation, which the Minister of Local Government has directed to change, is set out in legislation.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Interim measures to constrain large-scale reorganisations

We have assessed the scope and process options using the following criteria:

- 1) Effective: large-scale reorganisations without significant local support are reduced
- 2) Necessary: legislative changes are kept to a minimum to be in proportion to the interim nature of the measures
- 3) Fair: changes do not unduly limit local autonomy and community aspirations
- 4) Targeted: changes do not affect routine ongoing work, such as boundary adjustments, and transfer of functions

A key trade-off revealed in this analysis was meeting criteria for both effectiveness and fairness. Careful consideration was given to the importance of local autonomy and the ability of communities to pursue large-scale reorganisation should they choose to. However, interim measures also need to be effective at reducing the number of costly large-scale reorganisation investigations that do not result in any change. Under current legislation, any person can request the LGC to investigate a large-scale reorganisation, which is a very permissive setting. The ideal option would see less permissive settings while still providing for investigations where there is strong community support.

Improving the local government reorganisation process

The previous RIS included assessment of options for improving the reorganisation process. The preferred option involves improving the LGC-led reorganisation process and providing for a new locally-led process. The assessment of this preferred option changes depending on which option to constrain large-scale reorganisations it is combined with (for example, restricting who can initiate an investigation or limiting the scope of reorganisation proposals the LGC can investigate). The assessment of this is at table 2 in section 4. The criteria for assessing improving the reorganisation process are set out in the original RIS:

1. increase coordination and cost effectiveness of local services;
2. increase support for regional growth; and
3. remain responsive to local preference.

3.3 What other options have been ruled out of scope, or not considered, and why?

Ban

A ban on LGC investigation of local government reorganisation applications was considered and dismissed. Smaller-scale reorganisations of local government, such as minor boundary adjustments, are necessary for the sector to perform effectively. A ban would unnecessarily prevent this routine, ongoing work.

Gatekeeper

Options were also considered that targeted the LGC's ability to decline to initiate an investigation. This would not change who can initiate an investigation, but strengthens the criteria the LGC assesses applications against to determine if an investigation should proceed. The current criteria as set out under clause 5 of Schedule 3 in the LGA02 are not difficult to meet and therefore it is difficult for the LGC to reject an application.

Targeting the LGC's ability to decline to initiate an investigation may provide some reduction in large-scale reorganisations. Examples of criteria include requiring the affected local authorities to agree on the proposal or requiring demonstration of a greater level of public support than the current provision. There are other criteria that we have not spent time to form and assess. Where these criteria are met the LGC would still need to proceed.

There may be criteria that are clear and can be definitively met, such as requiring local authorities' to agree to a proposal. However, this criterion would fail to meet the fairness objective in section 3.2. It would mean communities had no way to progress any type of proposal that their respective local authority or local authorities did not agree to.

Other criteria may be not so definitive and could be open to interpretation, such as a criterion requiring demonstration of public support. This could be considered fair however it would be more difficult to determine than a prescriptive application threshold.

This option also does nothing to discourage initial applications, which the LGC would still need to put resources into assessing to determine if they should progress any further. Furthermore, enhancing these criteria would potentially mean increased powers for the LGC to make decisions based on these criteria and this would be contrary to the direction from the Minister to disestablish the LGC in its current form. Therefore, the gatekeeper option would not be as effective at constraining large-scale reorganisation as other options.

This option would also be contrary to a central and local government partnership approach to reorganisation. Setting the criteria an application needs to meet could be seen as central government determining whether an investigation should proceed, rather than proceeding based on the level of local support for the application.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

In the assessment of options for interim measures set out in the table below, both the option that restricts who can initiate an investigation and the option that removes large-scale reorganisations from the LGC's remit were found to be effective.

Restricting who can initiate an investigation would be fairer as it would permit communities to drive reorganisation by demonstrating sufficient local support through a petition even where the affected local authorities are not supportive. A petition of 10 per cent of electors in the affected area sets a threshold, but one that is not impossible to achieve. When this setting was in place before 2012, there were only a small number of occasions when community support for reorganisation was strong enough to meet this threshold. This option also preserves community voice in the reorganisation process and allows for an investigation into a proposal which has community, but not local authority, support.

Removing large-scale reorganisations from the LGC's remit was found to be less fair, as communities would have to convince the affected local authority/authorities should they wish to pursue a large-scale reorganisation. However, this option would be more effective at definitively constraining a large-scale reorganisation that does not have local authority support. This option would empower the sector and remove the 'threat of amalgamation' concern that is shared by many local authorities.

Table 1: Impact analysis of options to constrain large-scale reorganisations

	No action	Option 1 – Restricting who can initiate investigations	Option 2 – Removing large-scale reorganisations from LGC's remit
Effectiveness: large-scale reorganisations without significant local support are reduced	0	+	++
Necessity: number of legislative changes required is minimised to be in proportion to the interim nature of the measures	0	++	++

Fair: does not constrain local autonomy and participation	0	++	+	
Targeted: routine ongoing work is not impacted	0	++	++	
Overall assessment	0	++	++	

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Table 2: Change in impact analysis of preferred option in previous regulatory impact statement

Option	Assessment against objectives 1 and 2: coordinated and cost effective service/ support regional economic growth	Assessment against objective 3: responsive to local preferences
Original analysis of preferred option Improve the Commission-led reorganisation process and provide a new council-led process.	Meets – ability to target reorganisation of services to achieve outcomes.	Meets – reorganisation subject to consultation and polls.

Option	Assessment against objectives 1 and 2: coordinated and cost effective service/ support regional economic growth	Assessment against objective 3: responsive to local preferences
<p>Revised analysis of preferred option with interim measures <u>restricting who can initiate an investigation</u></p> <p>Improve the LGC-led reorganisation process and provide a new locally-led process with constraints on who can initiate a reorganisation proposal.</p>	Meets - process still allows for all types of reorganisations.	Meets – reorganisations can no longer be initiated by small unrepresentative groups and will remain subject to consultation and polls.
<p>Revised analysis of preferred option with interim measures <u>removing large-scale reorganisations from the LGC's remit</u></p> <p>Improve the LGC-led reorganisation process and provide a new locally-led process but remove <u>large-scale</u> reorganisations from the LGC's remit.</p>	Partially meets - process does not allow large-scale reorganisations, such as amalgamations, to be used for coordination of services and economic growth.	Meets – reorganisation subject to consultation and polls.

The implementation of interim measures to constrain large-scale reorganisations changes the assessment of the preferred option in the previous RIS depending on the approach. If restrictions on who can initiate investigations are implemented the preferred option would still meet criteria 1 to 3. However, if large-scale reorganisations are removed from the LGC's remit criteria 1 and 2 would only be partially met due to large-scale reorganisation options, such as amalgamations, no longer being available as a potential method to allow for coordination of services and economic growth. Changes to the analysis in the original RIS are shown in the table above.

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Interim measures to constrain large-scale reorganisation

Given the Minister of Local Government's focus on fairness as a key criterion for reform to the local government system, our assessment affords higher weighting to the fairness criterion. Restrictions on who can initiate an LGC investigation better meets this criterion and therefore the overall objectives. If all criteria were given equal weight, the options of restricting who can initiate an investigation and removing from scope would have equal overall merit.

Restricting who can initiate an investigation also has positive benefits as it allows for more of the objectives for improving the reorganisation process in the previous RIS to be achieved.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action			
Regulated parties	There is a possibility that some non-monetised costs fall on small unrepresented groups, or even single individuals, who will no longer be able to initiate an LGC investigation. Where the affected local authority/authorities do not agree, these groups will need to provide a petition of 10 per cent of affected electors. While costs associated with organising a petition may be low relative to investigation costs for the LGC or a local authority, these may be high for a single individual or a community group.	low	medium
Regulators	No additional costs identified	-	

Wider government	No additional costs identified	-	
Other parties	No additional costs identified	-	
Total Monetised Cost		-	
Non-monetised costs		<i>low</i>	<i>medium</i>

Expected benefits of proposed approach, compared to taking no action

Regulated parties	<p>Local authorities and communities will benefit from interim measures. Allowing breathing space for the development of changes made as part of the reform will allow for better engagement with the sector and improvement of existing processes so they better meet the needs of local authorities and their communities.</p> <p>The local government sector will also benefit from the removal of the 'threat of amalgamation' and the more flexible reorganisation process covered in the previous RIS, including the introduction of a locally-led reorganisation process. These will enable processes to be more responsive to local preferences.</p> <p>Constraining large-scale reorganisations will avoid costs associated with future investigations that may previously have progressed without these constraints. These savings cannot be gaged but since 2012, the five major local government reorganisation investigations have resulted in \$6.1 million in direct costs to the LGC, with further costs to applicants, local authorities and other relevant stakeholders. The costs to local authorities and other stakeholders have not been calculated but are likely to be high. Based on the costs to the LGC alone, a recent independent review</p>	<i>medium</i>	<i>medium</i>
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	of the LGC found that reorganisation investigations do not represent "value for money".		
Regulators	None identified		
Wider government	None identified		
Other parties	None Identified		
Total Monetised Benefit		-	
Non-monetised benefits		<i>Medium</i>	<i>medium</i>

5.3 What other impacts is this approach likely to have?

Outcome of large-scale reorganisation investigations unlikely to change

Since the settings became more permissive in 2012, the LGC has investigated five large-scale reorganisation applications. None of these applications eventuated due to a lack of community support. The current settings have not resulted in actual change, therefore constraining such applications will not impact on the structure of local government.

Current reorganisation applications can continue

The LGC has recently received two applications for an alteration of local authority boundaries, and a further application seeking to establish a local board. Assessment and investigation of these applications will not be impacted by the proposed amendments.

Risks

Overall, the proposed amendments are low risk. There is a strong case for change. The sector has indicated that it agrees with the need for change, and wants to work with government on it.

