21 September 2001

DRAFT SUBMISSION

Of the Wellington Regional Council

To the Local Government and Environment Committee

On the Local Government (Rating) Bill

1 Introduction

Thank you for the opportunity to make a submission on this Bill. We also wish to appear before the Select Committee to present our submission.

The Wellington Regional Council (WRC) supports the Bill as making a significant contribution towards the modernisation and simplification of rating powers. However, we note our disappointment that the broader issues of local government funding powers have not been addressed. We consider that this remains a significant limitation of the Bill and the future operation of local government.

The WRC considers that the Bill should be informed by the principles adopted in the review of the Local Government Act; that is, a move from legislative prescription to a principles-based statutory framework that empowers local authorities and their local communities. In this regard, the Council supports the principles of local government funding proposed in the submission by Local Government New Zealand and the Society of Local Government Managers (LGNZ/SOLGM).

Each Part of the Bill will be considered in turn. Where relevant, parts of the LGNZ/SOLGM submission will also be referred to.

2 Key Provisions

2.1 What is rateable?

The WRC **opposes** the continuation of exemptions on significant classes of land.

The WRC considers that the basic presumption of any Rating Powers Bill should be that all land is rateable. Therefore, the continuation of exemptions for significant classes of land is unacceptable; they constitute a compulsory subsidy by local communities of activities that are increasingly provided on a commercial basis (i.e. rail, ports and airports).

However, if exemptions are to be retained, the WRC believes that it should be based on an identifiable principle rather than what appears to be an historical carry over. The current exemptions do not seem to reflect any unifying principle. For example, what principle underpins the exemption of defence land (clause 22) or land used for purposes of instruction in theology or principally for religious worship (schedule 1, clauses 6 and 7)?

2.2 Non-rateable land liable for certain rates (clause 9)

If exemptions are retained, the WRC **approve**s of the continuation of liability for certain rates.

In the event that part or all of the current exemptions are retained, the Council endorses LGNZ/SOLGM's submission that the current liability for certain rates be continued by recognising liability for certain targeted rates. At the very least clause 9 should be amended as proposed by LGNZ/SOLGM, with the addition of biosecurity (rather than "pest control") and soil conservation.

However, the WRC considers drafting of clause 9 to be too prescriptive. There are a number of additional local authority activities that benefit rates-exempt land, either directly or indirectly (e.g. flood protection and soil conservation schemes). Rates exempt land also exacerbates problems that rate-funded activities attempt to remedy (e.g. Department of Conservation land harbours animal pests). All non-rateable land should therefore be liable for all targeted rates.

Recommendation

> ***That, should the Committee elect to retain rating exemptions, clause 9 be amended to read:***
>
> ***9 Land that is non-rateable under section 8 is rateable for the purpose of setting a targeted rate if the land is an exacerbator or a beneficiary whether directly or indirectly of the function for which the rate is charged.***

2.3 Who is a ratepayer?

The WRC **opposes** the shift in primary liability from the occupier to the owner.

The WRC does not understand the policy reasons for shifting primary liability to the owner. We suspect that this may be an attempt to address the "apportionment" issue. If so, it is a very blunt instrument that conflicts with the policy rationale underpinning targeted rates.

The use to which land is put and the nature of the occupation are the basis on which targeted rates are made. The focus on more targeted charges in this Bill reinforces the principle that the actual persons who benefit from a service or contribute to costs should pay; the "beneficiary" and "exacerbator" principle. Charging the costs of a function to an owner who has neither caused the expense or benefits from the function is contrary to the principles by which the funding of local authorities is based.

2.4 What kinds of rates may be set?

The WRC **strongly supports** the extension of wider rating powers to include regional councils.

The WRC has long advocated that there should be no difference between the rating powers of territorial authorities and regional councils.

2.4.1 Targeted rate (clause 16-18)

The WRC **supports** the introduction of a targeted rate (clause 16).

The provision consolidates the disparate rating powers contained in various parts of the current legislation into one rate. In addition, the provision provides greater flexibility for councils to make rates.

2.4.2 Clauses 16-18, Schedule 2

The WRC is **very concerned** that the Bill seeks to limit the factors used to calculate liability for targeted rates contained in schedule 2 and **supports** LGNZ/SOLGM's submission on targeted rates (clauses 16-18).

