

1. ASPECTS OF REGIONAL GOVERNMENT ARRANGEMENTS IN CANTERBURY

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INTRODUCTION

At its meeting on Monday 15 May 2000 the Committee considered a report relating to the review of membership and basis of election of the Canterbury Regional Council for the 2001 local body elections.

During discussion of that report the possibility of changing the present local government arrangements in Canterbury was also discussed and the Committee decided to request a report on:

- (a) processes seeking a review of local government arrangements in Canterbury; and
- (b) a redefinition of the role of powers of regional councils in the review of the Local Government Act, in order to allow for different models for different regions.

This report is to provide the information sought by the Committee at its May 2000 meeting.

Regarding the processes for seeking a review of local government arrangements in Canterbury, I will consider the legal processes for the transfer of responsibilities between the Regional Council and the City Council, and also the issue of a unitary authority in the City's district.

TRANSFER OF RESPONSIBILITIES

Both the Local Government Act 1974 and the Resource Management Act 1991 contain similar provisions for the transfer of functions.

The key points of those transfer provisions are:

- (i) the Regional Council may transfer any one or more of its functions, duties or powers to the City Council (with some exceptions under the Resource Management Act such as approval of a regional plan or policy statement);
- (ii) the Regional Council shall continue to be responsible for the exercise of that function, duty or power by the City Council notwithstanding it has been transferred;
- (iii) the transfer is by way of the special consultative procedure;
- (iv) the transfer shall be implemented by agreement between the Regional Council and the City Council;
- (v) the functions, duties and powers of the City Council would be deemed to extend in such manner as may be necessary to enable the City Council to undertake and perform that function, duty or power;
- (vi) the Regional Council could change the transfer at any time by giving notice to the City Council;

- (vii) the City Council can at any time relinquish the function, duty or power in accordance with the transfer agreement;
- (viii) the Regional Council may revoke the transfer at any time by:
 - (a) serving a notice on the Minister of Local Government that it proposes to revoke the transfer; and
 - (b) using the special consultative procedure.

Similar provisions apply in relation to the process in the Resource Management Act 1991.

This transfer system does not appear to be well used in New Zealand even though there may be merit in doing so.

In 1999 the Parliamentary Commissioner for the Environment and the Auditor-General produced a joint report entitled “Local Government Environment Management – A Study of Models and Outcomes”.

That report outlined the findings of a study of the unitary authority model of local government environmental management in contrast to the more common regional council/territorial authority dual model for the focus on the delivery of environmental outcomes.

In the course of that report, the authors commented on the transfer provisions under section 33 of the Resource Management Act 1991 and the fact that there was little evidence of regional councils having transferred functions, duties or powers under that section. The authors expressed the view that the absence of transfers seemed to be due to concerns including:

- (a) regional councils’ lack of confidence in territorial authorities’ capabilities;
- (b) reluctance amongst territorial authorities to undertake additional functions without the necessary funding or the ability to recover the costs of carrying out the functions;
- (c) the requirement, under the RMA, that the transferring authority retains the responsibility for the exercise of the functions, duties or powers it transfers.

In my view those concerns would probably be equally applicable to any proposed transfer under the Local Government Act. The fact that a regional council retained responsibility for the function, duty or power, notwithstanding that a territorial authority is exercising that function, duty or power, together with the fact that the regional council can at any time end the transfer, are in my view two of the biggest barriers to this process working effectively.

There will be a natural reluctance by organisations such as the regional council to transfer a function, duty or power and yet at the same time be legally responsible for the exercise of it over which they have no direct control.

Conversely, there is in my view, little incentive for a territorial authority to accept the transfer of a power when that transfer could at any time be revoked by the regional council. In this regard I would note that while the relinquishment of the exercise of the power by the territorial authority can be set out in the agreements between the two organisations, there is no equivalent ability to set out the process in the agreements by which the regional council can revoke the transfer because the statute sets out the power to revoke.

For those legal and practical reasons I believe that while transfers are available technically, in reality they are simply too difficult to implement in practice.

UNITARY AUTHORITIES

As noted above, the 1999 joint report considered the issue of unitary authorities which are another form of local government arrangement.

