

26 June 2012

File No: E/01/01/01

Committee Secretariat
Local Government and Environment Select Committee
Select Committee Office
Parliament Buildings
Wellington

Office of the Chairperson
PO Box 11646
142 Wakefield Street
Wellington
New Zealand
T 04 384 5708
F +64-4-3845023
www.gw.govt.nz

Dear Sir/Madam

Submission on the Local Government Act 2002 Amendment Bill

Attached is a copy of a submission made on behalf of Greater Wellington Regional Council.

This submission was approved by the Greater Wellington Regional Council on 27 June 2012.

The Council wishes to be heard in support of its submission. I will represent the Council at the Select Committee.

If you have any questions please feel free to contact me by phone or email, or in my absence, Jane Davis, General Manager, Strategy and Community Engagement by phone on 04 830 4201 or by email at jane.davis@gw.govt.nz.

Yours sincerely

Hon Fran Wilde
Chair

DD: +64-4-8020346
fran.wilde@gw.govt.nz

Submission of Greater Wellington Regional Council to Local Government and Environment Committee

on the

Local Government Act 2002 Amendment Bill

1. Introduction

Thank you for the opportunity to make this submission on the Local Government Act 2002 Amendment Bill.

Greater Wellington Regional Council (Greater Wellington) supports the general direction of the proposed amendments in the Local Government Act 2002 Amendment Bill (the Bill) but has concerns about some of the detail in the Bill.

Our submission addresses a number of parts of the Bill. Greater Wellington is of the view the most important elements of the Bill are the purpose statement, the Mayoral powers, the financial constraints and the local government reorganisation provisions. Some of our comments also relate to specific details and address specific wording and the need to clarify provisions.

2. General comments

2.1 Purpose of local government, and principles (clauses 7 and 8)

Greater Wellington questions the need for the changes to the local government purpose statement. We do not believe there is any rationale for removing all reference to the wellbeings throughout the Act. Even with the removal of the references, it is likely that councils, as a matter of good practice, will continue to make reference to wellbeings in their long term and strategic planning. The wellbeings provide an effective framework for determining how to best address community interests and needs, and for prioritising investment decisions. They do, in fact, underpin the rationale for local government.

We have a specific issue around the usefulness of the term “most cost effective” (proposed section 10(1)(b)). The term does not explicitly provide for the wider consideration of the value derived from the investment or expenditure decision. We consider that a more appropriate term would be “*in a way that provides the best value for households and businesses*”.

Cost effectiveness is only one element (albeit a very important one) that should be taken into account when an expenditure decision is made. The concept of value, as well as including cost effectiveness, also includes the opportunities for households and businesses to derive additional benefits on the back of infrastructure/services – i.e. their ability to get a “value-add”. In considering how services and infrastructure could be provided, councils should take into account the potential for return on investment. An example of this is the

returns to the Wellington regional economy from events such as the Rugby Sevens tournament or the New Zealand International Arts Festival.

A requirement to provide services and infrastructure that is “most cost effective” may also mean that councils take a short term view of expenditure, missing opportunities to achieve better value from the investment which could be achieved if considering the options over a longer timeframe.

Another example is the decisions councils make around the maintenance of local infrastructure. A focus on cost-effectiveness, rather than a broader consideration of value, may lead councils to make short term decisions involving deferral of maintenance on the grounds that this is the most cost-effective option for households and businesses during the term of the plan. However, these decisions could have negative implications if deferred maintenance or asset replacement generates significant additional and possibly unnecessary cost for future generations to meet.

As an alternative to adopting the wording proposed above, the words “in a way that is most cost-effective for households and businesses” could be deleted, given the definition of “good quality” contained in clause 7(2) provides for efficiency and effectiveness.

2.2 Role and powers of mayors - application to regional council chairs (clause 16)

Greater Wellington does not oppose the provisions of proposed section 41A, which generally align the role and powers of all Mayors with those of the Mayor of Auckland. We recognise that the power to appoint deputies and committee chairs, as well as to establish committees, would not be appropriate for Chairs of regional councils who are elected to the Chair position by the other elected representatives on the council.