We have identified three specific risks with the interim measures. We assess the likelihood and impact of these risks as low, and would put in place measures to mitigate them. These risk include:

- The sector does not support the interim measures. We have discussed the interim measures with LGNZ and SOLGM, who raised no objections to both approaches.
- Changes to the Bill are ruled out of scope if these are inconsistent with the Bill's principles and objects. While this is a matter for the Clerk of the House to determine, we consider changes proposed are consistent with the Bill.
- Announcing interim measures triggers reorganisation applications before measures are enacted. This is possible, but transitional measures will limit the number of applications.
- Reinstating the petition requirement may not be as effective as anticipated and fail to prevent large-scale reorganisation investigations. We believe that a petition of 10 per cent of affected electors will be a sufficiently high threshold that it should constrain applications that do not have a reasonable amount of local support. However, it is

possible there may still be applications for large-scale reorganisations that meet this threshold for an investigation but do not lead to organisational change.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

Yes

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The Bill is a useful vehicle for transitioning to new arrangements for the LGC

The Bill provides a useful vehicle for implementing the proposed interim measures as part of a wider reform programme to disestablish the LGC in its current form and develop new arrangements for its functions around representation and reorganisation.

As previously noted, the Bill is awaiting the Committee of the whole House stage. The Bill can be further amended to implement the proposed changes by Supplementary Order. Subject to Cabinet approval, the Supplementary Order Paper could be tabled in early 2019.

With a constrained workload, the number of Commissioners could be reduced

Under current settings, the LGC must have three Commissioners. As the LGC finishes its work programme in 2019, there may not be enough work to keep three Commissioners fully engaged. We intend to include provisions to allow for 'up to three' Commissioners during the transition period. This will enable the LGC to match any reduced workload with a reduced number of Commissioners, if this is appropriate, and to reduce costs.

Transitional arrangements are required for reorganisation applications

We propose that the date of the Minister's announcement of the interim measures will be the reference point for transitional arrangements. This is to reduce the potential for new large-scale reorganisation applications that are submitted before the enactment of the Bill. On enactment, where applications were made after the announcement of the changes, the LGC will not be obliged to continue to investigate if they do not meet the new requirements for who can initiate an investigation.

Transitional arrangements will not curtail current applications which will still be investigated.

6.2 What are the implementation risks?

There is a risk that the announcement of interim measures will trigger an increase in

applications. This is mitigated by the transitional measures described in section 6.1 above. These transitional measures also provide for current applications and those made prior to the announcement of the changes are able to progress.

Te Puni Kōkiri had comments on the implementation of changes allowing 'up to three' Commissioners. Specifically, they considered that a single Commissioner would still need to meet the requirement that a Commissioner has knowledge of tikanga Māori and be appointed after consultation with the Minister of Māori Affairs. We have determined that, should there be a single Commissioner, they would still need to meet this requirement.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Department has been working closely with the sector bodies LGNZ and SOLGM, as well as the LGC itself, in developing the interim measures.

We intend to continue this approach in developing the wider work programme. This will involve regular discussions where any issues can be raised and the effectiveness of the interim measures can be scrutinised and considered. We will monitor the number of reorganisation applications made to the LGC and whether any fail to proceed due to not meeting the petition requirement. This is intended to be for a limited period as interim measures will only be in place until changes associated with the wider reform are implemented. As such, there should be no need for long-term monitoring or evaluation.

7.2 When and how will the new arrangements be reviewed?

As mentioned in 2.4, the Minister has directed the Department to start work on the wider reform programme, and this is underway. It will consider which of the LGC's functions are necessary, and should continue, and how these could best be done (by local government, central government, an independent body, or collaborative arrangements).

Changes to the reorganisation process through the Bill, such as increased flexibility, locally-led reorganisation and a reduced number of Commissioners, could provide useful feedback for the consideration of future arrangements.

The Department is working closely with LGNZ, SOLGM and the LGC in developing options for the wider reform programme.

Appendix A: Previous Regulatory Impact Statement – Options for improving local government services



Regulatory Impact Statement – options for improving local government services

Contents

Agency disclosure statement	4
Executive summary.....	6
Part 1: Status quo and problem definition	8
1.1 Overview of part.....	8
1.2 Status quo.....	8
Overall structure of local government	8
Services provided by local government.....	10
Local government structures and services under pressure	12
1.3 The problem.....	13
Extent and urgency of the problem.....	15
RIS scope limitations	16
Part 2: Objective	17
2.1 Overview of part	17
2.2 Objective	17
Part 3: Options and impact analysis	18
3.1 Overview of part	18
3.2 Assessment criteria.....	18
3.3 Discounted interventions	18
3.4 Option 1: status quo	19
3.5 Options 2 and 3: alternatives to the status quo	20
<i>Option 2.0: enable additional structures and mechanisms for providing local government services (base option)</i>	21
<i>Option 3.0: Reorganisation that gives the Commission and councils powers to target the integrated delivery of key functions (base option)</i>	23
3.6 Mitigation of risks arising from preferred options	28
Risks from preferred options	28
Risk mitigations.....	28
<i>Reorganisation process</i>	28
<i>Service delivery options</i>	29
Part 4: Consultation	32
4.1 Overview of part	32
4.2 Consultation undertaken	32
Part 5: Conclusion and recommendations	33
Part 6: Implementation plan	35
Regulatory Impact Statement – options for improving local government services	

IN CONFIDENCE

6.1	Overview of part	35
6.2	Implementation plan	35
Part 7: Monitoring, evaluation and review		37
7.1	Overview of part	37
7.2	Monitoring, evaluation and review	37
Appendix A: Waikato Water CCO study		38

Agency disclosure statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (the Department). It analyses options for responding to the problem that New Zealand's local authorities need to adapt their governance arrangements and structures to lift performance and respond to emerging challenges, but the current reorganisation process and models are not flexible enough and are not advancing change at the level and pace required.
2. This RIS is to accompany the Cabinet paper *Local Government – better local services reforms*.

Scope of RIS

3. The general scope of the analysis is based on Cabinet direction in October 2015 for further consideration of changes to drive:
 - regional economic growth and to encourage councils to improve their organisation of functions and structures; and
 - more effective and efficient delivery of services and infrastructure [CAB-15-MIN-0177 refers].¹
4. Accordingly, the preferred options in this RIS aim to enable local government to improve the efficiency and effectiveness of local services, including water and transport, and to enable the Local Government Commission (the Commission) to proactively facilitate how communities respond to current and future pressures.
5. It is proposed that this be achieved by making available to local government more integrated models for services, such as jointly-owned council-controlled organisations (CCOs)², and mechanisms and accountability arrangements for implementing the models.
6. The proposals are in response to communities' desire for change, and a growing need for options to improve performance and cost-effectiveness while retaining community representation. The proposals will support and contribute to Government priorities, such as regional economic growth and the provision of resilient infrastructure, by enabling the integration of services through more flexible options and robust processes.

¹ The relevant Cabinet paper is published on the Department of Internal Affairs' website, and can be accessed here: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Our-Policy-Advice-Areas-Local-Government-Policy?OpenDocument#future.

² CCOs are entities in which one or more councils control 50 per cent or more of the shareholding, or have the right to appoint 50 per cent or more of the directors or trustees of the entity.

7. In line with this purpose, the proposed reforms are not intended to address more fundamental questions relating to any transfer of functions between local government and central government, the sustainability of the resource management and urban planning systems.

Analytical constraints

8. Given the nature of the issues covered in the reform programme and significant constraints on resources and time, quantification of the size of the problems and impacts has not been feasible across all policy options.
9. We cannot know what use councils and the Commission will make of the additional mechanisms proposed to be provided. However, the Commission and councils have indicated an appetite for changes of the nature described in this RIS. The proposals involve providing additional funding to the Commission – there is a correlation between funding levels and the scope, scale and pace of the change that can be achieved.
10. It is difficult to identify the exact impact of many of the preferred options in this paper as the options are enabling and will be given effect to through subsequent local government reorganisations and other change processes. As changes will be tailored to local circumstances, the proposals will affect local government, stakeholders and communities to a varied degree and with a mix of direct and indirect costs and benefits. For this reason, it is not possible for the Department to estimate the costs to local government of implementing the options. However they are designed to be implemented where there is a strong case for doing so.
11. With these limitations, we have focused on the most viable options based on the information available.
12. A key assumption of the analysis is that the proposed changes to different parts of the local government system will reinforce each other. The different parts of the reform package therefore rely on each other to collectively provide the right set of incentives for change to achieve the desired objectives.

Consultation

13. There has not been public consultation on the proposals. A reference group including local government and business representatives was established to test the high level objectives.

