1. Introduction and Areas Supported in Principle

This submission is made by the Wellington Regional Council. This Council broadly supports the general direction of the Bill, as it believes that truly empowering legislation is appropriate for directly elected local government which is largely self-funding and which operates already within the tightest accountability framework of any sector.

The Council therefore *welcomes* the overall direction and specifically the Statement of Purpose, the general empowering provisions, clarification of the role of local government with respect to the Treaty (though not as expressed in the Bill), emphasis on co-ordination in local government and the introduction of the Long Term Council Community Plan. The Councils *reservations* are articulated in section 2) below.

The Council has particular worries with respect to Parts 4 and 5. Accordingly, we have a special section in this submission on these Parts.

The Wellington Regional Council has a unique set of functions, being the only regional council with water supply responsibilities. It is also one of only two regional councils (with Auckland) that provides regional parks. It has major commitments also to regional transport, flood protection, environmental management, biosecurity and land management. The Council is also a joint funder of the Wellington Regional Stadium (which required special legislation). The Council therefore has particular knowledge and interests that are reflected in this submission.

The Council asks that its representatives be heard.

2. Some General Concerns

2.1 Objectives applauded, but they won't be achieved without changes

The Wellington Regional Council supports fully the intent of the legislation with its key objectives, as expressed in the General Policy Statement overview. Unfortunately, the Bill as drafted will not achieve those objectives. There is so much prescription as to process in the Bill that flexibility will be *lost, not enhanced*. Councils will have little ability to focus on promoting community well being as they will be worrying about the excessive compliance requirements. They will be *less* able to respond to their communities because of the onerous procedures. The net effect will be extra costs, which will have to be passed on to ratepayers and a strong risk of reduced performance. These points are enlarged upon below and specific recommendations are made.

2.2 Why not treat Local Government consistently?

The Wellington Regional Council is concerned that in many parts of the Bill there is an unnecessary differentiation between territorial authorities and regional councils. This Council cannot find any logic expressed for such differentiation. It recommends

that the general principle should be that both spheres of local government are treated equally. Different treatment should be applied only where there are compelling reasons that are clearly articulated.

2.3 There needs to be an overarching materiality provision

In many places in the Bill there are requirements for particular processes that may, for example, require provision of information or consultation. There is a lack of consistency in the inclusion of words such as "significant' to qualify when these processes are required. As a result absurd levels of process may be required. This Council therefore recommends that Clause 61 should contain an overarching materiality provision.

3. Specifics: Part 1

3.1 What's wrong with respecting the Treaty?

Clause 4 requires recognition of "the principles" of the Treaty of Waitangi. This Council, with the support of the members of Ara Tahi, our inter-iwi group, with representatives of all the region's iwi, believes that it should require recognition and respect for the Treaty itself. Such a change would avoid debate as to what the principles are.

4. Specifics: Part 2

4.1 Has the intent of enablement been stymied

The Wellington Regional Council is concerned that *clause 9 (4)* as drafted may be over restrictive. It supports fully the intent of the clause, however a legal argument may show that this clause in fact rules out the flexibility being sought. A suggested rewording is:

"Subsection (2) is subject to this Act and any other enactment always provided that where practicable the relevant statutory provision or provisions is or are read so as to be consistent with the intent of subsection (2) and so as to promote the purpose of this Part of the Act and the purpose of local authorities as set out in Sections 7 and 8 hereof".

4.2 A better way is proposed to resolve local differences

Clauses 13 and 14. The Wellington Regional Council has two concerns. First, it can see no reason for the one sided nature of clause 14 which requires certain processes if a regional council proposes to undertake a significant new activity that is already being undertaken by a territorial authority within its region without a corresponding requirement on a territorial authority. The Wellington Regional Council's first choice would be to remove this clause entirely. It is an example of unnecessary prescription

and process. Clause 13, which is supported, provides for triennial agreements. One matter which should be subject to such agreements should be a means to resolve potential overlaps. In the event that agreement cannot be reached then the local community will exercise its judgement at election time. Councils will always be mindful of this ultimate sanction – particularly as the costs of any new activity will be borne by the community. The Council is also concerned that one territorial authority may have at its disposal the means to impose procedural delays when a proposal may have widespread support across the wider regional community.

If the Committee is not minded to reduce the procedural burden in this case, then it must make this clause even-handed with an equivalent requirement on a territorial authority proposing an activity carried out by a regional council.

[*Alternative 1* The Wellington Regional Council's second concern is that the Minister is not the appropriate authority to make a binding decision. That role is better taken by the Commission to avoid any perception of political interest. It is suggested that this clause should contain criteria to guide the Commission in its determination. Such criteria could relate to questions of the scale of the affected community, capacity, efficiency and so on.]

[*Alternative 2* The Wellington Regional Council's second concern is that the Minister is not the appropriate authority to make the binding decision. The impact of a decision is likely to be local, with the affected community paying the bill. That community should therefore have the right to make the decision via a referendum ballot. Provision should be made accordingly.]

5. Specifics: Part 3

5.1 Chief Executive Contracts (Clause 28, Schedule 5 (33(2))

The Wellington Regional Council is opposed to the mandatory re-advertising after five years 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.

5.2 Code of Conduct (Clause 33(c), Schedule 5(14))

The Wellington Regional Council **opposes** the introduction of a mandatory code of conduct.

The Wellington Regional Council considers that the code may be useful for elected members and is a measure that could further enhance the quality of democratic governance. But the adoption or not of such a code should be a local decision. This Council is aware that some local authorities seek provisions empowering them to apply sanctions for breaches of the code. This Council would not support the introduction of formal legal sanctions. We consider informal political sanctions to be a more appropriate mechanism by which to ensure compliance with the code.

6. Introductory Comments on Parts 4 and 5

6.1 General Comments

The WRC supports the underlying intention of the bill, which provides Local Government with increased empowerment and the WRC accepts that such empowerment should have a price in terms of increased accountability provisions.

