
Local Government Commission
Mana Kāwanatanga ā Rohe

Local Government Commission
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Dear Minister


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.
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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Findings and Recommendations
FINDINGS AND RECOMMENDATIONS

OVERALL CONCLUSIONS

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.

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.

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 recommendations below) 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 the both the Justice and Electoral Committee and the Commission. We recommend that these amendments proceed as soon as possible.
Key findings

Local Government Act 2002

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.

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. 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.
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.

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.

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’ Interests) Act 1968.
Local Electoral Act 2001

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 STV 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.

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.

3. **Recommended enhancements in administration of local elections and polls should proceed**

Arising from its inquiry into the 2004 local elections, the Justice and Electoral Committee recommended a number of amendments to enhance the administration of local elections and polls. These recommendations, also supported by the Commission in its initial report on this review, will help achieve the three principles of the Act of ‘public confidence and understanding’, ‘fair and effective representation’ and ‘reasonable and equal opportunities to participate’.

The recommendations relate to elector awareness and education, the information provided to electors in candidate profile booklets and the availability of these booklets, voting methods, the quality of voting documents, the nomination process, the election timetable and providing for public assurance around the integrity of vote processing and counting systems.

We have endorsed most of these recommendations again in our review and recommend they be enacted as soon as possible.
Recommendations

Having conducted the review of the Local Government Act 2002 and Local Electoral Act 2001, the Local Government Commission makes the following recommendations\(^1\) to the Minister of Local Government.

**Local Government Act 2002**

*Responsive local government (see chapter 3)*

**3.1 Community outcomes**

1. No change to the Local Government Act relating to:
   a. identification of community outcomes
   b. reporting on community outcomes.

2. Development and dissemination of further good practice guidance relating to:
   a. the identification and application of community outcomes as well as ways to enhance community understanding of the community outcomes process
   b. local authority monitoring and reporting on community outcomes.

3. Further work:
   a. Consideration be given to opportunities and methods of promoting greater collaboration between local authorities in identifying community outcomes using current examples, and this include opportunities for collaboration on a regional basis promoted through the triennial agreement.
   b. Monitoring of central government agency engagement in local community outcomes processes as part of the Department of Internal Affairs’ ten-year evaluation of local government legislation.
   c. Priority be given to ensuring the availability of relevant disaggregated statistical data to assist local authority monitoring of progress towards the achievement of community outcomes.

**3.2 LTCCPs**

4. No change to the Local Government Act relating to:
   a. the requirement for councils to prepare an LTCCP and have this plan in place at all times
   b. the timing of LTCCPs
   c. the audit of LTCCPs.

5. Amendments to the Local Government Act:
   a. Section 102(4)(e) to require local authorities to adopt a policy on partnerships between the local authority and the private sector, for inclusion in the LTCCP, only if the local authority intends entering into such a partnership.
   b. Deletion of section 102 (4)(f) requiring local authorities to adopt a separate policy on the remission and postponement of rates on Māori freehold land.
   c. Extension of the auditing requirement for proposed amendments to LTCCPs, to include auditing of the amendment as finally adopted by the local authority.
   d. Section 97(1) to require amendments of an LTCCP only for significant changes to significant activities and strategic assets.

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\(^1\) Explanatory note: Input was sought from various stakeholders during the course of the review. However, the Commission was not obliged to consult on its final recommendations. As such some of our recommendations are worded as “consideration be given to”, as in those cases we acknowledge further consultation is required.
e. Section 102(6) to require amendment of an LTCCP only in the case of significant changes to funding and financial policies.

f. Section 141 to require that the sale or exchange of endowment land must be undertaken by way of the special consultative procedure rather than as an amendment to the LTCCP.

6. Development and dissemination of further good practice guidance relating to:
   a. the preparation of LTCCPs including processes for:
      i. measuring and forecasting levels of service
      ii. financial forecasting and projecting price increases based on inflation
      iii. developing succinct funding and financial policies
   b. the preparation of summaries of statements of proposal for LTCCPs
   c. requirements for amendments to LTCCPs.

3.3 Annual plan
7. No change to the Local Government Act relating to the requirement for councils to prepare and adopt an annual plan for each financial year.

3.4 Decision-making
8. No change to the Local Government Act relating to:
   a. local authority decision-making requirements
   b. the requirement for local authorities to adopt a policy on significance subject to section 90 (Policy on significance) being moved to follow section 79 (Compliance with procedures in relation to decisions) in the Act.

9. Development and dissemination of further good practice guidance relating to:
   a. local authority decision-making processes and procedures including in relation to a sustainable development approach
   b. the application of the concept of significance by local authorities.

10. Further work: A review of the use of the words ‘significant’, ‘significance’ and ‘significantly’ in the Local Government Act including distinguishing between council assessments of these terms and when the special consultative procedure is required to be used.

3.5 Consultation
11. No change to the Local Government Act relating to:
   a. the consultation principles in section 82
   b. requirements for use of the special consultative procedure.

12. Development and dissemination of further good practice guidance relating to:
   a. the range of community engagement and consultation mechanisms available and methods of evaluating their effectiveness
   b. effective consultation practices including appropriate use of the special consultative procedure.

13. Further work:
   a. Monitoring of the effectiveness of local authority consultation practices as part of the Department of Internal Affairs’ ten-year legislative evaluation.
   b. Consideration of alternative and parallel mechanisms to newspapers for the giving of required public notices.
3.6 Contributions to decision-making processes by Māori

14. No change at this time to the Local Government Act relating to provision of opportunities for Māori to contribute to decision-making processes.

15. Development and dissemination of further good practice guidance relating to local authority engagement with Māori and opportunities for contributions to decision-making.

16. Further work:
   b. Consideration of a central government funding strategy to advance the development of iwi management plans or similar strategic documents.

3.7 Annual report

17. No change to the Local Government Act relating to the requirement for councils to prepare and adopt an annual report in respect of each financial year.

3.8 Financial management

18. An amendment to the Local Government Act: section 100 be moved to follow section 102.


Effective local government (see chapter 4)

4.1 Empowerment of and relations between regional councils and territorial authorities

20. No change to the Local Government Act relating to:
   a. the requirement for local authorities to prepare triennial agreements
   b. proposals by regional councils to undertake significant new activities.

21. Amendments to the Local Government Act:
   a. Section 15 to require consideration of the choice of electoral system and timing of representation reviews as part of the development of all triennial agreements.
   b. Section 16 to provide for the Local Government Commission to perform the role presently prescribed for the Minister of Local Government in relation to proposals for undertaking significant new activities.

22. Development and dissemination of further good practice guidance relating to the development of triennial agreements, including examples of the benefits of enhanced local authority collaboration and cooperation.

23. Further work: Consideration of an amendment to section 17 to remove the requirement for prior notice to be given to the Minister of Local Government of a proposed transfer of responsibilities between local authorities. If this provision is seen to be necessary the section be amended to provide for the prior notice to be given to the Local Government Commission rather than to the Minister of Local Government.
4.2 **Special obligations and restrictions**

24. No change to the Local Government Act relating to requirements for territorial authorities to undertake water and sanitary service assessments.

25. Amendments to the Local Government Act:
   a. 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.
   b. Repeal of section 138 prescribing consultation on all proposals for the sale or disposal of parks.

4.3 **Regulatory, enforcement and coercive powers**

26. Amendments to the Local Government Act:
   a. Section 160A to state expressly that a bylaw not reviewed when required is enforceable for the specified two-year period before it is mandatorily revoked.
   b. Section 161(3) to clarify how the reference to section 17 is to work, including use of the special consultative procedure, given that the section primarily relates to transfers between territorial authorities or between regional councils.
   c. The current bylaw-making powers for the control of liquor be extended to regional councils in respect of land owned or controlled by the regional council, along with any other powers that may be identified as a result of the recommended comprehensive review of all statutory bylaw-making powers.
   d. Section 164(3) to identify the necessary requirements for the notice relating to the seizing and impounding of property or prescribe the form referred to in the section.
   e. Section 168(1) to clarify whether property may be disposed of within or after six months.
   f. An extension of the powers in section 181(1) and (2) in relation to construction of works on private land, to cover all land.
   g. Clarification that the powers provided to local authorities in section 181 include local authority organisations.
   h. Section 182 to confirm that powers to enter land to check water is not being wasted are able to be exercised in respect of waterworks under the control of a council-controlled organisation.

27. Further work:
   a. 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 bylaw-making powers.
   b. A review of the application of the provisions of section 188 relating to liability for payments in respect of private land, and consideration of a new generic provision enabling costs incurred by local authorities under various provisions to be a charge on the land concerned.
   c. Regulations be made under section 259 as soon as practicable to prescribe breaches of bylaws that are infringement offences along with associated infringement fees.
4.4 **Other legislation**


4.5 **Powers of the Minister and central government**

(No recommendations)

4.6 **Structure of local government**

29. An amendment to the Local Government Act: Clause 5 of Schedule 2 to provide that structures adjoining a district form part of that district in the same way as reclaimed land.

30. Further work: A review of those territorial authority district boundaries remaining at the mean high water mark with a view to extending them to mean low water springs.

4.7 **Reorganisation of local authorities**

31. Amendments to the Local Government Act:
   a. Clause 67 of Schedule 3 to provide for the continuation of delegations in respect of any Act, Regulations or bylaw made by a former local authority relating to an area coming under the jurisdiction of a new or different local authority.
   b. Provision for an Order in Council giving effect to a reorganisation scheme, or a ministerial notice, to alter, with the consent of the Minister of Health, the boundary of a district health board to conform with an altered territorial authority boundary.
   c. Clause 7 of Schedule 6 to provide that appeals against a decision of a territorial authority to not constitute a community must be lodged with the Local Government Commission within one month of the council’s decision being notified.

4.8 **Local Government Commission**

32. No change to the Local Government Act relating to the constitution, functions and membership of the Local Government Commission.

4.9 **Local authority governance**

33. No change to the Local Government Act relating to:
   a. the constitution, role and membership of the local authority governing body
   b. the requirement for local authorities to produce a local governance statement
   c. local authority meeting procedures including provision for a casting vote.

34. Amendments to the Local Government Act:
   a. Clause 32B of Schedule 7 to not automatically prohibit further delegation by an officer unless such a prohibition has been agreed by the local authority or is provided in another enactment.
   b. Section 5 to include a subcommittee appointed directly by the local authority in the definition of a committee.

35. Further work: Consideration of the option for local authorities to conduct business on-line including the possible scope for such a provision and its advantages and disadvantages.
4.10 Elected member issues
36. No change to the Local Government Act relating to:
   a. requirements for codes of conduct including in relation to enforcement provisions
   b. arrangements for the determination of elected member remuneration.
37. An amendment to the Local Government Act to provide that, in the event of a conflict, the territorial authority declaration signed by a councillor takes precedence over a declaration in respect of that councillor’s membership of a community board.
38. Further work:
   a. A good practice template for codes of conduct for community boards be developed, either by the Department of Internal Affairs or Local Government New Zealand, and circulated to community boards for consideration.
   b. A review of the Local Authorities (Members’ Interests) Act as soon as possible with consolidation into the Local Government Act of necessary statutory provisions relating to the ‘discussing and voting rule’ for elected members.

4.11 Community boards
39. No change to the Local Government Act relating to general provisions on establishment, membership and roles of community boards.
40. Amendments to the Local Government Act:
   a. Schedule 6 include a new clause providing that a local authority resolution or Local Government Commission determination on establishment of a community board may determine any matter contained in section 19J(2)(d) to (i) of the Local Electoral Act.
   b. Clause 39 of Schedule 7 to expressly preclude the levying of targeted rates for the purpose of funding the administration of community boards.
41. Development and dissemination of further good practice guidance relating to relationships between territorial authorities and their community boards including encouragement for territorial authorities to consider carefully the issue of community board delegations.

4.12 Council organisations and council-controlled organisations
42. No change to the Local Government Act relating to:
   a. organisations excluded or exempted from council-controlled organisation requirements
   b. requirements for the establishment of council-controlled organisations.
43. Further work: Consideration of alignment of statements of intent for council-controlled organisations with local authority LTCCPs.

4.13 Employment
44. No change to the Local Government Act relating to local authority employment provisions including those applying to chief executives.
Local Electoral Act 2001

Democratic local government (see chapter 5)

5.1 The electoral system for local elections

45. No change at this time to the Local Electoral Act relating to choice of electoral system for local authority elections.

46. Amendments to the Local Electoral Act:
   a. Section 27 to provide that a local authority resolution to adopt a particular electoral system applies for the following two triennial elections.
   b. Replace the term ‘electoral system’ with ‘voting system’ in each instance it occurs in the Act.

47. Development and dissemination of further good practice guidance relating to the provision of information to councils and communities on the advantages and disadvantages of the FPP and STV electoral systems.

5.2 Separate Māori representation

48. No change to the Local Electoral Act relating to establishment of Māori wards/constituencies.

5.3 Representation arrangements

49. No change to the Local Electoral Act relating to the basis of election for local authorities (i.e. choice for territorial authorities of at large, wards or a mix of both and mandatory constituencies for regional councils).

50. Amendments to the Local Electoral Act:
   a. Section 19D to provide that the maximum number of members for regional councils be 16. (Note this recommendation was by majority.)
   b. Provision for a territorial authority, subject to appropriate prior public notification, to seek the approval of the Local Government Commission for disestablishment of a community board with insufficient nominations at an election for a quorum to be formed.
   c. Section 19V to provide more flexibility around the requirement for achieving fair representation by allowing:
      i. the +/-10% rule to apply ‘on average’ between particular wards/constituencies in order to ensure effective representation of recognised communities of interest
      ii. exceptions to the +/-10% rule for both territorial authorities and regional councils subject to Local Government Commission approval, so as to:
         1. provide effective representation for island and isolated communities of interest
         2. avoid splitting recognisable communities of interest
         3. avoid grouping communities of interest with few commonalities
         4. avoid potential barriers to participation of electors
         5. provide convenient access to local authority services
         6. allow for population forecasts to address present imbalances
   d. A requirement for the following steps to be considered in determining representation arrangements:
      i. identify the communities of interest of the district or region
      ii. determine whether wards, or a mix of wards and at large, are required to achieve effective representation of the communities of interest of the
district (applies only to territorial authorities), with factors to consider including accessibility, size and configuration of the district, and the electoral system to be used

iii. identify a range/total number of members required to effectively represent the diversity of the district or region, meet statutory obligations, and provide efficient and effective governance of the district or region

iv. determine the number, boundaries, and members per ward/constituency required to achieve effective representation (of groupings) of communities of interest

v. determine the number of members per ward/constituency required to achieve fair representation (defined by the +/-10% rule)

vi. determine the extent, if any, to which effective representation of a particular community of interest requires wards or constituencies to be defined, and membership distributed between them, in a way that does not comply with the requirement for fair representation

e. Section 19V(1) to change “electors” to “residents”.

5.4 The representation review process

51. No change to the Local Electoral Act relating to general responsibilities for the conduct of representation reviews.

52. Amendments to the Local Electoral Act:
   a. Section 19R to require the Local Government Commission, when considering appeals and objections against local authority representation review proposals, to give due weight to local authority proposals that have been the subject of full consultation with the community and comply with all legislative requirements.
   b. Section 19N to require the public notice given by local authorities of their final proposals to include the same information given in respect of their initial proposals relating to the +/-10% rule.
   c. Section 19V to require all territorial authorities and regional councils to refer all final proposals that do not comply with the legislation to the Local Government Commission for final determination.
   d. Provision for local authorities to make minor adjustments to ward, constituency or community subdivision boundaries after three years from their last representation review determination without the need for community consultation, but subject to Local Government Commission approval.
   e. Sections 19H and 19I to provide that local authorities may only make representation determinations in the year preceding triennial elections.

5.5 Candidate issues

53. No change to the Local Electoral Act relating to:
   a. dual candidacy for and membership of local authorities
   b. candidate deposits
   c. the regime of electoral expense limits for candidates at local elections
   d. receipt and declaration of donations at local elections.

54. Amendments to the Local Electoral Act:
   a. Implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 61 requiring that dual candidacies be identified in candidate profile statements (not to be included in the 150 word limit).
   b. Repeal of section 69 and consequential amendments to sections 70 and 71 to remove provision for the voluntary retirement of a candidate following the close of nominations.
c. Implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 61 requiring that all candidates include their principal place of residence in their candidate profile statement (not to be included in the 150 word limit).
d. Section 55 to provide for electoral officers to require proof of citizenship of a candidate.
e. Implementation of the recommendation of the Justice and Electoral Committee for amendments to sections 55 and 61 to require all nomination documentation (i.e. nomination form, candidate profile statement and deposit) to be submitted together.

55. An amendment to the Local Electoral Regulations: Implementation of the recommendation of the Justice and Electoral Committee for an amendment to regulation 29 requiring early publication of candidate profile statements.

56. Development and dissemination of further good practice guidance relating to the layout and readable type face of candidate profile statements and their availability on request in accessible formats.

57. Further work:
   a. Consideration of the practicality of providing further statutory guidance on the definition of candidate ‘affiliation’ in section 57.
   b. Consideration of the introduction of an infringement offence regime to replace the summary conviction offence provision in section 135 relating to unauthorised advertisements.

5.6 Elector issues

58. No change to the Local Electoral Act relating to:
   a. provision for local discretion on choice of voting methods
   b. the length of the voting period, polling day or close of voting until research indicates such changes are likely to impact positively on voter turnout.

59. Amendments to the Local Electoral Act:
   a. Section 39(1)(b) to identify an earlier date by which councils are to provide, with their rates assessments/notices, information on qualifications and enrolment procedures for the non-resident ratepayer franchise.
   b. Implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 75 requiring a statement to be included on voting documents relating to offences under sections 123 and 124.
   c. Provision for electronically-enhanced provision and return of voting documents for overseas voters as occurs at parliamentary elections.

60. Amendments to the Local Electoral Regulations:
   a. The term “rateable” to be substituted by “rating” on the two occasions it occurs in regulation 16(2).
   b. Schedule 1 to specifically include “trusts” as bodies for which persons may be eligible to be non-resident ratepayer electors.

61. Development and dissemination of further good practice guidance relating to:
   a. postal voting processes and procedures including the integrity of this voting method
   b. initiatives to promote voter turnout.

62. Further work:
   a. The SOLGM electoral working party be encouraged to consider options for better synchronisation in the timing of the availability of preliminary electoral rolls for local elections with national enrolment update campaigns.
b. The SOLGM electoral working party be encouraged to undertake work on options relating to the need for enrolment on the non-resident ratepayer electoral roll and/or the need for triennial confirmation of enrolment and if enrolment is found to be necessary, simplification of the prescribed enrolment form in the Local Electoral Regulations.

c. Consideration of provision for compilation of unpublished non-resident ratepayer rolls for local elections.

d. The SOLGM electoral working party and the Department of Internal Affairs commence work on issues and options relating to the introduction of electronic voting in local elections.

e. Consideration of provision for an Order in Council to move polling day for all local authorities or for a particular local authority, on advice provided by the Minister of Local Government.

f. Consideration of formally assigning to the Electoral Commission responsibility for voter turnout and awareness, and education on electoral systems associated with local elections.

5.7 Appointment and role of the electoral officer

63. No change to the Local Electoral Act relating to roles and responsibilities in the conduct of local elections including electoral officers being appointed by local authorities and then acting independently of that body.

64. Amendments to the Local Electoral Act:
   a. Sections 16 to 19 to provide that all electoral officers are responsible for all electoral tasks in the first instance.
   b. Section 14 to provide a full prohibition on the appointment of a local authority chief executive as that authority’s electoral officer.

65. Development and dissemination of further good practice guidance relating to:
   a. the role of the electoral officer including job profiles and person specifications
   b. contracts for the provision of services
   c. job training including the option of certification of electoral officers.

5.8 Conduct of local elections and polls

66. No change to the Local Electoral Act relating to:
   a. the holding of by-elections
   b. the New Zealand method of STV
   c. the publishing of the source code for the STV calculator or any other STV counting program used in local elections
   d. the effect of an irregularity on the result of an election or poll.

67. Amendments to the Local Electoral Act:
   a. Implementation of the Justice and Electoral Committee recommendation for an extra week in the election timetable by section 5 providing that nomination day shall be the 57th day before polling day.
   b. Implementation of the Justice and Electoral Committee recommendation for the repeal of section 79 requiring local authorities to determine whether early processing of voting documents is to take place at local elections, and the matter be left for electoral officer discretion.
   c. Section 115 to provide that all members, whether elected unopposed or not, come into office at the same time i.e. the day after declaration of the result of the election.
68. An amendment to the Local Electoral Regulations: Provision of a generic requirement to achieve end-to-end assurance on vote processing and counting systems used for local elections.

69. Further work:
   a. As part of any future comprehensive review of the Local Electoral Act, a review of the consistency of the provisions of the Act and the Local Electoral Regulations in relation to the purpose of the Act to provide for matters of detail in regulations.
   b. The SOLGM electoral working party be encouraged to undertake further work to enhance the quality of voting documents including consideration of:
      i. prescription of separate voting documents when the two different electoral systems are being used
      ii. the ranking instructions for STV elections
      iii. the double column format of some voting documents.
   c. More analysis be carried out on a preferred order of candidates for voting documents including the option of alphabetical rotational order.
   d. The SOLGM electoral working party be encouraged to consider the availability and accessibility to the public of election data, including electronic data, and also the format of official election results as presently prescribed in the Local Electoral Regulations.
   e. Consideration be given to appropriate provisions for the securing and destruction of all electoral records, including electronic records, following local elections including the issue of access to records for research purposes.
   f. Consideration of amendments to the Local Electoral Act to:
      i. make it an offence to obstruct the electoral officer in the conduct of his or her duties under the Act
      ii. require the electoral officer to maintain order in official election places and provide for the arrest or removal of any person suspected of committing or attempting to commit an offence under this Act, or willfully obstructing the proceedings or causing a disturbance, or conducting themselves in a disorderly manner.
   g. Consideration of a new regulation to regulate the conduct of scrutineers following the close of voting at local elections.
   h. A comprehensive review of all offence provisions under the Local Electoral Act taking into account the voting methods currently or likely to be used at future local elections.

Other legislation

70. The Local Government Act, the New Zealand Public Health and Disability Act, and the Sale of Liquor Act to require local authorities to name their electoral officer in their annual report.

71. The Sale of Liquor Act to provide that a vacancy occurring on a licensing trust within 12 months of the next triennial election either be filled by an appointment or left vacant.

72. The Sale of Liquor Act to require licensing trust boundaries to align with meshblocks and to provide for the Local Government Commission to consider and determine proposals to alter licensing trust boundaries to assist the efficient administration of elections.
Chapter 1

Introduction
CHAPTER 1
INTRODUCTION

This chapter sets out information relating to:
1.1 Statutory mandate for the review
1.2 Status and role of the Local Government Commission
1.3 Scope of the review
1.4 Related reports
1.5 Longer-term evaluation
1.6 Councils’ experience in operating under the two Acts
1.7 Review process.
1.1 Statutory mandate for the review

The Commission was required to undertake this review by virtue of section 32 of the Local Government Act 2002 – “Review of the operation of Act (Local Government Act 2002) and Local Electoral Act 2001”.

Specifically:

“32(1) The Commission must –
(a) review the operation of this Act and the Local Electoral Act 2001; and
(b) present a report on the review to the Minister.

(2) The report must be presented to the Minister as soon as practicable after the triennial general election of members of local authorities in 2007.

(3) Without limiting the scope of the review, the review must determine and assess –
(a) the impact of conferring on local authorities full capacity, rights, powers, and privileges; and
(b) the cost effectiveness of consultation and planning procedures; and
(c) the impact of increasing participation in local government and improving representation on local authorities.”

1.2 Status and role of the Local Government Commission

The Local Government Commission is an independent statutory body. It has three members who are appointed by the Minister of Local Government. Its functions include reporting on and making recommendations to the Minister of Local Government on matters relating to local government.

1.3 Scope of the review

As prescribed in section 32 of the Local Government Act, the review is to be of the operation of both Acts. That is, we took the general policy intent of the Acts as givens. However, this did not prevent us from commenting on the policy intent when we considered it necessary.

We took the Government’s Statement of Policy Direction for Review of Local Government Act 1974 as the basis of the policy intent along with the purpose sections of both Acts. Details of the general policy intent in respect of the Acts, including the inter-relationship between the two Acts, are set out in Chapter 2: Overview.

The review was not an invitation, or an opportunity, to revisit or relitigate that general policy intent. The focus was on whether the Acts are operating as intended and are giving full effect to the policy intent. As such, key questions for the review were:

• 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 have given particular attention to:

• provisions that were introduced for the first time in these two Acts i.e. they were not present in the Local Government Act 1974 or the Local Elections and Polls Act 1976
• issues raised in submissions or in discussions with interested parties.
The review did not extend to consideration of:

- the current structure of local government or reorganisation policy (as distinct from technical or procedural reorganisation provisions)
- local authority funding as this has been most recently addressed by the Local Government Rates Inquiry and is the subject of a whole-of-government response to that inquiry, or because rating tools are provided for in a different Act i.e. the Local Government (Rating) Act 2002
- the performance of individual local authorities or comparisons between local authorities
- certain issues that were already being addressed through other mechanisms, for example, local authority exemptions from signature and disclosure requirements under the Securities Act 1978.

The funding issues we did not consider, despite these being provided for in the Local Government Act, were development contributions, borrowing and security provisions, including borrowing in foreign currencies, and certain matters relating to council-controlled organisations.

1.4 Related reports

1.4.1 Commission’s initial report (July 2005)

Section 32(4) of the Local Government Act provided for an initial report as follows:

“The Commission must, no later than 1 July 2005, present a report to the Minister if it considers that amendments should be made to this Act or the Local Electoral Act 2001 before the triennial general election of members of local authorities in 2007.”

The Commission completed and sent a report to the then Minister of Local Government on 1 July 2005 (referred to in this report as the initial report). The recommendations of that report are set out in Appendix 1.

No ministerial decisions were taken in respect of the recommendations in the Commission’s initial report relating to the Local Electoral Act prior to the 2007 local authority elections. Accordingly the Commission’s earlier recommendations are addressed again as part of this report.

1.4.2 Inquiry into the 2004 local authority elections – Report by the Justice and Electoral Committee

The Justice and Electoral Committee conducted an inquiry into the 2004 local authority elections and reported back to Parliament in August 2005. The Committee made a wide-ranging series of recommendations relating to the conduct of local elections (see Appendix 2). We have addressed these recommendations in this report.

1.4.3 Funding Local Government: Report of the Local Government Rates Inquiry (August 2007)

The inquiry did consider and make recommendations on certain non-funding provisions of the Local Government Act. We comment on those recommendations in this report.

1.4.4 Inquiry into the 2007 local authority elections – Report by the Justice and Electoral Committee

The Justice and Electoral Committee conducted an inquiry into the 2007 local authority elections and completed its report prior to us presenting this report.

In its report the Committee noted that the submissions it received did not raise any issues significantly different from those considered in the inquiry into the 2004 elections. It considered that this served to “emphasise the need to implement the recommendations from the inquiry into the 2004 elections as soon as possible”. We agree with the Committee and we have addressed these recommendations.
1.5 **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 long-term council community plan (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 this report, will help form a baseline and/or a snapshot for this longer-term evaluation.¹

1.6 **Councils’ experience in operating under the two Acts**

We are aware that councils’ experience of this legislation, particularly the Local Government Act, is still limited as the following indicates:

**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 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.

1.7 **Review process**

Input into the review was sought from a wide range of stakeholders and interested parties.

**1.7.1 Local authorities**

We received substantive submissions from the Society of Local Government Managers (SOLGM)² and Local Government New Zealand (LGNZ)³ in March and April 2007 respectively. We also sought their observations and views at various stages during the review.

The SOLGM submission noted that it had worked closely with LGNZ in preparing the submission. It also noted primary responsibility for the submission lay with SOLGM’s two working parties on financial management and elections. In preparing the Local Government Act aspects of its submission, SOLGM carried out the following exercises:
- It conducted a survey of local government managers’ perceptions of working with the Local Government Act. It surveyed all chief executives and finance, asset management and planning/policy managers in August 2006 (the period immediately following the adoption of 2006-16 LTCCPs) and about 190 managers (52%) responded.

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¹ Other information gathered from our review has been placed on the Commission’s website www.lgc.govt.nz or is available on request.


• It tested its understanding of the key results from the survey and the policy implications at two Countdown to 2009 seminars held during November 2006.
• It further considered the policy implications of some of the changes in both a technical working group and through the SOLGM financial management working party.
• It released an exposure draft of its submission via the SOLGM good practice toolkits website and sought comment from the sector.
• It considered the information LGNZ gathered during its ‘roadshow’ process that it ran in September/October 2006.

The LGNZ submission advised support for the SOLGM paper and provided some additional comments and views on particular issues. In preparing its submission, LGNZ undertook a ‘roadshow’ to canvas the views of local authorities. In September and October 2006, a panel of LGNZ national councillors held six hearings across the country and 72 submissions were received. Commissioners attended some of these hearings.

In addition to the SOLGM and LGNZ submissions, the Commission:
• extended an invitation in July 2007 to all local authorities to make any further submissions they wished (see Appendix 3 for the local authorities that responded)
• held separate discussions with elected members and officers of 14 selected councils, principally around Local Government Act Part 6 matters (planning, decision-making and accountability)4
• conducted an on-line survey of all councils on specific provisions of the Local Government Act.5

1.7.2 Interested parties
In July 2007, we extended an invitation to a selection of non-government agencies to raise any issues with the operation of either Act (see Appendix 3 for those that responded).

We also spoke to a number of Māori organisations and groups in relation to the provisions of section 81 of the Local Government Act (Contributions to decision-making processes by Māori). Details of who we spoke to are set out in Appendix 4.

1.7.3 Central government agencies
We extended an invitation to a selection of central government agencies to raise any issues with the operation of either Act. The list of those that responded appears in Appendix 3. In addition, discussions where held with some of these agencies on specific issues as listed in the same Appendix.

1.7.4 Resident responses and feedback
We commissioned a programme of social research as follows:
• a post-elections survey immediately following the October 2007 local elections examining voting behaviour of electors (people who were eligible to vote) and the impact of various sources of advertising and other information on elector understanding and behaviour
• a national survey on knowledge of, and participation in, local government
• interviews of submitters to selected local authorities on their experiences of interacting with that council.

Details of the methodology of this research and the issues explored are provided in Appendix 5. All survey reports are available on the Commission’s website.

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5 See report Councils’ experiences with the Local Government Act 2002 available on the Commission’s website.
1.7.5 Views received and actions recommended

In undertaking our review, we took account of the views expressed by all those who responded to our invitation to contribute, the findings from our research and a range of reports and papers set out in Appendix 6.

We have not addressed in this report what we see as new policy issues raised in submissions. We believe submitters should raise these with the Department of Internal Affairs. We have also not addressed a few specific detailed issues raised as either the issue was not clear or we did not agree. We noted in a number of cases suggested amendments for clarification of provisions or more detailed prescription were contrary to the policy intent of a ‘broadly empowering legislative framework’.

LGNZ noted in its submission that it did not include a number of technical issues raised by its members relating to the Local Government Act. It said it would forward these to the Department of Internal Affairs should the opportunity to amend the Act arise.

Given our recommendations for legislative change, we anticipate that councils will have the opportunity to raise specific and detailed issues of concern when legislation relating to these matters is being considered.

Finally we note that further consequential technical amendments to the two Acts may be required in addition to those we have identified in this report.
RE view of the Local Government Act 2002 and Local Electoral Act 2001
Chapter 2
Overview

Have the Local Government Act 2002 and the Local Electoral Act 2001 as enacted, and implemented by local authorities, given effect to the policy intent for the legislation?
CHAPTER 2
OVERVIEW

**Have the Local Government Act 2002 and the Local Electoral Act 2001 as enacted, and implemented by local authorities, given effect to the policy intent for the legislation?**

This chapter provides an overview response to the above question in relation to:
- the general policy intent for the Local Government Act 2002 and the purpose of the Act as set out in section 3 of that Act
- the purpose of the Local Electoral Act 2001 as set out in section 3 of that Act.

The chapter considers the above question in terms of ‘responsive local government’, ‘effective local government’ and ‘democratic local government’. It also addresses the three matters set out in section 32(3) of the Local Government Act which the Commission is required to determine and assess.

The issues addressed in this chapter are:

2.1 Policy intent and purpose of the Local Government Act
2.2 Purpose of the Local Electoral Act
2.3 Achievement of the policy intent and purpose of the legislation
2.4 Relationship of the Local Electoral Act and the Local Government Act
2.5 Conclusion.
2.1 Policy intent and purpose of the Local Government Act

There were four key aspects of the policy direction for the Local Government Act as outlined in the Government's Statement of Policy Direction for Review of Local Government Act 1974 released in November 2000. These were:

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
   - 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


2.1.1 A coherent overall strategy for local government

The Commission’s brief was to review the operation of the Local Government Act 2002 and the Local Electoral Act 2001. Our focus, therefore, was on the legislative framework and these two elements in particular, rather than on an overall strategy for local government.

However, several submitters, including LGNZ, raised issues relating to the overall strategy for local government. The issues related to the place of the Local Government Act in the overall local government legislative framework and the relationship between this Act and other Acts which local authorities are required to implement.

In its submission, LGNZ noted: “A key theme in feedback from our members related to the relationships and accountabilities between councils, their communities, and central government”. It referred to tensions, arising in part out of legislation, between local and national priorities, standards and accountabilities. These tensions have been brought into focus by, for example, the long-term planning requirements on local authorities including such exercises as the community outcomes process.

To address these concerns, LGNZ proposed that local government legislation be entrenched and formal protocols be developed to codify the roles, responsibilities, and commitments of central and local government. While we see such proposals as outside our brief to review the operation of the Local Government Act and Local Electoral Act, we note them here.

We believe that the interface between elements of the local government legislative framework also needs to be considered. Examples of key interfaces are those between the Local Government Act
and the Resource Management Act and between the Local Government Act and the Land Transport Management Act. We commissioned work on the relationship between these three Acts.¹

This work concluded that there was no significant operational difficulty identified by stakeholders between the Local Government Act and the other two Acts. The issues raised by stakeholders related more to the Resource Management Act and the Land Transport Management Act (including the current amendment Bill) and the consequential effects these two Acts have on the philosophy of the Local Government Act in relation to effective local governance.

The report raised the following question: Can the planning requirements in particular of these three Acts be harmonised to facilitate more integrated planning and decision-making to better achieve identified community outcomes? Again this is a matter outside our brief but one we believe worthy of further consideration.

### 2.1.2 A broadly empowering legislative framework

To give effect to the Government’s statement of policy direction, the Local Government Act was enacted with the following purpose:

> “to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and to that end …

(a) states the purpose of local government; and

(b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and

(c) promotes the accountability of local authorities to their communities; and

(d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.”

(Section 3 Local Government Act 2002)

The enacted purpose of local government, roles and powers of local authorities, and principles local authorities must act in accordance with, are set out in sections 10 to 14 of the Act (and summarised in Appendix 7).

We see the relationship of these legislative framework provisions as follows:

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The focus of our review and our findings relate to achieving the desired ‘empowering legislative framework’ as set out in the Government’s statement of policy direction and as provided for in the Local Government Act and the Local Electoral Act.

### 2.1.3 Partnership between central and local government

A number of mechanisms, both legislative and non-legislative, have been put in place with a view to achieving a closer working relationship between central and local government. Primary amongst these are:

- the bi-annual Local Government-Central Government Forums
- the Deputy Secretaries Group for engagement of senior central government officials with council chief executives on matters of regional significance
- Central-Local Government Officials Group on Sustainability.

Other examples of the working relationship between central and local government are identified in Chapter 3.

The community outcomes process, as enacted by the Local Government Act, is the principal legislative vehicle for facilitating partnership between central and local government. We assess this process in Chapter 3.
2.1.4 Local government’s relationship with the Treaty of Waitangi

Section 4 of the Local Government Act clearly establishes the Crown's responsibility in relation to the Treaty of Waitangi. In recognition of this responsibility, the Act sets out particular principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes. These are addressed in Chapter 3.

2.2 Purpose of the Local Electoral Act

The Local Electoral Act was enacted in 2001, i.e. prior to the Local Government Act, with the purpose: “to modernise the law governing the conduct of local elections and polls and, in doing this, to:

(a) provide sufficient flexibility in the law to readily accommodate new technologies and processes as they are developed …; and

(b) adopt uniform rules in relation to … (certain specified matters); and

(c) allow diversity through local decision-making in relation to … (certain specified matters).”

(section 3 Local Electoral Act 2001)

The Act reflected the New Zealand Labour Party’s 1999 election manifesto to modernise local electoral legislation and to provide local authorities with the option of adopting the single transferable vote (STV) electoral system. The Act also reflected the policy to establish locally elected district health boards, with elections to be held in conjunction with local authority elections using STV. In addition the Act introduced, for the first time, expense limits for candidates standing at local elections.

2.3 Achievement of the policy intent and purpose of the legislation

We were required by section 32 of the Local Government Act to review the operation of the Local Government Act and the Local Electoral Act. We therefore took the above legislative frameworks, reflecting the Government’s agreed policy direction, and section 3 of both Acts, as givens.

Our focus was on whether the Acts, as implemented by local authorities, are operating as intended and giving full effect to the policy direction and to their statutory purpose. This has not prevented us commenting on the high level policy directions when we considered this necessary.

We noted that SOLGM, endorsed by LGNZ, proposed a set of principles to guide the Commission in its review. We believe the Government’s statement of policy direction and the respective legislative purposes and frameworks provide an appropriate base for a ‘principled’ approach to guide our operational review without introducing a further set of principles.

Without limiting the scope of our review, we were required by section 32 to determine and assess:

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

Detailed analysis of issues relating to these three matters is set out in Chapters 3 to 5.
2.3.1 Impact of conferring full capacity, rights powers and privileges

We see the Government’s statement of policy direction and the purpose of the Local Government Act (as set out in section 3 of the Act) as clearly setting out the intent of providing for the general empowerment of local authorities.\(^2\)

We understand the intent to be that local authorities should have:

- the flexibility to identify what activities they will undertake consistent with the purpose of local government and the manner in which they will undertake them
- the same powers as individuals and corporations under the general law necessary to undertake these activities (without those powers having to be specifically conferred on them).

We received few comments on either the provision of general empowerment or the form of that empowerment. 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.

Certain provisions in the predecessor Act (i.e. the Local Government Act 1974) provided local authorities with wide powers in particular areas. Examples included:

- 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 do all things necessary for the preservation of public health and well-being.
- A territorial authority could undertake, promote and encourage the development of such services and facilities as it considers necessary in order to maintain and promote the general well-being of the public.

As an example of the previous wide powers, SOLGM noted that under the 1974 Act some local authorities provided subsidies for such things as attracting general practitioners to small rural areas and retaining post offices in local communities.

We noted the comment from LGNZ that ‘our feedback from the sector suggests that there is no appetite for major change to the LGA’. LGNZ added that ‘the sector has spent significant time, energy and resources ‘bedding in’ the new requirements and processes in the legislation and does not seek major departures from this’.

In summary, the impact of conferring full capacity, rights, powers and privileges on local authorities has not seen a significant change in the activities of local authorities or strong calls to change these powers.

We focus, as a result, in Chapter 3 Responsive Local Government and Chapter 4 Effective Local Government on the appropriateness or otherwise of provisions designed to provide checks and balances on the activities of local authorities as ‘limits and controls on general empowerment’. The limits and controls addressed in this report are:

- the decision-making processes and accountability requirements (Chapter 3)
- particular requirements relating to regional councils (Chapter 4)
- special obligations and restrictions on local authorities such as those relating to the provision of water and sanitary services (Chapter 4)
- procedures relating to bylaw-making and other coercive powers (Chapter 4)
- the impact of other legislation and particularly the Local Government Act 1974 (Chapter 4)
- the roles of the Minister and central government (Chapter 4).

Overall we found that the above limits and controls on the empowerment of local authorities are working satisfactorily. Our main concern is a need to enhance understanding of these provisions particularly those relating to local authority decision-making and accountability.

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\(^2\) ‘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 provided to local authorities than the term ‘power of general competence’ which has been used in the past.
We are concerned at the often poor understanding of the concept of ‘significance’ and how to determine this locally and apply it appropriately for effective, transparent and accountable local decision-making. We also noted that a few councils have a perception of ‘complexity and over-prescription’ in relation to the decision-making requirements and processes. We believe these are largely demonstrations of misunderstandings of the requirements, including provisions for discretion on their application based on councils’ own judgments.

We have identified what we believe is an inconsistency both within the Act and between the Act and the policy intent for the Act. The policy intent relating to an empowering legislative framework refers to “scope for communities to make their own choices about what their local authorities do and how they do it” (emphasis added). Similarly section 3 (The purpose of the Act) refers to the powers for local authorities “to decide which activities they will undertake and the manner in which they will undertake them” (emphasis added).

We believe the obligations on local authorities relating to the maintenance of water services, including the prohibition on divestment of ownership and the 15-year limit on contracts, are inconsistent with the stated policy intent and purpose of the Act of flexibility in deciding what and how activities are undertaken. We noted that the Local Government Rates Inquiry also made a recommendation on this matter.

With a view to achieving efficient and effective administration of bylaw-making powers, we have identified a need for a comprehensive review of bylaw-making provisions in all legislation relating to local authority activities. We also recommend action on introduction of regulations to prescribe infringement offences and associated penalties.

We have identified the remaining provisions of the 1974 Act as an unnecessary restriction and complication for local authorities in undertaking their role in an efficient and effective manner.

We recommend a review of the Local Authorities (Members’ Interests) Act 1968 as soon as possible to provide needed clarity for local authorities and their members in carrying out their governance role.

2.3.2 Cost-effectiveness of consultation and planning procedure

We see the provisions relating to planning, decision-making and consultation, set out in Part 6 of the Act, as at the centre of the legislative regime enacted by the 2002 Act. While there are other processes and mechanisms designed to balance the empowerment of local authorities, the Part 6 provisions are pivotal to effective, responsive and accountable local government. We have devoted a separate chapter to these provisions (Chapter 3).

