

Draft

Wellington Regional Council Submission on the Review of Local Government Act

The Wellington Regional Council welcomes the opportunity to make a submission on the Consultation Document on the Review of the Local Government Act 1974. In preparing this Submission, the Council has been fortunate to be able to consult with the Iwi of the Region and to take their views into account.

The Wellington Regional Council's vision is broadly based on the principles of sustainable development and Local Agenda 21. Our main challenge is to integrate sustainable development thinking into the heart of all our work, while trying to achieve the aspirations of our community. The proposed legislation fits well with this direction.

Purpose Statement / "Power of General Competence" (pages 13-19)

The Wellington Regional Council fully supports the overall direction of the Review of the Local Government Act, towards legislation, which enables local government to respond to the community. The Council believes that the concept that best describes this is powers of community wellbeing, rather than powers of general competence. It further supports being strongly accountable to that community, recognising that local government already has the most onerous accountability framework of any sector.

The Council has no difficulty with both spheres of local government, regional and territorial authorities, being given responsibility. It believes that fears of duplication and overlap are grossly exaggerated and that the reality is that around 99% of what is done now by a particular sphere of local government will remain within that sphere. Nevertheless, there will be benefit in looking at that remaining 1% to see if a better way to achieve outcomes for the community is possible.

The Wellington Regional Council supports the new key element of the Local Government Act, the proposed purpose statement:

"to enable local decision-making by and on behalf of citizens in their local communities to promote their social, economic, cultural and environmental well-being in the present and for the future."

The Council believes that this provides an opportunity for local government to focus its efforts and to work co-operatively with all sectors in the interests of achieving sustainable development.

Limits on Powers for Regional Councils (pages 20-22)

The Wellington Regional Council finds difficulty with the suggestion that regional councils should consult territorial authorities should they propose taking on a new activity, when there is no parallel requirement for territorial authorities to consult them in the reverse circumstances. The idea of requiring agreement of territorial authorities under certain circumstances is contrary to the spirit of the new legislation.

If a council (of whichever sphere) has proposed an activity, funded by its community and has gone through a proper consultation process with that community and interested parties then it has the right to make its own decision. The Wellington Regional Council does not support the idea of this being subject to a ministerial decision. As is noted in the Consultation Document, *“local political and funding constraints are likely to continue to be a more effective limit on what councils do in the future than the proposed limits to the powers of general competence alone.”*

As an alternative, the Council supports the idea of a protocol around mutual consultation and inclusion in each others draft planning documents. One of the factors which would help to make a decision could be the relevant community of interest.

Community Strategy

The Wellington Regional Council advocates the inclusion in the legislation of a mechanism, such as a community strategy or plan (as is being discussed by Local Government New Zealand), to co-ordinate efforts to achieve the outcomes that are important for a particular community. Such a strategy needs to be run by local government but would co-ordinate the efforts of central government departments, local government, iwi, the not-for-profit sector and business.

The form and preparation of the “community strategy” needs to be kept flexible so that the approach can be tailored to the community. What is important is having a mechanism to ensure partnership approaches are encouraged. The Wellington Regional Council is willing to take a lead role in this process, if requested by its community.

The Council recognises that further careful analysis will be required to develop this concept further.

Long Term Council Plan (page 38-41)

The Wellington Regional Council supports the concept of the Long Term Council Plan (LTCP) and welcomes the emphasis on outcomes, rather than cost aspects as has been the case with the long term financial strategy. However, the Wellington Regional Council would wish to see the LTCP remaining the plan for the Council, with there also being a separate plan or strategy for the wider community.

The Council welcomes the possibility of the focussed annual plan in the year when the LTCP is not prepared, but cautions that local government should not anticipate huge savings in process costs as good practice still requires much of the background budgetary work to be carried out. It is, however, more honest to recognise that a Council is not going to change direction on major issues every year, but that a three year comprehensive review is more realistic. The focussed annual plan idea does, however, still allow for significant changes by exception.

The Wellington Regional Council supports the idea for an effective consultation process on the LTCP.

Local Government and the Treaty of Waitangi (pages 33-36)

The Wellington Regional Council is concerned about the lack of legislative guidance in the Local Government Act in relation to Treaty obligations. The current review provides an ideal opportunity to remedy this situation.

The Council is committed to developing and enhancing its relationship with the iwi of the Region and to recognising the principles of the Treaty of Waitangi. The Council signed a Charter of Understanding in 1993 with Te Tangata Whenua o Te Upoko o te Ika a Maui to assist it to implement its responsibilities under the Resource Management Act 1991. The Charter was reviewed in 2000 and expanded to include all areas of Council business. Ara Tahi, an inter-iwi representative group, was established under the Charter and meets regularly to discuss issues of common interest and to contribute to the setting of policy directions for the Council.

The expansion of the Charter of Understanding to cover all areas of Council business is a clear statement of the Council's view of the benefits that can be gained from a positive and proactive relationship with an important part of the community – Iwi. The relationship has only developed successfully because of the goodwill and trust from both parties. The name “Ara Tahi” itself symbolises two parties walking together down the one road. We want to continue walking down this road with the Iwi of the Region.

The Council believes that it is fundamental and essential that the new legislation contains an overarching Treaty of Waitangi clause. As a “creature” of statute, local government is reliant on Parliament to clarify the responsibilities and obligations that it is delegating in relation to the Treaty of Waitangi. The Council's opinion on this matter has been reinforced by a consultative process and by its experience in dealing with the Iwi of the Region.

While recognising that relationships between local government and Iwi will vary throughout the country, the outcome from the review must be proactive and move local government forward in its relationship with Iwi.

Achieving Electoral Fairness and Effective Representation (page 32)

The Regional Council agrees with the statement in the discussion document that:

“If people are to have faith in local government they must be confident the electoral system ensures effective representation and fairness.”