We agree that the criteria in Schedule 2, defining which properties will be liable for targeted rates and for defining differentials for the general rate, are too narrow. We also support LGNZ/SOLGM's redrafted clauses 16 and 17 together with the deletion of clause 18.

2.4.3 Schedule 3

The WRC is **strongly opposed** to Schedule 3.

The WRC considers that Schedule 3 appears to limit the extent to which local communities can make judgements about fairness and equity and the application of wider council objectives and policies. Instead, it seems to ensure that largely economic factors govern the choice of funding tools. This is a retrograde step, which the WRC firmly rejects.

The Council suggests that Schedule 3 be amended to ensure that liability for targeted rates are established through councils' funding policies. These funding policies are to be developed in accordance with the special consultative procedure currently provided for in Part VIIA of the Local Government Act 1974. The development of funding policies is a three-step process:

a) The theoretical allocation of costs (application of economic principles);
b) The modification of theoretical model (political judgement); and
c) The selection of funding tools.

Requiring that the factors used to determine liability for targeted rates are measurable, reasonable and separately identifiable would provide flexibility for local circumstance. This ensures a principle-based assessment by the local community of the appropriate factors that may be used to calculate liability for targeted rates. Such an approach has the advantage of providing considerable flexibility, obviating the need for legislative amendment or Orders in Council as proposed in the LGNZ/SOLGM submission.

Recommendation

> ***That the Committee amend schedule 3 by deleting clauses 1-13 and replace them with:***
>
> ***1 The factors for calculating liability for rates will be those factors contained in the local authority's funding policy, determined in accordance with Part VIIA of the Local Government Act 1974; and***
>
> ***2 The factors determined in accordance with clause (1) must be:***
> ***(a) measurable; and***
> ***(b) reasonable; and***
> ***(c) separately identifiable.***

2.4.4 Certain rates must not exceed 30% of total rates (clause 21)

The WRC **opposes** the 30% cap.

The WRC believes that the 30% cap on the uniform annual general charge and uniform targeted rates should be removed. While we agree that uniform charges are regressive taxes, we consider the imposition of an arbitrary cap to be contrary to the empowerment of local authorities that is proposed for the revised Local Government Act.

It is contradictory that councils will be able to undertake a greater range of functions, subject to community approval through the special consultative procedure, but not fund those activities in a manner determined by the local authorities. The special consultative process and local community decision making will ensure that the rating mix adopted will be appropriate to local circumstances.

Furthermore, it would be possible to avoid such a cap. The Bill explicitly empowers a local authority to differentiate the general rate and targeted rates according to the land, capital or annual value. Using these provisions it would be possible to design rates so that the cents in the dollar paid by properties decreases as the value of the property increases; effectively creating a flat charge per property. In this manner the general rate or targeted rate, while being made as differential rates, have the same effect as uniform charges.

2.4.5 Defence Land (clause 22)

The WRC **opposes** the continuation of the provision limiting rates liability for defence land.

In part, the Council's objection to the exemption of defence land is considered in paragraph 2.1 above; that all land should be rateable and that if any exemptions are to apply a restrictive, principle-based, approach should be applied. It should also be noted that the closure of many military bases makes this provision redundant.

Recommendation

> ***That the Committee deletes clause 22 of the Bill.***

2.5 How are rates set?

The Wellington Regional Council **supports** the proposed simplification of the processes for setting rates.

The WRC welcomes the replacement of the Special Order process with the Special Consultative Procedure to set differentials. The incorporation of rate making into the annual plan process enhances transparency and accountability without raising the bureaucratic hurdles that councils must jump. These are significant improvements that receive our full support.

3 Rating information database and rates records

While the WRC **supports** the greater transparency promoted by Part 3, commentary is provided on some of the practical implications of this Part. We suggest that there may be issues of duplication and increased costs to ratepayers and make recommendations to provide greater flexibility without compromising the transparency intended.

3.1 Clause 37 Inspection of rates records

The intention of this section, to ensure accessibility and transparency is supported. However we consider that clause 27(2) of the Bill, which provides that a person's name not be available "unless it is necessary to identify the rating unit" presents more problems than it solves. We do not believe that it will serve to protect the privacy of persons.

The first problem that clause 27(2) presents is that in rural areas lots are not always identified by home numbers but rather by more generalised location description (i.e. the name of a road not a specific lot). While it could be argued that the provision allows the owner to be identified as being necessary for the identification of the rating unit, it does create uncertainty.

