



Review of the  
Local Government Act 2002  
and Local Electoral Act 2001  
Summary report

**Local Government Commission**  
Mana Kāwanatanga ā Rohe



LOCAL GOVERNMENT COMMISSION  
MANA KĀWANATANGA Ā ROHE

14 July 2008

Honourable Nanaia Mahuta  
Minister of Local Government  
Parliament House  
Wellington

Dear Minister

**Report on review of Local Government Act 2002 and Local Electoral Act 2001**

We set out to answer the following two questions in our review of the Local Government Act 2002 and the Local Electoral Act 2001:

- Are any of the provisions of the two Acts a barrier to achieving the policy intent? If they are, is legislative amendment appropriate?
- Are any of the ways that councils are operating and/or interpreting the Acts a barrier to achieving the policy intent? If they are, is the development and dissemination of further good practice guidance appropriate?

We are aware that councils have had limited experience with certain aspects of the Acts. However our investigations have demonstrated that this experience has not been so limited as to prevent general themes and trends from emerging. Accordingly, we have been more definitive in our findings and recommendations than we had perhaps expected.

We conclude that both Acts are fundamentally sound and assist in achieving their general policy intent and legislative purpose. The number of provisions we have endorsed is testament to this.

The Local Government Act promotes participation in local decision-making and the accountability of councils to their communities for the decisions they make. Their decisions and their actions should aim to enhance community well-being and meet the 'reasonably foreseeable needs of future generations'. They will also reflect the diverse nature of their communities.

There is already plenty of good practice material available to guide councils in implementing and giving full effect to the Local Government Act. Plans are in place to update and expand this material and we encourage the agencies concerned.

We believe some councils are failing to fully understand some critical provisions and in so doing are inadvertently making the operation of this Act more demanding than it needs to be. This may be discouraging public participation in some areas. Advancing and adopting good practice, by council officers and elected members alike, is the key to furthering the policy intent of the Act.

That is not to say there is no need for legislative amendment and we make specific recommendations in some areas.

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With respect to the Local Electoral Act 2001, we believe that generally the present balance between uniformity of rules on electoral processes and diversity, through local decision-making, is appropriate at this time.


We believe that local choice in two key areas, namely the electoral system and order of candidates on voting documents, will need to be addressed further in the future.

The improved operation of the Local Electoral Act will be best achieved through a combination of specific legislative amendments and continued development and dissemination of good practice guidance.

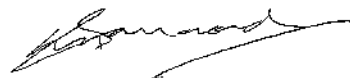
We would like to thank all those who gave freely of their time, through submissions, responding to surveys, or face-to-face discussions, to share their experiences of working with both Acts. This input was invaluable in assisting us in our review.



Sue Piper  
Chair



Gwen Bull  
Commissioner



Wynne Raymond  
Commissioner

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## 1.1 Local Government Act 2002

We have concluded that generally the provisions of the Local Government Act 2002, if fully understood and properly implemented, support the policy intent for the legislation.

We believe that, with a few notable exceptions, improved operation of the Act will be best achieved by the development and dissemination of (further) good practice guidance, coupled with the provision of training, as distinct from significant legislative amendment.

We recommend a few substantive amendments to the Act and numerous technical amendments (see Section 5: Recommendations).

We believe that the recommended good practice guidance and amendments will assist local authorities to be more responsive to the needs of their communities and more effective in carrying out their prescribed role.

## 1.2 Local Electoral Act 2001

We have concluded that generally the provisions of the Local Electoral Act 2001 support the purpose of the Act. This includes an appropriate balance, at this time, between uniformity of rules on electoral processes and diversity through local decision-making.

We believe improved operation of the Act will be best achieved through a number of specific legislative amendments (see Section 5: Recommendations) and continued development and dissemination of good practice guidance.

We believe our recommendations will assist the achievement of more democratic representation for local communities and facilitate greater public confidence and understanding of electoral processes.

Our recommended amendments include a number previously recommended by both the Justice and Electoral Committee and the Commission. We recommend that these amendments proceed as soon as possible.

## 2.1 Purpose of report

This report summarises the findings from our review of the operation of the Local Government Act 2002 and the Local Electoral Act 2001. The detailed analysis and commentary underpinning our findings can be found in our full report *Review of the Local Government Act 2002 and Local Electoral Act 2001*.

## 2.2 Focus of review

The requirement for the Commission to undertake this review is outlined in section 32 of the Local Government Act 2002. That section limits the scope of the review to the *operation* of that Act and the Local Electoral Act.

Accordingly, we have taken the policy intents for both Acts (outlined below) as given. However, this has not prevented us from commenting on the policy intent when we have considered that necessary.

Without limiting the scope of the review, section 32 requires us to assess and determine:

- the impact of conferring on local authorities full capacity, rights, powers and privileges<sup>1</sup>
- the cost-effectiveness of consultation and planning procedures
- the impact of increasing participation in local government and improving representation on local authorities.

Given the operational focus, key questions for the review were as follows:

- Are any of the provisions of the two Acts a barrier to achieving the policy intent? If they are, is legislative amendment appropriate?
- Are any of the ways that councils are operating and/or interpreting the Acts a barrier to achieving the policy intent? If they are, is the development and dissemination of further good practice appropriate?

We have given particular attention to:

- legislative provisions that were introduced for the first time in the Local Government Act 2002 or the Local Electoral Act 2001
- issues raised in submissions or in discussions with interested parties.

## 2.3 General policy intent

### 2.3.1 Local Government Act 2002

The general policy intent for the Local Government Act 2002 was outlined in the Government's *Statement of Policy Direction for Review of Local Government Act 1974* released in November 2000. There were four key aspects of the policy direction:

1. A coherent overall strategy for local government including:
  - a focus on local authorities as part of the overall structure of democratic government
  - local government being based on clearly articulated principles concerning communities' rights for representation, leadership, participation, diversity, fairness and accountability
2. A more broadly-empowering legislative framework under which local authorities can meet the needs of their communities including:
  - recognition of the diverse nature of local communities
  - a need for flexibility to allow local government to respond to changing circumstances

<sup>1</sup> 'Full capacity, rights, powers and privileges' is now commonly referred to as the 'general empowerment' of local authorities and this latter term is used throughout our report. General empowerment more accurately describes the powers given to local authorities than the term 'power of general competence'.