However, the WRC is concerned that the extent of new requirements contained within the bill will lead to significant additional compliance costs. Many of the new requirements are not unreasonable in isolation but when taken as a package the Local Government bill represents a new level of compliance compared with the current Act.

The WRC was one of the "early nine" Councils to adopt, in July 1997, the provisions of the Local Government Amendment No 3 Act 1996 (the No 3 Act). In the view of the WRC the No 3 Act helped move Local Government generally to a new level of financial management whereby it became harder for Councils to act imprudently with ratepayers' money. Whereas 1989 had introduced many of the building blocks (e.g. accrual accounting and the requirement to value all assets) it was not until the introduction of the No 3 Act that appropriate focus was brought to some key issues including:

- Long-Term Financial planning
- Asset Management planning
- Treasury Management
- Transparent funding of Council activities

It is the view of the WRC that as a general rule the current requirements of the No 3 Act, which focus primarily on prudent financial management, work well and have a high level of acceptance within the sector (with a few exceptions e.g. the current restrictive and impractical funding of depreciation requirements).

However, rather than 'fine tuning' the current requirements, the Local Government bill imposes a whole new accountability regime which will add significantly to the costs of compliance.

Unfortunately therefore, many of the good intentions of the bill in relation to community engagement and meaningful consultation are likely to be overshadowed by the extensive 'internal' processes/policies that will be required by the bill.

Having said that, many of the overall principles within the bill are seen as appropriate but rather than largely rely on the principles to achieve the intended outcome the bill goes too far in the view of the WRC by specifying detailed compliance requirements.

A good example of this is the balanced budget requirement in Clause 81. The principle of "setting projected operating revenues at a level sufficient to cover operating expenditure of a local authority unless it is financially prudent to do

otherwise" is fully supported by the Wellington Regional Council. However, rather than relying on local government to implement the principle in a sensible manner, under the watchful eye of the Audit Office, the drafters of the bill have chosen to include detailed requirements in relation to assets used in the delivery of key essential services and their ultimate replacement.

This is definitely penalising the well behaved majority for the possible poor behaviour of the minority. Quite apart from focussing incorrectly on inputs (assets) and not on outputs (service levels) the requirements are considered by the WRC to be unnecessary.

It is like saying we expect you to act prudently but we don't trust you to do so! This is at odds with the empowering nature of the bill.

It is apparent that the current requirements of the bill have not been subjected to a sensible assessment of the costs/benefits of the various requirements. As a general rule there are far too many detailed financial management requirements contained within the bill and it is the view of the WRC that a thorough review is required of all of part 5 of the bill, including schedule 8, in order to ensure that the final compliance requirements are reasonable.

Recommendation

That the Select Committee request officials to undertake a thorough cost/benefit analysis of the requirements of part 5 of the bill (including schedule 8) including identification of the rationale behind all the new requirements introduced in the bill.

6.2 Comments on Particular Issues

6.2.1 Detailed requirements of Part 5 and Schedule 8

The requirements as set out in Part 5 and in schedule 8 covering the LTCCP Annual Plan, Annual Report and other policies are extensive. While a number of these requirements are the same or similar to the current requirements, the drafters of the bill appear to have seen the bill as an opportunity to add in all sorts of new requirements on local government (e.g. policy on contributions to Joint Ventures or other initiatives involving the private sector S83) with no obvious rationale for the new requirements (it is not clear what problem will be solved by the new requirement and why is a legislative solution the best way to solve the problem)

To make matters worse schedule 8 appears to contain a number of internal inconsistencies which give the impression that the three parts of schedule 8 have been prepared by three different parties (who haven't had the time to consult with one another).

Recommendation

Officials should be requested to undertake a thorough review of the requirements of Part 5 and of Schedule 8 for consistency of language and to reassess the rationale for the various information requirements.

A good starting point would be to line up the various requirements as follows:

LTCCP	Annual Plan	Annual Report

6.2.2 "Streamlined" Annual Plan

The WRC fully supports the intention of the drafters to have an Annual Plan by exception, in the intervening years between a full review of the LTCCP.

However, the bill as drafted is unlikely to achieve this objective.

Schedule 8 sets out what must be in an Annual Plan including all the financial statements currently required by the Local Government Act and a statement of service performance. In addition there are some new requirements which are not currently required.

By virtue of the requirement in section 65 that information required under Part 5 and Schedule 8 be prepared in accordance with GAAP all financial statements and the statement of service performance will need to continue to be prepared as they are now (e.g. statement of service performance in accordance with FRS-2).

As most Annual Plans currently exceed 100 pages it is hard to see the bill resulting in streamlined Annual Plans. This is quite apart from the new requirements (e.g. Funding Impact Statement, consolidated Financial Statements – refer issue #5 below) which will add significantly to the existing level of information disclosure.

Recommendation

If the bill is to truly move the focus to the LTCCP the requirements on the Annual Plan need to be totally redrafted.

6.2.3 Blanket application of GAAP to Part 5 and Schedule 8

Although the Wellington Regional Council is in full support of the application of GAAP (as it helps to ensure information has integrity) it appears that the blanket application of GAAP to Part 5 and Schedule 8 of the bill, by virtue of section 65, may represent some real practical difficulties.

As already noted under specific issue #2 above, the blanket application of GAAP means that the Annual Plan disclosure requirements will continue to be extensive, yet the intention is to produce a streamlined Annual Plan (an Annual Plan by exception).

There are also other concerns with the blanket application of GAAP across all of Part 5 and Schedule 8.

- Schedule 8 requires Local Authorities to produce a summarised Annual Report. A number of Councils already do this and such summaries help the general public to understand the year's activities. Most of these summaries include graphs and other pictorial representation of some of the year's highlights and other relevant information. However, if the bill is passed as is, such summaries will in future need to be prepared in accordance with the technical accounting requirements imposed by the application of GAAP. There is currently an exposure draft (ED89A) on issue covering summary financial reports which will impose a legal code of disclosure on Local Authorities in the production of summarised financial reports.

