

Committee Secretariat
Local Government and Environment
Parliament Buildings
Wellington

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**Architectural Centre
submission on
The Local Government Act 2002 Amendment Bill**

To The Local Government and Environment Committee

This submission is from the Architectural Centre, an incorporated society dating from 1946 which represents both professional and non-professionals interested in the promotion of good design. We are commenting on this Bill from the perspective of:

- (i) a group of experts working in the areas of: the built environment, sustainability, city and urban design, public transport, and cultural viability, and
- (ii) as a community group who frequently participates in local council submission and consultation processes at the local government level.

The Architectural Centre is keenly interested in a local government which is able to respond to its citizens through a robust democracy. We believe that local representation plays an important role in ensuring this. We welcome the opportunity to comment on the Local Government Act 2002 Amendment Bill.

1. Opposition for the Bill

The Architectural Centre opposes the Local Government Act 2002 Amendment Bill. Our specific comments follow.

2. Viability of the Bill

The Architectural Centre is concerned about the viability of the Bill and the quality of evidence supporting the Bill, particularly given that the Treasury's "Regulatory Impact Statement" states that there is "limited evidence" informing the proposed changes in the Bill, and that "problem analysis and option assessments of specific proposals rely on assumptions that are not, or are only partially, tested."¹ It appears that the assumptions underpinning the Bill are not well-founded, repeat existing legislation and financial reporting mechanisms, and do not understand council operations.

Specific issues pertaining to the viability of the Bill that are of concern (which not covered in other points below) are:

- (i) that the lack of restriction on new proposals for local government re-organisation could be costly and disruptive to the provision of council services, and prevent long-term continuity of planning and council policies because of



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¹ "Regulatory Impact Statement: Better Local Disclosure Statement: Agency Disclosure Statement" p. [1].
<http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dia-blg-may12.pdf>

- serial reorganisations, given that reorganisation schemes are able to be proposed within 3 years of a previous reorganisation.²
- (ii) that the proposed extension of Mayoral powers to "lead the development of territorial authority's plans ... policies, and budgets"³ could replace long-term planning (e.g. for land use, transport and infrastructure) with contrary policy positions every 3-year mayoral term.
 - (iii) that the proposal for the Governor-General or the Minister to defer local elections⁴ has pragmatic difficulties, especially regarding the impact of this on the 3-year term of councillors, i.e. extending the term of incumbent councillors to 4 years, and reducing the term of new councillors to 2 years.
 - (iv) that the proposal to recover expenses from a local council for any expenses the Crown incurs when the Minister intervenes with a local authority⁵ is likely to mean that councils may incur expenses unable to be anticipated and budgeted for, and, if the local council is in financial difficulty, these may be unable to be recovered. We recommend balance is aimed at to recognise that, in most situations, it is unlikely that the local authority would have chosen Crown intervention, but to also ensure that the cost of invention is not an impediment to local authorities seeking early intervention if it is needed.

3. Scope of Council Activities

The Architectural Centre supports the retention of the four well-beings (social, economic, cultural and environmental) which currently define the potential scope of Council activities, and which the Bill proposes be replaced by "the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions"⁶ and "interests."⁷ We note that:

- (i) the introduction of the four well-beings in 2002 has not caused a radical shift in the scope of council activities.
- (ii) the largest expenditure (70% approx) of local councils is consistently focussed on conventional notions of infrastructure provision suggesting that the use of the four well-beings has not caused councils to neglect infrastructure provision.
- (iii) the four well-beings provide for the full scope of activities from which councils and their communities can determine the priorities of local government and represent local values.
- (iv) the four well-beings enable councils to address issues which are peculiar to localities and to develop cities in a way which make them more livable, attractive (e.g. to immigrants) and distinctive, and hence increase New Zealand's growth and productivity.

The Architectural Centre supports the four well-beings because we consider that local government plays an important and necessary role in the provision of social housing, and arts and cultural infrastructure (e.g. free access to libraries, art galleries etc.), the protection of built environment heritage, and sustainable development. We also refer to research which demonstrates the significance of equitable access to the public spaces provided by local authorities (swimming pools, public libraries, museums, community centres and playgrounds etc.) for children, especially those from low socio-economic backgrounds.⁸ We support the commonly-accepted functions of local government to promote and enhance the public good, including the cultural well-being of their communities.

We do not support the general shift that the Bill proposes towards homogenising all local authorities in terms of the range of activities they are legally allowed to undertake. We believe the self determination that is granted to communities across New Zealand, via the four well-beings, is positive as it enables local expression of values via the infrastructure, facilities, programmes and events that local authorities might choose to invest in. This ultimately results in a more interesting and diverse New Zealand and this local flavour should be encouraged.