- a need for local authorities to be responsive and accountable to the communities they represent
  - scope for communities to make their own choices about what their local authorities do and how they do it
  - the range of local authority activities stated more broadly and flexibly in legislation along with rigorous decision-making and accountability processes
3. A partnership relationship between central and local government including:
- central and local government being viewed as two arms of our system of government
  - a shared focus on contributing positively to the well-being of communities
  - recognition that the social, economic and environmental problems confronting New Zealand are not capable of being resolved by central government alone
  - a need for local government along with community groups, non-governmental organisations and business to be able to work together to find solutions and advance the aspirations of local communities
4. Clarification of local government's relationship with the Treaty of Waitangi.

### 2.3.2 Local Electoral Act 2001

The purpose of the Local Electoral Act 2001 (set out in section 3 of the Act) was to modernise the law governing the conduct of local elections and polls and to provide uniform rules in respect of many electoral processes and local discretion on other specified matters.

Modernisation recognised that all local authority elections are now conducted using postal voting and that there is an increasing use of technology in the management of local elections.

In addition, the Act reflects the New Zealand Labour Party's 1999 election manifesto for an option for local authorities to adopt the single transferable vote (STV) electoral system, establishment of locally elected district health boards using STV, and introduction of expense limits for candidates at local elections.

## 2.4 Councils' experience in operating under these Acts

Councils' experience of this legislation, particularly the Local Government Act, is still limited. For example:

Local Government Act:

- The first round of community outcomes identification took place prior to 2006 with reporting on progress toward achievement of outcomes required by 2009; the next round of identification of community outcomes is due in 2012.
- The first full round of long-term council community planning was completed in 2006 (2006-16 LTCCPs) and councils are now preparing for the next round (2009-2019 LTCCPs).

Local Electoral Act:

- Three rounds of local elections have been conducted (in 2001, 2004 and 2007).
- STV was an option for councils and local communities at the 2004 and 2007 elections, with ten councils using STV at the 2004 elections and eight councils at the 2007 elections.
- Two rounds of representation reviews have been completed with most councils having completed only one round.

We have taken this experience and the planned longer-term evaluation into account when making our recommendations.

## 2.5 Longer-term evaluation

The Local Government and Community Branch of the Department of Internal Affairs is undertaking a ten-year evaluation of the Local Government Act, the Local Electoral Act and the Local Government (Rating) Act. This will involve both process and outcome evaluations, with provisional report dates of October 2012 for the LTCCP and community outcomes process evaluation, and June 2013 for the overall outcome evaluation.

While not a prime objective, we believe much of the information collected as part of our review, some of which is contained in our report<sup>2</sup>, will help form a baseline for this longer-term evaluation. Given that councils will have been operating under these two Acts for more time, the ten-year evaluation should be capable of being more definitive in its findings on certain issues than was possible for this review.

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2 Other information has been placed on the Commission's website [www.lgc.govt.nz](http://www.lgc.govt.nz) or is available on request.

### 3.1 Framework for analysis

We present our review of this Act in two parts:

- the planning, decision-making and accountability provisions of Part 6 of the Act (Chapter 3: Responsive Local Government in the main report)
- all other provisions of the Act (Chapter 4: Effective Local Government in the main report).

#### 3.1.1 *Responsive local government*

We set out to address the following question: *How responsive and accountable are local authorities in meeting the present and long-term needs of their communities?*

The Act requires every local authority to take a sustainable development approach in undertaking its role of enabling democratic local decision-making and promoting community well-being. In being responsive and accountable to its community, a local authority must take account of the diversity of its community, and it must make itself aware of and have regard to community views. It is required to apply these principles in all its planning and decision-making processes.

We addressed the provisions and requirements relating to the following:

- the community outcomes process
- the long-term council community plan (LTCCP)
- the annual plan
- decision-making
- consultation
- contributions to decision-making processes by Māori
- the annual report.

#### 3.1.2 *Effective local government*

We set out to address the following question: *How effective are local authorities in performing their role of enabling local decision-making and action, and promoting community well-being?*

In addition to the provisions of Part 6, the Act places a number of checks and balances on the activities of local authorities as limits and controls on general empowerment. The Act also sets out the structure of local government in New Zealand and governance and management provisions within which local authorities must operate.

We addressed the provisions and requirements relating to the following:

- empowerment of and relations between regional councils and territorial authorities
- special obligations and restrictions
- regulatory, enforcement and coercive powers
- other legislation
- powers of the Minister and central government
- the structure of local government
- reorganisation of local authorities
- the Local Government Commission
- local authority governance
- elected member issues
- community boards
- council organisations and council-controlled organisations
- employment matters.

## 3.2 Key findings

### 3.2.1 *Empowerment has not led to a proliferation of new activities*

Some provisions in the predecessor Act (i.e. the Local Government Act 1974) provided local authorities with wide powers in certain areas. For example:

- A regional council could, with the consent of the territorial authorities in its region, fund and coordinate the promotion of tourism within the region.
- A territorial authority could undertake, promote and encourage the development of such services and facilities as it considered necessary to maintain and promote the general well-being of the public.

Responses from our all-councils survey indicated that councils are undertaking a wide range of activities. Councils had the powers to undertake most, if not all, of these activities previously.

We conclude that the new Act, and particularly the conferring of full capacity, rights, powers and privileges on local authorities, has not led to a proliferation of new activities being undertaken by councils. There also appears to be no appetite within the local government sector for major change to the empowering provisions of the Act.

### 3.2.2 *The need for and benefits of long-term planning are generally accepted but the quality of documentation needs to be improved*

The merits of long-term planning and the legislative vehicle for this, the LTCCP, appear to be largely accepted by councils. The benefits are seen in terms of an enhanced strategic focus, improved asset and financial planning, and opportunities for public participation.

However, there were concerns from councils about the prescribed documentation requirements for inclusion in LTCCPs and the resulting size of plans making it difficult to engage the community. We believe a number of these concerns reflect a misunderstanding of the role of the LTCCP as distinct from the LTCCP summary document. The latter document is the principal consultation tool.