Glenn Webber
Director Local Government

_____/_____/_____

Executive summary

14. New Zealand's local authorities need to adapt their governance arrangements and structures to lift performance and respond to emerging challenges, but the current council reorganisation process and models are not flexible enough and are not advancing change at the level and pace required.
15. Current arrangements limit councils' ability to adequately respond to and provide for regional and sub-regional economic and population dynamics while remaining responsive to local preferences. As a result, some services are provided sub-optimally because of lack of scale, integration, and strategic oversight across local government jurisdictions.
16. In responding and adapting to these challenges, councils need flexibility to coordinate and combine networks and scarce resources across regions and towns, especially for large scale infrastructure.
17. The current legislation only allows for limited shared or integrated services, which are insufficient to enhance scale and capability for water, transport, economic development and other activities. This includes the current legislation governing reorganisations which prescribes a rigid, linear process that can be triggered only by reorganisation applications made to the Commission and is oriented towards large-scale amalgamation. Present arrangements do not allow for a reorganisation that is focussed solely on improving the performance of service delivery or infrastructure provision functions. The diagram on **page 9** explains how the current reorganisation process works.
18. In 2015 three major amalgamation proposals were not implemented for lack of council and community support in Greater Wellington, Northland and Hawkes Bay. These communities demonstrated that they were opposed to large-scale amalgamations, especially if they thought it would lead to reduction of local representation. The public debate centred on perceived loss of representation rather than potential improvements to the governance and delivery of services for the future.
19. In response to the increasingly challenging demographic, technological and economic environment in which councils work, this RIS identifies a preferred package of measures to better enable and equip them, to:
 - (1) better deliver coordinated and cost effective local services;
 - (2) better support regional growth; and
 - (3) remain responsive to local preferences.
20. The preferred package includes:
 - providing more flexible approaches to local government reorganisation;
 - giving the Commission enhanced powers with suitable checks and balances so that it can take a more pro-active, broker role, rather than being limited to reacting to reorganisation proposals;
 - enabling council-led reorganisations for the first time;

- making greater use of joint CCOs for providing services, with improved accountability tools;
 - providing, through a reorganisation, for water CCOs with statutory powers and for two 'pre-approved' models for transport CCOs, plus 'bespoke' transport CCOs subject to the approval of the Minister of Transport;
 - enabling a broader range of functions to be transferred between local authorities as part of a reorganisation; and
 - facilitating joint governance arrangements for areas of common or shared interest.
21. The diagram on **page 24** explains how the proposed reorganisation process will work.
22. This RIS explores the benefits and trade-offs of each of the key options and the expected impacts which are to assist local authorities and the Commission to develop scale and efficiency in local government service delivery arrangements while retaining community representation, voice and choice.

Part 1: Status quo and problem definition

1.1 Overview of part

23. This part of the RIS describes the current situation and the problem.

1.2 Status quo

Overall structure of local government

24. There are 78 local authorities representing all areas of New Zealand. They are made up of regional councils, unitary authorities, district councils and city councils.³ The diverse and localised structure of local government means that decisions, services and regulations can vary significantly from city to city, district to district, and region to region. The organisation of local government reflects its dual roles to provide local public services and enable local democracy.⁴
25. With the exception of the Auckland governance reforms, the structure of local government we see today was established in 1989. In 1989, some 850 local bodies were amalgamated into 86 local authorities, representing distinct geographic communities.

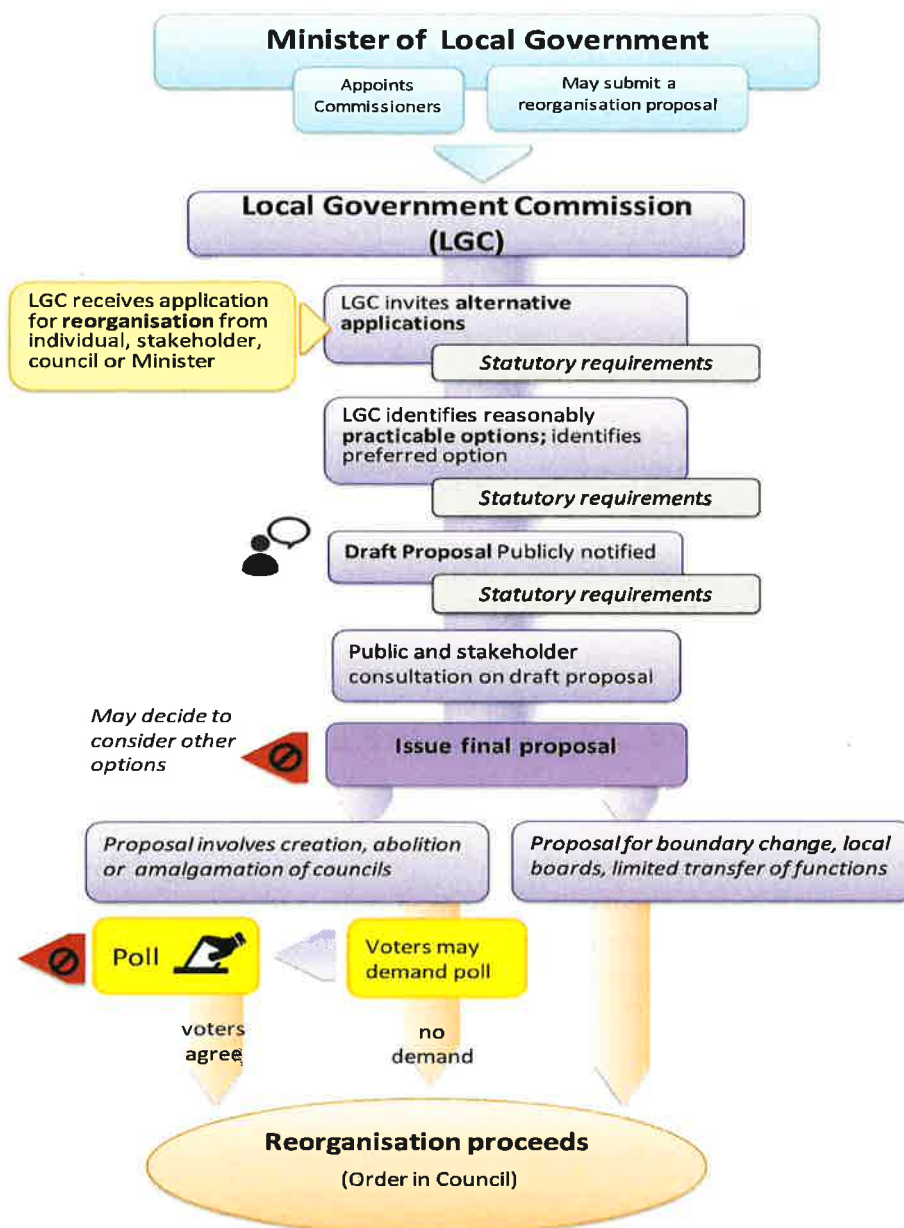
Reorganisation process

26. The Local Government Act 2002 (LGA02) contains a process for determining changes to the structure of local government, recognising that the organisation of local government needs to change over time for local authorities to work more effectively and efficiently. The current process was designed to have a focus principally on major institutional changes including on amalgamation (i.e. merging councils) and the creation or abolition of local authorities.
27. The Commission is an independent body of government appointed Commissioners that oversees local government reorganisation. It considers and makes decisions about proposals for reorganisation (subject to the results of a poll where that is required). The diagram below explains how the current reorganisation process works.

³ A unitary authority combines the functions and powers of a territorial authority and a regional council.

⁴ New Zealand Productivity Commission, *Towards better local regulation*, May 2013.

Diagram 1: current reorganisation process in LGA02



28. The Commission is required to identify the best option amongst all possible outcomes, and the evaluation criteria are weighted in favour of fewer, bigger local authorities. Other 'core' reorganisation options include setting up a new council, local boards⁵, changing council boundaries or transferring statutory obligations between councils.

⁵ A reorganisation proposal to establish a unitary authority may propose establishing local boards to provide for effective democratic governance at a community level, while achieving the benefits associated with larger organisations.

29. Arrangements, such as joint council governance arrangements and CCOs, may only be established by the Commission as part of a reorganisation where a 'core' structural change, such as an amalgamation or boundary change, is also proposed. Electors have an opportunity to demand (by petition) a poll (vote) on amalgamations and other major institutional changes.
30. Despite the existence in statute of a reorganisation process, restructuring has generally only occurred by enacting specific legislation. For example, the Auckland Council was established in 2010 through special legislation (the Local Government (Auckland Council) Act 2009) which merged eight local authorities into one unitary authority.

Services provided by local government

31. Every day New Zealanders are affected in some way by decisions city, district or regional councils make. Councils:
 - provide local governance, meaning they make and implement decisions about activities and funding on behalf of place-based communities;
 - provide local public services, which include roads, drinking water, wastewater, public transport and community facilities and emergency management; and
 - regulate natural resource use, land use and public health and safety, for example by making and enforcing rules in plans under the Resource Management Act 1991 (RMA).⁶
32. Local authorities are significant owners and providers of infrastructure. Collectively local government owns assets valued at \$120 billion⁷, and manages the majority of New Zealand's potable (drinking) water, wastewater and stormwater infrastructure and 88 per cent of the country's roads (National Infrastructure Unit, 2015).⁸ In comparison central government has approximately \$116 billion worth of existing infrastructure assets and \$50 billion of forecast infrastructure spend over the next ten years.⁹

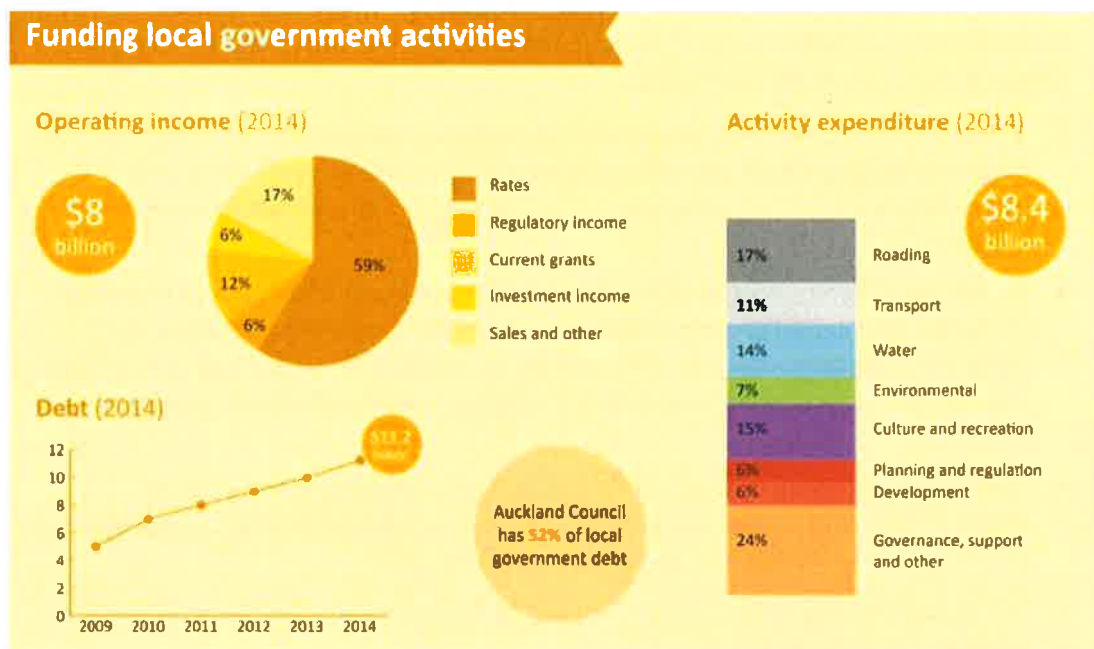
⁶ The role, conduct and powers of local government are set out in over thirty pieces of primary legislation.