  Unfortunately this is likely to result in reduced understandability for the general public compared with what is currently disclosed, as the summaries produced will become more technically oriented.

  The Wellington Regional Council is concerned that this would undermine the value of producing the summaries in the first place.

  It is possible that this issue could be dealt with by the Institute of Chartered Accountants in the process of finalising the Financial Reporting Standard which will follow ED89A. However, if this is not the case there remains a problem in this area.

- Part 5 contains the requirements for consultation with the community in relation to specific proposals. It is not totally clear how GAAP would need to be applied to such proposals but this could result in significant additional disclosures of the sort required by FRS-29.

  Again, this has the potential to undermine the quality of consultation with the community (because of the technical requirements of GAAP).

Recommendation

The Select Committee should request officials to determine which of the requirements in Part 5 and Schedule 8 need to directly link with GAAP, rather than apply the blanket linkage through the current section 65.

6.2.4 Scope of Audit Responsibilities

The existing LGA distinguishes between items that need to be audited and those items that need to be included in the Annual Report but which are not subject to audit.

The Local Government bill by contrast appears to significantly widen the scope of the audit process.

It is not clear whether this is an intended outcome. If so, have the costs/benefits of this approach been properly assessed? (Are the additional costs of compliance justified?)

Recommendation

The Select Committee should consult with the Auditor-General to assess the costs/benefits of the proposed approach.

6.2.5 Requirement to present consolidated information within the LTCCP and Annual Plan

The bill contains the requirement to prepare consolidated planning information for inclusion in both the LTCCP (10 year projected consolidated information) and the Annual Plan (one year projected consolidated information).

This contrasts with current practice whereby only the Annual Report includes the consolidated information, in addition to the core Council information.

While accepting that consolidation information is of information value to users it is in fact the core Council position that is of prime interest to ratepayers, as it is the core Council position that determines the future level of rating on the community.

The question then becomes, what are the costs and benefits of providing the additional consolidated projections?

If it is designed to provide users with a view of the total resources under the control of the Council this information is already readily available in Council Annual Reports.

The key questions are:

- why should consolidated projections be provided and does that outweigh the very real costs of compliance?
- will it be practical to obtain meaningful 10 year projections from all subsidiaries including Port Companies which are not Council Controlled Organisations?

In the case of the WRC we will be forced to add considerably to both our planning process and to the extent of information made available to the public in our planning documents.

Recommendation

That the costs and benefits of providing consolidated financial information be properly assessed.

6.2.6 Shortened Reporting Timeframes

The Local Government bill includes reporting dates as follows:

- Council Controlled Organisations - within two months of year end (currently three months)
- Core Council – within four months of year end (currently five months)

It is not clear why these deadlines have been brought forward, particularly in relation to Council Controlled Organisations. (i.e. what is the problem with the current three months?)

While it will theoretically be possible to meet the new deadlines they will put unnecessary pressure on the sector (and increase the costs of compliance) particularly in certain situations such as the WRC where Port Investments Ltd (a Council Controlled Organisation) owns the shares in CentrePort.

To complicate matters, Ports have been excluded from the definition of a Council Controlled Organisation and as the bill stands there is a conflict in the reporting deadlines where a Council Controlled Organisation own shares in Ports (as between the Local Government Act and Port Companies Act).

Recommendation

The reporting deadlines for Council Controlled Organisations should be returned to three months after balance date as is the case now.

6.2.7 Council Controlled Organisations

The Local Government bill introduces a new governance framework for Council Controlled Organisations, replacing the LATE provisions of the existing Local Government Act.

While the new provisions are intended to encompass the range of Council Controlled Organisations, not just companies, it is important to appreciate that many of these other entities were created by specific statute and therefore already have their own governance code (e.g. the Wellington Regional Stadium Trust).

In **Attachment 1** of this submission is a submission prepared by the Wellington Regional Stadium Trust which is fully endorsed by WRC. The attached submission highlights a number of important matters for the Select Committee to consider in relation to Council Controlled Organisations.

7. Specifics: Part 5

7.1 Avoid possible clashes with other legislation

As currently drafted, the decision making and financial management principles are expressed to apply to all decisions, including decisions made in the exercise of powers under other legislation. In these cases the principles may be inappropriate and may be inconsistent with the applicable principles from other legislation. To address this

concern the Council recommends that wording be added at the beginning of *clause 61*: *"In the exercise of its powers under this Act…"*

7.2 The Principles sound fine – but we doubt that they could work

The Wellington Regional Council applauds the idea of principle based legislation (unfortunately what we have here is a combination of "principle" and "process" which are not well-matched).

The specific concern is with the principles contained in *Clause 62*. If they are to be of value they need to be monitorable and auditable. None of sub-clauses 62(b), 62 (d), 62(e). 62(f), pass this test. For example, 62(d) sounds admirable with its reference to benefits being sustainable. However, that term is not defined and its interpretation in the four dimensions specified (economic, social, environmental and cultural) will always be arguable. We fear court led law which will tangle local government in more procedural tape. We are aware that no similar requirements apply to central government, for good reason.

7.3 Unrealistic requirements with respect to providing Maori contributions to decision-making

Clause 63(1)(b) is another provision that is superficially attractive but utterly unworkable. It asks a Council to "consider ways in which it may foster the development of Maori capacity to contribute to the local authority's decision-making". Probably the greatest requirement to improve such capacity is to address the problems of poverty and illiteracy – surely the Government is not trying to pass its responsibilities in this regard to local government?

The sentiment is accepted. This Council is actively working in this direction. Unfortunately, as soon as an attempt is made to legislate an auditable process, that requirement tends to get in the way. Our recommendation is to delete clause 63(1)(b) and allow us to use our own good sense.