In respect of the planning provisions, there is a general acceptance of the benefits that accrue from effective long-term planning including the need for a sustainable development approach. The long-term council community plan (LTCCP) is seen as facilitating a greater strategic focus, enhancing asset and financial management planning, and enabling the provision of greater clarity and certainty for the community about the future.

We understand concerns about the costs of planning processes but believe some of these costs were in the nature of initial set-up costs for councils’ first full LTCCP cycle. Over the medium to long-term, we believe these costs will be more than offset by the benefits that will accrue as councils become more familiar with process requirements.

The community outcomes process, as part of the planning cycle, was another innovation introduced in the Local Government Act. Councils have only gone through one round to date and we believe important learnings will have been gained for application to the next round in 2012. This is one of many areas where dissemination of good practice guidelines will enhance the effectiveness and quality of processes and final outcomes. Engagement by other parties, and particularly central government agencies, was an area identified for more work and we believe this should be carefully monitored.

We make recommendations for legislative amendments relating to the disclosure requirements for LTCCPs and also to the LTCCP amendment process as proposed by SOLGM. We also identify the need for ongoing good practice guidance on the development of LTCCP documents including the required funding and financial policies.
We see the production of high quality and easily accessible LTCCP summaries, as distinct from the full LTCCP itself, as critical for ensuring community engagement and accountability. This is an area where the Auditor-General was critical of local authority performance in the first LTCCP round and where there is a need for a focus of attention for the next planning round in 2009. We recommend this as a focus for good practice guidance.

We considered concerns about the costs that arise from the auditing requirement for LTCCPs and noted there is now general, though not universal, support for the auditing of LTCCPs.

In relation to consultation, we believe some councils have failed to fully understand the requirements of the Act and, in particular, what is left for their discretion to decide. Section 14(1)(b) sets out the principle that a local authority must “make itself aware of, and should have regard to, the views of all of its communities”. Section 78 requires a local authority to give consideration to the views and preferences of affected or interested persons. A number of local authorities appear to see these provisions as a requirement to consult when they are not. If a local authority is aware of community views, then there is no need for consultation arising from these requirements.

Further misunderstanding and confusion arises around the use of the special consultative procedure. The Act does require the use of this procedure in certain instances. Our all-councils survey revealed that a number of councils use the procedure in other non-mandatory circumstances. While this may be appropriate in some cases, we are concerned that the procedure may not be the most appropriate or effective consultation tool in other cases.

The special consultative procedure is designed for certain specific circumstances. In short, it is designed as a tool to provide the community as a whole with the opportunity to have a final say before the council plan or proposal is adopted. It is not designed as the only means of seeking community input. We are concerned that as the prescribed statutory ‘minimum’ in specific cases, it may be stopping councils from considering other possibly more effective consultation tools in other circumstances. Once again we believe there is a need for better understanding, aided by further good practice guidance, on consultation requirements and approaches.

We do acknowledge some of the confusion may be caused by the Act itself and the multiple and varying uses of the words ‘significant’, ‘significance’ and ‘significantly’ with a number of councils equating these to the need to use the special consultative procedure. We recommend a review of the use of these words in the Act with a view to removing this confusion.

While we recommend some minor legislative adjustments, we have not identified major difficulties with the planning and consultation requirements and provisions of the Act. We believe any concerns about the cost-effectiveness of these provisions relate more to misunderstandings of the requirements and demonstrate a need for further guidance and training.

We also believe there are opportunities for more collaboration by local authorities in the carrying out of their responsibilities, including in relation to consultation, and these may result in efficiencies and enhanced effectiveness. We identified the potential of the triennial agreement as one mechanism to facilitate collaboration.

2.3.3 Impact of increasing participation and improving representation

We noted that 60% of councils stated in our all-councils survey that the quantity of consultation feedback they receive has increased “a lot” or “to some extent” in comparison to before the enactment of the 2002 Act. Almost half (46%) stated the quality of consultation feedback had increased either “a lot” or “to some extent”.

There is a danger in using the quantity of consultation feedback for assessing the extent of participation overall in local decision-making. The quantity of such feedback is affected by a range of factors including the presence or absence of particularly contentious issues (for example, a large proposed rates increase), the effectiveness or otherwise of the consultation tools employed, and other more extraneous issues such as what else may be occupying the minds of residents at the time.

We are not in a position to provide a definitive answer as to whether there has been an increase in participation overall in local authority decision-making since enactment in 2002 of the Local
Government Act. This is an issue, along with the quality or effectiveness of participation, which we believe the longer term ten-year evaluation of the legislation should address.

An assessment of participation in electoral processes, on the other hand, is more straightforward. It can be assessed in terms of such measures as voter turnout at elections and numbers of candidates standing for election. Both these measures are addressed in Chapter 5 Democratic Local Government.

We see the Local Electoral Act principle of public confidence in, and public understanding of, local electoral processes as fundamental to the maintenance of a healthy local democracy. Achievement of the principle can be assessed by the levels of public participation or engagement in electoral processes and also in relation to satisfaction with electoral representation.

Chapter 5 addresses the operation of the Local Electoral Act in relation to the Act’s three principles of ‘public confidence and understanding’, ‘fair and effective representation’ and ‘reasonable and equal opportunities to participate’. In particular, it addresses provisions relating to the electoral system, representation arrangements, the representation review process and the conduct of local elections and polls.

Our conclusion on the electoral system (i.e. choice of FPP or STV) is that STV has the potential to enhance representation which may lead to increased participation at elections, but that this has not been demonstrated as yet for a number of reasons. On this basis we recommend retaining the status quo at this time on local authorities having the choice of electoral system.

We further recommend that responsibility for promoting voter awareness and education on electoral systems be formally assigned to the Electoral Commission (as previously recommended by the Justice Electoral Committee). In the meantime, we recommend development and dissemination of good practice guidance on the provision of information to local authorities and communities on the advantages and disadvantages of the respective electoral systems.

We recommend some more flexibility around the fair representation requirement relating to the ratio of population to elected member (the +/-10% rule) to provide a better balance with the requirement for effective representation of communities of interest. We believe these changes will help ensure both fair and effective representation for local communities. Our recommendation for the Act to set out all the factors to be considered in determining appropriate representation arrangements will also assist in achieving this objective.

We believe that achieving both fair and effective representation is likely to have a positive impact on participation. This is on the basis of the importance of communities of interest to electors’ identification with and sense of belonging to a community. This in turn is likely to result in greater willingness to participate in, for example, local elections.

In addition, we make a number of recommendations relating to the conduct of local elections and polls including some aimed at increasing voter turnout. These include the information provided to electors in candidate profile booklets and the availability of these booklets, voting methods, the quality of voting documents, and providing assurance around the integrity of vote processing and counting systems.

In addition to education on electoral systems, we recommend assigning responsibility for enhanced voter awareness and education to the Electoral Commission with a view to promoting participation. As well as this, we believe further research and work is required to reverse the trend of decreasing voter turnout at elections. This is a common trend internationally.

Until such research is undertaken, relating specifically to the New Zealand environment, we do not recommend changes to such factors as the length of the voting period and the time and date for close of polling proposed by some.

With a view to increasing citizen participation and engagement, we commend such initiatives as the growing active citizens project and associated kids voting project. Such projects aim to provide information and encourage young people, as citizens of tomorrow, to participate in their local community.
These initiatives reflect research that indicates that those who do not vote in their youth are less likely to vote in later life. On the other hand, those who vote early on continue to vote throughout their life.

In the same light, we also acknowledge the recent review of the New Zealand school curriculum and particularly inclusion of the ‘participating and contributing’ competency which aims to encourage students to value community and participation for the common good.

2.4 Relationship of the Local Electoral Act and the Local Government Act

2.4.1 Uniformity versus discretion by way of local decision-making

The purpose of the Local Electoral Act includes provision to adopt uniform rules in relation to a wide range of issues and to allow diversity, through local decision-making, in respect of certain specified issues.

The Local Electoral Act was enacted prior to the Local Government Act. An important question in respect of the Local Electoral Act, therefore, is how well the purpose and principles of this Act sit with those of the Local Government Act given the subsequent general empowerment of local authorities.

In particular, is there an appropriate balance in the Local Electoral Act between uniform rules for some electoral processes and local discretion, through local decision-making, in other specified areas?

Uniformity of processes can assist in achieving the principle of ‘public confidence in, and understanding of, local electoral processes’ by ensuring consistency across local authorities. Consistency is important given the multiple bodies deemed to be local authorities for the purpose of the Local Electoral Act and for which electors may vote. A person may, for example, simultaneously be an elector for a local council, regional council, district health board and licensing trust. In addition, that person may also be a non-resident ratepayer elector in another district.

The Act allows discretion, through local decision-making, in relation to:

- the electoral system (i.e. FPP or STV)
- representation arrangements
- the voting method (i.e. postal or booth voting)
- the order candidates are to appear on the voting document
- the appointment of electoral officer (i.e. council officer or contractor).

Our review addressed the implications of local discretion on these matters in relation to public confidence in and understanding of electoral processes.

We concluded that, in respect of the electoral system, while it is not the ideal long-term arrangement, local discretion should be retained at this time. We acknowledge the potential of STV to enhance representation, but believe that knowledge of, and confidence in, STV as an alternative to FPP is not sufficient at this time to recommend its universal adoption.

While we generally support retention of local authorities’ discretion in respect of representation arrangements, we recommend some further limits on this. We recommend prescribing the factors that local authorities must consider in determining their representation arrangements.

We also recommend that the Local Government Commission have the same role in respect of final territorial authority representation review proposals as it now has for regional council proposals. That is, the Commission must determine all final proposals that do not comply with the legislation whether or not appeals are received.

This is to ensure that the recommended further flexibility in respect of application of the +/-10% rule is appropriately determined in all cases. This is to be balanced by a requirement for the Commission to give weight to local decisions that comply with the legislation.

We recommend retaining local discretion on the choice of voting method (presently booth or postal voting). This is given the existing provisions for territorial authorities to finally determine the method to be used, in the case of any conflict, for all elections in a particular area at triennial elections.
We also recommend retaining the status quo on discretion for local authorities to appoint either a council officer as their electoral officer, or contract out this role.

We have reservations in respect of local discretion on the order of candidates’ names on voting documents. Given the common practice of combined voting documents, we believe in principle that the order of candidates should at least be the same for all elections covered by each combined document. Existing research does not enable us to recommend at this time which order be preferred.

In summary, we believe there should be scope for local discretion, by way of local decision-making, in limited and prescribed areas. We recommend retaining the status quo in respect of local discretion on the electoral system, representation arrangements (subject to final determinations by the Local Government Commission of non-complying proposals), voting method, voting documents and the appointment of the electoral officer. However, we do not see this as the ideal situation long term in respect of the electoral system or voting documents.

Generally we believe the scope for local discretion, by way of local decision-making, as currently set out in the Local Electoral Act, sits appropriately with the purpose and principles of the Local Government Act.

2.4.2 Representative democracy and participatory democracy

Some have seen the nature of local representation changing with the enactment of the Local Government Act. This has resulted in calls for “a return to representative democracy” given what is seen as a weighting toward participatory democracy.

We do not see this as an ‘either or’ situation. We believe that the implications of the legislation need to be considered in each district and region in light of the circumstances of that district or region. We noted the purpose of the Local Government Act (section 3) is “to provide for democratic and effective local government that recognises the diversity of New Zealand communities”.

This diversity of communities relates to such factors as their geographic size and character, the size and diversity of the population, and particular governance arrangements including the existence of community boards. In light of these characteristics, local authorities and their communities need to determine appropriate arrangements for the effective governance of those communities. The requirements of both the Local Electoral Act (with regard to representation arrangements) and the Local Government Act (with regard to requirements for participation) also need to be taken into account.

Under Local Government Act principles (section 14), elected members, while still representing particular electors, are now required, as well as acting in the interests of the district or region as a whole, to:

- be aware of, and have regard to, the views of all communities
- when making decisions, take account of the diversity of the community and its interests, the interests of future as well as current communities, and the impact of decisions on the social, economic, environmental and cultural well-being of the community.

The decision-making regime of the Local Government Act has a number of direct consequences for the traditional view of electoral representation including:

- Elections are not the only means by which electors/communities have input into the decision-making process and they may not be the most effective way (vis-à-vis submissions for example).
- In making decisions, the merits of the various options (in terms of community well-being) must be considered not simply the views of the majority of the representatives.
- The emphasis on a sustainable development approach envisages decision-making that resolves different interests and preferences, including those for future generations, by discussion and compromise rather than sheer weight of numbers.

We do not see these requirements and considerations as undermining the role of the democratically elected representatives. Rather, they are simply required to ensure they have a full understanding of the diversity of community views, and be seen to weigh these appropriately, before making the decisions they are elected to make.
The Office of the Auditor-General brought to our attention an example of a perceived tension between representative and participatory democracy. This is the case of a claimed electoral mandate, arising from an election, that is seen to be in conflict with current local authority policies or plans.

The Office’s advice is that the electoral mandate should not be seen to override the adopted policy or plan. Instead it would be appropriate to consider the issue as a matter the local authority must ‘give consideration to’ in terms of the requirements of section 78 of the Local Government Act (Community views in relation to decisions). As with all matters considered, it may or may not require an amendment to the current policy or plan.

In summary, each local authority needs to reach a balance between the requirements of representative and participatory democracy reflecting the circumstances of its own community. One does not override the other and the Local Government Act provides mechanisms to achieve an appropriate balance.

### 2.5 Conclusion

#### 2.5.1 Local Government Act

Generally we believe that the Local Government Act as enacted, and as being implemented by local authorities, is achieving:

- the policy intent of a broadly-empowering legislative framework as set out in the Government’s statement of policy direction
- the purpose of the Act as set out in section 3 of the Act.

We have found the impact of conferring full capacity, rights, powers and privileges on local authorities has not led to a proliferation of new activities by local authorities. We have also received submissions advising there is no appetite in the local government sector for major change to the Act given the time and resources invested in ‘bedding in’ the new legislation.

We have identified one inconsistency with the policy intent and the Act relating to the provision of water services. We have also made a number of recommendations for largely technical amendments which we believe will help give better effect to the policy intent and purpose of the Act. These relate to the core planning, decision-making and accountability provisions set out in Part 6 of the Act and to the limits and controls on general empowerment.

Local authorities have been through only one full round of LTCCPs, including the community outcomes process. We believe important learnings will have been gained from this experience and we are hopeful these will be applied in the next round of LTCCPs in 2009 and in identification of community outcomes in 2012.

We believe principal concerns about the Act arise from some fundamental misunderstandings of the purpose and application of particular provisions. Notable among these are the concept of ‘significance’ and the principle for a local authority to ‘make itself aware of, and have regard to, the views of all of its communities’ along with the requirement to give consideration to community views. These provisions require a local authority to make judgments, based on its discretion, about application of the provisions. We have identified a need for further good practice guidance in these areas.

Given the relative newness of the requirements, we believe that the planned ten-year evaluation of the legislation will be important in further assessing the need for legislative amendments and/or the enhancing of good practice guidance.

We commend the work done to date by LGNZ, SOLGM, the Office of the Auditor-General and the Department of Internal Affairs in leading the good practice guidance and we encourage their continued interest and commitment.

#### 2.5.2 Local Electoral Act

We also believe the Local Electoral Act, as being implemented by local authorities, is generally achieving its purpose as set out in section 3 of the Act.

We believe, with some qualifications, that there is an appropriate balance on the continuum between
‘diversity through local decision-making’ at one end and ‘comprehensive uniform requirements and implementation’ at the other. The qualifications relate to what we believe is a desirable long-term position of voters being faced with one electoral system at local elections and one order of candidates on any combined voting document.

At this time there is insufficient experience of the STV 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.

We have carefully considered the Act’s principles of ‘fair and effective representation’, ‘reasonable and equal opportunities to participate’ and ‘public confidence and understanding’. With a view to further assisting achievement of these principles, we have recommended a number of largely technical amendments to the Act, including a number previously recommended by the Justice and Electoral Committee.

We also recommend, as part of any future comprehensive review of the Local Electoral Act, a review of the consistency of the provisions of the Act and the Local Electoral Regulations in relation to the purpose of the Act to provide for matters of detail in regulations.

We commend SOLGM’s electoral working party for the work it has done to date in leading good practice guidance for electoral officers and we encourage it in this work.
Chapter 3
Responsive Local Government

How responsive and accountable are local authorities in meeting the present and long-term needs of their communities?
CHAPTER 3:
RESPONSIVE LOCAL GOVERNMENT

How responsive and accountable are local authorities in meeting the present and long-term needs of their communities?

This chapter addresses the above question in relation to the purpose, role, powers and principles for local government and the planning, decision-making, consultation and reporting provisions as set out in Part 6 of the Local Government Act.

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 the community and the current and future interests of the community. It must also 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.

The issues addressed in this chapter are:

3.1 Community outcomes
3.2 The long-term council community plan (LTCCP)
3.3 The annual plan
3.4 Decision-making
3.5 Consultation
3.6 Contributions to decision-making processes by Māori
3.7 The annual report
3.8 Financial management.

The chapter concludes with a summary of the areas where the operation of the Local Government Act could be improved and how this would be best achieved.
3.1 Community outcomes

3.1.1 Purpose

Section 91 of the Local Government Act requires local authorities to identify community outcomes for the immediate and long-term future of their district or region. Section 92 places an obligation on local authorities to monitor and report on progress in achieving these outcomes.

The Act sets out the purposes of identifying community outcomes as to:
- provide opportunities for communities to discuss their desired outcomes
- allow communities to discuss the relative importance and priorities of community outcomes
- provide scope for measuring progress towards the achievement of outcomes
- promote better co-ordination and application of community resources
- inform and guide priority-setting for local authorities and other organisations.

3.1.2 Submissions

We received a number of submissions on the community outcomes process relating to:
1. identification of community outcomes including concerns regarding the time and cost of the process and its value given the high level and uniform nature of outcomes identified
2. engagement of parties in the community outcomes process and central government agencies in particular
3. local authority reporting requirements.

We address issues in these three areas.
### 3.1.3 Issues and options

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<th>Principle</th>
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<th>Options</th>
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<tr>
<td>• Local authority should make itself aware of and have regard to the views of all of its communities</td>
<td>• Local authority must carry out process to identify immediate and long-term community outcomes at least every 6 years</td>
<td>• All local authorities have completed one round of identifying community outcomes</td>
<td>• Legislative status quo along with further good practice guidance</td>
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<td>• Local authority should collaborate and cooperate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes and make efficient use of its resources</td>
<td>• Local authority may decide process for facilitating identification of outcomes</td>
<td>• Some concerns raised at value of the process, extent of engagement of other parties and reporting requirements</td>
<td>• Remove mandatory requirement for local authorities to identify community outcomes</td>
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<td>• In taking a sustainable development approach, local authority should take into account: – the social, economic and cultural well-being of people and communities – the need to maintain and enhance the quality of the environment – the reasonably foreseeable needs of future generations</td>
<td>• Local authority must monitor and report at least once every 3 years on progress of community in achieving outcomes</td>
<td>• Mandate the involvement of parties in the process, particularly central government agencies</td>
<td>• Review/remove reporting requirements</td>
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<tr>
<td>• Local authority must carry out process to identify immediate and long-term community outcomes at least every 6 years</td>
<td>• Local authority may decide process for facilitating identification of outcomes</td>
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### 3.1.4 Analysis

1. **Identification of community outcomes**

We see the community outcomes process as integral to local authorities achieving their purpose of promoting community well-being and taking a sustainable development approach.

Local authorities have completed one round of identifying community outcomes for inclusion in their LTCCPs commencing 1 July 2006. We believe local authorities 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 towards achieving outcomes at least every three years.
Section 91(3) empowers local authorities to decide their own process for identifying community outcomes. This discretion is subject only to the consideration of organisations and groups that may influence either the identifying or promoting of community outcomes, the securing (if practicable) of their agreement to the process, and ensuring the process encourages public contributions.

We believe these provisions provide appropriate flexibility for the outcome identification process. We were advised by the Office of the Auditor-General that it expects that larger and smaller local authorities would approach outcomes identification differently – reflecting the greater complexity and diversity in larger communities, as well as the availability of resources.

We make these observations on concerns about the costs of the process:

- As is the nature of all new processes, local authorities can expect to carry forward lessons learnt from the first round to the next round of identifying community outcomes.
- Some 2006 costs may have been one-off costs of developing systems and processes that can be refined rather than completely re-developed for 2012.

Councils in a number of regions have taken a collaborative approach to identifying outcomes and some planning and consultation initiatives. We welcome such initiatives and encourage more councils (territorial authorities and regional councils) to consider collaborating on the identification of community outcomes, including on a regional basis. The triennial agreement is a vehicle for achieving collaboration between councils in a region. This would be to the benefit, both financial and non-financial, of all parties.

We received comments about the high level and uniform nature of local community outcomes. We also received submissions that community engagement is more likely to be effective when communities are asked to comment on specific strategies, plans and schemes than when asked to identify desired generic outcomes.

The Local Government and Community Branch of the Department of Internal Affairs advised us there is recognition that the high-level outcomes can be seen as a starting point. When working through a second round, it is likely that councils, agencies and communities will seek out more detail about local expectations, how they will be progressed and who will have responsibility for them.

The process for identifying community outcomes can be of value itself. For example, the process can assist the parties to establish a framework that facilitates working together and for communicating, discussing and prioritising community issues.

Our discussions with councils confirmed that a number of them believe the process of developing community outcomes is at least as useful as the final output. Council officers advised that their processes had built relationships, facilitated collaborative partnerships with government agencies, raised community awareness, provided background information about community issues and concerns, and initiated a new style of engaging with communities.

These sentiments were mirrored in submissions with, for example, the LGNZ Metropolitan Sector stating:

“Many of the metropolitan sector have been engaged in processes similar to the outcomes process since before 2002 and have recognised that the value of the process is not necessarily the statement of outcomes but the dialogue held with other agencies in the process and the commitments gained to work towards common objectives.”

In our all-councils survey, we asked councils to comment on the extent community outcomes informed their decisions. Slightly less than half (45%) of councils reported that community outcomes “frequently influenced their decisions” with a further 44% reporting they “occasionally influenced their decisions”.

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1 There is no audit requirement in respect of the process applied or the outcomes identified. From a compliance perspective the audit function is to see that the process has been carried out, but not how it has been done or the result.

2 The Department of Internal Affairs carried out an analysis of community outcomes from the 85 draft 2006-2016 LTCCPs and found 11 key themes such as the economy, environment, health and safety.
A small number (11%), representing nine councils, reported community outcomes “rarely” or “never influence their decisions”. Of the nine councils, five commented that community outcomes are very broad and, as a consequence, it is either very easy to align any project with a community outcome, or the outcomes are ideals that can never be reached.

This ‘little influence’ finding also came through in our face-to-face discussions with officers and elected members from the 14 selected councils:

- Few elected members were able to provide examples of how their community outcomes had directly influenced a decision, though most reported that the community outcomes act as a general guide to decision-making.
- Few elected members could recall more than one of their community outcomes, but all said that community outcomes are referred to in reports to council and that decisions are assessed against their impact on community outcomes.

We believe the fact that less than half the councils reported community outcomes frequently influence their decisions is likely to indicate either the newness of the concept, or the nature of the particular outcomes identified. This is rather than there being anything fundamentally wrong with the concept.

Several council officers stated that their community outcomes are key drivers for decision-making. Most officers believed that their community outcomes processes will improve as their council, other agencies and the public become more familiar with the process. They also believed that over time the outcomes themselves will become more sophisticated and useful.

We understand the Department of Internal Affairs is working with LGNZ and SOLGM to produce more guidance resources for both elected members and officers of local authorities. We commend and encourage such initiatives.

**We recommend:**

1. **No change to the Local Government Act relating to identification of community outcomes.**

2. **Consideration be given to opportunities and methods of promoting greater collaboration between local authorities in identifying community outcomes using current examples, and this include opportunities for collaboration on a regional basis promoted through the triennial agreement.**

3. **Development and dissemination of further good practice guidance relating to the identification and application of community outcomes as well as ways to enhance community understanding of the community outcomes process.**

2. **Engagement in the community outcomes process**

The submission from LGNZ noted that councils had mixed experiences in attempting to secure and maintain engagement by other parties in the community outcomes process, notably central government agencies. The LGNZ Metropolitan Sector commented “some (government) departments took a full role in the process, but went AWOL once it was time to commit to action. Others have not contributed at all”.

Other submissions from local government expressed a similar clear desire for more effective central government involvement in identifying and promoting community outcomes.

The SOLGM submission proposed that the Public Finance Act be amended to require central government agencies to report on their involvement in the community outcomes process and their actions in promoting community outcomes.

We were advised by the Department of Internal Affairs that initially some central government officials saw the community outcomes process as a local government issue with councils expected to explore ways of working with ‘interested parties’ including central government. As a result of a Cabinet paper in 2004 [POL Min (04) 12/15], the Department believes there is now a greater understanding that central...
government is expected to work in partnership with councils and communities where this can assist
the achievement of mutually agreed outcomes.

Some agencies did engage in the process in 2003/04, with the Department of Internal Affairs and the
Ministry of Social Development mandated to facilitate central and local government engagement. In
addition, the Ministry of Economic Development, the Ministry of Culture and Heritage, the Ministry for
the Environment, NZ Police and Statistics NZ all engaged in community outcomes processes.

A 2007 Cabinet Economic Committee paper [EDC Min (07) 1/3] listed several central government
agencies that had been involved in the delivery of resources and services to local government to assist
with the community outcomes processes. This involvement included:

- website material to assist in the development of community outcomes related to economic
  well-being (Ministry of Economic Development) and environmental well-being (Ministry for the
  Environment)
- workshops on cultural well-being (Ministry for Culture and Heritage)
- good practice guides for working with local government (Ministry of Social Development)
- development of monitoring material to support community outcomes processes (Statistics NZ).

A number of central-local government interagency collaborations to support community outcomes
processes have also occurred including:

- ‘Community Outcomes Bay of Plenty’, a collaboration of all councils and 20 central government
  agencies in the Bay of Plenty region
- a regional community outcomes group involving Manawatu-Wanganui councils, the
  Department of Internal Affairs and the Ministry of Social Development
- the development of a government agency networking group in the Wairarapa involving the
  three Wairarapa councils, central government and other agencies in the region
- Canterbury Forum, an officer group of the Canterbury Mayoral Forum, that worked on the four
  dimensions of well-being and ran several workshops with central government agencies on
  regional issues
- Northland Intersectoral Forum, a central-local government forum focusing on a co-operative
  approach to community outcomes
- Kaipara community outcomes steering group involving both central and local government.

Other collaborative central-local government projects, including a range of transport and health
initiatives, are outlined in Appendix 8.

The Department of Internal Affairs commented that there are still many central government officials
(particularly new staff) who lack knowledge about community outcomes, the community outcomes
process, and local government planning cycles. The Department advised that it has taken a number
of initiatives to draw more central government agencies into interagency work with local government
to make better use of resources and improve service delivery. It is also endeavoring to build central
government officials’ understanding of the community outcomes process and their role in it. Examples
of these initiatives are also included in Appendix 8.

During the course of our review, Commission staff held discussions with officials in the agencies
directly associated with the four dimensions of well-being (i.e. the Ministry for the Environment,
Ministry for Culture and Heritage, Ministry of Social Development and Ministry of Economic
Development). Each of these agencies stated they had systems in place to communicate with local
authorities – to disseminate policy and good practice information, to receive feedback and to support
collaborative efforts.

A number of barriers to collaboration remain. These have been identified by the Department of Internal
Affairs as follows:

- The location of many central government agencies in Wellington means they are not well
  placed to engage with the 85 local authorities across New Zealand.
- Boundaries of central government agencies do not match territorial authority boundaries.
- The language and terminology used by officials creates barriers.
Substantial differences in the resources available exist between central and local government. Central and local government financial and planning cycles are not well aligned (particularly the ten-year local government planning cycle compared to the annual fiscal cycle of central government).

Initiatives underway to overcome some of these barriers include:

- the Central and Local Government Forum
- Mayors’ Taskforce for Jobs
- Deputy Secretaries Group for engagement of senior central government officials with council chief executives on matters of regional significance
- Central-Local Government Officials Group on Sustainability focusing on sustainability while taking account of the four dimensions of well-being
- Central Government Interagency Group promoting central government understanding of the community outcomes process and encouraging involvement in central-local collaboration
- regional level central-local government interagency forums.

There are several methods by which central government engagement in the community outcomes process could be re-enforced, if existing Cabinet directives and good practice initiatives are not seen as sufficient. Submitters suggested options including:

- a requirement for a statement in agencies’ statements of intent on how central government agencies engage with local government and contribute to identifying and delivering community outcomes
- prescribing in the Local Government Act the roles and responsibilities of central government agencies in relation to community outcomes.

We believe that attempting to prescribe roles and responsibilities would be difficult given the broad range of initiatives that local and central government agencies could engage in together and how these may change over time. Prescription may also prove constraining, promote compliance over achievement and inhibit innovation.

Statements of intent are required under both the Public Finance Act (in respect of departments) and the Crown Entities Act (in respect of other entities). These could be used to formally integrate local community outcomes and central government planning.

The Ministry for the Environment’s statement of intent already makes specific reference to how the Ministry will work with local government. In particular it refers to work aimed at achieving particular national outcomes, and to its general role of working with local government and other government departments to maintain and improve the health of New Zealand’s environment. The Ministry also makes a commitment to work with local government to share information about best practice, to ensure it has the tools needed to manage the environment, and to raise public awareness of environmental issues.

We have reservations as to whether a mandatory requirement for statements in agencies’ statements of intent is necessary given this is beginning to occur already as a matter of good practice. We do not recommend such prescription. We prefer less formal monitoring of current practices and promoting of good practice examples. We believe practices should be evaluated as part of the ten-year evaluation of the legislation.

We recommend monitoring of central government agency engagement in local community outcomes processes as part of the Department of Internal Affairs’ ten-year evaluation of local government legislation.

In relation to local community engagement, for example of iwi, business and not-for-profit organisations, we were advised that this was variable in the first round. Some councils were highly innovative in the ways they engaged the community. Again there is a need to build on this experience.
3. Reporting on community outcomes

Section 92(1) of the Local Government Act establishes the obligation for local authorities to monitor and report, at least every three years, on the progress made by the community in achieving its outcomes. Each local authority may decide how to undertake these tasks. However, it must secure the agreement of any organisations it identified as capable of influencing the identification or promotion of outcomes to the monitoring and reporting procedures.

Clause 15 of Schedule 10 sets out the information, in relation to community outcomes, that must be included in the local authority’s annual report.

Submissions on the reporting requirements related to:

- concerns that outcomes will be seen as solely a council responsibility
- difficulty in attributing progress to activities in annual reports including issues in relation to reporting against both well-beings and community outcomes
- a proposal that the annual reporting requirement be deleted from the Act.

In addition, Statistics NZ noted that smaller councils are not as well placed as larger councils to collect data for reporting. Statistics NZ does provide outcomes-related data, but it is often unable to disaggregate this data to regional or territorial levels.

The SOLGM submission noted that the three-yearly reports can be released as a joint report of all agencies and it believes that most will be done this way.

In relation to annual reporting, SOLGM proposed deleting the requirement (clause 15(c) of Schedule 10) to report the results of any measurement undertaken during the year towards the achievement of outcomes. It believes this causes public confusion as to which agencies are responsible for achieving outcomes.

The Act is non-prescriptive about the approach to monitoring and reporting on outcomes. We believe that councils can manage the risk of outcomes being seen as their sole responsibility by being clear about the following:

- how they expect that council activities and decision-making will influence outcomes
- the expected effects of the efforts of other organisations
- the potential impacts of factors that they cannot influence or control.

We noted that clause 15(c) does not make measuring progress towards the achievement of outcomes mandatory. It only requires reporting if any measurement is undertaken. Clause 15(c) reflects a requirement in clause 2(1)(b) to include in the LTCCP the rationale for delivery of groups of activities including the community outcomes to which they contribute. On this basis we do not believe that clause 15(c) should be deleted.

We also do not recommend deletion of clause 15(d) as proposed by another submitter on the grounds of reporting against community outcomes (in clause 15(c)) is more relevant than against the well-beings (as required by 15(d)). We believe the requirements of clauses 15(c) and (d) are quite distinct with the latter relating to the impact, positive or negative, of the council’s activities on the well-being of the community.

The Office of the Auditor-General accepts that measuring progress towards outcomes is difficult and expects that practice will improve with experience and guidance. It says initially, for example, that it simply looks at a council’s approach to issues such as sustainability. We believe that more good practice guidance material will assist councils as the process ‘beds in’.

We are aware there is a paucity of useful trend data (apart from census data) for local area monitoring.\(^4\) In addition, the boundaries that define the areas for which data is collected differ between central government agencies, and it can be problematic for councils to obtain data for reporting purposes if councils are split by central government boundaries.

\(^4\) While the monitoring project Quality of Life 2007 in Twelve New Zealand Cities www.bigcities.co.nz provides some local area indicators for the cities involved, other councils do not have this range of data.
Central government is working to make information available to assist local government to monitor for outcomes, by council areas. This issue was raised at a Deputy Secretaries Group meeting with Canterbury council chief executives. Agreement was reached that further work would be undertaken with Statistics NZ to explore this issue. We commend agencies for their initiatives in these areas.

In addition, central government agencies are continuing to develop website material to use as good practice guides. SOLGM’s guides are key resources in this area, as is Office of the Auditor-General material.

We recommend:

1. **No change to the Local Government Act relating to reporting on community outcomes.**

2. **Priority be given to ensuring the availability of relevant disaggregated statistical data to assist local authority monitoring of progress toward achievement of community outcomes.**

3. **Development and dissemination of further good practice guidance relating to local authority monitoring and reporting on community outcomes.**
3.2 Long-term council community plan (LTCCP)

3.2.1 Purpose

Sections 93-94, 96-97 and Schedule 10 of the Local Government Act set out requirements relating to the LTCCP. The purpose of the LTCCP is to:

- describe the activities of the local authority
- describe the community outcomes of the district or region
- provide integrated decision-making and co-ordination of resources
- provide a long-term focus for decisions and activities
- provide a basis for accountability to the community
- provide an opportunity for public participation in decision-making processes.

3.2.2 Submissions

We received a number of submissions regarding the LTCCP. LGNZ advised that there was general support for the LTCCP process and recognition of its usefulness for long-term planning, financial and asset management, and community confidence. However, it noted that some councils, particularly smaller and rural councils, had concerns relating to:

- the time and resources (including cost) required for the process
- a perceived focus on compliance rather than a plan for the community
- the necessity of particular content requirements such as the section 102 funding and financial policies, the Schedule 10 disclosures, and sanitary and wastewater assessments
- their ability to communicate the plan to the community, within audit requirements, and the resulting low levels of community understanding and engagement in the process.

We address these issues\(^5\) as follows:

1. process issues including the time and resources to produce the LTCCP
2. documentation issues and particularly levels of service information, the section 102 policies and the Schedule 10 disclosure requirements
3. the LTCCP summary document
4. adoption date for the LTCCP
5. audit of LTCCPs
6. amendments to LTCCPs.

In addition to submissions received, we also considered in some detail the Auditor-General’s report on 2006-16 LTCCPs.\(^6\)

\(^5\) In addition to those listed there were several interpretation issues raised by SOLGM in its submission that have been dealt with ‘off-line’. These issues are not included in this report.

\(^6\) Matters arising from the 2006-16 long-term council community plans a parliamentary paper prepared by the Controller and Auditor-General dated June 2006.
### 3.2.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local authority should make itself aware of and have regard to the views of all of its communities</td>
<td>• Local authority must prepare LTCCP and have in place at all times</td>
<td>• Positive impact of strategic focus and quality of planning undertaken</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>• When making a decision, local authority should take account of:</td>
<td>• LTCCP:</td>
<td>• Concerns expressed about time and resources required for preparing LTCCPs</td>
<td>• Review/amend disclosure requirements</td>
</tr>
<tr>
<td>– the diversity of the community and the community’s interests</td>
<td>– must cover at least 10-year period</td>
<td>• Concerns about prescribed content requirements for LTCCPs and size of resulting document</td>
<td>• Prescribe requirements for LTCCP summary document</td>
</tr>
<tr>
<td>– the interests of future as well as current communities</td>
<td>– continues in force for 3 years</td>
<td>• Concerns about ability to engage the community through LTCCP</td>
<td>• Provide for flexible adoption dates for LTCCP</td>
</tr>
<tr>
<td>– the likely impact of any decision on all aspects of community well-being</td>
<td>– must include prescribed contents</td>
<td></td>
<td>• Review/amend audit requirements</td>
</tr>
<tr>
<td>• In taking a sustainable development approach, local authority should take into account:</td>
<td>• must be adopted using special consultative procedure</td>
<td></td>
<td>• Tie LTCCP amendments specifically to ‘significant’ activities and changes</td>
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2002/03\(^7\) which indicated that almost half of the 73 councils responding (49%) “had adopted strategic plans that addressed community outcomes”.

SOLGM noted in its submission the following benefits from the LTCCP process:

- a greater strategic focus
- improved asset and financial plans, and better financial forecasting
- some improvement in the level of public understanding of process
- greater clarity and certainty over council plans.

This positive view was reinforced by the results of our all-councils survey in which 72% of councils reported that their LTCCP has “a lot of influence over its decisions”, with the balance stating it has “some influence”\(^8\).

The Act is non-prescriptive about processes for the development of LTCCPs. It is councils’ responsibility to design effective and efficient processes. This should mean that smaller councils can develop processes appropriate to their size and resources. As noted by some submitters, the requirements are relatively new and the body of knowledge and experience in relation to preparing LTCCPs needs time to evolve.

Some of the concerns expressed by submitters about process relate specifically to:

- requirements to apply the special consultative procedure
- the audit requirements
- the scope of information required in the LTCCP.

We address these issues separately.

There was concern among some councils on the costs of preparing LTCCPs. These concerns are taken to be a narrow reference to the cost of collecting and presenting the statutorily required information rather than in engaging in a strategic planning process per se.

SOLGM noted in its submission that “to some degree some of the cost was incurred in developing systems and a base for underlying information that might be better viewed as something more akin to a ‘one-off’ investment’. The costs also have to be seen in relation to the widely acknowledged benefits of the LTCCP.

Councils have undergone only one full round of LTCCP development and audit. The Auditor-General reflected this in his report on 2006-16 LTCCPs when assessing overall performance and the need for improvement by 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”.

The Auditor-General’s report also commented that “the review of the LTCCPs showed that:

- the relationship between well-beings, community outcomes, and sustainable development within LTCCPs is often not clear, and there is limited evidence within LTCCPs of sustainable development infusing the thinking of local authorities; and
- there appears to be uneven understanding of the scope of sustainable development.”

We understand that councils, supported by both the Office of the Auditor-General and SOLGM, are putting more thought into planning for the upcoming round and we look forward to this being reflected in the quality of plans. We address the issue of sustainable development later in this report.

**We recommend no change to the Local Government Act relating to the requirement for councils to prepare an LTCCP and to have this plan in place at all times.**

2. **Documentation issues**

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. It is important that the LTCCP provides clear, concise and accessible information to the community.

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\(^7\) Snapshot survey of New Zealand Local Government during 2002/03 prepared by Mike Richardson for the Department of Internal Affairs dated January 2004.

\(^8\) 27% stated it had “some influence”, 1% stated it had “no influence”.
The LTCCP is a mechanism to identify the key issues, the options and the implications of each for the community. It also serves to facilitate what the Auditor-General describes as “the right debate” for the community. The community’s primary interest is getting value for money in relation to the services it receives (‘the value proposition’) and this should be clearly demonstrable in the LTCCP.

The Auditor-General commented in his June 2006 report on the role of the LTCCP:

“I am aware from anecdotal reports that some local authorities perceive a contradiction between the potential roles of an LTCCP as:

• a high level articulation of strategy; and
• a document to record detailed management intentions.

They view one role as resulting in a strategic plan that would omit the more detailed LTCCP content required by Schedule 10 of the Act, and the other as being simply a work plan that would not need the same amount of community engagement and audit.

My own observation, as a result of conducting the 2006-16 LTCCP audits, is that there is a middle ground between these views. This would be where the LTCCP articulates a local authority’s strategy (informed by both community desires and the reality of the community’s circumstances) and also provides an integrated view of the policies and actions required to support the strategy.

Using this approach, the LTCCP is a process that bridges high level strategic planning and detailed work planning.”

One important issue is that of clear statements relating to the actual level of service to be provided to the community in respect of each activity or group of activities. The Auditor-General commented on this issue as follows:

“… councils have a poor understanding of levels of service, there is a need for better understanding of the levels of service currently delivered and those intended to be delivered during the 10 years of the LTCCP.”

Since forecast levels of service underpin much of the content of LTCCPs in asset management plans and financial projections, it is difficult to prepare a robust LTCCP, or an LTCCP that delivers a clear approach to sustainability, without a clear understanding of levels of service. Developing an adequate understanding of required service levels, now and for the future, including their quantification and cost, requires sound processes. This is an area where further good practice guidance is needed.

Some concerns were expressed that the level of disclosure, i.e. at ‘group activity’ level, is too high and as a result hides important information particularly relating to performance measures and funding. SOLGM has responded by saying that it believes that the definition of ‘groups of activities’ in section 5 of the Act is “sufficiently flexible to allow local authorities to configure their ‘groups’ so that their disclosures meet the requirements and spirit of the Act”. We agree with SOLGM.

Published LTCCPs are large documents, ranging from 250 to, in one case, 530 pages, with much of this length seen to be driven by the disclosure requirements of section 102 and Schedule 10. Submitters raised a range of concerns about the documentation requirements for the LTCCP:

• It is difficult to communicate about LTCCPs because of their size so there is a low level of community understanding and engagement.
• Summaries are often too long to be useful (the Auditor-General also noted that councils have had difficulty developing useful summaries and eight received qualifications).
• The funding and financial policies required by section 102 should not all be required in the LTCCP.

