

SUBMISSION

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< Strengthening
local democracy
and the value
of local
government >



Environment Canterbury Review

Local Government New Zealand's submission to the Government's
review of Environment Canterbury

May 2015

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver the local government sector's vision: "Local democracy powering community and national success." Our submission is guided by the strength of our commitment to that vision.

Introduction

Thank you for this opportunity to make a submission on the Government's plan for changing the governance arrangements of Environment Canterbury. We appreciate the opportunity but, at the same time we are disappointed, as the National Party's Local Government Policy Statement published prior to the 2014 election stated:

We are committed to seeing elections happen but we do not want to lose the gains made by the ECan Commissioners. The options we will propose range from a return to full elections to a mixed model of elected and appointed members.

Since only one course of action is proposed there is a risk that the Government will be seen to have already made up its mind. It is unfortunate that fully elected options were not discussed in the document.

While we fully support the statement made in the Discussion Paper that future governance arrangements "need to be shaped in a way that avoids a return to ECan's past problems," our submission does not support the Government's proposed mixed governance model. This lack of support should not be seen, in any way, as a criticism of the performance of the current commissioners, who have led Environment Canterbury very well over recent years. As the discussion document notes, the Commissioners have rebuilt relationships with the region's territorial authorities, established a new model for the allocation of water and provided important oversight during the post-quake reconstruction phase. We accept that there will be specific circumstances where democratic models may have to be suspended, but only on the condition that such steps are temporary.

Our response

LGNZ's disagreement with the introduction of a mixed governance structure for the Canterbury Regional Council is both principled and pragmatic.

As a matter of principle it is important to remember that the regional council is a local government, in other words a democratically elected body that levies a local tax and is accountable to local voters and community members. Local governments play an important constitutional role by virtue of their separation from central government. In that sense, they are very different from District Health Boards (DHBs) with differing accountabilities for elected and appointed members.

From a pragmatic perspective, we do not believe there is sufficient time to put in place a meaningful and legitimate representative model, whether a fully elected approach or a partly elected approach. There is simply not enough time to develop constituencies that will be meaningful to Cantabrians and even if constituencies are put in place by the legislation it will not smooth the path to full democracy. Consequently, our submission recommends the following:

- The Commissioners' term at Environment Canterbury is extended for another three years until October 2019.
- The Local Electoral Act 2001 (LEA 2001) is amended to reintroduce area weighting to strengthen the representation of rural communities in Canterbury. Consideration should also be given as to whether such weighting should apply to all regional councils.
- A full and comprehensive representation review process is undertaken in the first two years following the 2016 local government elections to ensure fair and effective representation of communities across Canterbury.
- Full democracy is returned to Environment Canterbury by October 2019, or preferably earlier, and that the elections are conducted on the basis of the amended LEA 2001.

LGNZ is guided by a vision that recognises the contribution of local democracy to community and national success. Our submission is in two parts: The first is concerned with the general nature of local government, its relationship with central government and the differences between councils and District Health Boards. The second part addresses specific issues raised in the submission and the practicalities of introducing a mixed governing body for the region.

General comments

What is local government?

Parliament is responsible for the legislative and regulatory frameworks that allow for the operation of both central and local government. Each has different but complementary roles. Where central government is charged with protecting and enhancing the interests of the nation, local government has similar objectives concerning regions and localities. Both spheres of government need to play their roles if New Zealand is to continue to prosper.

The well-being of our communities requires collaboration between central and local government in relation to a broad range of issues that range from resilience to employment. Yet, despite the value of working together the constitutional distinction is extremely important as local government contributes to the system of checks and balances that ensure public power and authority is exercised responsibly. It does this by providing citizens with an opportunity to voice diverse views and strengthen the plurality of our democracy. Councils contribute to this in at least two ways:

1. the ability to elect individuals and political groupings that promote policies which may be at odds with the policies held by the government of the day; and
2. The ability to develop and implement policies and programmes to address local issues that are not being effectively addressed by central government agencies.

This role was expressed elegantly by Professor John Roberts, the Emeritus Professor of Public Administration at Victoria University between 1966 and 1988, when he stated:

The growing power of government, as evidenced by its ever increasing intervention in the economic and social affairs of the people, constitutes another reason for the existence of an efficient system of local authority. Whilst central and local government must share, as collaborative partners, the total task of governing the nation, an effective local government structure is an important counterweight to the growth of central government power.
(Professor John Roberts, VUW 1968)

Professor Roberts understood the importance of a strong system of local government that both enabled citizens to have a level of self-government over local affairs and reduced the risk of authority being over-concentrated in any single sphere of government. He was influenced by the American economist Herbert Simon who observed that “a democratic society is only sustainable if power is dispersed.”

