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### **ECO Submission on the Local Government Act 2002 Amendment Bill 2012**

#### **1. Introduction**

ECO is an organisation of around 50 member organisations and several hundred Friends of ECO. We welcome this opportunity to make a submission on the Local Government Act 2002 Amendment Bill 2012. ECO has been involved in issues of resource management and open government since its formation 40 years ago.

This submission has been prepared by members of ECO Executive and is in line with ECO Policy that was developed in consultation with ECO member bodies and endorsed by our June 2012 AGM.

ECO is concerned about the implications of this Bill for sustainable development, participative democracy and resource management.

ECO wishes to be heard in support of this submission.

#### **2.0 Key Submission Points on the Matter of the Better Local Government: The Local Government Act 2002 Amendment Bill 2012**

[2.1] ECO believes that most New Zealanders want an efficient and effective local government, but not at the cost of losing local decision making, loss of consultation on issues and of support for what is valued by local communities. ECO also supports an open, participatory sustainable development approach to frame our governance in local and central Government. Such an approach is now consistent with international agreements and norms, such as the 1992 United Nations Conference on Environment and Development (UNCED), 2002 World Summit on Sustainable Development (WSSD) and 2012 United Nations Conference on Sustainable Development (UNCSD) Agreements and the Aarhus Convention.

[2.2] The key change, that to the Purpose of the Act, goes against international best practice where local authorities uphold the principles of sustainable development and strive to strengthen their communities and democracy by making government more relevant, participative and inclusive. ECO opposes these changes.

[2.3] **ECO opposes** those clauses in this Bill which if passed in its present form would undermine the building and maintenance of responsive, democratic and open government.

### **3.0 Proposed changes to the Purpose of the 2002 Act and its outcomes**

[3.1] The Bill amends the Purpose Clause of the Local Government Act 2002 which *d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.*

3.2] This would now read so the Act  
*(d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.”*

[3.3] This is a very different and narrow purpose which denies communities consideration of well beings and sustainable development. Local government is restricted to catering for needs not well being by this change. There is a huge amount of research that shows that well being is contributed to by social connectedness, access to decision making, healthy and accessible environments, employment, security of person and avoidance of harm, trust and reciprocity and more<sup>1</sup>.

[3.4] The Explanatory Note – General Policy Statement at the beginning of this Bill states *“the very broad purpose of local government, as set out in the Local Government Act 2002, encompassing social, economic, cultural and environmental well-being, can divert councils into areas already covered by central government and the private sector.”*

[3.5] But evidence is lacking that would to show that that local authorities are failing to give primary focus to their core roles. Environmental, social, cultural and economic services by councils have been provided because central government and the private sector have failed to provide them, and/or because after consulting with their local communities these have been identified as significant gaps and requested of councils.

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<sup>1</sup> Stiglitz, J., Sen, A., Fitoussi, J-P. (2009). *Report by the commission on the measurement of economic performance and social progress.*

<http://www.stiglitz-sen-fitoussi.fr/en/index.htm> ; Watson, Robert & A. H. Zakri, (co-chairs) (2005). “Living Beyond our Means: Natural Assets and Human Wellbeing”, *Millennium Ecosystem Assessment*. See [www.maweb.org](http://www.maweb.org). See particularly the first section pp. 2-20 (pagination as per the final draft); Gleisner, Ben, Llewellyn-Fowler, Mary and Fiona McAlister (2011) *Treasury Working Towards Better Living Standards for New Zealanders*. The Treasury, Wellington, <http://www.treasury.govt.nz/publications/research-policy/tp/higherlivingstandards/tp-hls-may11.pdf> ; Ministry for the Environment – Environmental Reporting – methods and indicators. <http://www.mfe.govt.nz/environmental-reporting/>

[3.6] Clearly local councils are in a better position to determine and respond to local needs than central government or the private sector. In many cases the private sector will contribute to local government activities rather than providing the services (or local authorities will contribute to activities run by civil society) e.g. local youth activities or cultural festivals. This builds social capital and an engaged participative society.

[3.7] The changes to the Purpose undermine the very approach that the New Zealand Government has so recently agreed to in signing on 22 June 2012 the “The Future We Want” Outcomes Agreement from the United Nations Conference on Sustainable Development UNSD or Rio+20.

[3.8] Sustainable Development depends on a much more holistic approach integrating economic, social, environmental and cultural policies and outcomes, and recognises the need to involve and consult with communities at all levels. Sustainable development approaches consider and achieve co-benefits – for example local authority supported home insulation schemes as in the Environment Canterbury Clean Heat Project achieve energy conservation, health benefits and clean air.