² Local Government Act (LGA) (2002) Amendment Bill Schedule 1 p. 35 (new Schedule 3, Part 1, subpart 1 §3(b)). <http://www.legislation.govt.nz/bill/government/2012/0027/latest/versions.aspx>.

³ LGA (2002) Amendment Bill Clause 16, p. 9 (new §41A(2)).

⁴ LGA (2002) Amendment Bill Clause 11, p. 6 (new §24A (2)(b)); LGA (2002) Amendment Bill Clause 21, p. 19 (new §258G (1)).

⁵ LGA (2002) Amendment Bill Clause 21, p. 25 (new §258Q (1)).

⁶ LGA (2002) Amendment Bill Clause 5(1), p. 4.

⁷ LGA (2002) Amendment Bill Clause 8(2), p. 5; (new §14(l)(h)(i)).

⁸ Hayward, Bronwyn *Children, Citizenship and Environment: Nurturing a democratic imagination in a changing world* (London: Routledge, 2012): 87-93.

We do not believe that the replacement of the four well-beings with the suggested wording in the Bill will provide greater clarity around the role of local authorities. We also believe that the lack of definition around the proposed replacement for the four well-beings will require the courts to determine whether a local authority has gone outside its ambit. We can see this situation could make Crown intervention difficult in such a circumstance.

Additionally, the proposed removal of the four well-beings from the remit of local government suggests that central government will meet these wider activities. This would marginalise smaller communities who struggle to influence national policies at central government level. The Architectural Centre believes that, in almost all cases, local government is better suited to deliver the kind of activities supported by the notion of the four well-beings.

If the Committee decides to accept the replacement of the four well-beings, the Architectural Centre strongly recommends that the definition of "good-quality," in relation to local infrastructure, local public services, and performance of regulatory functions⁹ include a requirement for the term "resilient." Resilience embodies the idea of long-term value and considers infrastructure in relation to the system within which it is placed, to ensure viable alternatives in situations of failure and/or unexpected circumstances (e.g. natural disasters, such as the Canterbury earthquakes; economic disasters, such as the Global Financial Crisis).

4. Requirement for Council to function "in a way that is most cost-efficient for households and business"¹⁰

The Architectural Centre opposes the philosophy of cheapness (lowest cost) which underpins the Bill, and which appears to be judged over the term of a specific annual plan. We see this as a short-term and narrow financial logic. We note the following:

- (i) "best price," rather than "least cost" is internationally regarded as industry best practice.¹¹ Lowest cost in the short term is likely to be more expensive economically (e.g. life-cycle costs), and does not provide for value derived from the investment, determined by the cost (i.e. the rates payable) and the benefit the community perceives (or the impact it has on their wellbeing). Consequently, rather than "cost,"¹² we recommend the use of terms such as "value," "resilience" and "economic viability."
- (ii) the use of the Consumer Price Index (CPI) multiplied by a population growth ratio¹³ incorrectly assumes that infrastructure inflation is equal or less than general inflation, and so does not make economic sense. The 2007 Shand Report noted that "the CPI currently understates the level of price increases facing local government."¹⁴ In 2010 BERL derived a Local Government Cost Index (LGCI)¹⁵ which demonstrates the difference. From 2000 to 2010 the CPI increased about 3.1% per year, while the LGCI increased by 4.4% per annum. This difference between the CPI and LGCI is largely due to: the need for new, expanded or upgraded infrastructure-based services, world price rises in materials costs, the cost of providing network infrastructure in a resource-scarce environment. This is to say that the cost of providing first-world level of infrastructure services is higher than normal household costs, and that a general measure of inflation, such as CPI, is not a valid measure to compare with the cost of local government services.
- (iii) rates-capping policies are likely to encourage negative impacts such as deferred maintenance and a backlog of infrastructure spending.¹⁶ The consequences of under-investment (e.g. infrastructure maintenance or asset replacement) will likely cause significant additional and possibly unnecessary

⁹ LGA (2002) Amendment Bill Clause 7(2), p. 5; (new §10(2)).

¹⁰ LGA (2002) Amendment Bill Clause 7 (1) p. 5 (new §10(b)).

¹¹ Cheyne, Christine "Better Local Government Reform Proposals: Improving or Diminishing Local Government?" *Policy Quarterly* (May 2012) 8(2): 40; also Controller and Auditor-General/Tumuaki o te Mana Arotake "Good practice guide: Procurement guidance for public entities" p. 6. <http://www.oag.govt.nz/2008/procurement-guide/docs/procurement-guide.pdf>

¹² LGA (2002) Amendment Bill Clause 7 (1), p. 5 (new §10 (b))

¹³ LGA (2002) Amendment Bill Clause 22, p. 27 (new §259(3)(a)(ii)).