⁷ National Infrastructure Unit (2015) The Thirty Year New Zealand Infrastructure Plan.

⁸ National Infrastructure Unit (2015) The Thirty Year New Zealand Infrastructure Plan. Local government drinking-water supplies 85 per cent of population.

⁹ National Infrastructure Unit (2015) The Thirty Year New Zealand Infrastructure Plan.

Diagram 2: local government operating income and activity expenditure (2014)



Source: Information held by Department of Internal Affairs.

Service delivery mechanisms

33. Current mechanisms for the governance, funding, and delivery of infrastructure, services, and regulatory functions include:
- responsibility for governance, funding, and delivery exercised by the local authority (i.e. 'in house' delivery);
 - responsibility for governance and funding exercised by the local authority, and responsibility for delivery exercised by—
 - a CCO of the local authority; or
 - a CCO in which the local authority is one of several shareholders; or
 - another local authority (however responsibility for transport cannot be transferred); or
 - another person or agency (i.e. contracting); or
 - responsibility for governance and funding is delegated to a joint committee or other shared governance arrangement, and responsibility for delivery is exercised by an entity or a person listed above.
34. The availability of these mechanisms is restricted to specific services and circumstances, impacting their ability to contribute to service delivery improvement. The proposals later in this RIS will help lift these barriers.

Local government structures and services under pressure

35. Councils face a complex range of current and emerging pressures and challenges affecting their structures and services:
- aging infrastructure networks which will need renewing – capital investment has been historically low relative to population and income in recent decades, suggesting a spike in required capital renewals and replacements in coming decades;¹⁰
 - a range of different affordability constraints requiring different policy responses – including population growth (requires investment in new infrastructure and services), population decline (affordability constraints for improving or maintaining service levels), and aging populations (changing needs and reducing average incomes);
 - technology is driving change which provides new opportunities for asset management and service integration – greater collaboration and capability could lead to smarter investment and decision-making; and
 - infrastructure and service delivery needs to be resilient to the impacts of climate change and natural disasters.¹¹
36. One tangible effect of demographic and economic change on local authorities is its impact on regional labour markets. Councils struggle to recruit people they need to deliver high quality services and make good governance decisions. A number of councils, especially rural and provincial councils, have reported they have difficulty recruiting specialist staff.¹²
37. To manage these pressures and a desire for regional economic growth, some councils and communities have in recent years:
- sought new funding tools: however providing additional funding tools is not desirable or feasible in a challenging economic environment (i.e. Local Government New Zealand Funding Review);
 - sought efficiencies by establishing joint CCOs (for example Wellington Water and proposals for jointly-owned CCOs for Wellington Transport, Canterbury Transport, and Waikato Water), but have struggled to develop and implement optimal models;
 - entered into shared service agreements which have seen some cost savings and better integration, but these have been largely for 'back-office' functions; and

¹⁰ Local government finances: A historical perspective, NZIER report to OAG, 10 July 2014

¹¹ National Infrastructure Unit noted "with sea levels expected to rise by 30 centimetres by 2050, local authorities are noting that the rising water table is hastening the degradation of pipes. Changed rainfall patterns will bring challenges, not only for water storage, but also for flood protection of productive land and urban settlements as well as key transport networks that in our hilly terrain, can be impacted by slips and erosion. Flooding is our most frequent natural disaster with an average annual cost of approximately \$51 million".

¹² Productivity Commission (2013) *Towards better local regulation*, Wellington, New Zealand.

- applied for reorganisation to the Commission under LGA02 for greater efficiency and scale but the proposals have failed to reach implementation.

1.3 The problem

38. The problem is that New Zealand's local authorities need to adapt their governance arrangements and structures to lift performance and respond to emerging challenges, but the current reorganisation process and models are not flexible enough and are not advancing change at the level and pace required. Current arrangements limit councils' ability to adequately respond to and provide for regional and sub-regional economic and population dynamics, while remaining responsive to local preferences. As a result, some services are provided sub-optimally because of lack of scale, integration, and strategic oversight across local government jurisdictions.

Reorganisations have not been implemented

39. Amendments to the LGA02 in 2012 were designed to create a set of rules for reorganisation that facilitated community-led changes to local governance. In practice the rules have led to an emphasis on full amalgamation and have not facilitated the development of improved service governance and delivery arrangements. The result is that, due to a lack of broad community support, limited large scale change appears possible outside of Auckland and many opportunities to improve effectiveness, efficiency and integration of services will remain unrealised under current settings.

Recent experiences with the reorganisation process

In 2015, amalgamation proposals in Greater Wellington, Northland and Hawke's Bay were not implemented for lack of broad community and council support.

The proposals for each region were to merge existing councils into unitary authorities to support regional growth and achieve efficiencies, economies of scale and greater coordination of services.

The lack of broad community support was due in part to concerns about the perceived weakening of local voice and representation. While most people in the Wellington region opposed the region-wide unitary council about 40 per cent of submissions to the Commission on the proposal advocated smaller scale change. The councils have subsequently been working together with the Commission to explore possibilities for a more integrated transport network. In Hawkes Bay, following a 66 per cent vote against amalgamation, local government leaders immediately pledged closer regional working relationships.

The Commission and communities have expressed concerns that the reorganisation process in the LGA02 is weighted towards amalgamation. The process is out of line with community preference for and acceptance of smaller scale and more targeted change that achieves efficiencies without weakening local representation.

Service delivery mechanisms restricted

40. While there are successful examples of shared service agreements and CCOs, many change opportunities have not been taken. Joint arrangements involve a reduction of direct control by councils without any accompanying reduction in popular accountability or liability. They also require often lengthy negotiations while parties develop frameworks and safeguards for the joint arrangements.
41. The benefits of such arrangements are not readily perceived and accepted by citizens, especially where they involve strategic decisions and investments that may not have immediate tangible benefits. The combination of political disincentives and unwieldy negotiations to achieve solutions makes for slow and uneven progress. The absence of independent oversight and support (that is not answerable to a particular constituency or ward) is also a barrier.
42. Under the current system it is not possible to create water and transport CCOs (outside of Auckland) with statutory powers needed to operate network infrastructure except by legislation. Local authorities that want to make changes have identified significant difficulties in doing so, for example the Waikato water CCO proposal. The current choices are limited and based on an implicit assumption in the statutory requirements for CCOs of a single local authority delivery. **Appendix A** provides more detail about the Waikato Water proposal.
43. Under sections 33 and 80 of the RMA, it is currently possible for councils to establish joint committees to prepare combined resource management plans. However, the Wairarapa Plan is the only example of a combined plan prepared jointly by two or more councils under those provisions.¹³ As noted above, the Commission cannot currently establish joint committees with resource management planning except as part of a reorganisation unless there are also more significant structure changes (e.g. an amalgamation or boundary change).

¹³ *Combined Plan Study – Section 80 of the Resource Management Act 1991*, Ministry for the Environment (27 June 2014).

Canterbury transport

The effective delivery and operation of public transport services is governed by the performance of local authorities discharging responsibilities, duties and powers under: the Land Transport Management Act 2003 (LTMA), the Local Government Act 2002 (LGA02), the Local Government Act 1974 (LGA74), and the Land Transport Act 1998 (LTA).

A review by consultancy McGredy Winder & Co. last year found public transport services and infrastructure in the greater Christchurch area were sub-optimal because the four councils involved were not achieving the level of integration that was necessary. For example having the responsibilities for the bus routes and bus stops split between different councils required a degree of alignment across these crucial areas that was not always achieved.

The review concluded the Canterbury councils needed to move towards more integrated decision-making if they wanted to improve the governance and delivery of public transport, through a joint CCO, and that **legislation was needed to constitute and transfer functions to the CCO.**

Source: McGredy Winder (2015) *Review of governance and delivery arrangements for public transport in greater Christchurch*, November 2015.

Extent and urgency of the problem

44. The problem affects each council and community in different ways. It arises from both the regulatory system and the choices of local authorities, the Commission and communities. There is awareness in local government of the problem and a general willingness to adapt and respond. However councils face the constraints and barriers summarised below:

- It is difficult for councils to provide for regional economic growth, achieve efficiencies and respond to population dynamics while remaining responsive to local preferences.
- Large scale change requires a level of broad community support that is very difficult to achieve.
- The reorganisation process in the LGA02 is weighted towards amalgamation rather than smaller scale, more targeted change that achieves efficiencies without weakening local representation.
- Joint arrangements often involve a reduction of direct control by individual councils to accrue benefits.
- The benefits of joint arrangements are not readily perceived and accepted by citizens.
- Joint arrangements often require lengthy negotiations to implement.
- The absence of independent impartial oversight and support (such as that provided by the Commission in the proposals in this RIS) produces slow and uneven progress.