Taxation and representation

One of the fundamental principles underpinning our democracy is the principle of “no taxation without representation.” We trace the emergence of this principle to the Magna Carta which, in countries like New Zealand, has fundamentally influenced the way in which we organise representation and government. The influence was certainly present when the first Municipal Corporations Act was passed by New Zealand’s Legislative Council in 1842 (the second statute enacted in New Zealand) as it was when the citizens of Port Nicholson lobbied Governor Hobson for the right to establish a town council a few years earlier:

The British law prevails to such an extent as to make the imposition of taxes, without the consent of the people expressed through their representatives, an arbitrary and even an illegal exercise of the sovereign power.

The concerns raised by the early Wellington settlers are no less important today. LGNZ accepts, reluctantly, that where a major failure in governance has occurred there is a place for appointed commissioners, but only for a limited period. Governing bodies with the right to collect and allocate taxes without being accountable to the people who pay those taxes is both constitutionally and morally unacceptable. Given that this year is the 800th anniversary of the Magna Carta it would be concerning if New Zealand was to act in a way that was fundamentally in conflict with its basic premise. It is also worth noting that a number of municipal councils were also signatories to the Magna Carta, which guaranteed them a level of authority to manage local affairs free from intervention from the Crown.

The Rationale for the Mixed Governance proposal

The Discussion Paper makes the following arguments in favour of the mixed governance model:

1. A mixed model would help ensure the right balance between local representation and specialist skills and expertise for good quality decision-making.
2. A mixed governance model would help to sustain Environment Canterbury’s progress and best provide for future priorities and challenges.

Each of these is discussed below

Balancing local representation and specialist skills

The Discussion Paper, rightly, notes the level of expert and specialist skills that the Commissioners have brought to Environment Canterbury and highlights the importance of ensuring that such skills are not lost. The Document highlights the DHB model in which the Government selects a proportion of members on the basis of their specific skills to complement the elected board members. While we do not wish to comment on the effectiveness of the DHBs we would like to point out a number of critical differences between boards and councils.

- DHBs are a form of decentralised service providers funded by the Government from the country’s national taxes and are consequently accountable to the Minister of Health, for both financial prudence and performance. The role of elected board members on DHBs is largely concerned with improving responsiveness to local issues and needs, particularly in relation to services where some level of discretion is permitted.

- Councils, by contrast, are primarily democratic bodies that are required to make policy judgements about the effective use of locally and regional raised public resources where accountability is downward focused to voters and local tax payers. The difference in roles between DHBs and councils is also reflected in their relative levels of remuneration.

We cannot agree with the statement on page 23 that reverting Environment Canterbury to a standard regional council would be too significant at this stage to be progressed. To the degree that special resource management powers are required then we see no problem with such powers continuing to be located with the council as a corporate body, regardless of the make-up of the governing body. Environment Canterbury's very competent and experienced staff are more than able to manage such responsibilities.

Complex challenges

The Document argues that it is the complex nature of the challenges facing Environment Canterbury which justify the introduction of the mixed governance approach. The level of complexity is overstated, for example, the reference to the allocation of the anticipated \$330 million of annual expenditure on roading and transport fails to acknowledge that this funding is the responsibility of the territorial authorities, other than the public transport component. We do, however, acknowledge the regional council's role in water management and the implementation of the NPS for Freshwater Management, both of which are complex and important. Other regional councils face these challenges.

A possible challenge for a mixed governance model is remuneration. For example, members of DHBs receive between \$16,000 and \$26,000 per annum, depending upon the size of the population serviced by each board. In contrast, elected members on Environment Canterbury are likely to expect more than \$60,000pa once democracy is restored.¹ Whether elected and appointed members should have the same level of remuneration is an issue yet to be resolved. An argument exists to provide the elected members with higher levels of remuneration on the basis of their additional responsibilities as community representatives.

Specialist skills and expertise

Some comment is required on the statement that "specialist skills and expertise (are) required for good quality decision-making." This issue involves the distinction between governance and management and the nature of our institutional arrangements for making decisions. We do not expect elected representatives to be qualified accountants, qualified engineers or qualified water scientists. Expertise of this nature should be, and is being, provided by officials, whether in-house or contracted. Where necessary councils can, should an area of decision-making require a high level of technical knowledge, delegate responsibility to committees with appointed members. The role of elected members is governance. It is their job to set the direction, resolve differences over values and set priorities and most of all supervise management.