There has been criticism that the number of disclosures required results in a document which is too large to engage the community on. We believe this confuses the purpose of the LTCCP as distinct from the LTCCP summary.

It is the summary document that the Act requires to be the principal vehicle of consultation, and the Act does not require specific disclosures for the summary document. All the Act requires is that it be a fair representation of the major matters in the statement of proposal relating to the LTCCP and it be in a
form determined by the local authority. We address LTCCP summary documents in more detail later in this chapter.

Section 102 requires specified funding and financial policies to be adopted, using the special consultative procedure, for inclusion in the LTCCP. These policies may be amended only as an amendment to the LTCCP.

SOLGM submitted that councils should be able to amend these policies by using the special consultative process alone i.e. not as amendments to the LTCCP. We see the funding and financial policies as integral to the integrity of the LTCCP and the impact on the LTCCP of any amendments to these should be clearly spelt out and be subject to audit. Therefore we believe it is appropriate in most circumstances that amendments to funding and financial policies should be handled as amendments to the LTCCP. We address the issue of ‘significant’ changes to policies later in this chapter.

While concerned about the impact of the prescribed policies on the size of the LTCCP, submitters generally considered it important to retain the required full revenue and financing policy. However, in respect of other required policies, there were suggestions that:

- Some policies might be summarised in the LTCCP.
- Some policies might simply be referred to in the LTCCP.
- Some policies should be removed or their policy intent clarified.

We believe that, if the distinct purposes of the LTCCP and the LTCCP summary document are understood, the argument to remove or summarise a number of the section 102 policies, before including them in the LTCCP, is not compelling.

We believe some members of the public will want the full version of the respective funding and financial policies and it is more convenient for them to have these policies all together in the LTCCP. We believe 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 do believe that the requirements relating to two of the policies identified in section 102 should be reviewed. We agree with submitters that the mandatory requirement for all local authorities to have a policy on partnerships with the private sector is not necessary and should only be required if the local authority intends entering into such a partnership.

We recommend an amendment to section 102(4)(e) of the Local Government Act to require local authorities to adopt a policy on partnerships between the local authority and the private sector, for inclusion in the LTCCP, only if the local authority intends entering into such a partnership.

We also noted the concerns of a number of council submitters regarding the requirement to adopt, and include in the LTCCP, a policy on the remission and postponement of rates on Māori freehold land. Submitters were concerned that the policy intent of this requirement and its scope are unclear and no guidance is given on the development of such policies.

The policy relates to a specific category of land (not, for example, all land owned by Māori as may be the public perception). The SOLGM submission suggested that the policy intent behind this requirement appears to relate to a desire to ensure that further alienation of this land does not occur. We noted this is one of the objectives stated in Schedule 11. We also noted that there is no requirement to remit or postpone rates on Māori freehold land only to have a policy.

We agree with SOLGM it appears that a number of councils, and possibly a large proportion of the wider community, are unclear about the intent of this requirement. We also believe that the value of a mandatory requirement for a separate policy is offset by the addition of another requirement for inclusion in the LTCCP. We believe the general requirements relating to policies on rates remissions and postponements should be sufficient to disclose the rationale for any remissions or postponements of rates in respect of Māori freehold land. The information in Schedule 11 will be useful for this purpose and should be retained in some form.

We recommend the deletion of section 102 (4)(f) of the Local Government Act requiring local authorities to adopt a separate policy on the remission and postponement of rates on Māori freehold land.
Although the requirements of Schedule 10 are seen as onerous by some, we also heard anecdotal evidence that many officers concede that the requirements relating to financial information are in fact necessary.

The not specifically financial information requirements in Schedule 10 relate to water and sanitary service assessment summaries, council-controlled organisations, the development of Māori capacity to contribute to decision-making processes, and a summary of the council’s significance policy. These issues are addressed elsewhere in this report and we believe the information requirements in relation to these matters are appropriate.

Some concerns were raised by a few submitters about the difficulty of applying inflation to financial projections and whether the community will understand the basis of price increases due to inflation. Concerns about the effects of inflation on financial projections may reflect a lack of understanding of the ‘generally accepted accounting principles’. We believe that forecasting without taking inflation into account creates a risk that future costs would be significantly under-represented in financial statements.

We are aware that councils are now 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 further good practice guidance for councils in the preparation of their LTCCPs. The Office of the Auditor-General and SOLGM will play a leading role in the development of this guidance.  

We recommend development and dissemination of further good practice guidance relating to the preparation of LTCCPs including processes for:
- measuring and forecasting levels of service
- financial forecasting and projecting price increases based on inflation
- developing succinct funding and financial policies.

3. LTCCP summary documents

Section 83 of the Local Government Act requires local authorities to prepare a summary of the information contained in the statement of proposal on their LTCCP used in the special consultative procedure. Section 89 requires that the summary:
- be a fair representation of the major matters in the statement of proposal
- be in a form determined by the local authority
- be distributed as widely as practicable
- indicate where the statement of proposal may be inspected
- state the period within which submissions may be made.

We noted that the Local Government Rates Inquiry recommended that “councils improve the quality of the summaries of the long-term council community plan as a basis for decision-making and consultation”.

The Auditor-General singled out LTCCP summaries for attention particularly “the low priority given to preparing the LTCCP summary … (given) the Act states that the purpose of the LTCCP summary is to serve as a basis for general consultation”. An underlying reason for this was that he believed in many cases the summary “did not appear to encapsulate the ‘right debate’”.

The Auditor-General identified inadequacies in the summaries prepared by eight councils specifically. He noted that while this did not affect his overall audit opinion on the final LTCCP, the summary is intended to provide important information for readers. He concluded that the summary only partially complied with each council’s statutory responsibility to disclose all major matters from the LTCCP statement of proposal.

Like the Auditor-General and the Local Government Rates Inquiry, we see a need for councils to improve the quality of their summaries of LTCCPs as a basis for consultation and decision-making. We

To date SOLGM has published four guides as part of the 2009 and Beyond suite. These replace the LTCCP Jigsaw guide produced for the 2006 LTCCP round.
see this improvement evolving through the development of good practice, rather than prescribing specifications as to what must be contained in the summary, its format, form and so on.\textsuperscript{10}

\textbf{We recommend development and dissemination of further good practice guidance on the preparation of summaries of statements of proposal for LTCCPs.}

\section*{4. Adoption date for LTCCPs}

Several submissions suggested that consideration be given to amending the requirement that LTCCPs be adopted at fixed cycles. Specifically, they suggested that consideration be given to allowing the adoption of new LTCCPs on the same basis as long-term financial strategies under the previous legislation.

This would mean that rather than a common three-yearly cycle for all local authorities, a local authority would be required only to adopt an LTCCP at least once every three years. For example a local authority that adopted an LTCCP in 2009 could do so again in 2010, and rather than adopting another in 2012, would not have to do so until 2013. Related advantages and disadvantages of such an approach are identified as follows:

\begin{description}
\item[Advantages:]• Flexibility may support increased responsiveness to changing circumstances including sudden shifts in community needs and preferences.
• Flexibility may do away with or reduce the need for amendments to the LTCCP.
• Flexible adoption would spread the workload for auditors.
\item[Disadvantages:]• Providing the opportunity to redo the LTCCP more frequently may result in a loss of strategic focus.
• A common adoption date facilitates joint communications exercises.
• Non-contemporaneous adoption may discourage regional initiatives (for example joint approaches between territorial authorities and regional councils).
• The current timing allows new elected members to become familiar with requirements before engaging in the LTCCP process.
\end{description}

As we understand it, the reasons for opting for a common LTCCP cycle included many of the reasons submitters themselves have identified as disadvantages of moving away from such an approach, including:

• keeping the LTCCP in a constant and appropriate stage of the local electoral cycle (i.e. the second year of the three-year term)
• facilitating collaborative planning and implementation (and possible transfer of responsibilities under section 17) between councils
• providing for a single period of engagement for stakeholders (including government agencies) wishing to engage with multiple councils.

We believe those reasons remain valid and outweigh any perceived advantage of adopting a more flexible regime.

\textbf{We recommend no change to the Local Government Act relating to the timing of LTCCPs.}

\section*{5. Audit of LTCCPs}

While other countries have adopted long-term planning requirements for local government, we understand that auditing the reasonableness of long-term plans and issuing an audit opinion is unique to New Zealand.

The audit of 2006-2016 LTCCPs consumed 34,000 hours for the Office of Auditor-General with fees charged to councils ranging (in bands) from $20,000 – $30,000 to, in one case, $110,000 – $120,000.

\textsuperscript{10} Since preparing our report, SOLGM has released reviewed good practice guidance on LTCCP summaries. \textit{Telling our stories – the guide to preparing the LTCCP summary document.}
The majority of councils were charged between $30,000 to $60,000.\textsuperscript{11}

We received a number of submissions on the subject of the audit of LTCCPs and amendments. Some felt that the audit regime has resulted in higher quality LTCCPs, and supports transparency of information. As SOLGM pointed out, the audit is designed to benefit the community rather than the council.

One council submitted that it believed consideration should be given to extending the audit mandate “to ensure transparency and understanding of the implications of policy decisions”.

A few submitters saw the audit requirements as onerous and costly, and sought their removal. Others suggested the auditing of one third of LTCCPs each round. A few submitters commented that they felt the audit exceeds the scope set out in the Act, and adds little value. There was a request to restrict it to forecasting assumptions and performance measures and to remove the requirement to assess compliance with the Act.

LGNZ recommended that the Commission note the diversity of views and experiences of councils in relation to the audit of LTCCPs and that both SOLGM and LGNZ will continue to work with the Office of the Auditor-General to identify ways to improve practice in the implementation of audits.

The Office of the Auditor-General advised us that the Public Audit Act 2001 also applies to audits under Part 6 of the Local Government Act. The Public Audit Act establishes the Office as the auditor of all public entities and enables the Auditor-General to examine the efficiency and effectiveness with which an entity is carrying out its activities.

Section 94(3) of the Local Government Act precludes the audit report from commenting on the merits of any policy or plan. The Office noted that in some instances auditors have requested wording changes to ensure clarity and consistency, for example between the body of a plan and the mayor’s foreword, and to help ensure focus on ‘the right debate’.

The Office also advised us that the audit programme is designed to take assurance from robust, well-documented systems and approaches. It noted that in the first rounds of developing LTCCPs most councils had not developed such systems, and a more substantive audit was required. Audits will become less difficult for councils as their systems develop and ‘bed in’.

On the other hand, the Office of the Auditor-General noted that increasing sophistication in preparing LTCCPs may not necessarily result in lower audit fees. LTCCPs require senior auditors due to the strategic and forward-looking nature of the plans (as opposed to the more transactional and retrospective nature of financial plans and reports). As councils become more experienced in defining outcomes, planning to achieve them, and measuring progress against them, the efficiencies gained by ‘bedding in’ robust systems may be offset by the need for auditors to assess more complex plans.

We believe that the LTCCP audit is necessary to provide assurance to communities that long-term plans are robust and soundly based. We do not agree with arguments to eliminate or reduce the scope of the audit. We noted that the Local Government Rates Inquiry recommended that “the auditing of LTCCPs be continued in the medium term”.

We recommend no change to the Local Government Act relating to the audit of LTCCPs.

We are aware of an apparent gap in the auditing requirements. Audits are required in respect of proposed amendments to the LTCP but not in respect of amendments as finally adopted by the local authority. We do not see this as a large additional task and it appears logical to us that the auditing task relates to the whole LTCCP amendment exercise.

We recommend an amendment to the Local Government Act to extend the auditing requirement for proposed amendments to LTCCPs, to include auditing of the amendment as finally adopted by the local authority.

\textsuperscript{11} Matters arising from the 2006-16 long-term council community plans a parliamentary paper prepared by the Controller and Auditor-General dated June 2006.
6. Amendments to LTCCP

Section 97 of the Local Government Act provides that a local authority must not make a decision on certain prescribed matters unless that decision is explicitly provided for in the LTCCP and the proposal to provide for that decision was included in a statement of proposal prepared for use in a special consultative procedure. The certain prescribed matters are decisions:

- to alter significantly the intended level of service for a significant activity
- to transfer ownership or control of a significant asset
- to construct, replace or abandon a strategic asset
- that will directly or indirectly significantly affect the capacity of the local authority, or the cost to the local authority, in relation to any activity identified in the LTCCP.

Section 97 requires that, if a council wishes to make a decision that is not provided for in the LTCCP, relating to significant change to service levels, asset capacity, or key decisions about strategic assets, then the LTCCP must be amended using the special consultative procedure.

A number of submitters felt that the amendment requirements help maintain a robust LTCCP by ensuring that local authorities retain a strategic focus and that changes and trade-offs are made in the full knowledge of impacts on service levels and financial consequences.

Some submitters raised concerns that:

- It is not always clear when LTCCP amendments are required
- The amendment requirements are onerous and time-consuming and inhibit ability to act quickly
- The amendment process is costly.

As SOLGM pointed out, the Act draws a distinction between decisions that require an amendment to the LTCCP and day-to-day circumstances that give rise to change from what is in the LTCCP but do not require amendments to the LTCCP. SOLGM continued “it can be seen that ‘significance’ is a key determinant in the circumstances where amendments to the LTCCP are required”.

The Office of the Auditor-General advised us that the concept of ‘significance’ is not well understood, which leads to a belief that amendments are required in more situations than they actually are.

We address the concept of ‘significance’, and also the special consultative procedure, later in this report. Here we are concerned as to whether the provisions of the Act are sufficiently clear on when amendments to an LTCCP are required.

SOLGM submitted that three of the ‘triggers’ for amendment “appear to encompass any change regardless of scale”. Firstly, section 97(1)(d) applies to any activity identified in an LTCCP regardless of the size of the activity or its importance to the community. SOLGM believed linking this requirement to ‘significant’ activities would ensure its consistency with section 97(1)(a).

We were advised by the Department of Internal Affairs that the assumption behind section 97(1)(d) was that an activity in an LTCCP would not be of a ‘minor’ nature. We do not believe that such an assumption is clear.

The second ‘trigger’ referred to by SOLGM is the requirement of section 102(6) that any of the funding and financial policies may be amended only as an amendment to the LTCCP. Again there is no qualifier for ‘significance’ attached to such amendments and all must go through the full amendment process including statement of proposal, use of special consultative procedure and audit. SOLGM stated that this requirement is the reason why around half of the 30 councils amending their LTCCP were making amendments.

The third ‘trigger’ identified is the requirement in section 141 relating to the sale or exchange of endowment land. Any sale or exchange, no matter how small the piece of land concerned, must be part of an LTCCP or an amendment to an LTCCP notwithstanding the proceeds or land must be used for the same purpose as the original endowment purpose.

In addition to SOLGM’s, we received two further submissions on the requirements of section 97(1) and to proposals relating to strategic assets in particular. These also suggested the need for a significance
threshold for triggering the LTCCP amendment process in respect of changes to strategic assets.
We agree a review of the section 97(1) requirements relating to significant changes to activities and strategic assets is desirable. We believe this will go some way to addressing concerns about the cost and perceived onerous nature of the LTCCP amendment process.

We recommend:

1. Amendment of section 97(1) of the Local Government Act to require amendments of an LTCCP only for significant changes to significant activities and strategic assets.

2. Amendment of section 102(6) to require amendment of an LTCCP only in the case of significant changes to funding and financial policies.

3. Amendment of section 141 to require that the sale or exchange of endowment land must be undertaken by way of the special consultative procedure rather than as an amendment to the LTCCP.

In other respects, we consider that the amendment requirements are necessary to maintain the integrity and strategic focus of the LTCCP and to facilitate community confidence. We believe that with time and guidance, councils will become more efficient at implementing the amendment process and associated special consultative procedure requirements.

We recommend development and dissemination of further good practice guidance in respect of requirements for amendments to LTCCPs.

3.3 The annual plan

3.3.1 Purpose

Section 95 and Schedule 10 of the Local Government Act set out requirements relating to annual plans. The purpose of the annual plan is to:

- contain the proposed annual budget and funding impact statement for the year to which it applies
- identify any variations from the financial statements and funding impact statement included in the LTCCP for that year
- support the LTCCP in providing integrated decision-making and coordination of resources
- contribute to accountability to the community
- extend opportunities for public participation in decision-making processes.

3.3.2 Submissions

We received several submissions about the relationship between the annual plan and the LTCCP. Some expressed concern about the ‘fit’ of the annual plan with the LTCCP including whether there is still a need for an annual plan. We also received a number of submissions relating to the size of the annual plan particularly in relation to its prescribed contents.
### 3.3.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local authority should make itself aware of and have regard to the views of all of its communities</td>
<td>• Local authority must prepare and adopt an annual plan for each financial year subject to financial statement and funding impact of first year of LTCCP being regarded as annual plan for that year</td>
<td>• Provisions largely retained the status quo</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>• When making a decision, local authority should take account of:</td>
<td>• Annual plan:</td>
<td>• Issues raised on relationship of annual plan to LTCCP</td>
<td>• Remove requirement for annual plan</td>
</tr>
<tr>
<td>– the diversity of the community and the community's interests</td>
<td>– must be prepared in accordance with principles and procedures for preparation of LTCCP and include appropriate references to LTCCP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– the interests of future as well as current communities</td>
<td>– must include prescribed contents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– the likely impact of any decision on all aspects of community well-being</td>
<td>– must be adopted using the special consultative procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• In taking a sustainable development approach, local authority should take into account:</td>
<td>• Adoption of annual plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– the social, economic and cultural well-being of people and communities</td>
<td>a statement of intention not a decision to act on specific matter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>– the need to maintain and enhance the quality of the environment</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>– the reasonably foreseeable needs of future generations</td>
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</tbody>
</table>

### 3.3.4 Analysis

We believe that any suggestion to dispense with the annual plan requirement must be considered in the light of its role in the setting of rates and charges. The annual plan is the link between the LTCCP and the annual rates levy and the information needed to provide the value proposition (i.e. levels of service provided and their cost to the community).

SOLGM noted and we concur that:

- The nature of many annual plan submissions received by local authorities from members of their community are unlikely to come forward in the LTCCP process, for example requests for small items of capital works, or some form of community grant.
- Removal of the annual plan requirement is likely to add to the current negative perceptions that some parts of the community have regarding their ability to influence the rates burden.
- There is no other vehicle in legislation to make small scale changes to the LTCCP, if necessary.
- The annual plan is a good opportunity for the local authority to meet and engage with the community on progress against the LTCCP.

One concern about the relationship between the LTCCP and the annual plan arises from the fact that the process of preparing an annual plan requires councils to review and update their forecasts and to explain any variances. The Act does not provide for updating the forecast financial statements in the LTCCP as a result of the annual planning process. This creates extra administrative requirements to provide accounting against the annual plan as well as the LTCCP at the ends of years two and three.
Updating the financial statements in the LTCCP, as a result of the annual planning process, would require out-year forecasts to be updated also, which would then not relate to year one of the LTCCP. There are a number of technical issues relating to the updating issue that the sector needs to consider further. This includes maintaining the integrity of the LTCCP as a long-term planning document vis-à-vis the administrative requirements to ensure comparability of the LTCCP and the more recent annual plan. We have no recommendation to make on this particular matter.

Some submitters believe there would be value in allowing for new LTCCPs to be prepared each year. This would allow the LTCCP to be updated and provide a single set of information to report against.

We believe the intent of the Act is to have a long-term plan in place for three years to reinforce the requirement for long-term thinking. The LTCCP amendment process is aimed at providing a balance between flexibility and frequent wholesale change. We support this objective and do not recommend any change.

The documentation requirements for the annual plan are comparatively simple and generally require the information required for LTCCPs to be produced in respect of the year to which the annual plan relates. This tends to require a large amount of documentation to be compiled. Some submitters suggested that this information could be referred to, rather than reproduced.

We believe our arguments in relation to the prescribed contents of LTCCPs apply equally in respect of annual plans. That is, there is value in having the relevant information together in one place which is the annual plan.

*We recommend no change to the Local Government Act relating to the requirement for councils to prepare and adopt an annual plan for each financial year.*

### 3.4 Decision-making

#### 3.4.1 Purpose

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. To achieve this, a full understanding of the requirements for decision-making, as set out in sections 76 to 80 of the Local Government Act, is critical.

#### 3.4.2 Submissions

We received a number of submissions relating to the decision-making requirements in the Act and particularly to their perceived prescriptive and complex nature.

We included questions about these requirements in our national and all-councils surveys, in our interviews with elected members and officers from the 14 selected councils, and in interviews and surveys of submitters to local authorities on their experiences.

We address the issues raised as follows:

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

We address provision of opportunities for Māori to contribute to decision-making and requirements to take account of the relationship of Māori with ancestral land, water and other taonga later in this chapter.
3.4.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local authority should give effect to its identified priorities and desired outcomes in an efficient and effective manner</td>
<td>• Every decision must be made in accordance with prescribed requirements subject to the judgment of the local authority about compliance in proportion to the significance of the matter</td>
<td>• Range of views on new provisions on decision-making requirements and judgments required by councils in their application</td>
<td>• Legislative status quo along with good practice guidance</td>
</tr>
<tr>
<td></td>
<td>• When making a decision, local authority should take account of:</td>
<td></td>
<td>• Legal review of decision-making provisions</td>
</tr>
<tr>
<td></td>
<td>– the diversity of the community and the community’s interests</td>
<td></td>
<td>• Review of use of ‘significant’, ‘significance’ and ‘significantly’ in Act</td>
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<td></td>
<td>– the interests of future as well as current communities</td>
<td></td>
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<tr>
<td></td>
<td>– the likely impact of any decision on all aspects of community well-being</td>
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<td></td>
<td>• In taking a sustainable development approach, local authority should take into account:</td>
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<tr>
<td></td>
<td>– the social, economic and cultural well-being of people and communities</td>
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<td></td>
<td>– the need to maintain and enhance the quality of the environment</td>
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<td></td>
<td>– the reasonably foreseeable needs of future generations</td>
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<td></td>
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<tr>
<td></td>
<td>• Prescribed requirements:</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>– identification of all reasonably practicable options</td>
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<td></td>
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<tr>
<td></td>
<td>– assessment of options in terms of specified criteria</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>– consideration of views, preferences of affected and interested people</td>
<td></td>
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<td></td>
<td>• Requirement for local authority to adopt, by special consultative procedure, a policy on:</td>
<td></td>
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<td></td>
<td>– its general approach to determining significance of proposals/decisions</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>– thresholds, criteria or procedures to be used in assessing significance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>– assets considered to be strategic assets</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Local authority must identify any decision significantly inconsistent with any policy or plan</td>
<td></td>
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</tbody>
</table>
3.4.4 Analysis

1. Public perceptions and experiences about council decision-making

We contracted a nationally representative telephone survey of 1,000 eligible voters (people over 18 years of age) as one way of gaining insight into public knowledge and perceptions of local government. This included questions relating to council decision-making. A summary of the key findings is included in Appendix 9.

The survey identified a significant gap between the 82% of respondents who said it is “important to have a say” in council decisions and the 67% who claimed they “would have a say”. This reflects the difficulty councils are likely to face when attempting to get public input into decision-making.

A question to be asked is whether this gap simply reflects human nature or do councils, or the Local Government Act, through their various processes, knowingly or unknowingly, put in place barriers to public participation in decision-making? This section, and the next on consultation, explore this issue.

Respondents who stated they were “unlikely to give their view to council” were asked for their reasons. These can be summarised as follows:

- apathy/not interested: 39%
- won’t achieve anything/make a difference: 25%
- perceived process difficulties: 10%
- other: 15%

Demographic differences of note included:

- Those who live in one of the main cities were more likely than provincial or rural residents to say that they “can’t be bothered” or were “too lazy” (40% versus 18% and 19% respectively).
- Those with a combined income of $50,000 or less per year were more likely than those with an income over $50,000 to say that “they can’t be bothered” or were “too lazy” (39% versus 17%).
- Women were more likely than men to express apathy about giving views to council (54% versus 26% of men).

Without prompting with possible responses, respondents were asked to list the ways that people can influence the decisions of their council. The most common responses were “writing a letter to council” (26%) and “voting in the elections” (23%). Fewer suggested more active methods of participation, such as “personally speaking with councillors” (16%), “attending council meetings” (14%), and “attending or holding public meetings” (13%). Fourteen percent mentioned “making a submission to council”.

Demographic differences of note included:

- Māori were less likely than non-Māori to mention “voting in the elections” or “writing a letter to council”.
- NZ Europeans were more likely than non-NZ Europeans to mention “making a submission” and “writing a letter to council”.
- Those with a combined income over $50,000 were more likely than those with an income of $50,000 or less to mention “voting” (30% versus 17%), “making a submission”, “personally speaking with councillors” or “writing a letter to council”.


Respondents were asked to indicate how much influence particular methods could have on council decisions, with the following results:

![Influence on Council Decisions Graph]

**INFLUENCING COUNCIL DECISIONS**

“I'm now going to list some of the ways that members of the public can influence council decisions about issues they feel are important. How much influence do you think the following methods have on the decisions that councils make?”

<table>
<thead>
<tr>
<th>Method</th>
<th>At least some influence</th>
<th>Some influence</th>
<th>Not much influence</th>
<th>No influence</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voting people onto council who share your views about the issue</td>
<td>37%</td>
<td>42%</td>
<td>12%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Personally meeting with councillors to discuss the issue</td>
<td>23%</td>
<td>46%</td>
<td>20%</td>
<td>7%</td>
<td>4%</td>
</tr>
<tr>
<td>Attending meetings run by council to discuss the issue</td>
<td>18%</td>
<td>51%</td>
<td>18%</td>
<td>7%</td>
<td>6%</td>
</tr>
<tr>
<td>Attending meetings run by members of the public to discuss the issue</td>
<td>18%</td>
<td>51%</td>
<td>19%</td>
<td>9%</td>
<td>5%</td>
</tr>
<tr>
<td>Making a written submission to council about the issue</td>
<td>16%</td>
<td>46%</td>
<td>25%</td>
<td>9%</td>
<td>4%</td>
</tr>
</tbody>
</table>

Source: Knowledge of, and participation in, local government. Q4g
Base: All respondents (n = 1035)

While this was a limited piece of research, we can identify some signposts:

- Only a very small percent of New Zealanders (3%) believe the public cannot influence councils’ decisions.
- Voting is 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. However 62% do believe that written submissions had at least some influence on council decisions.

2. Council perceptions and experiences on decision-making requirements

The Local Government Act 2002 requires greater formal rigour with respect to decision-making processes than was the case under its predecessor 1974 Act. Prior to the 2002 Act there was no statutory prescription around decision-making methodology. Local authorities could approach decision-making as they saw fit (within a more limited role and in accordance with general legal principles). Then, as now, the local authority was accountable to the community for its decision-making and, in some cases, to the courts.

In relation to the 2002 Act provisions, SOLGM in its submission noted:

“Some councils have expressed concerns about the perceived prescriptive nature, complexity, cost and effectiveness of the decision-making and consultation provisions within the Act. While each individual requirement makes sense in and of itself, the cumulative impact of sections 76 – 82 can be to make some decisions take longer without necessarily adding value to the process. In a global marketplace unnecessary procedural requirements can lead to some loss of opportunity.”
Section 79 (Compliance with procedures in relation to decisions) offers local authorities the flexibility to design decision-making processes (according) to the significance of the decision, and the circumstances in which the decision is made. Without this the process would be too inflexible to be workable, but some concerns have been made at the potential for legal or public challenge to decisions based on the use of the provision.

It is difficult to ascertain the extent to which this is a problem requiring legislative change or one that can be best addressed through practice. Provisions around decision-making and consultation are fundamental to the Act and determining how to simplify them without weakening their purpose is difficult.

Section 77 (Requirements in relation to decisions) requires councils to:

- seek to identify all reasonably practicable options
- assess those options by considering:
  - their benefits and costs
  - the extent community outcomes would be promoted or achieved
  - the impact on the local authority's capacity to meet present and future needs
  - any other matters the local authority considers relevant.

While some councils have described the requirements as "onerous", others have pointed out the aspirational quality of these requirements i.e. 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 78 requires consideration of "the views and preferences of persons likely to be affected by, or to have an interest in, the matter". This consideration is required at each identified stage of the decision-making process. Section 78(3) makes it clear that this section alone does not require any consultation process or procedure. We address the requirements of section 78 further in the next section on consultation.

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.

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 on 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).

Section 76 requires every decision made by a local authority to be in accordance with these and certain other provisions (addressed elsewhere in this report) as are applicable. The provisions can be read
and, in isolation, be seen to be onerous in relation to particular decisions. We believe that to gain a full insight into these requirements the provisions need to be seen as a package. This will enhance understanding of the requirements.

We believe that seeing these provisions as a package is in accord with the philosophy of the Act relating to sustainable development approaches and local accountability for decision-making. The discretionary provisions (section 79 and section 82(4) in relation to application of the consultation principles) provide an opportunity to promote transparency and accountability of processes that are genuinely local and tailored to the current and future needs and preferences of the particular community.

In relation to councils’ understanding of the principle of ‘taking a sustainable development approach’ (section 14), we noted the findings of the expert reviewers included in the Auditor-General’s report on the 2006-16 LTCCPs. They concluded that “there are a number of areas requiring improvement to infuse council thinking on sustainable development into LTCCPs”. These included “expressing how sustainable development is localised, owned and defined at a council and community level” and “reflecting consideration given to the needs of future generations’ well-being in decision-making”.

Our discussions with elected members and officers from the 14 selected councils confirmed the need for a focus on understanding and application of the sustainable development principle. We recommend development and dissemination of good practice guidance in this area.

We believe that local decision-making under the Act requires ongoing learning and adaptation by councils so that they can build their own decision-making framework and processes suited to local needs and circumstances. Fundamental to promoting compliance with the requirements of sections 76 to 80, within a sustainable development approach, will be the quality of consideration and disclosure in relation to section 79.

There is evidence of a broadening of some councils’ approaches to decision-making in accordance with the legislative requirements. This has been, and will increasingly continue to be, assisted by good practice guidance material capturing and reflecting the relationships between Part 2 of the Act (Purpose of local government) and Part 6 (Planning, decision-making and accountability).

We believe there is the opportunity for further shared learning in relation to the decision-making requirements and discretionary provisions of section 79. The recent Office of the Auditor-General decision-making guide, prepared by a working group of local government staff and advisors, represents an important part of this ongoing learning.

Like SOLGM, we are not convinced that the decision-making 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. Nor did we sense any great appetite for such change generally speaking among the councils we spoke to.

We believe our recommendations, elsewhere in this report, relating to amendments of the LTCCP and consultation will further enhance the efficiency of council decision-making processes.

**We recommend:**

1. **No change to the Local Government Act relating to local authority decision-making requirements.**

2. **Development and dissemination of further good practice guidance on local authority decision-making processes and procedures including in relation to a sustainable development approach.**

Our all-councils survey asked to what extent the introduction of the 2002 Act has influenced decision-making at their council. An overwhelming majority (93%) reported that the Act had either “a lot” or “some influence” on decision-making at their council.

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12 Turning principles into action: A guide for local authorities on decision-making and consultation prepared by the Controller and Auditor-General dated 12 September 2007.

13 Other than clarity of the requirements that link to the concept of significance and may therefore trigger certain process requirements.
We then asked, in which of the following ways has the introduction of the Act influenced decision-making:

<table>
<thead>
<tr>
<th>Influence of LGA 2002 on local authority decision-making</th>
<th>% of councils</th>
</tr>
</thead>
<tbody>
<tr>
<td>We now take a longer term focus when making decisions</td>
<td>73</td>
</tr>
<tr>
<td>We now consider the extent to which community outcomes could be achieved*</td>
<td>71</td>
</tr>
<tr>
<td>We now consider a wider range of options when making decisions</td>
<td>67</td>
</tr>
<tr>
<td>We now consider the impact of decisions on the four types of community well-being (i.e. social, economic, environmental, and cultural well being)</td>
<td>67</td>
</tr>
</tbody>
</table>

* We note these results are self-reported and contrast somewhat with our own observations.

In our discussions with the 14 selected councils we posed the following question: Are you comfortable that the Act provides enough discretion around decision-making?

Elected members from regional, city and district councils identified that there is no simple guide for determining the level of compliance required in each stage of decision-making. No elected members appeared to use their council’s significance policy to determine the extent and degree of compliance required in the decision-making process.

Some district council elected members raised concerns that there can be a tension between taking critical commercial or strategic opportunities and the decision-making and consultation obligations of the Act. They believed the Act does not provide enough flexibility in these circumstances. Other district council members were supportive of the constraints around decision-making.

Council officers generally did not appear to use their council’s significance policy to determine the extent and degree of compliance required in the decision-making process. Only a few officers reported that they brief and seek guidance from committee chairs or portfolio leaders regarding the level of compliance required. A number also commented that the policy was purposely designed to be “flexible” and was therefore of limited value as an assessment tool or to signal thresholds.

The independent contractors who led the discussions with the 14 selected councils concluded:

“The extent to which there is strict compliance with the decision-making provisions of Part 6 is unclear. It appears that councils deal with this on a pragmatic basis rather than on a compliance basis. The lack of certainty around the decision-making provisions was mentioned by both city and district councils and it reportedly left them feeling vulnerable. Because of the lack of case law and any best practice guidelines, the extent to which this pragmatic approach exposes local authorities to risk is unclear. The Commission may consider that the provisions (sections 76-79) are worth independent legal review. This may or may not recommend legislative review.”

We considered whether legal review of the decision-making provisions is warranted. Our view is that, given the particularities of local authority decision-making, meaningful legal review of the provisions could only occur on a case-by-case basis. We also note that early concerns regarding a risk of legal challenge arising from the decision-making provisions have not to date been borne out.

We noted useful guidance is provided for local authorities by the Auditor-General in his 2007 good practice guide. He comments:

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15 Turning principles into action: A guide for local authorities on decision-making and consultation prepared by the Controller and Auditor-General dated September 2007.
“The courts will look at the process a local authority has followed to make a decision. However, in those decisions where local authorities have considerable discretion, such as in the preparation of policy or strategy, the court is unlikely to supplant a local authority’s decision-making powers.”

This confirms the need for ongoing good practice guidance in this area.

3. The concept of significance

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.

Given this, our review focused on how well the concept is understood by councils, including both elected members and officers.

Discussions with the Office of the Auditor-General highlighted the following points in regard to the assessment of significance and reiterated findings in the report by the Auditor-General on 2002-03 local authority audits:

- 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 noted that the Office has also received complaints about local authorities redefining aspects of their significance policies in order to make a decision (for example, remove an asset from the strategic asset list in order to sell it without prior community consultation).

Confusion and a heightened perception of risk have prompted some councils to suggest that the Act should prescribe certain thresholds or triggers to allow for clearer identification of ‘significant’ decisions that would require a high degree of compliance with the requirements of sections 77 and 78.

We share the view of SOLGM, LGNZ, and the Office of the Auditor-General that to do so would be fundamentally contrary to the intent of the Act. Councils are best placed to make these assessments.

We believe the Act’s requirement for councils to adopt a significance policy is an appropriate mechanism for providing certainty and consistency in the way each council assesses the significance of a particular issue.

We have concerns in relation to significance policies arising from:

- the Auditor-General’s review of a selection of councils’ significance policies in 2003 which found many policies wanting
- our discussions with the 14 selected councils that identified no councils (elected members or officers) saying their significance policy was a useful tool.

Some policies tend to focus on financial thresholds and assets rather than contain an explanation of the broader aspects of significance – namely the council’s approach to determining significance with regard to current and future community well-being, the views of those affected, and the local authority’s capacity to perform its role.

In the Auditor-General’s guide to decision-making and consultation it is noted, and we concur, that the better developed significance policies provide a mix of different criteria. Thresholds and criteria merely provide a trigger for identifying whether a matter is likely to be significant but are not the only determinants. In any particular instance, councils still need to weigh up the considerations set out in the definition of significance in section 5 of the Act and the requirements for assessing significance.

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17 Turning principles into action: A guide for local authorities on decision-making and consultation prepared by the Controller and Auditor-General dated 12 September 2007.
18 Turning principles into action: A guide for local authorities on decision-making and consultation prepared by the Controller and Auditor General dated 12 September 2007.
One possible source of confusion is the varying use of the words ‘significant’, ‘significance’ and ‘significantly’ in the Act. We noted the Office of the Auditor-General has compiled a list of the various uses (see Appendix 10). As an example, the Act uses the term in relation to when the special consultative procedure must be used, while also using it (as defined in section 5) in relation to local authority assessments of the likely impact or consequences on well-being, those affected and the capacity of the local authority. We believe a review of the uses of these words in the Act would be helpful.

We also believe the placement in the Act of the ‘Policy on significance’ section (section 90 at the end of the consultation provisions) may not assist understanding of the concept and its relationship to decision-making. We believe it would be better located following section 79.

Subject to these two recommendations, we see improvements in councils’ understanding of the significance concept and use of significance policies as ultimately coming from the development and dissemination of further good practice as distinct from legislative amendment. Generally, the Act adequately provides the tools for good decision-making; councils and the sector need to consider them further with a view to their most effective use.

We recommend:

1. No change to the Local Government Act relating to the requirement for local authorities to adopt a policy on significance subject to section 90 (Policy on significance) being moved to follow section 79 (Compliance with procedures in relation to decisions) in the Act.

2. A review of the use of the words ‘significant’, ‘significance’ and ‘significantly’ in the Local Government Act including distinguishing between council assessments of these terms and when the special consultative procedure is required to be used.

3. Promotion and dissemination of further good practice guidance relating to the application of the concept of significance by local authorities.

3.5 Consultation

3.5.1 Purpose

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. A full understanding of the principles of the Act and the requirements of sections 82 to 90 of the Local Government Act is critical.

3.5.2 Submissions

We received a number of submissions on the consultation provisions of the Act. The key issues raised can be summarised as concerns relating to:

- the purpose and requirements for consultation including concerns about ‘over consultation’
- the perceived prescriptive nature of the requirements
- the requirements relating to the special consultative procedure.

We address the issues raised as follows:

1. public perceptions about council consultation
2. council perceptions about consultation
3. awareness and consideration of community views
4. consultation principles
5. the special consultative procedure.

We address requirements for consulting with Māori later in this chapter.
We noted the following recommendations of the Local Government Rating Inquiry relating to consultation:

- After the current operational review of the Local Government Act 2002 by the Local Government Commission, a further independent review of the consultation and decision-making provisions of the Act be conducted with a view to substantially streamlining the legislative provisions and providing greater accountability.
- The Office of the Auditor-General and the Department of Internal Affairs monitor and review the way consultation is working.
- Section 82 of the Local Government Act 2002 be amended to limit council discretion in the means of applying the consultation principles.
- The current consultation processes be replaced by more selective and streamlined consultation arrangements.

### 3.5.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local authority should make itself aware of and have regard to the views of all of its communities</td>
<td>Requirement for local authority to adopt policy on significance</td>
<td>Requirement for councils to be aware of community views seen by some as requirement for consultation</td>
<td>Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td></td>
<td>Subject to discretion on certain matters, consultation must be in accordance with prescribed principles</td>
<td>Concerns about perceived prescriptive and onerous nature of consultation requirements</td>
<td>Removal of discretion relating to application of consultation principles</td>
</tr>
<tr>
<td></td>
<td>Prescribed considerations for local authority when exercising discretion on observing principles</td>
<td>Prescription of special consultative procedure as minimum legal requirement in certain circumstances may be a barrier to use of other more effective mechanisms</td>
<td>More prescription of targeted consultation mechanisms</td>
</tr>
<tr>
<td></td>
<td>Prescribed requirements when special consultative procedure is used</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Requirement to use special consultative procedure in relation to certain matters</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prescribed requirements for summary of proposal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3.5.4 Analysis

1. *Public perceptions about council consultation*

   We commissioned research aimed specifically at gaining insights on council consultation processes from individuals and community groups who had made a submission to their council. (Details of this research are outlined in *Appendix 5*). The local authority submission process was chosen as it is central to the special consultative procedure and this was the main focus of councils’ comments on the consultation provisions of the Act.

   Our research confirmed that a relatively narrow section of the community (generally well-educated, New Zealand European, and over the age of 45) tend to make written submissions to councils.

   Key findings from this research included how submitters rated the overall public consultation process for the issue on which they submitted. Results are shown in the following chart.

   Overall, 30% of submitters felt that the public consultation process was either “excellent” or “very good”, while 38% felt it was “fair” or “poor”. 
The outcome of the particular issue that the submitter was interested in (i.e. whether the decision was in their favour or not) was the primary variable by which perceptions of the public consultation process varied. This is consistent with the findings from our qualitative research.

Those for whom council made a decision against their views had more negative perceptions of the overall process (64% gave a rating of “fair” or “poor”, compared to 16% of those for whom council made a decision in their favour). Conversely, those for whom council made a decision in their favour had more positive perceptions of the overall process (47% gave a rating of “excellent” or “very good”, compared to 18% of those for whom council made a decision against their views).

The main reasons for feeling positive about the public consultation process were a sense of “appreciation for opportunities to express views” (22%), and that the council “keeps the public well-informed” (17%) and the issues are “well-publicised” (13%).

The main reasons for feeling negative were perceptions that councils “do not really listen” (17%) and that they were “not really interested in the views of the public” (11%).

We also asked submitters whether they agreed or disagreed with a series of statements relating to the principles that local authorities must follow when they consult. Results are displayed in the chart below.
In relation to the consultation principles, key findings 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 “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”.

We believe that care should be taken in assessing anecdotal evidence on how well or otherwise councils are consulting with their communities. As our research highlights, people’s impressions of the process are coloured by the outcome of the process. People are more likely to view the process favourably if the resultant decision is in their favour and visa versa.

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

However, clearly there are aspects of consultation on which councils could do better. Two that stand out from this research are:

- 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.

2. Council perceptions about consultation

We gained insight on councils’ experiences of operating under the Local Government Act through a variety of means. These included detailed submissions from SOLGM, an invitation to all councils to make submissions to the review, discussions with 14 selected councils on Part 6 of the Act, as well as our all-councils survey.

