



1 August 2012

Committee Secretariat  
Local Government and Environment  
Parliament Buildings  
Wellington

## **Thames-Coromandel District Council's Submission on the Local Government Act 2002 Amendment Bill (2012)**

### **Introduction**

1. The Thames-Coromandel District Council (TCDC) thanks the Local Government and Environment Committee for the opportunity to make a submission on the Local Government Act 2002 Amendment Bill (2012).
2. This final submission was endorsed under delegated authority by Mayor Glenn Leach.
3. The TCDC does not wish to be heard by the Local Government and Environment Committee.

### **Summary**

4. The TCDC is supportive of moves designed to ensure good effective and local governance. We recognise that our communities across the District and indeed country are diverse, with different wants, needs, circumstances, challenges and opportunities. The TCDC believes that any local government legislation changes must enhance local democracy and efficiencies, not exacerbate legal and other issues for the Council which will drive up costs.
5. Government will be well aware that TCDC has been the only Council to drive rate reductions for two years running (-6.9%) without impacting on asset condition or levels of service - and has done so under the present legislation. In other words, to us it is not the current legislation which is necessarily a problem. We place high value on the attributes of community-responsive leadership, pragmatic decision-making, and watching every dollar before it is spent.
6. **A Case for Change:** The TCDC is concerned that the Department of Internal Affairs has not provided sufficient evidence and analysis to demonstrate that the Bill is the most appropriate way forward. We maintain that some changes proposed in this Bill may actually increase this Council's costs and threaten the efficiencies we have worked hard for.
7. **Purpose Statement:** The TCDC is not convinced that the change to the purpose statement will achieve any better cost efficiencies or better governance. It is effectively 'tinkering', and could actually lead to unnecessary legal challenges arising.
8. **Fiscal Responsibility:** The TCDC is already delivering the most prudent financial results in New Zealand and doing so under the present legislation. Although the benchmarking has merit, the TCDC has already implemented this. The TCDC would like the proposal amended

to remove the provision of any 'one size fits all' approach to all local authorities. Council urges the Government to substantially reduce inefficient Audit costs for councils who are meeting their benchmarks.

9. **Intervention and Assistance Framework:** The TCDC supports the proposed intervention and assistance framework in principle, subject to improvements being made to the definition of the terms 'problem' and 'reasonable grounds'.
10. **Reorganisation:** The TCDC is supportive of the reorganisation proposal in principle and the inclusion of good local government criteria. The TCDC seeks changes to moderate over-reliance on polls to determine the best local government organisation for an area, and as such suggest that the Local Government Commission be required to have regard to levels of community support indicated in the poll.
11. **Mayoral Powers:** The TCDC is supportive of giving greater mayoral powers.
12. **Employment and Remuneration:** The TCDC seeks that further analysis be made on the practical implications of this proposal, in particular the relationship of the new policy to the Employment Relations Act. There appear to be conflicts between the two sets of legislation, and certainly conflicts with existing staff contractual agreements.

### Supporting Information

13. Local authorities have always been a foundation of communities providing basic infrastructure and local decision-making on priorities, funding and services. The Thames-Coromandel District Council (TCDC) is a major service provider on the Coromandel Peninsula, now with some 28 significant activities. From ensuring we are ready to respond in emergencies, to providing household infrastructure, each of these activities are a major community service in their own right all aimed at building a sustainable district.
14. Coromandel communities are highly engaged, and frequently and vocally tell their local council what they think. We had some 700 submissions to our last Ten Year Plan. In other words, we are well in-touch with the views and priorities of our communities, and work hard to know what they think and want. Council supports this level of engagement with excellent information, informed debate, and has moved to a 'Community Empowerment' model (of strengthened, more delegated Community Boards) at a time when the trend is for councils to centralise. We have done this because local communities are the best to make decisions on local services, drive for efficient service delivery options in their own areas, and because the economic development and recovery of our centres must be driven from inside local communities - not simply by centrally-driven strategies. We have implemented our Community Empowerment model at the same time as reducing rates by -6.9%, to prove the point that empowerment does not mean lack of efficiency.
15. Coromandel is a place of substantial challenge for any council. We have small communities over rugged terrain, with periods of incredible growth rates prior to the current recession. Not only does a population of 55% absentee owners leave challenges for small communities' vibrancy, it created the need for a string of new capital plants to cope with growth. As a driver of cost, three sewerage plants took the Council from some \$27m in credit in 2005, to \$90m debt by 2009. Very few councils could have survived this level of financial impact, so it is testament to TCDCs financial management that we could withstand this impact, and without any Government funding for the plants. Whilst it is tempting and simplistic to put cost and rate rises at the feet of inefficient management, the realities are around infrastructure cost drivers. We sincerely hope the Government has arrived at its proposal on actual facts.