The quality of LTCCP summaries was of concern in 2006 and we believe this should be a priority focus for the upcoming 2009-2019 LTCCPs.

### 3.2.3 *The concept of 'significance' is pivotal to a good understanding of the Act but is often not properly understood*

The concept of 'significance' is at the heart of the decision-making and accountability provisions of the Act. An effective significance policy enables councils to determine the extent they will apply the detailed provisions of the Act and engage and be accountable to the community.

We are concerned that the concept appears to be poorly understood by some councils. We believe this leads to misunderstandings of other provisions of the Act and to perceptions of legislative 'complexity and over-prescription'. We believe this should be a priority area for development and dissemination of further good practice guidance.

We do acknowledge that some of the confusion may be caused by the multiple and sometimes varying uses of the words 'significance', 'significant' and 'significantly' in the Act. We recommend a review of the use of these words.

### 3.2.4 *The consultation requirements are often not properly understood*

We believe a number of the concerns raised about the consultation requirements also arise from a lack of understanding of the provisions of the Act. The Act requires local authorities to be aware of and give consideration to community views before making decisions. However, section 78(3) makes it clear such requirements do not, of themselves, require public consultation to be undertaken.

There is a clear need for councils to have processes in place to enable them to identify to what extent community views are already known and therefore the need, or otherwise, for further consultation. The absence of such processes can lead to perceptions of 'over-consultation' and consequences of, for example, low response rates.

The Act does require consultation to be undertaken in certain specified cases using the special consultative procedure. This procedure is a statutory minimum for such cases.

Where use of the special consultative procedure is not prescribed, we believe more councils need to consider other possibly more effective consultation mechanisms. We believe there is a need for more good practice guidance on effective consultation and engagement mechanisms.

### ***3.2.5 There is a need for further good practice guidance and training***

We are heartened by the work being done by Local Government New Zealand, the Society of Local Government Managers, the Office of the Auditor-General and the Department of Internal Affairs to develop and disseminate good practice guidance. They also seek to identify and encourage initiatives around the country in relation to implementation of both the Local Government Act and the Local Electoral Act. We commend these agencies and wish to encourage them to continue this work.

As noted, there are some critical areas where further good practice guidance and training is urgently required. These include the community outcomes process, long-term planning, understanding and application of 'significance' in relation to decision-making and consultation, and effective consultation processes.

We congratulate the Government on its recent budget initiative for a professional development programme for local authority elected members. We believe this will be useful for enhancing elected member understanding of the legislation.

### ***3.2.6 There are specific items requiring focus***

In addition to work identified under both Acts and the development and dissemination of good practice guidance, we recommend the following for particular focus to assist the effective implementation of both Acts:

- monitoring of central government agencies' involvement in the community outcomes process, participation levels in local authority decision-making processes, and the effectiveness of local authority consultation practices as part of the ten-year evaluation of local government legislation
- an audit of the effectiveness of local authority engagement with Māori
- a comprehensive review of all statutory provisions authorising local authorities to make bylaws
- a review of the remaining provisions of the Local Government Act 1974 with a view to complete repeal of this Act
- a review of the Local Authorities (Members' Interest) Act 1968

### 3.3 Summary of findings

#### 3.3.1 Responsive local government: Where improvements need to be made

The following table summarises where we believe the operation of the Local Government Act could be improved in order to further advance the policy intent for achieving responsive local government.

#### Areas where operation of the Local Government Act could be improved

Provision	No significant concerns	Still bedding in	Needs attention
Community outcomes			
• identification of outcomes		✓	✓
• engagement in process		✓	✓
• reporting		✓	✓
LTCCPs			
• process issues		✓	✓
• documentation issues		✓	✓
• summary documents		✓	✓✓
• adoption date		✓	
• audit		✓	✓
• amendments		✓	✓
Annual plan	✓		
Decision-making			
• public perceptions	✓		
• council perceptions		✓	✓
• concept of significance		✓	✓✓
Consultation			
• public perceptions	✓		
• council perceptions		✓	✓
• awareness of community views		✓	✓✓
• principles		✓	✓✓
• special consultative procedure			✓✓
Contributions to decision-making by Māori		✓	✓
Annual report	✓		
Financial management			✓

Note: ✓✓ signifies issues we believe require priority attention

### 3.3.2 How improvements should be achieved

The following table outlines how the identified improvements would be best achieved.

#### How best to improve the operation of the Local Government Act

Provision	Amendments		Good practice development and dissemination
	Substantive	Technical	
Community outcomes			
• identification of outcomes			✓
• engagement in process			✓
• reporting			✓
LTCCPs			
• process issues			✓
• documentation issues	✓		✓
• summary documents			✓
• audit		✓	✓
• amendments	✓		✓
Decision-making			
• council perceptions			✓
• concept of significance		✓	✓
Consultation			
• council perceptions			✓
• awareness of community views			✓
• principles			✓
• special consultative procedure			✓
Contributions to decision-making by Māori			✓
Financial management		✓	

### 3.3.3 Effective local government: Where improvements need to be made

The following table summarises where we believe the operation of the Local Government Act could be improved in order to further advance the policy intent for achieving effective local government.

#### Areas where operation of the Local Government Act could be improved

Provision	No significant concerns	Still bedding in	Needs attention
Relations between regional councils and territorial authorities			
• triennial agreement		✓	✓
• significant new activities		✓	✓
• transfer of responsibilities			✓
Special obligations and restrictions			
• water and sanitary services		✓	✓
• other restrictions			✓
Regulatory/enforcement/coercive powers			
• bylaw-making powers		✓	✓✓
• enforcement powers		✓	✓
• offences and penalties		✓	✓✓
Remaining LGA 1974 provisions			✓✓
Powers of the Minister and central government	✓		
Structure of local government	✓		✓
Reorganisation of local authorities	✓		✓
Local Government Commission	✓		
Local authority governance			
• governing body	✓		
• local governance statements	✓		
• meeting procedures	✓		✓
• delegations	✓		✓
Elected members			
• declarations			✓
• code of conduct		✓	✓
• conflicts of interest			✓✓
• remuneration	✓		
Community boards			✓
Council (-controlled) organisations	✓		
Employment matters	✓		

Note: ✓✓ signifies issues we believe require priority attention

### 3.3.4 How improvements should be achieved

The following table outlines how the identified improvements would be best achieved.

