

21 April 2004

Hon Jeanette Fitzsimons
Chair
Local Government and Environment Select Committee
Parliament Buildings
WELLINGTON

Dear Ms Fitzsimons

Local Government Law Reform Bill (No 3)

The Waitakere City Council appreciates the opportunity to comment on the Local Government Amendment Bill (No 3).

The Waitakere City Council generally agrees with the contents of the Bill and aligns with the Local Government New Zealand submission where agreement is notified or where the Waitakere City submission is silent on the matter. The submission presented is in accordance with a resolution of the Council passed at the Council Meeting on 28 April 2004.

This submission addresses the contents of the Bill that the Waitakere City Council wishes to comment on and contains some additional items which we recommend for inclusion.

Part 2	The Dog Control Act
---------------	----------------------------

The Waitakere City Council fully supports the proposed changes that essentially tidy up the provisions of the Dog Control Amendment Act adopted in December 2003.

Part 3	The Local Electoral Act 2001
---------------	-------------------------------------

The Waitakere City Council supports all of the proposed amendments to the Local Electoral Act. The changes have the effect of tidying up some technical provisions and clarifying other aspects that will assist electoral officers to put the legislation into practice.

Definitions relating to the principal electoral systems (FPP and STV), currently contained in the Local Electoral Regulations, would now be enshrined in the Act. It is further intended to repeal Schedule 1 of the Act, relating to the New Zealand method of counting votes under STV. Duties of programmers and certifiers of programmes will instead be provided for in two new sections.

One major area of concern raised by the Local Electoral Amendment Act 2002 is that it appears to prohibit a candidate from standing for Mayor concurrently with standing for Ward Councillor. The amendments proposed in the Bill will remove any doubt and clearly provide that candidates may stand for both offices concurrently. This will be a great relief to Electoral Officers, as currently there are conflicting interpretations as to whether this is legally permissible or not, which accordingly means that both the allowing and the disallowing of such a candidacy could be open to legal challenge.

The remaining amendments are designed to facilitate plans by many Territorial Authorities to pass on the counting functions in respect of DHB elections to the DHB Electoral Officer (who is now always the Electoral Officer of one of the constituent Territorial Authorities). This is a direct consequence of the central government policy decision that all DHB elections will be held, at large and using STV.

Calculating ward and constituency boundaries

An issue that is not in the Local Government Law Reform Bill (No 3) concerns Section 19V – “requirement for fair representation and other factors in determination of membership for wards, constituencies and subdivision”. This section of the Local Electoral Act requires that wards and constituencies be designed to be within a +/- 10% population ratio. The only exception to this ratio for the “effective representation of island communities or isolated communities.”

ABS

The Waitakere City Council would prefer to see more flexibility in the legislation to appropriately cater for local situations. The City has one Ward, large in area but less densely populated than the other three Wards, that will be significantly disadvantaged if the Council is unable to deviate from the +/- 10% population formula, or, alternatively, boundary changes will effectively work against the communities of interest principal.

Recommendation:

In order to ensure more effective representation and to cater appropriately for local situations, the Waitakere City Council recommends that Section 19V(3)(a) be amended to read:

(Final wording still to come from solicitors however it will look to enlarge the criteria that councils can take into account when departing from the +/- 10% formula.)

Part 4	Local Government Act 2002
---------------	----------------------------------

General Comments

The Waitakere City Council supports all but one of the proposed changes to the Local Government Act 2002 and recommends an additional amendment.

The majority of the provisions in Part 4 are technical in nature and assist to smooth the implementation of the legislation. Two changes are however particularly important to local government - Clause 44, addressing the relationship with the RMA, and Clause 54 (24) dealing with "present and voting".

Since the passage of the Local Government Act 2002 a number of councils have expressed concern that the consultation provisions of the new Act – especially the consultation principles – would over ride those of the Resource Management Act. Concerns reflected potential risk that decision might be overturned because consultation principles were not complied with. Making it clear (Clause 44) that councils can use their discretion to apply these provisions to other legislation removes the possibility that their compliance is automatic.

Clause 54 (24)(1)(b) makes it clear that decisions require a majority of those present and voting, to vote for them. The Local Government Act 2002 inadvertently left off the phrase "and voting" which had the effect of treating abstentions as a vote against a motion, and in effect requiring elected members who wished to abstain on a motion to leave the council chamber for those votes.

Casting Votes

Waitakere City Council however is highly critical of Clause 54 (24)(2). This clause removes the right of councils to use a casting vote in the event of a tied vote. Waitakere City Council has consistently opposed any suggestion that councils should not have access to a casting vote.

