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## SUBMITTER DETAILS

**FULL NAME:** Environmental Defence Society Incorporated

**ADDRESS FOR SERVICE:** PO Box 91736, Victoria Street West, Auckland 1142

**CONTACT:** Greg Severinsen, Shay Schlaepfer

**EMAIL:** [greg@eds.org.nz](mailto:greg@eds.org.nz) and [shay@eds.org.nz](mailto:shay@eds.org.nz)

## SUBMISSION ON *SIMPLIFYING LOCAL GOVERNMENT: A DRAFT PROPOSAL*

### Introduction

1. This is the Environmental Defence Society's (EDS) feedback on the "Simplifying Local Government: A draft proposal" discussion document (Discussion Document). It is structured according to the questions outlined in that document.
2. By way of context, the Government has outlined a two-stage proposal for the most extensive structural reform of New Zealand's system of local government in a generation. In particular, it proposes to fundamentally change the regional layer of governance by replacing regional councils with "combined territories boards" (CTBs) comprised of territorial authority mayors within each region. Each CTB would be required to come up with a bespoke reorganisation plan to guide how local government will look in its region. It has been made reasonably clear by the Government that such a plan would not be able to contemplate the continued existence of elected regional councils.

### Part A: Background

Do you agree there is a need to simplify local government?

What do you think of the proposed approach overall?

3. EDS agrees that local government reform is needed. We have too many councils for a small country. Many territorial authorities are small and their financial viability is questionable. There is a clear case for amalgamation, shared services and unitisation.
4. Local government reform is, however, about much more than simplification and efficiency. Councils are also more than just service providers or democratic representatives of communities. Regional councils, in particular, are tasked with implementing and ensuring compliance with important environmental laws. They perform expert roles that require objectivity and a degree of independence from

political pressures. It is crucial that the form of local governance structures follows the functions they are expected to perform.

5. This view is reflected in the more detailed comments we provide in this submission. However, we note that the Discussion Document refers to:

a Government review of regional council roles and functions [which] will provide clarity on which responsibilities remain local and which may be either centralised or discontinued. This review will be completed before CTBs are established and CTBs will need to take into account the outcomes from this review when developing their plans.

6. This rapid review of the functions of local government (and of all actors in the system) is completely open-ended, and is of equal, if not greater, significance than the structure of local government itself. It goes to the heart of why we have government, what things should be decided locally or centrally, and what democracy means. It is remarkable that such a review is being referred to largely as an afterthought and is not itself subject to a discussion document and public consultation.
7. It is also surprising that one element of the form of local government (the removal of the directly elected regional governance layer) is being (or has been) determined before this closed-door rapid review is undertaken. There are some functions, like the setting of environmental limits, that require a separate, focused and expert layer of accountability that is not well provided for by a CTB model comprised of district mayors.
8. EDS has deep concerns about the practicality of the proposals in the Discussion Document. We are also concerned about their potential to weaken both environmental outcomes and local democracy.
9. It is particularly important for local government reform and resource management reform to be aligned. Councils will be vital to the implementation of the resource management system. In fact, the Natural Environment Bill and Planning Bill, currently before the Environment Select Committee, are heavily reliant on a stable, capable and well-functioning regional layer of environmental governance, especially when it comes to setting environmental limits and creating spatial plans. We recommend that the legislative process for those Bills be paused while a detailed and compatible proposal for local government reform is developed. Such legislation should be progressed contemporaneously to ensure that the reforms support each other.
10. It is also important for all environmental and resource management functions and responsibilities to be considered as a whole. This institutional system relies on a complex array of checks and balances, which includes not only separate layers of regional and local governance but also the Ministry/Secretary for the Environment, the Environment Court and the Environmental Protection Authority (EPA). In particular, the potential for the EPA to perform substantive functions has not been explored as part of either resource management or local government reforms, despite being a logical place for functions to be performed that require a national lens and political independence.

Weakening the regional layer of environmental governance through a CTB model requires careful consideration of how the EPA might strengthen environmental considerations in the resource management system.

