

WELLINGTON REGIONAL COUNCIL (STADIUM EMPOWERING) BILL

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Wellington Regional Council (Stadium Empowering) Bill and Supplementary Order Paper No. 192 (SOP) and recommends that the bill be passed with amendments.

The Standing Orders have been complied with and the rights and prerogatives of the Crown are not affected.

Conduct of the examination

The Wellington Regional Council (Stadium Empowering) Bill was referred to the committee on 1 May 1996. The bill permits the Wellington Regional Council to contribute to the funding of a multi-purpose sporting and cultural venue for the benefit of the public of the Wellington region and to permit the council to make and levy a stadium purposes rate.

On 30 May 1996 the SOP on the bill was referred to the committee for consideration. In its consideration of the bill the committee is authorised to adopt, if it thinks fit, the amendments set out on the SOP.

We spent five hours and 25 minutes considering the bill and the SOP. Advice was received from the Department of Internal Affairs and Senior Parliamentary Counsel.

This commentary sets out the details of our consideration of the Wellington Regional Council (Stadium Empowering) Bill, along with the amendments proposed in the SOP, and the major issues we addressed.

Objectives of the bill

The bill as introduced authorises the Wellington Regional Council (WRC) to exercise all the powers and functions conferred on territorial authorities by section 601 of the Local Government Act 1974 for purposes associated with the

planning, development, management, operation, maintenance or promotion of a multi-purpose sporting and cultural venue for the benefit of the Wellington region. It also authorises the WRC to make and levy a stadium purpose rate for one or more purposes connected with the planning, development, management, operation, maintenance or promotion of a multi-purpose sporting and cultural venue stadium.

Objectives of the SOP

The objectives of the amendments proposed in the SOP are to:

- Authorise the WRC to lend a sum not exceeding \$25 million to the Stadium Trust (to be established) to facilitate the planning, development and construction of a stadium to be built in Aotea Quay for the benefit of the public of the Wellington Region.
- Authorise the WRC to borrow money for the purposes of making such a loan or loans.
- Authorise the WRC to levy a stadium purposes rate to fund such a loan to the Wellington Regional Stadium Trust or to repay money borrowed by the WRC to make such a loan.
- Require the WRC, before exercising any of the powers conferred by the bill, to establish jointly with the Wellington City Council a trust to be known as the Wellington Regional Stadium Trust to undertake the planning, development, construction, ownership, operation and maintenance of the Stadium as a multi-purpose sporting and cultural venue.

Background to the bill

Government policy

The Local Government Amendment Act 1992 implemented Government policy to refocus and limit the functions of regional councils to resource management functions, catchment management and transport planning. Regional councils were explicitly excluded from the scope of Part XXXVI of the Local Government Act 1974 relating to Recreation and Community Development. It is therefore necessary for the WRC to seek empowering legislation to authorise any involvement, financial or otherwise, in the stadium development project.

Wellington stadium

The Wellington City Council (WCC) has been considering the development of a multi-purpose stadium for several years. Last year, following Government agreement to make available ex-railways land in Aotea Quay, the WCC identified that site as the preferred location and undertook to seek funding from a variety of sources, both public and private. The WCC also approached the WRC for funding.

Following an economic assessment of the proposal and a survey of ratepayers, the WRC has agreed in principle to contribute funds up to \$25 million to the proposed stadium development.

Submissions

The closing date for submissions was 31 May 1996. We received 52 submissions on the bill. After the SOP was referred to us, a copy of the SOP was sent to everyone who had sent in a submission asking if they had any further comments to make on the SOP, and extending the submission deadline to 18 June 1996. Oral evidence was heard from 19 submitters including the WRC, the promoter of the bill, and the Department of Internal Affairs. Evidence was also given by the

Wellington Stadium Development Trust, the Hutt City Council, the Kapiti Coast District Council, lobby groups and regional and city ratepayers.

Approximately, two thirds of the submissions were in favour of the bill and the amendments proposed in the SOP. Many groups generally support the stadium project and believe the passing of this legislation will be a further step towards the development of the stadium. Submitters opposing the bill and SOP were concerned with the cost to individual ratepayers, the fiscal risk of the project and that an undesirable precedent would be established which would allow investment of ratepayer funds in future development projects.

Stadium contribution

Clause 3 of the bill as introduced would confer on the WRC all the powers conferred on territorial authorities by section 601 of the Local Government Act 1974. These powers go significantly wider than funding and include the acquisition and development of land, and power for the council to assume control of any institution to which that section applies with the consent of the governing body.