The Local Government Act 2002 contains some ambiguity in the way in which the casting vote provision has been drafted, however after legal advice we were extremely comfortable with what was a logical interpretation of the words to the effect that a casting vote may be used if it is incorporated in a council's standing orders. We believe that this is not only the correct interpretation but that it is the correct policy position as well. To reinforce this view we have sought (and have postponed as a result of this Bill) a statutory declaration from the High Court to remove any doubt.

We acknowledge that there have been circumstances in which casting votes have been used in controversial circumstances and that, in an ideal world, councils and their committees should continue to debate and discuss issues until there is a clear majority in support. However reality is often more complex and sometimes difficult decisions need to be made within timeframes that do not provide the luxury of extending the decision making process.

The critical situation for the council concerns the adoption of the Long term Council Community Plans and the annual budgets. These decisions must be made within statutory deadlines, which can, where councils are politically divided, allow small groups to hold the local authority to ransom. In these situations the use of the casting vote is essential to allow for the good governance of the city. Unlike parliament, councils cannot call an election if their annual budget is not approved. Dysfunctional councils are obliged to coexist for the three year term and cannot, like parliament, seek a new mandate from their community as a way of establishing a workable majority.

In this Council a casting vote is rarely, if ever, used. Invariably our politicians seek to achieve a consensus outcome. It is not for the actuality of the casting vote that we support its inclusion, but for the ability to fall back on it in the unusual but not improbable situation where an important decision is stymied by lack of a majority. Indeed it is strange that in the context of an Act which seeks to ensure greater community participation and

empowerment, this important decision (whether to have a casting vote and if so, upon what terms) has been removed from the community.

Recommendation:

The Waitakere City Council recommends that the wording of clause 54(7) of the Bill be struck out and the following (or similar words) be substituted:

“Clause 24 of Schedule 7 of the Principal Act is amended by revoking clause 24(2) and substituting the following clause:

“24(2) To avoid doubt:

- (a) nothing in clause 24(1) prevents Standing Orders conferring upon the Mayor or Chairperson or other person presiding at a meeting the right to exercise a casting vote;
- (b) in any case where there is an equality of votes, the question is defeated and the status quo is preserved.”

Open Voting

Clause 54(7) of the Bill proposes the total repeal of clause 24 of Schedule 7 including clause 24(3). That clause reads: “Any Act or question coming before a Local Authority must be done or decided by open voting.”

Waitakere City strongly believes that open voting on all issues before a local authority is fundamental to the democratic process. The removal of clause 24(3) might be seen as a signal that decisions might properly be made by some secret, non-public, process.

Recommendation

The coincidental benefit of the recommendation in relation to clause 54(7) above is that it leaves the original clause 24(3) intact. However, if that recommendation is not accepted, it is recommended that clause 54(7) of the Bill be amended so that the original clause 24(3) is retained as a new clause 24(4).

Other Amendments

The Council would like the Select Committee to consider a number of other largely technical issues concerned with the Local Government Act 2002. These are dealt with below.

Warranting of Enforcement Officers

Clause 32(1)(g) of Schedule 7 of the Local Government Act 2002 changed the law with regard to the warranting of enforcement officers. Under the 1974 Act councils were able to delegate the warranting of enforcement officers to their Chief Executives. The power to delegate has now been removed which means that only councils can issue warrants to enforcement officers. A number of our members have found this change difficult to comply with and regard it as leading to unnecessary complexity and compliance costs.

Warranting of enforcement officers occurs under a number of statutes and practice is far from consistent. For example warranting of enforcement officers under the Building Act has been amended to bring it into line with the Local Government Act 2002, however warrants under the Dog Control Act 1996, the Health Act 1956, the Reserves Act 1977 and the Resource Management Act 1991 can be delegated to chief executives. In our view the result is not only complex but also inconsistent and far from rational, considering that each case involves enforcement.

One other practical issue for councils is the gap between the employment of enforcement officers and the time taken to have their warrants issued, and for some Chief Executives a concern that there may be a situation where a council refuses to issue a warrant to a recently employed officer. It also creates doubt as to whether a Chief Executive has the power to rescind or suspend a warrant for administrative or disciplinary purpose.

Recommendation

Waitakere City Council recommends that Clause 32(1)(g) of Schedule 7 be revoked. This action will also restore the power to delegate the warranting of enforcement officers under the Building Act 1991.

Section 85: the use of the special consultative procedure in relation to annual plan

Section 85(2)(c) requires councils to include a summary in their statement of proposal when amending a LTCCP and adopting an annual plan concurrently. The wording of this sub-section is tautological and fails to make sense. It is easily fixed by deleting the final phrase "to be contained in the statement of proposal for the amendment" be deleted.

