

Local Government Act 2002 Amendment Bill 2012

Additional Submission by the McGuinness Institute, 18 September 2012

The Institute wishes to briefly update and expand on the key concerns raised in our initial submission of 26 July 2012. The key points in our written submission are:

- 1. Further local government reforms are yet to be finalised.**
The key point is that the approach being proposed with this Bill appears piecemeal, as indicated by the move to make the South Island more like one council.¹
- 2. Local and central government relationships have always been difficult.**
The key point is that tension between central and local government is a very effective tool for optimising outcomes for communities.
- 3. New Zealand is already very centrally controlled in comparison with other OECD countries.**
The key point is that New Zealand already has more centralised financial power than those we are aiming to imitate in the OECD.
- 4. Powers of the Minister are already utilised effectively.**
The key point is that recent events, namely the Christchurch earthquakes and changes resulting from the Canterbury Regional Council review,² have been managed very effectively without any changes to the Local Government Act.
- 5. Central government has already been given increased power under the Resource Management Act 1991 regarding decisions of 'national significance'.³**
The key point is that we need to understand exactly what the Bill attempts to achieve that does not already exist.
- 6. Regional v local council regimes are already complex, creating uncertainty over the agreement and implementation of overarching goals.**
The key point is that this Bill may increase uncertainty.

¹ Councils in the South Island are banding together in an effort to counterbalance Auckland's growing political power. See <http://www.radionz.co.nz/news/national/116051/south-island-alliance-to-counter-auckland's-power>

² Commissioners were appointed by Government in 2010 following a critical external review of Environment Canterbury Council's performance. Earlier this month a Bill was tabled in the House, amending the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, to extend Commissioner governance until the 2016 local authority elections, with a ministerial review in 2014. See <http://www.beehive.govt.nz/release/environment-canterbury-commissioners-stay>

³ A recent example is the process that has occurred with the application by the New Zealand King Salmon (NZKS) Proposal in the Marlborough Sounds. NZKS applied to the EPA by asserting that their proposal was of national significance and should therefore be heard by a Board of Inquiry. The Minister of Conservation, on the EPA's recommendation, accepted NZKS's assertion that this was of national significance. This allowed NZKS to bypass the direct decision making of the local council based on local priorities and considerations, and to put the matter before a body with different priorities, economic objectives, and environmental concerns. The Marlborough District Council is opposed to the proposal to expand salmon farming operations put forward by NZKS (Marlborough District Council, April 2012). See the [Marlborough District Council's Submission on New Zealand King Salmon's Proposal](#).

7. **Strategy v planning.**

The key point is that New Zealand resource management tends to focus on planning rather than the high level strategy required to consider how best to use resources. We tend to spend a great deal of time responding to applications for resource use rather than exploring what New Zealand is good at. New Zealand, at a central level, should spend more time thinking about strategy and researching evidence, and leave the operations to local authorities who can complete the detailed planning and local decision making.

Two further observations are apparent:

Firstly, central government must primarily focus on creating the type of country New Zealanders want. It needs to be careful not to take on any more than it needs to do. For this reason we believe the country would be more resilient if communities could, to a large extent, manage their own affairs while central government only intervened when it was absolutely necessary. Central government should provide the checks and balances on local government. If central government takes on the role of providing support to communities, we believe that this trend is likely to mean:

- Central government may fail to focus on national issues and international relationships and treaties (as it is too busy focusing on local authorities)
- Local communities blame central government rather than taking responsibility for their own communities
- There will be no institution/s that provide the checks and balances on local governance as central government becomes both the decision maker and the reviewer – meaning that independent review is no longer possible.

Secondly, there is a need to ensure good processes are being adhered to. The Institute has been a party to the New Zealand King Salmon (NZKS) proposal application in the Marlborough Sounds. Our interest is twofold; it is the first commercial agriculture/aquaculture-based proposal to be heard under the EPA Act 2011 and it is the first to be seriously considered in terms of its 'national significance' by a Board of Inquiry. For these reasons we were keen to see how the new approach was being implemented. What follows are some key observations that might be useful for discussing the Local Government Act 2002 Amendment Bill 2012:

- How to prevent tampering from Ministers, even if such messages are not intended to be seen as placing pressure on local authorities' decision-making processes. There is concern that Economic Development Minister Steven Joyce advised mayors at a recent conference against rejecting industries such as oil and gas or intensified agriculture. In particular, the Marlborough District Council's lack of support for the NZKS proposal was raised – 'Steven Joyce, Kate Wilkinson and David Carter at the youth taskforce meeting took me aside and asked "what's happening in Marlborough? Can't you see it's great for the region?" I said "yes, but this is not the right way to achieve it".'⁴

⁴ 'Three Government ministers queried the Marlborough District Council's stance on the NZ King Salmon application and asked pointed questions of Mayor Alistair Sowman at a meeting in Wellington. Mr Sowman said that while he was at the mayoral taskforce on jobs in Wellington last month, Economic Development Minister Steven Joyce, Labour and Conservation Minister Kate Wilkinson, and Local Government and Primary Industries Minister David Carter took him aside to ask "what was going on in Marlborough" that the council would oppose King Salmon's application.' See <http://www.stuff.co.nz/marlborough-express/news/7615457/Mayor-quizzed-on-King-Salmon>

- How do we ensure comprehensive cost-benefit analysis is required to be completed early in the process. Economic experts agreed last week that NZKS proposal lacks a comprehensive cost-benefit analysis,⁵ which raises concerns about whether the legislation adequately describes the process envisaged by legislators. New Zealand is going to continue to have applications of national significance which will require assessments of costs and benefits; hence we need to ensure legislation requires for high levels of due diligence to be applied where there are significant impacts. Legislation needs to have the necessary teeth to demand high standards of due diligence and transparency. Assumptions about economic impacts must be questioned rather than simply accepted at face value.
- How do we weigh local impact against national impacts is core to this legislation. The NZKS proposal shows that significant differences do occur between local and central government. The Local Government Act 2002 Amendment Bill 2012 wishes to expand the powers of the Minister of Local Government enabling them to intercede in situations where a local authority is not giving proper effect to the purpose of local government, with the focus on households and businesses; or in other words, when central government does not agree with local government. The NZKS case study shows that 'differences in opinion' between local and central government can exist in regard to prudent management, economic growth and environmental impacts. How local needs and wants are weighed against central government needs and wants must be explained in the legislation – it is simply too important to be left to case law.
- Finally, aquaculture is a new and emerging industry. The Institute has always been interested in ensuring that policy is developed alongside emerging industry. Commercial interests naturally wish to push forward with new ventures, but it is the role of government to ensure policy is developed alongside new and emerging industries so that optimal outcomes are progressed for all citizens. We believe the current model may deliver a proposal that fails to reach standards of international best practice, or be sufficiently flexible to be modified as many standards are still in development. The proposal is for 35 years, which is a long time in an emerging industry. The Local Government Act 2002 Amendment Bill 2012 needs to recognise that the policing of standards will depend on the legal teeth it gives local communities. This suggests that this Bill requires a deeper understanding of the practicalities of removing power, and therefore responsibility, from local communities.

To conclude, the purpose of this legislation should be seen in the context of how development should be progressed in the long-term. As such, it needs a strong and transparent backbone that enables local communities to work with central government on agreed goals. Our key concern is that this legislation could go some way to weakening that backbone, and as such reduce local resilience and monopolise central government thinking and resources; all of which would be detrimental to making New Zealand more resilient.

⁵ Economic experts agreed last week that: 'There has been no comprehensive Cost-Benefit Analysis of the NZ King Salmon proposal undertaken by any of the economic experts.' See <http://www.epa.govt.nz/Resource-management/king-salmon/evidence/Pages/Expert-witness-caucusing-statements.aspx>