

LOCAL GOVERNMENT FORUM

1. OVERVIEW

- 1.1. This submission is made by the Local Government Forum (the Forum). The Forum welcomes the opportunity to make a submission on the Local Government Act 2002 Amendment Bill (the Bill). ***Overall, the Forum supports the Bill's intent and recommends that it should proceed – subject to specific comments and recommendations contained in this submission.***
- 1.2. The Forum comprises organisations that have a vital interest in the activities of local government. Its members include Business New Zealand, the Electricity Networks Association, Federated Farmers of New Zealand, New Zealand Chambers of Commerce, New Zealand Initiative, and the New Zealand Retailers' Association. The Forum was established in 1994 to promote greater efficiency in local government and to contribute to debate on policy issues affecting it.
- 1.3. Forum members are significant representatives of ratepayers in their own right. The Forum's perspective is to advance community welfare through the advocacy of sound public policy. The Forum believes that local government can best serve the interests of the community and ratepayers by focusing on the funding and, where appropriate, the efficient provision of local public goods and the administration of welfare-enhancing regulations at the local level.
- 1.4. The engagement of local authorities in activities where local government action is not warranted, and the growth in local authority spending and rates revenue are of concern to the Forum. Local authorities' total operating spending and total rates revenue increased by 100 and 93 percent respectively between 2001/02 and 2010/11. In comparison the CPI increased by about 28 percent. Local authority debt quadrupled between June 2002 and June 2011.
- 1.5. An analysis of the aggregated draft long-term plans of local authorities, aside from the Christchurch City Council, which was prepared in 2012 showed that operating

spending, rates revenue and debt are forecast to increase by 49 percent, 58 percent and 97 percent respectively over the 10 years to 2021/22.

- 1.6. There is little evidence that the quantity and quality of services has increased commensurately with the growth in local authority spending. As a rough rule of thumb, the burden of funding tax-funded spending rises with the square of the tax rate. Stopping ill-justified spending is a necessary step towards controlling the funding burden. Of course, it is also very important to choose the most appropriate funding methods for financing the approved levels of spending.
- 1.7. The Bill is the first step towards implementing the government's proposals outlined in *Better Local Government*. Additional measures are to be included in a later bill. The planned reforms contained in *Better Local Government* constitute a marked departure from the direction of policy on local government over the last decade or so. The Forum welcomes the change in direction.
- 1.8. The laudable aim of the Bill is to improve the operation of local government. As noted in the Bill's explanatory note, the Local Government Act 2002 (the Act) does not adequately focus councils on operating efficiently, or on delivering those services that only councils can provide or on performing those roles that only councils can perform. The Bill reduces the role of councils, gives them somewhat stronger tools to contain costs, and makes council reorganisation easier to implement.
- 1.9. The Bill provides for the following:
 - the introduction of a new purpose statement for the Act and for local government. The latter is to meet the current and future needs of communities for good quality local infrastructure and local public services, and the performance of regulatory functions in a way that is most cost-effective for households and businesses;
 - the establishment by regulation of additional financial prudence requirements for councils, setting benchmarks for councils' performance in respect of income, expenditure and debt levels;
 - the strengthening of council governance by the introduction of the following measures:
 - a simpler, graduated mechanism for Crown assistance and intervention in the affairs of struggling councils;

- the application of some aspects of the 'Auckland mayoral model', such as the power to appoint deputy mayors and chairs of committees, to all mayors; and
 - empowering councils to determine policies on remuneration and staff numbers, and requiring standard reporting of information on staff numbers and remuneration in council annual reports; and
 - the streamlining of local government reorganisation procedures.
- 1.10. The Speech from the Throne in December 2011 stated that the driving goal of the government is to build a more competitive and internationally-focused economy with less debt, more jobs and higher incomes. The Forum supports that goal. Its achievement requires a substantial increase in productivity growth from the low levels of the recent past. The export and import competing sector of the economy must also expand relative to that of the non-traded sector, which includes local government.
- 1.11. A coherent growth strategy is required. Important elements would include measures to obtain better value for money from operating spending by local government, a higher return on local government investment projects, a reduction in the ratio of local government spending to GDP and fundamental reform of regulations, such as the Resource Management Act 1991, which unduly impede wealth creation.
- 1.12. Local government is a vitally important institution. It provides essential services such as roading and water, and undertakes important regulatory functions. However, the role of local government is not all encompassing. It needs to be established on a principled basis and properly circumscribed. Its role should be limited to protect individual autonomy and choice, and to allow wealth creation and other activities that are undertaken by individuals, private firms and voluntary organisations.
- 1.13. The present purpose of local government, as defined in the Act, is undesirable. It does not distinguish between those activities that should properly be the domain of local government and those that should be the responsibility of either central government or civil society (which includes individuals, business firms and voluntary organisations).
- 1.14. While the Bill is a commendable step, the Forum believes that much work remains if local government is to contribute fully to lifting the overall economic and social