## Regulatory Impact Statement & Evidence Base

16. The TCDC is concerned that the Department of Internal Affairs has not provided the degree of evidence and analysis to support changes to the Local Government Act 2002. The Bill regulatory impact statement (RIS) states:

*"There is limited evidence to inform the development of these proposals and the timeframes within which the proposals have been developed have restricted the ability to assess multiple options. As a result, the problem analysis and option assessments by specific proposals rely on assumptions that are not, or are only partially tested."*

and

*"The short timeframe for formatting and drafting the legislation creates some risk that interventions could be incorrectly aligned, and/or require subsequent amendment to address unforeseen circumstances"*.

TCDC is gravely concerned at the Department of Internal Affairs' quality of information in support of change. Earlier in 2012 the Department released financial 'league tables' which were misrepresentations of our Council's position and many others. The information also excluded some councils' water rates separately charged, and used a simplistic 'per capita' basis to compare rate and loan affordability. In holiday areas such as ours where 55% are absentee owners, a per capita calculation is meaningless and misleading advice to the Government. Whilst later withdrawn, the Department has not apologised to our Council for that misleading information put out to our ratepayers. The proposal for changes to the current Act have been built on foundations such as this.

17. We understand one of the main drivers of the Bill to be the assertion that local government costs are 'out of control' because of the increased scope of activities that local authorities are now involved in. We have never had V8s racing around the Coromandel, nor paid for David Beckham's appearance fees, nor bought a lotto shop. In other words, each community is different in its needs and wants, and it is up to the local electoral processes and other local consultations for the public to bring change and signal priorities. The community exercising their views at the ballot box has worked for the Coromandel, and brought more substantial change to our direction than anything prescribed in the current Government Bill.

## The Purpose of Local Government

18. TCDC recalls the vocal opposition from many councils to the introduction of the four wellbeings into the Local Government Act in 2002. The criticism at that time from the many opposing councils was that the inclusion of the four wellbeings would raise the expectations that councils would need to become involved in more activities to deliver on them. In fact, that has not materialised in our view. Whilst we don't have a fundamental issue with the change to the purpose statement, we also see the change as unnecessary. The business of councils has largely remained unchanged irrespective of the wording of purpose statements. Communities still need the basics of assets and services to function, and this is what councils deliver as a bottom line, year-in and year-out. We would agree with the RIS conclusion:

*"The change [in purpose] is likely to have a symbolic effect and should not affect council business as usual"*.

19. We think that a tinkering with the wording of the purpose statement is not material to deliver on the overall goals of better governance, management practice and efficiencies. TCDC would prefer no change to this as it opens the door for unnecessary and costly legal and

other challenges to councils across New Zealand, which is simply not helpful and causes them to look inwardly rather than getting on with the job of delivering services and asset management.

20. Quite simply, there is no real reason to change the purpose statement; it is tinkering, and will lead to unnecessary costs and lack of focus on delivery. Rather, the drivers of local government costs can be attributed to a number of other factors. The TCDC supports the second phase of the Better Local Government programme as a more relevant and effective means of finding efficiencies.

### Interpretation Issues

21. As mentioned, we are concerned about changing the wording and opening up expensive legal challenges unnecessarily. If the purpose statement must change, then the wording has got to be tightened up. In particular, the terms '**local infrastructure**', '**local public services**' are not defined in the Bill. The TCDC notes that the requirement for its activities to be of '**good quality**' will open up expectations for a level of investment which is higher than we might provide in some services we see ourselves as primarily an advocate or a junior partner.
22. Again, it is unclear what regulatory functions a local authority may or may not undertake under the new purpose statement. The Better Local Government paper first released noted that:

*"Local government is involved in many regulatory roles...but there is no consistent approach to policy making about what regulatory functions are most effectively achieved nationally or locally. There is also a concern in local government that functions are allocated to councils without adequate mechanisms for funding".*

The TCDC understands that the Productivity Commission will undertake a review of the balance of regulatory functions devolved to local government by April 2013, however this will be non-statutory.

### Recommendation

23. **That the current purpose contained in the Local Government Act 2002 is not changed.**

### Fiscal Responsibility

24. The TCDC agrees that fiscal efficiencies are critical for successful local authorities going forward, and is supportive of introducing fiscal parameters and responsibility amendments in principle. However we would like the proposal amended to remove the provision of any standardised or 'one size fits all' approach across all local authorities.
25. TCDC prides itself as New Zealand's leader in cost management, having achieved two years of rate reductions, and a ten year average of 1.9% rate rise requirement. This is being achieved under the present legislation.
26. The RIS cites that local government rates have increased at a rate higher than all other CPI inputs. This is another unfortunate example of the Department of Internal Affairs' complete lack of professionalism and analysis in giving advice to Government. Obviously councils don't buy a lot of bread and milk on which the CPI is based, but do buy a lot of oil on which tarseal roads are built. Our cost drivers are higher.