Ensuring elected members understand the nature of their governance role, ask the right questions and have clear expectations about the quality of official advice, is a priority for LGNZ and is a large component of our governance training programme undertaken jointly with the Institute of Directors. With access to support and information, democracy works. We sometimes forget that New Zealand's local governments have been successfully running towns, cities and regions for the last 170 years – we see no evidence to suggest that the democratic model is broken or that governing in today's environment is necessarily more difficult that it would have been in the mid 19th Century, for example.

¹ Actual remuneration will depend upon the application of the Remuneration Authority formula which takes into account population and expenditure. The formula will not have been applied since 2010.

Providing for future priorities and challenges

The proposal expresses concern that a fully elected body could create a situation in which competing interests and a lack of a shared vision would “once again prevent effective governance and decision-making” and that a path is needed to manage differing urban and rural perspectives. We have a number of concerns with this statement.

- It implies that the mixed governance model is not a temporary measure but is proposed as a permanent arrangement, as presumably the lack of a shared vision would re-occur once the term of the mixed body is concluded.
- The mixed model could lead to greater discord than noted above as there is a possibility that at least the seven elected members will be selected on the platform of returning the councils to full democracy and not cooperating with the appointed members. The result may easily be a repeat of the previous discord.

In LGNZ’s view the answer to both these issues lies in re-establishing full democracy on the basis of a fair and effective representation system that ensure representation of all the region’s communities.

Continuity

Continuity is advanced as a major rationale for the introduction of a mixed governance model. We are not convinced, and neither are we certain, that the proposed timeline will work.

The proposal appears to suggest that the provision for seven elected members in the 2016 elections will ensure a continuity of approach and philosophy when the council returns to full democracy in (presumably) 2019. Unfortunately, this may not be the case as the constituencies on which those seven members will be elected will not exist in 2019. The new constituencies will be significantly different and there is no guarantee that any of the seven will be returned.

The document also argues for a continuation of appointed members so that the Council’s constructive relationship with mana whenua at both a governance and operational level will continue. We would like to acknowledge the good work that has been achieved by the council and the commissioners on rebuilding the relationship with Māori in the region, however, relationships cannot simply rely on individuals. Relationships must be owned by the council as a whole as individuals, both appointed and elected, change.

The proposal also assumes that central government policies will not change but again this is not a given. A change in government is almost certain to bring a different set of environmental priorities and will inevitably result in a change in the appointed members at Environment Canterbury to reflect the policy preferences of the new Minister and the new government. In our view, long term commitment to an agreed set of outcomes for the region is just as likely, if not more likely, to be achieved through elected representatives operating within the planning and decision-making rules set out in the various statutes that govern the operation of local government.

General comments

It is a basic principle that accountability for performance, especially in organisations that spend public money, must be clear and unambiguous. Where accountability is ambiguous, people are unable to identify those responsible for particular decisions. Where this is not the case, moral hazard can result as decision-makers are able to act in a manner inconsistent with their organisational mandate, or, in the case of the elected members, the policies on which they were elected.

Mixed governance models make it difficult for voters to assess the performance of their elected representatives as it can be unclear as to where responsibility lies for decisions. How, for example, do voters determine the relative contributions of the appointed and elected members should there be a need to call the council to account for a policy or programme failure? In fact, the lack of clear accountability runs directly counter to government policy over the last few decades which has sought to make accountability more transparent.

The issue is not one that is relevant to DHBs as the boards allocate national taxes which are allocated directly by the Minister of Health, who is clearly responsible for the overall budget and has clear and agreed performance measures that boards must comply with. The argument that the DHB model is applicable to local government shows a great misunderstanding of the differences between DHBs and local authorities and their different accountabilities.

Environment Canterbury is a regional council and as such has a broad purpose to enable democratic local decision-making and action by, and on behalf of, communities, as well as providing good quality local infrastructure and local services to meet the current and future needs of communities. It also has full rights, powers and privileges to enable it to fulfil this purpose. Under the Local Government Act 2002, the role of a regional council is potentially much larger than the environmental and regulatory roles prescribed in the Resource Management Act.

