



22. 4. 2004

**SUPPLEMENTARY REPORT NO 2 BY THE  
CHAIR OF THE STRATEGY AND FINANCE COMMITTEE**

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**3. LOCAL GOVERNMENT LAW REFORM (NO.3) BILL  
CASTING VOTE**

<b>Officer responsible</b> General Manager Regulation & Democracy Services	<b>Author</b> Peter Mitchell, DDI 941-8549
--	---

The purpose of this report is to afford the Council the opportunity to make a submission on this new Bill in relation to casting votes.

The Government has recently introduced into Parliament a Bill to make a number of technical changes to statutes administered by local authorities, such as the Local Government Act 2002, the Local Electoral Act 2001 and the Local Government Official Information and Meetings Act 1987.

When the new Local Government Bill 2001 was drafted (and which was to become the Local Government Act 2002) it appears that the Government had a policy position that the right to have a casting vote in the Council's Standing Orders be removed. However, because of the way that the Bill was enacted, it left it open to local authorities to choose whether or not to retain the casting vote in their Standing Orders. At its meeting in June last year, this Council decided to retain the casting vote in its updated Standing Orders at that time.

The Local Government Law Reform (No. 3) Bill recently introduced into Parliament now makes it expressly clear that the right to a casting vote is to be removed.

Clause 54 of the Bill provides in part:

- “(2) Unless otherwise provided in this Act, the mayor, chairperson, or other person presiding at the meeting—*
- “(a) has a deliberative vote; and*
- “(b) in the case of equality of votes, does not have a casting vote.*
- “(3) In the case of equality of votes, the question is defeated and the status quo is preserved.*
- “(4) Subclause (3) is for the avoidance of doubt.”*

A closing date for submissions on this Bill has been set for 7 May 2004. Officers are currently giving consideration as to what matters in the Bill should be the basis of a submission by the Council and these will be referred to the Legislation Subcommittee.

However, it was seen that the issue of the Council's position on the casting vote should be a matter to be dealt with by the full Council, rather than the Legislation Subcommittee, and for that reason this report is presented.

As Councillors will be aware, it has been a long-standing practice in New Zealand local government for the chair of a Council, Committee or Community Board meeting to have the right to exercise a casting vote.

At common law a chairperson does not have a casting vote. For a chair to have a casting vote it must be expressly conferred by statute and this has been the case in New Zealand for many years in the Local Government Act 1974 and its predecessors.

The principle behind the concept of the casting vote when first introduced as a “second vote” was that it could be given only in the event of an equality of valid votes, including the chair's own, and that it would be used so that a decision could be arrived at. A chairperson is not bound to exercise a casting vote. The chair may decide not to do so and to announce that the motion has not been carried.

### 3 Cont'd

However, where a proposal is of a high degree of interest to the meeting that it divides equally on the issue, it may appear to the chairperson to be irresponsible for the matter to be left floundering without a decision being made. The concept of the casting vote is to avoid such a situation so the casting vote is to assist meetings to arrive at a decision.

Local Government New Zealand's proposed submission is:

*"Local Government New Zealand however is highly critical of Clause 54 (24)(2). This is the Clause which removes the right of councils to use a casting vote in the event of a tied vote. Local Government New Zealand has consistently opposed any suggestion that councils should not have access to a casting vote, it was an issue we addressed in our submissions on the LGA 2002.*

*The LGA 2002 contains some ambiguity in the way in which the casting vote provision as been draft, however after legal advice we are extremely comfortable with what is 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 our members concerns the adoption of their Long term Council Community Plans and their 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, district or region. 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 the majority of councils it would be unusual to find a situation where a casting vote has been used more than once in a five year period. It is not for the actuality of the casting vote that we support its inclusion but for the ability to fallback on it in the unusual but not improbable situation where an important decision is stymied by lack of a majority."*

The Council needs to decide whether it wishes to make a submission to the Select Committee considering the Bill to retain the casting vote.

**Chair's**

**Recommendation:** That the Council make a submission seeking the retention of the casting vote.

**CONSIDERED THIS 22ND DAY OF APRIL 2004**

**MAYOR**