#### How best to improve the operation of the Local Government Act

Provision	Amendments		Good practice development and dissemination
	Substantive	Technical	
Relations between regional councils and territorial authorities			
• triennial agreement		✓	✓
• significant new activities		✓	
• transfer of responsibilities		✓	
Special obligations and restrictions			
• water and sanitary services	✓		
• other restrictions		✓	
Regulatory/enforcement/coercive powers			
• bylaw-making powers	✓	✓	
• enforcement powers		✓	
• offences and penalties	✓		
Remaining LGA 1974 provisions	✓		
Structure of local government		✓	
Reorganisation of local authorities		✓	
Local authority governance			
• delegations		✓	
Elected members			
• declarations		✓	
• codes of conduct			✓
• conflicts of interest	✓		
Community boards		✓	

## 3.4 Responsive local government: Discussion

### 3.4.1 Community outcomes process

Councils have completed one round of identifying community outcomes for inclusion in their LTCCPs commencing 1 July 2006. We believe councils will learn from this experience and revise their approach as necessary. They are not required to engage in another process for a further six years (i.e. for their 2012 LTCCP) though they must report on progress toward achieving outcomes at least every three years.

We note:

- Many councils see the value as not just the resultant statement of outcomes but the dialogue held with other agencies in the process and the commitments gained to work towards common objectives.
- The various initiatives that are aimed at improving central government agencies' input and commitment to this process.
- A process and outcome evaluation will form part of the Department of Internal Affairs' ten-year evaluation of the legislation.

We do not recommend any legislative changes relating to identification and reporting on community outcomes. However, we believe there is a need for further good practice guidance on these processes and requirements.

### 3.4.2 Long-term council community plan

The LTCCP is at the heart of a council's planning, decision-making and accountability responsibilities including the need to take a sustainable development approach. The LTCCP is a mechanism to identify the key issues, the options and the implications of each for the community. It serves to facilitate what the Auditor-General describes as "the right debate" for the community.

LGNZ advised that there is general support for the LTCCP process and recognition of its usefulness for long-term planning, financial and asset management, and community confidence. However some councils, particularly smaller and rural councils, had some concerns relating to:

- the time and resources (including costs) required for the process
- a perceived focus on compliance rather than a plan for the community
- the necessity of particular content requirements
- their ability to communicate the plan to the community, within audit requirements, given its size.

We believe concerns about the size of the LTCCP confuse the purpose of the LTCCP as distinct from the LTCCP summary. It is the latter document that the Act requires to be the principal vehicle for consultation, and the Act does not require specific disclosures for the summary document. The Auditor-General in his report on 2006-16 LTCCPs singled out LTCCP summaries as receiving low priority and needing attention for the 2009 round.

We believe some members of the public will want the full version of the funding and financial policies and it is more convenient for them to have these policies all together in the LTCCP. A key issue is the quality of the policies themselves and succinctness is one important measure. Good practice guidance on the writing of such policies is therefore important.

We believe that the requirements relating to two of the policies should be reviewed. We recommend that the requirement to have a policy on partnerships with the private sector should only be necessary if the local authority intends entering into such a partnership. We believe the general requirements relating to policies on rates remissions and postponements should be sufficient to disclose the rationale for any remissions or postponement of rates in respect of Māori freehold land. Accordingly we recommend deletion of the requirement for a separate policy specifically relating to rates remissions and postponements on Māori freehold land.

We recommend retention of present requirements relating to adoption dates for LTCCPs and auditing requirements. The latter are now generally seen as valuable to provide assurance to communities that long-term plans are robust and soundly based. We recommend a small extension to the audit role relating to LTCCP amendments as finally adopted by councils.

We also make recommendations relating to amendments to LTCCPs. These are aimed at ensuring local authorities retain a strategic focus in the LTCCPs and that changes and trade-offs are made in the full knowledge of impacts on service levels and financial consequences.

SOLGM pointed out in its submission that the concept of 'significance' can be seen as a key determinant in the circumstances where amendments to the LTCCP are required. However, it noted that three of the 'triggers' for amendment appear to encompass any change regardless of scale. We address these concerns by recommending:

- amendments only cover significant activities in relation to section 97(1) requirements
- amendments only for significant changes to the funding and financial policies required to be included in the LTCCP
- use of the special consultative procedure rather than the LTCCP for proposed changes relating to endowment land.

Most councils have undergone only one full round of LTCCP development and audit. The Auditor-General reflected this fact in assessing overall performance and the need for improvement when referring to concerns about “project management and sequencing issues, information gaps and the still developing familiarity of many in the sector with the requirements of the Act”

Councils are beginning to prepare their 2009-2019 LTCCPs. It is unlikely that there will be any legislative changes enacted prior to 30 June 2009. We believe the focus should be on development and dissemination of good practice guidance for councils on preparing LTCCPs. The Office of the Auditor-General and SOLGM will play a leading role in the development of this guidance.

### 3.4.3 Annual plan

We received several submissions about the relationship between the annual plan and the LTCCP. The annual plan is the link between the LTCCP and the annual rates levy and information needed to provide the value proposition (i.e. level of service provided to the community at a particular cost). As such, we believe the annual plan should be retained and we recommend no legislative amendments.

### 3.4.4 Decision-making

The purpose of local government includes ‘to enable democratic local decision-making and action by, and on behalf of, communities’. We believe top priority must therefore be given to ensuring effective and efficient decision-making processes. We addressed this key issue in relation to:

- public perceptions and experiences of council decision-making
- council perceptions and experiences in relation to the nature of the legislative requirements and their influence on decision-making
- the concept of significance.

Our research of residents identified some key points:

- Only a very small percent (3%) believed the public cannot influence councils’ decisions.
- Voting was perceived to have the greatest influence over council decisions (37% said it has “a lot of influence” and 42% said it has “some influence”).
- Based on the different responses in our research (for example, according to income level, ethnicity, and gender), there is a need to accommodate the needs and preferences of increasingly diverse communities when attempting to encourage public participation.
- Submissions received a relatively low rating as a method by which to influence council decision-making (although 62% see them as having at least “some influence”).