- It is not possible to create water and transport CCOs (outside of Auckland) with the statutory powers needed to operate network infrastructure except by legislation.
- The Commission cannot establish joint committees with resource management planning functions as part of a reorganisation unless more significant structure change is also proposed.
- Legislation is needed to appropriately constitute, and provide for the delivery of functions by joint CCOs.

45. These constraints have implications for:

- Living standards and prosperity of communities. Council decisions relating to roading, transport, water services and resource management have a particularly high impact on ratepayers, residents and businesses. Local government expenditure accounts for close to four per cent of the country's gross domestic product, and regulates and provides services to major sectors of the economy (for example, tourism, agriculture, construction).
- Regional economies and labour markets, which cross local authority boundaries. It is hard for businesses and central government to work with fragmented and uncoordinated structures.
- Smaller councils, which can struggle to maintain or develop infrastructure. For example, the Ministry of Health reports that many territorial authorities advise that they cannot afford to upgrade their drinking-water supplies and sewage treatment and disposal schemes to meet higher performance requirements.
- Larger councils in high growth areas, which can struggle to expand infrastructure to meet demand.

RIS scope limitations

46. The analysis deliberately does not address broader, more fundamental questions such as the roles of central versus local government and the relationship between the LGA02, the RMA and the Land Transport Management Act. Addressing these questions is beyond the scope of this RIS and what is achievable in the short to medium term.
47. There are longer-term 'first principles' reviews underway to look at these issues, including the Productivity Commission's inquiry into the urban planning system (due to be completed in November 2016)¹⁴ and the cross-agency strategic review of the resource management and planning system being led by the Ministry for the Environment¹⁵. This is likely to be a further step in a longer journey of complementary improvements to the local government system. Changes to the governance and delivery of services in Auckland are outside of the scope of this work because Auckland governance was recently reformed and change is still bedding in.

¹⁴ The Minister of Local Government was one of the commissioning Ministers for this inquiry.

¹⁵ A number of stakeholders, including Local Government New Zealand and the New Zealand Council for Infrastructure Development, are involved in the MfE-led review and doing their own system-level work.

Part 2: Objective

2.1 Overview of part

48. This part states the objectives that the regulatory intervention is seeking to achieve.

2.2 Objective

49. The Government's objective is to better enable and equip local government, in response to the increasingly challenging demographic, technological and economic environment in which it works, to:
- (1) increase coordination and cost effectiveness of local services;
 - (2) increase support for regional growth; and
 - (3) remain responsive to local preference.
50. Options should be implemented as soon as practical after the October 2016 local authority elections. It is opportune and desirable to provide newly elected councils and the Commission with additional tools early in the 2016 to 2019 local government term in order to affect policy and planning cycles.¹⁶

¹⁶ For example: section 15 of the LGA02 requires all local authorities, after each triennial election, to agree protocols for communication and collaboration over the next triennium; after elections, councils begin to prepare their long term plan which is a document required under the LGA02 that sets out a local authority's priorities over ten years (the next round of plans will be adopted in 2018).

Part 3: Options and impact analysis

3.1 Overview of part

51. This part identifies a range of practical options that may wholly or partly achieve the objectives. The options are not all mutually exclusive and may be used to form a package to address the problem. An options and impact analysis summary table is provided on **page 25**.

3.2 Assessment criteria

52. The objectives, outlined in part 2, illustrate the key attributes sought. These contribute to the selection of preferred options along with feasibility, flexibility, timeliness and cost considerations. The status quo is used as a baseline for analysis. This means that all of the primary options are assessed against the status quo using the objectives.

3.3 Discounted interventions

53. We have considered, but discounted, the following interventions for reasons of poor feasibility, high cost and inability to address the problem in a timely way.
- Legislating for reform region by region following a review process - discounted as this would be effective for a single region, but would be an ad hoc, time consuming, costly approach and risk resulting in a fragmented local government system if done region by region.
 - Nationwide restructuring directed by Government and implemented by the Commission (as with the Elwood Commission and 1989 reforms) - not favoured as the extent of the problems outlined earlier would not warrant fundamental reforms of this nature and it would not provide the same level of community engagement and flexibility to tailor solutions to local circumstances as the preferred options.
 - Commissioning a further NZ-wide review process such as a Royal Commission or a Productivity Commission inquiry, followed by legislation - discarded as it would be too costly and time consuming, although it would have the advantage of encouraging public discussion and debate and building momentum for change.

- Using significant financial incentives for change as overseas jurisdictions have done, e.g. in NSW.¹⁷ - discounted as this would be an expensive option and not guaranteed to be successful. Work with sector partners to develop a new, common performance framework is underway but it will take time to fully realise the potential for driving performance.

3.4 Option 1: status quo

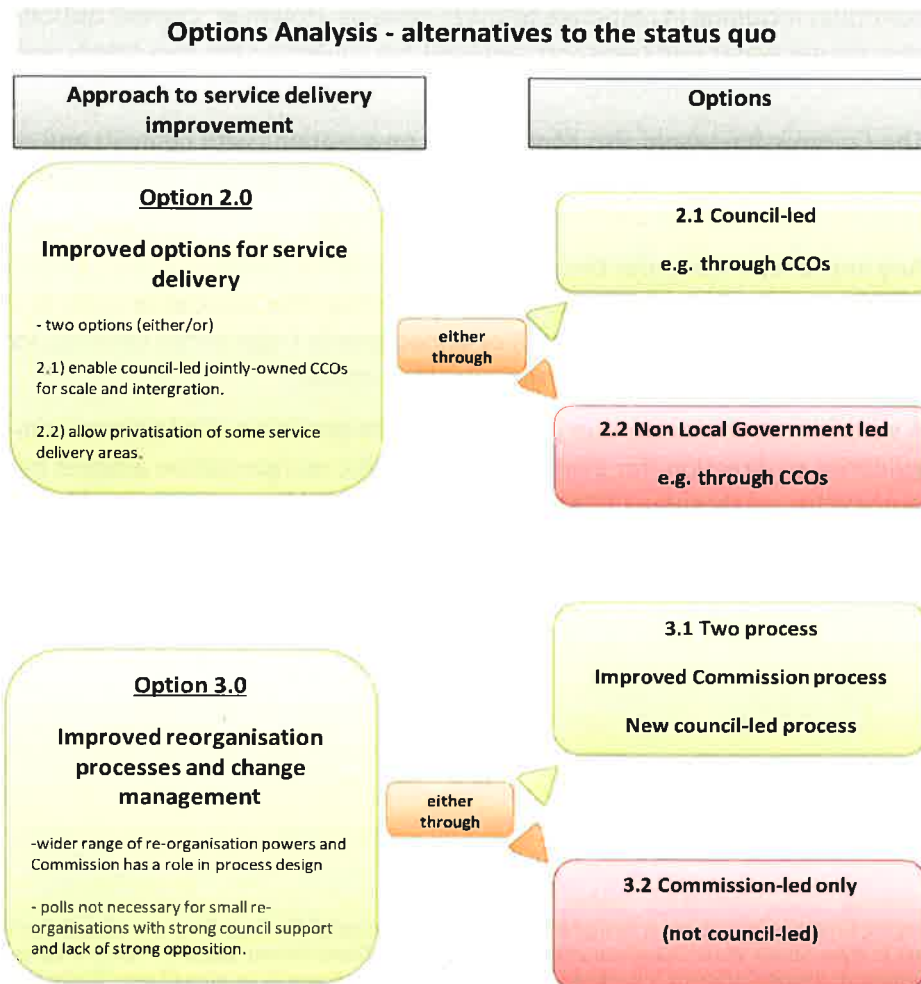
54. Option 1: status quo is the do nothing option. It involves the Government taking no further action in response to the identified problems. The status quo favours the localised provision of services, overseen by elected representatives.
55. The status quo does not preclude Government initiatives already underway that affect local government. For example, efforts are underway to improve council capability and the availability and quality of data, so even with no changes to the LGA02 some improvement in local government service delivery might reasonably be expected.
56. Under the LGA02 councils are required to regularly review their efficiency and effectiveness. Councils' own exploration of options to improve services would continue, including in response to these reviews. However, current options (e.g. to restructure water and transport services) are subject to the regulatory and other constraints described earlier.
57. The Commission would also continue its conversations with councils and communities but, as demonstrated by recent history, its ability to develop reorganisation proposals that are acceptable to communities is constrained.
58. Any improvements under the status quo will not be substantial enough to address the problem a way that achieves the stated objective. The associated costs to councils and communities of inefficient, costly, or unnecessarily fragmented services, including water and transport infrastructure, would continue.
59. A variation on the status quo could involve the provision of additional non-statutory guidance or direction (for example, on a specific reorganisation process or the existing process for establishing CCOs). However this would have very limited benefits over and above the status quo, as the problem is not for the most part a problem with how current legislation is being interpreted and applied. Additional guidance is unlikely to have any material impact without legislative change to remove regulatory barriers.

¹⁷ Employing financial incentives is not guaranteed to be successful. To date the measures to incentivise mergers in New South Wales have not resulted in the State Government's desired level of voluntary amalgamation despite offering a package of up to \$1 billion to councils as part of the "fit for the future" local government reforms.

3.5 Options 2 and 3: alternatives to the status quo

60. There are two broad approaches considered to improve the level of service delivery efficiency compared to the status quo:
- Option 2: enabling additional structures and mechanisms for the provision of local services; and
 - Option 3: providing the Commission and councils respectively with powers to target the integrated delivery of key functions, and to enable the Commission to broker and facilitate change.
61. Within each of these approaches sub-options exist. The following sections detail the analysis of these sub-options. Options 2 and 3 are not mutually exclusive serving as base options and sub-options to form a package for addressing the problem.
62. Diagram 3 below provides an overview of the analysis. The green boxes indicate the preferred regulatory approaches and options. A detailed analysis summary table is provided on page 25.