Recommendation

That subsection 85(2)(c) be amended to read:

"If it is proposed that the making of an amendment to the long term council community plan and the adoption of the annual plan should take place concurrently, the summary that is required by section 89."

Part 4A Local Government Act 1974

The Waitakere City Council generally supports the proposed changes, which tidy up issues remaining under Local Government Act 1974 in relation to the use of the "Special Order" process under that Act. It does however have some specific reservations.

Under Local Government Act 2002 there is now a statutory description of the requirements for consultation including the direction in s.82(4) for a local authority to bring to account "the current views and preferences of persons who will or may be affected" by a decision and the nature and significance of a decision "including its likely impact from the perspective of the persons who will or may be affected" by the decision. Overriding the general consultation obligation is the special consultative procedure which is a formal, potentially expensive and time consuming process, for matters which are likely to have a district-wide impact and are of sufficient significance to enable the community as a whole to be engaged. There is a risk of over use of the special consultative procedure, and consultation fatigue from both the community and elected members alike as a consequence. There is a clear need to tailor decision-making by reference to significance and that is, at least in part, the reason for a Significance Policy under s.90 Local Government Act 2002.

In that background therefore, Waitakere City questions why it is necessary to engage in a special consultative procedure in relation to proposals which have a very clearly defined class of persons who may be interested or affected by a decision. Indeed there appears to be some recognition of this in clause 57M of the Bill, where the changes to s.446 Local Government Act 1974, (which relates to the covering in of watercourses) requires the production of a summary of the proposal which is publicised "in a way appropriate to the subject matter of the proposal". A special consultative procedure is not required in that case.

Those circumstances can be contrasted with the requirement for a special consultative procedure under:

- (a) clause 57D, in relation to s.320 Local Government Act 1974 which is concerned with the power to lay out a new road, divert or widen an existing road or to alter the name of a road. The laying out of a new road is invariably preceded by either a plan change or a designation publicly notified under RMA. In respect of a road diversion, widening or name alteration the identity of the parties directly affected by those decisions is known.
- (b) Clause 57J in relation to s.346A Local Government Act 1974 which is concerned with the declaration of limited access roads. Again the class of persons directly affected by those decisions is known.
- (c) Clause 57K8 in relation to s.349(1) Local Government Act 1974, which is concerned with decisions to declare private road or right-of-way to be public road. Again the class of persons directly affected by those decisions will be known.

It is submitted that the interests of the community are adequately protected by the existing process requirements of Local Government Act 2002 in these cases, and ultimately by the remedy of judicial review.

Recommendation

The Waitakere City Council's preferred solution to these issues is to amend clauses 57D, 57J and 57K to substitute "special order" in Local Government Act 1974 with "resolution" in each case. In the alternative, the Committee is invited to consider either a limited notification arrangement similar to that proposed under clause 57M of the Bill in relation to s.446 Local Government Act 1974, or a requirement for the local authority to give public notice before considering a resolution under the particular sections of Local Government Act 1974.

A88

Part 5 Local Government Official Information and Meetings Act 1987

The Waitakere City Council fully supports the proposal to clarify the provision regarding the ability of councils to consider late and/or extra-ordinary items on their agendas. The lack of consistency between S46(A)7 and subsection 7(A) has been a constant source of irritation to councils and caused ongoing compliance issues and costs. This change is timely.

Part 6 Local Government (Rating) Act 2002

The Waitakere City Council generally agrees with the changes made. However there is an area where there is still some confusion.

Clause 63 amends the provisions of Section 38 (1) (d) of the Local Government (Rating) Act 2002 as to who may be given the financial details of a rate account.

Current provisions under Section 38 (1) (d) of the Local Government (Rating) Act 2002 allow the information to be made available to solicitors, land brokers or real estate agents.

The Local Government Law Reform Bill (No3) seeks to restrict access to the information further by introducing the following qualifiers; (i) to those who are party to a transaction relating to the rating unit; and (ii) who reasonably require the information in the rates record for the purposes of the transaction.

There is doubt as to how this new section should be interpreted with regard to the qualifying clauses (i) and (ii). Advice from legal sources notes that qualifiers (i) and (ii), because of their wording, relate purely to "any other person" and not to solicitors or real estate agents. It is understood that this was not the intention of the amendment. The Council seeks clarification to meet with its legal interpretation.