In comparison to before enactment of the 2002 Act, 60% of councils stated in our all-councils survey, the quantity of consultation feedback they receive has increased either “a lot” or “to some extent” and 36% stated “there has been no difference”. Almost half (46%) stated the quality of consultation feedback has increased either “a lot” or “to some extent”. A similar number (45%) stated the quality of feedback has neither “increased” nor “decreased”.

3. Awareness and consideration of community views

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 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’.

Putting aside the requirements relating to the special consultative procedure (addressed below), neither the principle nor the requirements of section 78 automatically translate into an obligation to consult the community. Councils 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. Subsection 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. One important requirement clearly is to have effective internal processes in place to ensure that the information held within the organisation is available for decision-making.

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.

Engagement encompasses a continuum of activities of which consultation is but one. We noted the International Association for Public Participation (IAP2) ‘Participation Model’ depicts this range as comprising: ‘informing, consulting, involving, collaborating and empowering’ (see Appendix 11).

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 that is available and that they consider carefully which are 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 received.

We recommend development and dissemination of further good practice guidance on the range of community engagement and consultation mechanisms available and methods of evaluating their effectiveness.

4. Consultation principles

When consultation is required, section 82 sets out the following principles which the local authority, subject to certain matters of discretion, must act in accordance with:

- Affected/interested persons have access to relevant information in a manner and format that meets their preferences and needs.
- Affected/interested persons are encouraged to present their views.
- Persons who are invited or encouraged to present their views are given information on the purpose of the consultation and scope of the decisions to be taken.
- Persons who wish to have their views considered are given a reasonable opportunity to present their views in a manner and format that meets their preferences and needs.
- Views presented are received by the local authority with an open mind and given due consideration.
- Persons who present their views are provided with information on relevant decisions and reasons for the decision.

According to our research, councils were seen by people who have participated in a council submission process, as generally performing reasonably well against the principles of consultation.

A key provision is subsection 82(3) which provides discretion for local authorities (subject to subsections 82(4) and (5)) 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. In our view, the discretion here simply reflects that:

- the principles need to be given effect to in different ways depending on the circumstances of the consultation
- there is a degree of judgment required on the principles (particularly in respect of subsections (1)(b) and (d), which require councils to ‘encourage’ people to present their views to it and to provide reasonable opportunities for participants to present their views in a manner and format that is appropriate to their preferences and needs).
We believe some flexibility is required in the application of these consultation principles and that the Act provides this appropriately.

As noted in the previous section of this report on decision-making, section 79 also provides, we believe appropriately, for councils’ judgments on the requirements in relation to the views of the community. This, as we have seen, is closely linked to proper understanding of the concept of significance.

We do not agree with the recommendation by the Local Government Rating Inquiry to limit councils’ discretion in the application of these principles. It appears to us more important that councils take responsibility, based on an agreed understanding of significance for their community, of their side of the consultation agreement with communities. The consultation principles provide a basis for this agreement, as do councils’ consultation/engagement policies.

We believe there is a strong sense within the sector that more prescriptive legislation would simply result in a ‘tick box’ approach and no ongoing benefit.

If an aim is to promote councils’ improved application of the principles, then we believe that subsection 82(4) already provides appropriate ‘limitations’ on councils’ discretion. It provides that, in exercising its judgment, a local authority must have regard to:

- the requirements of section 78
- the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority
- the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter
- the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (which, amongst other things, sets out the circumstances in which there is good reason for withholding local authority information)
- the costs and benefits of any consultation process or procedure.

The prescribed considerations provide a basis for ongoing learning and evaluation of consultation practices. In our view, subsection 82(4), as it stands, provides an appropriate pathway for the evolution of effective consultation practice.

However, it is too early to gain a clear picture of how councils are using the subsection 82(4) matters to inform their approaches to the principles of consultation. The Act is not specific about councils recording and disclosing their discretionary considerations. We believe this is an area which the ten-year legislative evaluation being undertaken by the Department of Internal Affairs should monitor.

We noted the recommendation of the Local Government Rating Inquiry that the Office of the Auditor-General and the Department of Internal Affairs monitor and review the way consultation is working. We agree this is necessary and once again believe the ten-year evaluation is an appropriate vehicle. The ongoing work by the Office of the Auditor-General is likely to include some monitoring of council consultation practices as well.

**We recommend:**

1. **No change to the Local Government Act relating to the consultation principles in section 82.**
2. **Monitoring of the effectiveness of local authority consultation practices as part of the Department of Internal Affairs’ ten-year legislative evaluation.**
3. **Special Consultative Procedure**
   The Act requires use of the special consultative procedure in relation to statements of proposal on the following:
   - the LTCCP including amendments
   - the annual plan
   - bylaws
   - certain other matters including in relation to a change of mode of delivery of a significant activity.
Where the special consultative procedure is required to be used, the local authority must:

- prepare a statement of proposal and summary statement
- include the statement of proposal on a local authority meeting agenda
- make the statement of proposal available for public inspection
- distribute the summary of information
- give public notice of the proposal and consultation to be undertaken
- include information on how to obtain the summary and inspect the full proposal
- include information on the period for submissions being not less than one month
- ensure submitters are sent an acknowledgement and given reasonable opportunity to be heard with appropriate details
- ensure meetings to hear submissions are open to the public
- make all submissions available to the public.

The special consultative procedure received more comment than any other decision-making or consultation provision. Council submitters’ concerns regarding the special consultative procedure related to:

- the degree to which the Act’s requirements to use the procedure limit a council’s ability to take a principle-based approach to consultation
- perceived issues of imbalance and non-representativeness associated with the procedure as a method of consultation
- the inflexibility of prescribed procedural requirements
- the frequency of occasions for which the procedure is required
- the perceived inappropriateness of certain specific requirements to use the procedure, in particular, in relation to:
  - minor changes to an LTCCP
  - second or third year annual plans (of three year term) that are consistent with the second or third year of planning as contained in an LTCCP
  - council-controlled organisations
  - changing the mode of delivery of council services
  - bylaws.

We have addressed the use of the special consultative procedure in relation to a number of these specific instances elsewhere in this report.

We noted from our all-councils survey that a number of councils see the special consultative procedure as not representing good value for money (where value for money is defined as good quality and quantity of responses for the cost involved). The following table presents these results.
### PERCEIVED VALUE FOR MONEY FROM USE OF SPECIAL CONSULTATIVE PROCEDURE

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Not at all effective</th>
<th>Somewhat effective</th>
<th>Very effective</th>
<th>Unsure</th>
<th>Not answered</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Perceptions of respondents</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>(a) Adoption of LTCCP</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Increasing the quantity of responses (n = 76)</td>
<td>30</td>
<td>51</td>
<td>16</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>ii) Increasing the quality of responses (n = 76)</td>
<td>37</td>
<td>49</td>
<td>12</td>
<td>3</td>
<td>–</td>
</tr>
<tr>
<td>iii) Providing value for money (n = 74)*</td>
<td>47</td>
<td>39</td>
<td>3</td>
<td>11</td>
<td>–</td>
</tr>
<tr>
<td><strong>(b) Amendment to LTCCP</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Increasing the quantity of responses (n = 76)</td>
<td>29</td>
<td>37</td>
<td>7</td>
<td>17</td>
<td>11</td>
</tr>
<tr>
<td>ii) Increasing the quality of responses (n = 76)</td>
<td>33</td>
<td>37</td>
<td>1</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td>iii) Providing value for money (n = 54)*</td>
<td>65</td>
<td>26</td>
<td>–</td>
<td>9</td>
<td>–</td>
</tr>
<tr>
<td><strong>(c) Adoption of annual plan</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Increasing the quantity of responses (n = 76)</td>
<td>37</td>
<td>47</td>
<td>11</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>ii) Increasing the quality of responses (n = 76)</td>
<td>43</td>
<td>41</td>
<td>9</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>iii) Providing value for money (n = 71)*</td>
<td>51</td>
<td>34</td>
<td>8</td>
<td>7</td>
<td>–</td>
</tr>
<tr>
<td><strong>(d) Making, amending or revoking bylaws</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Increasing the quantity of responses (n = 76)</td>
<td>34</td>
<td>41</td>
<td>4</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>ii) Increasing the quality of responses (n = 76)</td>
<td>38</td>
<td>37</td>
<td>4</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>iii) Providing value for money (n = 59)*</td>
<td>53</td>
<td>37</td>
<td>5</td>
<td>5</td>
<td>–</td>
</tr>
<tr>
<td><strong>(e) Other circumstances not mentioned above (i.e., other times when your council is required by the LGA 2002 to use the SPC)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Increasing the quantity of responses (n = 75)</td>
<td>24</td>
<td>42</td>
<td>5</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>ii) Increasing the quality of responses (n = 75)</td>
<td>29</td>
<td>36</td>
<td>5</td>
<td>21</td>
<td>9</td>
</tr>
<tr>
<td>iii) Providing value for money (n = 53)*</td>
<td>51</td>
<td>38</td>
<td>4</td>
<td>8</td>
<td>–</td>
</tr>
</tbody>
</table>

Base: All councils that took part (n=76)

*Only councils who answered questions regarding quantity and quality under the respective circumstances are included here.*
Some 40% of councils who responded indicated that they had chosen to use the procedure when not statutorily required to do so. Reasons for doing this are set out in the following table.

**REASONS FOR USING THE SPECIAL CONSULTATIVE PROCEDURE WHEN NOT STATUTORILY REQUIRED TO**

<table>
<thead>
<tr>
<th>Reason</th>
<th>No of councils citing this as a reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>We use it for matters of important public interest</td>
<td>8</td>
</tr>
<tr>
<td>It is a good way to get feedback from the public</td>
<td>6</td>
</tr>
<tr>
<td>Want to ensure we receive the widest possible feedback/maximum coverage</td>
<td>5</td>
</tr>
<tr>
<td>People have become used to/familiar with the process</td>
<td>3</td>
</tr>
<tr>
<td>Adds legitimacy to our decision/provides a mandate</td>
<td>3</td>
</tr>
<tr>
<td>It is the best procedure/is ‘best practice’</td>
<td>2</td>
</tr>
<tr>
<td>To make sure the community is aware of the issue</td>
<td>2</td>
</tr>
<tr>
<td>Unsure</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
</tbody>
</table>

Base: All councils who have used the special consultative procedure when not statutorily required to (n = 30)

Councils were also asked to list the subject matter of the decisions where they have used the special consultative procedure when not required to. Responses were diverse. The more frequent responses were decisions relating to adoption or development of strategies (n=8) or decisions relating to community facilities such as parks and libraries (n=8). Other decisions included building controls, community events, public-private partnerships, relocation of council offices, graffiti management, a sewage scheme, gambling venues, dog control policy, fluoridation, and a proposal for a music school.

We are aware that some councils are drawing a link between their own assessment of ‘significant’ decisions and a need to use the special consultative procedure. As previously discussed, this suggests a need for more good practice guidance on the concept of significance and a review of terms in the Local Government Act.

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. This could be seen to give weight to the Local Government Rates Inquiry call for prescription of more selective consultation arrangements.

We found from our research that written submissions were perceived to have the least influence on council decisions (although 62% did believe written submissions have at least “some influence”). We also found from our quantitative survey of people that had made submissions, that not all sectors of society are likely to make submissions (submitters tend to be older, well-educated and New Zealand European). We were therefore interested to learn the prevalence of other forms of engagement councils employ. Our all-councils survey provided the following results:
FORMS OF LOCAL AUTHORITY ENGAGEMENT

<table>
<thead>
<tr>
<th>Method of engagement employed by local authority</th>
<th>Used in past 3 years (%)</th>
<th>Plan to use at some point in next 3 years (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public meetings</td>
<td>97</td>
<td>97</td>
</tr>
<tr>
<td>Hui</td>
<td>76</td>
<td>80</td>
</tr>
<tr>
<td>Surveys of residents selected at random</td>
<td>87</td>
<td>89</td>
</tr>
<tr>
<td>Self-selected surveys of residents (including newspaper forms)</td>
<td>63</td>
<td>64</td>
</tr>
<tr>
<td>Focus groups</td>
<td>73</td>
<td>79</td>
</tr>
<tr>
<td>Citizen panels</td>
<td>15</td>
<td>21</td>
</tr>
<tr>
<td>Submissions</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Community planning days and open houses</td>
<td>57</td>
<td>65</td>
</tr>
<tr>
<td>Websites that allow residents to provide electronic responses</td>
<td>71</td>
<td>81</td>
</tr>
<tr>
<td>Any other ways*</td>
<td>40</td>
<td>29</td>
</tr>
</tbody>
</table>

Base: All councils that responded to survey (n=76)
* Details provided in survey report

As expected, the results show that councils are already 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.

As highlighted in our discussion of findings from our survey of people who had made written submissions to councils, councils will need to continually adapt their methods of engagement to satisfy the preferences of increasingly diverse local communities.

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 appears to be 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.

Some councils are concerned about the number of occasions when the special consultative procedure is required. We have addressed this in part in our recommendations relating to when amendments to the LTCCP should be required. We also point out section 83A, as inserted into the Act in 2004, allows for requirements to use the special consultative procedure to be combined.

We do not agree with one submitter that proposed that a representative sample survey of residents should be able to be used in place of the special consultative procedure. As noted, the purpose of this procedure is a final unrestricted opportunity for input before a decision is made. This does not preclude prior consultation using other mechanisms.

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”.

*We recommend no change to the Local Government Act relating to requirements for use of the special consultative procedure.*
Given our findings above, we do not see the need for “a further independent review of the consultation and decision-making provisions of the Act (to) be conducted with a view to substantially streamlining the legislative provisions and providing greater accountability” as recommended by the Local Government Rates Inquiry.

We recommend development and dissemination of further good practice guidance relating to effective consultation practices including appropriate use of the special consultative procedure.

On a technical point, we noted and agree with SOLGM’s recommendation that the definition of public notice be reviewed/future proofed to ensure that it is capable of keeping pace with emerging technologies.

We believe (daily) newspapers may not necessarily remain the widest circulation medium (compared to the internet for example), yet that is the medium by which the special consultative procedure and other statutorily required public notices are to be given.

We recommend consideration of alternative and parallel mechanisms to newspapers for the giving of required public notices.

3.6 Contributions to decision-making processes by Māori

3.6.1 Purpose

The Government’s Statement of Policy Direction for review of Local Government Act 1974 sought to clarify local government’s relationship with the Treaty of Waitangi. Accordingly section 4 of the 2002 Act provides:

“In order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 of the Act provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making process.”

In particular, the 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, waters and other taonga when making significant decisions.

3.6.2 Submissions

In relation to obligations to Māori under the Local Government 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 raising the issue in our discussions with the 14 selected councils, including questions in our all-councils survey, and by initiating some discussions at the local level and with key central government agencies (details of these discussions are set out in Appendix 4).

We noted a recommendation of the Local Government Rates Inquiry was “that local authorities place more emphasis on building capacity among elected members and council staff to engage with Māori in their decision-making”.

3.6.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local authority should provide opportunities for Māori to contribute to decision-making processes</td>
<td>• Local authority required, in case of a significant decision in relation to land or a body of water, to take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.</td>
<td>• A wide variety of arrangements and practices by local authorities in engaging with Māori</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>• Local authority must:</td>
<td>• • establish and maintain processes to provide opportunities for Māori to contribute to decision-making processes</td>
<td>• Limited progress in building capacity of Māori to contribute to local authority decision-making</td>
<td>• Undertake effectiveness audit of local authority engagement with Māori</td>
</tr>
<tr>
<td>• • consider ways to foster development of Māori capacity to contribute to decision-making</td>
<td>• • provide information to Māori for these purposes</td>
<td>• Difficulties faced by Māori in responding to wide range of requests from local and central government to provide input into decisions and plans</td>
<td>• Prepare strategy to advance the development of iwi management strategic/plans</td>
</tr>
<tr>
<td>• Local authority must ensure it has processes in place for consulting with Māori</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.6.4 Analysis

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 noted 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.

LGNZ surveyed councils in mid-200421, achieving a 100% response rate. The survey found:

• 69 councils had a formal process for consulting Māori
• 79 had informal processes for consultation/information sharing
• 43 held one or more iwi management plans
• 55 had provided funding for one or more joint initiatives
• 41 had projects to work with the Māori community
• 22 had established a co-management regime for managing a site, activity or resource
• 57 provided internal training for councillors and staff on subjects such as statutory obligations, the Treaty, Māori language/culture, marae protocol.

20 One exception is the soon to be released Te Puni Kōkiri report Future directions on iwi management plans which seeks to explore Māori perspectives, as expressed by Māori.

The survey also revealed that:

• 39 had set up Māori standing committees or advisory committees and 42 involved iwi/hapu representatives in subcommittees/working groups
• 44 had established relationship agreements with iwi organisations
• 32 had dedicated iwi liaison/policy staff.

The 2004 figures represented a significant increase in activity compared to an earlier survey in 1997. The 1997 and 2004 surveys, and other reports, suggest a significant increase in activity between 1997 and 2004 and further progress since 2004. The Local Government Act can be seen to have had an impact, though it is not possible to separate out the impact of the Act from a range of other influences.

The Commission’s all-councils survey, while less quantitative, confirmed widespread and varied arrangements for engaging with Māori.

A number of other reports on the extent and nature of engagement processes reinforce the impression of significant progress over time. Some notable points from these reports are:

• Engagement is predominantly with tangata whenua22, often involving two or more iwi. This is understandable and probably appropriate given that tangata whenua will have interests and involvement both in land and resource issues and in community well-being issues.
• Some local authorities also engaged with taura here, sometimes in the context of a general Māori body which included both tangata whenua and taura here representatives.
• Engagement tended to be on land/water/resource issues, but engagement extended to beyond the Resource Management Act, for example into management of reserves and important sites.
• The experience of engagement has led to increasingly better relationships and engagement processes and has helped build capability both within local authorities and within Māori organisations.

The reports 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. While a number of iwi/tangata whenua have made good progress others have made less progress. This is seen to be due to factors such as resources, governance issues, other priorities (for example achieving a Treaty settlement) and the lack of readily accessible guidance material.

Local authorities also need to develop their capacity to engage with Māori. This should include ensuring that elected members and staff possess and demonstrate an understanding of:

• the history of the tangata whenua and their need to re-establish and/or strengthen their mana whenua
• kaitiakitanga and tangata whenua’s relationship with their land
• tribal governance structures and the appropriate people to engage with on which issues
• partnership concepts under the Treaty
• the Māori holistic world view (all things are interconnected)
• tikanga, te reo, meeting protocols, and marae protocol.

This will require strategies such as:

• meeting Māori on their own ground
• recognising that Māori appreciate and relate well to kanohi ki te kanohi (face-to-face) communication
• demonstrating respect for kaumatua, rangatira and other leaders.

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22 There are two broad Māori constituencies: tangata whenua and taura here. Tangata whenua have special rights, under Article II of the Treaty, over land, waters, wahi tapu, valued flora and fauna and other taonga in their rohe. They also have interests in the social, economic, environmental and cultural well-being of the communities that live in their rohe. Taura here do not have specially recognised rights and interests under Article II but have interests in the social, economic, environmental and cultural well-being of the communities in which they live.
In short, lack of capacity and lack of confidence can mean that local authority elected members and staff find engagement processes intimidating.

Local authorities and others can approach their obligations to engage with Māori in one, two or all three of the following ways:

- **Process compliance**: “We are required to engage with Māori so we will meet the procedural requirements for doing so”. By itself, this approach can convey a sense of going through the motions and was described by one Māori group as “paying lip service”.

- **Active compliance**: “We are very interested in your views because you have a right to a say and we take that very seriously”. This approach can convey a sense of preparedness to take on board Māori values and aspirations “even though we may not have those values and aspirations ourselves”.

- **Active enrichment**: “Māori culture and values are part of our national identity and embracing them enriches us all”. This approach conveys a strong sense of incorporation of Māori culture and values in a respectful way and an inclination to view the results as a benefit to the community in general.

The impression we have is that a number of councils are in the ‘active compliance’ space and some of them are moving into ‘active enrichment’. Regrettably some remain in the ‘process compliance’ space.

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

In considering appropriate recommendations, we noted the following:

- Tangata whenua groups hold knowledge about their history, lands, values and aspirations. They need support to collate that information and convert it into a format that is capable of interfacing effectively with local and central government processes.

- Tangata whenua, and to a lesser extent taura here groups, are being asked to input into a variety of local and central processes. These groups generally lack the necessary resources and have difficulty funding and accessing expertise to develop their plans. The legislative frameworks have perhaps created the vehicles but there is ‘no petrol to run the vehicle’.

- Tangata whenua, and to a lesser extent taura here groups, are faced with an array of local and central government agencies seeking separate input on matters that often raise the same issues about Māori values and aspirations. The way forward needs to include finding ways of eliminating or minimising the duplication of effort that the system requires from Māori.

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 a more comprehensive availability of iwi management plans or similar strategic documents. In the case of central government agencies, it would be fair to say that, to date, their funding support has delivered pilot schemes and good practice examples. Whilst these initiatives assist, none of the agencies have programmes that are geared to support a general and nationwide take up of iwi management plans or similar documents. Developments to date have established a platform, but in our opinion it is time to take further steps.

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 and 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.

Given what is known about the cost of developing an iwi management plan (something in the order of $20,000 to $200,000, depending on factors such as issues to be covered, the size of the rohe, the size of the iwi, the amount of information already available), we envisage a fund of around three to five million dollars in total spread over five years. This could be either new funding or from the existing allocations to relevant government agencies.

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. We encourage LGNZ to continue to play the important role it has assumed in this area.

We recommend:

1. No change at this time to the Local Government Act relating to provision of opportunities for Māori to contribute to decision-making processes.
3. Consideration of a central government funding strategy to advance the development of iwi management plans or similar strategic documents.
4. Development and dissemination of further good practice guidance relating to local authority engagement with Māori and opportunities for contributions to decision-making.
3.7 The annual report

3.7.1 Purpose

Sections 98 and 99 and Part 3 of Schedule 10 of the Local Government Act set out requirements relating to local authority annual reports. The purposes of an annual report are to:

- compare actual activities and performance of the local authority with intended activities and performance set out in the LTCCP or annual plan
- promote the local authority’s accountability to the community for the decisions made throughout the year.

3.7.2 Submissions

We did not receive any submissions relating to the annual report.

3.7.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
</table>
| • Local authority should conduct its business in an open, transparent and democratically manner | • Local authority must prepare and adopt in respect of each financial year an annual report  
• Annual report:  
  – must be adopted within 4 months of the end of the financial year  
  – must be made publicly available along with summary of information contained in report  
  – must contain auditor’s report on financial statements and compliance with requirements of Act | • Provisions largely retained the status quo | • Legislative status quo |

3.7.4 Analysis

In the absence of submissions or particular issues of concern we recommend no change to these provisions.

*We recommend no change to the Local Government Act relating to the requirement for councils to prepare and adopt an annual plan in respect of each financial year.*

3.8 Financial management

3.8.1 Purpose

Subparts 3 and 4 of Part 6 of the Local Government Act set out requirements relating to local authority financial management and borrowing and security. The majority of these requirements have been dealt with previously in this report or, as noted in Chapter 1, we see them as outside the scope of our review.

3.8.2 Submissions

We address here the following two technical issues as a result of submissions received and further discussions:

- the order of the financial management sections in the Act
- the implications of New Zealand’s transfer to International Financial Reporting Standards.
We also received submissions on the following two issues that we see as policy issues and we suggest the submitters refer them to the Department of Internal Affairs:

- transfers of assets between entities covered by the Local Government Act should be exempt from gift duty
- a requirement for an interests register for elected members and senior executive officers.

3.8.3 Analysis

The Office of the Auditor-General has suggested that section 100 of the Local Government Act (Balanced budget requirement) should be moved to follow sections 101 (Financial management) and 102 (Funding and financial policies). This is on the basis that sections 101 and 102 establish the basis of financial prudence, including a need to provide predictability and certainty about sources and levels of funding, under which a local authority must operate. Under section 100, a local authority may decide not to adopt a balanced budget if it resolves that it is financially prudent to do so. The Office believes that it would be logical, therefore, for section 100 to follow section 102. We agree.

We recommend an amendment to the Local Government Act for section 100 to follow section 102.

A number of submitters pointed out consequences of the requirement under section 111 for local authorities to prepare information in accordance with 'generally accepted accounting practice'. SOLGM submitted this requirement is about to add to the complexity of the accounting regime given New Zealand is in the process of transferring to the International Financial Reporting Standards (IFRS). It submits that this is likely to add significantly to the disclosures that accompany financial statements many of which are of little or no relevance to local authorities given the IFRS are based largely on American corporate financial reporting standards. One submitter proposed that the New Zealand Accounting Standards Review Board be granted discretion to exempt local authorities from specific IFRS requirements.

We recommend consideration of the implications of New Zealand’s transfer to International Financial Reporting Standards.
3.9 Summary of areas for improvement

3.9.1 Where improvements need to be made

Based on the analysis presented in this chapter, 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**

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

Note: ✓✓ signifies issues we believe require priority attention
3.9.2 How improvements should be achieved

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

<table>
<thead>
<tr>
<th>Provision</th>
<th>Amendments</th>
<th>Good practice development and dissemination</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Substantive</td>
<td>Technical</td>
</tr>
<tr>
<td>Community outcomes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• identification of outcomes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>• engagement in process</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>• reporting</td>
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</tr>
<tr>
<td>LTCCPs</td>
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<td></td>
</tr>
<tr>
<td>• process issues</td>
<td></td>
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</tr>
<tr>
<td>• documentation issues</td>
<td>✓</td>
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<tr>
<td>• summary documents</td>
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<td>• audit</td>
<td>✓</td>
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<tr>
<td>• amendments</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Decision-making</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• council perceptions</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>• concept of significance</td>
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<td>✓</td>
</tr>
<tr>
<td>Consultation</td>
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<td></td>
</tr>
<tr>
<td>• council perceptions</td>
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<td>✓</td>
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<tr>
<td>• principles</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>• special consultative procedure</td>
<td></td>
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</tr>
<tr>
<td>Contributions to decision-making by Māori</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial management</td>
<td></td>
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</tr>
</tbody>
</table>
Chapter 4
Effective Local Government

How effective are local authorities in performing their role of enabling local decision-making and action, and promoting community well-being?
CHAPTER 4
EFFECTIVE LOCAL GOVERNMENT

How effective are local authorities in performing their role of enabling local decision-making and action, and promoting community well-being?

This chapter addresses the above question in relation to the purpose, role, powers and principles for local government as set out in the Local Government Act (with the exception of provisions relating to Part 6).

The Local Government Act places a number of checks and balances on the activities of local authorities as limits and controls on general empowerment. It also sets out the structure of local government and governance and management provisions within which local authorities must operate. These provisions are addressed in terms of enabling local authorities to effectively carry out their prescribed role.

The issues addressed in this chapter are:

4.1 Empowerment of and relations between regional councils and territorial authorities
4.2 Special obligations and restrictions
4.3 Regulatory, enforcement and coercive powers
4.4 Other legislation
4.5 Powers of the Minister and central government
4.6 Structure of local government in New Zealand
4.7 Reorganisation of local authorities
4.8 Local Government Commission
4.9 Local authority governance
4.10 Elected member issues
4.11 Community boards
4.12 Council organisations and council-controlled organisations
4.13 Employment matters.

The chapter concludes with a summary of the areas where the operation of the Local Government Act could be improved and how this would be best achieved.
4.1 Empowerment of and relations between regional councils and territorial authorities

4.1.1 Purpose

The Local Government Act provides for the empowerment of both regional councils and territorial authorities. Subpart 3 of Part 2 of the Act 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.

4.1.2 Submissions

We received one submission proposing the provisions relating to triennial agreements be removed from the Act. We also received a submission suggesting the provisions relating to significant new activities for regional councils impose “a one-way obligation on regional councils to territorial authorities, with no reciprocal obligations if territorial authorities seek to take on a new function.”

4.1.3 Issues and options

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<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Local authority should collaborate and cooperate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources</td>
<td>• Requirement for triennial agreement between local authorities in region on protocols for communication and coordination</td>
<td>• All councils enter into triennial agreements but there may be more scope for regional collaboration and cooperation</td>
<td>• Legislative status quo along with further good practice guidance</td>
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<td></td>
<td>• Prescribed process if regional council proposes undertaking significant new activity being or proposed to be undertaken by a territorial authority</td>
<td></td>
<td>• Review requirements in relation to triennial agreements e.g. consideration of electoral system and timing of representation reviews</td>
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<td></td>
<td>• Prescribed process for transfer of responsibility between regional council and territorial authority</td>
<td></td>
<td>• LGC rather than Minister determine disputed proposals for regional council to undertake significant new activity</td>
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<td></td>
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<td>• Remove requirement for notice to Minister of proposed transfer of responsibility or notice be given to LGC</td>
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</table>

4.1.4 Analysis

Prior to 2002, regional councils were authorised to undertake a limited range of activities (mostly regulatory roles relating to natural resources). We understand the reasons for extending general powers to regional councils included:

- acknowledging the existence of regional as well as local issues and communities of interest
- ensuring regional councils have the legal capacity to participate in collaborative initiatives where central government may wish to engage at the regional level (such as in regional development).

A corollary of extending general powers to regional councils is a need for processes to address the risks of:

- duplication or competition in activities within regions
- expansion of regional activities over time amounting to a form of ‘creeping amalgamation’
- conflicts of interest arising between local authorities’ regulatory and service delivery functions.
The processes provided for are:

1. the triennial agreement (section 15)
2. provisions for when significant new activities are being considered (section 16)
3. provisions for when responsibilities are proposed to be transferred (section 17).

1. Triennial agreement

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 that it should be removed from the legislation. However, we believe existing triennial agreements may not be achieving their full potential.

This is demonstrated by the responses to our all-councils survey with only 36% of councils describing their first triennial agreement after the 2004 elections as either “effective” or “very effective”. When asked if they had done anything to make the 2007 agreement more effective, 25% responded they had.

We believe there is scope for further promotion of good practice in relation to triennial agreements building on the guidance provided in the Governance Know How Guide1 released following the enactment of the Local Government Act. That guide identified the triennial agreement as a vehicle for:

• agreeing processes for identifying outcomes and strategies for their achievement
• agreeing on shared approaches to consulting with communities, undertaking research and delivering services within (and between) regions
• agreeing on joint approaches for communicating with communities and stakeholder groups and distributing information
• providing a mechanism for aligning policies and services and resolving differences between local authorities
• ensuring gaps in services are identified and duplication addressed.

While some councils have seen the benefits from greater collaboration and cooperation in areas such as the identification of community outcomes, we believe there is scope for still greater cooperation between councils within regions. This is seen as helping to enhance public understanding and confidence in council activities and service delivery, as well as being simply more efficient and effective.

As an example, in Chapter 5 of this report we identify two matters that we believe should be the subject of communication between councils in a region. These are decisions relating to the choice of electoral system (i.e. FPP or STV) and when each council’s next representation review will be carried out. We believe consideration of maximum possible regional coordination on these matters is desirable.

We recommend:

1. **No change to the Local Government Act relating to the requirement for local authorities to prepare triennial agreements.**
2. **An amendment to section 15 of the Local Government Act to require consideration of choice of electoral system and timing of representation reviews as part of the development of all triennial agreements.**
3. **Development and dissemination of further good practice guidance relating to development of triennial agreements, including examples of the benefits of enhanced local authority collaboration and cooperation.**

2. Significant new activities

Given the potential of triennial agreements to enhance communication between local authorities, we do not believe it is necessary to prescribe further requirements relating to the undertaking of significant new activities.

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1 The Knowhow Guide to Governance under the Local Government Act 2002 jointly prepared by SOLGM, LGNZ and the Department of Internal Affairs.
The roles of both territorial authorities and regional councils remain relatively well established notwithstanding recent general empowerment. The role of regional councils has been more of a regulatory function, particularly in relation to natural resources. The role of territorial authorities has generally been seen as more diverse and includes a range of more socially focused activities.

On this basis, we believe it is more likely that new activities proposed by regional councils would duplicate existing activities of territorial authorities rather than the other way round. We do not support parallel processes for territorial authorities proposing to undertake a significant new activity.

We believe if in future the potential of triennial agreements to establish effective regional protocols for communication and cooperation is realised, then consideration could be given to the need for section 16. This would avoid any future concerns about the definition of ‘new’ and ‘significant’ activities.

We noted that section 16 provides for the Minister of Local Government to have a final adjudicator role when mediation fails on whether the proposed significant new activity should be undertaken. We also noted that prior to the introduction of the Local Government Bill LGNZ submitted that this final decision-making role should be carried out by the Commission rather than the Minister.

LGNZ’s reasons for suggesting the Commission should undertake this role included the fact the Commission would build a pool of expertise and experience in dealing with these issues, and a number of the issues were likely to be relatively minor. We agree with LGNZ that this would be appropriate and consistent with the role of the Commission.

We recommend:

1. No change to the Local Government Act relating to proposals by regional councils to undertake significant new activities.

2. An amendment to section 16 of the Local Government Act to 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.

3. Transfer of responsibilities

We received no submissions relating to the transfer of responsibility provisions of section 17.

The section provides that transfers between regional councils and territorial authorities and vice versa may take place subject to mutual agreement and inclusion of the proposal in both councils’ LTCCP or annual plan, or following adoption of the special consultative procedure. The section also requires the local authority to provide prior notice to the Minister of any proposed transfer of responsibility. We cannot see the need for this latter provision.

We recommend consideration of an amendment to section 17 of the Local Government Act to remove the requirement for prior notice to be given to the Minister of Local Government of a proposed transfer of responsibilities between local authorities. If this provision is seen to be necessary the section be amended to provide for the prior notice to be given to the Local Government Commission rather than to the Minister of Local Government.

4.2 Special obligations and restrictions on local authorities

4.2.1 Purpose

Part 7 of the Local Government Act sets out specific obligations and restrictions on local authorities and other persons. These may be seen as further specific limits and controls on the general empowerment of local authorities. These obligations and restrictions relate to the provision of water and other sanitary services, disposal of parks, reserves and endowment properties, and membership of public libraries.
4.2.2 Submissions

We received submissions proposing that:

- All aspects of the Local Government Act that relate to service delivery (including prescriptive provisions governing some aspects of delivery of water and wastewater services) be reviewed to ensure that they are consistent with the purpose and principles of that Act.
- Responsibility for assessing non-local authority water and sanitary services be transferred to district health boards.
- The requirements for local authorities to conduct assessments of water and sanitary services be removed from the Local Government Act.
- The requirements relating to consultation before local authorities dispose of parks be removed.
- The sale of endowment land be undertaken via a stand-alone special consultative procedure rather than as an amendment to a local authority's LTCCP.

We address these issues as follows:

1. water and other sanitary services
2. other restrictions on general empowerment.

4.2.3 Issues and options

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<thead>
<tr>
<th>Principle</th>
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<th>Impact</th>
<th>Options</th>
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<tbody>
<tr>
<td>- When making a decision, a local authority should take account of:</td>
<td>- Territorial authorities must assess the quality and adequacy of water and other sanitary services within its district and future demands</td>
<td>- Requirement for assessment of water and other sanitary services may be seen as core element of long-term planning now established in local authorities</td>
<td>- Legislative status quo along with further good practice guidance</td>
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<td>- the diversity of the community and the community's interests</td>
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<td>- the interests of future as well as current communities</td>
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<td>- the likely impact of any decision on each aspect of community well-being</td>
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<td>- A local authority should ensure prudent stewardship and the efficient and effective use of its resources</td>
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<td>- In taking a sustainable development approach, a local authority should take into account:</td>
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<td>- the social, economic and cultural well-being of people and communities</td>
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<td>- the need to maintain and enhance the quality of the environment</td>
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<td>- the reasonably foreseeable needs of future generations</td>
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<td>- Local authorities must consult on proposals to sell or dispose of parks</td>
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<td>- Local authorities must retain property vested in it in trust or as an endowment for the purpose it was vested (subject to prescribed processes for variations)</td>
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<td>- Local authorities must provide free membership of libraries</td>
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<td>- Requirement for consultation on disposal of parks may be seen as unnecessary</td>
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<td>- Requirement for local authority to formally amend its LTCCP when proposing to sell/exchange endowment land seen by some as onerous</td>
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- Legislative status quo along with further good practice guidance
- Remove mandatory requirement for water and sanitary assessments
- Transfer requirement for assessments for non-local authority services to DHBs
- Repeal provisions relating to service delivery for water
- Repeal provisions relating to consultation on disposal of parks
- Repeal provisions relating to amendment of LTCCP for proposals for endowment land
4.2.4 Analysis

1. Water and other sanitary services

Section 125 of the Local Government Act requires territorial authorities to assess the provision of water and other sanitary services (includes drainage works, sewerage works, works for collection and disposal of refuse, public conveniences, cemeteries and crematoria). Assessments are to include detailed descriptions of the services, including their quality and adequacy, risks of not providing services, and current and estimated future demand.

The Act sets out in some detail the information required in assessments (sections 126 and 127) and the process for making assessments (section 128) including a requirement to consult the appropriate Medical Officer of Health in preparing assessments. Section 129 provides limits on the extent of information required in assessments as considered appropriate by the territorial authority. An assessment may be included in the local authority’s LTCCP but, if not, must be adopted by the special consultative procedure.

The Act also requires local authorities (including council-controlled organisations) to continue to provide water services and maintain their capacity to meet certain specified obligations (section 130). In order to fulfil its obligations, a local authority must generally:

- not use its water service assets as security for any purpose
- not divest its ownership or other interest in a water service
- not lose control of, sell, or otherwise dispose of the significant infrastructure necessary for providing water services unless, in doing so, it retains its capacity to meet its obligations
- not restrict or stop the water supply unless particular specified circumstances apply.

The Act provides for contracting out of aspects of the operation of water services for a term not exceeding 15 years (section 136) and also for joint arrangements between local authorities and between a local authority and other body (section 137). These provisions are subject to the local authority retaining control over all matters relating to the pricing, management and policy development relating to water services. In the case of joint arrangements, consultation must be in accordance with the provisions of Part 6 of the Act.

We understand that the provisions relating to mandatory assessments of water and other sanitary services, and mandatory retention of responsibility for the provision of water services were the subject of some debate leading up to the enactment of the Local Government Bill.

On the one hand it was argued, in relation to mandatory assessments, that responsibility for promoting the sustainable social, economic, environmental and cultural well-being of the district means a local authority will have to assess the current state of the water, wastewater and stormwater needs of its district and how these needs will be met in the future. In other words, consideration of these issues is implicit in the prescribed long-term planning provisions.

On the other hand, it was argued that the Local Government Act should explicitly require assessments of these services and plan for their continued provision given the following:

- the historical and ongoing significant public health role of local authorities
- the fact that this role is clearly assumed in other legislation (i.e. the Health Act)
- the expectations of ratepayers and central government as to the continuity and quality of these services
- the indisputable contribution of such services to public health and community well-being.

This latter view, a statutory obligation to plan for and retain ownership and control of significant assets for the delivery of water services, was subsequently reflected in the Act.

It can be argued that the LTCCP provides an effective framework to consider what activities – both discretionary activities and mandatory responsibilities – a local authority will provide or be responsible for. Processes for the development of an LTCCP require some degree of assessment of current services provided and future needs. As a result, it is argued that there is no need to prescribe mandatory assessments for particular services, notwithstanding their traditional importance to local communities, as part of this planning process.
Some see such prescription as inconsistent with the purpose and principles of the Local Government Act, both as to the requirement itself and the level of prescription on the information and process required.

We are aware that the Public Health Bill currently before Parliament maintains existing territorial authority duties and discretionary powers to improve, promote and protect public health within their districts.

The Local Government Act provisions relating to assessments of water and other sanitary services may be seen as being supportive of the regulatory role the Public Health Bill envisages for territorial authorities. This role includes assessing ‘the state of play’ of services in the district. As a consequence of carrying out this task, 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.

Indicative of what we see as community expectations in this area, responses to our all-councils survey showed that 76% of councils considered the requirement to prepare water and sanitary service assessments informed their long-term planning either “to some extent” or “to a great extent”.

On balance, in line with territorial authorities’ public health regulatory role, we believe the current requirements are appropriate.

The SOLGM submission stated that when the Bill was introduced the sector saw the assessment requirement as a transfer of responsibility from central government given the obligation on local authorities to assess services not owned or operated by the local authority. It noted the current statutory responsibilities of the Ministry of Health and of district health boards in this area. It considered that, given the obligations and powers of boards, responsibility for assessing non-local authority water and sanitary services should be transferred to district health boards.

We do not agree with this suggestion. We see territorial authorities as having an overarching regulatory responsibility for these services in their districts, including those not owned by the territorial authority, which collectively contribute to community well-being. On this basis, territorial authorities need to consider the adequacy of all services provided, including gaps or the need for enhancement of services. This can be achieved through the assessment process including that of non-territorial authority services.

**We recommend no change to the Local Government Act relating to requirements for territorial authorities to undertake water and sanitary service assessments.**

Our all-councils survey also sought responses on whether the obligations and restrictions relating to the provision of water services to local communities caused undue constraint on the efficient and effective delivery of those services. Sixty-two of the councils that responded (83%) said the current provisions ‘did not cause undue constraint’.

We noted that under the desire for a more broadly-empowering legislative framework, in the Government’s *Statement of Policy Direction for the Review of the Local Government Act 1974*, was the aim of “scope for communities to make their own choices about what their local communities do and how they do it” (emphasis added).

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 noted LGNZ’s strong opposition at the time to proposed provisions in the Local Government Bill for restrictions on councils making strategic decisions about the way in which water services might be delivered in future. It noted that there might be situations where community well-being would be enhanced by a council selling or transferring ownership of a water/wastewater scheme to direct community control where the number served by the scheme is small and/or a community-based scheme already operated.
We assume this opposition may have resulted in provision being made in the Act for closure or transfer of small water services (defined as serving 200 people or less) subject to a binding referendum.