7.4 Avoid making consultation too onerous

The Wellington Regional Council is very concerned that the level of prescription in *Clause 66* will be counter-productive. Because clause 66 as drafted applies to any consultation, a local authority may be disinclined to engage in a range of alternative, less formal but highly valuable consultation processes, frequently as a prelude to the more formal processes at a later stage. It is submitted that sub-clause (1) should be limited in its application to special consultation procedures.

7.5 Avoid asking for a proposal for a plan

There is difficulty in interpreting and applying sub-clause (1) of *clause 67* and *clause 68* where the proposal is a plan (such as the Long Term Council Community Plan). Suggested wording to overcome this is the addition of a new paragraph 67(1)(b):

"*where the proposal is the adoption of a plan, the plan is the statement of proposal for the purposes of section 67(1)(a) and section 68 does not apply*."

7.6 Significant Proposals

Clause 70 appears to contain several drafting errors. Clause 70(b) would seem to imply that every time a Council replaces any of its vehicle fleet this is a significant proposal and the Council must go through the special consultative procedure to do so. This would apply to any routine sale and purchase transactions which are frequent for Councils. If the clause was intended to apply to significant assets, then it is hard to see why this is not already covered by clause (a).

Also clause (c)(i) seems to be nonsense as it implies that every time a new staff person was employed Councils would have to go through the special consultative procedure.

It is submitted that the Select Committee

1. Delete clause 70(b), or for every occurrence of the word "asset" make it read "significant asset".

2. Delete clause 70 (c)(i).

6.7 Don't ask for the special consultation procedure to be used twice

The requirement to use the special consultative procedure in respect of a decision on a significant proposal takes no account of the fact that the particular proposal may have been the subject of a special consultative procedure in relation to a recent Long Term Council Community Plan or the current Annual Plan. This can give rise to unwarranted duplication of procedures. It is therefore submitted that the existing provision in clause 72 become sub-clause (1), and the following sub-clause be added:

> *"(2) Nothing in subsection (1) requires a local authority to undertake a separate special consultative procedure on a significant proposal where that proposal is –*
>
> *(a) included in the Long-Term Council Community Plan or the Annual Plan; and*
>
> (b) *the proposal is implemented in the first year to which the Long Term Council Community Plan relates or the year to which the Annual Plan relates, as the case may be.*"

7.8 Process for identifying community outcomes and priorities

The requirement in *Clause 73* to identify community outcomes and priorities at least every six years is welcomed. Linking a Council's outputs and activities to outcomes is a vital element in achieving effectiveness. However, this Council is concerned that subsection (3)(a)(ii) will add another layer of compliance costs. WRC believe the

process used for developing LTCCP should be used simultaneously to identify community outcomes and priorities.

The Council recommends that *Clause 73(3)(ii)* be amended and add a subsection added as follows:

> *(ii) to include in the process mechanisms for consulting with those bodies; and*
> *(4) For the avoidance of doubt, a local authority may use at the same time the processes it uses to prepare its Long-Term Council Community Plan required by section 75 to identify the community outcomes and priorities required by this section.*

7.9 Principles of financial management

Wellington Regional Council notes that *Clause 122C(I)(e)* of the present Act, which requires debt to be maintained at prudent levels and in accordance with the borrowing management policy, has been omitted from the proposed *Clause 82*. We consider such a provision should be retained in the new bill.

We note with concern that there is no reference to managing revenues, expenditure, assets, liabilities, investments, with prudent.

Therefore *Clause 82* should be amended by the addition of a provision similar to C*lause 122C(I)(e)* of the present Act.

7.10 Requirement to Maintain Sound Financial Systems

Wellington Regional Council notes that no provision similar to *Clause 223F* of the present Act has been incorporated in the new Bill. In terms of accountability and transparency, Wellington Regional Council appreciates the focus on disclosure of information and public involvement in decision making in the Act. However, a requirement to maintain sound financial systems is an important safeguard for residents, ratepayers and other stakeholders to ensure that the assets that Councils manage on their behalf are being properly managed. We therefore recommend that *Clause 223F* of the present Act, with appropriate modifications, be included in the Bill.

7.11 Financial Management Provisions – Funding of Activities

We note that the three-step process for funding policies has been replaced with a menu type list. While acknowledging that, with one exception, Councils can achieve the same result through this list, the requirement for the three-step process did impose discipline to the whole process which led to better results.

We are concerned that the exacerbator principle has been omitted from *Clause 82(c).* This allows Council to charge those who impose cost on the Council and the community through their actions and inactions. The exacerbator pays principle provides a rationale for Councils to fund all or most of the costs of any services or

activities from the groups of ratepayers that created the need for the service or activity. This is especially important when developing funding allocations for our functions e.g. River and Drainage Schemes. For example, types of land use can have dramatic effects on the works required to mitigate flooding and erosion downstream of the land use. It is important that these effects be recognised by the relevant land owners being charged a share of the costs to remediate the effects. It is also important to be able to recognise those that lessen the need for any service or activity.

Our recommendation is that the Select Committee add to *Clause 82*© a further clause as follows:

> (vii) the extent to which the actions or inactions of an individual or group contribute to or alleviate the need for the service or activity concerned.

7.12 Prohibition on borrowing foreign currency

The Wellington Regional Council believes that *Clause 92* is unnecessarily restrictive and should be amended to allow for hedging of risk when Councils are directly purchasing from international markets (e.g. purchasing equipment from overseas).

Councils purchase direct from overseas when they deem it is financially prudent to do so and it would be financially prudent to minimise the risk in this process by allowing for hedging arrangements.

The Bill should therefore be amended to clarify that hedging against such transactions is permissible.

7.13 Cessation of activity Owing to cash restraints – Clause 83(3)

The provision restricts a local authority from ceasing an activity on the 'sole basis that insufficient cash is available to fund the asset management requirements of that activity'. Effectively this means that an authority is unable to exit an activity it cannot afford unless it can find at least one other reason for such an exit. This is not consistent with the empowering nature of the bill.