While some councils described the requirements as “onerous”, others pointed out the aspirational quality, i.e. as to what constitutes robust and transparent decision-making.

In our view, concerns about the perceived prescriptive nature of the decision-making provisions of the Act highlight in many cases a failure to fully understand the purpose and scope of:

- section 78 (Community views in relation to decisions)
- section 79 (Compliance with procedures in relation to decisions).

Section 79 makes it clear that councils have discretion based on certain considerations to determine the degree to which they comply with both sections 77 and 78 in relation to any particular decision or matter. Councils are responsible for making judgments, based on their own discretion, on:

- how to achieve compliance with sections 77 and 78 in proportion to the significance of the matters affected by the decision
- in particular, the extent options are to be identified and assessed, benefits and costs are to be quantified, information is to be considered, and a written record kept on the manner of compliance.

The section requires the council, in making these judgments, to have regard to the significance of all matters and:

- the principles set out in section 14
- the local authority’s resources
- the circumstances of the decision.

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We see these provisions as being designed to provide for councils an appropriate balance between robust decision-making criteria, for which they are accountable to their community, and discretion in their application according to particular considerations and circumstances. Section 79 makes it clear compliance is to be “largely in proportion” to the significance of the matter and regard is to be had to the local authority’s resources. We note section 77 also refers to “reasonably practicable options” (emphasis added).

Like SOLGM, we are not convinced that the requirements are fundamentally flawed or that any appropriate alternatives have been suggested.

Both SOLGM and LGNZ expressed reluctance for legislative change around the decision-making provisions.<sup>3</sup> Nor, generally speaking, did we sense any great appetite for such change among the councils we spoke to.

Accordingly, we recommend no change to the legislative requirements relating to local authority decision-making, and development and dissemination of further good practice guidance in this area including in relation to a sustainable development approach.

The concept of ‘significance’ is at the heart of robust, transparent and sustainable local decision-making. It is the key issue when it comes to analysing how well or otherwise the decision-making provisions of the Local Government Act are working.

Discussions with the Office of the Auditor-General highlighted the following points in regard to the assessment of significance:

- The concept of significance is inconsistently understood.
- Assessment of significance is not always based on clear criteria.
- Some significance policies do not align with significance under the Act.
- Few significance policies talk about what constitutes a significant change to level of service provision (and other related areas where significance is a relevant consideration).

We believe our recommendations relating to amendments of the LTCCP and consultation will enhance the efficiency of council decision-making processes. We also see the need for more good practice guidance in this area. We commend the Office of the Auditor-General on its initiative to form a working group of local government staff and advisors to produce a good practice guide.<sup>4</sup>

We acknowledge that one source of confusion for councils may be the multiple and sometimes varying use of the words ‘significance’, ‘significant’ and ‘significantly’ in the Act and we recommend a review of these words. We also recommend moving section 90 (Policy on significance) to follow section 79 (Compliance with procedures in relation to decisions).

### 3.4.5 Consultation

The purpose of local government includes ‘to enable democratic local decision-making and action by, and on behalf of, communities’. A fundamental premise of the Act, and of Part 6 in particular, is that community participation will enhance the quality and sustainability of local authority decision-making and, ultimately, accountability back to the community. Consultation is an essential form of community participation and we addressed this issue from both the community and council perspectives.

Our research showed that overall, 30% of submitters felt that their council’s public consultation process was either “excellent” or “very good”, while 38% felt it was “fair” or “poor”. Consistent with other research we undertook, the outcome of the particular issue the submitter was interested in was the primary variable by which perceptions of the public consultation process vary i.e. whether the decision was in their favour or not.

<sup>3</sup> Other than clarity of requirements that link to the concept of significance and may therefore trigger certain process requirements.

<sup>4</sup> *Turning principles into action: A guide for local authorities on decision-making and consultation* report by Controller and Auditor-General dated 12 September 2007

In relation to the consultation principles, key findings from our research were:

- Around two-thirds of survey respondents agreed that the council provided them with enough background information about the issue or issues they raised in their submission (67%), and that this information was user-friendly and easy to understand (66%).
- The vast majority of the submitters (90%) agreed that they had enough time to prepare and submit their views.
- Nearly three-quarters of submitters (72%) agreed with the statement: "The council was open to hearing my views" However when asked specifically if council carefully considered the issues they raised in their submission, only 37% of submitters agreed, and 29% were unsure.
- Over half (59%) of submitters agreed that the council kept them informed about when it would make a decision.
- Nearly two-thirds (63%) of submitters for whom council had made a decision, agreed that council explained the reasons for their decision in a way they could easily understand.
- The vast majority of submitters (95%) said they would be likely to make another submission about an issue they felt was important.

While we have no doubt there are individual examples where councils have not handled a consultation exercise as well as they might, we saw nothing in the results that would suggest any systemic failure. Accordingly we believe there is no need for wholesale changes to the consultation provisions of the Act.

Two aspects of consultation on which councils could do better stand out from this research:

- councils keeping people better informed about when a decision will be made
- councils explaining the reasons for their decision, once made, in a way that residents can understand.

We believe a reason a number of councils have concerns about the consultation provisions of the Act arises from a misinterpretation of the meaning and resulting application of the sections 14(1)(b) and 78. Section 14(1)(b) sets out the principle that local authorities must 'make themselves aware of and have regard to the views of all their communities'. Section 78 requires local authorities to 'give consideration to these views'.

Neither the principle nor the requirements of section 78 automatically translate into an obligation to consult the community. Local authorities may be aware of community views from a number of sources and, if so, there is no obligation to undertake further consultation arising from this principle or the requirements of section 78. Section 78(3) confirms this.

How councils become aware of community views is a matter for their discretion. This can be achieved through a range of mechanisms including feedback received in the carrying out of their everyday functions. A first question in respect of a particular decision is "Do we have enough information on community views now?" If not, a range of public participation or engagement strategies and processes, including but not limited to public consultation, may be considered.

The Office of the Auditor-General's 2007 good practice guide provides examples of the broad range of ongoing engagement processes used by New Zealand (and overseas) councils to assist them to meet and manage the requirements of section 78.

We believe it is important that councils are aware of the full range of engagement processes available and that they consider carefully which is likely to be the most effective in particular circumstances. This information can then be the basis of an engagement or consultation policy. This policy should be reviewed regularly as new information and feedback on existing processes is reviewed. Again we see the need for more good practice guidance in this area.

