

Draft Submission of the Wellington Regional Council
to the Government Administration Select Committee
on the Matter of the

**CIVIL DEFENCE EMERGENCY MANAGEMENT BILL
2000**

1. Introduction

1.1 Wellington Regional Council

The Wellington Regional Council has a keen interest in civil defence emergency management.

Emergency management is an integral part of the functions of the Council. In addition to the four staff whose work is dedicated to emergency management and hazard analysis, there are a number of other staff dealing with, for example, floodplain management, water supply protection, oil spill response, pollution control, transport planning etc who are contributing to the management of emergencies and hazards in the Region.

The Wellington Region itself is vulnerable to natural hazards, especially earthquakes and flooding. During the past few years, there have been several major flooding events in the Kapiti Coast, Hutt Valley and the Wairarapa area. Recent research on global warming indicates that the flood threat will increase.

Living in the Wellington Region means living on or near a fault line. Wellington residents are extremely conscious about the earthquake threat and are often gently (and sometimes not so gently) reminded of their vulnerability by easily felt ground shaking activity.

The Regional Council has had a programme investigating the threat from natural hazards for many years. For example, when examining scenarios for two kinds of earthquake, it found that a large earthquake centred right on the Wellington Fault will extensively or completely damage a total of 16,000 buildings with a repair bill of \$4 billion. There will also be significant costs arising from damage to lifelines and other infrastructure. If the event occurs during the day, 4000 injuries and 500 deaths are expected.

Similarly, the Council has concluded that a 1 in 100 year flooding event from nine rivers in the Region would expose over 10,000 properties and over 35,000 people.

The Council has been responding to these threats posed by natural hazards with a programme covering the full spectrum of comprehensive emergency management, from reduction and readiness to response and recovery. For example, floodplain management plans have been or are being developed for urban areas such as the Hutt Valley and Kapiti Coast. River management schemes are operating in the Wairarapa.

In addition to natural hazards, the Wellington Region is also subject to threats from human induced hazards, for example, the transport and storage of hazardous substances. It has an on-going programme of work to address these threats.

The Council has an emergency headquarters in the basement of the Beehive with a regional communications network. It also has an Incident Command Centre in its main offices in Wakefield St and a mobile response facility. All these facilities are tested regularly. Council volunteer staff are trained in emergency management.

Emergency management staff work closely with their counterparts in the territorial authorities on joint projects in order to share expertise and rationalise resources. Joint approaches and initiatives with, for example, logistics planning, promotions, training etc. are either underway or have been completed.

For the record, in the past the Regional Council has expressed a preference for the NZ Police to assume the response management role in civil defence emergency management. The Council considers that the Police have the necessary experience – it is their job! Under the present legislation, and the Bill, the response role remains with local authorities. This means that planners and secretaries suddenly have to become emergency managers. It seems incongruous.

1.2 **General view of the Bill**

The Council is delighted that the Civil Defence Emergency Management Bill had been introduced. The Civil Defence Act 1983 seems to have been under review for a long time, causing uncertainty about the Council's future role in emergency management.

However, whilst we support the intent of the Bill, we have grave reservations about some of the proposed structures, responsibilities and functions. In our opinion there are several aspects of the Bill that are confused, ill-conceived and contrary to the principles of the 1989 local government reform.

A general concern is that the drafting is very loose and “wordy”. It is sometimes difficult to understand what is meant. Even the purpose of the Act is convoluted and unclear. Functions and responsibilities are muddled. The Ministry for Civil Defence Emergency Management staff, when running workshops and giving presentations about the Bill, have frequently assumed

that the Bill says something – when in fact it doesn't. There has been a mismatch between what is actually in the Bill and the Ministry's explanations.

2. **The Submission**

This submission is divided into four parts: (a) guiding principles; (b) areas of support; (c) key concerns; and (d) other concerns.