performance of the country. Proposals contained in *Better Local Government* that are to be included in a later bill would help but more reform is required.

- 1.15. The balance of this submission focuses on those areas of the Bill that can be improved. Proposals relating to the purpose of local government and financial prudence are addressed in sections 2 and 3 respectively. Other issues are discussed in section 4. Some assertions concerning the Bill made by Local Government New Zealand (LGNZ) are addressed in section 5. The Forum's conclusions and recommendations are presented in section 6.
- 1.16. The Forum notes that its members may make separate submissions.

2. PURPOSE OF LOCAL GOVERNMENT

What is proposed?

- 2.1. The most important provisions contained in the Bill would change the definition of the purpose of the Act and of local government. Section 3 of the Act (emphasis added) states:

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) *provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.*

The social, economic, environmental and cultural well-being of communities are commonly referred to as the four well-beings.

- 2.2. Section 3 of the Act is related to section 10 which defines the purpose of local government in the following terms:

The purpose of local government is—

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) *to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.*

- 2.3. Section 10 in turn is related to sections 11 and 11A. The former defines the role of a local authority:

The role of a local authority is to—

- (a) give effect, in relation to its district or region, to the purpose of local government stated in section 10; and
- (b) perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.

Section 11A (which was inserted into the Act in 2010) states:

In performing its role, a local authority must have particular regard to the contribution that the following core services make to its communities:

- (a) network infrastructure;
- (b) public transport services;
- (c) solid waste collection and disposal;
- (d) the avoidance or mitigation of natural hazards;
- (e) libraries, museums, reserves, recreational facilities, and other community infrastructure.

- 2.4. The Bill proposes to amend sections 3 and 10. Clause 4 would replace section 3(d) with the following:

(d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.

- 2.5. Clause 7 would replace section 10(b) with the following:

(b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

In addition a new subsection 2, would define "good quality" as follows:

(2) In this Act, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—

- (a) efficient; and
- (b) effective; and
- (c) appropriate to present and anticipated future circumstances.

- 2.6. Another change would amend the principles that local authorities must apply in carrying out their role. The present cross-reference in section 14(1)(c)(iii) to the four well-beings in section 10 of the Act would be deleted (clause 8). Further, in undertaking a sustainable development approach under section 14(1)(h)(i), local government would be informed that it "should take into account the social, economic,

and cultural interests", rather than well-beings, "of people and communities" (clause 8).

- 2.7. The present definition of community outcomes in section 5 of the Act, which also focuses on the four well-beings, would be redefined as "the outcomes that a local authority aims to achieve in meeting the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions" (clause 5(1)).
- 2.8. All other references to the four well-beings in the Act are also to be deleted or amended.

The Forum's comment

- 2.9. The above changes arise from the government's concerns that the current law does not adequately focus local authorities on operating efficiently, or on delivering those services that only councils can provide or performing those roles that only councils can perform. The Forum has made the same point many times, including in its submission on the consultative document that led to the Act.
- 2.10. The Act generally enables local authorities to undertake any activity that is lawful. It is difficult, if not impossible, to conceive of an activity that could not be related to one or more of the four well-beings.
- 2.11. There are compelling reasons to limit the role of local authorities by statute rather than to empower them to engage in any lawful activities that their governing body or a majority of electors might wish them to undertake. They include the following:
 - The upholding of the autonomy of the individual promotes social harmony and provides choice. Every government intervention that makes it harder for law-abiding individuals to pursue goals of their own choosing (based on their own resources) potentially reduces both their individual welfare and social cohesion. There should be a rebuttable presumption against proposals that would increase tax burdens or restrict the lawful domain for individual choice without the general consent of those most adversely affected. Increasingly expansive definitions of what constitutes an 'environmental harm' illustrate the second concern. Individual autonomy should only be restricted where the case for net benefits is strong enough to overcome a real burden of proof hurdle. The establishment and

enforcing of property rights is an example of how central and local government can work together to enhance rather than undermine individual autonomy.