The SOP proposes to omit clause 3 of the bill, and substitute a new clause 3 to limit the powers of the WRC to lend up to \$25 million to the trust for the planning, development and construction of the stadium, and to borrow money for the purpose of making that loan.

While most submissions supported the narrower powers proposed in the SOP some submitters proposed that the WRC be explicitly required to examine options other than borrowing. The Hutt City Council proposes that the WRC be required to go through a publicly disclosed analysis of the relative merits of different funding proposals. It suggests that the WRC sell down half of its shareholding in the Port Company as an alternative funding proposal.

The WRC has confirmed that it seeks authority for a loan to the trust which would allow, but not require, repayment of principal if and when the stadium income allows this. We recommend a new clause 3 to authorise the WRC to lend to the trust subject to such terms and conditions as it thinks fit. We believe the issues of alternative funding raised in submissions are largely outside the scope of the bill and are matters for the WRC to determine through the normal consultative and accountability processes that apply to all funding decisions.

Stadium purposes rate

Clause 4 in the bill as introduced would empower the WRC to make and levy a stadium purposes rate for the purposes of any stadium related activity. The clause provides that such a rate may be levied uniformly across the region, uniformly within different constituent districts (but at different levels at different districts), or as a differential rate. This clause would impose explicit requirements to consider the distribution of benefits from the stadium in determining the rate.

The SOP would make a number of significant changes to the bill which can be summarised as follows:

- The purposes for which the rate can be made are limited, in line with new clause 3, to lending money to the trust or meeting the annual costs and repayments of any loan undertaken for the purposes of lending to the trust.
- The option of making a uniform rate across the region is removed.
- Clause 4 (5) is replaced by two new subclauses the first of which will impose similar but stronger requirements to consider the direct and indirect benefits of the construction and development of the stadium in different constituent districts and to any property in determining how the rate is to be made.

- The second new subclause would require the WRC to have regard to equalised rateable values, population and demographic characteristics, distance from the stadium and other relevant characteristics of each constituent district when levying different uniform rates on different districts.

We believe the WRC must have an option to levy rates in order to contribute financially to the stadium project. The proposed rating powers conferred on the WRC are subject to the usual consultation requirements and therefore we support the objective of the amendment outlined in the SOP.

Establishment of Wellington Regional Stadium Trust

The SOP proposes to amend the legislation to provide that the governance of the stadium should be through a trust. The proposed clause 5 would require the WRC, before exercising any other powers conferred by the legislation to establish a trust to be known as the Wellington Regional Stadium Trust jointly with the Wellington City Council.

We believe the current provisions of clause 5 and the Second Schedule as proposed are overly prescriptive about the nature of the trust deed. The overall effect is confusing and we suggest that the wording of clause 5 be amended to provide a clearer description of the powers and responsibilities of the trust.

Liability of trustees

As a result of a discussion at the hearing of evidence on the liability of trustees to the trust we requested an interim report from officials as to the liabilities of trustees, and where liabilities fall if trustees resign. In a written response to the committee it was suggested that trustees are generally only liable for funding losses where there has been a demonstrable failure to act prudently and with due care, or demonstrable bad faith. The liability of the settlors (including the WRC) for losses incurred by the trust in other circumstances or where the trustees have resigned is less clear. In light of this we recommend that clause 5 be amended to include explicit authority for the trust deed to preclude any liability of the WRC and the WCC for any losses, liabilities or commitments of the trust.

Ratepayer poll

The issue of ratepayer polls was raised in submissions in two quite distinct respects. Some submissions sought a provision in the bill for a poll of ratepayers on the proposal that the WRC contribute funding towards the stadium itself. Other submissions sought the application of the loan poll provisions in the Local Authority Loans Act 1956 to any proposal that the WRC borrow money in order to fund a contribution to the stadium.

These arguments in favour of a poll of ratepayers on the funding contribution itself appear to be based on a perception that the WRC's willingness, subject to legal authorisation, to make the contribution does not or may not reflect the wishes of the majority of ratepayers in the region. Presumably it is felt that such a substantial contribution for a purpose outside the WRC's normal responsibilities should be explicitly and directly endorsed by ratepayers if it is to proceed.

Provision for a poll of ratepayers on this proposal would be inconsistent with the general decision making and accountability processes that apply to local authorities under the Local Government Act 1974. These processes provide for democratically elected councils to make decisions on behalf of, and in the interests of, their communities subject to extensive consultation requirements.