WRC firmly disagrees with this clause and recommends that it be removed from the legislation.

We would also question: (1) the rationale for insufficient cash and (2) the reasons for using cash rather than revenue.

If the clause is to remain in the legislation, it is recommended that the wording be changed so that Council may not cease an activity on the sole basis that insufficient cash is available to fund the asset management requirements of that activity without considering the community's economic, environmental, social and cultural impacts'.

Such an amendment would ensure that Council would find it hard to exit costly but essential activities (for example rural water suppliers) while enabling it to exit costly but non-essential activities (for example a swimming pool).

7.14 Liability policy and investment policy (Clauses 86 & 87)

These policies were previously covered by the Investment Policy and Borrowing Management Policy provisions of the current Act. In each case the current Act requires only that the policy be adopted by resolution and a summary in the Annual Plan.

Council does not support the requirement to subject these policies to the special consultative procedure as:

1. WRC is unclear as to the purpose of this requirement, and
2. WRC believes that, given the detailed and technical nature of the information in the policies, the uninformed reader will be unable to submit informed submissions on the policies.

We recommend that the status quo under the current Act should remain with respect to these policies, i.e. they should not be subject to consultation.

7.15 Revenue and financing sources – Clause 84(3)

The funding and revenue sources available to Council are specifically listed but omit several sources that Councils may use:

- Grants and subsidies
- Reserves (including depreciation reserves)
- Prior year or future surpluses
- Trust fund revenue
- Vested assets

The existing Act uses a catch-all provision to ensure that any other revenue was captured (sec 1220(3)(f) – other sources of revenue of any kind). Inclusion of a similar provision in the bill would ensure all possible revenue sources were captured.

8. Specifics: Part 6

8.1 General bylaw making power for all authorities (Clause 100)

The Wellington Regional Council considers that the same general bylaw powers proposed for territorial authorities should also apply to regional councils. Under the Bill, only bylaw powers for forestry (Clause 104) and navigation and safety are retained (LGA savings, Schedule 17). General bylaw powers are needed by regional councils for the purpose of protecting the public from nuisance effects and protecting, promoting and maintaining public health and safety. For example, in the area of flood protection, wilful or negligent damage to stopbanks or berms by cars and motorbikes could have serious ramifications for communities located behind these structures.

8.2 Additional power to protect council works or property.

The Wellington Regional Council **supports** Local Government New Zealand's addition to Clause 100, which would allow local authorities to protect council assets where appropriate.

We agree with Local Government New Zealand's assessment that *Clause 193* is neither an appropriate nor cost effective enforcement measure for minor property offences. Because of prohibitive costs, Clause 193 could only be applied in cases of serious property damage; in essence, the regional ratepayer would bear the costs for the non-enforcement of minor damage. The Wellington Regional Council concurs with Local Government New Zealand's contention that bylaws and infringement notices is the most efficient and appropriate method to protect public works and property from minor offending. We would also note that infringement notices would not replace educating the public about the appropriate use of public property and assets administered by the Council.

In terms of regional parks, the removal of bylaw powers leaves three options: the Resource Management Act 1991 (RMA) and the Trespass Act 1980, bylaw powers in other legislation.

a) The Trespass Act is limited in its jurisdiction and requires costly Court proceedings to enforce. It is also questionable whether the Trespass Act is an appropriate mechanism by which to discourage damage (and in some cases misappropriation) of environmental and heritage assets.

b) The RMA does not deal particularly well with minor, nuisance type effects or activities. Furthermore, responsibility for managing land use activities lies mainly with territorial authorities. Regional Councils would then be reliant on the co-operation and willingness of territorial authorities to form rules in each district. This process would need to be duplicated a number of times depending on the geographic spread of regional council activities, potentially generating significant costs in the process.

c) The Wellington Regional Water Board Act 1972 and the Reserves Act 1977 allow this council to make certain bylaws. However, these bylaws only apply to particular categories of land (i.e. bylaws might apply to only one-third of a Regional Park). Neither Act allows regional councils to make bylaws protecting assets.

Wellington Regional Council therefore **supports** Local Government New Zealand's recommended addition of Clause 100(d).

8.3 Specific bylaw-making powers of regional councils (Clause 104)

The Wellington Regional Council **approves** of Local Government New Zealand's proposed amendment of *Clause 104*, which clarifies the specific purposes for which bylaws can be made.

8.4 Transfer of bylaw making powers (Clause 108)

Clause 108 allowing for the transfer of bylaw-making powers is supported, but not as an alternative to regional council bylaw powers.

8.5 Review of Bylaws (Clauses 112-117)

The Wellington Regional Council **supports** the provisions relating to the review of bylaws.

Clauses 112-117 provide a clearly defined process by which the bylaws can be regularly tested for relevance and appropriateness. These provisions are an essential counterpart to the new general bylaw powers. These provisions will ensure that the appropriate instrument is selected to address particular problems.

9. Part 7 – Specific obligations, powers, and restrictions of local authorities and other persons

9.1 Subpart 2 – Specific Restrictions

Removal on restrictions on disposal of parks (Clause 126)

The Wellington Regional Council **supports** the removal of restrictions on the disposal of parks.

The LGA 1974 currently provides that Regional Park land is to be held in perpetuity and therefore cannot be sold. Clause 126 allows for such land to be sold in accordance with the special consultative procedure. Such an approach is consistent with the provisions relating to other Regional Council land held under the Reserves Act 1977; reserve land under this Act can be sold in accordance with a consultation procedure similar to that in the Bill. The Wellington Regional Council therefore supports Clause 126.

9.2 Subpart 6 – Powers in relation to private land

Covering Watercourses (Clause 145)

The Wellington Regional Council considers that there is a need for more clarity over the definition of "watercourse".