- New Zealand's long-standing constitutional arrangements do not envisage local democracy limited only by popular vote. Local authorities may only exercise the powers that are conferred by parliament (and powers that are incidental thereto). Moreover, those powers are limited by common law. The Act substantially relaxed statutory constraints on the role of local authorities and encouraged them to engage in activities that are better undertaken by central government (for example, in setting targets for educational outcomes in their long-term plans) or the private sector (for example, operating or investing in a Lotto outlet, a cinema, sports stadia, a marina, and a farm in Australia).
- Local authorities do not always advance the overall welfare of their citizens. Partisan interest groups lobby local authorities to undertake activities that benefit their interests disproportionately. Elected representatives may not be independent of these interests and they and council officers may also stand to benefit from expanded mandates and enlarged budgets.
- Constraints on the role of local authorities are necessary to reduce the risk that their activities will crowd out worthwhile private activities. Unless the resources used by local authorities yield a return to the community at least equal to that which could be earned elsewhere, potential national income is forgone. The calculated return to the community should take into account the economic or deadweight costs of rates that are applied to fund such activities. The full cost of local authority activities is too often overlooked. It is implausible that marginal council spending provides the level of return required.¹
- Some activities that are the responsibility of government are undertaken by central government rather than by local authorities. The allocation of responsibilities between the two levels of government should be based on the principle of subsidiarity. This requires an unambiguous allocation of responsibilities between the two sectors (to avoid confusion and overlap) with

¹ The central Auckland rail loop project, which has been included in the Auckland Council's long-term plan, illustrates the point. The project's estimated capital cost is \$2.4 billion. A joint Ministry of Transport and Treasury review reported that the project is expected to generate just 30 or 40 cents of benefits (depending on the basis used) for every \$1 of costs. In other words, the project would waste at least \$1 billion of resources in present cost terms according to the review.

activities allocated to the lowest level of government that can carry them out most efficiently. Central government is responsible for welfare support and income redistribution in New Zealand. Local authorities were encouraged to expand into these areas by the Act.

- 2.12. The above arguments support the refocusing of local authorities as envisaged in the Bill. The Forum is concerned, however, that the Bill as drafted would not adequately constrain the activities of local authorities. The Forum understands that some local government sector participants believe that the Bill would have no significant effect on the activities of local authorities.
- 2.13. The explanatory note to the Bill indicates that the government's intent is that local authorities should focus on funding, and where appropriate, supplying services that only councils can provide or performing those roles that only councils can perform. This implies that local authorities should be limited to the provision of what are known in the economics literature as public goods (which includes services).
- 2.14. Pure public goods have two properties. They are non-excludable and non-rivalrous. A product is non-excludable if the cost of keeping people who are not prepared to pay from enjoying the benefits of the good or service is prohibitive. A good is non-rivalrous in consumption if one person's enjoyment of it does not diminish anyone else's enjoyment. National defence is an example. All citizens benefit whether they contribute to the cost and the benefit derived by one person does not diminish the benefit that accrues to his neighbour. Street lighting is another example.
- 2.15. A private firm may be unable to supply a public good (except under contract) because it is not possible to charge for it in the normal way. However, it should not be assumed that the private sector is always unable to supply public goods or that it is necessarily efficient for the government to do so. The benefits from some services may not justify the costs involved.
- 2.16. The term public goods or services has a common meaning which refers to the provision of goods or services that are available to the general public. Public passenger transport services, for example, are private rather than public goods from an economic perspective. People who are not prepared to pay are denied a ride and once a seat is taken it is not available to another potential user.