2.1 **Guiding principles**

Several principles and considerations have guided the Council's response to the Bill. They are:

- Any legislative reform must have demonstrable benefits – otherwise the status quo should prevail, albeit with minor changes. The new legislation should be forward looking and have a clear content and direction that is logical, practical and achievable.
- Because it has consequences for people's lives, property and livelihoods, emergency management is a vital responsibility. Lawmakers should have the courage to make judgements that are guided solely by community good. This may mean sacrificing the interests of some interested parties.
- Effective management requires strong leadership, clear responsibilities and accountabilities and a structure that allows the right people to do the right jobs.
- Any legislative change should allow for the promotion of greater professionalism in emergency management in New Zealand and increased community awareness of risk.

2.2 **Areas of Support**

The Council supports the following aspects of the Bill:

- The Bill does provide for local emergency events to be managed at the local level where possible. This is appropriate as the operational responsibilities of territorial local authorities, eg road clearing, stormwater, are vital during and after an event. There are also community connection and accountability issues, especially when ratepayer funds are being used.
- The all hazards approach to emergency management.
- Our experience with the Resource Management Act 1991 is that central government invariably produced guidelines that were too late to be of any

use. It is gratifying to see the timeframe for the Director's guidelines to be one year after enactment.

- The Bill allows for greater co-ordination and co-operation amongst those agencies with emergency management responsibilities. We support that objective – but we consider that the Bill depends too much on the fact that this approach will be successful.
- The Bill emphasises that people and communities should provide for their own well-being and refers to the acceptable level of risk for communities. We support this approach but are concerned that (a) the Bill doesn't include a principle to the effect of people/communities providing for their own well-being and (b) there isn't a definition of acceptable level of risk.

2.3 Key Concerns

2.3.1 Purpose and definitions

The stated purpose of the Bill (Clause 3) is convoluted, unclear and uses terms that are not defined elsewhere in the Bill – even though it is explicitly stated that they are defined in the Bill. For example, there is no definition of *sustainable management of hazards*.

Similarly, the definition of civil defence emergency management (Clause 4) is a challenge to grasp! The Council asks that the Committee carefully scrutinises the purpose clause and all definitions and terms, and, where necessary, recommends changes to ensure that clarity and certainty prevails.

Throughout the Bill, the Council gains the impression that many of the current buzz words have been used with little real thought to their meaning. It appears to be a smattering of common jargon lacking in logical analysis. This is disappointing as the Council was hoping for clarity and certainty.

2.3.2 Responsibilities of the Civil Defence Emergency Management Group

The reform of local government in 1989 was underpinned by some fundamental principles about governance and the different powers and responsibilities of representatives and chief executives. These governance principles are now commonly accepted. Essentially, city, district and regional councils have the authority to make decisions and set directions in the best long-term interests of their communities. They set policies and monitor performance. The only employee of these councils is the chief executive officer whose responsibility is to implement the decisions of the local authority. Simply, there is a policy setting/policy implementation split with clear accountabilities. Yet this is not reflected in the Bill, especially Clauses 17, 18, and 81, where the CDEMG, comprising elected representatives, are given “implementing functions” that are more appropriate for a chief executive officer or the Co-ordinating Advisory Group (CAG). (For example,

clause 18(2) provides for a CDEMG to recruit and train volunteers, issue and control the use of signs, badges and insignia etc).

This is a fundamental flaw in the Bill and the Council is disappointed that it has been allowed to occur. If this were to pass into law, there would be a great deal of confusion. It may have come about through the Ministry, in the past, referring to the whole structure eg the CDEMG, the CAG, the Recovery Manager etc., as the Civil Defence Emergency Group. However, the Bill quite clearly defines the constituent parts and their membership.

To deal with this problem, Clause 17 (1) could be amended to include some words at the beginning to indicate that the function of a CDEMG is *to develop the objectives, policies and methods that will allow the delivery of the following functions.*

Secondly, for Clause 18, an amendment could be the inclusion of some words at the beginning to clarify the situation.

In Clause 81, the CDEMG is granted a list of emergency powers that are more appropriately allocated to a person appointed by the Chief Executive Officers of the administering authority or of the constituent member local authorities. It is not the responsibility of the CDEMG, for example, to carry out road clearing or to set up first aid posts. It is the Controller who manages emergency events – not the CDEMG. The CDEMG should, before the emergency event, have specified the response framework and it is the Controller who decides to put it into action when required.