We agree with the SOLGM and LGNZ submissions and note that the Local Government Rates Inquiry recommended an extension of the 15-year limit on contracts with the private sector for water and wastewater services.

**We recommend repeal of the provisions in the Local Government Act 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.**

2. **Other restrictions on general empowerment**

We noted the following further limits and controls on the empowerment of local authorities:

- restrictions on the disposal of parks and reserves
- restrictions on the disposal of endowment property
- an obligation to provide free membership of public libraries.

In relation to parks and reserves, the Act requires local authorities to consult the community on any proposal to sell or otherwise dispose of a park or reserve (section 138). In relation to regional reserves, the Act provides for Orders in Council to protect reserves in perpetuity (sections 139 and 139A). We received one submission seeking clarification of the extent of the consultation requirement in section 138 and another its repeal.

Removal of the consultation requirement would be in line with our recommended approach to consultation and decision-making set out in Chapter 3. That is, local authorities should establish robust decision-making processes reflecting both the requirement to be aware of and take into account community views, and also the significance to the community of the particular matter. We see this as a preferable approach to a prescriptive blanket approach to consultation on disposal of parks including small parts of parks.

**We recommend the repeal of section 138 of the Local Government Act prescribing consultation on all proposals for sale or disposal of parks.**

While we received no submissions on sections 139 and 139A specifically, we received a submission proposing:

- Provision for land gifted to a local authority for reserve purposes be exempt from gift duty in order to remove a potential impediment to the preservation of private land as a public park.
- Local authorities be empowered to categorise park land for a specific purpose (for example, scenic, conservation or recreation).
- There be mandatory requirements for management plans for regional reserves equivalent to those required under the Reserves Act.

We have sympathy for some of these proposals but see them as new policy issues that the submitter should raise directly with the Department of Internal Affairs.

In relation to the disposal of endowment land, specific obligations and restrictions are placed on local authorities. These provisions reflect that, in principle, the donor’s wishes for the use of the endowment land should be respected in perpetuity.

Generally the Act provides that endowment land must be retained for the purpose for which it was vested in the local authority. However, it does provide for local authorities to seek the Minister’s approval for additional or different purposes for which the property may be used, or for which the income from the property may be used.

The Act also provides that the local authority may sell or exchange the property and use the proceeds for a purpose identified by the local authority consistent with the original purpose. Such a proposal is subject to it being included in the local authority’s LTCCP, and the local authority making a reasonable attempt to notify the donor and provide a reasonable opportunity for the donor to comment on the proposal.
We received no submissions relating to the Minister’s powers.

As noted in Chapter 3, SOLGM made a submission on the requirements for an amendment to the LTCCP relating to disposal of endowment property. In that chapter we recommend that the requirement to undertake an LTCCP amendment process be replaced by use of the special consultative procedure.

We noted a final limit on local authority empowerment is the obligation on local authorities (section 142) to provide residents free membership of public libraries in the district. We received no submissions on this issue.

4.3 Regulatory, enforcement and coercive powers

4.3.1 Purpose

Local authorities require a range of regulatory and other coercive powers to promote well-being in their communities. Because coercive and regulatory powers such as bylaws are not available under general empowerment, they must be provided for in legislation.

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. These powers are set out in Part 8 of the Act and associated offence and penalty provisions are set out in Part 9.

4.3.2 Submissions

We received several submissions proposing that the powers for territorial authorities to make liquor control bylaws be extended to regional councils in respect of property owned or controlled by regional councils. We also received a submission proposing that the use of the special consultative procedure not be mandatory when a local authority has resolved that a bylaw should continue without amendment.

Several submissions were received proposing technical amendments to the enforcement provisions of the Act.

We also received a number of submissions pointing out the need for regulations to be made (under section 259 of the Local Government Act) establishing the breaches of bylaws that are infringement offences and setting fees for these offences.

In addition to submissions received, we commissioned a legal analysis of the bylaw-making, enforcement and offence provisions in Parts 8 and 9 of the Act to identify provisions that are seen to be working well, still ‘bedding in’, or require amendment.2 We drew heavily on this analysis in our consideration of these issues and resulting recommendations.

We address these issues as follows:

1. bylaw-making powers
2. enforcement powers
3. offences and penalties.
### 4.3.3 Issues and options

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<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
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<tbody>
<tr>
<td>• When making a decision, a local authority should take account of:</td>
<td>• Territorial authorities may make bylaws to:</td>
<td>• Legal advice often necessary on scope of bylaw-making powers under LGA compared to narrower more specific powers in other Acts</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>– the diversity of the community and the community’s interests</td>
<td>– protect against nuisance</td>
<td>• Technical issues arising from local authority implementation</td>
<td>• Comprehensive review of all statutory bylaw-making powers</td>
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<tr>
<td>– the interests of future as well as current communities</td>
<td>– protect/promote public health and safety</td>
<td>• Concerns of regional councils about the absence of liquor control bylaw-making powers</td>
<td>• Technical amendments</td>
</tr>
<tr>
<td>– the likely impact of any decision on each aspect of community well-being</td>
<td>– minimise potential for offensive behaviour</td>
<td>• A range of technical issues on enforcement powers of local authorities</td>
<td>• Extension of liquor control bylaw-making powers to regional councils</td>
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<tr>
<td>• In taking a sustainable development approach, a local authority should take into account:</td>
<td>– prohibit or regulate consumption/possession of liquor in public places</td>
<td>• Absence of prescribed infringement offences and fees means prosecutions for bylaw breaches required to be carried out by summary procedure which is costly and time-consuming</td>
<td>• Regulations to prescribe infringement offences, fees</td>
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<tr>
<td>– the social, economic and cultural well-being of people and communities</td>
<td>• Regional councils may make bylaws relating to:</td>
<td>• Provision to:</td>
<td>• Technical issues arising from local authority implementation</td>
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<td>– the need to maintain and enhance the quality of the environment</td>
<td>– council forests</td>
<td>• require owners/occupiers to do certain works</td>
<td>• Concerns of regional councils about the absence of liquor control bylaw-making powers</td>
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<td>– the reasonably foreseeable needs of future generations</td>
<td>– parks, reserves, recreation grounds and other council land</td>
<td>– do work on private land</td>
<td>• A range of technical issues on enforcement powers of local authorities</td>
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<td>– flood protection and flood control works</td>
<td>– create statutory rights of easement for works</td>
<td>• Absence of prescribed infringement offences and fees means prosecutions for bylaw breaches required to be carried out by summary procedure which is costly and time-consuming</td>
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<td>– water supply works</td>
<td>– vest water supply sources</td>
<td>• Legislative status quo along with further good practice guidance</td>
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<td>• Prescribed process for transfer of powers between territorial authorities and regional councils</td>
<td>• Provision to:</td>
<td>• Comprehensive review of all statutory bylaw-making powers</td>
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<td>• Specific provisions for bylaw-making process:</td>
<td>• require owners/occupiers to do certain works</td>
<td>• Technical amendments</td>
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<td>– whether the most appropriate means of addressing problem</td>
<td>– do work on private land</td>
<td>• Extension of liquor control bylaw-making powers to regional councils</td>
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<td>– use of special consultative procedure</td>
<td>– create statutory rights of easement for works</td>
<td>• Regulations to prescribe infringement offences, fees</td>
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<td>– fast tracking of minor bylaw changes</td>
<td>– vest water supply sources</td>
<td>• Technical issues arising from local authority implementation</td>
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<td>– review provisions</td>
<td>• Provision to:</td>
<td>• Concerns of regional councils about the absence of liquor control bylaw-making powers</td>
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<td>• Crown bound by certain bylaws with exemptions in the national interest</td>
<td>• require owners/occupiers to do certain works</td>
<td>• A range of technical issues on enforcement powers of local authorities</td>
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<td>• Provision to:</td>
<td>– do work on private land</td>
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<td></td>
<td>– require owners/occupiers to do certain works</td>
<td>– create statutory rights of easement for works</td>
<td>• Legislative status quo along with further good practice guidance</td>
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<td></td>
<td>– do work on private land</td>
<td>– vest water supply sources</td>
<td>• Comprehensive review of all statutory bylaw-making powers</td>
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<td>– create statutory rights of easement for works</td>
<td>• Enforcement provisions:</td>
<td>• Technical amendments</td>
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<td>• Extension of liquor control bylaw-making powers to regional councils</td>
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<td>• Enforcement provisions:</td>
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<td>• Regulations to prescribe infringement offences, fees</td>
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<td>– control unlawful work</td>
<td>– prescribed powers of entry</td>
<td>• Concerns of regional councils about the absence of liquor control bylaw-making powers</td>
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<td>– contract delivery of regulatory functions</td>
<td>– prescribed power to seize, impound objects</td>
<td>• A range of technical issues on enforcement powers of local authorities</td>
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<td>– prescribed powers of entry</td>
<td>– prescribed power to seize, impound objects</td>
<td>• Absence of prescribed infringement offences and fees means prosecutions for bylaw breaches required to be carried out by summary procedure which is costly and time-consuming</td>
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<td>• Prescribed offences</td>
<td>• Prescribed penalties</td>
<td>• Comprehensive review of all statutory bylaw-making powers</td>
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<td>• System of infringement notices for bylaw offences</td>
<td>• System of infringement notices for bylaw offences</td>
<td>• Technical amendments</td>
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<td></td>
<td>• Legal advice often necessary on scope of bylaw-making powers under LGA compared to narrower more specific powers in other Acts</td>
<td>• Enforcement provisions:</td>
<td>• Extension of liquor control bylaw-making powers to regional councils</td>
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</table>
4.3.4 Analysis

1. Bylaw-making powers

Our legal analysis identified a need for a number of amendments to the bylaw-making powers in the Local Government Act. In light of these proposed amendments, it suggested that a comprehensive review of all statutory provisions authorising local authorities to make bylaws would now be timely.

This suggestion arises from observations in relation to the following provisions of the Local Government Act:

- **Section 144**: Bylaws Act 1910 is to prevail over the provisions of the Local Government Act: requires analysis on a case-by-case basis of the legal implications of the provision.
- **Section 145**: General bylaw-making power for territorial authorities: is a collation of the various bylaw-making powers in the 1974 Act. This has led to requests for legal opinions on the breadth of the provision to authorise particular bylaw proposals and will only be tested when a particular bylaw is challenged in the Courts.
- **Section 146**: Specific bylaw-making powers of territorial authorities: also a collation of specific powers in the 1974 Act which did provide clear guidance on what was and was not authorised. Meanwhile other detailed provisions remain in force in other legislation (including in the 1974 Act relating to waste management and the Burial and Cremation Act relating to cemeteries) yet are still referenced in section 146.
- **Section 148**: Special requirements for bylaws relating to trade wastes: is this provision necessary?
- **Section 150**: fees may be prescribed by bylaw: is of limited application but seems to be treated as a general charging power when it is not. Is the requirement to use the special consultative procedure necessary?
- **Section 151**: General provisions applying to bylaws made under this Act: only applies to bylaws made under this Act. This leaves local authorities, for other bylaws, to rely on the Bylaws Act 1910 to provide authority for leaving matters to be delegated by council resolution. Raises a question as to what extent matters may be left for council resolution and is this reasonable?
- **Section 155**: Determination whether bylaw made under this Act is appropriate: similar comments as in respect of section 151. Raises a question as to what determination must be made in respect of bylaws under other enactments?

We recommend 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.

Our legal analysis also identified a need for the following technical amendments:

We recommend:

1. An amendment to section 160A of the Local Government to state expressly that a bylaw not reviewed when required is enforceable for the specified two-year period before it is mandatorily revoked.
2. An amendment to section 161(3) of the Local Government Act to clarify how the reference to section 17 is to work, including use of the special consultative procedure, given that section primarily relates to transfers between territorial authorities or between regional councils.

Submissions from two regional councils, supported by LGNZ and SOLGM, were received seeking the extension of the bylaw-making provisions on liquor control to regional councils for land that they own or control. While a policy issue, we are not aware of reasons why these powers should not be extended to regional councils to assist efficient local bylaw administration.

We recommend that current bylaw-making powers for the control of liquor be extended to regional councils in respect of land owned or controlled by the regional council, along with any other powers that may be identified as a result of the recommended comprehensive review of all statutory bylaw-making powers.
We received one submission proposing that the use of the special consultative procedure not be mandatory when a local authority has resolved that a bylaw should continue without amendment. We believe it is possible that such resolutions are of equal concern to proposals to amend a bylaw (when the special consultative procedure must be used) and therefore we believe the current provision is appropriate.

2. Enforcement powers

The Act provides a number of specific enforcement powers, including in relation to private land, for local authorities in respect of:

- removal of works and seizure of property
- arrest, search and seizure in relation to liquor
- powers of entry
- recovery for damage
- administration of enforcement functions including powers of enforcement officers and contracting out of enforcement subject to all residual legal responsibilities, to ensure proper exercise of regulatory functions and powers, remain with the local authority
- construction of works on private land
- powers of entry to check utility services
- removal of fire hazards
- default of owners or occupiers to do work
- recovery of costs
- compulsory acquisition of land
- particular powers in relation to water services and trade wastes including powers to restrict or stop water services
- removal orders.

Further detailed requirements are set out in Schedules 12 and 14 of the Act.

As a result of analysis of submissions received on a range of technical issues and our legal analysis:

We recommend:

1. Section 164(3) of the Local Government Act be amended to identify the necessary requirements for the notice relating to the seizing and impounding of property or prescribe the form referred to in the section.

2. Section 168(1) of the Local Government Act be amended to clarify whether property may be disposed of within or after 6 months.

3. An extension of the powers in section 181(1) and (2) of the Local Government Act in relation to construction of works on private land, to cover all land.

4. Clarification that the powers provided to local authorities in section 181 include local authority organisations.

5. Section 182 of the Local Government Act to confirm that powers to enter land to check water is not being wasted are able to be exercised in respect of waterworks under the control of a council-controlled organisation.

In addition, our legal analysis, and a further analysis relating to the remaining provisions of the Local Government Act 1974, identified inconsistencies in relation to provisions in the 2002 Act relating to liability for payments in respect of work carried out on private land. Some inconsistencies include providing for a charge on the land in some cases (such as under sections 183(6) and 184(7)) but not in others (such as under sections 151(3)(c), 163(1)(b), 175, 176, 186 and 187). The issue also arises as a result of the repeal of section 465 of the Local Government Act 1974 providing for a charge on land for recovery of costs for work associated with private drains.
We recommend a review of the application of the provisions of section 188 of the Local Government Act relating to liability for payments in respect of private land, and consideration of a new generic provision enabling costs incurred by local authorities under various provisions to be a charge on the land concerned.

3. Offences and penalties

Part 9 of the Local Government Act prescribes offences in respect of specific functions and activities, including infringement offences, and provides for penalties. Infringement offences and infringement fees are defined by reference to regulations promulgated under section 259.

No such regulations have been promulgated. This means prosecution of offences which are likely to be defined as infringement offences, such as parking offences, are required to be carried out by summary procedure which is both costly and time-consuming for local authorities. We support the submissions received identifying the need for regulations relating to infringement offences and fees.

*We recommend that regulations be made under section 259 of the Local Government Act as soon as practicable to prescribe breaches of bylaws that are infringement offences along with associated infringement fees.*

4.4 Other legislation

4.4.1 Purpose

Legislation other than the Local Government Act 2002 provides further limits and controls on the general empowerment of local authorities.

4.4.2 Submissions

We received a number of submissions relating in particular to the provisions of the Local Government Act 1974 which were not repealed with the enactment of the 2002 Act. Generally these submissions expressed concern about the continuing existence of a number of these provisions in parallel with provisions in the 2002 Act and the confusion and uncertainty being experienced as a result.

In light of these submissions, we commissioned a legal analysis of the impact of the remaining provisions of the 1974 Act on the activities of local authorities.\(^3\) We drew heavily on this analysis in our consideration of the impact of this Act and resulting recommendation.

A submission from the Auckland Regional Council requested we undertake a review of the remaining provisions in the 1974 Act “especially in relation to the water services industry in Auckland.” We see such a review as outside the scope of our operational review of the 2002 Act. In addition, we believe the Royal Commission on Auckland Governance will address delivery of water services in Auckland.

4.4.3 Analysis

Our legal analysis has categorised the remaining provisions of the Local Government Act 1974 as follows:

- no action required as the provision has or will be addressed by current legislative reform or other exercises
- consideration of amendment and transfer to the Local Government Act 2002
- consideration of amendment and inclusion in other legislation.

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\(^3\) Review of the Local Government Act 1974 provisions report by DLA Phillips Fox dated April 2008 available from the Commission on request.
### Unrepealed Provisions of the Local Government Act 1974

<table>
<thead>
<tr>
<th>Unrepealed Provision</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Sections 37SE to 37SH relating to Auckland regional growth strategy</td>
<td>No action required, to be addressed as part of ‘One Auckland Plan’ and Royal Commission exercises</td>
</tr>
<tr>
<td>Part XI (Local Authorities Petroleum Tax)</td>
<td>Consider transfer to LGA 2002 following whole-of-government response to Rates Inquiry recommendation</td>
</tr>
<tr>
<td>Part XVII (Documents and Local Archives)</td>
<td>No action required, repealed by Public Records Act 2005</td>
</tr>
<tr>
<td>Part XXI (Roads (other than Regional Roads), Service Lanes and Accessways)</td>
<td>Consider transfer to LGA 2002 with necessary amendments</td>
</tr>
<tr>
<td>Sections 446, 447, 451, 459, 460, 461, 462, 467, 468 (relating to sewerage and stormwater drainage)</td>
<td>Consider transfer to LGA 2002 with necessary amendments</td>
</tr>
<tr>
<td>Part XXIX (Land Drainage and River Clearance)</td>
<td>Consider transfer to LGA 2002 with necessary amendments</td>
</tr>
<tr>
<td>Part XXXA (Divestment of Land Drainage Schemes and Water Race Schemes)</td>
<td>Consider transfer to LGA 2002 with necessary amendments</td>
</tr>
<tr>
<td>Part XXXI (Waste Management)</td>
<td>No action required, proposed to be repealed by Waste Minimisation (Solids) Bill</td>
</tr>
<tr>
<td>Sections 591 and 591A (relating to parking places and buildings, and transport stations)</td>
<td>Consider transfer to LGA with necessary amendments</td>
</tr>
<tr>
<td>Part XXXIVB (Transport-related Enterprises and Divestment of Undertakings)</td>
<td>Consider transfer to LGA with necessary amendments</td>
</tr>
<tr>
<td>Sections 619 and 619C to 619I (relating to Wellington regional parks and reserves)</td>
<td>No action required, provisions repealed as from 1 July 2008</td>
</tr>
<tr>
<td>Sections 647 and 648 (relating to fire hydrants)</td>
<td>Consider transfer to LGA with necessary amendments</td>
</tr>
<tr>
<td>Part 39A (Navigation)</td>
<td>No action required, provisions being addressed as part of maritime transport review</td>
</tr>
<tr>
<td>Certain parts of section 684 (relating to subject matter of bylaws)</td>
<td>Consider transfer to LGA with necessary amendments</td>
</tr>
<tr>
<td>Sections 684B to 684F (relating to navigation bylaws)</td>
<td>No action required, provisions being addressed as part of maritime transport review</td>
</tr>
<tr>
<td>Sections 698 to 699D (relating to offences)</td>
<td>Consider need for provisions in LGA 2002 and transfer as necessary</td>
</tr>
<tr>
<td>Section 707A (relating to application of provisions to Auckland Regional Council)</td>
<td>No action required, will be repealed when remaining Auckland-related provisions are repealed</td>
</tr>
<tr>
<td>Sections 707ZZZR and 7070ZZZS (Infrastructure Auckland)</td>
<td>No action required, to be addressed as part of Royal Commission exercise</td>
</tr>
<tr>
<td>Sixth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Schedules</td>
<td>Consider need for provisions in LGA 2002 and transfer as necessary consequential upon repeal of related provisions</td>
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</table>

Our bylaws analysis pointed out the consequences of the repeal of section 683 of the Local Government Act 1974 which prescribed penalties for breaches of bylaws under that Act. Repeal of this section means there is now no prescribed penalty for breaches of certain bylaws made under that Act other than section 20 of the Bylaws Act 1910.

The analysis concluded that this issue, along with what it described as the “confusing nature of the amendments made in 2006” (confirming provisions relate only to bylaws made under the 2002 Act), further underlines the need for a comprehensive review of all local authority bylaw-making powers across the statute book.
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.

4.5 Powers of the Minister and central government

4.5.1 Purpose

As part of the policy decisions related to the general empowerment of local authorities, it was agreed that:

- there be no general provision for intervention in local authority decision-making on national policy grounds
- generally, the current powers of the Minister of Local Government would continue
- generally, the current powers of the Local Government Commission would continue.

This section of our report addresses the role and powers of the Minister of Local Government as set out in section 18 and Part 10 of the Local Government Act. The role and powers of the Local Government Commission are addressed in the next section.

4.5.2 Submissions

We received no submissions on these matters.

4.5.3 Issues and options

<table>
<thead>
<tr>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
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</thead>
<tbody>
<tr>
<td>• Provision for appointment of a review authority in relation to performance of a local authority</td>
<td>• Provisions largely retained the status quo</td>
<td>• Legislative status quo</td>
</tr>
<tr>
<td>• Provision to appoint commissioner to act in the place of a local authority as a result of:</td>
<td>• Review provisions have not been invoked since 1999</td>
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<tr>
<td>- review authority recommendation</td>
<td>• No recent appointments of commissioner</td>
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<td>- request from local authority or its loss of a quorum</td>
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<td>- willful refusal of local authority to perform duties/exercise powers</td>
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<tr>
<td>• Provision to appoint commissioner for disaster recovery</td>
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<tr>
<td>• Provision to appoint members of Local Government Commission</td>
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<tr>
<td>• Other prescribed roles, including various consent and determination roles (addressed elsewhere in report)</td>
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4.5.4 Analysis

The Local Government Act enacted slightly amended provisions relating to the role of the Minister of Local Government. The reviewed provisions reflected the only recent experience of invoking the ministerial review provisions (in relation to Rodney District Council in 1999). While the existing provisions were generally seen to work satisfactorily, some additional provisions were agreed to provide more flexibility for the Minister including power to:

- appoint a person to assist a local authority to implement recommendations arising from a review authority
- appoint a person to exercise one or more of a local authority’s powers to the extent necessary to implement a review authority’s recommendations
- call an election for the local authority.
Given the absence of recent experience with the review provisions, we have no recommendations to make in this area.

4.6 Structure of local government in New Zealand

4.6.1 Purpose

Subpart 1 of Part 3 and Schedule 2 of the Local Government Act set out the structure of local government in New Zealand through which the purpose of local government is to be achieved.

4.6.2 Submissions

We received no submissions on these provisions. However, we are aware from our existing responsibilities in this area, of some issues relating to the boundaries of local authority districts that require attention.

4.6.3 Issues and options

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<thead>
<tr>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
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</thead>
<tbody>
<tr>
<td>• Local government in New Zealand to consist of regional councils and territorial authorities</td>
<td>• Provisions largely retained the status quo</td>
<td>• Legislative status quo</td>
</tr>
<tr>
<td>• Every part of New Zealand, apart from the Chatham Islands, in the district of a territorial authority must also be within a region</td>
<td>• Minister is the territorial authority for approximately 30 off-shore islands</td>
<td>• Technical amendments to boundary provisions</td>
</tr>
<tr>
<td>• Minister of Local Government to be territorial authority for any part of New Zealand that does not form part of the district of a territorial authority (with some prescribed exceptions)</td>
<td>• One application granted for a district council to be named a city council</td>
<td>• Review seaward boundaries of territorial authority districts</td>
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<tr>
<td>• A territorial authority must be either a city or district council</td>
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<tr>
<td>• Prescribed process for how councils are named (city or district council) including process to change by application to Commission</td>
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4.6.4 Analysis

We do not consider that an examination of the appropriateness of the current structure of local government in New Zealand falls within the scope of this operational review. This is a matter of broad policy rather than the operation of the Act and we have no recommendations to make on the general provisions.

We are aware of some issues relating to the boundaries of local authority districts that require attention. We have identified the need for a number of minor technical amendments relating to these boundaries.

The seaward boundaries of territorial authority districts were traditionally defined at the mean high water mark. This situation was continued in the restructuring of local government in the late 1980s in respect of the open coast. At that time the Local Government Commission included most harbours, inlets and estuaries in districts. The significant exceptions were the Kaipara, Waitemata, Manukau and Wellington harbours.

Since 1989, the Minister of Local Government has extended the seaward boundaries of 32 districts to the mean low water springs or beyond, under clause 5 of Schedule 2 of the Local Government Act.\(^4\) Mean low water springs is effectively as far as the tide will go out in normal circumstances and

\(^4\) Clause 5 provides that the Minister of Local Government may, by notice in the Gazette, include or exclude land from a district in respect of which there are no electors.
therefore is a boundary that includes human activity on beaches. The boundaries of 22 districts remain at the mean high water mark.

Extending boundaries to mean low water springs allows a range of nuisances and public safety issues to be regulated on beaches, such as in respect of dogs, litter, fire and vehicles. Recently the speed of vehicles on beaches has been an issue of particular concern. Councils for those districts with boundaries remaining at the mean high water mark are unable to regulate activity on beaches and for this reason a jurisdictional gap occurs.

In recent years legislation controlling two forms of public nuisance has been strengthened after public concern – the Dog Control Act and the powers in the Local Government Act to regulate the consumption of liquor in public places. Both these Acts give powers to territorial authorities, but their effect is limited if territorial authorities are not able to exercise these powers in an area where the nuisance being regulated is likely to occur i.e. where it is beyond their boundary.

We recommend a review of those territorial authority district boundaries remaining at the mean high water mark with a view to extending them to mean low water springs.

A similar issue relating to the exercise of local authority powers exists in respect of structures on the coastline.

Clause 5(2)(a) of Schedule 2 of the Local Government Act provides that “land reclaimed from the sea (whether lawfully or unlawfully) adjoining a district or region forms part of that district or region”.

While areas of reclaimed land automatically form part of a district, structures such as wharves, jetties and piers extending from a district do not. Such structures can have impacts on a district similar to that caused by reclaimed land, for example in respect of dog control and litter control.

One example is the Brighton Pier in Christchurch which is only partly within Christchurch City. The pier attracts a large number of visitors and attracts the same range of nuisances and issues as any other public place.

We recommend that clause 5 of Schedule 2 of the Local Government Act be amended to provide that structures adjoining a district form part of that district in the same way as reclaimed land.

4.7 Reorganisation of local authorities

4.7.1 Purpose

Subpart 2 of Part 3 and Schedules 3 and 6 of the Local Government Act set out provisions for reorganisation of local authorities. These cover the forms of reorganisation, who may make a reorganisation proposal, processes for considering and determining proposals, and how reorganisation schemes are to be given effect.

4.7.2 Submissions

We received two submissions relating to the reorganisation provisions. One described the statutory reorganisation process as “extremely lengthy and complex” and the other referred to technical issues relating to polls of electors and remuneration of elected members and existing delegations when a reorganisation scheme takes effect.
4.7.3 Issues and options

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<tr>
<th>Act Provision</th>
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<th>Options</th>
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<tr>
<td>• Provision for local authority, Minister or petition signed by 10% of electors to initiate all types of reorganisation proposals (unions, constitution or abolition of new local authorities, boundary alterations, transfer of statutory obligations, territorial authority assuming power of regional council)</td>
<td>• Six reorganisation proposals have been initiated since enactment of the reviewed provisions</td>
<td>• Legislative status quo</td>
</tr>
<tr>
<td>• Prescribed processes for considering proposals including expenditure limits and funding for proposer</td>
<td>• To date, one proposal has proceeded to implementation</td>
<td>• Minor technical amendments</td>
</tr>
<tr>
<td>• Prescribed processes for determining proposals including criteria to promote 'good local government' and minimum population requirement</td>
<td></td>
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<tr>
<td>• Prescribed processes for implementing reorganisation schemes</td>
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4.7.4 Analysis

The following steps are required for reorganisation proposals that pass through the entire process:

- consultation and initial consideration of the concept of the proposal
- issue of a draft reorganisation scheme and consultation on that scheme
- issue of a final reorganisation scheme
- a poll in the case of a scheme for the union, abolition or constitution of districts.

These steps do take time. A reorganisation of any type is an important issue for a community to consider. We do not consider that there is any significant scope for streamlining this process while at the same time allowing for proper consideration of the issues and consultation with the community.

Inherent in proposals for significant changes to the reorganisation procedures can be a desire for restructuring of local government to become easier or more difficult to achieve. We do not consider that issues of this nature fall within the scope of this operational review. However, there are some technical issues that warrant amendments to the Act.

One council that has recently been through a reorganisation process proposed the following amendments:

- clarification that support of more than 50% of electors is required in each poll held where a reorganisation proposal affects multiple districts
- a requirement that the Remuneration Authority make a new or amended determination on remuneration following a reorganisation
- clause 67 of Schedule 3 of the Local Government Act to clarify that any existing delegations to officers made in relation to a bylaw continue and can be exercised by the equivalent officer of a new or changed local authority.

We believe the requirement for more than 50% support in each reorganisation poll is clear in clause 52 of Schedule 3 of the Local Government Act and we do not see the need for an amendment.

Section 19 of the Remuneration Authority Act 1977 allows the Remuneration Authority to amend an existing remuneration determination to deal with a new matter or if the Authority is satisfied that there are special circumstances. We consider that the Authority would have an obligation to consider whether an amended determination is required when a significant reorganisation has taken place. Accordingly, we see no need for an amendment to the Local Government Act as proposed in the submission.
We understand the general purpose of clause 67 of Schedule 3 of the Local Government Act to be that a new local authority or a local authority assuming responsibility for a new area has clarity and certainty about what powers it may exercise over the new area.

Bylaws remain in force to the extent applicable over the new or transferred area. We believe it is logical that delegations relating to those bylaws should also remain in force until the new local authority addresses them. Making specific provision for this in clause 67 would ensure that no gap occurs between the time new boundaries come into effect and the new or changed local authority making new delegations.

We recommend that clause 67 of Schedule 3 of the Local Government Act be amended to provide for the continuation of delegations in respect of any Act, Regulation or bylaw made by a former local authority relating to an area coming under the jurisdiction of a new or different local authority.

When a territorial authority boundary is altered by a reorganisation scheme or a ministerial notice, and where that boundary is also the boundary of a district health board, the district health board boundary remains unchanged. Alterations to district health board boundaries can only be made by a separate process under the New Zealand Public Health and Disability Act 2000.

While in some cases there might be legitimate reasons to leave the district health board boundary unchanged, in many cases logic suggests that the boundary should be altered to conform with a new territorial authority boundary. This is particularly so when the boundary change is minor or technical in nature. Having common boundaries greatly assists, for example, the conduct of local elections.

We consider a requirement to follow a separate boundary alteration process in the New Zealand Public Health and Disability Act as onerous, after a process under the Local Government Act has already been followed.

We recommend an amendment to the Local Government Act for provision for an Order in Council giving effect to a reorganisation scheme, or a ministerial notice, to alter, with the consent of the Minister of Health, the boundary of a district health board to conform with an altered territorial authority boundary.

Schedule 6 of the Local Government Act provides a process for electors in part of a territorial authority district to initiate a proposal for the constitution of a community. Where the territorial authority decides not to constitute a community the proposers may appeal that decision to the Commission.

We noted that Schedule 6 does not specify a time within which appeals must be lodged with the Commission. This contrasts with the representation review process where one month is allowed for the lodging of appeals.

We recommend that clause 7 of Schedule 6 of the Local Government Act be amended to provide that appeals against a decision of a territorial authority to not constitute a community must be lodged with the Local Government Commission within one month of the council’s decision being notified.
4.8 The Local Government Commission

4.8.1 Purpose
Subpart 3 of Part 3 and Schedules 4 and 5 of the Local Government Act provide for the continued operation of the Local Government Commission, its roles, functions, powers and membership.

4.8.2 Submissions
We received one submission proposing that the membership of the Commission be increased from three to five.

4.8.3 Issues and options

<table>
<thead>
<tr>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
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</table>
| • Commission has functions, duties and powers conferred by Local Government Act or any other enactment and may:  
  – provide information about local government  
  – promote good practice relating to a local authority or to local government generally  
• Commission may consider, report on, and make recommendations to Minister and any relevant local authority on matters relating to a local authority or local government considered appropriate by the Commission or referred by the Minister  
• For the purpose of performing its functions, Commission has full capacity, rights, powers and privileges  
• Commission is to have three members appointed by the Minister for maximum terms of five years, one of whom must have knowledge of tikanga Māori and is to be appointed after consultation with the Minister of Māori Affairs  
• Commission is to be treated as a Commission of Inquiry and the Evidence Act 1908 is to apply | • Provisions largely retained the status quo | • Legislative status quo  
• Exercise of power under section 30(2)  
• Greater use of powers under section 31 to report on matters to the Minister of Local Government |

4.8.4 Analysis
The Local Government Commission has a range of functions under the Local Government Act. Historically the principal role of the Commission has been seen as dealing with local government reorganisation.

Increasingly since 1992, representation reviews have formed an important part of the Commission’s functions. This has been particularly so since the enactment of Part 1A of the Local Electoral Act in 2002 when the scope of representation reviews was widened to include community boards, the review criteria was changed significantly and a requirement for guidelines to be produced was introduced.

Section 30(2) of the Local Government Act established a new role for the Commission, by providing that it may:

• provide information about local government  
• promote good practice relating to a local authority or to local government generally.
The Commission has not yet exercised these new functions, but intends doing so after the completion of this review. In exercising these powers we would not wish to duplicate the activities of other organisations such as the Department of Internal Affairs, the Office of the Auditor-General, LGNZ or SOLGM.

While maintaining the independence of the Commission, we anticipate discussing our approach to this role with those organisations to ensure complementary roles are maintained. It is envisaged that the Commission’s role in this area would focus on issues that have some relationship to its existing functions, such as governance, representation, electoral matters and boundaries.

A further function of the Commission is to review and report to the Minister under section 31 of the Act on matters relating to local government. This may be done either at the request of the Minister or on the Commission’s own initiative. With one exception, this function appears to have only been exercised on the request of the Minister.

We consider that there is scope for the Commission to undertake reviews on its own initiative more frequently. Doing so would complement the powers in section 30(2) described above and allow issues to be dealt with on a holistic basis.

One submission sought an increase in the membership of the Commission from three to five. We understand that this may have been the result of a small number of representation review appeals in 2007 being heard by two rather than three members of the Commission.

We do not believe that the workload of the Commission requires additional members at this time; nor do we consider that the hearing of the appeals concerned by two members of the Commission had any impact on the nature of the decisions made.

The Commission is also able to request the Minister appoint temporary members to the Commission and in fact it did so for the 2007 round of representation review hearings. We see no need to amend the current provisions relating to membership of the Commission.

We recommend no change to the Local Government Act relating to the constitution, functions and membership of the Local Government Commission.

4.9 Local authority governance

4.9.1 Purpose

Part 4 and Schedule 7 of the Local Government Act set out a range of provisions relating to the governance of the local authority. These cover governance principles, local governance statements and the constitution and functioning of the governing body. The governing body consists of members elected under the Local Electoral Act and is responsible and democratically accountable for the decision-making of the local authority. In carrying out its governance role the local authority must act in accordance with prescribed governance principles.

4.9.2 Submissions

We received one submission suggesting that local governance statements add little or no value and proposed that the requirement be removed.

We received one submission relating directly to the delegation provisions in clause 32 of Schedule 7 and one indirectly as a result of the current definition of a committee in section 5 (in particular whether it includes a subcommittee appointed directly by the local authority). Two issues relating to delegations were also raised in the two legal analyses that we commissioned.

5 Since 1990 the Commission has submitted reports on: regional council membership; the structure of local government on the Chatham Islands, for offshore islands and the West Coast Region; Government assistance to the Chatham Islands Council; funding for the West Coast Regional Council; a redundancy payment made to an officer of a local authority and the boundaries of licensing trust districts.

6 The exception was the report on licensing trust district boundaries submitted to the Minister in 2006.
We address these issues as follows:

1. governing body
2. local governance statements
3. meeting procedures
4. delegations.

4.9.3 Issues and options

<table>
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<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A local authority should: – conduct its business in an open, transparent and democratically accountable manner – give effect to its identified priorities and desired outcomes in an efficient and effective manner • A local authority should undertake any commercial transactions in accordance with sound business practices • A local authority should ensure prudent stewardship and efficient and effective use of its resources in the interests of its district/region • A local authority must act in accordance with certain governance principles: – governance structures and processes are effective, open and transparent – as far as practicable, responsibility for decision-making in relation to regulatory responsibilities is separated from (that applying to) non-regulatory responsibilities</td>
<td>• The elected council is responsible for decision-making with elected members only having the right to vote • Elected body has discretion to establish subordinate decision-making structures, delegate functions and responsibilities (with prescribed exceptions) and determine membership • Mayor and regional council chair are presiding members and appointed Justices of the Peace as a consequence of their election • Prescribed provisions relating to calling and conduct of meetings • Local authority is required to prepare and make publicly available, a local governance statement containing prescribed information</td>
<td>• Provisions largely retained the status quo apart from: – enactment of governance principles – requirement for local governance statement – removal of casting vote (unless provided for in standing orders)</td>
<td>• Legislative status quo along with further good practice guidance • Removal of requirement to produce local governance statement • Removal of provision for a casting vote in standing orders</td>
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</table>

4.9.4 Analysis

1. Governing body

We received no submissions on issues relating to the constitution, role and membership of the local authority governing body as the responsible and democratically accountable decision-making body. Generally these provisions were carried over from the 1974 Act with the addition of new governance principles.

We recommend no change to the Local Government Act relating to the constitution, role and membership of the local authority governing body.
2. Local governance statements

The Local Government Act requires local authorities, following the triennial elections, to prepare a local governance statement and make this publicly available. Prescribed contents of this statement include information on:

- the local authority’s functions, roles and responsibilities
- options for the electoral system and Māori representation
- members’ roles and conduct
- governance structures and processes
- meeting processes
- consultation policies and policies for liaising with Māori
- the management structure
- equal employment opportunities policy
- key planning and policy documents
- systems for public access including in relation to official information.

We believe the local governance statement is an important part of a local authority’s accountability to the community and we do not agree with the submission to remove this requirement.

The submitter said local authorities provide this information under the Local Government Official Information and Meetings Act (LGOIMA) and through websites. The intention of the local governance requirement was to expand the existing requirement under LGOIMA, including such matters as the options around the electoral system and separate Māori representation. As a consequence the LGOIMA requirement was repealed.

We agree with the submitter that websites are an easy way to make this information available in full, rather than summary form, and this can still be done. However, not all people have access to the internet or would wish to seek out the detailed individual policy or information statements. We noted that the Governance Know How Guide provided useful guidance to local authorities in developing their local governance statements.

**We recommend no change to the Local Government Act relating to the requirement for local authorities to produce a local governance statement.**

3. Meeting procedures

Generally the 2002 Act re-enacted provisions relating to processes and procedures for local authority meetings.

Initially the 2002 Act purported to remove the casting vote for members presiding at local authority meetings. This was on the basis that local authorities had enhanced powers and in making significant decisions ideally they should achieve a consensus rather than in some cases determine these matters on the single casting vote of the presiding member. However, the provision in the Act was not clear as to whether the casting vote was actually prohibited.

Given this uncertainty, and also following representations from the local government sector to allow for a casting vote, the matter was clarified by an amendment in 2004 providing that there was not to be a casting vote unless the local authority expressly provided otherwise in its standing orders.

Our all-councils survey showed that of the 76 councils that responded, 65 had provided for a casting vote in their standing orders and 11 had not.

We have become aware of a local authority that wishes to raise the possibility of councils conducting more of their business over the internet to avoid the cost and time involved in members travelling long distances to attend meetings. This is prevented by the need for a quorum of members to be (physically) present at a meeting for any business to be transacted.

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7 The Knowhow Guide to Governance under the Local Government Act 2002 jointly prepared by SOLGM, LGNZ and the Department of Internal Affairs.
There are a number of issues to consider in providing for 'internet meetings' not least of which is the matter of public access. We believe this matter should be further explored along with the use of modern technology generally in the conduct of local authority business.

**We recommend:**

1. **No change to the Local Government Act relating to local authority meeting procedures including the provision for a casting vote.**
2. **Work be undertaken on the option of local authorities conducting business on-line including the possible scope for such a provision and its advantages and disadvantages.**

4. **Delegations**

One legal analysis we commissioned raised two issues that we consider need clarification. These relate to the ability for local authority officers to sub-delegate and the ability to delegate to the holder of an office/position.

The analysis states that arguably (the provisions have not been tested in the Courts) the insertion of clause 32B in Schedule 7 has limited officers to delegate functions once and this may interfere with administrative efficiency. Unlike its predecessor clause (section 716(7) of the 1974 Act), the new clause only provides for a delegation to a specified member or officer, not to the holder for the time being of a specified office. We agree that this should be clarified.

Another suggestion for clarification relates to the current statutory definition of 'committee' in section 5 of the Act, and in particular whether this includes a subcommittee appointed directly by a local authority (as opposed to one appointed by a committee). Possible lack of clarity on this matter impacts on the powers of delegation of the local authority. Again we agree with the need for clarification.

**We recommend:**

1. **An amendment to clause 32B of Schedule 7 of the Local Government Act to remove the apparent automatic prohibition on further delegation by an officer unless such a prohibition has been agreed by the local authority or is provided in another enactment.**
2. **An amendment of section 5 of the Local Government Act to clarify that a committee may include a subcommittee appointed by the local authority.**

4.10 **Elected member issues**

4.10.1 **Purpose**

Part 4 and Schedule 7 of the Local Government Act set out provisions and requirements relating to local authority elected members. These include vacating of office, remuneration of members, the conduct of members and member declarations.

4.10.2 **Submissions**

We received two submissions relating to a possible conflict in declarations when a councillor is also appointed to a community board.