Regardless of the interpretation it is not envisaged that this change will cause any undue concern in delivering a service to our ratepayers. However, if Solicitors have to satisfy the Council that they are acting on the sale of a property, the current practice of phoning Council to quickly obtain the detail will probably end; and all correspondence will be by facsimile or mail and may incur delays. Approximately 11,500 properties are sold in Waitakere each year.

The effect of the Local Government (Rating) Act 2002 was to remove access to the ratepayers name and address from the Rating Information Database (Section 27) and Rate Record (Section 38).

Since its introduction complaints have come from many areas of the community who are wanting/needing the information for legitimate purposes e.g. Resource Consents for the purpose of consultation with neighbours, obtaining neighbours consent or notification to the neighbours.

The non availability of this information has added costs and time to people needing the information.

It is understood that Local Government NZ are making a submission to amend the provisions with regard to the availability of the information in certain circumstances. Waitakere City Council supports the freeing up of the information for such activities as Resource Consent applications.

Waitakere City Council supports the proposed changes to the Local Government (Rating) Act. Clause 65, which will allow for postponed rates to be registered as a charge on a rating unit is a small but important change. This removes a compliance cost caused by councils having to register an amount annually and the amendment will allow the development of schemes to assist asset rich but income poor households use the equity in their properties to offset expenses such as rates.

Recommendation

That Section 28(2) be amended as follows...

(Drafting to come – this will amend s 28(2) along similar lines to that suggested for s.38(1))

Lump sum payments

The Waitakere City Council supports the submission from Local Government New Zealand for the re-inclusion of a power to levy lump sums. This power was removed with the adoption of the Local Government (Rating) Act 2001 which provided a range of additional funding tools. The assumption at the time was that the new tools, such as targeted rates, would make the lump sum provision redundant.

A89

In reality councils, and more importantly affected communities, have found that the new funding tools don't provide the same flexibility in some circumstances as that provided by the former Lump Sum provisions.

Kind regards

Darryl Griffin
Group Manager Democracy and Support Services

A90



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy


R. W. Muir
Registrar-General
of Land

Identifier NA24D/137
Land Registration District North Auckland
Date Issued 15 January 1973

Prior References
NAPR1383/57

Estate Fee Simple
Area 5893 square metres more or less
Legal Description Lot 14 Deposited Plan 39391

Proprietors
Waitemata City Council

Interests
Subject to Section 59 Land Act 1948

A91

CREEK

WHAU

426.05

14

457.11

1 . 1 . 33

285.0

250.0

250.0

18-19

GODLEY

ROAD

A92

21/37

HEARINGS COMMITTEE

All Delegations to the Hearings Committee are made through the Chief Executive Officer, in terms of Section 34A of the Resource Management Act 1991.

FIELDS OF ACTIVITY

To conduct hearings and make decisions in relation to matters arising from bylaws, regulations and legislation, including but not limited to the Resource Management Act 1991, the Building Act 1991, the Local Government Act 1974, the Local Government Act 2002, the Sale of Liquor Act 1989, the Dog Control Act 1996, the Fencing of Swimming Pools Act 1987, the Gambling Act 2003 and the Prostitution Law Reform Act 2003.

Notwithstanding the above to perform the functions of the Council as the Waitakere District Licensing Agency (pursuant to Section 104 of the Sale of Liquor Act 1989).

MEMBERSHIP

The Committee shall comprise:

- 6 Members appointed by the Council
- 1 Community Board Member from the specific ward to which the hearing applies except when the Committee is exercising powers under the Fencing of Swimming Pools Act 1987.

Quorum: 4 members

DELEGATED POWERS

General Delegations

1. Generally (except where otherwise provided by Delegation to another committee or Council officers) all matters detailed in the Fields of Activity, as adopted by the Council from time to time, where financial provision has been made, and where the action proposed is not contrary to established Council policy.

Hearings

2. Hearing of submissions in respect of any matter covered by any Act, Regulation or Bylaw adopted by the Waitakere City Council which requires elected member consideration, and the granting or refusing of any such consent, approval and/or permission upon or subject to such terms and conditions as may be appropriate.
3. Except where otherwise provided, all of Council's powers, duties, and discretions as relate to matters under the Resource Management Act 1991, the Sale of Liquor Act 1989, the Dog Control Act 1996, the Building Act 1991, the Local Government Act 1974, the Local Government Act 2002, the Fencing of Swimming Pools Act 1987, the Gambling Act 2003, the Prostitution Law Reform Act 2003 and under all other powers thereto enabling and including (but without affecting any limitation whatsoever upon the foregoing general delegation):
 - a. Determination of any applications for resource consent under Section 88 of the Resource Management Act 1991 (whether or not requiring notification) and including the power to require in any particular case that an application be notified, having regard to Sections 93 and 94 of that Act.
 - b. Determination of applications under Section 125 of the Resource Management Act 1991 for extension of a resource consent or under Section 127 of the Resource Management Act 1991 for variation or cancellation of any conditions, restrictions or prohibitions imposed in respect of any resource consent
 - c. Determination of applications within the Fields of Activity of this Committee for review of a decision made by any officer of the Council acting under any authority delegated under the Local Government Act 2002.