## **Part B: Simplifying regional governance**

Do you agree with replacing regional councillors with a CTB?

What do you like or dislike about the proposal to replace regional councillors with a CTB?

11. It is positive that regional councils are not proposed to be disbanded altogether. Changes are to be limited to the governance layer of those councils (removal of the councillors themselves). It is vital that the machinery of regional councils (including chief executives and staff) remains intact, since this is where a significant amount of capacity and capability for environmental and resource management resides. It is also where functions requiring a degree of independence from the governance layer, especially an elected governance layer, are located (eg compliance monitoring and enforcement).
12. Upending the machinery of regional councils would be fatally disruptive to implementation of the resource management system as well as the many other regional level functions they have (eg flood control/catchment management, biosecurity, harbour management).
13. However, the proposal to replace directly elected regional councillors with a CTB is deeply flawed for both practical and conceptual reasons. These include the following reasons, which apply to situations where a CTB is an interim measure (and charged with creating a more permanent reorganisation plan) and where a CTB is the permanent solution (the outcome of that reorganisation plan):
  - a. It would dilute democratic accountability for achieving environmental outcomes.

At present, people in most regions can vote for regional councillors directly.<sup>1</sup> Such elections relate to a relatively limited number of functions, most (although not all)<sup>2</sup> of which are about core environmental safeguards (notably freshwater quality, indigenous biodiversity, air and soil protections). If councillors fail to meet the environmental expectations of constituents, this is (in theory) very obvious and they will face electoral consequences.

Mayors of territorial authorities (and other district/city councillors) are elected for different, and much broader, reasons. Often these things are prominent issues that affect communities directly on a day-to-day basis, such as water and transport infrastructure, the renewal of civic spaces, events, various bylaws, or housing provision.

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<sup>1</sup> The exception being unitary authorities.

<sup>2</sup> Regional councils have a power of general competence under the Local Government Act 2002, which means their functions can go beyond those required by particular statutes and may overlap with those of territorial authorities.

The Discussion Document asks submitters: “while you might know your mayor, could you name the chairperson of your regional council?” The implication is that many people could not do so, which we understand is true. But this is precisely why mayors should *not* be tasked with regional functions. It would result in issues that dominate the public consciousness and civic engagement being given most political oxygen at the expense of the environmental issues. The latter are just as important, but may fly under the radar until it is too late to avert an environmental catastrophe. There are many other agencies around the country that are of huge importance, yet their governance is not widely known to the public.

- b. It weakens the separation of powers and therefore oversight in the resource management system.

Having a separately elected regional governance layer provides a check and balance on territorial authority activities. Many of those activities are operational rather than regulatory and can conflict with the environmental protection mandate of regional councils. The Discussion Document notes that:

Councils don’t always work together well – there are examples of them contesting each other’s rules and decisions in court.

The implication is that this is a bad thing. It is not. Although regional and district councils do for the most part tend to work collaboratively, the relationship is partly a regulatory one. This is by design, not accident. For example, regional councils are sometimes forced to contest district plan provisions if they fail to give effect to a regional policy statement. That can trigger the important supervisory role of the Environment Court. Regional councils are also responsible for enforcing compliance where there are wastewater failures.

None of this is to say that the current regional layer of governance is perfect. In fact, it has deep flaws in need of urgent attention. Voter turnout is far too low. There has been a history of capture by vested interests at the expense of environmental mandates, which has contributed to poor freshwater outcomes in places like Canterbury and Manawatu-Whanganui. Regional enforcement of district breaches of planning rules has not been universally strong. Oversight mechanisms have been weak.

However, a CTB model would make this worse, since it may be a weaker regulator of the councils that appoint its members.

- c. It creates unnecessary and irreconcilable tension in the system.

The primary concern of elected mayors is to represent the interests of the district that elected them (and may elect them in the future). This will create considerable tensions when they are expected to put the interests of the whole region first. It is naïve to think that a provision in legislation requiring CTB members to act for “the benefit of all or a significant part” of its region will negate the considerable political

pressures to act on behalf of the district to which they are electorally accountable. A similar “united council” model in parts of New Zealand from the mid-1970s suffered from such issues.