A unitary authority is an organisation which exercises the functions, duties and powers of both a territorial authority (in respect of the district in which it is constituted) and a regional council (in respect of the region which is under its control).

As will be well known, the Gisborne District Council was established as the first unitary authority in New Zealand with effect from 1 November 1989.

In 1992 the Minister of Local Government carried out a survey by way of postal ballot of the residents and ratepayers of Nelson, Marlborough, Tasman and Kaikoura districts, on the future of their regional council – the Nelson/Marlborough Regional Council. In that survey, out of those who responded, the residents of Marlborough, Nelson and Tasman Districts voted in favour of the abolition of their regional council while the residents of Kaikoura voted in favour of retaining the regional council.

Subsequently the Government passed legislation to abolish the Nelson/Marlborough Regional Council and three new regions were constituted in respect of Nelson City and Marlborough and Tasman Districts, and these three territorial authorities were vested with the powers, functions and duties of both regional and territorial authorities.

In terms of legal process, the Local Government Act provides a system whereby any local authority, including this City Council, can initiate a reorganisation proposal which would seek the exercise by the City Council of the functions, duties and powers of both a regional council and a territorial authority within this Council's existing district.

That proposal would be sent to the Local Government Commission which would then follow a process which would be broadly similar to the recent Banks Peninsula amalgamation proposal, in that the Local Government Commission could carry out a review of the local authorities involved and it would then decide whether or not the unitary authority proposal would go ahead.

If it decided in favour of that proposal, then probably two polls would be held, one in Christchurch City and another in the districts of the other territorial authorities that form part of the Canterbury region, and a majority vote in favour of the proposal would be needed in both polls.

One issue that would arise in any consideration of a unitary authority based upon the existing Christchurch City would be the question of the management of river catchments. For example, at the present time the legal boundary between Christchurch City and Waimakariri District is along the middle of the Waimakariri River, with the regional council having general responsibility for management of the river itself.

It is probable that the Commission would not agree to a unitary authority having a boundary down the middle of a river, and that the boundary would have to be adjusted so that either all work done in the river catchment area fell within the jurisdiction of the unitary authority or that the river catchment area was excluded from the unitary authority's district. In this regard the issue is similar to that faced by the Canterbury Regional Council at the present time in relation to its southern boundary along the Waitaki River where people who consider they belong in Otago fall within the jurisdiction of the Canterbury Regional Council in order for that Council to be able to, in the Commission's view, adequately manage the Waitaki River basin.

As noted above, in 1999 the Parliamentary Commissioner of the Environment and the Auditor-General produced a joint report entitled "*Local Government Environmental Management – A Study of Models and Outcomes*".

Regarding unitary authorities, the 1999 report by the Parliamentary Commissioner for the Environment and the Auditor-General noted:

"There is a view that the unitary authority model overcomes some of the potential problems that may be attributed to functional overlaps in the dual system of regional councils and territorial authorities, and that it is consistent with the integrated management approach promoted by the RMA. An alternative view suggests that combining the two sets of functions into a unitary authority has the potential to create conflicts of interest between councils' regulatory and service delivery roles, and that short term demands to fund district services and infrastructure are likely to receive higher priority than achieving longer term environmental management objectives and outcomes."

The report also noted that the range of environmental pressures placing demands on unitary authorities included:

- solid waste management
- land disturbance and vegetation clearance
- land instability and soil erosion
- rivers managements and flood protection
- marine farming
- tangata whenua values and concerns
- wastewater treatment and disposal
- urban growth
- urban water supply
- competing demands for rural land use
- cross-boundary issues such as catchment management
- contaminated sites
- water quality and quantity

It noted that generally unitary authorities do not now make any distinction between territorial or regional functions except where there is a statutory requirement for them to do so.

Advantages that the report saw with the unitary authority model were avoidance of dispute amongst agencies over jurisdictional matters, avoidance of confusion among resource users and the public over responsibility and accountability for environmental management and avoidance of tensions between regional councils and territorial authorities of shared responsibilities, such as those relating to management of land and land use.