- 2.17. ***If the Bill is to achieve its aim of refocusing local authorities, the term public services needs to be defined in keeping with the intent conveyed by the explanatory note. A technical definition of a public good could be included in the Bill or a less technical definition reflecting the statement in the explanatory note could be added.***
- 2.18. **Consideration should also be given to explicitly enumerating the activities that councils may undertake.** A start was made with the adoption of section 11A. While it identifies core services, the present Act and the proposals contained in the Bill do not explicitly prohibit a local authority from engaging in activities that are not included within its proposed role. Non-financial investments that are intended to fund council activities (for example, commercial forestry and farms) are not addressed. The enumeration of the activities that councils may fund and, where appropriate, provide is consistent with the arguments advanced above and would limit the scope for ambiguity over the classes of activities councils may lawfully undertake.

3. FINANCIAL PRUDENCE

What is proposed?

- 3.1. *Better Local Government* noted that the government had agreed to changes to the Public Finance Act 1989, as part of the confidence and supply agreement between ACT and National, to introduce a fiscal responsibility requirement for central government. This will generally limit central government expenditure growth to no faster than inflation and population growth unless the consent of taxpayers is obtained for additional spending.
- 3.2. According to *Better Local Government*, the government is proposing to introduce a parallel requirement on councils, which would be implemented by regulation (clause 22). Parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expenses, assets, liabilities, investments, and general financial dealings would be prescribed.
- 3.3. The explanatory note to the Bill states that new fiscal responsibility requirements will be linked to the development of the fiscal strategy of councils. They are to incorporate 'soft' caps that are linked to the new graduated powers of intervention requiring information reports, the appointment of a crown reviewer, observer or manager or, in extreme circumstances, a commissioner or an early election.

- 3.4. In terms of the Bill, the Minister may recommend the making of regulations on fiscal responsibility only if the content of the recommendation has been developed in consultation with the New Zealand Local Government Association Incorporated (clause 22(2)).

The Forum's comment

- 3.5. More effective controls to limit the growth of local authority spending are desirable. The effectiveness of the proposed regulation will depend on its content. A firm limit on local authority spending is required which, except in certain exceptional circumstances, could be exceeded only if the explicit consent of ratepayers is obtained. It seems, however, that the government may have backed away from that proposal in favour of soft limits. ***The Forum supports the initial proposal.***
- 3.6. The Forum is also concerned that the minister would be required by statute to develop the content of the proposed regulations in consultation with the New Zealand Local Government Association Incorporated. The Association, more commonly known as LGNZ, represents local authorities. Its interests are different from those of citizens and ratepayers whose interests the regulations are primarily intended to protect. More generally, there is no compelling reason to include a statutory provision on which organisations should be consulted on the development of the regulations. ***The Forum submits that the relevant provision in clause 22(2) should not be adopted. Alternatively, other groups that better reflect ratepayers' interests should also be included in the clause.***

4. OTHER MEASURES

- 4.1. ***The Forum agrees with the thrust of the measures to strengthen governance and streamline procedures for the reorganisation of councils.*** We note, however, the following:
- The case for extending some features of the Auckland mayoral model, such as the power to appoint deputy mayors and chairs of committees, to all mayors is arguably strongest for the larger city authorities where political parties contest elections. The problems that gave rise to those powers are rare in smaller authorities where factional politics is unusual.

- The proposed changes to the process for reorganising local authorities would make it easier to restructure councils. While the Forum supports the thrust of the proposal it cautions against the view that large councils are necessarily more efficient than small councils. Small councils may, for example, be more responsive to the preferences of their citizens and ratepayers than large authorities. A choice of territorial authorities within a region may also lead to councils that better reflect the diverse preferences of citizens and ratepayers. The Forum believes that is far too early to assess the merits of the amalgamation of councils in Auckland and, in event, it is not aware that any rigorous assessment has been prepared.

5. LOCAL GOVERNMENT OPPOSITION

5.1. The local government sector is opposed to the Bill, particularly the change to the purpose statement. At the recent LGNZ conference in Queenstown the 78 councils agreed to push for the retention of the four well-beings.

5.2. The local government sector's assertions are listed below followed by the Forum's comment:

- Local government is 'united' in its opposition to the change to the purpose statement.

Despite the LGNZ conference resolution the public comments of individual councillors indicated that they are far from united. Some have said that the proposed purpose statement would be the end of the world, some are relaxed because in their view it would make no difference, some have welcomed the clarity that the Bill would provide, and others do not think the Bill goes far enough.