A mayor also does not necessarily represent the balance of political perspectives in any given territorial authority. A decision taken by a CTB, even if a mayor deems it to be for the benefit of their district, may still face opposition when it comes time to implementing it in district decision-making (eg land use plans under the Planning Bill). A CTB model is therefore not a panacea for the current fragmented decision-making between regional and district levels of governance. A mayor is not an ‘executive’ who commands a majority in the council ‘legislature’.

14. A CTB model would also create an enormous amount of unnecessary complexity.

- a. Regions do not share exact boundaries with their constituent districts (because some districts span more than one region). This makes it difficult to determine the extent to which small populations in a district that lie outside a regional boundary should have a voice in a CTB. Existing boundaries have simply not been designed to work with a CTB-type model.

For this particular issue, it would help to redraw the geographical boundaries of territorial authorities in fairly minor ways (to align those boundaries with regional, catchment-based boundaries). It is odd that this is said to be beyond the scope of the current reforms.<sup>3</sup>

- b. In a CTB model there is the problem of different districts having different population sizes, and therefore difficulties in deciding who gets what voting rights at the regional level. As recognised by the Discussion Document:

Determining how many votes a mayor gets is challenging. There are two main options, but both have issues...

On the one hand, inflating the voting power of mayors representing smaller, rural districts undermines regional democracy by effectively removing the principle of ‘one person one vote’. On the other hand, giving mayors voting power strictly proportionate to the populations in their districts confers considerable power on those who do not live there to make decisions that affect them.

- c. This becomes even more complicated (and inappropriate) in the resource management context. The Government is proposing that, when certain resource management decisions are made, the CTB membership will be slightly different and a “dual condition voting procedure” will apply.

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<sup>3</sup> “In the context of local government reform and resource management reform, those are decisions best left to communities to determine in the future.”

A resolution would only pass if (1) CTB members representing more than 50 percent of the population support the resolution, and (2) more than 50 percent of CTB members with a voting mandate for decisions on spatial plan chapters and/or natural environment plan chapters, support the resolution.

This approach is much more likely to lead to gridlock, because when it comes to contested issues like freshwater quality in rural areas it would effectively provide a power of veto for both urban mayors (representing over 50 percent of overall population) and rural mayors (representing more than 50 percent of mayors able to vote). The machinery of decision-making could entirely break down. The Natural Environment Bill contemplates the continued existence of regional councils, requiring a simple majority vote. It does not describe what would happen if a regional governance body could not reach a simple majority decision on a plan.<sup>4</sup>

15. A considerable amount of the Discussion Document is devoted to discussing these intractable problems. Rather than having to choose between two flawed solutions, our view is that this highlights the inadequacy of a CTB model in the first place. A more effective way forward would be for unitisation of councils at a regional level, with the addition of various checks and balances (see later).

#### What level of Crown participation in regional decision-making do you prefer?

16. We support a stronger, more meaningful connection between central and regional decision-making. Irrespective of the specific form that regional governance takes in a future system, this should involve a Crown observer/liaison sitting on a regional governance body.
17. This observer should not have voting rights, including in the context of regional spatial plans and natural environment plans prepared under the Planning Bill and Natural Environment Bill. There are ample opportunities for the Minister and other central government entities to intervene in or constrain those instruments in more appropriate and predictable ways (including an audit of plans prior to notification by the Secretary for the Environment, and the creation of national policy direction and national standards). The purpose of a non-voting observer sitting on a governance body would be to strengthen the relationship between levels of government, foster more in-depth central government understanding of regional conditions, and to relay concerns back to central government.
18. A Crown observer should be appointed by an independent authority such as the EPA or Public Service Commissioner, not directly by the Minister.
19. For completeness, we do not support replacing elected regional councillors with Crown commissioners or providing commissioners with a veto right over council decisions.