Proposed amendments

We recommend the following amendments. We have already referred to some of our more substantial amendments. Other amendments include the following:

Clause 2—Interpretation

The SOP proposes that the definition of “stadium related activity” be omitted and definitions of “Minister”, “Stadium” and “Trust” be inserted in the bill. The content of clause 2 is dependent upon the terminology used in other clauses and we recommend modifications to the amendments proposed in the SOP to make the bill’s definitions more appropriate.

New clause 2A—Purpose

The SOP proposes the inclusion of a purpose clause in the bill. The WRC sought the inclusion of a purpose clause to make clear the intentions of the bill. We recommend a new clause 2A that accurately reflects the major objectives of the bill.

The Schedules

The SOP proposes the insertion of two schedules in the bill, the first is a legal description of the railyard site for the proposed stadium and the second specifies the matters required to be included in the trust deed establishing the trust. The WRC has submitted a revised legal description of the proposed site which we recommend be substituted for the First Schedule in the SOP. We also propose a revised version of the Second Schedule which removes the duplication and prescriptive detail previously outlined in the SOP.

The Title

The bill as introduced and the SOP propose different Titles to the bill. Several submissions expressed concern that neither Title clearly expressed the principle objectives of the bill. We recommend that the Title be amended to better reflect the fundamental objectives of the bill and we propose the omission of all the words after “Region”.

Conclusion

We have decided to facilitate the passing of this bill, which will enable the WRC to levy a rate to fund the regional stadium. We have noted the concerns expressed in the submissions with respect to ratepayer funding. We feel that it is not the responsibility of the committee to direct the WRC in matters that fall within its own discretion. The WRC is subject to extensive consultation requirements which are laid down in legislation. We expect that the WRC will fulfil all the conditions associated with ratepayer funding, especially those relating to public consultation procedures.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Pauline Gardiner

**WELLINGTON REGIONAL COUNCIL (STADIUM
EMPOWERING)**

[LOCAL]

ANALYSIS

Title	3. Stadium contribution
1. Short Title	4. Stadium purposes rate
2. Interpretation	5. Establishment of Trust Schedules
2A. Purposes of Act	

A BILL INTITLED

An Act to permit the Wellington Regional Council to contribute to the funding of a multi-purpose sporting and cultural venue for the benefit of the public of the Wellington Region (and to permit the Council to make and levy a stadium purposes rate)

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Wellington Regional Council (Stadium Empowering) Act 1996.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Constituent district” means any district of a territorial authority which is situated within the Region and, where only part of such a district is situated within the Region, means that part of that district:

“Constituent territorial authority” means the territorial authority for any constituent district:

“Council” means the Wellington Regional Council constituted by clause 9 of the Local Government (Wellington Region) Reorganisation Order 1989:

New (Unanimous)

“Minister” means the Minister of Local Government:

“Region” means the Wellington Region constituted by clause 4 of the Local Government (Wellington Region) Reorganisation Order 1989:

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New (Unanimous)

“Stadium” means a multi-purpose sporting and cultural venue for the benefit of the public of the Region built or proposed to be built on the land described in the **First Schedule** to this Act:

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Struck Out (Unanimous)

“Stadium related activity” includes any activity, undertaking or expenditure for the purpose of or ancillary to the planning, development, management, operation, maintenance, or promotion of a multi-purpose sporting and cultural venue for the benefit of the public of the Region:

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“Territorial authority” has the same meaning as in section 2 of the Local Government Act 1974:

New (Unanimous)

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“Trust” means the Wellington Regional Stadium Trust referred to in **section 5** of this Act.

2A. Purposes of Act—The purposes of this Act are to—

- (a) Enable the Council to lend a sum not exceeding \$25 million to the Trust to facilitate the planning, development, and construction of the Stadium; and
- (b) Require the Council to participate in the establishment of, and act as one of the settlers of, the Trust before exercising any other powers conferred by this Act.

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Struck Out (Unanimous)

5 **3. Stadium related activity**—(1) Notwithstanding section 597A of the Local Government Act 1974, the Council shall, for the purposes of any stadium related activity, have all the powers and functions conferred on a territorial authority by section 601 of the Local Government Act 1974.

10 (2) Except as otherwise provided in this Act, the provisions of the Local Government Act 1974 and any other enactment shall apply to the Council as if the powers and functions conferred by **subsection (1)** of this section had been conferred on the Council by the Local Government Act 1974.