Section 82 sets out consultation principles local authorities must act in accordance with. A key provision is subsection 82(3) which provides discretion for local authorities in the observance of the principles. Subsection 82(3) makes it clear that the principles are to be observed by a local authority in such a manner as it considers, in its discretion, to be appropriate in any particular instance.

We believe the Act provides appropriate flexibility in the application of the consultation principles and we recommend no change to these provisions. We also believe monitoring of local authority practices is required and we see the Department of Internal Affairs' ten-year legislative evaluation as an appropriate vehicle.

The special consultative procedure received more comment than any other decision-making or consultation provision.

We are concerned that some councils are using the special consultative procedure, the prescribed statutory minimum in specific circumstances, on other occasions when more effective mechanisms may be available. Our survey of all councils suggested this is the case (40% of councils said they used it when not statutorily required to do so).

However, the survey also highlighted that councils were employing a range of methods to engage with their communities and, if anything, the take-up of that range is likely to increase in the future. It appears that methods beyond the special consultative procedure have been, and will be, used.

Given misunderstandings about the role of the special consultative procedure and current practices, we did consider whether the procedure could be removed. A benefit of such a step would be to remove what for some councils appears to be a barrier to further innovation in consultation activities i.e. it is used as the 'default' consultation mechanism by some councils.

On the other hand, we believe that the desired outcomes from the special consultation procedure would still have to be prescribed to achieve its intended purpose of a final unrestricted invitation for submissions before adoption of the council plan/proposal. Such prescription of outcomes would be little different from the current prescribed procedure. Accordingly, we do not recommend removal of the prescribed special consultation procedure.

We believe guidance is necessary on the (limited) purpose of the special consultative procedure and dissemination of existing good practice on new and innovative approaches to consultation. We believe this good practice approach is preferable and accordingly we do not agree with the Local Government Rates Inquiry recommendation "that the current consultation processes be replaced by more selective and streamlined consultation arrangements"

Given our recommendations for more good practice guidance and monitoring as part of the ten-year evaluation, we do not see the need for a further independent review of the consultation and decision-making provisions of the Act as recommended by the Local Government Rates Inquiry.

### 3.4.6 Contributions to decision-making processes by Māori

The Local Government Act requires local authorities to:

- establish and maintain processes to give Māori an opportunity to contribute to decision-making, consider ways to foster Māori capacity to do so, and provide relevant information to Māori for these purposes
- take into account the relationship Māori have with ancestral lands and waters when making significant decisions.

In relation to obligations to Māori under the Act, the SOLGM submission referred to misconceptions that abound about "the obligation to consider how to build Māori capacity to participate in local government"

It seemed important to us to elicit information on local authorities' and Māori experiences with the new provisions of the Act relating specifically to opportunities for Māori to contribute to local authority decision-making, requirements in relation to significant decisions and in relation to consultation. We did this by various means.

There is a large body of information about local authority and central government engagement with Māori. Most of the information records structural arrangements and processes and reports on local authority perceptions of progress, issues, and problems. We note that information is light on the perspectives of Māori on progress, issues and problems.

There is also a wide range of good practice guides, relating to such legislation as the Local Government Act and the Resource Management Act, on how local authorities (and/or central government agencies) can more effectively engage with Māori. Guides on how Māori can more effectively engage with local authorities are less evident.

The various reports we considered and our own analysis reveals that engagement activity is patchy across the country. This is due in part to capacity issues for both Māori and local authorities.

Local authorities need to develop their capacity to engage with Māori. A lack of capacity and lack of confidence in many local authority elected members and staff find engagement processes intimidating.

LGNZ has been active in supporting local authorities by providing advice and sharing information on how local authorities can effectively engage with Māori. Looking forward, LGNZ has a long-term project to develop resources over time to assist local authorities to engage more effectively with Māori. We encourage LGNZ in this area.

Advice and assistance to Māori has been less evident and we are not aware of any forums or organisations that can provide similar nation-wide support and information sharing for Māori.

Although our role is to review the operation of the Local Government Act, we decided, in light of the information we were presented, to take a broader approach and considered the bigger picture regarding local and central government engagement with Māori generally. We did so because:

- We believe that many factors and considerations relevant to engagement under the Local Government Act are also relevant to central and local government engagement under other legislative, regulatory, and service delivery regimes.
- Whilst many local and central government agencies each have their own kaupapa, the Māori organisations they engage with have holistic values and aspirations that span a range of activities. We believe it is important that our considerations are based on a clear view of the bigger picture and that our recommendations fit with a 'whole-of-government' approach.

We see the need for a strategic approach across both local and central government in relation to engagement with Māori, and in particular a need for

- an independent audit of the effectiveness of local authority engagement with Māori
- a more co-ordinated approach to funding of the development of iwi management plans or similar strategic documents.

We consider that an independent audit of the effectiveness of local authority engagement with Māori would be useful and that periodic reviews should track progress over time. Such an audit should focus on the effectiveness of the engagement rather than on the existence of protocols and agreements. We suggest that the Local Government Commission and the Office of the Auditor-General be assigned to jointly lead this audit.

We recommend no change to the provisions of the Local Government Act relating to Māori pending completion of the recommended independent audit.

We believe Māori and both central and local government would benefit from more comprehensive availability of iwi management plans or similar strategic documents. We envisage a strategy being developed to boost and extend the scope of strategic planning, incorporating the following:

- Development of a 'whole-of-government' funding strategy (a dedicated fund) to support tangata whenua to develop iwi management plans or similar strategic documents which contain a clear, comprehensive articulation of tangata whenua values, strategic aspirations, and interests on a holistic basis.
- Development of a 'whole-of-government' funding strategy to support strategic planning by taura here organisations that are involved in community well-being and service delivery.

Clearly further consultation with Māori, both tangata whenua and taura here, would be required before implementing such initiatives.

Whether the above recommendations are adopted or not, we still see the need for further promotion of good practice guidance to local authorities on effective engagement strategies and opportunities to contribute to decision-making. We encourage LGNZ to continue to play the important role it has assumed in this area.