¹⁴ Local Government Rates Inquiry (LGRl) "Funding Local Government: Local Government Rates Inquiry: Pakirehua mō ngā Reiti Kaunihera ā-Rohe [also known as the Shand Report]" (August 2007) p. 56. [http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE12126512/http://www.dia.govt.nz/Agency-Independent-Inquiry-into-Local-Government-Rates-Index \[Full Report\]](http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE12126512/http://www.dia.govt.nz/Agency-Independent-Inquiry-into-Local-Government-Rates-Index [Full Report])

¹⁵ Norman, David and Ganesh Nana (BERL) "A Local Government Cost Index for New Zealand" (May 2010) p. 3.

http://www.lgnz.co.nz/library/files/store_024/A-Local-Government-Cost-Index-For-New-Zealand-Prepared-By-BERL-May-2010.pdf

¹⁶ LGRl "Funding Local Government " p. 2.

cost for future generations to meet.¹⁷ As the Shand Report concluded, current rate rises are largely due to the need to address "past underinvestment" in infrastructure, population growth and higher standards.¹⁸ Consistent investment is important for intergenerational equity, particularly because the long life of local government assets (50, 80, 100 years, even perpetual lives) means that both present and future ratepayers get to enjoy the benefits that these assets generate. This means that local authority debt payment needs to be structured strategically to ensure intergenerational equity; that, all things being equal, where future ratepayers enjoy a benefit from a service they should meet part of the cost of its construction.

- (iv) the identification of cost-efficiency with respect to households and businesses fails to acknowledge the prime significance of communities for local government. We believe that economic evaluation must be both broadly understood, and prioritise collective well-being over singular households or businesses. Councils are required to achieve collective benefit while balancing conflicting interests across the community.
- (v) there is a complex economic interplay between the costs and benefits to ratepayers and taxpayers across the supplementary roles of local and central government (e.g. the provision by local government of recreational events and facilities will cost local government but may benefit central government through increased fitness and health and less dependence on healthcare, longevity of economically productive life etc.) making the isolation of local council economies, distinct from the broader national economy, naive. As the Local Government Rates Inquiry (LGRI) found, for example, "rates, as a tax on property, need to be considered in relation to New Zealand's overall taxation system, in which property is lightly taxed."¹⁹ A further example of this interplay is how the provision of social housing by local authorities supplements Housing New Zealand's stock in a given area.

5. Democratic Processes in relation to applications for local authority reorganisation

The Architectural Centre opposes the removal of a mandatory poll to test whether or not there is community support for proposals to reorganise local authorities.

- (i) the new requirement that the Commission determine that an application for reorganisation has "significant community support"²⁰ is not substantially defined. We consider that defining "significant community support" as support from "a large proportion of the community" or support from "the leaders of the community"²¹ could be subject to abuse and/or legally contested. What is a "large proportion of the community"? and what criteria determines who the "leaders of the community" are? The previous requirement for a poll indicating majority support requires a more robust test of community endorsement. We believe that only unambiguous evidence of majority support in each local authority area affected by a proposed reorganisation (e.g. a mandatory poll) is an adequate demonstration of community support. Without such a robust test, the Bill limits the opportunity for communities to have their say on local governance. We note that requiring a poll to gauge support will also eliminate the likelihood of any legal contestation regarding whether or not support exists.
- (ii) the Bill shifts the responsibility for demonstrating support, or lack of support, for a proposal, from the Commission and those proposing change, to those ratepayers in the community who do not support a proposal for local authority reorganisation with the new requirement for those opposed to present a petition signed by 10% of those affected by the change.²² Given the likely resource disparity of a community group compared with the Commission we consider that this shift is undemocratic. We consider that the proposal to require only a minimum of 40 working days to gain such a petition is an unreasonable requirement. We note that recently it took 18 months to assemble the requisite number of signatures for a poll in the Tasman District.²³

¹⁷ NZIER (for Local Government New Zealand) "Rates Capping: A Study of the International Literature & Experience" (June 2009) pp. iv, 17 http://www.lgnz.co.nz/library/files/store_022/RatesCappingfinal.pdf

¹⁸ LGRI "Funding Local Government" p. 5.

¹⁹ LGRI "Funding Local Government" p. 3.

²⁰ LGA (2002) Amendment Bill Schedule 1, p. 37 (new Schedule 3 Part 1, Subpart 2 §7 (1)).