2.3.3 Organisational Structure of Emergency Management Group

Clause 12 (1) (a) requires that within six months after the date of the commencement of the Act:

every regional council must unite with the territorial authorities within its region to establish a Civil Defence Emergency Management Group for the purposes of this Act a joint standing committee under section 114S of the Local Government Act 1974.

History has shown that joint standing committees are generally not successful. The Council does not support the joint committee structure for the following reasons.

Clause 16 of the Bill sets out the powers and obligations of the CDEMG. These include (subclause 2(e)) the obligation to pay the costs or the share of the costs which the member has agreed to pay in respect of any emergency management activity. In short, it is clear that the Bill contemplates that the members will agree what activity is to be undertaken and agree on the incidence of the cost of such activities in advance of such costs being incurred. The major difficulty is that the Bill does not address what is to happen if one

or more members refuse to agree upon either the extent of the activities or the cost sharing between them.

It is questionable whether that disagreement would constitute grounds for the Director to intervene for non-performance of duty. In theory, the remaining members might agree between themselves to undertake (through the CDEMG) further activities within their own areas and to share the cost. However, that is not a satisfactory solution and is a recipe for manipulation and “free-loading”.

Furthermore, part VIIA of the Local Government Act 1974 has specific requirements with regard to the financial management of local authorities. These include the long-term financial strategy (s.122K) and funding policy which is to be adopted in accordance with a special consultative procedure (s. 122N). Part XIIA of the Local Government Act 1974 deals with accountability and accounting. These sections provide for the annual plan, the annual report and the financial systems. These provisions are all designed to make each local authority accountable for determining priorities and expenditure pursuant to a public process. It is difficult to see how, without of a clear power, a joint committee of local authorities could commit an individual local authority to expenditure that the local authority had not itself determined under the annual plan procedures.

The CDEMG, as a joint committee, would not be a body corporate and would not have rating powers.

This difficulty has ramifications for the timing of the CDEMG plans (within 2 years of enactment) as the planned preparation process would need to allow for the financial planning processes of the constituent local authorities.

The Bill has overlooked the financial planning obligations of local authorities and appears to have assumed that a majority resolution of the members of the joint committee means even dissenting members are bound to the level of activity and the expenditure. Given the strong desire for local autonomy by local authorities, there is a high probability that there will be those authorities who dissent.

It is difficult to see a workable solution. One way is for regional councils (or another lead council) to be given responsibility for all emergency management functions and to fund the activity through rates or by way of a levy on members. There would be the right of appeal against the levy (as in the Wellington Regional Water Board Act 1972 or with United Councils which existed from 1979 to 1989)). The CDEMG could then decide matters in the usual way by majority decisions and pay for all administrative and other structures.

The Council asks that the Select Committee investigates the limitations of the joint committee structure, taking into account the matters raised above. It should re -consider alternative organisational structures.

2.3.4 Powers of the Director

The Bill provides extensive powers to the Director of Emergency Management with few accountability requirements.

Clauses 70 and 71 provide powers to the Director that generally extend beyond those normally allocated to a government employee. If these are retained, appropriate accountability procedures and measures should be introduced.

However, some of the powers are more appropriate for the Minister of Civil Defence, for example:

- Clause 70 provides the Director with the power to publish statements relating to any emergency, or to the performance or non-performance of duties imposed on any person under the CDEM Act. This can be carried out under qualified privilege giving protection against liability arising from such statements. Statements of non-performance of local authorities should be the prerogative of the Minister – not a government employee.
- Clause 71 allows the Director to commence and complete the performance of a function or duty under the CDEM Act that a CDEMG has failed to commence or complete – if the Director considers it reasonable to do so. The Director can recover the costs of this intervention.

The Council has no difficulty with positive action over non-performance. However, it is strongly of the opinion that this is a power more appropriate for the Minister, especially as the cost of the intervention is born by the defaulting organisation or person.

In addition, there should be a clear formal process of notifying the intervention intention and specifying the exact nature of non-compliance before any intervention powers are exercised. This process should be within a defined period and should allow the statement of non-compliance to be challenged by the alleged defaulter. Even then, it is the Minister who should have the power to instruct intervention.