- The new purpose statement creates 'uncertainty' for councils.

The Forum does not believe that the proposed purpose statement would lead to undue uncertainty. On the contrary, it would provide greater clarity on the proper role of local authorities. In any event, the Act created huge uncertainty and cost for ratepayers and it is refreshing that the Act is to be amended with the ratepayer more in mind.

- Councils will be ‘vulnerable to costly legal challenges’.

Again, highly unlikely unless councils blatantly ignore the law. There was no flood of court action in the years prior to 2002 before the advent of the four well-beings. There were some high profile cases taken around the substance of rating policy but ultimately the courts found in favour of the council(s). Also, there is nothing inherently wrong with the ability of individuals to test in the courts central or local government's interpretation and application of laws. We have seen legal action taken by various groups in recent times against central government policy (e.g., the Child Poverty Action Group's case concerning the in-work tax credit and the Maori Council hearing before the Waitangi Tribunal relating to asset sales) but, although some might disagree with their arguments, no one begrudges them their right to have their day in court.

- Councils are ‘well connected’ to their communities and that the change in purpose statement will shatter this connection.

Although some councils are very well engaged with their communities they are usually the small, rural and provincial councils that stick to the basics. Sadly, this is not true for the sector as a whole. Turnouts at local elections are generally low and falling, and engagement in council consultative processes is usually sparse unless there is a particularly contentious proposal.

- Councils do things only ‘if their communities want them and are prepared to pay for them’.

This assumes that those who use and/or benefit from council activities pay for them according to their use and/or benefit, and *vice versa*. This is generally not so and in many areas a disproportionate amount of the rates are sourced from a minority of ratepayers. It is easy for interest groups to advocate for new and/or expanded council activities and facilities when their constituencies would bear relatively little of the cost.

- There is ‘no evidence’ that the four well-beings have contributed to rising rates.

From 1992 to 2002 local government rates increased on average by less than 4 percent per year, but since 2002 this rate of increase has grown to an

average of nearly 7 percent per year. If rates had increased between 2002 and 2012 at the same rate as in the preceding decade, the average household would be paying \$500 per year less in rates and the total rate bill would be \$1 billion per year less. In the Forum's view the four well-beings have been a significant factor behind the growth in council spending, rates, and debt over the past decade and it makes sense for the Government to do all it can to address this, including amending the purpose of local government.

- 5.3. To sum up, the Forum makes these comments to enhance the effectiveness of local government. It does a tough job and has to manage its statutory obligations and the demands from vocal interest groups to do more and more and spend more and more. We believe the proposed reforms would help by giving councils more clarity about their purpose and greater ability to say 'no' to proposals that extend beyond their proper role.

6. CONCLUSION

- 6.1. The Forum's main conclusions are listed below:

- The government's planned reforms outlined in *Better Local Government* constitute a marked departure from the direction of policy on local government over the last decade, which is welcomed. Much work remains to be done if local government is to contribute fully to lifting the overall economic and social performance of the country.
- The purpose of local government, as presently defined in the Act, is undesirable because it does not distinguish between those activities that should properly be the domain of local government and those that should be the responsibility of either central government or individuals, firms and voluntary organisations.
- There are compelling constitutional and economic reasons to limit the role of local authorities by statute.
- The proposal to apply a fiscal responsibility mechanism to local government similar to that which is proposed for central government is supported. The proposed regulation should impose a firm limit on local authority spending which,

except in certain exceptional circumstances, could be exceeded only if the explicit consent of ratepayers is obtained.

6.2. The Forum recommends that the Bill proceed subject to the following:

- The term public services be defined in keeping with the intent conveyed by the explanatory note. A technical definition of a public good could be included in the Bill or a less technical definition reflecting the statement in the explanatory note could be added.
- Consideration be given to explicitly enumerating in the Act those activities that councils may undertake.
- The requirement in clause 22(2) that the minister develop the content of the proposed financial prudence regulations in consultation with the New Zealand Local Government Association Incorporated should not proceed. Alternatively, other groups that better reflect the interests of citizens and ratepayers should be given equal status to the Association in the clause.