The second issue is that this provision does nothing to improve the privacy of ratepayers/landowners. The information provided on the rating database can easily be matched with an information search of certificates of title from Land Information NZ. It therefore seems an unnecessary complication to require that names be removed, as these names can easily be identified on another public record.

Recommendation

> ***That the Select Committee amend clause 27(2) to read:***
>
> *(2)* ***The copy of the rating information database that is made available for inspection must not include any address other than the street address of the rating unit.***

4 Assessment, payment, and recovery of rates

4.1 Power not to collect small amounts (clause 53)

The Council **supports** clause 53, which allows councils to decide not to issue invoices where it is uneconomic to do so.

However, the requirement to send an invoice stating that a person is not liable to pay rates seems unnecessary and costly. An alternative would be that the Council, through its annual plan, adopts and notifies their policy on the minimum amount payable. This would be sufficient to clearly communicate to ratepayers the minimum amount for which they would be liable.

The Bill does not permit a council to charge a minimum amount. Where land area rating is used, it is not uncommon for a residential property on a small lot to be liable for a very small rate; yet the capital value of the asset being protected exceeds the value of the surrounding land.

This Council considers that it is important that where possible all beneficiaries of a function funded by a targeted charge should contribute. It is therefore suggested that councils be permitted to make a minimum charge in cases where the rate, if collected in accordance with the rating system, would be uneconomic (e.g. $10 +GST).

4.2 Application of surplus rates – new clause 131

The WRC **supports** the addition of a new clause 131, as proposed by the LGNZ/SOLGM submission, and **proposes** a further addition to this section.

4.2.1 Ability to refund revenue through a "negative" rate.

The Bill should allow local authorities to return excess funds to ratepayers through the adoption of negative rates, thereby crediting ratepayers accounts and reducing the overall rating liability.

The WRC currently funds the repayment (principal and interest) of a $25 million loan to the Wellington Stadium Trust by a dedicated differentiated targeted rate. It is expected that the Trust will begin repaying the principal in approximately 12 years. By this time the loan will be partially paid off and therefore the money received from the Trust may exceed the balance owing on the loan. The Council considers it important that it should have the power to return any excess to ratepayers in proportion to their contributions. This could not be achieved through the crediting of the general rate. The fairest and most inexpensive manner to administer refunds, reflecting the degree to which each ratepayer has contributed, is by making a differentiated "negative" rate.

4.3 Collection of rates

The Bill does allow a local authority to delegate the collection of rates to an agent (clause 52). We support this approach, as there are considerable advantages of having the ability to appoint another local authority as agent.

Currently, section 128(b) of the Rating Powers Act 1988 (RPA) permits a Regional Council (with a section 127 agreement) to collect rates by authorising the collecting authority to exercise all the powers of a regional council under the following Parts of the RPA:

- Part VII (maintenance of the rating roll, making rates),
- Part VIII (levying, payment and recovery of rates),
- Part IX (instalments), and
- Part XII (remission and postponement of rates).

The WRC considers that a similar delegation should be included in the Bill. The absence of a similar provision will cause administrative difficulties and added cost for local communities. Regional councils will also have to resolve different policies and payment dates for each of the collecting authority areas so that a combined invoice can be issued.

4.4 Rating information database

The WRC is **generally supportive** of the proposed rating information database.

The wording of section 25(1), and other sections, suggests that each local authority, whether a city, district or regional council, must maintain its own rates database. The WRC, like many regional councils, has agreements in terms of section 127 of the Rating Powers Act 1988 with its constituent territorial authorities for the collection of rates. The territorial authority issues the rates assessment/invoice on the WRC's behalf and ratepayers make their payments to that authority. All information about liability for rates and rates outstanding can be obtained from the territorial authority. It is therefore an unnecessary duplication to require a regional council to maintain a rating database.

As the maintenance of a rating database is a significant cost in the rate collection process, the mandatory requirement to maintain a database may force regional councils to collect their own rates. Increased compliance costs would inevitably be passed on to ratepayers as higher rates.