Diagram 3: Overview of options analysis



Option 2.0: enable additional structures and mechanisms for providing local government services (base option)

63. This option involves amending the LGA02 to enable additional structures and mechanisms for the provision of local services. The option allows for a targeted regulatory response to the problems and provides opportunities for local government performance improvement.
64. Appropriately targeted legislative amendments can be enacted reasonably quickly. The costs and benefits of the option will depend on the extent to which the Commission and councils use the new tools.

Sub-option 2.1: strengthen existing service delivery structures and facilitate multiply-owned CCOs, particularly for the delivery of water and transport services [preferred]

65. Sub-option 2.1 builds on option 2.0, and includes:
- enabling more flexible regional and unitary models (e.g. rationalising functions by enabling a unitary authority also exercising regional council functions to provide services, such as resource consents, in a neighbouring district);
 - facilitating greater use of CCOs, including jointly-owned CCOs, with improved accountability tools to safeguard democratic control (refer to risk mitigations below), for example:
 - providing, through a reorganisation, for water CCOs with statutory powers and for two 'pre-approved' models of transport CCOs, plus enabling 'bespoke' transport CCOs (subject to the approval of the Minister of Transport);
 - enabling transfer of a broader range of powers between local authorities;
 - facilitating joint governance arrangements for areas of common and/or shared interest, while protecting the integrity of council-iwi arrangements established by Treaty settlements or other legislation; and
 - enabling the Minister of Local Government to obtain comparable data on local government asset management and service delivery to support performance improvement and transparency.
66. Better integration of services and networks through CCOs will help address the problems identified in part 1 of this RIS in a way that achieves the objective identified in part 2. Water and transport services require considerable investment and technical capability.

67. As the Auckland local government reforms have demonstrated, it is possible to establish an arm's length service delivery organisation, such as a CCO that can better coordinate and combine networks and resources, while retaining local authority ownership and influence over service delivery. They can also better attract the level of technical capability required to deliver effective services. Better enabling joint CCOs can also provide savings and improve value for money:
- The estimated total savings over 10 years for Waikato water services are estimated at \$107 million and over 28 years, \$468 million.¹⁸
 - Greater financial capacity to make capital investments, e.g. Watercare has spent \$116 million to upgrade the water supply to eight communities in Franklin. This expenditure would have been beyond the financial capability of the former Franklin District Council.
68. We expect these proposals to lead to the establishment of new multiply-owned CCOs, particularly for water and transport services, with likely improvements in the quality and cost-effectiveness of local services. Some CCOs may be established outside the reorganisation process. However, most change is likely to be achieved through reorganisation processes (subject to the changes to the reorganisation process described in Option 3 being made).
69. Appropriate transfers of functions and joint governance arrangements would be alternative ways of achieving economies of scale and improving the integration of services.

Sub-option 2.2: allow separate, non-local government public entities to own and operate services

70. This option is to allow separate, non-local government public entities to own and operate certain services, such as water.
71. Commercialisation or shifting responsibilities to new entities could achieve benefits by bringing commercial disciplines to the relevant services. This is a subject that many people feel passionately about and any reform proposals would be controversial. It would be a major policy shift requiring more substantive longer-term policy work. Commercialisation would, for example, require full economic and price regulation of water services providers (as a monopoly service), and would require consideration of iwi interests in water.

¹⁸ Cranleigh, Mott MacDonald and Martin Jenkins: Business Case for Water Services – Delivery Options, May 2015.

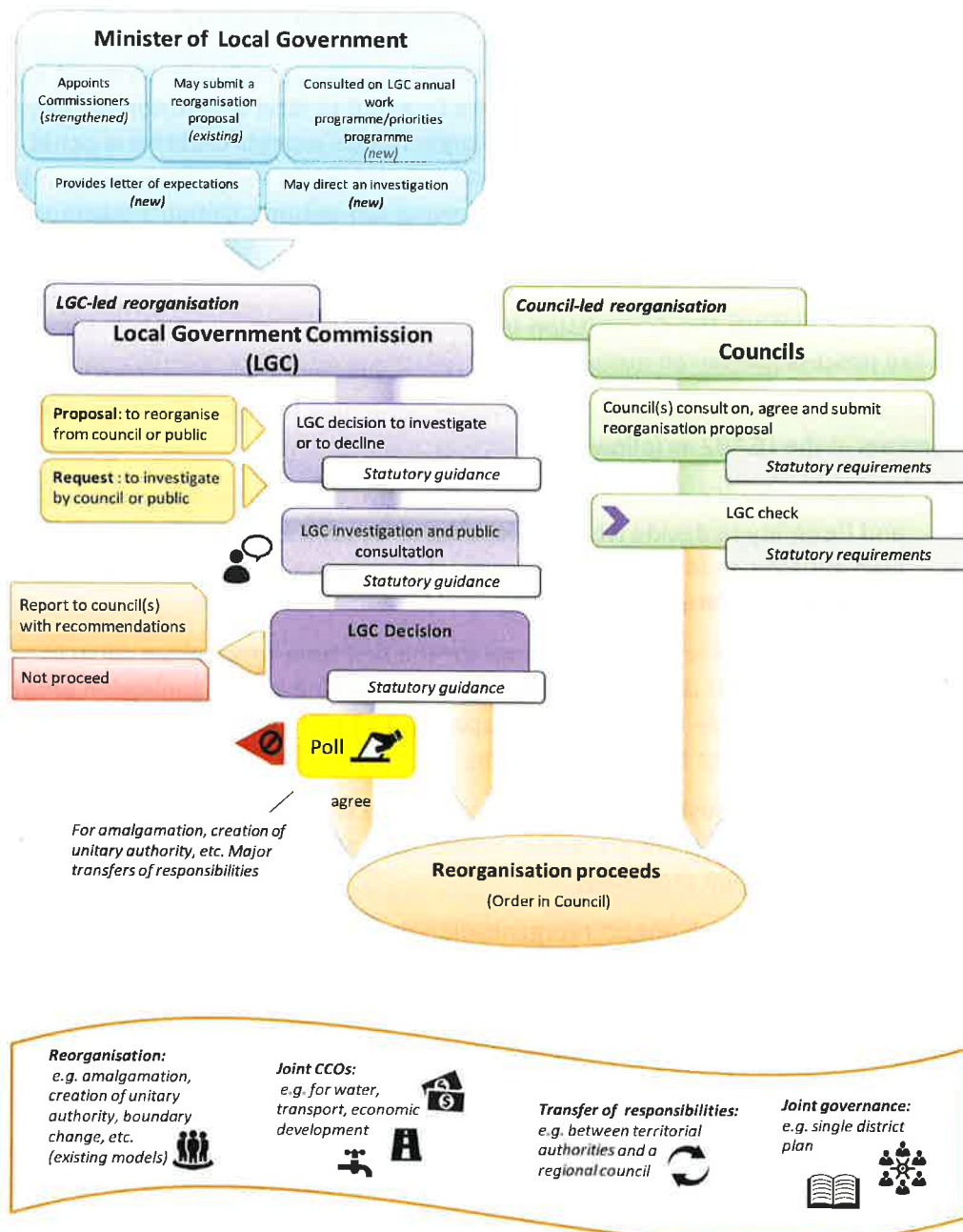
Option 3.0: Reorganisation that gives the Commission and councils powers to target the integrated delivery of key functions (base option)

72. Option 3.0 involves amending the reorganisation process so that it can result in a wider range of reorganisation outcomes that are targeted to local circumstances. Legislative amendments to the local government reorganisation process could be enacted reasonably quickly and need not impose significant direct compliance costs on local government. Together with one of its following sub-options, Option 3.0 complements Option 2.0 above.

Sub-option 3.1: improve the Commission-led reorganisation process and provide a new council-led process [preferred option]

73. Option 3.1 builds on Option 3.0 and involves amending the council reorganisation process in the LGA02 as follows:
- improving the 'Commission-led' process to give the Commission greater discretion and flexibility to decide what proposals and issues it will investigate (either on its own initiative or in response to a request or proposal) and what processes and engagement strategy it will follow;
 - enabling council-led reorganisations for the first time which allow councils to take responsibility for developing, refining and consulting on reorganisation proposals, with the objective of securing the support of all affected councils and communities, and endorsement by the Commission;
 - giving the Commission enhanced powers, with suitable checks and balances, so that it can take a more pro-active, broker role, rather than be restricted to reacting to reorganisation proposals;
 - using polls for high impact reorganisation proposals, but allowing some change (e.g. CCOs and joint governance arrangements) to be established without recourse to a poll.
74. Diagram 4 explains how the proposed reorganisation processes will work, and the possible outcomes.

Diagram 4: Proposed reorganisation process and resulting structural change



Sub-option 3.2: improve the Commission-led reorganisation process

75. Option 3.2 involves amending the reorganisation process as with option 3.1 above, but without the council-led reorganisation process.
76. This option could achieve improved service delivery, but is weaker on providing for local choice, and incentivising councils to develop their own solutions compared with option 3.

77. Table 1 below provides a summary of the options and impact analysis.

Table 1: Options analysis summary table

Option	Assessment against objectives 1 and 2: coordinated and cost effective service/ support regional economic growth	Assessment against objective 3: responsive to local preferences	Benefit	Cost/risk	Net impact
Option 1: Status quo (with or without additional guidance and direction).	Partially meets – some progress through current initiatives, however ability to achieve the benefits of scale are constrained. Potential for marginal improvement through the clearer direction against best practice.	Partially meets – strong on community voice because it favours the localised provision of services, however it doesn't provide adequate choice on ways to deliver services.	N/A	N/A	Opportunity cost. The associated costs to people from sub-optimal service provision and dampened economic activity would continue. Some compliance costs for councils and missed opportunities for efficiency gains.
Additional structures and mechanisms for the provision of local services					
Option 2.0 (Base option): Enable additional structures and mechanisms for providing services.	Meets - broadens the responses available to local government to address the problems. Could realise the benefits of scale and specialist service delivery.	Meets – potential to retain local voice while enabling appropriate service delivery at the most appropriate level.	Enables more efficient and effective service delivery.	Alternative structural options risk weakening the direct accountability relationship with communities.	Strong potential to contribute to achieving the objectives, dependant on local uptake and implementation.