Local authority cost drivers will also vary across areas. For example, a city council may only have to provide one wastewater plant to service its households, whereas the Thames-Coromandel District has ten separate wastewater plants to service its individual larger communities.

27. The TCDC has already benchmarked itself to the CPI plus property growth. Any benchmark based on per capita is not appropriate to a holiday area such as Coromandel which has 55% absentee ratepayers.
28. Of the 'weak financial management' examples noted in the RIS as reasons for introducing parameters or benchmarks, few of those problems related to exceeding what might be considered appropriate spend, rather they were about *how* the finances were managed i.e. parameters will do little to resolve such issues.
29. If the provision of financial benchmark regulations are retained in the Bill, the TCDC supports that they be developed in consultation with LGNZ as proposed in clause 259(4).
30. The TCDC strongly urges Government to reduce the impost and enormous cost of auditing on councils who are meeting their agreed benchmarks. If benchmarking is introduced, and councils successfully achieve them, it is unacceptable for councils to come under the same intense audit scrutiny. The TCDC believes that a Ten Year Plan audit by Audit New Zealand well in excess of \$100,000 is an example of Government's unchecked cost inefficiencies placed on our ratepayers.
31. The TCDC understands that the benchmarks will take effect on 1 July 2013. The TCDC considers that this timeframe is impractical. By the time the regulations are confirmed, most councils including the TCDC will have necessarily already completed a draft annual plan. The Bill should instead provide that any regulations prescribing benchmarks do not take effect until *at least* 1 July 2014, and preferably the 2015 Long Term Plan rounds (1 July 2015).

**Recommendation:**

32. **If the provision of financial benchmark regulations are retained in the Bill, the TCDC supports that they be developed in consultation with LGNZ as proposed in clause 259(4).**
33. **The Bill should provide that any regulations prescribing benchmarks do not take effect until *at least* 1 July 2014, and preferably the 2015 Long Term Plan rounds (1 July 2015).**

**Intervention and Assistance Framework**

34. In principle, the TCDC supports the intent to extend the powers of Ministerial intervention, subject to improvements being made to the definition of the terms '**problem**' and '**reasonable grounds**' and so long as local autonomy and democracy are not impeded upon.
35. The TCDC is concerned however at the definition of 'problem' and recommends that it be better defined. For example, at present many small matters could be considered matters or circumstances relating to the management or governance of the local authority which detract from, or is likely to detract from, its ability to give effect to the purpose of local government. It is unreasonable to expect that these would all warrant Minister intervention.
36. In addition, the third part of the definition states that a problem:

*"includes a failure by the local authority to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings in terms of any parameters or benchmarks prescribed by regulation".*

The TCDC notes that there is already a provision for the OAG to issue a non-standard audit report on long term plans and annual reports when it considers a local authority is managing its finances imprudently.

37. Further, the 'reasonable grounds' on which a Minister may require information a problem is also a broad term. The TCDC seeks that further detail be provided for to define the circumstances which may considered reasonable grounds, considering how matters such as impartiality, effectiveness, relevance will be ensured.

**Recommendation:**

38. **That the terms 'problem' and 'reasonable ground' in the new Part 10: clause 254 in clause 21 be defined in greater detail.**

**Reorganisation**

39. The TCDC is supportive of the reorganisation proposal in principle but seeks that specific changes be made to the proposal.
40. The TCDC supports that 'good local government' criteria be provided (Clause 8) to guide the Commission in assessing a reorganisation application. This will assist in robust and consistent decision-making.
41. TCDC notes that in issuing a final reorganisation proposal, a poll may be demanded if a threshold of 10% of affected electors is met. If the resulting votes in support reach 50% the proposal must proceed. TCDC cautions however that the results of a poll vote do not:
- necessarily equate to good local government outcomes,
  - mean that the needs of future generations are best represented,
  - mean that the needs of key community groups and sectors (e.g. Iwi, industry) are best recognised,
  - always represent the less politically active sectors of the population.
42. To ensure that good local government outcomes are of paramount importance in assessing a proposal, the TCDC seeks that changes be made to Clause 25 of Schedule 3 to require the Commission to *have regard to* levels of community support indicated in the poll.
43. If a poll result is retained as a determining factor in the reorganisation decision, the TCDC would like to see that the 50% threshold be changed from the affected area as a whole, to 50% of each existing affected council area, thereby ensuring that each existing territorial area is supportive of the proposal.
44. Clause 17 in Schedule 3 prescribes that submissions may be made on a proposal 'by the date specified by the Commission'. The TCDC would expect that a minimum timeframe be provided for in the legislation, and that it be no less than one month in duration. There is otherwise no guarantee that the public will have sufficient time to have their say on the proposal. The TCDC would like to see amendments made to some of the timeframes prescribed.