New (Unanimous)

15 **3. Stadium contribution**—The Council may—
(a) Contribute to meeting the costs of the planning, development, and construction of the Stadium by lending to the Trust, on such terms and conditions as the Council in its absolute discretion thinks fit, a sum or sums not exceeding \$25 million in total;
20 (b) For the purpose of making any loan under **paragraph (a)** of this section—
(i) Borrow money by way of special loan under the Local Authorities Loans Act 1956; or
25 (ii) Raise a loan under Part VII B of the Local Government Act 1974—
as the case may be.

4. Stadium purposes rate—

Struck Out (Unanimous)

30 (1) The Council may from time to time, for the purposes of any one or more stadium related activities, by resolution, make and levy a stadium purposes rate in accordance with this section.

New (Unanimous)

(1) The Council may from time to time, by resolution, make and levy a stadium purposes rate in accordance with this section for any or all of the purposes of—

- (a) Making any loan under **section 3 (a)** of this Act; or
- (b) Meeting the annual costs of any borrowing under **section 3 (b)** of this Act; or
- (c) Repaying part or all of any sum borrowed under **section 3 (b)** of this Act.

(2) Except as otherwise provided in this section, the provisions of the Rating Powers Act 1988, the Local Government Act 1974, and any other enactment shall apply to any rate made and levied under **subsection (1)** of this section as if it were a works and services rate made and levied under section 34 of the Rating Powers Act 1988.

(3) A rate under **subsection (1)** of this section may be made and levied—

Struck Out (Unanimous)

(a) As a uniform rate in the dollar on every rateable property within the region; or

(b) Subject to **subsection (4)** of this section, as a uniform rate in the dollar on every rateable property within each constituent district or part thereof, so that the rate made and levied in any one or more of the constituent districts or parts thereof may vary from that in another or others; or

(c) On a differential basis in accordance with Part V of the Rating Powers Act 1988.

(4) No rate shall be levied in accordance with **subsection (3) (b)** of this section except pursuant to a special order of the Council, and sections 84 to 87 of the Rating Powers Act 1988 shall, with the necessary modifications, apply to any such special order and to any alteration or revocation of the basis on which any such rate is made and levied, as if that rate had been made and levied on a differential basis.

Struck Out (Unanimous)

- 5 (5) The Council shall, both in determining whether any rate is to be made in accordance with **paragraph (a) or paragraph (b) or paragraph (c) of subsection (3)** of this section and in determining the relationship between any rate made under that **paragraph (b)** and any rate made under that **paragraph (c)**,—
- (a) Satisfy itself that the rate, and, where applicable, any such relationship, will be fair and reasonable; and
- 10 (b) Shall take account of the benefits that, by reason of the stadium related activity or activities for the purposes of which the rate is to be made, are likely to accrue, directly or indirectly, to or in—
- (i) Any property; or
- 15 (ii) Any constituent district, or any part of a constituent district, in which any property is situated.

New (Unanimous)

- (5) In determining—
- (a) Whether any rate under this section is to be made in accordance with **subsection (3) (b) or (c)** of this section; and
- 20 (b) Where any rate is to be made in accordance with **subsection (3) (b)** of this section, the rate to be made and levied in any constituent district or part thereof; and
- (c) Where any rate is to be made in accordance with **subsection (3) (c)** of this section, the rate to be made and levied on
- 25 any type or group of property—
the Council shall—
- (d) Take account of the direct and indirect benefits that are, in the opinion of the Council, likely to accrue—
- (i) In any constituent district or part thereof in which the rate is to be made and levied; and
- 30 (ii) To any property on which the rate is to be made and levied;—
by reason of the construction and development of the Stadium; and
- 35 (e) Satisfy itself that the rate or rates are fair and reasonable as between each constituent district or part thereof, or each respective specified type or group of property, as the case may be.