2.3.5 Confused regional council role (and other roles)

The regional council role in CDEM is confused in the Bill. The Bill provides for CDEMGs to be based on regional council boundaries. It also provides for regional councils to be the administering authority for the CDEMG. However, it does not define the functions of an administering authority. This Council is therefore unsure about its future role in emergency management. The administering role needs clarification – as do a number of other identified roles, eg controllers and recovery co-ordinator.

In material released by the Ministry for Civil Defence Emergency Management prior to the legislation, there was also some suggestion that

regional councils should run the emergency management office. The emergency management office is not mentioned in the new Bill, but it stands to reason that some body of expertise with co-ordinating responsibilities is required.

It is our submission that there should be a lead authority with an emergency management office housing the Group Director (as proposed in this submission), the Recovery Co-ordinator, staff undertaking hazard identification work etc. This lead authority could be any constituent local authority appointed by the CDEMG. However, given the administering function of the regional council and the cross boundary nature of all its other functions, it is common sense that the regional council operate the emergency management office.

2.3.6 Effective Management: Co-operative approach sometimes not forthcoming

The management structure in the Bill does not incorporate good management principles. It places a lot of emphasis on the value of a co-operative approach and joint decision-making. Whilst we do not deny that this is a laudable approach, we cannot help but be rather cynical about whether this will happen in practice. There are many examples of local authorities in the Region not being able to agree or work together well. In any case compromise (which is inevitable with joint decision-making) does not always bring about the best results. CDEM is about saving lives. It is too important to allow the worst aspects of politics or self-interest to influence the outcome.

Effective management requires strong leadership, sound decision-making, clear accountabilities and “the right people to do the right jobs”. This is especially true in emergencies. Group decision making, for example, is not prevalent in the armed forces or the police. Likewise, in local government, elected members set the strategic direction and formulate policy – but they employ a Chief Executive Officer to implement the policy and “make it all happen”. This is not so with this Bill. There is a Group of elected representatives (CDEMG) who set the strategic direction and a Group of CEOs of local authorities and emergency service organisations in the Co-ordinating and Advisory Group (CAG) who together are responsible for implementing the decisions of, and providing advice to, the CDEMG. There is not any one person in charge.

This Council submits that whatever model is adopted for the CDEMG, it be a requirement for the CAG to appoint a Group Director with responsibility to assist the elected representatives on the CDEMG to prepare policy and the CAG to deliver the desired outcomes. This person should logically be part of the administering authority.

2.4 Other Concerns

2.4.1 Lack of Principles

There are a number of generally accepted principles about emergency management, eg individual responsibility and self-reliance, local response for local events, integrated and comprehensive management. However, there is no clear statement of principles in the Bill (cf Resource Management Act) although some of them are referred to in passing (eg Clause 35(a))

The Council suggests that a set of principles be included and that the strategies and plans (national and CDEMG) be required to be prepared to achieve the purpose of the Act and taking these principles into account.

2.4.2 Civil Defence v Emergency Management

The term *civil defence emergency management* is too long winded and is a compromise that pleases nobody. We submit that *civil defence* be dropped and the term *emergency management* retained

We acknowledge that the general community is familiar with the term *civil defence*. However, it does have “Dad’s Army” connotations. This Bill aims to bring about a new approach to the management of emergencies. Therefore, it is appropriate that the old terminology with the old connotations be forgotten and that new terminology which is in keeping with the whole new thrust of the Bill (a comprehensive and integrated approach) be used. It is an opportunity to get the community involved and committed to a new way of doing things!

Certainly the term *civil defence emergency management* is a deviation from international practice where *emergency management* is accepted terminology. At the very least we ask that only one of the terms (ie *civil defence* or *emergency management*) be used.

2.4.3 Duties to consider alternatives, assess benefits and costs etc.

Clause 62 appears to be modelled on section 32 of the Resource Management Act 1991 (RMA). The Council does not disagree with the sentiment behind the clause. However, the interpretation of the similar section in the RMA has required a separate “s.32 report” to accompany policy statement and plans. These contain explanations, justifications and appraisals of alternative methods. Experience shows that this is time consuming, repetitive and questionable in value. Such considerations are merely good professional practice. The Council recommends that Clause 62 be simplified to state that the Group be satisfied that the group plan provisions are necessary to achieve the purpose of the Act and are the most appropriate means to achieve the purpose (clause 62 (c)).