**Recommendation:**

45. That the inclusion of good local government criteria be retained.
46. That a change be made to Clause 25 of Schedule 3 to require the Commission to *have regard to levels of community support indicated in the poll.*
47. That if a poll result is retained as a determining factor in the reorganisation decision, the TCDC would like to see that the 50% threshold be changed from the affected area as a whole, to 50% of each existing affected council area, thereby ensuring that each existing territorial area is supportive of the proposal.
48. That Clause 17 in Schedule 3 be amended to include a minimum timeframe within which submissions may be made on a proposal, and that it be at least one month.

**Mayoral Powers**

49. The TCDC is supportive of giving greater mayoral powers. This style is already in operation by the TCDC.

**Employment and Remuneration**

50. The TCDC seeks that further analysis be made on the practical implications of this proposal, in particular the relationship of the new policy to the Employment Relations Act. There appear to be conflicts between the two sets of legislation.
51. The Bill would provide local authorities with the power to adopt a policy on staff levels and remuneration; and require disclosure of the number of employees by remuneration band in the council's annual report. The TCDC notes concern that the effects the Bill may have on employers' obligations under the Employment Relations Act (ERA) have not been assessed or considered.
52. There are a number of ways in which the Bill may impinge on the local authorities' obligations under the ERA to act in good faith. The requirement for the parties to an employment relationship to deal with each other in good faith is central to the ERA and its promotion of collective bargaining.
53. Any employment policy implemented by a local authority may affect the Chief Executive's obligations under Section 4 of the ERA to:
  - Bargain in good faith for a collective agreement
  - Bargain in good faith for an individual agreement
  - Act in good faith to employees during the redundancy process; and
  - Not unilaterally reduce staff member's remuneration.
54. The TCDC requests that effects the Bill may have on employers' obligations under the ERA be assessed and considered by Central Government before the Bill is progressed as legislation.
55. The TCDC suggests that the Bill may be amended to include a phrase which states that any employment policy should be read in conjunction with the obligations of good faith under the ERA. This would mean that any interpretation of a policy must be consistent with the obligations of good faith.

56. Secondly, the TCDC suggests that the employment policy could be a recommendation or guidelines, rather than binding on the local authority. This could minimise any argument about potential breaches of good faith when introducing such an employment policy.

### **Development of the Employment and Relations Policy**

57. The Bill is silent on 'how' the Employment and Remuneration Policy would need to be developed.

58. If left unchanged, whilst this by default would then mean that consultation is at the discretion of the local authority, it would be preferable that the Bill stipulate either a suggested or mandatory consultation with existing unions in preparation of the Employment and Remuneration Policy.

59. Under clause 24 of its collective agreement, the TCDC is required "to consult with the Union as soon as practicable should any internal reorganisation or other eventuality have the potential to lead to redundancies". Therefore, the TCDC has an obligation to consult prior to the implementation of any employment policy if such a policy may result in redundancy.

60. Further, under the collective agreement, it could also be argued that the TCDC has a duty to consult with the unions regarding any employment policy may impact significantly on employment terms and conditions, not just redundancy. Therefore, there is a risk that this may impinge on the ability of the employer to enter into meaningful discussion and/or negotiations in accordance with good faith obligations.

61. The TCDC's collective agreement also requires that remuneration will be set by the remuneration committee. This is a clear conflict between requiring the remuneration committee to set remuneration level at market rates and a cap set by the local authority.

#### **Recommendation:**

**1. That the relationship of the employment and remuneration policy with other sections of the Act, and particularly, the Employment Relations Act be further considered and resolved. For example:**

- **The TCDC suggests that the Bill may be amended to include a phrase which states that any employment policy should be read in conjunction with the obligations of good faith under the ERA.**
- **The TCDC suggests that the employment policy could be a recommendation or guidelines, rather than binding on the local authority.**



Should you have any queries regarding this submission, please do not hesitate to contact Katina Conomos, Strategy Policy Planner/Analyst, by email [katina.conomos@tcdc.govt.nz](mailto:katina.conomos@tcdc.govt.nz) or phone 07 868 0408.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D. Hammond', with a large loop at the end.

David Hammond  
**CHIEF EXECUTIVE**