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<sup>4</sup> The Planning Bill does contemplate this situation for spatial plans, which have committees comprised of all local authorities in a region. In such a case, where local authorities cannot reach agreement, there are powers for the Minister to resolve conflicts.

Do you agree that mayors on the CTB should have a proportional vote adjusted for effective representation?

What do you like or dislike about the voting proposal for the CTB?

20. These questions have largely been addressed above. The CTB model gives rise to excessive and avoidable complexity, including issues around proportional voting. However, one additional point should be made about the reasoning for the proposal.
21. Part of the Government's logic for giving more voting power on a CTB to the mayors of largely rural districts is that:

these decisions will often affect rural land and rural communities, the protection and allocation of water resources, and flood protection across urban and rural land.

22. This appears to be based on a flawed assumption that urban populations have less of a stake in rules that protect a region's waterways from pollution (despite pollution in rural catchments often flowing into urban districts nearer the coast). While regulation may affect how rural farmers use their land, pollution from a lack of effective regulation affects urbanites. The biophysical interconnectivity of catchments is part of the reason that regional boundaries – and therefore all of a regional population – are aligned with and encompass catchments rather than just "urban" or "rural" communities of interest.

What do you think about the ways that communities crossing regional boundaries could be represented?

23. As described above, the proposals addressing this question are unnecessary complex because they are not dealing with the root cause of fragmentation. A more fundamental rethink of territorial boundaries, including unitisation, is needed.

### **Part C: Improving local government**

Do you support the proposal to require CTBs to develop regional reorganisation plans?

What do you think about the criteria proposed for assessing regional reorganisation plans?

24. We do not support the proposal for CTBs, even as an interim measure. Regional councils should remain in place until more permanent arrangements for local government structural reform are put in place.
25. As outlined further below, our preference would be for unitary authorities to be established across the country at a regional level, with appropriate checks and balances to ensure environmental protection and local democracy. A patchwork of different arrangements for local government across the country is unlikely to achieve the consistency desired by the Government.
26. However, we do not oppose the creation of regional reorganisation plans to inform the conversation, or to allow regions to pursue flexible arrangements within a unitary

framework.<sup>5</sup> Communities need to be able to have a say about the detailed arrangements of their own local governance. A CTB would be an appropriate mechanism established as a vehicle for creating a reorganisation plan, although it should not take over regional council governance functions and it should include a regional council chair in its membership.

27. The criteria outlined in the Discussion Document to guide reorganisation plans are deeply deficient. They do not refer to environmental considerations at all, despite environmental and resource management being core functions of local government, especially at a regional level. The suitability of an institutional framework for setting and defending environmental limits under the Natural Environment Bill needs to be front and centre of any reorganisation proposal.

### **Other concerns**

28. We have several more general concerns with the Discussion Document and its underpinning logic.

29. First, one reason put forward for needing a CTB model is that:

Some projects will require developers to obtain consent from two or more councils for the same project which can be complicated and confusing.

30. This fails to recognise that:

- a. Different RMA consents for the most part deal with completely different things (reflected in regional and district functions);
- b. The CTB model is not actually a solution to this complaint (given that a separate regional level of governance, and a separate regional level of consenting, would still remain); and
- c. The Government's proposed resource management system is actually *increasing* fragmentation even further by requiring separate consents under entirely different statutes with different purposes (goals).<sup>6</sup> In this context, complaints about needing multiple consents ring hollow.

31. Secondly, one justification for change is that “resource management reform will bring more consistency across regional councils’ functions” and that “more activities will be permitted by default, reducing the work of councils”. The implication is that the regional level, as a separate layer of governance, is becoming less important and could be treated

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<sup>5</sup> For example, how a local board structure might work, the most efficient mechanisms for service delivery, or what powers and functions should lie where.

<sup>6</sup> It is actually more confusing than even this, because the regional level has jurisdiction to require consents not just under the Natural Environment Bill, but also for some things (eg heritage in the coastal marine area) under the Planning Bill.

almost as an afterthought by the mayors of territorial authorities. However, that is not correct.