#### **3.4.7 The annual report**

We received no submissions relating to annual reports and we recommend no change to the present requirements.

### 3.4.8 Financial management

We recommend changing the order of the financial management sections in the Act. We believe the balanced budget requirement (in section 100) should follow the more general financial management provisions of section 101, which include the requirement for prudence, and section 102 which covers funding and financial policies.

We also recommend consideration of the implication of the statutory requirement to act in accordance with 'generally accepted accounting practice' given New Zealand's transfer to the International Financial Reporting Standards.

## 3.5 Effective local government: Discussion

### 3.5.1 Empowerment of and relations between regional councils and territorial authorities

The Local Government Act provides for the empowerment of both regional councils and territorial authorities. It contains provisions to ensure necessary collaboration and coordination between regional councils and territorial authorities in a region and avoidance of duplication in the carrying out of roles. These provisions require a triennial agreement on communication and coordination protocols, and compliance with procedures relating to significant new activities and the transfer of responsibilities.

We see the triennial agreement as a key element in processes of checks and balances on the empowerment of local authorities. We do not agree with one submitter that it should be removed from the legislation. However, we believe existing triennial agreements may not be achieving their full potential.

We recommend an amendment to require consideration of choice of electoral system and timing of representation reviews as part of the development of triennial agreements. We also recommend development and dissemination of further good practice guidance on the development of triennial agreements including examples of benefits of enhanced local authority collaboration and cooperation.

We recommend no change to the requirements relating to proposals by regional councils to undertake significant new activities. But we do recommend that section 16 provide for the Local Government Commission to perform the role presently prescribed for the Minister of Local Government in relation to proposals to undertake significant new activities.

We also recommend consideration of an amendment to remove the requirement for prior notice of a proposed transfer of responsibilities between local authorities to be given to the Minister of Local Government. If this provision is seen to be necessary, we believe the requirement should be amended to provide for the prior notice to be given to the Local Government Commission rather than to the Minister of Local Government.

### 3.5.2 Special obligations and restrictions

The Part 7 provisions relating to the provision of water and other sanitary services, disposal of parks, reserves and endowment properties, and membership of public libraries may be seen as further specific limits and controls on the general empowerment of local authorities. We were interested to see whether the provisions were consistent with the original policy intent for the legislation.

The provisions relating to the provision of water and other sanitary services may be seen as being supportive of the regulatory role that the Public Health Bill, before Parliament, envisages for territorial authorities. This role includes assessing 'the state of play' of services in the district.

As a consequence of being responsible for this role, a territorial authority may be directed by the Minister of Health, under the provisions of the Public Health Bill, to provide for a particular service in its LTCCP. This regulatory role envisaged by the Public Health Bill is different from the essentially service delivery role carried out by territorial authorities through their LTCCP.

In line with this public health regulatory role, we recommend no change relating to requirements for territorial authorities to undertake water and sanitary service assessments.

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We believe the provisions relating to the means of delivery of water services can be seen to be contrary to the Government's statement of policy intent. SOLGM argued that the provisions confuse 'means' with 'ends'. The provisions also need to be considered alongside those of section 88 which require the special consultative procedure to be used in relation to a change of mode of delivery of significant activities.

We recommend repeal of the provisions placing specific obligations and restrictions on local authorities relating to the delivery of water services (i.e. section 130 and consequential repeal of sections 131 to 137 with the exception of provisions relating to restriction or stopping of the water supply) and these matters be left for local communities to determine.

In line with our recommendations in Chapter 3 of our main report relating to consultation and decision-making, we recommend the repeal of section 138 and its prescriptive consultation requirement on all proposals for the sale or disposal of parks.

### ***3.5.3 Regulatory, enforcement and coercive powers***

Local authorities require a range of regulatory and other coercive powers to promote well-being in their communities. Bylaws are the most familiar local authority regulatory power but other powers are also required, such as powers to enter onto private land and powers, in certain circumstances, to require certain work to be done.

We received a number of submissions on the provisions of Parts 8 and 9 of the Act. We also commissioned a legal analysis on these provisions given their nature and the existence of bylaw-making provisions in other Acts.

This analysis recommended a comprehensive review of all local authority statutory bylaw-making provisions to ensure consistency of approach between Acts and with a view to achieving efficient and effective administration of all bylaw-making powers. We endorse this recommendation.

We also recommend that current bylaw-making powers for the control of liquor be extended to regional councils in respect of land owned or controlled by regional councils. Further extensions of bylaw-making powers to regional councils may be identified as a result of the recommended comprehensive review of all statutory bylaw-making powers.

We make a number of recommendations relating to technical enforcement issues as identified by submitters and our legal analysis. In response to a number of submissions on the subject, we also recommend that regulations be made under section 259 as soon as practicable to prescribe breaches of bylaws that are infringement offences along with associated infringement fees.

### ***3.5.4 Other legislation***

We recommend a review of the remaining provisions of the Local Government Act 1974 relating to roading, private drains, land drainage, transport activities, fire hydrants and the remaining offence provisions with a view to a complete repeal of this Act.

### ***3.5.5 Other provisions of the Local Government Act***

We make no substantive recommendations but raise some technical issues relating to the following:

- the powers of the Minister and central government
- the structure of local government
- reorganisation of local authorities
- the Local Government Commission.

### ***3.5.6 Local authority governance***

We recommend no change relating to the constitution, role and membership of the local authority governing body as the responsible and democratically accountable decision-making body. We also recommend no change to provisions relating to local governance statements and meeting procedures including the provision for a casting vote.

We are aware of a suggestion for local authorities to conduct some of their business on-line. We recommend that work is undertaken on this issue including the scope for such a provision and its advantages and disadvantages.

We raise some technical issues relating to committee and officer delegations.

### 3.5.7 *Elected member issues*

In response to submissions, we recommend an amendment to clarify that, in the event of a conflict, the territorial authority declaration signed by a councillor shall take precedence over a declaration in respect of that councillor's membership of a community board.

We received several submissions on the requirement for local authorities to adopt a code of conduct. These related to the absence of a statutory process for investigations of alleged breaches, the absence of statutory penalties and the exclusion of the mandatory requirement for a code for community boards.

We gave careful consideration to this issue. We also discussed codes of conduct with the Office of Auditor-General and considered reports by the Controller and Auditor-General.