We received several submissions on the requirement for local authorities to adopt a code of conduct. These relate 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 also received submissions seeking a review of other functional legislation applying to local authorities including the Local Authorities (Members' Interests) Act 1968.

We received one submission relating to elected member remuneration criteria and one on remuneration following local government reorganisation (addressed under the reorganisation of local authorities section of this report). We also discussed the current statutory provisions for elected member remuneration with the Remuneration Authority.
We address these issues as follows:

1. declarations by members
2. code of conduct
3. conflicts of interest
4. elected member remuneration.

### 4.10.3 Issues and options

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<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A local authority must act in accordance with the following governance</td>
<td>• Members required to make a declaration to undertake powers, authorities</td>
<td>• Potential confusion between councillor declaration to act in interests of district when</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>principles:</td>
<td>and duties in the best interests of district, before acting</td>
<td>appointed to a community board</td>
<td>• Clarification that in event of a conflict, the local authority declaration to take precedence</td>
</tr>
<tr>
<td>– the role of democratic governance of the community and expected</td>
<td>• Local authority required to adopt a code of conduct to apply to all members</td>
<td>• Absence of statutory process and penalties when considering alleged breaches of code of</td>
<td>• Prescription of process and penalties when considering alleged breaches of code of conduct</td>
</tr>
<tr>
<td>conduct of elected members is clear and understood by elected members</td>
<td>• Prescribed provisions relating to disqualification of members, ouster from</td>
<td>conduct concern some local authorities</td>
<td>• Require community boards to adopt a code of conduct or promulgation of good practice</td>
</tr>
<tr>
<td>and the community</td>
<td>office and extraordinary vacancies</td>
<td>• No mandatory requirement for community boards to adopt a code of conduct</td>
<td>template</td>
</tr>
<tr>
<td>– relationship between elected members and management is effective</td>
<td>• Remuneration Authority to determine elected member remuneration</td>
<td>• Confusion arising from dated provisions of Local Authorities (Members’ Interests) Act</td>
<td>• Review Local Authorities (Members’ Interests) Act</td>
</tr>
<tr>
<td>and understood</td>
<td>• Members required to abide by standing orders</td>
<td>• Some concerns about incentives for local authorities to minimise community board remuneration</td>
<td>• Further statutory guidance to Remuneration Authority</td>
</tr>
</tbody>
</table>

### 4.10.4 Analysis

1. **Declarations by members**

Councillors are required to make a declaration to act in the best interests of the district or region as a whole. This is a long-established principle that is seen as appropriate notwithstanding that councillors may be elected from wards or constituencies. Arising from this provision, two submitters have identified a potential conflict when a councillor is appointed to a community board (generally comprising only part of a district).

One submitter proposed that, to avoid a conflict, the Act clarify that the councillor's declaration to act in the interests of the district as a whole be paramount over any obligation to a community relating to a community board. The other submission proposed that an amendment clarify whether a declaration in relation to the appointed position is actually necessary.
We recommend that the Local Government Act be amended 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.

2. Code of conduct

Local authorities are required to adopt a code of conduct. This was a new provision introduced in 2002. The code is to set out understandings and expectations about the manner in which members must conduct themselves while acting in their capacity as members including around disclosure and non-disclosure of information.

The code must also include an explanation of the legislation and rules of law that apply to members. These include: the Local Authorities (Members’ Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Securities Act 1978, the Privacy Act 1993, and other legislation and rules of law relating to conflicts of interest and decision-making.

Members are required to comply with the code but breaches are not deemed to be offences against the Local Government Act. Community boards are exempted from a mandatory requirement to adopt a code.

We noted that the Governance Know How Guide provided local authorities with useful guidance in developing their first codes.

In 2006, the Auditor-General published a report noting that local authorities viewed their codes as being useful in the following ways:

- documenting acceptable standards and requiring members to turn their minds to what constitutes acceptable standards
- being a tool for educating new members
- helping to mitigate the risks of personal grievances by staff.

The report also noted:

- Codes of conduct are generally well-focused, clear and informative, consistent with the Act’s governance principles, and not inconsistent with other laws.
- Local authorities rarely needed to use the codes and most issues were (and should be) dealt with informally and privately.
- Most code issues involved offensive comments or leaks of confidential information.
- Processes for enforcing codes of conduct varied but most involved investigation by a person or committee and then a decision by the full council, and local authorities were aware of the need for fair processes.
- Some members and staff who had been through a code enforcement process ended up bitter and frustrated.

The Auditor-General also outlined areas where local authorities could improve their codes. On the basis of these reports and the response received from local authorities to our invitation for submissions, we believe most issues relating to codes can be addressed by local authorities amending their codes and/or processes.

We included several questions in our all-councils survey on codes of conduct. Findings included that since the enactment of the 2002 Act:

- Thirty-two councils (of the 76 that responded) had to consider alleged breaches of their code (with 16 considering more than one breach).
- Nineteen of the 32 councils had to formally investigate an alleged breach (with eight investigating more than one breach).

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8 The Knowhow Guide to Governance under the Local Government Act 2002 jointly prepared by SOLGM, LGNZ and the Department of Internal Affairs.
9 Local authority codes of conduct report of the Controller and Auditor-General dated June 2006.
• Four of the 19 councils used an independent person to carry out the investigation.
• Twelve of the 19 councils found there had been a breach of the code (with three finding breaches more than once).
• Four of the 12 councils considered there were sanctions they would have liked to have imposed but were not empowered to do so (all four sought a power to suspend and/or dismiss a member from office).

Of the few submissions we received, one (on behalf of a number of local authorities) sought specific statutory authority for:

• investigations into alleged breaches of the code including ability to compel persons to give evidence
• sanctions and penalties
• an independent tribunal/body, with skills and resources in investigation and judicial process, to investigate and adjudicate on 'more serious' allegations of breaches.

We understand that it was a specific Government policy not to prescribe penalties in the Act. This was on the basis of concerns about members judging each other, natural justice and a need for rights of appeal 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 preliminary 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 do not recommend any change to the current provisions.

**We recommend no change to the Local Government Act relating to requirements for codes of conduct including in relation to enforcement provisions.**

There is no legislative requirement for community boards to have a code of conduct, and generally they appear to have not developed one. The absence of a mandatory requirement was on the basis that community boards are not local authorities and have a different role including being explicitly prohibited from some activities such as the employment of staff. In addition, the nature, functions and roles of community boards vary widely with some having purely community liaison and advocacy roles whilst others have wider roles and delegated decision-making powers.

While a mandatory legislative requirement may create more certainty, it is likely to impose burdens on small boards not resourced to develop a code of conduct. A mandatory requirement may also generate a negative reaction and resistance out of proportion to any perceived problem. We believe the preparation of a good practice template for use by community boards that choose to adopt a code could mitigate such concerns.

**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 Local Government New Zealand, and be circulated to community boards for consideration.**
3. Conflicts of interest

We noted the Auditor-General observed that codes of conduct would benefit from more thorough explanations of non-financial conflicts of interest.

In 2007, the Auditor-General published guidance material for local authority members on conflicts of interest. This document set out detailed information about the Local Authorities (Members’ Interests) Act 1968 and how to apply it, and also detailed information on non-pecuniary conflicts of interest.

In 2005, the Auditor-General published a report on issues and options for reform of the Local Authorities (Members’ Interests) Act and noted that the Act applied to local authorities and a range of other statutory bodies. He also noted that the Schedule to the Act listed statutory agencies covered by the Act but the list was outdated/inaccurate and confusing.

The Auditor-General considered the style and content of the Act to be outdated and recommended it be rewritten and that:

- It was desirable to retain legislation dealing with the ‘discussing and voting rule’.
- It was unnecessary to retain the ‘contracting rule’. This rule disqualifies persons from being members when they may just need to manage a conflict of interest on a single issue or narrow range of issues by applying the ‘discussing and voting rule’.
- Civil penalties (for breaches of the Act) would be preferable to criminal penalties.
- Various other aspects of the Act needed to be modified.

In addition, we understand that in his 2008 annual report the Auditor-General will highlight a particular problem with the ‘contracting rule’ in respect of exemptions for elected members as distinct from election candidates.

Whilst there are some exceptions to the ‘contracting rule’, the wording of the exceptions is complicated and difficult to follow, hence hard to understand and apply. Consequences can be harsh including a candidate for office being disqualified in situations where a sitting member may have been granted an exemption, and aspiring candidates being influenced to either not stand or to stand and dispose of their interest.

The Auditor-General’s office also advised us:

- Many of the statutory bodies originally covered by the Act are now subject to conflict of interest requirements in other Acts.
- Most of the statutory bodies now covered by the Act (other than local authorities) are relatively small entities and there may be no need for specific conflict of interest legislation for them.
- Whilst lawyers may be able to work out which bodies are covered by the Act by looking at various pieces of legislation, this clarity is not apparent to other readers of the Schedule to the Act.

We agree on the 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 be undertaken as soon as possible with consolidation into the Local Government Act of necessary statutory provisions relating to the ‘discussing and voting rule’ for elected members.

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10 Guidance for members of local authorities about the law on conflicts of interest report by the Office of the Auditor-General dated June 2007.

4. Elected member remuneration

Clauses 6 and 7 of Schedule 7 of the Local Government Act provide that the Remuneration Authority must determine the remuneration, allowances and expenses payable to members of local authorities and community boards.

When doing so, the Authority must have regard to the need to:

- minimise incentives to distort behaviour in relation to the positions of members
- achieve and maintain fair relativities with remuneration elsewhere
- be fair to both members and ratepayers
- attract and retain competent people.

The Remuneration Authority advised us that it believes the statutory provisions and its general approach to its task are working satisfactorily. The approach involves the following steps:

- an assessment of the scale of the governance task taking into account four criteria: population (the most important factor), asset base, expenditure levels, and the rate of change (increase or decrease) in the population
- application of a sliding scale with a base rate (all local authorities have basic functions irrespective of size) and a diminishing scale as population rises
- determination of the remuneration pool required for the size of the governance job for that local authority
- setting of the mayor’s and chair’s remuneration
- advice to the local authority of the mayor’s remuneration and the remaining amount of money in the pool with an invitation for feedback on how the pool should be allocated
- response from the local authority including information about any dissenting views
- if the local authority’s view is unanimous and appears equitable and in line with other comparable local authorities, the Authority will generally accept it
- if there are dissenting views and/or apparent inequities or misalignment with other comparable local authorities, the Authority will investigate further before making a determination.

Remuneration levels will be affected by, among other things, the number of local authority and community board members. If the local authority has more members, then remuneration levels per member will be lower.

In relation to community boards, only half of a board’s remuneration is charged against the pool – reflecting boards’ role as part governance (chargeable against the pool) and part advocacy (not chargeable).

We received one submission on the remuneration criteria as they apply to community boards acting under significant delegations from the territorial authority. We are also aware of issues that are raised from time to time including:

- the Authority’s criteria for assessing the scale of local authorities’ governance task
- remuneration in relation to hours of work and whether this provides the right incentives to ensure sufficiently diverse representation
- funding of remuneration for community board members and whether this provides incentives for local authorities to minimise community board remuneration.

In response to comments about assessing the scale of the governance task, the Authority advised us it varies arrangements where it considers this is justified. For example, it will consider special circumstances and make exceptions where strict application of its criteria would produce an unfair result such as a local authority with a very small population.

The Authority noted that the time demands in local authorities varied. In a rural area, a member (and even the mayor) might be required to work only limited hours on council business. In cities, the mayor and councillors might have to work long hours on council business.
The Authority determines the size of the governance role in the particular area and the remuneration accordingly. The size of the governance role is the determining factor – not the amount of time that individuals choose to engage in council or community board business.

The Authority also advised that it manages risks regarding community board remuneration and possible incentives to minimise board remuneration. It does so by only including half of community board remuneration in the governance pool and, as necessary, by holding the line on fair remuneration for community boards irrespective of local authority views.

In summary, setting, increasing or decreasing remuneration, and the relativities between local authorities will always be contentious. That is one of the reasons why the role of setting remuneration now resides with the Remuneration Authority. The Authority says it makes changes from time to time to reflect changes in circumstances or to correct situations where, in hindsight, this is required. It sees its role as bringing an independent mind to determining remuneration.

On the basis of comments received from the Authority, we recommend no change to current provisions.

*We recommend no change to the Local Government Act relating to arrangements for the determination of elected member remuneration.*

### 4.11 Community boards

#### 4.11.1 Purpose

Subpart 2 of Part 4, Schedule 6 and Part 2 of Schedule 7 of the Local Government Act set out requirements for the establishment of community boards and their membership, role and powers.

Section 52 of the Act sets out the role of a community board as follows:

- representing and advocating for the interests of the community
- considering and reporting on matters referred to it or of interest
- maintaining an overview of services provided in the community
- preparing an annual plan submission
- communicating within its community
- undertaking other responsibilities delegated to it.

Section 51 of the Act confirms the status of community boards as not being incorporated bodies, local authorities or committees of territorial authorities. As such, some but not all the governance provisions applying to local authorities apply to community boards.

#### 4.11.2 Submissions

The following two issues raised in submissions relating to community boards have been addressed elsewhere in this report: application of the requirement to adopt a code of conduct and declarations by board members appointed by the parent territorial authority. We address technical issues relating to the establishment and funding of community boards and delegations.

We received a copy of a report prepared for LGNZ on the roles and functions of community boards. The objectives of this project were to:

- identify the functions carried out by community boards
- describe community board satisfaction with the working relationship between territorial authorities and boards
- identify if and how the functions of community boards have changed over time.

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12 Role and functions of community boards report by Mary Richardson for LGNZ on behalf of Community Boards’ Executive Committee dated June 2008.
4.11.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
</table>
| • A local authority must act in accordance with the following governance principles:  
  – the role of democratic governance of the community and expected conduct of elected members is clear and understood by elected members and the community  
  – governance structures and processes are effective, open and transparent | • Territorial authority required to:  
  – consider delegations to enable community board to best achieve its role  
  – meet expenses of community board within set limits  
  – provide administrative facilities  
• Community board prohibited from:  
  – acquiring, holding or disposing of property  
  – appointing, suspending or removing staff  
• Territorial authority procedures generally to apply to community board with modifications | • Provisions largely retained the status quo | • Legislative status quo along with further good practice guidance |

4.11.4 Analysis

Community boards were first provided for in the legislation leading to the major reorganisation of local government in the late 1980s. Establishment of community boards remains an option for territorial authorities and local communities in the 2002 Act. At present 144 boards are in existence.

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 address this issue further in Chapter 5.

Schedule 6 of the Local Government Act provides for communities to initiate a proposal to establish a community board at any time (i.e. outside the local authority’s representation review process) by way of a poll of electors.

Schedule 6 does not provide explicitly for arrangements relating to the membership of a community board to be determined other than by way of a representation review. This needs to be addressed whether the arrangements are being determined by the local authority or the Commission, in the event of an appeal against the local authority’s decision regarding establishment of a community board.

We recommend:

1. No change to the Local Government Act relating to general provisions on establishment, roles and membership of community boards.
2. Schedule 6 of the Local Government Act be amended to include a new clause providing that a local authority resolution or Local Government Commission determination on establishment of a community board may determine any matter contained in section 19J(2)(d) to (i) of the Local Electoral Act.

A new provision introduced with the 2002 Act is the requirement for territorial authorities to consider whether or not to delegate to a community board if the delegation would enable the community board to best achieve its role.
The LGNZ report stated that of the boards surveyed, 45% had advisory roles, 7% had a decision-making role and in 46% of cases the territorial authority attended to the function in question.

The report noted that territorial authorities were less likely to delegate decision-making or advisory roles to community boards in 2007 than in 1995 when a similar report was prepared by the Department of Internal Affairs. The report stated that over this period there was a significant reduction in the number of community boards that had a decision-making role, and in most functional areas boards also had fewer advisory roles.

The report concluded that “while community boards are in an ideal position to reflect the views of their communities in the decision-making process, most boards did not appear to play a significant role in planning or managing council consultation processes”. It noted previous studies and guidelines have suggested a number of good practice elements for community boards including a need for meaningful delegations.

We believe the best models for effective community boards are those where the territorial authority has delegated significant and meaningful responsibilities to their boards.

We recommend development and dissemination of good practice guidance on relationships between territorial authorities and their community boards including encouragement for territorial authorities to consider carefully the issue of community board delegations.

We are aware of concerns raised in some areas regarding territorial authority 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 of the Local Government Act be amended to expressly preclude the levying of targeted rates for the purpose of funding the administration of community boards.

4.12 Council organisations and council-controlled organisations

4.12.1 Purpose

Part 5 and Schedules 8 and 9 of the Local Government Act set out governance and accountability requirements relating to the establishment and operation of council organisations including council-controlled organisations and council-controlled trading organisations (definitions of these organisations are set out in section 6 of the Act). Section 7 sets out requirements for exempting particular organisations from these requirements.

4.12.2 Submissions

We received three submissions relating to the council (-controlled) organisation provisions in the Local Government Act covering: excluded organisations; consultation requirements for establishment of council-controlled organisations; the statement of intent; and indemnification of directors/trustees.

As noted in Chapter 1, 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 have not addressed the operation of these enterprises and organisations.

We also understand that the Department of Internal Affairs is to undertake a survey of local authority council-controlled organisations. We believe it is appropriate to await the outcomes of these exercises before detailed consideration of changes to the legislative provisions.

For these reasons, we confined our consideration specifically to technical issues raised in submissions relating to definitions of excluded and exempted organisations, establishment processes and indemnification of directors.
### 4.12.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A local authority must act in accordance with the following governance principle: – governance structures and processes are effective, open and transparent</td>
<td>• Prescribed definitions of: – council organisation – council-controlled organisation – council-controlled trading organisation • Prescribed exclusions to statutory definition • Prescribed process for exempting organisations • Prescribed establishment process • Requirement to adopt objective process to appoint directors/trustees including identification of required skills • Prescribed principal objective for council-controlled organisation • Requirement for council-controlled organisation to have statement of intent (with prescribed purpose and contents) • Requirements relating to performance monitoring and reporting • Official information provisions of Local Government Official Information and Meetings Act/Ombudsmen Act to apply</td>
<td>• Concerns about requirements for establishment of council-controlled organisation having “no material impact on ratepayers”</td>
<td>• Legislative status quo along with further good practice guidance • Removal of requirement for special consultative procedure when establishing some council-controlled organisations • Extension of indemnification of non-council directors</td>
</tr>
</tbody>
</table>

### 4.12.4 Analysis

The Act provides certain exclusions from the definition of council-controlled organisation. We received one submission saying these exclusions are inconsistent, such as excluding port companies but not airport companies.

The basis of the exclusions is whether similar accountability provisions exist in other legislation. If so, the provisions of the Local Government Act should not apply as this would be unnecessary and undesirable duplication. This is the case in respect of the exclusion of port companies but not airport companies.

We recommend no change to the Local Government Act relating to organisations excluded or exempted from the council-controlled organisation requirements.

Two submissions raised the requirement to use the special consultative procedure before establishing a council-controlled organisation (section 56). One submitter suggested that this should not be required.

This suggestion was on the basis that when a council-controlled organisation is being established to undertake a significant council function or own a significant asset, section 88 and/or section 97 already require the use of the special consultative procedure. The submitter also suggested that the requirement should not be necessary in relation to “small entities” bearing in mind the exemption provisions of section 7.

Another submitter also suggested that there should be an exemption from the consultation requirements in certain circumstances such as the acquisition of existing companies which become council-controlled organisations, where “there is no material impact on ratepayers”. An example of this
was a holding company established solely for holding a piece of land which the council proposes to purchase. The submitter also suggested an exemption in respect of the requirement for a statement of intent.

We noted that section 83A, inserted in 2004, provides that multiple requirements to use the special consultative procedure may be combined or run concurrently. Therefore there need not be duplication where, for example, the special consultative procedure must be used to establish a council-controlled organisation (under section 56) and for a council-controlled organisation to undertake a significant council function (under section 88) or assume ownership of a significant asset (under section 97).

In relation to ‘small entities’ where there is ‘no material impact on ratepayers’, the exemption provisions can apply. One of the submitters suggested that these provisions apply once the council-controlled organisation has been established. We are not convinced this is in fact the case.

We recommend no change to the Local Government Act relating to requirements for the establishment of council-controlled organisations.

One submitter raised concerns at the impact of the prohibition on indemnification of directors of council-controlled organisations. It pointed out that outside directors bring expertise not held by council members or officers and the positions are filled for the benefit of the community for no or little remuneration. It stated that the potential for such people to be exposed to personal liability can be an issue in filling positions.

We noted that, for the avoidance of doubt, section 43 of the Local Government Act expressly excludes all directors of council-controlled organisations (whether local authority members or not) from indemnification by the local authority in respect of that council-controlled organisation. We understand that this provision reflects a general policy position that provisions relating to council-controlled organisations should, as far as practicable, reflect comparable provisions for companies under the Companies Act.

The Companies Act generally provides that a company may not indemnify a director unless this is expressly authorised by the constitution of the company concerned. We see this as a policy matter which the submitter may wish to raise with the Department of Internal Affairs.

We received one submission suggesting that the required statement of intent for council-controlled organisations should be aligned with requirements for local authority LTCCPs. We believe this suggestion should be investigated.

We recommend consideration of alignment of statements of intent for council-controlled organisations with local authority LTCCPs.

4.13 Employment matters

4.13.1 Purpose

Part 4 and Schedule 7 of the Local Government Act set out requirements relating to the employment of staff of local authorities. Provisions include that the local authority be a ‘good employer’ and it must employ a chief executive who is responsible for employing other staff on behalf of the local authority.

4.13.2 Submissions

We received one submission on local authority employment matters. These included the absence of a peak employer body for the sector, strengthening of the ‘good employer’ requirement, possible council role in shaping employment relations policies to guide the chief executive, and provisions relating to transfers of undertakings to council-controlled organisations.

We also received a submission on the provisions relating to reappointment of the chief executive. In addition, we discussed employment matters, including this latter issue, with LGNZ and SOLGM.
4.13.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A local authority must act in accordance with the following governance principles:</td>
<td>• Local authority required to operate a personnel policy that complies with 'good employer' principle containing provisions generally accepted as necessary for the fair and proper treatment of employees</td>
<td>• Provisions largely retained the status quo</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td>– a ‘good employer’</td>
<td>• Local authority must employ chief executive to undertake prescribed role including to employ staff</td>
<td>• Concerns about the impact of the 5-year limit on:</td>
<td>• Review employment roles and responsibilities</td>
</tr>
<tr>
<td>– relationship between elected members and management is effective and understood</td>
<td>• Chief executive may not be appointed for more than 5 years but may be reappointed for further 2 years subject to completion of a performance review</td>
<td>– employment relationship between local authority and chief executive</td>
<td>• Provide for reappointment of chief executive for further 5 years without need for advertising</td>
</tr>
</tbody>
</table>

4.13.4 Analysis

In line with the principle for the local authority to be a ‘good employer’, clause 36 of Schedule 7 of the Act sets out the following provisions as being generally accepted for the fair and proper treatment of employees:

- good and safe working conditions
- an equal employment opportunities programme
- impartial appointments of staff and appointment on merit
- recognition of the aims, aspirations and employment requirements of Māori and the need for greater involvement of Māori in local government employment
- opportunities for enhancement of abilities
- recognition of the aims, aspirations and cultural differences of ethnic and minority groups
- recognition of the employment requirements of women
- recognition of the employment requirements of persons with disabilities
- local authorities ensure that employees maintain proper standards of integrity, conduct, and concern for the public interest.

These provisions are identical to requirements for government departments under the State Sector Act and Crown entities under the Crown Entities Act.

The Local Government Act does not include a specific employment relations regime for local government. It merely imposes a ‘good employer’ requirement (as does the Crown Entities Act). The general employment relations legislation applies including the Employment Relations Act, health and safety legislation and parental leave legislation.

There does not appear to us to be a compelling argument to change this situation. We do not, for example, see the need to strengthen the ‘good employer’ provisions by specific reference to a requirement for the employer to act in good faith which would duplicate the Employment Relations Act.

The submission also suggested a change to deal with transfer of undertakings from a local authority to a council-controlled organisation. It suggested a provision to protect existing terms and conditions for employees who move to the council-controlled organisation.

The Employment Relations Act applies to all employers including local authorities. It requires collective and individual agreements to contain an ‘employee protection’ provision to apply to restructuring
situations where employees transfer to a new employer. Such a provision must include provisions relating to whether affected employees will transfer on the same terms and conditions of employment.

We received one submission suggesting that the requirement to advertise the position of chief executive after five years was contrary to the philosophy of the Local Government Act which emphasised democratic local decision-making. It considered that:

- the mandatory requirement was unnecessarily restrictive, created uncertainty, and was unsettling
- the concept of the LTCCP meant that a longer term view of leadership was appropriate
- local authorities should have the discretion every five years to either reappoint or advertise the position.

We discussed this issue with both LGNZ and SOLGM. LGNZ advised us 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 current 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.

The current provisions were put in place against a background of similar changes to arrangements for central government. Section 35 of the State Sector Act provides for appointment of state sector chief executives for a five-year term, with provision for reappointment for a further term. In practice, reappointments are often of shorter duration (for example, two or three years).

The five-year term and the provision for an extension of two years for local authority chief executives is effectively a balance between:

- *flexibility and renewal*: the value of having an ability to ‘change horses’ (for example to get a person with different skills and attributes or new energy and direction) where there are no grounds for dismissal
- *stability*: the value of experience for the local authority, personal job security for chief executives and giving enough security to make the job attractive to potential candidates.

The provisions relating to local authority chief executives are also recognition of the fact that there is no equivalent agency able to perform the function of the State Services Commissioner in assessing the performance of state sector chief executives. In the absence of such a competent and independent agency, local authorities are required to assess incumbent chief executive performance against the market.

We noted that the Governance Know How Guide provided local authorities with good practice guidance on employment and performance management of chief executives. More recently LGNZ has published guidance material for local authorities on hiring of and relationships with the chief executive. We believe such guidance to local authorities should address concerns in this area.

In the absence of strong sector-wide calls for statutory change, we make no recommendations for change in this area.

_We recommend no change to the Local Government Act relating to local authority employment provisions including those applying to chief executives._

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13 The Knowhow Guide to Governance under the Local Government Act 2002 jointly prepared by SOLGM, LGNZ and the Department of Internal Affairs.

14 Guide for local authorities on hiring and managing relationships with the chief executive prepared by LGNZ dated March 2008.
4.14 Summary of areas for improvement

4.14.1 Where improvements need to be made

Based on the analysis presented in this chapter, 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

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

Note: ✓✓ signifies issues we believe require priority attention
4.14.2 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

<table>
<thead>
<tr>
<th>Provision</th>
<th>Amendments</th>
<th>Good practice development and dissemination</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Substantive</td>
<td>Technical</td>
</tr>
<tr>
<td>Relations between regional councils and territorial authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• triennial agreement</td>
<td>✓</td>
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</tr>
<tr>
<td>• significant new activities</td>
<td>✓</td>
<td></td>
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<tr>
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<tr>
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<tr>
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<td>✓</td>
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<td>• other restrictions</td>
<td>✓</td>
<td></td>
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<tr>
<td>Regulatory/enforcement/coercive powers</td>
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<tr>
<td>• bylaw-making powers</td>
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<tr>
<td>• enforcement powers</td>
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<td></td>
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</tr>
<tr>
<td>Remaining LGA 1974 provisions</td>
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<tr>
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<tr>
<td>Reorganisation of local authorities</td>
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</tr>
<tr>
<td>Local authority governance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• delegations</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Elected members</td>
<td></td>
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</tr>
<tr>
<td>• declarations</td>
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</tr>
<tr>
<td>• codes of conduct</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>• conflicts of interest</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Community boards</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
Chapter 5

Democratic Local Government

How well do current arrangements provide for democratic representation for local communities and for facilitating public confidence and understanding in electoral processes?
This chapter addresses the above question in relation to the purpose and principles of the Local Electoral Act.

The purpose of the Act 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 in certain specified areas.

This purpose needs to be assessed 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’.

The key issues are addressed in relation to a continuum from ‘diversity through local decision-making’ at one end to ‘comprehensive uniform requirements and implementation’ at the other.

The issues addressed in this chapter are:

5.1 The electoral system for local elections
5.2 Separate Māori representation
5.3 Representation arrangements
5.4 The representation review process
5.5 Candidate issues
5.6 Elector issues
5.7 The appointment and role of the electoral officer
5.8 The conduct of local elections and polls.

The chapter concludes with a summary of the areas where the operation of the Local Electoral Act could be improved and how this could be best achieved.
5.1 The electoral system for local elections

5.1.1 Purpose
Sections 27 to 34 of the Local Electoral Act provide for local authorities and communities to choose between the first past the post (FPP) or the single transferable vote (STV) electoral system. Local choice of electoral system can be achieved either by local authority resolution or a poll of electors. In addition, the New Zealand Public Health and Disability Act provides that district health board elections are to be conducted in conjunction with local authority elections using STV.

5.1.2 Submissions
We received three submissions on the provisions relating to local choice for the electoral system calling for:

• a uniform system for local authority elections and it be FPP
• STV and at large elections be abandoned for district health boards
• research to be carried out on the impact that different electoral systems on one voting document could have on voter behaviour.

We also noted the recommendations of the Justice and Electoral Committee on this issue arising out of its inquiry into the 2004 local elections. The Committee’s recommendations are set out in full in Appendix 2.

We address the issues as follows:

1. Advantages and disadvantages of STV and FPP
2. The impact of local choice of the electoral system
3. Options
4. Education and information on electoral systems
5. Technical amendments.

5.1.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Fair and effective representation for individuals and communities</td>
<td>• Diversity through local decision-making on the electoral system i.e. each local authority/ community has choice of FPP or STV</td>
<td>• A strong likelihood electors will face dual electoral systems given electors vote in local council, regional council, DHB (and possibly licensing trust) elections</td>
<td>• Legislative status quo along with further good practice guidance and education/awareness initiatives</td>
</tr>
<tr>
<td>• Public confidence in, and understanding of, local electoral processes</td>
<td>• DHB elections to be held in conjunction with local authority elections using STV</td>
<td>• Dual systems even more likely given DHB elections have to be held at the same time using STV</td>
<td>• Remove STV option i.e. FPP mandatory for all local elections (including DHBs)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Dual systems can be seen to add complexity to local elections with possible impact on voter turnout/informal votes</td>
<td>• Make STV mandatory for all local elections</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Require a regional consensus on electoral system (including DHBs)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Hold DHB elections separately</td>
</tr>
</tbody>
</table>
5.1.4 Analysis

1. Advantages and disadvantages of STV and FPP

The advantages of STV relate to its potential to enhance representation and include:

- the provision of proportional representation in multi-member wards/constituencies that may result in increased voter turnout
- the provision of majority preference results in single-member ward/constituency elections
- reduction in the number of ‘wasted’ votes (i.e. votes that do not contribute to the election of any candidate).

The disadvantages of STV include:

- its relative unfamiliarity to New Zealand electors
- its perceived complexity in comparison to FPP
- less immediately available information on the popularity of candidates from published election results (i.e. all successful candidates gain same quota of votes)
- the need for computer counting (for NZSTV) requiring different risk mitigation strategies (i.e. cannot use manual counting as a backup).

The advantages of FPP include:

- electors’ familiarity/understanding
- simplicity of the system
- the immediately available information from published election results.

The disadvantages of FPP include:

- no proportional representation
- majority outcomes unlikely in single-member elections
- possible exaggeration of election majorities particularly of parties or groups
- more ‘wasted’ votes.

2. The impact of local choice of the electoral system

STV and FPP were used together for the first time in 2004 and again at the 2007 local elections. We undertook an analysis of the impact of having dual systems in relation to:

- elector behaviour and particularly in terms of voter turnout and the incidence of informal and blank voting documents
- electoral outcomes in terms of the diversity of representation.

With the exception of the 1998 elections, local authority election turnout in New Zealand has gradually declined since 1989. This was when mandatory postal voting was introduced following the major reorganisation of local government. The decline in turnout is in line with international experience.

One of the factors identified internationally that may be seen to affect voter turnout is the presence or absence of proportional representation. This is on the basis that if electors believe they are truly able to influence the outcome of an election and ‘their’ candidate has a reasonable chance of being elected, they are more likely to vote.

The potential benefits of proportional representation (in this case STV) may be undermined, however, when:

- there are insufficient positions in wards/constituencies to allow for proportional representation to occur (the minimum desirable number of positions is three but preferably it is five to seven)
- there is insufficient diversity of candidates
- not all local communities turn out equally to vote
- voters have inadequate understanding of how to vote to achieve their desired outcomes.

What was the experience in terms of voter turnout in 2004 and 2007?
In 2004, ten local councils used STV (Kaipara, Papakura, Matamata-Piako, Thames-Coromandel, Kapiti Coast, Porirua, Wellington, Marlborough, Dunedin and the Chatham Islands). In 2007, eight councils used STV (the same councils as in 2004 apart from Papakura and Matamata-Piako).

<table>
<thead>
<tr>
<th>Council</th>
<th>2001</th>
<th>2004</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>All districts</td>
<td>57%</td>
<td>51%</td>
<td>49%</td>
</tr>
<tr>
<td>Kaipara</td>
<td>56%</td>
<td>51%</td>
<td>43%</td>
</tr>
<tr>
<td>Papakura</td>
<td>42%</td>
<td>40%</td>
<td>35%*</td>
</tr>
<tr>
<td>Matamata-Piako</td>
<td>52%</td>
<td>42%</td>
<td>42%*</td>
</tr>
<tr>
<td>Thames-Coromandel</td>
<td>61%</td>
<td>56%</td>
<td>53%</td>
</tr>
<tr>
<td>Kapiti Coast</td>
<td>63%</td>
<td>51%</td>
<td>53%</td>
</tr>
<tr>
<td>Marlborough</td>
<td>66%</td>
<td>62%</td>
<td>52%</td>
</tr>
<tr>
<td>Chatham Islands</td>
<td>No election</td>
<td>68%</td>
<td>No election</td>
</tr>
<tr>
<td>All cities</td>
<td>45%</td>
<td>43%</td>
<td>40%</td>
</tr>
<tr>
<td>Porirua</td>
<td>43%</td>
<td>43%</td>
<td>39%</td>
</tr>
<tr>
<td>Wellington</td>
<td>48%</td>
<td>42%</td>
<td>39%</td>
</tr>
<tr>
<td>Dunedin</td>
<td>54%</td>
<td>53%</td>
<td>47%</td>
</tr>
<tr>
<td>All district health boards</td>
<td>50%</td>
<td>46%</td>
<td>43%</td>
</tr>
</tbody>
</table>

*FPP election

The above table shows that some of the STV councils had turnout figures above the national average and some below. It is not possible to draw definitive conclusions, positive or negative, on the impact of STV on voter turnout as a result of the 2004 and 2007 elections. This is because of:

- the limited size of the sample of STV councils
- the newness of STV to New Zealand and as a result the limited time electors have had to familiarise themselves with the system and the opportunities that proportional representation provides
- the number of factors that can impact on voter turnout at an election including the size and nature of the district, the existence of a mayoral contest, and particular issues which may impact on an election.

There is a perception that STV is a more complex voting system than FPP. This can be analysed by the numbers of blank or informal\(^1\) voting documents.

Before 2004, there was no requirement for electoral officers to separately record blank and informal voting documents. These were often combined in one statistic of ‘informal’ voting documents. Sometimes the number of blank voting documents was not recorded. The following table showing the percentage of blank and informal voting documents since 1989 should be read in this context. In comparing the 2004 and 2007 figures (i.e. since STV was introduced) with earlier elections, it should also be noted that the 2001 figure was an historical low.

---

\(^1\) An informal STV voting document is one not issued by the electoral officer or it does not contain a unique first preference.
While STV may be seen to be more complex than FPP in terms of understanding how votes are counted, surveys suggest that voters do not support this contention in relation to STV voting. The post-election survey undertaken for the Commission showed that a large majority of respondents (79%) who had heard of STV and voted in the district health board elections found the system “easy to understand and use”. Also 84% agreed or strongly agreed “it was easy to fill in the form and rank the candidates”.

The following analysis is based on statistics collated by the Department of Internal Affairs as part of its regular survey of local elections. It also draws on data from a study undertaken for the Commission on the incidence of blank and informal voting documents in a sample of 2007 local elections.

The Commission study identified the following forms of informal STV voting:

- voted separately in each column of candidates
- used only 1’s and 2’s in separate columns
- used only 1’s and 2’s
- no first preference
- more than one first preference
- used more than one tick (N.B. a single tick is deemed to be a unique first preference)
- used candidate number
- other.

The percentages of blank and informal voting documents at the 2004 and 2007 elections were as follows:

| TERRITORIAL AUTHORITY AND DISTRICT HEALTH BOARD BLANK AND INFORMAL VOTING DOCUMENTS |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| % of blank voting documents     | 3.1%             | 3.1%             | 3.0%             | 2.9%             | 8.0%             | 8.9%             |
| % of informal voting documents  | 0.3%             | 0.4%             | 1.6%             | 0.9%             | 6.6%             | 8.2%             |

Clearly a proportion of voters have found it more difficult to cast a valid vote in STV elections. This is not surprising given the relative novelty of STV whereas the methodology of FPP voting is now well ingrained with voters. While better understanding of STV voting can be expected over time, it would be beneficial to have an enhanced education campaign (addressed below).

---

2 Sample comprised 259 (42.18%) of total contested elections covering mayoral, local council, community board, licensing trust, regional council and district health board elections. The sample comprised 209 (40.58%) FPP elections and 50 (58.14%) STV elections. The study included examination of voting documents from the following four local councils: Christchurch, Marlborough, Waitakere and Wellington.
The main concern appears to be not with the complexity of STV per se, but with related factors of the following:

- the need for many voters to change between STV and FPP on the same voting document
- the number of candidates and consequently the format of the voting document
- placement on the voting document of the STV election issue(s).

Both the Departmental and Commission studies confirmed that the incidence of informal voting was greatest in certain categories of election. In relation to voters having to switch between STV and FPP, the incidence of blank and informal voting documents can be analysed between:

- **fully STV** areas (Kaipara where there was no regional council election in 2004 or 2007, Kapiti Coast in 2004 for the same reason, and Marlborough where there is no regional council3)
- **mostly STV** areas (Thames-Coromandel, Kapiti Coast in 2007 only, Porirua, Wellington, Dunedin where the district/city council and district health board elections were STV and only the regional council election was FPP)
- **mostly FPP** areas (all other districts/cities where the only STV election was for the district health board).

### Blank and Informal Voting Documents for Fully and Mostly STV Councils and Mostly FPP Councils

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fully STV</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kaipara</td>
<td>2%</td>
<td>1.58%</td>
<td>1.73%</td>
<td>1.71%</td>
</tr>
<tr>
<td>Kapiti Coast</td>
<td>5%</td>
<td>2.45%</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Marlborough</td>
<td>2%</td>
<td>1.25%</td>
<td>3.46%</td>
<td>0.63%</td>
</tr>
<tr>
<td>Chatham Islands</td>
<td>0%</td>
<td>0.40%</td>
<td>No election</td>
<td>No election</td>
</tr>
<tr>
<td><strong>Mostly STV</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Papakura</td>
<td>3%</td>
<td>1.63%</td>
<td>FPP election</td>
<td>FPP election</td>
</tr>
<tr>
<td>Matamata-Piako</td>
<td>1%</td>
<td>2.37%</td>
<td>FPP election</td>
<td>FPP election</td>
</tr>
<tr>
<td>Thames-Coromandel</td>
<td>3%</td>
<td>1.23%</td>
<td>2.66%</td>
<td>1.03%</td>
</tr>
<tr>
<td>Kapiti Coast</td>
<td>NA</td>
<td>NA</td>
<td>4.42%</td>
<td>0.47%</td>
</tr>
<tr>
<td>Porirua</td>
<td>3%</td>
<td>2.76%</td>
<td>1.57%</td>
<td>1.61%</td>
</tr>
<tr>
<td>Wellington</td>
<td>3%</td>
<td>1.05%</td>
<td>2.81%</td>
<td>0.94%</td>
</tr>
<tr>
<td>Dunedin</td>
<td>4%</td>
<td>1.41%</td>
<td>2.81%</td>
<td>0.80%</td>
</tr>
<tr>
<td><strong>Mostly FPP</strong></td>
<td>3.16%</td>
<td>0.35%</td>
<td>3.08%</td>
<td>0.38%</td>
</tr>
</tbody>
</table>

---

3 The Chatham Islands Council is also a fully STV council but had no election for the council in 2007.
In mostly STV areas the impact of dual electoral systems was marked in relation to regional councils, particularly in 2007.

**BLANK AND INFORMAL VOTING DOCUMENTS FOR REGIONAL COUNCILS**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional councils with no STV territorial authorities</td>
<td>7.46%</td>
<td>0.16%</td>
<td>7.65%</td>
<td>0.32%</td>
</tr>
<tr>
<td>Regional councils with STV territorial authorities</td>
<td>7.90%</td>
<td>0.62%</td>
<td>7.71%</td>
<td>2.97%</td>
</tr>
</tbody>
</table>

The incidence of blank and informal voting documents for Greater Wellington Regional Council reflected the impact of dual electoral systems even more graphically. The Council’s six constituencies can be divided into three groupings with one grouping (Wellington, Porirua, Kapiti Coast) being mostly STV (i.e. only the Greater Wellington Regional Council election being FPP) whereas the other two groupings (Hutt Valley and Wairarapa) were mostly FPP (i.e. only the district health board being STV).

**GREATER WELLINGTON REGIONAL COUNCIL BLANK AND INFORMAL VOTING DOCUMENTS**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellington/Porirua/ Kapiti Coast</td>
<td>6.32%</td>
<td>1.24%</td>
<td>7.47%</td>
<td>6.41%</td>
</tr>
<tr>
<td>Hutt Valley</td>
<td>5.31%</td>
<td>0.10%</td>
<td>6.57%</td>
<td>0.06%</td>
</tr>
<tr>
<td>Wairarapa</td>
<td>5.00%</td>
<td>0.30%</td>
<td>8.50%</td>
<td>0.10%</td>
</tr>
</tbody>
</table>

Given all 21 district health boards are required to use STV, the incidence of blank and informal voting documents under STV is best analysed generally in relation to district health board elections. The incidence may be higher given district health board elections are always for seven positions and in most cases candidates will be less well-known than mayoral and council candidates. Also the district health board election issue is generally at the end of the voting document.