However, we consider that a leadership provision similar to that being given to Mayors under section 41A(1), should be extended to regional council chairs. Under the current proposal there is likely to be uncertainty and confusion within a region over the relative roles of council leaders, and potentially an assumption that a regional council is subservient to a territorial authority in terms of providing leadership within the region.

2.3 Powers of Minister to act in relation to local authorities (clause 21)

2.3.1 Broadened assistance and intervention options

Greater Wellington notes the broadened range of powers that would be available to the Minister to act in relation to local authorities. We support the changes because they provide a range of lower level interventions not currently available to the Minister. However, we are unsure as to how the Minister will determine if a problem exists. We suggest that the Committee consider a role for the Controller and Auditor-General in providing impartial advice to enable the Minister to better form a view on whether a problem exists in a local authority, and to assist in determining the nature of any invention to address the problem.

2.3.2 Provisions when Commission is in place

Greater Wellington has identified two matters that are minor but important. Proposed section 258F(3) includes the term "but not otherwise". These words appear unnecessary and contradictory to the powers granted to a Commission under proposed section 258D(4) and section 258D(5).

Proposed section 258H(2) makes it clear that an elected member may not act as an elected member or receive any salary, allowances and expenses during the term of a Commission. Many local authorities also provide elected members with various items of council property (for example, to assist them in undertaking council business a vehicle for the Chair or Mayor, and telecommunications and computer equipment). It would be desirable, for the avoidance of doubt, that this section makes it clear that such equipment may not be utilised by any elected member during the term of a Commission.

2.4 Financial constraints (clause 22)

The Bill provides for parameters and benchmarks to be set for local government by way of regulation. While Greater Wellington agrees councils should be focussed on good fiscal management, we have concerns about the setting of benchmarks and parameters because of the risk of unintended consequences.

We question the assumptions that are the basis for the changes - that councils are generally increasing rates and building up levels of debt that are not justified or prudent. Examples of poor financial decision-making in local government are relatively rare.

The Bill provides no guidance as to what constitutes "prudent" financial management.

Much attention is given to the Consumers Price Index as an acceptable level of rates increase. This may be appropriate if there were no change proposed to the level of service required and the only increases were effectively price increases. However, for many councils, a large portion of any rates increases are driven by the need for new or upgraded infrastructure-based services such as water supply and waste water management.

By way of example, Greater Wellington's rates base is relatively low - approximately \$85m in 2011/12. This equates to around \$298 for the average residential household and \$440 for all rating entities, including businesses and holders of rural land. Any major infrastructure addition in the future will have a significant impact on a percentage increase. Greater Wellington is currently delivering a major rail upgrade project, in agreement and partnership with the Government. This project is driving a large proportion of our rates increases and associated debt. The loan for the purchase of rolling stock will add \$1m to the rates line in 2013/14, \$2.5m in 2014/15, growing to around \$5m per annum from 2017/18 until the debt is paid. This one project alone drives a 5.8% increase over today's baseline number. We are extremely focussed on keeping the "base service" or "business as usual" cost increases to minimum. However, the public demand for upgraded infrastructure (not just passenger rail but for, example, enhanced flood protection for the Hutt Valley) remains a significant cost driver. If these factors are not considered in setting financial

limits via regulation there is a serious risk of severe deterioration in the state of the infrastructure, with the consequential risk to service delivery

When looking at prudent financial management, consideration must also be given to the consequences of under-investment, especially in the maintenance of infrastructure. Any limit set must avoid encouraging or forcing councils into under-investing in maintenance which will have consequences in later years. This issue is a real one currently for the Government and Greater Wellington as the rail network is brought up to an acceptable standard following decades of neglect.