It is unclear whether the term "watercourse" includes both natural and artificial watercourses. The Courts have not helped this situation by adopting a wide interpretation of the term. While there has been a presumption under section 441 that "watercourse" relates to artificial features, greater clarity is required. In addition, the Wellington Regional Council considers that Clause 145 should be subject to the Resource Management Act 1991. The Wellington Regional Council therefore recommends that Clause 145 be amended by the addition of subclause 14:

(14) Nothing in this section derogates from any of the provisions of the Resource Management Act 1991.

9.3 Clauses 149, 150 & 154

The Wellington Regional Council **recommends** that the powers contained in *clauses 149, 150 and 154,* be extended to include regional councils.

These provisions represent a significant change from the powers contained in the respective provisions of the LGA 1974. Regional councils have responsibilities for land drainage, river clearance as well as smaller natural watercourses in urban areas. The Wellington Regional Council can therefore see no justification for not having the same powers as a territorial authority in this regard.

It is therefore **recommended** that clauses 149. 150 and 154 are amended, replacing all references to "territorial authority" with "local authority".

9.4 Regional Councils should have access to development contributions

The Wellington Regional Council does not understand why regional councils are excluded from the powers to levy developers. It supports Local Government New Zealand's view that all references in Part 7, subpart 9 to "territorial authorities" should be replaced with "local authorities" and the words "flood and erosion protection and land drainage works" should be added to *Clause 161(1)(a).*

Regional Councils already have responsibility for the provision of infrastructure – particularly to control flooding. Also the Bill contemplates transfers of functions between authorities to promote solutions that best meet local needs. The absence of the power for regional councils would work against such solutions.

This is another case where equal empowerment should apply.

10. Specifics: Part 13

10.1 Allow Local Choice for Electoral Purposes

The Wellington Regional Council does <u>not</u> support the prescribed electoral arrangements contained in Part 13 – *clause 209* – which amends the Electoral Act 2001. Its first preference is that membership of councils and the basis of election should be determined locally by the council in conjunction with the local people. Legislation that is theoretically empowering does not need to tell local people how many representatives they should have or how they should be elected. We struggle to see the need for a nationally defined answer that is inevitably "one size fits all". The UK has recognised this point and provides in its legislation for local choice. Why cannot we do the same here?

This flexibility should apply both to regional councils and territorial authorities. We could ask why a mayor has to be elected at large but a regional council chairperson from among the councillors, and why a territorial authority can have wards or not but a regional council must have constituencies. It can't be for reasons related to population size as the larger territorial authorities (e.g. Auckland City, Christchurch City) have eight times the population of the smallest region. Similarly why is there a cap of 14 members for a regional council (e.g. the Auckland Regional Council, population around 1.1 million) against a cap for territorial authorities of 30 (e.g. Carterton District, 6,800 population).

So our first choice is to delete the prescriptive clauses. If there is a valid reason for them, which eludes us, then we would like to see even-handed legislation with the same level of flexibility for regions as for territorial authorities with respect to "at large" elections, wards/constituencies or a hybrid and both types of authority able to decide in conjunction with the community as to how the political leader is elected.

10.2 Is the specified number of electors seeking a poll reasonable?

Clause 269 amends the Local Electoral Act 2001. The Wellington Regional Council is concerned that in 19ZB(3) the number of electors required to demand a poll is 5% of the roll. While such a number may be reasonable for a large authority as the absolute number required is appropriately large for such a financial commitment (e.g. in the largest cities it could be 15,000), in a small authority this cost and commitment could be imposed by, say, just 250 electors (5% of 5,000).

The Wellington Regional Council therefore recommends that, following standard mathematical principles, a different percentage should apply depending on the size of the roll. The Wellington Regional Council recommends 15% if the roll is 10,000 or fewer, 10% between 10,001 and 50,000, and 5% for a roll in excess of 50,001. This is a general principle which the Wellington Regional Council would wish to see applied to *all* such poll demands.

10.3 Factors in determination of constituencies (Clause 19V)

a) The Wellington Regional Council **supports** the inclusion of *clause 19V(4).*

The ability to deviate from a +/- 10% population formula, to the extent that a community of interest requires, is of great importance to this Council.

Clause 19V(4) recognises that a formula based solely on population presents regional councils with significant issues regarding representation, fairness and efficacy. An example is the Wairarapa constituency, which constitutes three-quarters of the land area of the Wellington Region yet contains less than ten per cent of the region's population. Under a population formula the Wairarapa would have only one elected representative, while under the current formula, which recognises land area and rateable value, it has two. In the Wairarapa much of the Council's work relates to land (i.e. animal control, plant pests and soil conservation) rather than people. Further, the Council is required by an Order in Council to have a Wairarapa Committee (of elected members from the Wairarapa Constituency and appointed members) to consider all matters affecting the

Wairarapa. The effective working of this Committee would be seriously compromised if only one elected member was on the Committee.

b) The Wellington Regional Council **supports** the ability to define constituencies in a manner that does not comply with *clause 19V(2).*

Clause 19V(2) recognises the differences between regional council constituency boundaries and territorial authority wards. A river catchment may define a regional community of interest, whereas a river may be appropriately used as a boundary for a territorial authority. We note however, that the drafting of these sections is a little confusing and suggest that clarity can be enhanced by:

a) **Deleting** the reference in clause 19V(2) to "but subject to subsection (4)"; and

b) **Amending** clause 19V(4) to read:

"(4) If, and to the extent that, community of interest so requires, constituencies, wards, and subdivisions of a community may be defined, and membership may be distributed between the, in a way that does not comply with ***subsection (2) or*** **subsection (3).**"

11. Specifics - Schedule 5 – Local Authorities, Community Boards, and their Members

11.1 Schedule 5 - Part 1, Conduct of meetings

The Wellington Regional Council **opposes** the removal of the chairperson's casting vote (schedule 5, clause 23(1)(b)(ii)).

It is difficult to understand the reason for removing the chairperson's casting vote. The ability to have a casting vote can be vital if a decision is required in order to meet a statutorily defined timeframe.