However, the Wellington Regional Council is very concerned that the proposed system will not work for this Council.

We have major problems with the proposal that the ratio of councillors to population is to be based on population only, with area and rateable value no longer taken into account. The Wellington region covers a land area of 813,000 hectares and has a population of 424,461. Although the land area of the Wairarapa is around three-quarters of the region, its population is only 38,253. Currently the Regional Council has two Wairarapa representatives whereas under a population only formula it would only have one. In the Wairarapa much of the Council's work relates to land rather than people, such as the control of animal and plant pests and soil conservation. Further, the Council is required by an Order in Council to have a Wairarapa Committee (of elected and appointed members) to consider all matters affecting the Wairarapa and having only one Wairarapa elected member could seriously compromise the effective workings of the Committee.

The Council is also concerned that the requirement in the current legislation for Regional Councils' constituency boundaries to coincide with territorial authorities districts or ward boundaries “so far as is practicable”, will continue in the new legislation although we note the discussion document is silent on this. The Council notes that the proposal to make population the sole criterion for representation, with the +/- 10% guideline, will mean that this conformity is no longer practicable. However we also consider that regional communities of interest may vary to some extent from territorial authority communities of interest. For example, river catchments can define regional communities of interest whereas rivers are common, and very appropriate, boundaries for territorial authorities. Accordingly, we consider that the requirement in any new legislation needs “to have regard to” territorial authority boundaries rather the present more rigorous “conformity” requirement. We also note that other options for determining appropriate boundaries and communities of interest, such as parliamentary boundaries, should be investigated.

Ability to Stand for Regional Council and Territorial Authority (page 30)

The Wellington Regional Council supports the proposal to continue the prohibition of candidacy for both a regional council and a territorial authority or community board within the same region. The workload of a regional councillor and a territorial authority councillor, and the possibility of conflicts of interest, suggest that an elected member could not do justice to both positions.

The Non Resident Ratepayer Franchise (page 30)

Whilst the issue of non-resident ratepayer electors is not significant for the Wellington Regional Council, the Council supports the principle of no taxation without representation. Therefore we support LGNZ's proposal to retain the non-resident franchise but to remove the obligation on councils to invite non-resident ratepayers to register to vote before each triennial election.

Review of Council Membership (pages 31-32)

The Regional Council supports the proposal that each council should review the number of elected members and the basis of their election less frequently than the current three-year review. The Council suggests that an appropriate review period would be every five years, after the Census of Population, in line with the review of parliamentary members.

The Council supports the proposed process for the review, outlined in the Discussion Document on page 32. However, the Council is of the view that where there is an appeal, the Local Government Commission's review should be confined to the issue of the appeal and not be a full scale review addressing issues which may not have been raised in response to the Council's consultation.

Maximum Size of Councils (page 31)

We question the validity of retaining the present differences between the maximum size for regional councils and the maximum size for territorial authorities. The Council considers that in the spirit of the proposed legislation, the maximum number of representatives should be the same for both territorial authorities and regional councils. A maximum size of around 16 councillors seems to this Council to be an appropriate balance between representation and good governance.

Code of Conduct (page 29)

The Wellington Regional Council supports the proposal that councils adopt a code of conduct but has some reservations about the breadth of the concept. The proposed statutory requirements relating to conflict of interest and pecuniary interests seem appropriate. It would also be useful to clarify the role of councillors vis a vis staff and other matters such as customer service and handling of complaints directed at the Council. It doubts that issues such as standards of behaviour are most appropriately dealt with in the framework of a code of conduct. The Council also notes that for a code of conduct to be effective there would need to be appropriate sanctions for breaches of the code.

Chief Executive Contracts (page 26)

The Wellington Regional Council is opposed to the mandatory re-advertising of the position of chief executive, regardless of the performance of the incumbent or a mutual desire to renew the contract. The Council considers that this can contribute to unnecessary costs and instability. The Council notes that the same is not required of departments in central government.

Regulating the Drinking Alcohol in Public Places (page 53)

We believe it is important for councils to have the ability to ban or restrict alcohol consumption in public places at specific times or for specific events. For this Council, the issue relates to our regional parks. The current provisions in the Local Government Act are too restrictive, particularly over periods like Christmas and New Year, and should allow local government wider discretion to control alcohol consumption in public places. Of the options in the discussion document, we prefer option 1 – general powers to make bylaws.

Financial Management Principles (page 20)

We note that the proposed financial management principles listed in the discussion document are in addition to the financial management principles already in Part VIIA of the current act. We have concerns that there will now be a large number of principles and that they seem to be a mixture of high level principles and lower level technical tests, for example the requirement to balance the books. We would prefer if the number of principles was reduced to the key matters the Government is looking for eg sustainability, long term focus, and prudent financial management.

Also, we have a particular concern with the proposed principle “*Debt should not exceed prudent levels*”. This is a variation of an existing financial management principle in the current act. Under 122c(e) of the current act it is stated that “*Debt shall be maintained at prudent levels and in accordance with the relevant provisions of the borrowing management policy.*” The Wellington Regional Council believes that the current wording is more appropriate, as it allows flexibility for councils to determine prudent debt levels within the context of an overall borrowing management policy.

Depreciation (page 46)

We believe that it is unacceptable that the Government is proposing to retain the current requirement to fund depreciation in all cases except where existing exemptions in the Act provide some relief. The current exemption provisions do not work well in practice. The Wellington Regional Council notes that this issue is being addressed through a technical working group of which the Chief Financial Officer of this Council is a member.

The Wellington Regional Council looks forward to the enactment of the new Local Government Act and a new era of partnership between central and local government and the community.

STUART MACASKILL
Chairman