[3.9] In 1992 when the New Zealand Government signed at UNCED (United Nations Conference on Environment and Development) the Agenda 21 with its Chapter 28 statement on Local Authorities, it recognised Local Authorities *“as the level of governance closest to the people, they play a vital role in educating, mobilizing and responding to the public to promote sustainable development”*

[3.10] At Rio+20 June 2012 the New Zealand Government reaffirmed this principle in Paragraph 43  
*“we reaffirm the key role of all levels of government and legislative bodies in promoting sustainable development ...recognize the important role that such authorities and communities can play in implementing sustainable development, including by engaging citizens and stakeholders ...”*

[3.11] Furthermore Paragraph 98 of the Rio+20 agreement states: *“We **encourage regional, national, subnational and local authorities as appropriate to develop and utilize sustainable development strategies as key instruments for guiding decision-making and implementation of sustainable development at all levels, and in this regard we recognize that integrated social, economic and environmental data and information, as well as effective analysis and assessment of implementation, is important in decision-making processes.**”*

[3.12] Integral to this is the recognition in Paragraph 43: *“We **underscore that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. ...we agree to work more closely with Major Groups and other stakeholders and encourage their active participation, as appropriate, in processes that contribute to decision making, planning and implementation of policies and programmes for sustainable development at all levels.**”*

[3.13] Changes identified the Local Government Act 2002 Amendment Bill 2012 will remove the identification of sustainable development as purpose of local authorities, and with consequent and other changes will restrict the very activities and functions which promote ‘broad public participation’ and access to judicial and administrative

proceedings 'essential to the promotion of sustainable development' and the agreement to work more closely with Major Groups<sup>2</sup> and 'encourage their active participation'.

[3.14] Two further points to be made on this change are:

- while good-quality is defined in the Bill to mean "infrastructure, services and performance that are efficient and effective and appropriate to present and anticipated future circumstances:" this is neither broad enough nor clear enough to avoid inviting legal challenge by interest groups. That could lay the ground for expensive litigious charges against Local Authority decisions.

The changes proposed for the Purpose of the Act set up an inconsistency with the sustainable management purpose stated in the RMA (Section 5) which may create problems in implementing a local authority's responsibilities under the RMA.

[3.15] **ECO requests:** the current (2002) wording of the Purpose of the Act to be retained as it gives specific direction for a sustainable development approach from local government, with its economic, environmental, social and cultural outcomes interconnected and with the principles of consultation and participation retained.

#### 4.0 Reorganisation proposals

[4.1] ECO considers that proposed changes in the processes for reorganization of political boundaries could undermine the principles of inclusive and participative democracy.

[4.2] Local authority amalgamations into increasingly larger units result in the ordinary residents and their communities being distanced still further from local authority contact and so their ability to participate and influence local government. Already New Zealand has larger local government units than many OECD countries.

[4.3] ECO is concerned about the direction towards greater amalgamation and loss of participation in our democracy through losing local representation and involvement. The Auckland model is not yet proven and is unlikely to fit the rest of the country where the current structure (regional and district council and community boards) with its tiered instruments provides checks and balances that might not otherwise be there.

[4.4] In the matter of amalgamation the current Act requires polling of all affected communities. It is proposed in the Bill that this be changed. While this might make it easier to achieve amalgamations, it is an undesirable loss of democratic rights.

[4.5] The Bill proposes (Section 25) that a petition signed by 10% of eligible voters is required to trigger a poll on a proposal to amalgamate. The Local Government Commission (which is to be given a central role) is not obligated to consult with all affected residents (although it may do so) unless the poll is triggered by such a

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<sup>2</sup> Major Groups as identified in Agenda 21 and subsequent agreements to include" civil society organisations, including business and industry, have been represented Women, Children and Youth, NGOs, Indigenous Peoples, Business and Industry, Workers and Trade Unions, Science and Technology, Farmers, and have been recognised as playing important and increasing roles as partners in sustainable development.

petition. It should be required to do so as in current processes. Forced amalgamation of local authorities undermines the democratic rights of residents to vote on this. Some affected communities may find it much harder to organise polls as they lack the community board structures, urban aggregates or active civil society organisations of the other areas. As the Regulatory Impact Statement<sup>3</sup> identifies, *“Requiring a petition to trigger a poll may override the legitimate views of low population areas”*. This is unfair and undemocratic.

[4.6] **ECO requests:** that the current process for consulting and voting on local authority amalgamations be retained with the requirement of a provision for a mandatory poll.

## 5.0 Centralisation of Powers

[5.1] There are changes proposed in the Bill which would result in unjustified and undesirable centralisation of power. As the Regulatory Impact Statement identifies: *“this could threaten the democratic control of councils, and undermine important principles of government, such as local autonomy and local choice, diffusion of power, and the sharing of the administrative load between tiers”*.