Surprisingly Clause 62 only applies to the Minister and the CDEMG – not to the Director who has responsibility to prepare the National Strategy, National Plan and guidelines. It appears that the Director has escaped this accountability measure. The Council requests that, as the Director has such a major role in national policy and planning, a similar duty of accountability provision apply to the Director.

2.4.4 **Controllers**

The Bill provides for the CDEMG to appoint at least one *suitably qualified and experienced person to be the Local Controller for its area* (Clause 26). This raises two issues:

- a) More than one controller will be required because of the varying types of emergency events and because back-ups will inevitably be needed. Although the Bill doesn't preclude more than one controller, it should explicitly recognise this need. The Council suggests that the term Principal Group Controller be used and that alternate Controllers be provided for.
- b) The term local controller suddenly seems to have replaced the term regional controller. There is a need for local controllers at the territorial authority level and Group controllers at the Group area level – all of whom should be qualified and experienced. The Regional Council is aware that many territorial authorities feel strongly that one of "their staff or appointees" should assume this role, especially when other Council staff and resources are directly involved – notwithstanding Council dollars! The Regional Council sympathises with that situation.

However, experience shows that Controllers are often Council managers who are very willing but ill-suited to the Controller role. Consequently, it submits that the Bill should provide for the CDEMG – through the CAG – to only appoint controllers (local and Group) who are *suitable qualified persons*.

2.4.5 **Emergency Services and Lifelines Utilities**

Pre-eminence has been given to the New Zealand Police, the New Zealand Fire Service and hospital and health services as being the emergency service providers. However, there are many other agencies that deliver these services. These should be included in the definition of emergency services by adding *or any other organisation recognised by the Civil Defence Emergency Management Group as delivering emergency services in the Groups area*.

The placing of emergency services within the CDEMG framework is not logical. The CDEMG comprises elected representatives from constituent local authorities; the Co-ordinating Advisory Group (CAG) comprises the chief

executive officers of those authorities and emergency services. If the role of the CDEMG is to provide policy direction and the CAG to implement that policy direction, the hierarchical structure means that emergency services will be directed by elected representatives. This has obvious implications for responsibilities and expenditure. This Council's feeling is that the emergency services are uncomfortable with this situation, it being completely dependant on the relationship set with elected representatives (CDEMG) and chief executives (CAG). A better solution would be for the Group Director to be required to consult with the emergency services (and lifelines utilities) when preparing the CDEMG plan. This is merely stating the obvious, as any failure to do so would constitute unprofessional behaviour.

Conversely, the Bill provides for lifelines utilities to undertake particular duties. For example, Clause 57 (d) states that *every lifeline utility must provide, free of charge, any technical advice to any CDEMG or the Director that may be reasonably required by the Group or the Director*. However, there is no formal means for them to be involved in the CDEMG process. In essence the Bill is demanding a standard of behaviour from the lifelines utilities without these utilities being involved in the emergency management process.

2.4.6 No reference to Co-ordinated Incident Management System (CIMS)

CIMS is an internally recognised emergency management system. It has been adopted in New Zealand by nearly all the emergency services and emergency managers. It is therefore surprising that there is no reference to CIMS in the Bill.

3. Conclusion

Although the Council welcomes the Bill, it sees a number of flaws. We are unconvinced that it adds anything to emergency management that could not be achieved under the present legislation.

The drafting of the Bill means that the new structure is "woolly". It lacks a clear purpose and clear definitions. The functions of the new structures are confused and there is an absence of a clear management structure with clear accountabilities.

The Council supports flexibility and "horses for courses", but considers that the Bill has gone too far in this direction. In its quest for comprehension, co-operation and inclusiveness, emergency management could be crippled by indecision and dissension.

It is too important to get wrong.

If the Committee is unable to find solutions to the problems that have been identified, we recommend that the Bill be withdrawn. Amendments to existing legislation may well be the best way forward.

The Council would be pleased to have an opportunity to speak to its submission.