To meet their statutory purpose members of the governing bodies are likely to be faced with making important policy choices that will affect the social and economic future of their regions. Members will be faced with making judgements about the allocation of resources, however, it is not clear appointed members will have a mandate to contribute to these decisions. Ultimately voters provide elected members with the mandate to allocate local taxes on their behalf. The shift to a mixed governance model, certainly if it is to extend beyond a very limited time period, means that regional councils will no longer be a form of local government. Should this occur, legislative change, such as removing the right of such regional bodies to levy a tax, needs to follow.

There are also practical difficulties. The document suggests that the representation review process will occur in early to mid 2016. Unfortunately, this is far too late as representation reviews are required to be completed in August 2015 with the final arrangements confirmed in early April 2016. The timing is essential to allow electoral officers to prepare voting papers and to give prospective candidates the information necessary to assist them to decide whether to stand or not. Given the timing of this consultation, any consequential legislation will need to also include the specific constituencies and number of elected members for each constituency and will need to be enacted ideally by early April 2016.

An alternative approach

Our submission argues against the draft recommendations of the review on both principled and pragmatic grounds. The essence of our pragmatic objections is that the proposed timeframe for putting in place the mixed model is too short and is likely to lead to a less than optimal arrangement. We also note that the failure to undertake a representation review means that a return to full democracy on the basis of the LEA 2001 is now no longer possible as reviews must be completed by mid August this year and given population movement within the region it will be a complex issue to redesign constituencies with substantial popular interest.

Yet, even if a mixed governance approach could be established for the next local government term, attention must be given to the basis on which the 2019 elections will be held. We need a representative system that ensures all communities are fairly represented on regional councils – this is not just an issue for Canterbury.

The discussion document notes that the discord in Environment Canterbury prior to the appointment of commissioners was related to the mix of urban and rural seats on the governing body and the difficulty of forging a uniform vision. This is an issue LGNZ raised when the Government adopted a population formula for setting constituencies in 2002 and we have repeated our concerns on a regular basis since. It is not such an issue for territorial authorities as they are smaller and because they are able to establish community boards to provide representation for areas that otherwise would be under-represented.

Since the amendment of the Local Electoral Act in 2002, regional council constituencies have been defined on a purely population basis, which has resulted in the under-representation of rural communities, especially in regions that contain large urban centres, such as Christchurch and to a degree Hamilton. In the case of Canterbury, the effect of the new representation formula was to increase the number of urban representatives and decrease the number of rural representatives on the regional council even though it is responsible for New Zealand's largest region.

Increasing the level of rural representation through some form of rural weighting (similar to the formula which existed before 2002) should reduce the governance issues faced by Environment Canterbury prior to the appointment of Commissioners and remove the need for Government appointees in the future. LGNZ is happy to work with the Department of Internal Affairs on the design of an alternative formula for determining representation on Environment Canterbury which will ensure that the rural communities of Canterbury will also have an equitable voice around the table of the governing body. Changes in the nature of representation may also require a review of the way in which some regional responsibilities are undertaken.

To put the governance of the Canterbury region on a sustainable footing we recommend the following process:

1. Continue with Commissioners at Environment Canterbury until a full representation review is completed.
2. Amend the Local Electoral Act 2001 during 2016/17 to introduce an area weighting for determining regional council constituencies.
3. Undertake a full and substantial representation review, reviewing both the number of elected members and constituencies during 2017/18.
4. Return the council to full democracy by October 2019 at the latest.

Conclusion

LGZ finds the argument in support of the mixed governance model for Environment Canterbury unconvincing. It fails to provide a long term solution to the region's governance and risks creating both short term problems and a concerning precedent.

We recommend an alternative approach that will provide a sustainable and democratic leadership for the regional council. New Zealand has had democratically elected local government since the first Municipal Corporations Act of 1842. The suggestion that we are facing challenges more than 170 years later that are too difficult or complex for democratically elected governments to resolve is problematic.

Returning the regional council to full democracy requires putting in place a sustainable representation model that ensures all communities within the regional council's boundaries are adequately represented.

As the submission argues, effective representation is difficult in Canterbury, as in some other regions, due to a distribution of rural and urban populations. As a result, many rural areas are effectively under-

represented. Addressing this requires a change to the LEA 2001, the re-introduction of an area weighting when designing constituencies and sufficient time to undertake an effective representation review.

In concluding our submission we would like to highlight the following statement published by the Government in 2001 which clearly shows local government's unique nature – it is important that this isn't lost.

Local government's unique proposition is that it has the capacity (within its powers as defined by parliament) to act as the agent of the local community allowing it to make choices that reflect local values and priorities. (DIA 2001)