

Local Government
New Zealand
te pūtahi matakōkiri

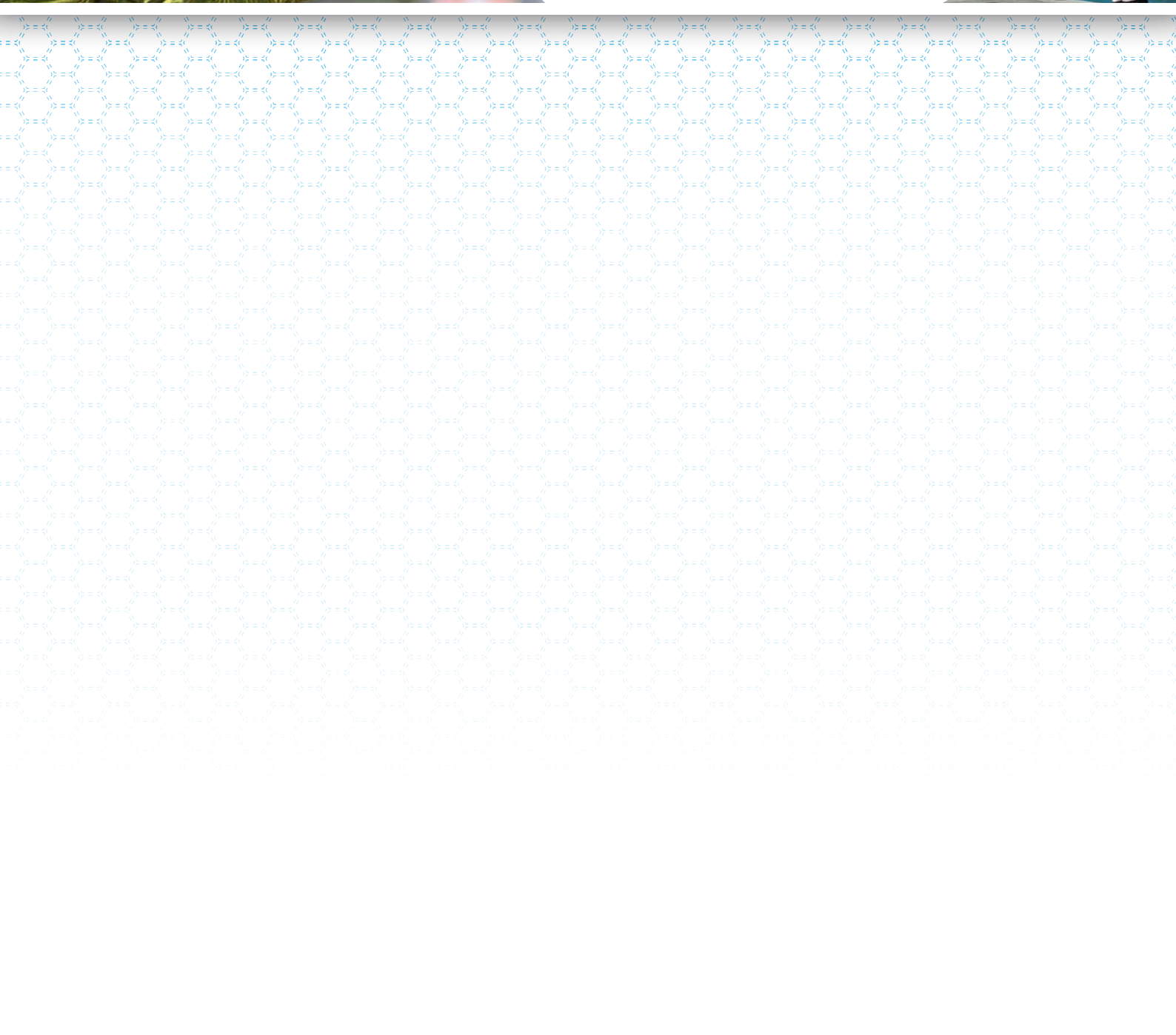


TABLE OF CONTENTS

INTRODUCTION	2
RECOMMENDATIONS	2
<i>LOCAL GOVERNMENT NEW ZEALAND</i> POLICY PRINCIPLES.....	3
COMMENTS	4
General comments	4
Clause 12 – Functions for local government	4
CONCLUSION	5

INTRODUCTION

1. *Local Government New Zealand* thanks the Local Government and Environment Committee for the opportunity to make this submission in relation to the Environmental Protection Authority (EPA) Bill.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the Environmental Protection Authority Bill
 - analysis of all feedback from councils.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, National Council
 - Fran Wilde, Regional Sector Chair and National Council member
 - Eugene Bowen, Chief Executive, *Local Government New Zealand*.
5. *Local Government New Zealand* would be pleased to meet with the Local Government and Environment Committee for further discussion on any points raised in this submission.
6. *Local Government New Zealand* requests the opportunity to review the draft legislation before it is finalised.