2.5 Local authority staffing and remuneration matters (clause 24)

The proposed clause 36A (1) of Schedule 7 provides for a local authority to adopt a single policy relating to employee staffing levels and employee remuneration. As issues relating to employee staffing levels may be quite distinct from employee remuneration Greater Wellington recommends that this provision be amended to provide for the ability of authorities to adopt separate policies on these matters.

The proposed change to section 42(2)(h) would require the Chief Executive, when negotiating the terms of employment of the staff of the local authority, to act in accordance with any remuneration and employment policy adopted by the local authority. It would be unusual for employee staffing levels to be included as part of these negotiations. This may inadvertently lead to unions considering that they have a right to negotiate employee staffing levels as part of the collective employment agreement negotiations.

Proposed clause 32A(4) of Schedule 10 provides a definition of total annual remuneration, which could be interpreted in various ways. This definition does not expressly state what is included in relation to the financial amount (i.e. is overtime, standby and other allowances included?) or what is included in the definition of “non-financial benefit”.

Greater Wellington considers that the definition of “total annual remuneration” should be consistent with the industry definition of “total remuneration” which includes:

- a) base salary, bonuses or incentive pay and other variable cash elements such as commission, but does not include any overtime payments, and
- b) benefits such as vehicles, allowances, service payments, superannuation contributions, employer contributions to KiwiSaver.

2.6 Local government reorganisation (Schedule 1)

Greater Wellington agrees that the current reorganisation process in the Local Government Act is lengthy and complex, and that history has shown that there is virtually no scope for meaningful change. We welcome the changes to facilitate the reorganisation of local government arrangements and we generally support the Bill’s new Schedule 3 provisions.

2.6.1 Promotion of good local government

We support the assessment provisions in clause 8 of proposed Schedule 3, although we believe that clause 8(1)(b)(ii) is unclear. The clause states that, in promoting good local government, an application for reorganisation must show how change will facilitate “productivity improvements, both within the affected local authorities and for businesses and households that interact with those local authorities”.

It would be difficult to show a real link between the productivity of a local authority and businesses and households, as the clause implies. Productivity is a very complex concept. The provision appears to be addressing the concept of “economies of scope” which in essence is the ability of an organisation to make more effective use of inputs, leading to new and/or better outputs. A more useful clause would be:

“Productivity improvements, through more effective use of resources, that will benefit businesses and households that interact with those local authorities.”

In this context we also note that section 14(g) of the Act currently provides that a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region.

2.6.2 Unitary authority considerations

Clause 8 of proposed Schedule 3 also establishes specific considerations for proposed unitary authorities. Greater Wellington agrees that catchment-based flooding and water management are important matters that must be considered. We also suggest that the management of transport networks and delivery of public transport services should be explicitly considered. In some parts of New Zealand, including the Wellington region, the complex transport networks would be difficult to manage should unitary authorities be proposed at a scale smaller than the current regional council area. The Land Transport Management Act 2003 provides for transport planning to be done on a regional basis, and this needs to be taken into account when considering any unitary authority proposal.

2.6.3 Postponement of general elections

Clause 11 of the Bill provides for a new section 24A that sets out transitional provisions where a notice of a final proposal has been given. These include the ability of the Governor-General, on the recommendation of the Minister, to postpone a general election. In making a recommendation to postpone an election, the Minister must be satisfied that the postponement is necessary to avoid public confusion or waste of public resources, or is in the interests of the district of the affected local authority. We agree that these provisions are pragmatic and appropriate in that by the time this provision is invoked the Local Government Commission will have given public notice of a final reorganisation proposal and the date for the first election of the proposed new authority will be well known in the affected communities. If these provisions were not enacted, the cost to local authorities and their ratepayers in having to conduct two elections within a short timeframe (perhaps only a few months) would be significant. For example, if the Wellington region were subject to a final reorganisation proposal, the cost of conducting a triennial election for the regional

council alone would be approximately \$315,000, and the eight territorial authorities would also incur significant costs. If a final scheme were later issued near the date of the election, or shortly after, much of these costs would be replicated in conducting another election for the new local authority or authorities established under the scheme.