Recommendation

> ***That the Select Committee amend clause 52 of the Bill to read:***
>
> ***52(5) Subject to subsection (6) a collector may, subject to any agreement with a local authority, exercise all the powers of that local authority under Parts 3 to 6 of the Act.***
>
> ***52(6) Subsection (5) shall only apply where the collector is another local authority.***

4.5 Recovery of rates if owner in default (clause 61)

The WRC **fully supports** LGNZ/SOLGM's submission that councils should continue to be able to approach a first mortgagee to recover outstanding rates.

The Council considers that it would be simplistic to view such a power as making a mortgagee the de facto debt collector for local authorities. There are considerable benefits to all parties from the present powers allowing recovery from the mortgagee to be continued.

Currently, resolution of outstanding rates is often achieved at a "low level" and is inexpensive to all concerned. Very often the Council notifies the mortgagee of default in the payment of rates. The mortgagee has an interest in ensuring the validity of their security and will make arrangements with the mortgagor for the payment of rates. It is in the interests of all parties that prompt action is undertaken before rates and associated penalties are such that the only option remaining is to undertake a mortgagee or rating sale.

The Bill will limit the options available to councils to recover rates, leading to increased costs to ratepayers and increased use of rating sales as the only option by which to recover rates arrears. Rating sales are an extreme measure, which are expensive to undertake, time consuming and very unpopular in the community.

Recommendation

> ***That the Select Committee amend clause 61(1) to read***
>
> ***(1) If a ratepayer defaults in paying the rates under section 60 the local authority may recover all or part of any outstanding rates from any person with an interest (including an interest as first mortgagee) in the rating unit.***

5 Remission and postponement

The Council **supports** the provisions of Part 5 for local authorities to develop policies regarding the remission and postponement of rates.

Part 5 ensures more transparency for policies, which are in effect ratepayer subsidies. We would refer the Select Committee to our comments on exemptions (paragraphs 2.1) and delegation powers above (paragraph 4.3).

6 Rating of Maori freehold land

6.1 Maori freehold land

The WRC **supports** the provisions that relate to Maori freehold land.

The Bill indicates that all Maori freehold land is rateable while recognising its special characteristics (i.e. the spiritual connection to the land, multiple ownership and the fact that much land is "land-locked").

The provision allowing liability for rates to fall on the owner or occupier is a pragmatic recognition that Maori freehold land is often in multiple ownership, sometimes complicating collection.

6.2 Payment of rates on land vested in trustees (clause 92)

The Bill, having established the principle in clause 90 that all Maori freehold land is rateable, then limits the amount of rating liability for land vested in a trust. The reason for a provision giving Maori freehold land, in a particular ownership structure, special status is unclear. Consistency with other parts of the Act would suggest that the adoption of a remission policy in terms of clauses 84 and 113 adequately provide for this issue.

6.3 Application for a charging order (clause 99)

In contrast to LGNZ/SOLGM the Regional Council considers that the provisions of clause 99 give appropriate guidance to the Maori Land Court as to the manner in which applications for charging orders are determined. It is therefore unnecessary for issues of legality or fairness be removed to appellate jurisdiction.

7 Valuation adjustment estimation (clause 130)

The WRC notes its **strong support** for the LGNZ/SOLGM submission regarding clause 130 "valuation equalisation".

8 Local Legislation

The WRC notes and **supports** the consequential amendments to the Wellington Regional Council (Stadium Empowering) Act 1996, in Schedule 5. These amendments are necessary, as the features in section 5 of this Act are not listed in Schedules 2 or 3 of the Bill. However, the WRC considers that consequential amendment is required, as the continued use of the phrase “net equalised capital value” does not reflect the change in terminology used in the Bill.

If the LGNZ/SOLGM submission with regard to “valuation equalisation” is accepted, it is recommended that section 5(2)(4) be amended to read:

> *(4)* ***In determining the type of targeted rate for a particular constituent district, the Council must have regard to ~~net equalised capital value~~, net capital value determined by valuation equalisation, population or related demographic characteristics, distance from the Stadium, and any other relevant characteristics of each constituent district, or part of the constituent district, that the Council considers appropriate.***

Alternatively, if the terminology used in the body of the Bill is retained, then it is recommended that section 5(2)(4) be amended to read:

> *(4)* ***In determining the type of targeted rate for a particular constituent district, the Council must have regard to ~~net equalised capital value~~, net capital value determined by the estimate of projected valuation, population or related demographic characteristics, distance from the Stadium, and any other relevant characteristics of each constituent district, or part of the constituent district, that the Council considers appropriate.***