Option	Assessment against objectives 1 and 2: coordinated and cost effective service/ support regional economic growth	Assessment against objective 3: responsive to local preferences	Benefit	Cost/risk	Net impact
Sub-option 2.1: Strengthen existing service delivery structures and facilitate multiply-owned CCOs, particularly for the delivery of water and transport services <u>[preferred]</u> .	Meets - better integration with planning and management of national transport networks.	Meets – substantial proposals would require a poll, however smaller scale reorganisations could be achieved without a poll.	Provides councils with more choices to respond to local circumstances.	Loss of direct control – potential divergence between council directions/plans/strategy and those of the CCO. Risks that creating more CCOs could result in coordination issues, particularly in circumstances where there are multiple shareholder councils with different objectives and there is no effective mechanism for resolving differences. Can diverge from community preferences. Less direct relationship with communities that in-house model.	Significant cost-savings, e.g. better integration with planning and management of national transport networks. Ability to better attract the professional expertise required to manage water and transport services. Able to respond on larger scale, and balance interests of multiple communities. Ability to mitigate risks by providing a framework for such CCOs.
Sub-option 2.2: Allow separate, non-local government public entities to own and operate services.	Partially meets – potential to meet objectives.	Fails to meet – may reduce democratic accountability to citizens.	Potential savings through specialist focus on delivery.	Significant departure from status quo could result in higher implementation costs. Change would not be possible early in the next local government term, as is desirable.	n/a Inadequate scope for analysis of impacts.

Option	Assessment against objectives 1 and 2: coordinated and cost effective service/ support regional economic growth	Assessment against objective 3: responsive to local preferences	Benefit	Cost/risk	Net impact
Options: change management and procedures (i.e. for implementing structures)					
Option 3.0 (Base option): Reorganisation that gives the Commission and councils powers to target the integrated delivery of key functions.	Meets - potential to right-size process according to need. Potential to consider achievability when pursuing change.	Meets – retains local voice whilst enabling new service delivery savings and improvements.	Enables implementation of more efficient service delivery.	Adds process. Less prescriptive process potentially results in wider discretion and more variable outcomes and potential for fragmentation.	Enables more change and greater menu of options available to councils and the Commission.
Sub-option 3.1: Improve the Commission-led reorganisation process and provide a new council-led process [<u>preferred option</u>].	Meets – ability to target reorganisation of services to achieve outcomes.	Meets – reorganisation subject to consultation and polls.		Whilst no proposal would go ahead without net benefits, there could be establishment costs. Opportunity costs from uncertainty for the duration of a reorganisation process. Risks arising from inappropriate exercise of powers.	Increase the likelihood of successful reorganisations by: enabling the Commission to act as a pro-active broker of change; and enabling councils to lead reorganisation proposals. Enable the Commission and councils to adapt the size of a reorganisation process so it is proportionate and appropriate to the level of change being proposed. Ability to mitigate risks through greater accountability.

Note: for brevity sub-option 3.2: improve the Commission-led reorganisation process has been excluded from the table.

3.6 Mitigation of risks arising from preferred options

Risks from preferred options

78. Greater flexibility for the Commission will result in a significant increase in its role, powers and discretion. These include:
- high discretion to determine its own work programme, rather than be required to respond to applications as they arrive. This includes the ability to choose to investigate local government arrangements on the Commission's own initiative;
 - high discretion about the process the Commission will use to progress an investigation/reorganisation; and
 - new powers to implement the reorganisation of local government without recourse to a public poll. This includes the ability to establish CCOs, compel councils to join existing CCOs, expanded powers to transfer functions and powers between councils, and boundary changes.
79. These changes support a strengthening of the accountability arrangements for the Commission to ensure that the Minister of Local Government, Parliament and the local government sector can be confident that the Commission will exercise its increased discretion and powers wisely.¹⁹
80. At the same time, an increase in the level of accountability between the Minister of Local Government and Commissioners also supports ensuring that Commissioners have the ability to carry out their roles and functions for which they are accountable. This has implications in particular for the ability of Commissioners to appoint a Chief Executive to undertake tasks and functions on their behalf.

Risk mitigations

Reorganisation process

81. We have identified four broad checks and balances:
- **Additional accountability arrangements for the Commission** – Accountability arrangements between the Commission and the Minister of Local Government (the Minister) currently reflect an arms-length relationship based on the Commission's historical roles. The mitigation is to build on existing accountability arrangements, by retaining the core provisions and introducing additional accountability measures that draw substantially on the accountability framework applying to Crown entities, including:

¹⁹ The Commission is an independent statutory body (not a Crown Entity or Public Service department). Its formal accountability arrangements are limited compared with other public bodies. There are no requirements for it to produce any kind of annual plan (such as a statement of intent). However, LGA02 requires it to produce a report of its 'proceedings and operations' annually (which typically comprise a brief summary of its activities).

- the provision for the Minister to provide the Commission with an annual Letter of Expectation; and
- the requirement for the Commission to provide an annual Statement of Intent to the Minister, which takes account of the Minister's Letter of Expectation;
- the ability for the Minister to direct the Commission to have regard to government policy (as with an Autonomous Crown Entity);
- the requirement that the Minister must be consulted on formation of the Commission's Annual Work Programme, excluding those aspects that relate to ring-fenced statutorily independent functions;
- the ability for the Minister to review the operations and performance of the entity (as with a Crown Entity); and
- the ability for the Minister to direct the Commission to investigate a local government arrangement and treat it as a reorganisation matter without being required to submit that as a reorganisation application.
- **Statutory guidance for reorganisations** – the Commission will need to be guided by criteria about what it investigates, the processes by which it does so (including public engagement) and what it seeks to achieve. Guidance will include cost benefit considerations, community views, effect of options on overall territorial authority viability.
- **Use of polls** – the retention of polls where the Commission proposes to abolish, constitute or amalgamate local authorities. Polls will be introduced for a major transfer of water and/or transport and/or RMA functions from one local authority to another, except where the Commission is satisfied all affected local authorities agree to the proposal.
 - The current process under which electors can demand a poll via petition could be replaced with an automatic right to vote in a poll (polls are almost inevitable and removing the petition requirement will avoid 3 to 4 month's delay and a divisive impact on communities).
- **Orders in Council** – Orders in Council to give effect to local authority reorganisations should be recommended by the Minister of Local Government (rather than directly by the Commission) to the Executive Council. This change would bring the process for Orders in Council into line with standard practice. The legislation would require the Minister to recommend an Order in Council unless he or she was satisfied that the Commission had not acted in accordance with its mandate and legislation.

Service delivery options

82. The LGA02 provisions governing CCOs contain the following gaps, which risk undermining the establishment and operation of joint-CCOs:
- (a) no specific powers for the Commission to establish multiply-owned CCOs without a full amalgamation proposal involving a core function;

- (b) no specific provisions facilitating the funding, governance and management of jointly-owned CCOs;
- (c) no processes to integrate strategic council planning with CCO planning and service delivery; and
- (d) particularly in circumstances where there are multiple shareholder councils with different objectives. There is no effective mechanism for resolving differences.

83. The mitigations for these gaps are set out below.

84. **Proposed mitigations (a):**

- The mitigation is providing the following powers to the Commission (subject to statutory guidance) in relation to establishing multiply-owned CCOs:
 - the power to establish a CCO, including a jointly-owned CCO, as part of a reorganisation, even when no other change is proposed;
 - the power, subject to statutory criteria to:
 - change the shareholding of an existing CCO by adding one or more additional local authorities;
 - abolish an existing CCO, and transfer its functions, assets and liabilities to a new or expanded CCO;
 - requiring local authorities to obtain the written agreement of the Commission before undertaking formal consultation on a proposal to establish a jointly-owned CCO for the purposes of delivering water, wastewater, stormwater or transport services (or any combination of these);
 - powers to investigate a proposal to establish a CCO, which may lead to the Commission intervening, for example to develop an alternative or amended proposal as a reorganisation to achieve better outcomes; and
 - a formal dispute resolution role in relation to disputes between local authorities involved in the creation of a jointly-owned CCO.

85. **Proposed mitigations (b, c and d):**

- **Integrated CCO and council planning:** ensure that where CCOs deliver core services their activities are closely integrated with council planning systems to ensure ratepayers receive efficient quality services²⁰.
- **CCO funding:** develop requirements for allowing a substantive CCO to manage its funding including the amount that shareholders commit, allocating a funding formula, managing disputes, funding tools and management of borrowing and debt.

²⁰ Changes to require CCOs using capital charges (e.g. Watercare's infrastructure growth charges) to be incorporated into a CCO development contribution policy and become subject to the same objection mechanisms as territorial authorities. This implements a recommendation of the Productivity Commission report *Using land for housing* and provides greater transparency and accountability around CCO charges.

- **Restriction on pricing for water CCOs:** Watercare Services Limited is prohibited from distributing surpluses to its shareholders; include a similar prohibition in the LGA02 for all water services CCOs.
- **Establishing transport CCOs:** provide for the establishment by reorganisation of two preferred models of transport council-controlled organisations as follows:
 - regional transport CCOs to undertake all functions currently undertaken by shareholding local authorities in relation to local roads, public transport (including contracting for public transport services), and transport planning;
 - regional roading only CCOs to undertake all functions currently undertaken by shareholding local authorities in relation to local roads including maintenance, control and regulation, and improvements; and
 - ability to develop bespoke models, with the agreement of the Minister of Transport.²¹
- **Tax liability:** include a set of generic tax provisions that would ensure any reorganisation of local government services and functions is carried out in a tax neutral manner.