Under the Bill, the proposed section 24A(3) provision can be implemented only with the agreement of the local authority affected. If there is an amalgamation proposal then presumably this applies to all local authorities affected, in which case it would be possible that local authorities covering populations of up to hundreds of thousands of people may agree, but a small local authority within the area with only a few thousand people may disagree.

We ask that the Committee consider the implications of this. We also point out that in putting forward a proposal the Local Government Commission is required to be satisfied that it has community support and that this is defined in the Bill as not just agreement of a majority of elected representatives on any particular Council. We therefore ask that this provision relating to securing agreement on transition arrangements from all local authorities be deleted.

While it is necessary for the Minister to seek the views of the affected local authorities, requiring their agreement would contradict the principles behind the proposal changes, which centre on community interests, rather than the interests of local authority representatives.

Giving local authority elected representatives what would be in effect a power of veto on a general election postponement could potentially result in gaming of the process to delay a reform. This would not be in the interests of the community.

It might be useful to note that currently under the Local Government Act 2002 the Minister has the power to call an election “out of sync” with the general three-year timetable, In doing this the Minister is required to consider the views expressed through the Review Panel that would have been set up prior to this and the local authority in question can comment on the report of the Review Panel. The Minister must then consider those comments when deciding whether or not to call an election. A similar process might be appropriate in the case of a reorganisation proposal.

2.6.4 Prioritising reorganisation applications

Proposed section 31A(2)(b) provides that the Minister may specify which reorganisation applications are to be regarded by the Local Government Commission as having a higher priority. To enable the Minister to accord priority to proposals and to inform the Commission accordingly there will first need to be a provision requiring the Commission to inform the Secretary of the receipt of proposals. Greater Wellington considers that this could be addressed through the inclusion of a reference to the Secretary in clause 5(c) of the proposed Schedule 3.

2.6.5 Submission timeframes

One final, minor matter, relates to submissions to the Commission. Clause 17(2) of proposed Schedule 3 provides that the Commission must specify a date for the making of

submissions on a proposal by way of public notice. However, there is no provision requiring the Commission to provide a certain minimum time for the making of submissions. Greater Wellington considers that a minimum period of one month should be specified for the making of submissions.

2.7 Additional local government reorganisation provision

There is significant potential to achieve efficiencies and better decision-making through structural reforms of councils. The present structure under the Local Government Act results in overlaps, as well as inefficiencies and gaps. In the Wellington region alternative models are being considered and much of the discussion has been about the need to ensure that local issues can be decided locally and regional issues regionally.

A major difficulty we have identified with the Bill is that, while it will streamline reorganisations, the Local Government Commission will not be able to consider options other than the current ones available under the Local Government Act. That means choices can be made only between the existing ‘regional council/territorial authority’ model and the ‘unitary’ model (with community boards being available in either case). In some areas these options may not provide optimal models for achieving better local government. The recent reforms in Auckland, for example, led to the introduction of a third model where local issues are decided locally and regional issues regionally. This was also the purport of the recommendations of the Royal Commission on Auckland. We strongly urge the Committee to change the Bill to facilitate this.

In particular, we recommend that in any reorganisation proposal the Local Government Commission be empowered to deal with the structure of the local authority through the establishment of local boards or community councils (including their membership, status, role and powers) and that this power be given effect through an Order in Council.

In order to give the Local Government Commission the authority to determine ‘purpose built’ reorganisation schemes, we suggest that the Bill be amended as follows by inserting new clauses 10A and 10B:

10A Section 24 amended (Reorganisation proposals)

After section 24(b) insert

(ba) the structure of the local authority, particularly the establishment of Local Boards or Community Councils (including their membership, status, role, powers and the application of other provisions of the Act to such Local Boards or Community Councils)

10B Section 25 amended (Order in Council to give effect to reorganisation schemes)

After section 25(1) insert

(1A) A reorganisation scheme and Order in Council may establish the structure of the local authority, particularly the establishment of Local Boards or Community Councils (including their membership, status, role, powers) and the application of other provisions of the Act to such Local Boards or Community Councils).