Other observations made in the report were:

- (a) In the split model, regional councils are a check on the service delivery activities and environmental management responsibilities of territorial authorities. In the absence of such an external check, a unitary authority has the potential for environmental outcomes to be compromised;
- (b) There is a need to separate the environmental management (regulatory) functions from the asset management service delivery functions of a unitary authority to avoid conflicts of interest. The risk of conflicts of interest in unitary authorities is higher because of the wider range of operational and regulatory functions;
- (c) Because unitary authorities have management of a broad range of functions, they have a strong multi-disciplinary staff approach;

- (d) Elected members of unitary authorities are in a position to gain comprehensive knowledge of local government's environmental management role and appreciation of the link between the environmental, social, cultural and economic factors;
- (e) Unitary authorities can combine their regional district plans into a single plan. This enables regional and district rules to be co-ordinated. It also reduces potential administrative duplication and sets out in a single document all the rules that govern the management of resources in a unitary authority's district;
- (f) Having both regional and district planning functions enables unitary authorities to establish plans that integrate the environmental, social, cultural and economic outcomes for the district. The dual model can also achieve this where there is a commitment (to partnership) to achieve environmental outcomes;
- (g) Unitary authorities can integrate the management of resource, building and other regulatory consents;
- (h) Unitary authorities can minimise the number of separate local government agencies which iwi and hapu will need to deal with on resource management issues.

In conclusion, the report noted that experience in the application of the unitary authority is so far limited to only one urban and three predominantly rural authority areas of New Zealand. However, within this relatively narrow range of application, a number of advantages of the unitary model, with respect to the delivery of environmental outcomes have emerged from their study and these included:

- being a 'one-stop shop' for all local government and environmental managements functions including the delivery of environmental outcomes;
- integrating social, cultural, economic and environmental management in their policies, plans, strategies and institutional structures;
- having clear responsibilities and accountabilities – no confusion or conflicts over environmental management roles and functions;
- combining regional and district state of the environment monitoring and reporting;
- having the ability to develop short- to long-term strategic objectives for the full range of local authority activities (regulatory, non-regulatory and service delivery) that all contribute to the achievement of environmental outcomes.

It found that the unitary authority model can be an effective alternative model of integrating environmental management and delivering the environmental outcomes provided that it incorporates a number of key features of an effective environmental management system which are identified in the report.

It also noted that this does not necessarily imply that the unitary authority model will be appropriate in all regions and districts and this is in part due to:

- (a) the limited experience of the application of the unitary authority model to date; and
- (b) the wide range and diversity of local authority jurisdictions in New Zealand preclude a single approach to environmental management being adopted.

LOCAL GOVERNMENT ACT REVIEW

The Committee also sought information on a redefinition of the role and powers of regional councils in the review of the Local Government Act in order to allow for different models for different regions.

In the work currently being carried out by Local Government New Zealand on the review of the Local Government Act, it is intended that there will continue to be regional councils, territorial authorities and community boards in the new Act.

How the provisions of the new Act, particularly in relation to the power of general competence, applies to each of those bodies and for particular purposes, the detail of the relationship between regional councils and territorial authorities has yet to be worked through.

One of the objectives of the new Act would be to allow communities to develop what they consider as the most appropriate role in their area.

It is anticipated that more detailed work by both central and local government will be carried out on this issue in the next six months.

This Council has appointed a subcommittee to monitor the issue of the Local Government Act Review and a briefing was given to that subcommittee by the writer on Thursday 8 June 2000.

Clearly, the issue identified under paragraph 2 above, of the existing barriers in the Local Government Act regarding the current transfer powers, would be one of the key issues to be addressed in any review of the Local Government Act. This is so that there is the maximum flexibility to allow for different models in different areas of New Zealand.

- Recommendation:**
1. That the Council make clear submissions at the appropriate time, in the review of the Local Government Act, with the aim of having the governance responsibility for all the key functions relating to the sustainability of the urban area resting with the Christchurch City Council.
 2. That the Subcommittee monitoring the review of the Local Government Act report to the Committee on the preliminary input into the review.