RECOMMENDATIONS

7. *Local Government New Zealand* makes the following recommendations:
 - amend the EPA Bill to include the criteria agreed to in the Cabinet Minute CAB Min (10) 19/9 at paragraph 37 regarding suitability for future expansion of functions. Any activities proposed to be transferred to the EPA in the future are to be assessed against the following principles:
 - is best performed at the national level under the organisational form of the EPA
 - is of a regulatory nature (including standard-setting, licensing, and enforcement), rather than of policy targeted at complex environmental problems
 - is of a technical nature, with a low level of discretion to be applied by the EPA

- is able to maintain or enhance certainty of process for resource users and applicants
- is of a similar nature to existing functions to enable efficiency gains
- will result in greater concentration of technical and expert skills, and not a duplication of skills and expertise
- is able to maintain or enhance the role of Maori in the regulation of New Zealand's environment and natural resources
- Formalise a process to be followed when additional functions are being considered for the EPA. Local government should be a key participant in this process.

LOCAL GOVERNMENT NEW ZEALAND POLICY PRINCIPLES

8. In developing a view on the provisions in this EPA Bill we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*. We would like the Local Government and Environment Committee to take these into account when reading this submission.

- **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
- **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
- **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.
- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

COMMENTS

General comments

9. *Local Government New Zealand* is generally supportive of the EPA Bill and raises no concerns about the proposal to amend the Climate Change Response Act 2002, the Hazardous Substances and New Organisms Act 1996, and the Resource Management Act 1991, and to establish a new EPA as a Crown agent under the Crown Entities Act 2004.

Clause 12 – Functions for local government

10. We have reviewed the Cabinet Paper which sought Cabinet agreement to proceed with the establishment of a fully formed EPA and which considered organisational forms for the EPA. Of particular interest is the discussion in the Cabinet Paper at paragraph 72 about: "*suitability of future activities*". The Cabinet Paper proposed that any activities proposed to be performed or undertaken by the EPA in the future should be assessed against the following principles:
- is best performed at the national level under the organisational form of the EPA
 - is of a regulatory nature (including standard-setting, licensing and enforcement) rather than policy (targeted at complex environmental problems)
 - is of a technical nature with a low level of discretion to be applied by the EPA
 - is able to maintain or enhance certainty of process for resource users and applicants
 - is of a similar nature to existing functions to enable efficiency gains
 - will result in greater concentration of technical and expert skills and not a duplication of skills and expertise
 - is able to maintain or enhance the role of Maori in the regulation of New Zealand's environment and natural resources.
11. Clause 12(1) of the EPA Bill lists "*Functions of EPA*". Additional functions are covered at 12(1)(c) which states: "*to carry out any additional function consistent with its objective under section 11 that the Minister directs in accordance with its objective under section 112 of the Crown Entities Act 2004...*"
12. 12(2) states that: "*A function must not be added under subsection (1)(c) unless that function is:*
- (a) *consistent with the EPA's objective under section 11; and*
 - (b) *of a similar nature to and compatible with other functions performed by the EPA.*"
13. Clause 11 states that: "*the objective of the EPA is to undertake its functions in a way that:*

- (a) contributes to the efficient, effective and transparent management of New Zealand's environment and natural and physical resources;*
and
- (b) enables New Zealand to meet its international obligations".*

14. The criteria proposed in the Cabinet Paper, and subsequently agreed to by Cabinet, have not been codified in the provisions of the EPA Bill. Instead, they are at a very high level and, significantly, omit the criteria that a function "*is best performed at the national level under the organisational form of the EPA.*" The proposed criterion, instead, is that a new function is "*of a similar nature to and compatible with other functions performed by the EPA.*" This does not capture the principle that a new function is best performed at a national level.
15. *Local Government New Zealand* considers that the criteria contained in the Cabinet Paper should be codified into legislation as agreed to by Cabinet. Any additional function for the EPA will be one currently undertaken by local government or by central government via an alternative agency. The criteria need to be clear and, critically, should include "*is best performed at the national level under the organisational form of the EPA.*" As proposed, the criteria are too vague and given the significance of transferring new functions to the EPA, and the potential implications for the local government sector, we consider that clear criteria and a clear process for considering the addition of functions should be included in legislation.
16. The issue of centralisation of decision making is a fundamentally important one and at the heart of any decision about appropriate functions to be undertaken by the EPA. It is part of a bigger question regarding centralisation and devolved decision making. The implications of centralising decision making and adding functions to an EPA should be carefully considered and criteria for making such decisions needs to be carefully included in legislation to achieve an appropriate balance.

CONCLUSION

17. *Local Government New Zealand* is generally supportive of the changes proposed but considers that clear criteria and a transparent process should be included in the EPA Bill regarding the addition of functions to the EPA.
18. *Local Government New Zealand* thanks the Local Government and Environment Committee for the opportunity to comment on this EPA Bill.