- d. Representation, on behalf of the Council, at any Joint Hearing pursuant to Section 102 of the Resource Management Act 1991. The Chairperson shall nominate from the members of the Committee on each occasion those persons to attend and represent the Council at such Hearings.
 - e. Hearing of objections in relation to earthquake prone buildings pursuant to Section 67 of the Building Act 1991.
 - f. Determination of requests for dispensation from any bylaw of the Council where there is no hearing necessary.
 - g. Such of the powers, duties, and discretions of the Council in respect of matters relevant to the conduct and hearing of any appeals before the Environment Court including applications to the Environment Court for Consent Orders and the power to approve terms and conditions in relation to any such Consent Order to which the Council may be proposed to be a party.
 - h. Offences under the Resource Management Act 1991.
 - i. Determination of requests for dispensation from the requirements to fence swimming pools in accordance with Section 6 of the Fencing of Swimming Pools Act 1987.
 - j. The exercise of the Council's powers under Section 39 of the Act in relation to buildings having a specified intended life and Section 46 of the Act in respect of change of use of buildings and the issuing of a certificate under Section 224(f) of the Resource Management Act 1991.
 - k. The Hearing of submissions on venue policies pursuant to Section 101 of the Gambling Act 2003 and making recommendations to the Environmental Management Committee for the adoption of a policy.
 - l. The hearing of submissions on any Bylaw made pursuant to Section 12 of the Prostitution Law Reform Act 2003.
4. Where required as a condition of a consent the powers concerning or involving proposed changes to the following controls in terms of the Traffic Regulations 1976:
 - a. STOP or GIVE WAY controls.
 - b. NO STOPPING or NO OVERTAKING controls, centre lines.
 - c. Parking controls.
 5. The determination of matters arising under Section 37 of the Resource Management Act 1991 relating to time limits or to waive compliance with requirements of the Act and the protection of sensitive information under Section 42.
 6. Authority to hear and determine objections under Section 357 of the Resource Management Act 1991.
 7. Authority to defer applications pending lodgement of consents with another authority (Section 91 Resource Management Act 1991).
 8. Such powers duties and discretions are as necessary to deal with applications for Subdivision consents under Part X of the Resource Management Act 1991.
 9. Such powers, duties and discretions as are necessary to administer the transitional provisions of Part XV (Transitional Provisions) of the Resource Management Act 1991 (in respect of Resource Consents, Subdivision Consents and Esplanade Reserves and Strips and Financial Contributions).
 10. The hearing of submissions to the District Plan (or any change, variation or review) and the formulation of recommendations to Council.

A94

Waitakere District Licensing Agency

(NOTE: Pursuant to section 104(4) of the Sale of Liquor Act 1989 a copy of this delegation must be kept in the Council office and shall be available for inspection during ordinary business hours).

11. Authority to carry out the following functions of the Council, as the Waitakere District Licensing Agency, pursuant to Section 100 of the Sale of Liquor Act 1989:
 - a. To consider and determine such applications for the grant of on-licences, off-licences and club licences, as it is not required by this Act to forward for determination by the Licensing Authority:
 - b. To grant such applications for renewal of on-licences, off-licences, and club licences or for the variation of conditions as it is not required by this Act to forward for determination by the Licensing Authority:
 - c. To consider and determine applications for temporary authority to carry on the sale and supply of liquor in accordance with Section 24 or Section 47 of this Act:
 - d. To consider and determine applications for special licences in accordance with this Act:
 - e. To grant such applications for renewal of managers' certificates as it is not required by this Act to forward for determination by the Licensing Authority:
 - f. To conduct such inquiries and to make such reports as may be required of it by the Licensing Authority under Section 95 of this Act:
 - g. Such other functions as may be conferred on the District Licensing Agency by or under this Act or any other enactment.
12. Pursuant to Section 105 of the Sale of Liquor Act 1989 the requirement to prepare and send to the Licensing Authority the report of the Agency's proceedings and operations during each year.
13. Pursuant to Section 101 of the Sale of Liquor Act 1989 all such powers as may be reasonably necessary to enable the Agency to exercise its jurisdiction and perform its duties satisfactorily.

A95