The Wellington Regional Council therefore **supports** LGNZ's proposed amendment to Clause 23(1)(b)(ii)

11.2 Wellington Regional Water Board Act 1972

The Local Government Bill will not repeal the Wellington Regional Water Board Act 1972, with the exception of (No 3 (l) Section 123(1)). However, in the interests of clarity, the Wellington Regional Council considers that a provision similar to s37SA of the Local Government Act 1974 should be included. It is therefore recommended that the Select Committee add to Clause 9 a new subclause (5):

"9(5) For the avoidance of doubt, it is hereby declared that nothing in section 9 of this Act affects the exercise by the Wellington Regional Council of any of the functions, duties, or powers exercisable by that Council under the Wellington Regional Water Board Act 1972."

Submission on the

Local Government Bill

by

The Wellington Regional Stadium Trust

Contents

Introduction

1 This submission is made by The Wellington Regional Stadium Trust (**The Staduim Trust**), supported by The Wellington City Council and The Wellington Regional Council.

2 The Stadium Trust is an incorporated charitable trust established under The Wellington Regional Council (Stadium Empowering) Act 1996 (**Empowering Act**). The Wellington City Council and the Wellington Regional Council jointly hold the power to appoint trustees of the trust.

3 This submission focuses on the specific aspects of the bill, particularly in regard to Council Controlled Organisations that will affect the Stadium Trust.

4 This submission is in 3 parts:

4.1 the first part sets out a submission that the Stadium Trust should be specifically excluded from the definition of a Council Controlled Organisation at clause 42(4);

4.2 the second part sets out major issues that are fundamental to the Stadium Trust if the specific exemption under clause 42(4) is not possible;

4.3 the third part identifies specific or technical matters raised by the bill that the Stadium Trust believes need to be addressed.

5 [The Stadium Trust requests the opportunity to be heard].

Part 1 – Specific Exemption under clause 42(4)

6 The Empowering Act is a local act of Parliament that enabled The Wellington Regional Council to be involved in the Regional Stadium project. The purpose of the act was two-fold:

6.1 it required The Wellington Regional Council to participate in the establishment of, and act as one of the settlors of, the Stadium Trust which was set up for the planning, development, construction, ownership, operation and maintenance of the Stadium. (The Wellington City Council which also contributed $15 million towards the Stadium project is the other settlor); and

6.2 it enabled The Wellington Regional Council to lend a sum not exceeding $25 million to the Stadium Trust to facilitate the planning, development and construction of the Stadium.

7 It is our belief that the intention of Parliament in passing the Empowering Act was to create a community asset with its own clear governance structure, for the benefit of the Wellington City and the Wellington Region.

8 It is our view that the Empowering Act has established a specific governance code for the Stadium which according to legal advice prevails over the Local Government Act. The effect is that the Empowering Act has implicitly repealed all legislative provisions that apply to Local Authority Trading Enterprises (**LATE's**) under the Local Government Act (**LGA**) to the extent these provisions may apply to the Stadium. The concept of a LATE under the LGA disappears and the Bill introduces the new expanded concept of a Council Controlled Organisation in its place.

9 The Stadium Trust falls within the definition of a Council Controlled Organisation because the trustees are appointed by the two Councils.

10 We are aware that there are a number of other special purpose bodies, controlled by local authorities, which will also fall within the expanded definition of Council Controlled Organisations. A number of these other bodies are also established by statute with their own specific governance and accountability arrangements. Examples include the Canterbury Museum Trust Board, the Auckland Museum Trust Board and the Otago Museum Trust Board. Like the Stadium Trust they are controlled by local authorities because their governing boards are local authority appointed. What is unclear is whether they come within the definition of 'Organisation' in section 42(2) of the bill. If it is intended that organisations of this type be included, the legislation should be specific and any necessary modifications made to their current legislation. If it is not intended to include them, then the bill should list them in the exemption provision in section 42(4).

11 **Recommendation:** Because the Empowering Act has established its own specific governance code for the Stadium we believe section 42(4) should contain a specific exemption to exempt any entity established by the Empowering Act.

Amendment requested:
s.42(4) the following entities are not council controlled organisations: (a) … (b) … (c) … (d) any entity established by the Wellington Regional Council (Stadium Empowering) Act 1996.

Part 2 – Major issues, if specific exemption under clause 42(4) is unavailable

Clarify intended meaning of 'operates a trading undertaking for the purpose of making a profit'

12 If our earlier submission requesting a specific exemption for the Stadium Trust from the definition of a Council Controlled Organisation by the extension of

section 42(4) is not accepted, then we believe greater certainty is needed in regard to what is intended to be caught by the definition of a 'Council Controlled Profit Organisation'.

13 In particular the intended meaning of the words 'operates a trading undertaking for the purpose of making a profit'.

14 The bill makes a distinction between Council Controlled Profit Organisations and Council Controlled Non-Profit Organisations. The main significance of the distinction is how to comply with schedule 6.

15 A more significant distinction however is likely to be the tax implications. We expect there to be consequential amendments to the Income Tax Act to make Council Controlled Profit Organisations subject to the same tax treatment currently applied to LATEs.

16 The Stadium Trust is an incorporated charitable trust. As such it has no ability to return profit to the Councils. Although the Stadium Trust operates a trading undertaking we do not consider that operation is for the sole purpose of making a profit.

17 The Stadium Trust holds a community asset. The main purpose of the business operated by the Stadium Trust is the motivation to ensure that the Stadium continues to be an asset provided for the benefit of the community. The motivation is not the ability to return profit to the Councils

18 In fact by virtue of the requirements of the Stadium Trust Deed there is no ability under the Trust Deed to return profit to the Councils.