New (Unanimous)

(5A) The Council shall, in determining any rate made and levied in any constituent district, or part thereof, in accordance with **subsection (3) (b)** of this section, have regard to the net equalised capital value, population or related demographic characteristics, distance from the Stadium, and such other relevant characteristics of each constituent district, or part thereof, as the Council considers appropriate. 5

(6) Notwithstanding anything to the contrary in Part VI of the Rating Powers Act 1988 or in section 127 or section 129 of that Act, every rate made under **subsection (1)** of this section shall be levied in accordance with the basis and system of rating on which that rate was made. 10

New (Unanimous)

5. Establishment of Trust—(1) The Council may, and shall before exercising any of the powers conferred by **section 3 or section 4** of this Act, jointly with the Wellington City Council, establish a trust to be known as the Wellington Regional Stadium Trust. 15

(2) The Wellington Regional Stadium Trust— 20

(a) Shall be responsible for the planning, development, construction, ownership, operation, and maintenance of the Stadium as a multi-purpose sporting and cultural venue; and

(b) May undertake such additional functions as are specified in the trust deed establishing the Trust, being functions ancillary to the responsibilities in **paragraph (a)** of this subsection for the benefit of the public of the Region. 25

(3) The trust deed establishing the Trust— 30

(a) Shall include the matters set out in the **Second Schedule** to this Act; and

(b) Shall comply with and be registered under the provisions of the Charitable Trusts Act 1957; and

(c) May provide that the Council and the Wellington City Council shall not in any circumstances be liable for the debts, liabilities, or commitments of the Trust. 35

New (Unanimous)

5 (4) The trust deed shall not be executed by the Council without the written approval of the Minister who shall, before giving such approval, be satisfied that the trust deed is consistent with the provisions of this section and such of the provisions of sections 225F to 225J of the Local Government Act 1974 as are appropriate and relevant to the purposes of the Trust.

10 (5) The Council is hereby empowered to exercise such rights, powers, and privileges, and to perform such duties and responsibilities, as are conferred on the Council under the provisions of the trust deed establishing the Trust.

New (Unanimous)

SCHEDULES

Section 2

FIRST SCHEDULE

WELLINGTON LAND DISTRICT—WELLINGTON CITY

1.73 hectares, approximately, being part Lot 30, DP 80544. Part CT 47A/798, marked A on SO Plan 37605.

4.71 hectares, approximately, being part Lot 31, DP 80544 and part Lot 1, DP 11017. All CT 47A/799 and part CT 47C/565, marked B on SO Plan 37605.

560 square metres, approximately, being part Lot 30, DP 80544, part Lot 1, DP 10550 and part Lot 1, DP 17895. Balance CT 47A/798 and part CT 44A/19, marked C on SO Plan 37605.

1100 square metres, approximately, being part Lot 1, DP 11017. Balance CT 47C/565, marked D on SO Plan 37605.

1000 square metres, approximately, being part Lot 37, DP 79376, part Lot 1, DP 11017, and part Section 1, SO 20150. Part CT 45D/803, part CT 47C/565, and part Proc. 2764, marked E on SO Plan 37605.

666 square metres, more or less, below reduced level 8 metres and 210 square metres more or less above reduced level 8 metres, mean sea level, being Accessway. Vested DP 80544, marked F on SO Plan 37605.

New (Unanimous)

SECOND SCHEDULE

Section 5

MATTERS TO BE INCLUDED IN TRUST DEED

- (1) The trust deed shall contain provisions—
- (a) Specifying the name of the Trust (“The Wellington Regional Stadium Trust”);
 - (b) Specifying the responsibilities of the Trust in accordance with **section 5 (2) (a)** of this Act;
 - (c) Specifying any additional functions of the Trust in accordance with **section 5 (2) (b)** of this Act;
 - (d) Specifying the maximum and minimum number of trustees;
 - (e) For the holding of, and voting at, meetings of trustees and specifying the quorum necessary for the holding of meetings of trustees;
 - (f) For the remuneration of trustees;
 - (g) Specifying the manner of appointment to or removal from the office of trustee;
 - (h) For the appointment of officers, employees, managers, and agents;
 - (i) Specifying the powers of investment of the trustees;
 - (j) Specifying the powers of the trustees to enter into contracts or arrangements which they consider conducive to the carrying out of the purposes of the Trust;
 - (k) Specifying the powers of the trustees to expend the income of the Trust, which powers shall be exercisable only for the purposes of administering and maintaining the Trust and for the purposes specified in the trust;
 - (l) For the keeping of accounts;
 - (m) Specifying the manner in which the trust deed may be varied.
- (2) The trust deed establishing the Trust—
- (a) Shall include such of the provisions required by sections 225F to 225K of the Local Government Act 1974 in respect of a community trust established under section 225D of that Act as are appropriate and relevant to the purposes of the Trust; and
 - (b) May contain such other provisions as are agreed between the Council and the Wellington City Council.