²¹ Under either of the proposed models, ownership of local roads would remain with territorial authorities.

Part 4: Consultation

4.1 Overview of part

86. This part of the RIS describes the consultation undertaken on the proposals in this RIS.

4.2 Consultation undertaken

87. The Treasury, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the New Zealand Transport Agency, the Ministry of Health, Land Information New Zealand, Te Puni Kōkiri, Ministry of Justice, Office of Treaty Settlements, Ministry of Primary Industries, Department of Conservation and Inland Revenue Department have been consulted on the proposals. The Department of the Prime Minister and Cabinet has been informed. The Department has undertaken to reflect the comments of other agencies in this document.
88. In addition, the Local Government Commission has been consulted and has provided information from its sector engagement that has assisted with the problem definition and options analysis.
89. There has been targeted engagement in relation to a number of the proposals in this paper with:
- a specially convened reference group (local government and business leaders) – which contributed to the development of the problem definition and possible options; and
 - Local Government New Zealand.
90. The public and the wider local government sector have not been consulted in detail. This is due to the tight policy development timeframes required to introduce a bill by June 2016, which is necessary to allow local authorities adequate time to make submissions on the bill at select committee before the pre-election period for the 2016 local authority elections begins.

Part 5: Conclusion and recommendations

91. Our system of local government was not designed to support the way New Zealanders live, work and do business within and between jurisdictions, and the changing demographics of communities. It limits councils' ability to adequately respond to and provide for regional and sub-regional economic and population dynamics and remain responsive to local preferences. Some services are provided sub-optimally because of lack of scale, integration, and strategic oversight across local government jurisdictions.
92. In response, the Government has made a public commitment to reform.
93. This RIS has considered possible options for addressing the problem and achieving the following objectives:
 - enable and encourage local government, in response to the increasingly challenging demographic, technological and economic environment in which it works, to:
 - deliver coordinated and cost effective local services;
 - support regional growth; and
 - remain responsive to local preferences.
94. This RIS, has concluded that the following targeted solutions can deliver meaningful change and lift local government performance:
 - provide more flexible approaches to reorganisation;
 - enable council-led reorganisations for the first time;
 - give the Commission enhanced powers, with suitable checks and balances, so that it can take a more pro-active, broker role, rather than just reacting to reorganisation proposals;
 - make greater use of council-controlled CCOs, with improved accountability tools to safeguard democratic control;
 - provide, through a reorganisation, for water CCOs with statutory powers and for two 'pre-approved' models of transport CCOs, plus enabling 'bespoke' transport CCOs subject to the approval of the Minister of Transport;
 - give greater ability to transfer functions between territorial authorities and regional councils; and
 - create joint governance arrangements for areas of common and/or shared interest.
95. These measures will help local authorities to develop scale and efficiency in their service delivery arrangements without communities losing voice and choice.
96. However, appropriate checks and balances will be critical as the package is co-regulatory, the outcomes are contingent on both the Commission and councils implementing the reforms.

97. The cumulative impacts of these reforms entail the Commission and consequentially local government having closer links to government policy and additional power (e.g. to compel councils to join a joint CCO if there is net benefit). The Commission's powers will enable change, but could lessen council independence. This risk is mitigated by the use of polls for significant changes. The changes acknowledge the interdependencies between New Zealand's councils in terms of producing positive economic outcomes and lifting prosperity.
98. The package would provide significant opportunities for local government to make efficiency and effectiveness gains in the areas of water, transport and economic development.
99. A range of Government initiatives is underway to address broader national challenges. The preferred regulatory options outlined in this RIS will complement these Government priorities as follows:
 - Regional economic growth: through greater coordination of best practice services.
 - Improving land supply for housing: through responsive planning and cost effective investment in infrastructure.
 - Implementing the National Infrastructure Plan's vision of resilient and coordinated infrastructure contributing to a strong economy and high living standards: through better integration.
 - The RMA reforms: through proposals to facilitate joint governance arrangements and increase capability (both have shared drivers of facilitating regional economic growth and development, encouraging collaboration between councils and streamlining processes).

Part 6: Implementation plan

6.1 Overview of part

100. This part of the RIS summarises how the preferred options will be implemented (subject to Government policy decisions).

6.2 Implementation plan

101. Timely implementation is important to harness current proposals for change in local government (i.e. Waikato Water CCO, a new regional conversation approach by the Commission), to provide certainty and to grow existing momentum for change.
102. The preferred options would be given effect by amending the LGA02.
103. The Commission would be largely responsible for the direct implementation of local government reorganisation, unless reorganisation proposals are council-led. Councils would not be required to lead reorganisation or transfer responsibilities. However, proposed amendments would provide a necessary legislative base for encouraging and incentivising councils to facilitate reorganisation, with their communities, to deliver services that meet future needs.
104. Where reorganisation is council-led, proposed amendments to the LGA include checks and balances to reorganisation processes, scope and outcomes. These include communities having opportunities to have their say through polls or formal consultation, and the Commission maintaining an appropriate level of oversight of council-led reorganisation.
105. The proposed amendments include a broader range of powers for the Commission to act as a proactive broker of change, with the ability to initiate and consider different levels of reorganisation that work for communities. The proposed amendments also include new accountability measures to balance these powers, with reporting requirements to councils and the Minister.
106. Statutory guidance has been developed by the Minister to assist the Commission in its use of proposed powers, including decision criteria and processes. The criteria would guide its reorganisation decisions to ensure that the reorganisation process is transparent, appropriate to the size of the issue, has regard to costs and benefits, and provides for an appropriate level of community input. In determining the outcomes of a reorganisation, the Commission would ensure new arrangements:
- better achieve the purpose of local government;
 - lead to improved productivity; and
 - achieve efficiencies, cost savings and can be resourced to work effectively.

107. Details on any transitional provisions to implement the changes are dependent on the final detail of the bill. As currently intended, applications for local government reorganisation will not be affected by the proposed amendments, but only those applications that the Commission has made a 'final determination' on, as provided for by the current LGA02, before any amendments are made.
108. The Department, in consultation with the Commission, would be responsible for communications associated with the bill. The Commission and councils would be responsible for any communications associated with any local government reorganisation proposals, implemented under an amended LGA02.

Part 7: Monitoring, evaluation and review

7.1 Overview of part

109. The Department of Internal Affairs will adopt an evaluation approach and track the progress of the preferred regulatory interventions against the objectives.

7.2 Monitoring, evaluation and review

110. Success looks like:

- A system that does not prescribe but allows for adaptation based on local aspirations and local issues and reorganisation proposals processed to implementation.
- Current proposed multiply-owned CCOs (for example, Waikato and Canterbury) are enabled and established without the need for new legislation beyond the proposed legislation.
- Reputation and trust with the Commission processes is high amongst communities and the local government sector. The Commission acts as a catalyst for substantive change.

111. Further analysis of the data and more detailed studies through complimentary initiatives will then be undertaken to determine whether the intent of each proposal in the reform package has been achieved.

112. Most of the other proposals are designed to enable a menu of options for councils to respond to their local issues. The Department will monitor the uptake of new arrangements, such as collaboration and/or transfers of responsibilities between councils.

113. The Department is also in regular communication with Local Government New Zealand, the Society of Local Government Managers, and the Office of the Auditor-General. The Department will seek feedback from these organisations about the effectiveness of the intervention and whether there are any design flaws in the regulations that need correction.

Appendix A: Waikato Water CCO study

In 2014, Hamilton City Council, Waipa District Council and Waikato District Councils agreed to co-fund a study. The Cranleigh study²² was to determine how each council should manage water, wastewater and stormwater services across the sub-region. Three options were considered: the status quo; enhancing shared services; and forming a CCO. The study identified the following reasons for change:

- **Growth** – From the Waikato Water Report “The 2013 census reveals that three councils (Hamilton, Waikato & Waipa) experienced very high growth, about 10 per cent over the last census period. Ninety two per cent of growth in the Region was in these three areas and 63 per cent of the Region’s total population is in these three areas. It is also noted that the Future Proof Strategy forecasts that the Hamilton, Waikato and Waipa population will likely double by 2061.” Already Councils cannot provide water for new water intensive industries which may wish to locate in the sub-region. The population is also ageing (affecting average incomes making affordability of services even more important).
- **Environmental and Regulatory Compliance** – A number of councils have faced compliance issues in terms of drinking water and waste water standards. An important focus of councils’ Long Term Plans (LTP) is making the necessary investments to resolve these issues.
- **Capital Investment** – The three councils are planning substantial capital investment over the next 10 years. This is expected to total \$764m in nominal dollars. The drivers are: expansion for growth; improved long-term management of infrastructure and renewal (replacement of worn out assets). Bringing the three council water businesses together offers the potential to achieve economies of scale. This will be evident in all parts of the business, including procurement and financial management.

Study recommendation	Key benefits identified by study
The three Councils (Waikato, Hamilton and Waipa) should transfer their water and wastewater assets into a jointly owned not-for-profit CCO	<ul style="list-style-type: none">• Overcomes the inherent limitations of three separate Councils making decisions on critical community infrastructure where there is a high level of interdependency;• Enables the three councils to manage an estimated \$0.5 billion 10 year capital expenditure programme in a coordinated way;• Unlocks significant cost saving potential;• Enables value adds through economies of scale, faster decision making, reduced consenting costs and other efficiencies;• Enables a piped network across the three communities which will improve the security of supply and level of service to each;• Optimises the use of water;• Reduces risk and provides greater financial flexibility; and• Provides a robust platform for the three Councils to address growth challenges.

²² Cranleigh (2015) Business Case For Water Services-Delivery Options, Part B: Detailed Report, page 9.
<http://www.waterstudywaikato.org.nz/uploads/files/Part%20B%20-%20Final.pdf>