²¹ LGA (2002) Amendment Bill Schedule 1, p. 34 (new Schedule 3 §1(a)).

²² LGA (2002) Amendment Bill Schedule 1, p. 45 (new Schedule 3, Part 2, Subpart 1, §21(2)).

²³ Jones, John "Leadership and collaboration" *Gisborne Herald* (18 April 2012) <http://www.gisborneherald.co.nz/article/?id=27509>

- (iii) it appears that no costs for reorganisation are incurred by the proposer or the Commission, instead all costs appear to accrue to the local authorities who might not want or support the proposal.²⁴

6. Assessment of Applications for local authority reorganisation

The Architectural Centre opposes the limited test of "good local government" which is narrowly confined to "efficiencies and cost savings," "productivity improvements," and "simplified planning processes"²⁵ because it denies issues of community representation which are key to good local government, and because it lacks reference to a requirement which safeguards community participation in planning processes, without which simplified processes could easily become undemocratic.

We suggest an additional requirement for the assessment of applications: that the effect of the application does not reduce the existing level of democratic and representative community participation in the affected local authority/authorities. We also strongly recommend that a minimum time period for submissions on a proposal for local authority reorganisation be specified and be at least 6 weeks.²⁶

7. Council Independence

The Architectural Centre supports the independence and autonomy of local councils from central government because we believe that this is democratically healthy. While we recognise there is a need for legislation to enable central government, in extreme and rare circumstances, to intervene at the local authority level, we consider that the exceptional nature of such intervention should be reflected in legislation which safeguards the independence of local authorities. The proposed role of the Minister in the Bill though, significantly shifts the current balance of power between central and local government, restricting the devolution of power to local government, and hence increasing central government's share of power. Such a change to the distribution of the powers of central versus local government needs an explicit and proper debate about where this devolution adequately sits prior to any legislative changes which are in danger of ignoring the larger context regarding the distribution of power. We strongly urge Parliament to undertake this debate prior to passing legislation which effects a shift to the status quo position, and we point to the recent discussion in Britain on exactly this matter, which emphasised the importance of getting the balance of power right.²⁷

The Bill proposes that a Minister's determination of a problem with a specific council is grounds for Ministerial intervention. The definition of "problem"²⁸ is all encompassing and includes predicted, as well as actual situations ("a potential problem;" "probable adverse consequences") without including a definition, with the only qualifier being "reasonable grounds."²⁹

The protection from liability afforded to the Minister³⁰ also reduces the level of caution and need for evidence to be gathered by the Minister prior to intervention, and risks irresponsible, unwarranted expense and/or undemocratic intervention in local authorities by the Minister.

We recommend instead that the Bill's proposed intervention by central government in local authorities be revised to better prioritise local authority autonomy, the accountability of councils to their communities (rather than the Minister). We support proposals by other submitters that recommend that the Minister's powers, in such rare circumstances, be restricted to the ability to appoint a Crown Commissioner or order a new council election.

8. Shared service

An area which we consider might be productive for the legislation to support is mechanisms to better assist councils in the sharing of services without the onerous need for structural reorganisation. In addition to Civil Defence and infrastructure, for example, the Architectural Centre considers that facilitating cross-council services and

²⁴ e.g. LGA (2002) Amendment Bill Schedule 1, p. 47 (new Schedule 3, Part 2, Subpart 2, §22(4)).

²⁵ LGA (2002) Amendment Bill Schedule 1, p.38 (new Schedule 3, Part 1, Subpart 2 §8 (1)(b)(i)-(iii)).

²⁶ LGA (2002) Amendment Bill Schedule 1, p. 43 (new Schedule 3, Part 2, Subpart 1 §2).

²⁷ House of Commons: Communities and Local Government Committee *The Balance of Power: Central and Local Government* (London: The Stationery Office Limited, 20 May 2009) <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomloc/33/33i.pdf>

²⁸ LGA (2002) Amendment Bill Clause 21, p. 11 (new §254).

²⁹ LGA (2002) Amendment Bill Clause 21, p. 12 (new § 255 (1)).

³⁰ LGA (2002) Amendment Bill Clause 21, p. 26 (new §258S).

expertise could strengthen council activities, particularly for smaller councils, in areas such as earthquake strengthening, resource consent expertise (e.g. wind farms), built environment heritage, transportation and policy development. While we recognise that mechanisms do exist for this and that there have been some local initiatives regarding shared services (e.g. the Manawatu Whanganui Local Authority Shared Services (MW LASS)), we believe that assistance for such initiatives could be better supported and note that such initiatives offer opportunities for the cost-effectiveness and efficiencies that the Bill is seeking to encourage.

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

Yours faithfully

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