The incidence of blank and informal voting documents is analysed below in terms of:
- the size of the district health board area
- the number of candidates.

District health boards can be divided into large and small with a population of 150,000 being the dividing line\(^4\). The incidence of blank and informal voting documents was as follows:

**BLANK AND INFORMAL VOTING DOCUMENTS FOR LARGE AND SMALL DISTRICT HEALTH BOARDS**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Large DHBs</td>
<td>9.50%</td>
<td>7.08%</td>
<td>9.83%</td>
<td>8.84%</td>
</tr>
<tr>
<td>Small DHBs</td>
<td>4.70%</td>
<td>5.45%</td>
<td>7.05%</td>
<td>6.97%</td>
</tr>
</tbody>
</table>

\(^4\) Nine district health boards are large (Waitemata, Auckland, Counties-Manukau, Waikato, Bay of Plenty, Mid Central, Capital and Coast, Canterbury and Otago) and the remaining 12 are small (Northland, Tairawhiti, Lakes, Hawke’s Bay, Taranaki, Whanganui, Wairarapa, Hutt, Marlborough, West Coast, South Canterbury and Southland).
The higher percentages of blank and informal voting documents in large district health boards are likely to be explained by the fact that large populations reflect greater social diversity, for example with ethnicity and language, less knowledge of candidates and also less civic engagement. District health boards that were at the high and the low end of the range in the number and percentage of blank and informal voting documents were:

- Auckland District Health Board (27 candidates): 16,805 (14.92%) blank and 15,134 (13.43%) informal voting documents
- West Coast District Health Board (24 candidates): 503 (3.91%) blank and 760 (5.91%) informal voting documents.

The size of the board is also likely to have a relationship to the number of candidates. The number of candidates, particularly given district health board elections are held at large for seven positions, is in turn likely to be a factor in determining whether an elector is motivated to vote at all or cast a valid vote.

### BLANK AND INFORMAL VOTING DOCUMENTS AND NUMBER OF CANDIDATES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;16</td>
<td>5.83%</td>
<td>5.62%</td>
<td>7.65%</td>
<td>3.59%</td>
</tr>
<tr>
<td>16-20</td>
<td>5.69%</td>
<td>4.77%</td>
<td>7.93%</td>
<td>7.84%</td>
</tr>
<tr>
<td>21-25</td>
<td>5.38%</td>
<td>5.39%</td>
<td>9.41%</td>
<td>8.04%</td>
</tr>
<tr>
<td>&gt;25</td>
<td>9.03%</td>
<td>7.17%</td>
<td>10.01%</td>
<td>10.64%</td>
</tr>
</tbody>
</table>

The categorisation of district health boards into those with candidates listed in one column on the voting document and those listed in two columns, was as follows:

### BLANK AND INFORMAL VOTING DOCUMENTS AND COLUMNS OF CANDIDATES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>in 1 column</td>
<td>6.30%</td>
<td>5.01%</td>
<td>8.00%</td>
<td>4.63%</td>
</tr>
<tr>
<td>in 2 columns</td>
<td>8.65%</td>
<td>7.16%</td>
<td>9.30%</td>
<td>9.60%</td>
</tr>
</tbody>
</table>

The 2007 figures for informal voting documents may in part reflect changed STV voting instructions. This particularly relates to the reference in instructions on voting documents in 2007 to “1, 2 and so on” in relation to preferences for candidates, as opposed to “1, 2, 3 and so on” in 2004.

The incidence of blank and informal voting documents associated with two columns of candidates is not unique to STV elections. In the FPP election for the Henderson Ward of Waitakere City, there were 25 candidates in two columns. This ward had an informal votes rate of 2.6% while the other three wards in the city all had rates less than 1%.

In summary, this data confirms that while there is a small proportion of electors who have difficulty with the concept of STV voting itself, the incidence of blank and informal voting documents increases significantly in certain circumstances:

- where more than one electoral system is used on the same voting document and particularly in either an STV or FPP election where the remainder of the voting document uses the other electoral system
- where the size of population is large (likely to translate into more diversity, less knowledge of candidates and less engagement in community activities such as elections)
- where there is a large number of candidates (particularly where this requires more than one column on the voting document).
Finally, we analysed the impact of local choice of electoral system in relation to diversity of representation. The ten councils that used STV in 2004 comprised a range of large metropolitan cities, medium and small districts. All districts had wards with the exception of the Chatham Islands, with Kapiti Coast District having a mix of at large and wards.

The diversity of representation will depend firstly on the number and diversity of candidates standing at the election. For the ten councils that used STV in either or both 2004 and 2007, and for district health boards, the numbers of candidates per position were as follows:

<table>
<thead>
<tr>
<th>NUMBER OF CANDIDATES PER POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>All districts</strong></td>
</tr>
<tr>
<td>2001</td>
</tr>
<tr>
<td>2.0</td>
</tr>
<tr>
<td>2.0</td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>2.2</td>
</tr>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>2007</td>
</tr>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>Kaipara</td>
</tr>
<tr>
<td>2.5</td>
</tr>
<tr>
<td>2.2</td>
</tr>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>Papakura</td>
</tr>
<tr>
<td>2.5</td>
</tr>
<tr>
<td>2.9</td>
</tr>
<tr>
<td>2.5*</td>
</tr>
<tr>
<td>Matamata-Piako</td>
</tr>
<tr>
<td>2.0</td>
</tr>
<tr>
<td>1.9</td>
</tr>
<tr>
<td>2.3*</td>
</tr>
<tr>
<td>Thames-Coromandel</td>
</tr>
<tr>
<td>1.8</td>
</tr>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>2.6</td>
</tr>
<tr>
<td>Kapiti Coast</td>
</tr>
<tr>
<td>2.1</td>
</tr>
<tr>
<td>3.4</td>
</tr>
<tr>
<td>2.8</td>
</tr>
<tr>
<td>Marlborough</td>
</tr>
<tr>
<td>2.8</td>
</tr>
<tr>
<td>2.4</td>
</tr>
<tr>
<td>2.2</td>
</tr>
<tr>
<td>Chatham Islands</td>
</tr>
<tr>
<td>1.0</td>
</tr>
<tr>
<td>1.5</td>
</tr>
<tr>
<td>1.0</td>
</tr>
<tr>
<td><strong>All cities</strong></td>
</tr>
<tr>
<td>2001</td>
</tr>
<tr>
<td>2.7</td>
</tr>
<tr>
<td>2.7</td>
</tr>
<tr>
<td>3.0</td>
</tr>
<tr>
<td>Porirua</td>
</tr>
<tr>
<td>1.7</td>
</tr>
<tr>
<td>2.2</td>
</tr>
<tr>
<td>1.8</td>
</tr>
<tr>
<td>Wellington</td>
</tr>
<tr>
<td>2.9</td>
</tr>
<tr>
<td>2.6</td>
</tr>
<tr>
<td>2.7</td>
</tr>
<tr>
<td>Dunedin</td>
</tr>
<tr>
<td>1.5</td>
</tr>
<tr>
<td>2.6</td>
</tr>
<tr>
<td>3.1</td>
</tr>
<tr>
<td><strong>All district health boards</strong></td>
</tr>
<tr>
<td>2001</td>
</tr>
<tr>
<td>7.4</td>
</tr>
<tr>
<td>3.5</td>
</tr>
<tr>
<td>2.92</td>
</tr>
<tr>
<td>* FPP election</td>
</tr>
</tbody>
</table>

Appendix 12 provides some details about the make-up of the ten councils that have used STV. There appears to have been some change in the gender, ethnicity and age characteristics of members of some of these councils which may, at least in part, be attributable to STV. However, the majority of members continue to be Pākehā males in their 50s or 60s. Increased diversity of membership may be expected in the future as the nature and opportunities of STV become more familiar to the public.

The Ministry of Health did an analysis of the diversity of representation of successful district health board candidates. This showed increases in the number of elected Māori and Pasifika members as follows:

<table>
<thead>
<tr>
<th>MĀORI AND PACIFIC ISLAND DISTRICT HEALTH BOARD MEMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>2001</strong></td>
</tr>
<tr>
<td><strong>2004</strong></td>
</tr>
<tr>
<td><strong>2007</strong></td>
</tr>
<tr>
<td>Māori members</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>Pasifika members</td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>2</td>
</tr>
</tbody>
</table>

In addition, there have been changes in the geographical spread of successful candidates in district health board areas between 2001, when district health board elections were conducted by constituencies using FPP, and 2007. Based on the 76 constituencies used in 2001, 28 (37%) had fewer representatives, 27 (35%) had the same number of representatives, and 21 (28%) had more representatives.
3. Options

A large majority (82%) of respondents in our 2007 post-election survey (excluding Marlborough respondents as they only use one electoral system) indicated that they preferred that one electoral system be used for all local elections. Despite this overwhelming preference, the survey showed divided opinion over whether having two systems is confusing. Just over half (52%) considered having two systems was confusing (either "very confusing" or "quite confusing") while 46% said it was "not confusing at all".

The analysis in this report reflects a similarly equivocal position on the impact of a second electoral system. It is not possible, after just two elections, to identify a significant impact, either positive or negative, on voter turnout from the introduction of STV. This is not surprising given the range of factors that can impact on turnout at a particular election. STV appears also to have not had a significant impact on the number of candidates standing for election.

The incidence of blank and informal voting documents has increased with the introduction of STV and is higher in district health board elections. The incidence of informal voting appears to be more common in areas where the two electoral systems are operating in tandem rather than a reflection of the complexity of STV voting. It was also more common in areas where the number of candidates required more than one column on the voting document.

The attractiveness of STV, as a form of proportional representation, lies in its potential to enhance representation. This has the benefits not only of fairer representation but also the potential to improve engagement with the council or district health board. Engagement may be improved in terms of both the diversity of people standing for election and also voter turnout, given a perception of enhanced ability to have an impact on electoral outcomes.

Respondents to our 2007 post-election survey identified this potential of STV when indicating (without prompting with possible answers) the top three reasons for preferring STV. These were:

- "it is more representative" (22%)
- "it is fairer/more democratic" (21%)
- "it gives you more choices/options of people you want/more flexibility in voting" (18%).

On the other hand, the three most common responses of those who preferred FPP were:

- "it is simple/easy to vote" (42%)
- "you can just pick one candidate/don't have to rank" (26%)
- "STV is too complicated" (11%).

STV has the potential to enhance representation at the local level and to encourage engagement. We presume this is the reason that the New Zealand Labour Party included its use as an option for councils in its 1999 election manifesto. To date, after just two elections, its potential has not been fully realised.

We noted that the significant delays experienced by one service provider in 2004 in processing STV voting documents and announcing results did not recur in 2007. We also noted that the nature of STV meant a number of electoral officers in 2007 preferred to announce full preliminary STV election results as opposed to partial or progress results. This meant marginally longer times for the announcement of results in some areas. These factors are process issues and we believe should not be seen as compelling arguments in the debate on the merits of STV for enhancing local representation.

In light of the experience of two elections using STV, we identified the following options:

- **option 1**: retaining the legislative status quo but with enhanced education and awareness initiatives relating to STV
- **option 2**: removing the STV option i.e. FPP would be mandatory for all local elections including district health boards
- **option 3**: making STV mandatory for all local elections
- **option 4**: requiring a regional consensus, by way of poll, on the electoral system to be used in each region including district health boards
- **option 5**: holding of district health board elections separately.
We agree that STV has the potential to enhance local representation and engagement although this has not yet been fully realised. We therefore do not support option 2 (removal of STV option) which would also be contrary to Government policy relating to district health boards. The 2007 post-election survey showed that, of all respondents who had heard of STV, 60% indicated they preferred FPP but there was still a significant level of support (33%) for STV.

We believe there is not wide enough public understanding and acceptance of STV, at this time, to support option 3 (STV mandatory). The resources and time necessary for an effective nation-wide education and publicity campaign makes this a possible option following the 2010 local elections. We noted that councils have the opportunity to make decisions about the electoral system again in September 2008 and representation reviews (including the number and size of wards/constituencies) will need to be carried out in a number of areas in 2009. As a result, there is sufficient time to undertake an enhanced but still limited campaign prior to the 2010 elections.

**Option 4** (requirement for a regional consensus on the electoral system to be used for all elections in a region) while appealing, has significant practical difficulties given overlapping council and district health board boundaries. There are only two (out of 12) local government regions and one unitary authority that fully encompass whole territorial authority districts and district health board areas. As a result, in many areas electors could still be faced with dual electoral systems. It could also be contrary to current Government policy of all district health board elections being conducted using STV. However, a degree of regional local government consistency is still desirable and could be encouraged on a voluntary basis under option 1 for example. A mechanism to achieve some regional consistency is the required triennial agreement between regional councils and the territorial authorities in that region. We have made recommendations on this matter in Chapter 4.

**Option 5** (holding district health board elections separately) is supported by some in local government and could result in ‘simpler’ local elections. However, dual electoral systems could still remain a fact in council elections if the STV/FPP option remains for councils.

There are limited options to where district health board elections may be moved in the common three-yearly parliamentary and local election cycle. If they were moved to another year, that would result in elections being held every year (i.e. parliamentary, local government and district health board successively). This may have a negative impact on voter turnout for all elections i.e. voter fatigue. Holding district health board elections separately would also have significant cost implications for the Crown given the savings that are gained from conducting district health board elections in conjunction with council elections. For these reasons we do not support option 5.

We believe, ideally, electors should not have to face dual electoral systems. Our analysis suggests that there is a negative impact from having dual electoral systems on the same voting document. The incidence of blank and informal voting documents relates, in part, to voters having to change between the two electoral systems on one voting document rather than the nature of STV itself.

While STV has the potential to enhance representation and engagement, we do not believe it has wide enough public support at this time for it to be made mandatory. We believe more education on the advantages and disadvantages of FPP and STV is necessary before a decision is made on the preferred option. In the meantime we recommend local discretion on the choice of electoral systems be retained.

**We recommend no change at this time to the Local Electoral Act relating to local choice of electoral system for local authority elections.**

4. **Education and information on electoral systems**

In 2005, two academic researchers from Massey University (Christine Cheyne and Margie Comrie) examined the way councils responded to the opportunity to choose between electoral systems for the 2004 local elections. They concluded that “local authorities utilised limited methods for consulting citizens about the STV option (and some did not undertake any consultation)” They also noted:

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“By far the majority of local authorities opted for the status quo. The main reasons given typically included the complexity of the voting system, lack of public understanding, the cost of running the elections and the dependence on technology for doing the count. These reasons, along with most of the council-initiated debate surrounding the STV option, are technocratic, ignoring the political concerns of improving representativeness or fairness of elections. Further, several of the reasons are highly contestable.”

Noted local government researcher Graham Bush has examined the merits and weaknesses of STV and reached a similar conclusion:

“Because STV is so markedly superior as regards the achieving of broad proportionality, equitable representation of minorities, and the reduction of wasted votes, opponents tend to concentrate on process arguments … Even after factoring in its downside, STV substantially outscores all other voting methods on an integrated assessment of the four critical criteria of proportionality, the constituency/councillor link, the minimisation of wasted votes, and the imposition of accountability”

Cheyne and Comrie were critical of the limited information provided to citizens by local authorities and central government. They contended that “with few local authorities undertaking consultation it fell to under-resourced community organisations to provide user-friendly information and stimulate debate”.

They argue that empowerment for local decision-making “requires appropriate and adequate public information as the basic prerequisite for meaningful citizen engagement and deliberation”.

In terms of the continuum between ‘diversity through local decision-making’ and ‘consistency from uniform national requirements’, Cheyne and Comrie concluded that “the Local Electoral Act accorded local flexibility higher priority than fairness through proportional representation”. They noted:

“Local authority decision-making is a goal that needs to be balanced with accountability, national consistency and equity. In decisions of importance an argument can be made for policy leadership by central government … (and) … an issue of such significance as the fairness and effectiveness of the system of local elections in our view warrants such policy leadership”.

We agree with this research that suggests, until such time as a decision is taken to use only one electoral system for all local elections, more resources could and should be provided by central government to ensure the STV option is given serious consideration by both local councils and communities.

We believe that the provision of good quality information to councils and communities on the respective advantages and disadvantages of the two electoral systems should now be a priority ahead of council resolutions and poll opportunities leading up to the 2010 local elections.

We recommend the development and dissemination of further good practice guidance relating to the provision of information to councils and communities on the advantages and disadvantages of the FPP and STV electoral systems.

We noted that the Justice and Electoral Committee in its 2004 inquiry made two recommendations relating to Government funding of a single agency to be responsible for “education and information on all electoral systems used in New Zealand” and for “improving voter turnout and awareness in general and local elections”. We address these related issues under the heading ‘voter turnout’ later in this chapter. We also address the issue of the quality of voting documents, including the quality of instructions and use of combined documents in association with the two electoral systems, later in this chapter.

5. Technical amendments

We recommend a technical amendment to section 27 of the Local Electoral Act. Despite an amendment in 2002, this section remains ambiguous as to whether a council that resolved to
change its electoral system is bound by that resolution for two elections, which was the intent of the amendment. This would have brought the provision into line with a change of electoral system taking place through a poll which clearly applies for two elections. As a result of the ambiguity, two councils (Papakura and Matamata-Piako District Councils) resolved to change back to FPP after just one election using STV. In order to mitigate public uncertainty and confusion, we believe it is desirable for councils to use a particular electoral system for at least two elections regardless of how it was adopted.

We recommend section 27 of the Local Electoral Act be amended to provide that a local authority resolution to adopt a particular electoral system applies for the following two triennial elections.

Secondly, we are aware that the term ‘voting system’ is frequently used interchangeably with ‘electoral system’ in discussion on STV and FPP. We believe the term ‘voting system’ more accurately describes STV or FPP and is more commonly used internationally. The term ‘electoral system’, on the other hand, more accurately refers to wider election systems and procedures.

We recommend that the Local Electoral Act be amended to replace the term ‘electoral system’ with ‘voting system’ in each instance in the Act.

5.2. Separate Māori representation

5.2.1 Purpose

Sections 19Z to 19ZH of the Local Electoral Act provide that local authorities and communities may choose to establish separate Māori wards or constituencies.

5.2.2 Submissions

We received no submissions on these provisions.

5.2.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Fair and effective representation for individuals and communities</td>
<td>• Diversity through local decision-making on representation arrangements i.e. each local authority/community has choice of separate Māori wards/constituencies</td>
<td>• No Māori wards/constituencies have been established under the Local Electoral Act</td>
<td>• Legislative status quo</td>
</tr>
<tr>
<td>• Public confidence in, and understanding of, local electoral processes</td>
<td>• 3 polls on issue rejected proposal</td>
<td>• Local Act adds degree of complexity to elections in Bay of Plenty region with little apparent impact on turnout or the number of candidates</td>
<td>• Remove Māori ward/constituency option</td>
</tr>
</tbody>
</table>

5.2.4 Analysis

The option of establishing Māori wards/constituencies is at the ‘diversity through local decision-making’ end of the continuum, subject only to there being sufficient electors on the parliamentary Māori roll in the district or region concerned.

We are aware that there have been calls for the statutory provisions relating to polls on the establishment of Māori wards/constituencies to be changed. In particular, the 5% threshold for the number of electors required to successfully demand a poll, should be reduced. The 5% threshold is the same as for demanding a poll on the electoral system.

Given the impact of establishing Māori wards/constituencies on the representation arrangements for the district or region concerned, we believe the 5% threshold is appropriate. We also noted that councils may themselves resolve to hold a poll on the issue thereby doing away with the need for electors to gather the required number of signatures.
A further related issue is whether any poll should be conducted over all electors of the district or region, or be restricted to those on the Māori roll as the electors who would be entitled to vote in any Māori ward/constituency actually established. Again given the impact of any such proposal on district or region-wide representation arrangements, we believe that the present provisions requiring the poll to be conducted over all electors are appropriate. We also noted that a significant number of Māori are not on the Māori roll and they too have a legitimate interest in this issue.

In the absence of submissions and the fact that no Māori wards/constituencies have been established under the Local Electoral Act; we have no further observations to make on these provisions.

As a result of the enactment of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act in 2001, three Māori constituencies have been established for Environment Bay of Plenty. Turnout and the number of candidates for the Council’s constituencies in 2007 and 2004 were as follows:

**TURNOUT AND CANDIDATES AT BAY OF PLENTY REGIONAL COUNCIL ELECTIONS IN 2004 AND 2007**

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern BoP</td>
<td>22,226 (22,527)</td>
<td>52.7% (-)</td>
<td>2 (2)</td>
<td>5 (2)</td>
<td>2.5 (1.0)</td>
</tr>
<tr>
<td>Kohi Māori</td>
<td>9,229 (8,860)</td>
<td>31.9% (30%)</td>
<td>1 (1)</td>
<td>2 (5)</td>
<td>2.0 (5.0)</td>
</tr>
<tr>
<td>Mauao Māori</td>
<td>8,718 (7,279)</td>
<td>(26%)</td>
<td>1 (1)</td>
<td>1 (5)</td>
<td>1.0 (5.0)</td>
</tr>
<tr>
<td>Okurei Māori</td>
<td>9,688 (8,941)</td>
<td>31.5% (36%)</td>
<td>1 (1)</td>
<td>3 (2)</td>
<td>3.0 (2.0)</td>
</tr>
<tr>
<td>Rotorua</td>
<td>32,322 (31,998)</td>
<td>47.2% (52%)</td>
<td>2 (3)</td>
<td>4 (5)</td>
<td>2.0 (1.7)</td>
</tr>
<tr>
<td>Tauranga</td>
<td>70,664 (61,172)</td>
<td>46.0% (48%)</td>
<td>4 (4)</td>
<td>9 (8)</td>
<td>2.3 (2.0)</td>
</tr>
<tr>
<td>Western BoP</td>
<td>27,659 (29,611)</td>
<td>38.6% (42%)</td>
<td>2 (2)</td>
<td>8 (7)</td>
<td>4.0 (3.5)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>180,576 (170,388)</strong></td>
<td><strong>44.4% (45%)</strong></td>
<td><strong>13 (14)</strong></td>
<td><strong>32 (33)</strong></td>
<td><strong>2.5 (2.4)</strong></td>
</tr>
</tbody>
</table>

*We recommend no change to the Local Electoral Act relating to establishment of Māori wards/constituencies.*

### 5.3 Representation arrangements

#### 5.3.1 Purpose

Part 1A of the Local Electoral Act sets out a range of statutory requirements relating to local authority representation arrangements covering: the basis of election, maximum number of members, community boards and achievement of fair and effective representation.

#### 5.3.2 Submissions

We received a number of submissions on the current statutory provisions relating to local authority representation arrangements. One related to the maximum number of regional council members. The majority of the submissions focused on the statutory provisions relating to fair representation.

The provision for fair representation is set out in section 19V of the Local Electoral Act and requires the ratio of population per member in each ward/constituency to be within +/-10% of the ratio of the population of the district or region divided by the total number of members (referred to here as the +/-10% rule). In summary, the suggestions made in submissions were:

- Allow scope for marginal adjustments to the population formula (i.e. +/-10% rule) to align electoral boundaries with communities of interest or broaden the formula to include other factors such as area and rateable value.
- Investigate the provision of further flexibility (in line with that for regional councils) including exceptions to +/-10% rule, definition of ‘isolation’ and recognition of council/community-identified communities of interest.
• Give consideration to other factors, for example, the total number of members, the nature of the district or region, governance requirements, the nature of rural/urban population distribution.
• Investigate other means to safeguard and balance fair and effective representation where these distort communities of interest.
• Encourage the establishment of wards to ensure fair and effective representation of communities.
• Provide for the requirements and process for regional councils to be the same as for territorial authorities.
• Investigate a methodology that will include non-resident ratepayers in representation calculations.

We also noted the recommendations of the Justice and Electoral Committee on representation arrangements arising out of its 2004 inquiry as set out in Appendix 2.

We address the issues as follows:
1. Basis of election
2. Maximum number of members
3. Community boards
4. Fair and effective representation.
### 5.3.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Fair and effective representation for individuals and communities</td>
<td>Diversity through local decision-making in territorial authorities on:</td>
<td>• Concerns raised about the balance between requirements for fair and effective representation including outcomes seen as:</td>
<td>• Legislative status quo along with further good practice guidance</td>
</tr>
<tr>
<td></td>
<td>• basis of election (wards/ at large/mix of both)</td>
<td>– resulting in division/inappropriate combinations of some communities of interest</td>
<td>• Increase the maximum number of regional council members</td>
</tr>
<tr>
<td></td>
<td>• number of members (range of 6 to 30 including the mayor)</td>
<td>• not taking account of number of members required to effectively represent diversity of district, recognise its geographical nature, address governance requirements</td>
<td>• Provide for more flexibility for fair representation and/or</td>
</tr>
<tr>
<td></td>
<td>• establishment of community boards to enhance representation of geographic communities of interest; subdivisions of communities; number of board members (range of 4 to 12, at least 4 elected) with majority to be elected; appointed members</td>
<td>– resulting in an undermining of public confidence (e.g. perceptions of under/unfair representation) with possible impact on participation</td>
<td>• Provide for objective measure of effective representation and/or</td>
</tr>
<tr>
<td></td>
<td>Uniform requirements on:</td>
<td>• Concerns raised about different legislative approach for territorial authorities and regional councils</td>
<td>• Prescribe all factors for determining representation arrangements</td>
</tr>
<tr>
<td></td>
<td>• mayor elected at large</td>
<td>• Concerns raised about different legislative approach for territorial authorities and regional councils</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• achievement of effective representation in relation to number/boundaries of wards, fair representation in relation to number of members (+/-10% rule with some exceptions)</td>
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<tr>
<td></td>
<td>Diversity through local decision-making in regional councils on:</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• number of members (range of 6 to 14)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Uniform requirements on:</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• basis of election (i.e. constituencies mandatory)</td>
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<td></td>
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<tr>
<td></td>
<td>• election of chairperson by the council</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• achievement of effective representation in relation to number/boundaries of constituencies, fair representation in relation to number of members (+/-10% rule with some exceptions)</td>
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</tbody>
</table>
5.3.4 Analysis

1. Basis of election

We received no submissions relating to the provisions on the basis of election. For territorial authorities, there is a choice between at large elections, wards or a mix of both. At the 2007 elections:

- eight councils were elected at large
- sixty councils were elected by wards
- five councils were elected by a mixed system.

Constituencies are mandatory for regional councils. This is on the basis of the size and diversity of the 12 regions coupled with the fact that most have a population dominated by one urban centre. If elections were to be held at large they would be likely to result in a domination of members from the urban centre. This would be even more exaggerated given the limit of 14 members for regional councils. For the same reason, chairs of regional councils are to be elected by the council itself and not by electors at large.

We recommend no change to the Local Electoral Act relating to the basis of election for local authorities (i.e. choice for territorial authorities of at large, wards or a mix of both and mandatory constituencies for regional councils).

2. Maximum number of members

The Local Electoral Act provides that territorial authorities may have between six and 30 members including the mayor (i.e. between five and 29 councillors) and regional councils between six and 14 members.

When the reforms of the late 1980s were implemented, the provision on the number of members was the same for both territorial authorities and regional councils i.e. between six and 30. The amended provision for regional councils was enacted in 1992 when the Government of the day determined to limit regional councils to a largely regulatory role.

The application of the +/-10% rule coupled with the limit of 14 members has caused concern in certain regions. The concerns relate to a perceived emphasis on fair representation (the +/-10% rule) at the expense of effective representation. The application of the +/-10% rule resulted, for example, in Environment Canterbury comprising eight members for the greater Christchurch area, with six representing the remainder of this large region, from Kaikoura in the north to Waitaki in the south. Based on present population projections this balance could well soon move to nine or ten members for the greater Christchurch area. This could further undermine provision of effective representation for the remainder of the region.

These concerns have led to a submission from LGNZ’s regional affairs committee proposing an increase to 15 in the maximum number of regional council members. No reason was provided for selecting the number of 15. It is difficult to provide a rationale for this as opposed to say 16 or 20, as in fact is now the case with the reduction in the maximum to 14 in 1992.

We were advised that the National Council of LGNZ had not considered the regional affairs committee’s submission. However, its official position was as stated in its submission on the Local Government Bill in 2002:

“While concerns may be raised about the potential cost of large councils we do not find this a convincing argument for capping the size of regional councils at 14. In order to provide equitable representation for communities within regions we believe that this cap should be increased to be consistent with that applying to territorial councils”.

The policy issue is whether it can be justified to apply a different maximum number of members for regional councils from that applying to territorial authorities. Territorial authorities cover a wide range of districts and cities: physically large and small, geographically diverse, with large and small populations, and with councils carrying out a wide range of functions. This has been seen for a long time as the reason to justify a wide range in the minimum and maximum number of members (i.e. between six and 30).
We see the conferring of general empowerment on regional councils (i.e. a wider role than regulation), as well as on territorial authorities, in 2002, as an argument for further consideration of the present limit regarding the maximum number of members for regional councils. Allowing more flexibility in numbers may also be useful for the Royal Commission on Auckland rather than possibly making a case for special provisions for the Auckland region.

However, there were no calls in submissions to return to the 1989 policy position of the same range in number of members for both territorial authorities and regional councils. We believe there may be some opposition to such a move in terms of the signal this may give. This is despite the fact that there is no obligation on councils to move towards the maximum and the actual number of elected members for all local authorities, excluding mayors, has steadily declined from a peak in 1989 of 1,213 to 926 in 2007. We noted also that while the maximum number of members for territorial authorities is 30, the largest actual number for a single territorial authority is 20 (Auckland City).

The present remuneration provisions are likely to be a further constraint on large increases in the number of regional council members if the limit were to be increased. These provide for a fixed remuneration ‘pot’ for the governance of the region or district regardless of the number of elected members.

A majority of us believe it would be inappropriate now to move the limit on the number of regional council members back to the 1989 position.

We recommend (by majority) an amendment to section 19D of the Local Electoral Act to provide that the maximum number of members for regional councils be 16.

3. Community boards

Territorial authorities and their communities have the option of establishing community boards. At the 2007 elections, 46 territorial authorities had one or more community board, giving a total of 143 boards nationally.

Amendments to the Local Electoral Act in 2002 required for the first time that all territorial authorities must consider establishing community boards as part of their review of representation arrangements. In addition, community boards may be established at any time under the Local Government Act. However, boards may only be disestablished as part of a representation review.

Another change introduced in 2002 provided for subdivision of communities for electoral purposes together with application of the +/-10% fair representation rule for any such subdivisions.

We received no submissions on these matters. We are aware, however, of a concern at the provision for disestablishment of a community board only as part of a representation review.

At the 2007 elections, a community board in one district attracted only one nomination for four positions. As required by the Local Electoral Act, the electoral officer gave further notice of the need for a by-election to fill the remaining three vacancies. This notice failed to attract any further nominations. As a result, the board comprised only one member of the required four.

In such circumstances a board is unable to meet as it would not have a quorum to consider appointments to the board as would normally be the case. Effectively the board becomes defunct. However, the council would only be able to disestablish the board as part of a representation review which may not otherwise be necessary for up to a further six years.

While in the case concerned it was decided to again call for nominations, we believe there should be provision for the disestablishment of a community board in similar circumstances, other than as part of a representation review.

We recommend provision in the Local Electoral Act for a territorial authority, subject to appropriate prior public notification, to seek the approval of the Local Government Commission for disestablishment of a community board with insufficient nominations at an election for a quorum to be formed.

We also noted that some territorial authorities appear to have given only cursory consideration to the establishment of community boards as part of their representation review. This is disappointing given the possibility of community boards enhancing representation in some areas where they do not currently exist.
We believe that active consideration of the option of establishing community boards to enhance representation of geographic communities should be an integral part of a council’s representation review process. We identify means of doing this later in the chapter.

4. Fair and effective representation

One of the Local Electoral Act principles is achievement of fair and effective representation for individuals and communities. This principle gives equal weight to both ‘fair’ and ‘effective’ representation.

There are concerns in the sector and some parts of the wider community that the objective measure for fair representation in the Act (i.e. the +/-10% rule) gives an inappropriate weighting to this requirement at the expense of effective representation of communities of interest. As noted, this matter was the subject of the majority of submissions on representation issues.

Councils’ concerns about this provision may be reflected in the level of non-compliance with the +/-10% rule:

- In 2004, of the 23 proposals appealed to the Commission, eight did not comply.
- In 2007, of the 36 proposals appealed to the Commission, 15 did not comply.

In addition, we are aware that three further determinations made by councils in 2007 did not comply but were not appealed to the Commission.

We believe that some consideration needs to be given to whether the Local Electoral Act allows for achievement of an appropriate balance between fair and effective representation. We are aware, for example, of some instances where rigorous implementation of the +/-10% rule has led to division of a recognised community of interest. One example was the 2004 placement of Reikorangi in the Otaki Ward of Kapiti Coast District. This was despite its recognised community of interest being with the Waikanae Ward through which one has to travel to get to Otaki. Other examples exist around the country.

Another example suggesting that further consideration of the implementation of the +/-10% rule would be useful, was the case of the West Coast Regional Council representation review in 2007. The Council proposed that one constituency have a ratio of population to members of 10.39%. Given this non-compliance (equating to 17 people), the Council’s proposal had to be referred to the Commission even though no appeals were received. The Commission concluded that an alteration to the constituency boundary (which coincided with a territorial authority boundary) to comply with the +/-10% rule would “not be appropriate or reasonable in this case, as it would create an arbitrary boundary alteration with the potential to split established communities of interest”.

While we believe some councils and interest groups have overplayed the extent of the problem with the +/-10% rule, we consider there is a need for some more flexibility in the Act when striving to achieve both fair and effective representation. Inflexibility in implementing the +/-10% rule may lead, in some cases, to artificial boundaries that do not correspond with recognised or accepted communities of interest. This can undermine public confidence and understanding with electors being unable to identify with the area concerned. This in turn could impact on public participation rates such as voter turnout, which can be exacerbated with constant changing of ward/constituency boundaries in fast growing areas to comply with the +/-10% rule.

We also believe that there are other factors beyond calculating the ratio of population to members that should be considered when seeking achievement of fair and effective representation. These factors include the electoral system to be used (as noted earlier STV is seen to operate best with at least three-member wards) and the total number of members needed. The latter needs to be considered in relation to the size and nature of the district or region. This is in order to provide effective representation and to meet particular governance requirements.

The Royal Commission on the Electoral System in 1986 identified “effective representation of minority and special interest groups” and “effective representation of constituents” as two of the criteria for judging voting systems. In relation to the first criterion, the Commission suggested that membership of an elected body should, among other things, “reflect other significant characteristics of the electorate, such as gender, ethnicity, socio-economic class, locality and age”. In relation to the second criterion, the Commission suggested that the voting system should encourage close links and accountability
between representatives and constituents.

We believe these criteria can be applied equally to local government. In short, we suggest that effective representation, including consideration of the total number of representatives required for effective representation, is equally important as a calculation of approximate equality in the numbers actually represented by each member.

With this in mind, we identified the following three options:

1. **option 1**: provide more flexibility around the requirement for achieving fair representation by allowing:
   - the +/-10% rule to apply ‘on average’ between particular wards/constituencies and/or
   - exceptions to the +/-10% rule subject to Commission approval (i.e. territorial authorities treated the same as regional councils)

2. **option 2**: provide an objective measure of effective representation by:
   - statutorily defining ‘effective representation’ and/or
   - prescribing minimum criteria for effective representation (for example maximum size wards or ratios of members to population)

3. **option 3**: prescribe all relevant factors to be considered in the decision-making process for representation arrangements including: identification of communities of interest, electoral system to be used, basis of election, total number of members required, requirements for fair and effective representation, and other relevant factors such as the existence of community boards.

**Option 1: more flexibility around requirement for fair representation**

We acknowledge that it was a specific policy decision to amend the previous provision relating to fair representation and make population the sole criterion for assessment. Previously, “if the circumstances so required”, regard could also be given to “rateable values, areas, or other relevant characteristics of the various constituencies or wards”.

We accept that population alone is an appropriate criterion for assessing the achievement of fair representation on the basis of approximating ‘one vote one value’. Accordingly, we do not recommend reinstating a provision allowing consideration of other factors as proposed in some submissions.

As noted, in the case of the West Coast Regional Council, scope to apply the +/-10% rule with a small amount of flexibility was both appropriate and reasonable in certain circumstances. Provision to ‘average’ the ratio for the two wards/constituencies affected would have allowed sufficient flexibility to achieve the desired outcome. Provision to average ratios of two adjoining wards would also have allowed the Reikorangi community to remain in the Waikanae Ward of Kapiti Coast District.

Given an averaging provision is an objective measure, councils could be empowered to apply such a provision without it having to be referred to the Commission for determination. We envisage such a provision being tightly defined and its use would be monitored by the Commission.

Any other exceptions to the application of the +/-10% rule (for both regional councils and territorial authorities) would have to be referred to the Commission for determination. We suggest some further flexibility in, and guidance on, exceptions could be prescribed as follows in order to:

- provide effective representation for island and isolated communities of interest (as currently provided for in the Act)
- avoid splitting recognisable communities of interest including territorial authority/ward boundaries in relation to regional constituencies
- avoid grouping communities of interest with few commonalities
- avoid potential barriers to participation of electors (for example willingness to stand or vote in elections based on identification with/sense of belonging to an area)
- provide convenient access to local authority services
- allow for population forecasts to address present imbalances thereby reducing the need for constant boundary alterations in fast growing areas.
We do not believe that changing the permissible tolerance level in the population to member ratio for the district or region as a whole, to say 15%, is appropriate as it would further undermine the concept of ‘one vote one value’. Such an extended tolerance could be applied to the permitted exceptions. Alternatively, it could apply in respect of areas of say less than 10,000 people given the impact of the present rule on small areas. We do not believe, however, that further limits on the approval of exceptions are necessary.

Option 2: an objective measure of effective representation

The concepts of ‘fair’ and ‘effective’ representation relate to different aspects of representation. Fair representation clearly relates to a point in time (i.e. when the calculation is made) whereas effective representation relates to the ongoing relationship between representatives and those represented over a three-year period.

In part for this reason, we do not believe that statutorily defining effective representation, if it were practical, as has been done with fair representation, would add value to the determination of representation arrangements.

There are also practical difficulties in attempting to define effective representation (for example, by prescribing wards in areas of a certain population, maximum size wards and/or ratios of population to members) as it would have to apply to all councils. This would be difficult because of the diversity of districts and regions. This diversity includes their size, geography and particular governance arrangements such as the existence of community boards and the extent of delegations to boards.

For the above reasons, we do not support an approach of attempting to statutorily define effective representation.

Option 3: prescribing all factors to be considered in determining representation arrangements

The determination of representation arrangements is a complex process that requires weighing of a range of sometimes conflicting factors. The optimum arrangement for each district or region can only be determined after careful consideration of the particular character and circumstances of that district or region. We believe there would be value in identifying in statute the factors that should be considered. These comprise a series of steps, though not necessarily in a linear process, as follows:

- identify the communities of interest of the district or region (with guidance given)
- determine whether wards, or a mix of wards and at large, are required to achieve effective representation of the communities of interest of the district (applies only to territorial authorities), with factors to consider including accessibility, size and configuration of the district, and the electoral system to be used
- identify a range/total number of members required to effectively represent the diversity of the district or region, meet statutory obligations, and provide efficient and effective governance of the district or region taking account, for example, of the existence of community boards
- determine the number, boundaries, and members per ward/constituency required to achieve effective representation of (groupings of) communities of interest
- determine the number of members per ward/constituency required to achieve fair representation (defined by the +/-10% rule)
- determine the extent, if any, to which effective representation of a particular community of interest requires wards or constituencies to be defined, and membership distributed between them, in a way that does not comply with the requirement for fair representation.

We believe **option 3** has merit on the basis that it formalises what councils, to a greater or lesser extent, undertake now, guided by existing Commission Guidelines. Making the decision-making process more explicit, with a legislative underpinning beyond good practice guidelines, would provide more assurance and accountability that a proper and comprehensive process has been undertaken. **Option 3** would enhance community understanding and confidence in the process while also achieving the principle of (both) fair and effective representation.

We also believe **option 1** should be adopted setting out in the Local Electoral Act more explicitly, permissible exceptions to the +/-10% rule for both territorial authorities and regional councils subject to Commission approval.
We recommend that the Local Electoral Act be amended to provide more flexibility around the requirement for achieving fair representation by allowing:

1. the +/-10% rule to apply 'on average' between particular wards/constituencies in order to ensure effective representation of recognised communities of interest
2. exceptions to the +/-10% rule for both territorial authorities and regional councils subject to Local Government Commission approval, so as to:
   a. provide effective representation for island and isolated communities of interest
   b. avoid splitting recognisable communities of interest
   c. avoid grouping communities of interest with few commonalities
   d. avoid potential barriers to participation of electors
   e. provide convenient access to local authority services
   f. allow for population forecasts to address present imbalances.

We also recommend that the Local Electoral Act be amended to require the following steps to be considered in determining representation arrangements:

1. identify the communities of interest of the district or region
2. determine whether wards, or a mix of wards and at large, are required to achieve effective representation of the communities of interest of the district (applies only to territorial authorities), with factors to consider including accessibility, size and configuration of the district, and the electoral system to be used
3. identify a range/total number of members required to effectively represent the diversity of the district or region, meet statutory obligations, and provide efficient and effective governance of the district or region
4. determine the number, boundaries, and members per ward/constituency required to achieve effective representation (of groupings) of communities of interest
5. determine the number of members per ward/constituency required to achieve fair representation (defined by the +/-10% rule)
6. determine the extent, if any, to which effective representation of a particular community of interest requires wards or constituencies to be defined, and membership distributed between them, in a way that does not comply with the requirement for fair representation.