We understand that it was a specific Government policy not to prescribe penalties in the Act for breaches of codes. This was on the basis of concerns about members judging each other, natural justice and a need for appeal rights to an independent body.

The Auditor-General did not identify any significant concerns regarding current enforcement processes, but:

- considered that it would be better for independent external people (rather than members) to be used for the investigation stage
- noted strong views on whether or not the Act should provide for penalties but no consensus or majority view
- suggested that codes encourage issues to be raised and resolved at the lowest possible level and allow for a screening process with discretion to dismiss complaints that do not warrant formal enforcement processes.

Given the resource implications of establishing an independent appeal or primary adjudication body, the Auditor-General's comments about the nature of most allegations, and the uptake of good practice guidance in this area including the use of independent persons for initial investigations, we recommend no change to the current provisions.

We recommend that a good practice template for a code of conduct for community boards be developed, either by the Department of Internal Affairs or LGNZ. This should then be circulated to community boards for consideration.

We agree with submitters that there is an urgent need for a review of the Local Authorities (Members' Interests) Act to modernise its application and bring its scope, approach and provisions into line with more recent legislation such as the Crown Entities Act. Options to achieve this are to retain a stand alone statute or consolidate the relevant provisions into the Local Government Act.

We recommend a review of the Local Authorities (Members' Interests) Act as soon as possible consolidating necessary statutory provisions relating to the 'discussing and voting rule' for elected members into the Local Government Act.

We discussed the operation of the elected member remuneration provisions with the Remuneration Authority. No substantive concerns with the legislative provisions were raised and accordingly we recommend no change to the Act.

### **3.5.8 Community boards**

We considered several issues relating to the establishment and functioning of community boards. We also received a copy of a report prepared for LGNZ on behalf of the Community Boards Executive Committee on the roles and functions of community boards.

We believe community boards have an important function in the structure of local government in New Zealand and all territorial authorities should regularly consider the option of establishing community boards in their district. We therefore endorse the 2002 amendment to the Local Electoral Act to require such consideration as part of territorial authorities' representation reviews.

We believe the best models for effective community boards are those where the territorial authority has delegated significant and meaningful responsibilities to their boards. Accordingly we recommend development and dissemination of good practice guidance on relationships between territorial authorities and their community boards including consideration of appropriate delegations.

We are aware of concerns in some areas regarding proposals to levy targeted rates on communities with community boards to fund board running costs.

We are on record as saying we believe community boards are a part of the governance structure for the district as a whole and therefore their administration should be funded across the district, not just by the community concerned. In order to ensure this, we believe a legislative amendment is necessary. We recommend clause 39 of Schedule 7 be amended to clarify, for the purpose of funding the administration of community boards, that "general revenues of the district" precludes the levying of targeted rates.

We recommend no other changes relating to the general provisions on establishment, roles and membership of community boards.

### **3.5.9 Council (-controlled) organisations**

We were aware that the Local Government Rates Inquiry made a number of recommendations relating to the operation of business enterprises owned or controlled by local authorities. As we understood there was to be a whole-of-government response to the Inquiry's report and recommendations, we did not address the operation of these enterprises and organisations.

We did receive a few submissions on the provisions relating to exclusion and exemption from council-controlled organisation requirements, establishment requirements and director indemnification. Following our consideration, we were not convinced of the need for any legislative changes at this time.

### **3.5.10 Employment matters**

We received one submission on the Act's general employment provisions and one on the issue of the employment of the chief executive. We also discussed the latter issue with both LGNZ and SOLGM.

LGNZ advised its preferred position was that chief executives be appointed for a five-year term with the local authority having discretion to extend the term for a further five years without the need for advertising. This was on the grounds of the cost of advertising and the negative impact uncertainty of reappointment of the chief executive after five years can have on the local authority.

SOLGM noted there was a level of acceptance of the statutory provisions albeit a reluctant acceptance in some areas. It also noted the practice of some councils and chief executives to agree to advertising after five years, rather than undertake the required performance review to allow for a two-year extension.

LGNZ has recently published guidance material for councils on hiring of and relationships with the chief executive. We believe such guidance to councils should address concerns in this area. In the absence of strong sector-wide calls for statutory change, we recommend no change in this area.

## 4.1 Framework for analysis

We present our review of this Act in Chapter 5: Democratic Local Government.

We set out to address the following question: *How well do current arrangements provide for democratic representation for local communities and for facilitating public confidence and understanding of the electoral process?*

The purpose of the Act (section 3) is to:

- provide sufficient flexibility in law to readily accommodate new technologies and processes as they are developed
- adopt uniform rules in relation to particular aspects of the conduct of local elections and polls
- allow diversity, through local decision-making, in certain specified areas.

We addressed this purpose in relation to the principles of the Act of 'fair and effective representation', 'reasonable and equal opportunities to participate' and 'public confidence in, and public understanding of, local electoral processes'.

We addressed the provisions and requirements relating to the following issues:

- the electoral system
- separate Māori representation
- representation arrangements
- the representation review process
- candidate issues
- elector issues
- the appointment and role of the electoral officer
- the conduct of local elections and polls.

## 4.2 Key findings

### 4.2.1 *An appropriate balance between uniform rules and local diversity has been achieved.*

Generally the Local Electoral Act is achieving its statutory purpose and achieving an appropriate balance on a continuum between 'diversity through local decision-making' at one end and 'comprehensive uniform requirements and implementation' at the other.

We believe that in the long term, it would be desirable for voters to be faced with one electoral system at local elections and one order of candidates at least on combined voting documents. At this time there is insufficient experience of the GIV electoral system to recommend it as an alternative to FPP, and insufficient research applicable to the New Zealand environment to recommend one preferred candidate order for voting documents.

### 4.2.2 *There is a need for a better balance between fair and effective representation*

We have identified a need for more flexibility around the fair representation requirement relating to the ratio of population to elected member (the +/-10% rule) in order to provide a better balance with the requirement for effective representation of communities of interest. We make recommendations to achieve such flexibility.

We believe these recommendations, along with a recommendation for the Act to set out all the factors to be considered in determining appropriate representation arrangements, will help ensure achievement of both fair and effective representation for individuals and local communities.