[5.2] Powers are given to the Minister to intervene (new Part 10) in a local authority are predicated on the existence or potential existence of a ‘problem’ i.e. *“a matter or circumstance relating to the management or governance of the local authority that detracts from, or is likely to detract from, its ability to give effect to the purpose of local government within its district or region”* This is a power that is far too widely defined. It would allow the minister to intervene in many circumstances thus overriding local representation (as in the ECAN Act) and so undermining the very basis of democracy. We ask that this change be withdrawn.

[5.3] There are also extra powers given to Local Government Commission in the Reorganisation changes (new Schedule 3):

[5.4] These changes are not justified. There are sufficient existing powers to meet all contingencies as has already been demonstrated over the past decade. The removal and dilution (including by the implicit threat of intervention) of the powers of local government are a dangerous reversal in trends to encourage and support local democratic decisions and the principle of subsidiarity in decision making.

[5.5] **ECO requests:** that clauses within the Bill giving greater powers of intervention (New Part 10) of power to Central Government not be enacted.

## 6.0 Are the changes justified?

[6.1] The changes to the purpose of the 2002 Act and to the functions and activities of local government would indicate that the current Act and practices justify significant changes. Such a case is not made. Indeed the Department of Internal Affairs’ Regulatory Impact Statement accompanying the Bill also comes to this conclusion and that the changes purport to address problems that are not substantiated or are insufficient to warrant such changes, and that there needs to be more time given any amendments to the current Act<sup>4</sup>.

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<sup>3</sup> Department of Internal Affairs (2012) Regulatory Impact Statement – Better Local Government.

<sup>4</sup> *“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*

[6.2] Some facts used to justify the approach are not correct. The figures on debt are three years out of date and do not reflect the 2009 information from LTPs which indicate fresh caution reflecting the financial situation<sup>5</sup>.

[6.3] The current Act (Section 11A) already requires councils to "have particular regard to" core services of network infrastructure, public transport, solid waste collection and disposal, the avoidance and mitigation of natural hazards, libraries, museums, reserves, and other recreational facilities.

[6.4] There is little evidence that local authorities are not already focussed on the identified core services as shown in reviews and analysis of 2006 and 2009 LTPs. If increased costs and debt in local government are of such concern, the rising costs of materials and energy for infrastructure should be identified as a contributor to this. This is a widely identified, even of global concern. It is also a fact that increased rates and costs in some local authorities are caused by past unsustainable attempts to hold rates low and/or avoid incurring debt necessary to maintain or replace infrastructure.

[6.5] The Bill proposes that the Governor-General be given a new regulatory power for assessing whether a local authority is managing its finances prudently. It is proposed in this bill to set "prudential benchmarks" on local authority rates and debt.

[6.6] This makes the assumption that central government is better positioned than local government to know the needs of local communities and assess the needs and priorities, the required expenditure and appropriate levels of debt. Similarly it makes the unlikely assumption that prudential benchmarks set by central government will serve local communities better than decisions made locally elected councils, although these are guided by extensive consultation on plans, locally consulted-on Financial Strategies and Long Term Plans, are subject to audit by Audit New Zealand and required to produce Pre-election Reports, It is not persuasive that central government is better placed at such tasks.

[6.7] ECO suggests it would be rather more prudent to recognise some of the limitations of accounting systems including those of the National Accounting System which is well recognised to be flawed. We propose that councils adopt natural, environmental and social accounting, introducing the concepts that are now being developed as best practice internationally. Local government should be required to recognise and properly protect and maintain all kinds of capital including (as identified by UK Deputy Prime Minister Nick Clegg at Rio+20) to "move beyond the narrow understanding of wealth, ...ignoring the state of assets like forests or coastal areas – vital natural capital". This would be a much more innovative and appropriate way to establish capital and financial prudence requirements and is an opportunity missed hitherto in reforms to local government.

[6.8] More than 50 countries are already members of the Wealth Accounting and Valuation of Ecosystem Services (WAVES) initiative ([www.wavespartnership.org/waves/](http://www.wavespartnership.org/waves/)). Growing numbers of business leaders

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*result, the problem analysis and option assessments of the specific proposals rely on assumptions that are not, or are only partially tested."*

*"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*

<sup>5</sup> Local Government New Zealand and Society of Local Government Managers discussion document

internationally are committing to initiatives like the financial sector's Natural Capital Declaration and the Natural Capital Leadership Compact for the Financial Sector.

[6.9] ECO submits that the case made by the Government for the need for the changes is unconvincing. Some assumptions and some of the facts for the changes identified in the Bill are less than robust and do not justify the changes to the Purpose. The imposition of control and the threat of intervention and so loss to participative democracy and sustainable development are all unwarranted.

[6.10] **ECO requests** the Committee agree to remove those clauses of the Bill as proposed by ECO and to restore the 2002 Act. To leave the changes as proposed would be to undermine democracy and participation and good governance.