- a. It is by no means settled that the Planning Bill and Natural Environment Bill will result in a regional entity simply applying nationally standardised zones across their jurisdiction ('painting by numbers'). Many may, quite rightly, choose to pursue bespoke solutions despite hurdles under the Bills as currently drafted.
- b. Nor do the Bills require permitted activity status; they simply provide principles for when different activity statuses are appropriate. There is also a new framework for registering and monitoring permitted activities, which will require considerable resources.
- c. The regional layer is to be responsible for significant new spatial planning functions. This will require a more robust institutional framework.
- d. Regions are going to be solely responsible for setting environmental limits, marking an increase in activity relative to the RMA, not a lessening of importance.

32. Thirdly, regional councils are repeatedly described as service providers. This misunderstands the importance of their role as statutory regulators (including for nationally important outcomes), not just the providers of services that a community may want.

33. Fourthly, the whole premise of the proposal appears to be that the regional layer of governance is a threat to efficiency. In our view, a much more pressing problem is the sheer number of territorial authorities the country currently has, and the fact that they are of hugely varying sizes and capacities. If efficiency is the desired outcome, this would benefit far more from a territorial authority amalgamation process.

34. It is also not clear how replacing one level of regional governance with an equal number of mayors, who will be more prone to patch protection, will actually improve efficiency or reduce costs. If anything, it will lead to more argument, complexity and uncertainty. Other than a vague hope that reorganisation plans will create something better than what we have now, the Government's proposal is not connected to the problem definition articulated at the start of the Discussion Document.

35. We are left with the disconcerting sense that the true reason behind the proposal is that regional councils are perceived to be performing environmental functions in a way that is slowing development. That is a crucial function, and it should not be lost from the system.

### **A better way forward**

36. All of the issues identified in the Discussion Document would be better addressed by establishing a gradual process for creating unitary authorities around the country. These authorities should:

- a. Be directly elected;
- b. Have geographical boundaries focused on freshwater catchments, and informed by communities of interest;
- c. Encompass a range of urban and rural communities;
- d. Be of a scale that provides a suitable rating base for performance of their functions;
- e. Be designed in conjunction with tangata whenua;
- f. Contain effective mechanisms for local representation, such as local boards with the budget and power to make decisions on truly local issues (eg community playgrounds, design of town centres etc);
- g. Have dedicated and ringfenced funding streams for environmental (regional) functions, with associated reporting requirements; and
- h. Be overseen by a retooled EPA responsible for advising on/ensuring compliance with environmental limits (and other constraints) required by new resource management legislation.

37. The final point about the EPA is particularly important. Unless it (or a similar arm's length body) has a substantive role, the removal of a separate layer of directly elected regional governance for environmental issues will give rise to the same risks as a CTB model (diluted accountability for environmental protection). The EPA is a vital check and balance and needs to be part of the conversation about institutional reform. Similar national bodies in other countries (eg Scotland, England, Ireland) perform core oversight and intervention functions for environmental issues.

38. As long as this occurred, a unitary model would:

- a. Remove issues around overlapping regional and district boundaries;
- b. Avoid problems with the weighting of mayoral voting rights depending on the populations of the districts, and simplify the dispute resolution process (no need to defer to the Local Government Commission);
- c. Preserve direct democratic legitimacy;
- d. Make for a simpler decision-making framework (majority vote of councillors);
- e. Improve the coherence of spatial plans, land use plans and natural environment plans (there would be one decision maker and one plan, rather than a compilation of many land use plans);

- f. Better provide for the integrated environmental management of land use (which is being fragmented under the Planning Bill and Natural Environment Bill);
- g. Make community consultation more straightforward;
- h. Make interactions with central government simpler (including for land transport in
  - i. regional transport committees);
  - j. Increase consistency of decision-making across a region;
  - k. Improve efficiencies through economies of scale (one council, one leadership team);
  - l. Result in less variation in capacity and capability across the country (amalgamating very small territorial authorities); and
- m. Provide for nuanced mechanisms for local representation (local boards).

**ENDS**