We consider this issue to be most critical in relation to the re-organisation provisions of the Bill. In particular, we believe that any re-organisation proposal for the Wellington region will fail to gain public support if it does not provide for local decision making. A simple one-level unitary authority would be neither sensible nor acceptable.

3. Summary of requested changes to the Bill

Clause	Suggested amendment
7(1)	<p>Replace the words “is most cost-effective” with “provides the best value”</p> <p>Or</p> <p>Delete the words “in a way that is most cost-effective for households and businesses.”</p>
11	Delete all references to “affected local authority”
14	<p>Replace the wording of clause 5(c) of Schedule 3 with the following wording:</p> <p>“if the Commission decides to assess the application, notify the Secretary and the affected local authorities of its decision.”</p>
16	<p>Insert a new proposed section 41B as follows:</p> <p>“41B Role of regional council chairperson</p> <p>The role of a chairperson is to provide leadership to –</p> <p>(a) other members of the regional council; and</p> <p>(b) the people in the district of the regional council.</p>
17	Amend clause 17(2) to refer only to remuneration policy. See comments associated with proposed clause 36A to separate the remuneration policy from the “employment policy” which deals primarily with employee staffing levels.

21	<p>Delete the words “but not otherwise” from proposed section 258F(3).</p> <p>Insert the following bolded words into 258H(2):</p> <p>“ ... or any other enactment, or utilise any item of Council property provided for Council business purposes to the member, but remains in office ...”</p>
22	Remove references to examples in proposed section 259(3)
24	<p>Clause 36A be amended to read:</p> <p>“A local authority may adopt a policy or separate policies in relation to – (a) employee staffing levels; and (b) the remuneration of employees.”</p>
25	<p>Replace the definition of total remuneration in proposed section 32A(4) with:</p> <p>“In sub-clause (2), total annual remuneration includes:</p> <p>a) base salary, bonuses or incentive pay and other variable cash elements such as commission, but does not include any overtime payments, and</p> <p>b) benefits such as vehicles, allowances, service payments, superannuation contributions, employer contributions to KiwiSaver.”</p>
<p>Schedule 1:</p> <p>Proposed Schedule 3, clause 8</p>	<p>Replace the wording of proposed clause 8(1)(b)(ii) with “Productivity improvements, through more effective use of resources, that will benefit businesses and households that interact with those local authorities.”</p> <p>Include the following bolded words in Schedule 3, clause 8(1)(d):</p> <p>“... enabling catchment-based flooding and water management issues, and integrated transport planning to be dealt with ...”</p>
<p>Schedule 1:</p> <p>Proposed Schedule 3, clause 17</p>	That clause 17 of proposed Schedule 3 include a requirement that the Commission’s public notice of the proposal provide a minimum period of at least one month for the making of submissions on a reorganisation proposal.
New provisions	10A Section 24 amended (Reorganisation proposals)

	<p>After section 24(b) insert</p> <p>(ba) the structure of the local authority, particularly the establishment of Local Boards or Community Councils (including their membership, status, role, powers and the application of other provisions of the Act to such Local Boards or Community Councils)</p> <p>10B Section 25 amended (Order in Council to give effect to reorganisation schemes)</p> <p>After section 25(1) insert</p> <p>(1A) A reorganisation scheme and Order in Council may establish the structure of the local authority, particularly the establishment of Local Boards or Community Councils (including their membership, status, role, powers) and the application of other provisions of the Act to such Local Boards or Community Councils).</p>
--	--

4. Request to be heard

Greater Wellington wishes to be heard in relation to this submission.

5. Contact details

For any matters relating to this submission please contact:

Jane Davis
 General Manager
 Strategy and Community Engagement
 Greater Wellington Regional Council
 PO Box 11646
 Wellington

Ph: 04 830 4201

Email: jane.davis@gw.govt.nz