19 **Recommendation:** The Stadium Trust should be a Council Controlled **Non-Profit** Organisation for the purposes of both the Local Government bill and any consequential Income Tax amendments. The present definition of a 'Council Controlled Profit Organisation' needs to be clarified so that it is easy to determine whether an entity like the Stadium Trust is intended to be a profit organisation or not. This could be achieved by:

19.1 adding a further definition to clarify the meaning of 'operates a trading undertaking for the purpose of making a profit'; or

19.2 clarifying the meaning of the term 'profit'; or

19.3 excluding Council Controlled Organisations which generate a surplus, if that surplus is reinvested and retained by the organisation rather than distributed to the owner - this achieves the desired result if the organisation is also prohibited from distributing any surplus to its owners;

Amendment requested:
Council Controlled Profit Organisation means a Council Controlled Organisation i) that operates a trading undertaking for the sole purpose of

	making a profit; and ii) has the ability to distribute surpluses to one or more controlling local authorities.
We anticipate that the term 'distribute' will need to be clarified to incorporate rebates, excessive management fees and to exclude repayment of debt.	
Depending on how the issue is addressed we believe it will also be important to clarify the meaning of 'purpose' and 'profit' as these terms will be crucial in determining whether or not an organisation does in fact have the 'purpose of making a profit'.	

Consequential tax changes

20 The bill does not currently propose any consequential changes to the Income Tax Act to recognise the fact that the concept of a LATE has disappeared.

21 It is essential that the definitions of a 'Council Controlled Profit Organisation' in the bill and in the Income Tax Act are the same. If this does not occur entities and local authorities run the risk that the Inland Revenue will take one view of an entity for tax purposes and the local authority or the Auditor General will take a different view for the purposes of the Local Government Act. The possibility of this occurring needs to be removed.

22 **Recommendation:** It is critical that any amendments to be made to the Income Tax Act as a result of the Bill be disclosed as part of the Bill consultation/submission process, in order that the full implications can be considered before the Bill is reported back to the House for its second reading.

Clause 49(a)

23 We are concerned that under the proposed clause 49(a) The Wellington City Council and The Wellington Regional Council must approve the matters outlined and in doing so they are effectively undertaking the role of the trustees with the following consequences:

23.1 it may be difficult to hold trustees accountable if the local authorities have taken the primary role of exercising the discretions which trustees themselves would normally have;

23.2 it raises questions about the local authorities' ability to attract competent commercial trustees if a local authority has in effect reserved to itself the principal discretions which the trustees would generally exercise.

24 Separately there is a concern that in our case the 2 local authorities exercising the powers proposed in clause 49 may at times have difficulty agreeing on the exercise of those powers. This gives rise to difficulties if the local authorities or one of them is not prepared to 'approve or endorse' a direction or strategy.

25 **Recommendation:** We support the suggested amendments to clause 49 proposed in the LGNZ submission.

Part 3 - specific/technical issues

Terms ‘shareholder’ and ‘equity’

26 The bill seeks to extend a number of the provisions of part 4 and of schedules 6 and 7 to non-company Council Controlled Organisations by deeming provisions in clause 42 based on the terms ‘shareholder’ and ‘equity securities’. As local authorities will generally neither hold ‘equity securities’ as such in trusts nor have voting rights, council controlled trusts will fall outside a number of the provisions that appear to be intended to them. The legislation should be reviewed to ensure that the definitions and deeming provisions it contains will achieve their intended effect.

Drafting errors - schedule 6

27 There are a range of drafting errors that flow from clause 42(3) and extend through schedule 6. The Stadium Trust supports the correction of drafting errors outlined in the LGNZ submission.

Schedule 17 - Local Government Act 1974 – Removal of Wreck

The WRC **recommends** that section 650K of the Local Government Act 1974 be amended (Part 39A saved under Schedule 17, LGB).

Regional council responsibilities for navigation and safety in its water continue under this Bill. These provisions have generally worked well. However, regional council's wreck removal powers have emerged as a particular concern.

Regional councils do not have the power to remove and destroy ownerless[1] unseaworthy ships that are likely to sink, or indeed have sunk, at their moorings. Such ships should be removed as they present significant health and safety risks (i.e. inquisitive children boarding to explore) as well as fire and oil pollution risks. In such circumstances, it is necessary for regional councils to have the power to remove and destroy such vessels before they sink; avoiding the additional costs associated with refloating a sunken vessel.

Section 650K sets out the procedure by which a regional council can remove (or direct an owner to remove) from its waters a "wreck" that is a "hazard to navigation". However, the definition of "wreck", combined with the requirement for a ship to be a "hazard to navigation", seriously restricts the utility of this section in a harbour context. A "wreck" is defined as including ships that are "abandoned, stranded or in distress", as well as "any derelict ship". Unseaworthy and unsafe ships that remain moored to a wharf do not easily to fall within the definition of a wreck.[2] Even if the ship fell within the definition of a "wreck", a ship secured to a wharf does not usually present a "hazard to navigation". Councils are therefore unable to utilise the powers in section 650K(2)(a)-(f) to remove (or direct an owner to remove) an unseaworthy ship that is likely to sink at its moorings.

Due to the inadequacy of section 650K, other regional councils have attempted to remove such ships by recourse to the Resource Management Act 1991. However, the RMA has proved very costly and ineffective in the management of such issues.

The WRC therefore **recommends** that:

1) That a new paragraph 650K(d) be added:

   (d) Any dilapidated or unsound ship;

2) That 650K(2) be amended to read:

   (2) If a wreck on or in any land or waters within the region of a regional council is a hazard to navigation <u>or is sinking or is likely to sink,</u> the council may take

[1] While the WRC considers that a ship's owner or liquidator should have the primary responsibility for removing and destroying an unsound ship, in some cases, an owner may be bankrupt, have no insurance or, in the case of a liquidator, they may disclaim any ownership interest.

[2] A moored ship would not be a wreck as: (a) the ship is neither "stranded" or in "distress"; (b) the legal meanings of "abandoned" and "derelict" imply the abandonment of a ship *at sea*. However, a sunken ship it would appear to fall within the definition of by virtue of the wording in section 650(3).

steps to remove and deal with the wreck in accordance with the following provisions: