

Submission to the Review into the Future of Local Government

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SUBMITTER DETAILS

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Introduction

1. Thank you for the opportunity to submit to the Review into the Future for Local Government on its draft report entitled *He mata whāriki, he matawhānui* (the Draft Report).
2. The Environmental Defence Society (EDS) is an independent not-for-profit organisation conducting interdisciplinary policy research and litigation. It was established in 1971 with the purpose of improving environmental outcomes in Aotearoa New Zealand.
3. Local government is an important part of the resource management the system for achieving good environmental outcomes, and will continue to be so under the new system proposed under the Natural and Built Environment Bill (NBEB) and Spatial Planning Bill (SPB) currently before the House. It is essential that the design of local government is fit for purpose from an environmental perspective, so that institutional settings support the objectives of resource management reform set out in these Bills. The NBEB and the SPB will not achieve this by themselves.
4. The state of our natural environment is under significant pressure, which has been highlighted repeatedly through national level environmental reporting. Fresh and coastal water quality is declining, biodiversity loss is a constant and climate change is already impacting communities and the natural environment across the country. Local government is at the forefront of these issues, and we see a need to reevaluate its role and functions.
5. EDS is currently working on a project that explores the future of local government through an environmental lens, alongside a broader project looking at how other related institutions (including the Environmental Protection Authority and the functions of various central government departments) may evolve in the new system. This work reflects our view that environmental institutional arrangements should be looked at in a broad manner (which functions should lie where, and what this means for how each institution is designed), rather than looking at particular types of institutions (councils, central government, Crown entities) in isolation. Within this, the role of local government is one crucial element.
6. Because our broader project is ongoing, we do not provide hard and fast recommendations in this submission. Instead, we offer some higher-level comments.

7. Overall, EDS supports the Review into the future of local government. This is an essential next step to resource management reform, given that councils will be key delivery agencies under the reforms and in many cases have presided over decision-making under the Resource Management Act 1991 (RMA) that has contributed to declining environmental outcomes. Our system of local government needs to be designed with the starting point of the environment firmly in mind, or there is a risk that the intent of resource management reform will be undermined in practice.
8. The Draft Report makes recommendations to address many of the complex challenges that local government faces, to make it resilient for the future and to support and enhance the wellbeing of communities. Overall, we note that the terms of reference mainly have a local democracy and governance lens, with only some consideration of the implications that resource management reform will have on councils. The latter needs to be stronger, particularly as new resource management legislation crystallises.

General recommendations with ramifications for the environment

9. Below, we highlight some of the Draft Report's general points/recommendations that will have important implications for environmental outcomes, and provide high-level comment. In the following sections we then go through some of the key headings of the report.
 - a. The use of a framework to allocate roles and functions based on three core principles: subsidiarity, local government's capacity to influence the conditions for wellbeing, and Māori values underpinning decision-making. This is positive, but the natural environment needs to be a stronger theme in the organising principles of the reforms.
 - b. The idea that the allocation of functions is not a binary decision between central and local. This is positive, and presents an opportunity to reevaluate where environmental responsibilities should lie, including the role of an arms-length institution such as the Environmental Protection Authority, how checks and balances can be built in (where decision-making functions can lie across multiple layers), and how institutions themselves can be changed to make them more attuned to changing communities of interest (e.g., by changing boundaries or governance arrangements).
 - c. The concept of a partnership between local and central government to explore funding and resources that would enable councils to achieve greater social, economic, cultural and environmental wellbeing. We consider that a stronger relationship between levels of government and institutions is critical for the improvement of environmental outcomes, especially in a new resource management system where national direction is set to take on a stronger role (e.g., in framing environmental limits) but still requires implementation by councils.
 - d. Central and local government agreeing on arrangements and mechanisms for them to co-invest to meet community wellbeing priorities. Councils need to be supported with appropriate funding to be able to efficiently perform their role not just as environmental regulators but also in proactively providing for environmental wellbeing.
 - e. The creation of an intergenerational fund for climate change, with the application of the fund requiring appropriate regional and local decision-making input. Funding assistance will be crucial in helping councils adapt to climate change, but it is important that clarity is

provided to ensure that parties know what to expect and how the mechanism will be funded.

10. While we recognise that local government will do many “non-environmental” things and reform needs to encompass that, we consider that stronger emphasis should be put on the importance of the link between councils and environmental wellbeing. We encourage the Review Panel to signal more strongly in the Draft Report the importance of designing local government (including with respect to governance arrangements, geographical boundaries, funding/financing mechanisms, oversight mechanisms and relationships with other agencies) to give effect to the environmental objectives at the core of the NBEB and SPB, which are now coming more clearly into being.

Local democracy

11. Section 2.6 of the Draft Report discusses tools and initiatives that could help enhance meaningful public engagement. The Draft Report recommends a review of the legislative provisions to allow the use of participatory practices to revitalise community participation. EDS acknowledges the importance of strengthening public participation to connect communities to decision-making and enhance societal trust and cohesion.
12. Enabling the use of deliberative and participatory practices could help empower communities, leading to more durable and informed decision-making with respect to the natural environment. Generally, it is a good thing. However, participatory practices need to have appropriate safeguards to ensure that decisions around environmental matters (notably when it comes to setting environmental limits and prioritising some outcomes over others) are not inappropriately politicised. At root, we consider that environmental limits are about biophysical necessity, not local democratic preference. Broad public participation does not by itself provide “answers” or checks and balances that defend the environment, and in some situations it can even create an inequality of arms that can undermine legal imperatives to protect nature. We have discussed such issues extensively in our forthcoming report on environmental advocacy in the future resource management system, which will be available on EDS’s website in early March.
13. Of course, many such process safeguards around public participation (e.g., who can submit and appeal, and how much weight can be given to different perspectives) will need to be in the NBEB, rather than in local government legislation. However, it is also important to consider how local democratic pressures have created excessive politicisation of environmental issues under the RMA. This is less a concern about public participation in council processes than it is about the democratic incentives facing councils themselves. There can be significant tensions between the interests of particular sections of a community represented by councillors and the interests of the environment that councils are legally charged with protecting under resource management legislation. We see a risk that a similar dynamic may continue under the NBEB unless there are careful changes to some underlying institutional arrangements and incentives. The environment cannot be about unfettered local democracy.

Relationship between Māori and local government

14. The Draft report recognises the potential impacts that the proposed resource management reform will bring to Māori participation mechanisms and existing co-governance arrangements, referring to the need to consider how to “raise all boats” by making sure that all groups are included at the right times and places. It will be important to give effect to the principles of te Tiriti o Waitangi in local government reform, as it is in resource management reform.

15. We also note the Draft Report's reluctance to prescribe mechanisms for co-governance, leaving the way open to find solutions based on local conditions and existing arrangements. While each situation needs to be approached differently and in context, there equally needs to be consistency and clarity about the role of Māori across local government and resource management reforms. We note that resource management reforms seem unlikely to resolve such issues directly (e.g., with respect to the composition of regional planning committees) even though the legal direction under the new laws is to give effect to the principles of Te Tiriti.

Allocation of roles and functions

16. The Draft Report notes that the allocation of roles and functions across public authorities is not a binary decision between central and local. Rather, it is question of how design, accountability, influence and delivery could lie across many actors in a more nuanced way. This strikes us as a sensible approach. In our resource management reform work, we looked at different ways in which decision-making functions could not only be split, but also how they could be shared or layered via the internal design of institutions or the interactions between different institutions.
17. Section 4.5 of the Draft Report offers a framework to guide the allocation of roles and functions in the future. EDS considers that a more thorough analysis should occur when it comes to the allocation of environmental functions, based on the principles that are coming into being under the NBEB. We note that sometimes communities of interest in a healthy environment are national rather than local or require strong legal independence rather than political accountability. In some instances, economies of scale and efficient management (and integrated reporting) might mean that greater centralisation or cross-regionalisation of environmental functions is desirable. Subsidiarity should not be assumed to mean localism or devolution.

A sustainable funding and financing system

18. The Draft Report recognises significant pressures on the funding of local government. Accordingly, it recommends that current regulatory impact assessment processes at the national level should specifically include the financial impact on councils, and that "provision be made for funding national public-good benefits that accrue from those regulations". National direction can, and increasingly are, imposing significant obligations on councils that do not necessarily have adequate funding, capacity or capability resulting in the need to make hard choices between competing priorities.
19. It will be important to address this issue (which is often referred to as an "unfunded mandate" imposed by central on local government), particularly with respect to environmental functions. By this, we mean that any responsibilities that local government has with respect to environmental management need to be matched by funding and financing mechanisms that enable (and, indeed, *incentivise*) councils to discharge their functions effectively. While this might be partially addressed by creating economies of scale (e.g., by amalgamating/unitising councils or sharing resources), a more transparent and durable mechanism is probably needed. This does not necessarily mean the direct transfer of funds from central to local, and requires a broad look at how existing systems of council funding and financing are hampering efforts to monitor, regulate and enforce compliance with *environmental* controls (e.g., reliance on community appetite to pay rates for planning/regulatory functions). This is particularly important given that the new resource management system is predicted to see an increase in costs on public authorities at the planning stage (even though it is expected to have lower costs overall, due to lower reliance on consenting decisions).

20. Existing funding pressures and the need for scale also begs the question as to whether some “implementation” functions should instead be shifted from local to central government (and what that would mean for the design of agencies like the Environmental Protection Authority or the Ministry for the Environment). One example of this would be the implementation of environmental limits.

Structure of local government

21. There is a risk that the existing structure of local government will not support the substantial changes of the forthcoming resource management reform, and we are continuing to give thought in our own work to what that might mean. How councils and their boundaries are configured (how many we have, whether we have two or more tiers, where their borders are drawn) cannot be considered in isolation of broader aspect of institutional design.
22. In particular, it is essential that any review contemplates the potential role of other agencies like the Department of Conservation, the Ministry for the Environment, the Ministry for Primary Industries, including the role of a national level arms-length entity like the Environmental Protection Authority. We note that the latter is set to have more functions under the NBEA, and its further evolution requires conversation.
23. We also note that the role of local government under the NBEB and SPB (assuming they are enacted in roughly present form) is set to change subtly but significantly. Instead of each council being the “custodian” of their own plan(s), plans are to be developed and reviewed at a regional level by regional planning committees. These will be composed of representatives of all councils in a region, alongside Māori. This means that councils will be required to work together in both determining membership of a committee, and in making decisions on plans.
24. Unlike under the RMA, one council will therefore have some influence over the contents of a plan that applies in a different council’s jurisdiction, raising complexities when it comes to governance and accountability. It would certainly be simpler if councils were to be “regionalised/unitised” so that a single council (alongside Māori) would be responsible for a single plan. However, this will require close consideration and we note it may have environmental risks (for example, losing the potential of separate regional councils as a check and balance on territorial authorities) as well as benefits (economies of scale).

The importance of looking at the bigger picture

25. Finally, we note that a number of issues with current local government settings require further thought through a specifically environmental lens, which we will be grappling with in our policy work over the coming months, including:
 - a. The extent which localism, centralism and different variants of subsidiarity are beneficial or harmful with respect to environmental outcomes.
 - b. The incentives that local democracy can have for environmental outcomes, and how to resolve potential conflicts with mandates to represent communities’ interests.
 - c. The incentives that existing funding and financing mechanisms can have for the environmental performance of councils, including cost-recovery, polluter-pays mechanisms,

rates (including targeted rates) and debt, as well as alternative mechanisms that may provide positive environmental incentives.

- d. The impacts of scale on the environmental capability/capacity of councils, and potential downsides of scale (e.g., community disconnection/disempowerment).
- e. The ability for political actors to determine which aspects of the environment get more attention than others (e.g., land, coastal environments, freshwater), whether in terms of regulation or funding.
- f. The way geographical boundaries have been set, and whether these could be better aligned with the scale at which various environmental issues need to be tackled (e.g., the marine environment).
- g. Which aspects of environmental management require democratic process, and which require greater independence.
- h. The extent to which councils should be the primary delivery agencies for environmental regulation where they have other potential conflicting democratic and legal mandates, including for the delivery of infrastructure and local/regional economic wellbeing.

Conclusion

26. Overall, we consider that it is essential to review the future of local government in Aotearoa New Zealand, and we thank the Review Panel for its interesting and insightful analysis. However, we think that local government reform and resource management reform need to be tackled hand in glove. As long as councils retain significant jurisdiction under resource management legislation, local government reform is not just a constitutional question but also a much more targeted one: how do we configure councils so that they are best placed to support the objectives of resource management reform?