The relevant principle in the Local Electoral Act relating to these provisions is 'fair and effective representation for individuals and communities' (emphasis added). Section 19V(1), however, refers to fair representation for electors. Section 19V(2) then goes on to refer to the permitted variation in population per member for the ward and district as a whole. Total population figures (including children and persons not eligible to vote) are used to determine boundaries within the +/-10% variation.

There are differences in the proportions of population eligible to vote in different districts and in rates of voter registration. These differences mean there is no necessary correlation between total population per member and number of registered electors per member.

Wide deviations in the number of registered electors per member are seen as deviating from the 'one vote, one value' principle. Such deviations are sometimes seen as a justification for determining boundaries according to either the number of registered electors, or according to the population eligible to be an elector, i.e. those aged 18 and over.

It can be argued that an elected member represents the whole population within his or her ward/constituency. The composition of that population also affects the nature of the issues the member encounters and should therefore be recognised in determining ward/constituency boundaries. This argument is used to support the determination of New Zealand's parliamentary electorates according to total population, and we believe it is equally applicable to the wards, constituencies and subdivisions used in local government. In that case, the use of the word 'electors' in section 19V(1) is misleading.

We recommend an amendment to section 19V(1) of the Local Electoral Act to change “electors” to “residents”.
Finally, we noted a suggestion that the number of non-resident ratepayers also be included in representation calculations. Given their non-resident status, we do not believe these ratepayers should be treated with equal status to permanent residents (not just resident ratepayers). Many may only be present in the district or region a matter of a few weeks in a year.

Non-resident ratepayers do have the opportunity to have a say in the running of the district or region, by enrolling as non-resident ratepayer electors, but only a very small proportion (less than 1% of all electors) take this opportunity.

There would also be significant practical difficulties in determining the actual numbers of such people, including non-resident nominees of business properties, to combine with the permanent population for the purpose of the ratio calculations. For the above reasons, we do not support this suggestion.

5.4 The representation review process

5.4.1 Purpose

Part 1A of the Local Electoral Act prescribes the process for the periodic review of local authority representation arrangements including the respective roles of individual local authorities and the Local Government Commission and the review timetable.

5.4.2 Submissions

A number of submissions were received on the representation review process. The main proposals were:

- the Commission’s role be limited to matters raised in appeals or be subject to further consultation
- there be a further appeal process against Commission determinations
- territorial authority reviews be conducted before regional reviews.

We also noted the recommendations of the Justice and Electoral Committee on these issues arising out of its 2004 inquiry as set out in Appendix 2.
5.4.3 Issues and options

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<th>Principle</th>
<th>Act Provision</th>
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<th>Options</th>
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<td>• Fair and effective representation for individuals and communities</td>
<td>• Reviews required to be conducted at least every 6 years</td>
<td>• Provisions may result in quite different outcomes from that consulted on/agreed with community (either in final council decision or LGC determination)</td>
<td>• Legislative status quo along with further good practice guidance</td>
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<td>• Public confidence in, and understanding of, local electoral processes</td>
<td>• LGC to produce guidelines to assist councils</td>
<td>• Provisions may result in undermining of public confidence (e.g. different outcomes, decisions reflecting self-interest of members, uncertainty arising from impact of separate TA ward/RC constituency boundaries) and this may impact on engagement including voter turnout</td>
<td>• Modified status quo (in terms of process to be followed and responsibilities of parties)</td>
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<td>• Reviews to cover basis of election (TAs only), number/size/boundaries/names of wards and constituencies, number of members, establishment of community boards (TAs only)</td>
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<td>• Local independent panels</td>
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<td>• Councils required to publicly notify initial proposal, call and hear submissions, resolve final proposal</td>
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<td>• Central independent decision-making</td>
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<td>• Public right of appeal/objection to LGC</td>
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<td>• Non-compliant regional council proposals to be submitted to LGC</td>
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<td>• LGC to make final determination subject to appeals on points of law/judicial review</td>
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5.4.4 Analysis

Present responsibility for representation reviews reflects a balance on the continuum between ‘local diversity and discretion through local decision-making’ at one end, and ‘uniform requirements and implementation’ at the other. Councils are required to:

• initiate reviews in accordance with legislative requirements
• invite and consider submissions on their initial proposals
• agree a final proposal
• notify the final proposal and a right of appeal/objection to the Commission.

The Commission on receipt of appeals/objections is required to consider these and make a final determination. Appeals against Commission determinations may only be made to the courts on a point of law or by way of judicial review.

We believe the majority of submissions received on these issues, and also the recommendations of the Justice and Electoral Committee, reflected concerns arising from a few determinations made by the previous Commission. In some cases these determinations represented quite different outcomes from those proposed by the council concerned in relation to:

• the basis of election (introduction of a mixed at large/wards system)
• significant reductions in the number of members
• particular ward arrangements
• establishment of community boards.

Concern at one of these determinations (Christchurch City) led to a challenge, by way of judicial review, on the Commission’s powers. The challenge was unsuccessful.
On the other hand, the previous Commission expressed concerns about the failure of a number of councils to attempt to comply with the +/-10% rule and about some councils’ cursory or non-existent consideration of community boards. It saw the system of remuneration (i.e. one fixed pool to remunerate both council and community board members) as a significant driver in council decisions to reduce or disestablish community boards. It also believed there was significant community dissatisfaction about the review processes of some councils.

The current Commission believes that after two rounds of representation reviews under the new legislative requirements, understanding by councils of these requirements is improving and most undertake appropriate review processes. In these circumstances we see our role primarily as resolving issues over which there is some local dispute.

We believe the recommendations in this report, particularly the prescribed steps for consideration in the review process and some more flexibility around the +/-10% rule, will further enhance both outcomes and community satisfaction with the review process undertaken.

To address any remaining concerns, we identified the following four options:

1. **option 1**: legislative status quo (with further refining of good practice guidelines for councils and hearing practices by the Commission)

2. **option 2**: modified status quo including sub-options of:
   - further prescribing process and criteria to be followed (as outlined in previous section)
   - an extended approval role for the Commission common to both territorial authorities and regional councils (as outlined in previous section)
   - giving due weight to local decisions properly undertaken
   - requiring the Commission to consult on its determinations in certain circumstances
   - giving equal status to all parties at hearings including supporters of council determination

3. **option 3**: local independent panels

4. **option 4**: central independent decision-making.

**Option 1: legislative status quo**

The present Commission reissued its statutorily required representation review guidelines in June 2005 and intends issuing a third edition prior to the next round of reviews to take place in 2009. The guidelines have been and will continue to be progressively enhanced to assist councils when undertaking their reviews. This Commission has followed and will continue to follow these guidelines itself when making determinations.

As a matter of good practice, we have also introduced the issuing of invitations to selected submitters who support a council’s proposal to appear at hearings of appeals and objections. This provides more balanced input on a council’s proposal and reflects the legislative change in 2002 for councils to seek ‘submissions’ on its initial proposal as opposed to ‘objections’.

With these and other procedural changes, we believe the present review process works satisfactorily. This is reflected in the absence of challenges or widespread expressions of concern about the process, including the Commission’s role and determinations, arising from the last round of reviews.

**Option 2: modified status quo**

We believe the recommendations in section 5.3 will further enhance the review process and in particular achievement of the principles of ‘fair and effective representation’ and ‘public confidence and understanding of electoral processes’. These recommendations include more prescription of the process and criteria, and an extended approval role for the Commission in relation to council proposals that do not comply with the +/-10% rule.

LGNZ submitted that the Local Electoral Act be amended “to ensure that the Commission gives due weight to council resolutions arrived at after full consultation through their representation review process and that any significant variation be subject to further consultation.”
The suggestion to give due weight to council resolutions on representation proposals that have been the subject of full consultation is in line with the philosophy for local decision-making in the Local Government Act. We support the suggestion subject to the council proposal also complying with the enhanced legislation recommended by us including the range of factors to be considered when developing proposals.

We do not support the suggestion for further consultation on a Commission determination that is a "significant variation" from the council’s proposal. We believe giving due weight to a local decision properly made, coupled with the further guidance we recommend the legislation should provide, will be sufficient to address concerns about significantly different Commission determinations.

There would be practical difficulties in allowing time for a further period of consultation before a determination was finalised. Finally, the concept of consultation on the decision of a statutorily established appeal authority would be a significant precedent.

We also do not support the suggestion of providing equal legal status to all parties at hearings including supporters of a council determination. As noted, this Commission has adopted this as a matter of good practice. We believe it needs discretion in its application.

As noted in section 5.3, a number of council proposals did not or do not comply with the legislation, particularly the +/-10% rule. We believe achievement of fair representation, as defined by the +/-10% rule, along with equally important effective representation, is fundamental to healthy local democracy and achieving the second principle of ‘public confidence and understanding of electoral processes’.

For this reason, we believe it is important that all councils, whether their proposals are appealed or not, comply with the legislation.

To ensure that all council determinations comply with statutory requirements and that the public has confidence in the process and outcomes, we recommend that the Commission be given the same role in respect of territorial authority determinations as it currently has for regional council determinations. This would entail determination of all council proposals that do not comply with legislative requirements whether or not appeals/objections are made against those proposals.

Option 3: local independent panels

Some councils have adopted the approach of appointing local independent panels to recommend representation arrangements. This can overcome the perception of members developing proposals on matters on which they have a personal (self) interest.

While independent panels may be desirable, there would be significant practical ramifications for this to be made mandatory for all 85 councils including ensuring the necessary expertise for these panels, and timing issues. We do not, therefore, recommend adoption of mandatory local independent panels but would encourage consideration of this approach by councils as part of their local process.

Option 4: central independent decision-making

We noted that the previous Commission in its submission to the Justice and Electoral Committee suggested a new approach for reviews of local authority representation arrangements. This entailed rolling reviews undertaken by an independent body.

It considered that the Local Government Commission was an appropriate body to undertake these reviews. The approach is based on that undertaken by the Boundary Committee for England which is part of the United Kingdom Electoral Commission.

The Commission described the rolling independent review approach as having the following advantages:

- The process involves a highly consultative approach, engaging with affected local authorities, local communities and interest groups.
- Local authorities and others are invited to come forward with their proposals at the outset.
- Local democracy is enhanced through decisions being made by an independent body free of bias, pre-determination or perverse incentives such as remuneration.
• Once a review is underway interested persons only need to deal with one organisation relating to the review.

• The independent body can make decisions relevant to local needs by taking account of the locally generated suggestions, applying a consistent procedural approach and drawing on specialised staffing resources.

The Commission, in suggesting this new approach, noted that previous Commissions had also expressed similar concerns about local authority non-compliance with statutory requirements when undertaking reviews.

We do not support the previous Commission’s suggestion, and believe that the approach of rolling reviews by an independent body is fundamentally, and unnecessarily, contrary to the philosophy of the Local Government Act on local decision-making. In addition it would have significant resource implications for the Crown.

Instead, we support option 2 (modified status quo) with the exception of the sub-options of requiring the Commission to consult on its determinations in certain circumstances and giving equal status to all parties at hearings.

While we share concerns about non-compliance with statutory requirements, we believe that the approach we have outlined in this report can address these concerns. This approach includes more prescription of the process and criteria and an extended approval role for the Commission for all non-complying proposals.

We recommend an amendment to section 19N to require councils to provide certain information in the public notice of their final proposal. The information concerned is already required to be given in public notices on initial proposals. This will assist the Commission to monitor compliance with legislative requirements, and the +/-10% rule in particular.

We recommend:

1. **No change to the Local Electoral Act relating to general responsibilities for the conduct of representation reviews.**

2. **Section 19R of the Local Electoral Act be amended to require the Local Government Commission, when considering appeals and objections against local authority representation review proposals, to give due weight to local authority proposals that have been the subject of full consultation with the community and comply with all legislative requirements.**

3. **Section 19N of the Local Electoral Act be amended to require the public notice given by local authorities of their final proposals to include the same information given in respect of their initial proposals relating to the +/-10% rule.**

4. **Section 19V of the Local Electoral Act be amended to require all territorial authorities and regional councils to refer all final proposals that do not comply with the legislation to the Local Government Commission for final determination.**

In addition, we believe two further technical amendments to the provisions of the Local Electoral Act are necessary.

We believe the Act should allow technical adjustments to representation arrangements after three years. Possible scenarios are alterations to private property boundaries or alterations to meshblocks that impact on ward/constituency/community subdivision boundaries.

Instead of waiting for up to six years for the next comprehensive review of representation arrangements to make required adjustments, or undertaking a full review again after three years when this may not otherwise be necessary, a ‘technical review’ could be undertaken. We believe, given its technical nature, community consultation would not be necessary on such electoral boundary adjustments and that the proposal should be submitted to the Commission for approval.

The proposed amendment is seen as having the benefit of accurately reflecting minor population changes that occur between reviews and assisting election management.
We recommend the Local Electoral Act be amended to provide for local authorities to make minor adjustments to ward, constituency or community subdivision boundaries after three years from its last representation review determination without the need for community consultation, but subject to Local Government Commission approval.

We propose a second technical amendment to clarify that representation review determinations made under sections 19H and 19I of the Local Electoral Act may only be made in the year before a triennial election. We believe this occurs now in most cases but would prevent the situation of a council receiving a valid demand for a poll on the electoral system or on separate Māori wards/constituencies after a council determination on its representation arrangements.

We recommend sections 19H and 19I of the Local Electoral Act be amended to provide that local authority determinations may only make representation determinations in the year preceding triennial elections.

Finally, we respond as follows to other issues raised:

- **Conduct territorial authority reviews before regional council reviews.** We believe it is desirable for this to occur as regional constituencies are required, as far as practicable, to coincide with territorial authority boundaries or ward boundaries. However, it would be difficult to mandate this as not all councils in a region presently carry out reviews together and are free to undertake a further review after just 3 years (every 6 years is the minimum). The suggested practice could be encouraged as good practice within regions. As noted elsewhere in this report, a mechanism to achieve this is the required triennial agreement between regional councils and the territorial authorities in their region on communication and co-ordination protocols. We have made a recommendation accordingly.

- **Councils be able to initially consult on more than one representation proposal.** There is nothing to stop councils doing this now and a number do undertake such preliminary consultation. However, one proposal is required to facilitate the making of formal submissions given the range and inter-relationship of the issues.

- **Bring forward the review timetable by 3 months.** The present review process effectively starts with decisions on the electoral system in September two years before the triennial election. There is no scope to condense the timetable from this point onwards and, therefore, the only way to achieve this suggestion would be to start in June, two years before the election. Given its proximity to the end of the financial year, such a requirement may cause problems for councils. Encouraging councils to commence the review process early, but within the current statutory timetable, and the Commission progressively hearing appeals and releasing determinations, can address concerns about the time the Commission has to complete its responsibilities. This includes the conducting of hearings. Administrative and technological changes identified by the Commission can also address any concerns about the limited time between the deadline for Commission determinations (April) and the ensuing triennial elections in October.

- **The Commission’s representation review guidelines be adhered to by all parties including the Commission.** We support this suggestion.

- **Where the boundaries of a local authority are expanded, a representation review be required prior to next election.** We understand this arose as a result of the abolition of Banks Peninsula District and its inclusion in Christchurch City. We believe that it is appropriate for the reorganisation scheme in such a case to provide for the representation arrangements to apply at the next local election and do not, therefore, support the proposed recommendation.

### 5.5 Candidate issues

#### 5.5.1 Purpose

The Local Electoral Act sets out a range of provisions relating to local election candidacy covering dual candidacy/membership, eligibility, affiliations, deposits, profile statements, the nomination process and expense limits.
5.5.2 Submissions

We received a number of submissions on local candidacy issues. The proposals made in submissions related to:

- lodging of candidate documentation (profile statement, nomination form and deposit)
- candidate qualifications and eligibility
- candidate profile statements
- candidate expense limits, including donations, and advertising requirements.

We also noted the recommendations of the Justice and Electoral Committee on candidacy issues arising out of its 2004 inquiry as set out in Appendix 2. In addition, the Commission in its initial report on the review of the two Acts in July 2005 made certain recommendations relating to these issues.

We address the issues as follows:

1. Dual candidacy and membership
2. Candidate eligibility
3. Candidate affiliation
4. Candidate deposit
5. Candidate profile statements
6. Nomination process
7. Candidate expense limits and donations.

5.5.3 Issues and options

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<th>Options</th>
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| All qualified persons have a reasonable and equal opportunity to nominate one or more candidates and accept nomination as a candidate         | Prohibitions on dual candidacy/membership:                                     | • Candidate/membership prohibitions limit candidates’ choices, may limit talent pool  
• ‘Tactical’ withdrawal of candidate may lead to wasted votes  
• Absence of proof of candidate’s citizenship may result in election of ineligible candidate and resulting need for a by-election  
• Issues around definition of ‘affiliation’  
• Elector reliance on candidate profile statements  
• Administrative issues around ability of candidates to submit nomination, deposit and candidate profile statement separately  
• Limited apparent impact of expense limits  
• Administrative issues around monitoring of authorisation of advertising  | • Legislative status quo along with further good practice guidance  
• Remove candidacy/membership prohibitions and/or extend to mayor and councillor  
• Prohibit voluntary candidate retirement after nominations close  
• Requirement to provide proof of citizenship  
• More statutory guidance on ‘affiliation’  
• Provision for local authorities to set level of deposit for community boards  
• Allow candidate profile statement to be published earlier/requirement for further information on candidates  
• Require nomination documentation to be submitted together  
• Revise/remove expense limits and/or advertising authorisation requirements |
5.5.4 Analysis

The total number of local authority (including community board) elected positions has declined steadily from a high of 2,234 in 1989 to 1,699 in 2007. The number of candidates also dropped from a peak in 1989 of 5,297 and totalled 3,470 in 2007. As a result, the average number of candidates per position over this period was as set out in the following table:

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1. Dual candidacy and membership

Subject to certain exceptions, individuals are able to stand for and become members of multiple local authorities. This is in line with the principle that ‘all qualified persons have a reasonable and equal opportunity to nominate and accept nomination as a candidate’. It also reflects the philosophy that electors are in the best position, and should have maximum freedom, to choose those candidates they wish to represent them. Other arguments supporting dual membership include that it does not unnecessarily restrict the talent pool.

Some exceptions do apply and appear now to be generally accepted. A person may not stand for (or be elected to) a regional council and a territorial authority or community board in the same region. This is on the basis of the distinct roles of regional councils and territorial authorities (and by association community boards) which should be reinforced to the community. The prohibition also aims to remove the potential for conflict of interest for a person performing both roles. We received no submissions seeking a review of this provision.

The other existing limitation is that a person may stand for a territorial authority and a community board in the same district, but, if elected to both, is deemed to have vacated the community board position. This provision was first introduced at the 2004 elections and again reflects a desire to clearly distinguish different roles in this case of territorial authorities and community boards. It also seeks to ensure that the parent territorial authority does not unduly dominate its community boards. This was also to be achieved by providing that appointed members to a community board (from the territorial authority) comprise less than half the total community board membership. Again we received no calls seeking a review of this provision.

However, a new restriction has been suggested which is that a person should not be able to stand for more than one position and, in particular, for a mayoralty and councillor position. This is on the basis that it is believed that some people stand for both positions ‘not to win the mayoralty but to boost their profile as a council candidate and gain an advantage over the competition’. An alternative offered, if the suggested prohibition was not acceptable, was for the deposit for mayoral candidates to be increased.

We do not believe either suggestion is in line with the philosophy of the Act which is that electors are in the best position to determine who are ‘serious’ candidates and have maximum freedom to choose their representatives. We believe a prohibition on standing for both a mayoralty and a councillor position would also unnecessarily limit the talent pool of candidates.

We recommend no change to the Local Electoral Act relating to dual candidacy for and membership of local authorities.
We are aware of instances in recent elections where late withdrawal of a candidate from one position has been seen by some to be ‘tactical’ or ‘political’ in nature. While not supporting a prohibition on mayorality/councillor dual candidacies, we acknowledge the concern that late withdrawal of a candidate from one position can have significant implications. These include the cost in either reprinting voting documents or, if past a certain time, notifying electors of the withdrawal. A late withdrawal may result in some cases in voters wasting their vote by voting for a withdrawn candidate. It has been suggested that sanctions to discourage ‘tactical’ or ‘political’ withdrawals could include forfeiture of the deposit.

We noted that section 69 of the Local Electoral Act, allowing for the voluntary retirement of a candidate after the close of nominations, was carried over from the Local Elections and Polls Act 1976. We also noted there is no equivalent provision in the Electoral Act to allow for the voluntary retirement of a parliamentary candidate following the close of nominations. However, it does provide for the cancellation of a nomination on the grounds of incapacity by way of serious illness or injury.

We believe it would be appropriate in this instance to align the provisions for local and parliamentary elections by repealing section 69 of the Local Electoral Act. We believe removing provision for voluntary retirement after the close of nominations would achieve the following: provide an appropriate test of the seriousness of a candidate for the local election in question, address allegations of attempts to unfairly use expense limits to raise a candidate’s profile, lessen the possibility of voters wasting their votes, and potentially save costs.

Amendments to sections 70 and 71 would also be required to extend the provisions for withdrawal or retirement to include grounds of serious illness or injury. Current provisions relating to retirements due to death, incapacity or invalid nomination of a candidate following the close of nominations would still apply.

We recommend repeal of section 69 and consequential amendments to sections 70 and 71 of the Local Electoral Act, to remove provision for the voluntary retirement of a candidate following the close of nominations.

The Justice and Electoral Committee in its 2004 inquiry recommended that where a candidate is standing for more than one position this information be included in the candidate profile statement. We believe this would be useful information for electors.

We recommend implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 61 of the Local Electoral Act requiring that dual candidacies be identified in candidate profile statements (not to be included in the 150 word limit).

2. Candidate eligibility

We received no submissions about the candidate eligibility requirement for candidates to be qualified electors. However, two submissions were received suggesting candidates should reside in the area for which they wish to stand. One of these submissions suggested that in addition to residents, non-residential ratepayers in the area concerned should also be eligible to stand.

The absence of a residential qualification for candidacy for both local government and Parliament is well established in this country and we are not aware of strong calls for change. Acceptance of the status quo was behind the recommendation of the Justice and Electoral Committee in its 2004 inquiry, for all candidates to be required to include their principal place of residence (suburb/locality and city/district/region) in their candidate profile statement. We do not support introduction of a residency requirement for local elections and endorse the Committee’s recommendation which would ensure that electors are aware of the non-residency of any candidate.

We recommend implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 61 of the Local Electoral Act requiring that all candidates include their principal place of residence in their candidate profile statement (not to be included in the 150 word limit).

A consequential matter has been raised, relating to the new requirement for candidates to also be New Zealand citizens. This requirement came into force for the 2004 local elections and did result in some issues at those elections for a few candidates who were not aware of the additional requirement. Officials are not aware of the extent of particular issues at the 2007 elections.
Some submitters sought an amendment to allow the electoral officer to decline a nomination without adequate proof of citizenship. This was on the basis of the cost of a by-election if it was subsequently found that a candidate was not eligible to stand. An electoral officer relies on the signed declaration by the candidate that they are eligible to stand. The SOLGM electoral working party proposed that proof of citizenship be by way of production of a passport, birth certificate or certificate of citizenship under the Citizenship Act 1977. We support the suggested power for electoral officers to require proof of citizenship.

We recommend an amendment to section 55 of the Local Electoral Act to provide for electoral officers to require proof of citizenship of a candidate.

3. Candidate affiliation

Section 57 of the Local Electoral Act sets out the requirements for candidate affiliations. It defines affiliation as "an endorsement by any organisation or group (whether incorporated or unincorporated)". It provides that in certain circumstances the electoral officer must consult with the candidate with a view to agreeing on a "reasonably practicable" alternative affiliation or, where no agreement is reached, the electoral officer must not allow any affiliation. The particular circumstances provided for are where an electoral officer considers that a candidate is not eligible to claim an affiliation or where the affiliation claimed may cause offence or is likely to cause confusion or to mislead.

We received two submissions on these provisions seeking further statutory guidance on the definition of affiliations. One referred to the following concerns that candidates use affiliations that:

- are "a political statement" (for example, '52 Free Rubbish Bags')
- are very long (100 plus characters) and are not able to fit on to the voting document
- are not treated consistently by different electoral officers
- may be treated as including iwi.

We understand the concerns raised about the definition of affiliation but believe it may prove difficult to address these satisfactorily by legislation. Some further good practice guidance may be able to be given on this issue.

We recommend consideration of the practicality of providing further statutory guidance on the definition of candidate ‘affiliation’ in section 57 of the Local Electoral Act.

The second submission suggested that it should be required that all name registers are researched and prior consent be sought from organisations that may have a potential conflict. We believe these latter suggestions are matters for good practice not for legislation.

4. Candidate deposit

One submitter suggested that territorial authorities should have discretion to set deposits for community board candidates at a level less than that applying for local authority candidates. The submitter believed the current standard deposit of $200 for all bodies discourages potential candidates for some community boards.

We understand it was Government policy that, where appropriate, there is to be consistent treatment of all bodies under the Local Electoral Act. This is to assist public understanding and also reflects the fact individuals can be candidates for multiple bodies. Consistent treatment includes levels of candidate deposit. The policy also reflects the fact that some community boards have larger populations than some local authorities.

We acknowledge that in some cases the $200 deposit may be seen as a significant cost. On balance, however, we believe national consistency in this provision is important. We also noted that the level of deposit is lower than for parliamentary elections (i.e. $300) and that the $200 is usually refundable.

We recommend no change to the Local Electoral Act relating to candidate deposits.

5. Candidate profile statements

The Commission’s 2007 post-election survey showed that respondents found the candidate profile statement effective, with 69% of those who voted saying they either read it thoroughly (41%) or read certain sections (28%). A further 22% said they skim read it. Slightly over three-quarters (76%) of those
who read at least some of the candidate profile statement “agreed” or “strongly agreed” that it helped them decide who to vote for.

Clearly candidate profile statements, first introduced for the 2001 elections, perform an important function for electors. However, not knowing the candidates or who to vote for, was still a significant barrier to voting (26%) for respondents to the post-election survey. Therefore, we endorse the following legislative changes recommended by the Justice and Electoral Committee to enhance candidate profile statements:

- Candidate profile statements be published (by whatever means considered appropriate by the electoral officer such as placed on local authority websites) as soon as possible after the close of nominations i.e. not just in the voting period when they have been mailed to electors.
- All candidates be required to include their principal place of residence (suburb/locality and city/district/region) in their candidate profile statement (not to be included in the 150 word limit).
- Where a candidate is standing for more than one position, this information be included in the candidate profile statement (not to be included in the 150 word limit).

We also endorse the Committee’s recommendations for good practice guidance in the following areas:

- Candidate profile statements be set out clearly, with an easily readable type face.
- Candidate information be made available upon request in accessible formats, such as large prints, and be included on council websites.

**We recommend:**

1. Implementation of the recommendation of the Justice and Electoral Committee for an amendment to regulation 29 of the Local Electoral Regulations requiring early publication of candidate profile statements.

2. Implementation of further good practice guidance relating to the layout and readable type face of candidate profile statements and their availability on request in accessible formats.

We noted that the Justice and Electoral Committee also recommended that consideration be given to a consistent approach to conflict of interest statements in the candidate profile statement. District health board candidates are required by the New Zealand Public Health and Disability Act to provide a statement as to any conflicts of interest should they be elected. There is no comparable requirement for local government candidates.

The requirement on district health board candidates reflects the prevalence of individuals employed in or associated with the provision of health and medical services in the community who may wish to stand for the local board. This situation is not directly comparable with local government where council employees are required to resign if elected to that council. In addition any pecuniary interests of council members in relation to contracts and provision of services are governed by the Local Authorities (Members’ Interests) Act. On this basis we do not believe there is any need for change relating to candidates’ declarations of conflicts of interest in candidate profile statements.

6. Nomination process

The Local Electoral Act was amended in 2002 to allow for a candidate’s nomination form, deposit and candidate profile statement to be submitted separately provided they are all received before the close of nominations. The amendment allowing nominations and candidate profile statements to be submitted separately was sought by SOLGM and designed to alleviate pressures experienced by electoral officers at the time of close of nominations. These pressures arise because of the habit of many candidates to leave submitting of nominations until the last moment.

However, this amendment and also that allowing the deposit to be submitted separately, have caused additional burdens for electoral officers with the need in many cases to complete three different transactions for each candidate. SOLGM sought an amendment to again require all three elements of a nomination to be submitted together. The Justice and Electoral Committee supported the proposed amendment and we endorse its recommendation on the basis of facilitating efficient management of the nomination process and reducing the potential for errors.
We recommend implementation of the recommendation of the Justice and Electoral Committee for amendments to sections 55 and 61 of the Local Electoral Act to require all nomination documentation (i.e. nomination form, candidate profile statement and deposit) to be submitted together.

We received one submission suggesting that the Local Electoral Act provide for nominations to be submitted in confidence and released as public information only after the close of nominations. We noted that the Act currently provides that a person may inspect any nomination (or a candidate’s consent to nomination) at any time during business hours. We believe it is important, throughout the nomination period, to provide for an open process allowing public scrutiny including of the validity of nominations lodged. We do not support the suggestion of nominations being submitted in confidence.

We believe the suggestion may be motivated by a belief that documentation accompanying the nomination form, and in particular the candidate profile statement, should not be accessible to the public prior to the close of nominations. We agree this should be the case.

In this regard, we noted the Ombudsmen’s Office 2003 case notes (Case no. W47703) and the determination that electoral officers are not subject to the requirements of the Local Government Official Information and Meetings Act. This is on the basis that electoral officers are statutory officers who do not act in the capacity of local authority officers when undertaking electoral duties. Accordingly documentation held by them, such as candidate profile statements, is not ‘public information’ before the close of nominations and does not have to be released before that date. We do not see the need for further amendment to the Local Electoral Act on candidate documentation.

7. Candidate expense limits and donations

The Local Electoral Act provides that the total electoral expenses of any candidate must not exceed a certain amount based on the population of the area over which the election is held. The provisions were aimed at addressing concerns about the ability of candidates to spend unlimited amounts of money on their campaigns and the impact this has on representation and local electoral processes. The provisions support the principle that all qualified persons have a reasonable and equal opportunity to nominate one or more candidates and accept nomination as a candidate.

The enactment of expense limits for local elections in 2001 brought local elections into line with parliamentary elections. The local regime is similar to that which applies for parliamentary elections. The tiered limits were based on the $20,000 limit for parliamentary candidates for constituencies containing an average resident population of 37,700.

In order to assess the impact of the imposition of the expense limits, the Commission undertook an analysis of electoral expense returns by candidates at the 2001, 2004 and 2007 elections. Findings from this analysis showed:

• The ‘average’ candidate spent nowhere near the expense limit (on average 2007 candidates spent 10.58% of their limit with the median being 3.59%).
• Mayoral candidates on average spent a higher percentage of their limit but still well short of the maximum limit (on average in 2007, candidates spent 28% of their limit with 75% spending less than 45% of their limit).
• There was no clear pattern or correlation between the quantum of the expense limit and the percentage spent.
• Candidates in urban areas were less likely to have declared no election expenses.

We understand that consideration was given in 2001 to the limits applying only for the larger councils (for example cities) or only to mayoral candidates. However, it was decided that the limits should apply universally. Reasons for this decision included the loopholes that would exist, given the provision for dual and multiple candidacies, when some positions were subject to expense limits and others were not.

Our analysis showed that while mayoral candidates spent a higher percentage of their limit, it was not significantly different enough to warrant limits only applying to mayoral elections.

We believe the existence of candidate expense limits sends an important message that the relative abilities of candidates and/or popularity of their policies, should determine electoral success, not the
relative resources of the candidates. The limits can contribute, as a result, to achievement of better representation of the diversity of interests of the community. Local candidate expense limits mirror those at the parliamentary level and this also helps provide a consistent message about elections in New Zealand.

The limits do need to be high enough to provide flexibility for the different circumstances of communities that have the same population. For example, the cost of campaigning in urban and rural areas can be very different.

We recommend no change to the Local Electoral Act relating to the regime of electoral expense limits for candidates at local elections.

As a corollary of the introduction of the expense limits regime, there is a need for processes and procedures designed to ensure candidates remain within the prescribed limits. A first requirement is for all candidate advertising to be authorised by the candidate or the candidate's agent. This is to ensure that third parties cannot advertise on behalf of candidates as a way of getting around the expense limits. This in turn requires all candidate advertising to have the name and address of the authorising party.

Policing of the authorisation requirement can be a very time consuming activity for electoral officers and may be highly politicised. The absence of an address on advertising may be explained in some cases by candidates not wishing to identify their physical place of residence. It has been suggested that provision for a candidate to include a 'PO Box' address as an alternative to place of residence or business would be a way to reduce non-compliant behaviour.

We discussed this suggestion with the Chief Electoral Officer who advised he would not support it applying in respect of parliamentary elections given the potential for abuse of the provision. On balance, while we understand the reasoning behind this suggestion, we believe use of PO Box addresses would provide increased scope for abuse and potentially hinder accountability for electoral expenses.

We noted the option for an agent to be appointed to authorise candidate advertising and that this person's details would then be provided. We also are aware that some electoral officers have sought and received approval for the address of the local authority to be used as the place of business for councillor candidates.

We received one submission suggesting that the extent of non-compliance with the authorisation requirements results in increasing involvement of the Police to whom all complaints of alleged offences are to be referred. The submission suggested that provision be made for the electoral officer to take appropriate steps in an attempt to achieve compliance before the matter is referred to the Police. We believe there is sufficient flexibility currently in the Act to allow this to happen without the need for an amendment.

We acknowledge the concerns of electoral officers on the time and resources involved in policing requirements relating to authorisation of electoral advertising. We also acknowledge questions about the effectiveness of the existing offence provision, by summary conviction, under section 135 of the Local Electoral Act.

We considered possible options to address these concerns including introduction of bylaw offence provisions for local authorities. We consider that a national regime would be more appropriate to provide consistency of practice across the country. We believe the creation of infringement offences enforceable by the local authority should be investigated.

We recommend consideration of the introduction of an infringement offence regime to replace the summary conviction offence provision in section 135 of the Local Electoral Act relating to unauthorised advertisements.

We received one submission suggesting an amendment to section 108 of the Local Electoral Act which requires that all payments of $200 or more for electoral expenses be vouched by a bill and receipt. The submitter stated the provision is proving to be somewhat onerous on candidates as they are not always provided with receipts. It suggested the requirement be for bills only, not receipts as well.
We noted that the same provision currently applies in respect of parliamentary elections. We also noted there is no requirement for candidates to provide this documentation to electoral officers, rather it should be available if requested. On the basis that we received only one submission on this issue, we are not convinced that this is a sufficiently widespread problem for candidates to warrant an amendment to the Act.

We received several submissions relating to the requirements of section 109 of the Local Electoral Act on returns of electoral expenses including donations received. One submitter suggested that all donations received in excess of $200 be required to be declared (presently the figure is $1,000). The current provision was based on that applying to parliamentary constituency candidates.

We believe donations of smaller amounts to local election candidates should not be discouraged. This is likely if they had to be declared. Concerns about donations presumably are on the grounds of possible 'undue influence'. A threshold needs to be established for what might be seen as undue influence. We believe an appropriate balance has been struck with the threshold for declaration being set at $1,000. We do not agree with the suggestion to reduce this to $200.

We are aware of some concerns expressed relating to anonymous donations the receipt of which has to be disclosed if in excess of $1,000. There have been calls for the $1,000 threshold to be lowered and for anonymous donations to be outlawed.

Again these provisions were set to reflect those applying at the time for parliamentary constituency candidates. While we noted new provisions have been enacted for parliamentary elections, we do not believe comparable circumstances generally apply at local elections. Differences include the number of independent candidates or small informal groupings of candidates as distinct from registered political parties. As noted, we believe the present $1,000 threshold for declaration of donations, including anonymous donations, is an appropriate balance between funding needs and transparency requirements.

We are aware of concerns in one area about the use of a trust, details of which were largely unknown, as a vehicle for making donations to a mayoral candidate. We did not receive a submission on this issue and do not believe it is a widespread concern.

We see the recently enacted Electoral Finance Act as setting a new benchmark in this area but believe, given the absence of a comparable body to the Electoral Commission for local elections, a similar approach would cause significant problems for local electoral officers in relation to compliance monitoring.

If anonymous donations are to continue to be allowed, we consider that it would be difficult to justify prescribing further transparency requirements on what can simply be vehicles for making such donations. However, we were advised that the Justice and Electoral Committee in its inquiry into the 2007 elections may address issues relating to candidate donations and possible recommendations in this area.

We recommend no change to the Local Electoral Act relating to receipt and declaration of donations at local elections.

5.6 Elector issues

5.6.1 Purpose

The Local Electoral Act sets out a number of requirements relating to electors at local elections covering enrolment, the non-residential ratepayer franchise, voting method and voter turnout.

5.6.2 Submissions

A number of submissions were received relating to local elector issues covering:

- electoral rolls
- the non-resident ratepayer franchise
- voting documents
- voting methods including enhanced integrity for postal voting and trialling of electronic voting
• the voting period
• voter turnout including nationwide education and voter awareness/participation campaigns and accessibility issues
• civics education
• vote processing and counting.

We also noted the recommendations of the Justice and Electoral Committee on these issues arising out of its inquiry into the 2004 elections as set out in Appendix 2. Finally we noted the recommendations of the Commission in its initial report on the review of the two Acts in 2005.

We address the issues as follows:
1. Elector enrolment
2. Non-resident ratepayer franchise
3. Voting method
4. Voter turnout.

5.6.3 Issues and options

<table>
<thead>
<tr>
<th>Principle</th>
<th>Act Provision</th>
<th>Impact</th>
<th>Options</th>
</tr>
</thead>
</table>
| • All qualified persons have a reasonable and equal opportunity to cast an informed vote  
• Public confidence in, and understanding of, local electoral processes | Uniform rules on:  
• 3-yearly electoral term including time and date of polling day (12 noon on 2nd Saturday in October)  
• a residential franchise, in common with Parliament  
• a non-residential ratepayer franchise  
• a 3-week postal voting period  
Local authorities have discretion on:  
• the voting method (currently postal or booth voting) | • High level of residential elector enrolment  
• Very low level of non-resident ratepayer enrolment leading to high cost/voter, but high voter turnout  
• Universal use of postal voting with periodic allegations regarding integrity of method  
• Gradual decline in voter turnout since 1989 | • Legislative status quo along with further good practice guidance  
• Remove requirement for non-resident ratepayer enrolment/triennial re-enrolment/simplify enrolment form  
• Consider introduction of electronic voting  
• Enhance integrity of postal voting  
• Changes to voting period/polling day/time  
• Single agency responsible for encouraging voter turnout/awareness of elections |

5.6.4 Analysis

1. Elector enrolment

New Zealand has had a system of common enrolment of residential electors for parliamentary and local elections since the 1980s and this works well. As at the close of rolls for the 2007 elections, there were 2.84 million people on the electoral roll.

The Electoral Enrolment Centre is responsible for producing and forwarding to electoral officers lists of eligible electors for compilation into local electoral rolls. We received a submission from the Electoral Enrolment Centre noting that the timetable for the compilation and notifying of preliminary rolls has little relationship to the enrolment campaign conducted by the Electoral Enrolment Centre. This is in spite of both exercises having the common purpose of enabling residents to check their enrolment status.
In 2007, the Electoral Enrolment Centre had to close off data for the preliminary rolls just three days after it had sent out enrolment packs to all enrolled electors. The Electoral Enrolment Centre proposed that the close-off for data for the preliminary roll be two weeks prior to the commencement of the enrolment campaign. The rolls would then be produced and be available for public display on the day the campaign commences.

This suggestion would allow electors to check the most up-to-date roll at the commencement of the enrolment campaign. It would also address concerns of the Electoral Enrolment Centre that new rolls appear to be compiled after its update campaign has commenced but that they do not reflect any updated information.

Commission staff discussed this matter with the SOLGM electoral working party. While acknowledging the intent of the suggestion, the working party raised some concerns that it would result in enrolment data being more out-of-date than under current arrangements. This is an important consideration given the preliminary roll is the basis that candidates’ and their nominators’ eligibility can be checked. On the other hand, it appears little use is made of the preliminary roll by electors given the personalised update data provided to electors by the Electoral Enrolment Centre.

A counter suggestion was made that the Electoral Enrolment Centre’s enrolment campaign be brought forward by say a month. However, the Centre was concerned that the enrolment data it gathers as a result of its campaign would be more out-of-date by the time it is used for the mailing out of voting documents given the increasing mobility of the population. It believed the suggestion would result in significantly more ‘gone no address’ returned voting packs. In light of the above comments, we have no specific recommendations to make on this matter at this time.

We recommend the SOLGM electoral working party be encouraged to consider options for better synchronisation in the timing of the availability of preliminary electoral rolls for local elections with national enrolment update campaigns.

2. Non-resident ratepayer franchise

As a result of the introduction of common residential elector enrolment, responsibility for the non-resident ratepayer roll became the sole responsibility of local electoral officers.

Eligibility for this franchise requires the individual concerned to be a parliamentary elector who resides outside of the district. The non-resident ratepayer elector is either identified on the appropriate valuation roll as the sole ratepayer for a property, or is nominated to be the ratepayer elector for a property owned by one or more ratepayers none of whom are qualified as residential electors in the district concerned.

Despite joint national advertising initiatives, enrolment under this franchise is very low and has steadily fallen since 1992 when it was reintroduced. The following table identifies the total number of non-resident ratepayer electors and this number as a percentage of all local electors.

### NON-RESIDENT RATEPAYER ELECTORS

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<td></td>
<td>16,224</td>
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<td>11,027</td>
<td>9,263</td>
<td>4,657</td>
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<tr>
<td></td>
<td>(0.74%)</td>
<td>(0.50%)</td>
<td>(0.46%)</td>
<td>(0.37%)</td>
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<td></td>
<td>6,080</td>
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<td></td>
<td>(0.48%)</td>
<td>(0.26%)</td>
<td>(0.19%)</td>
<td>(0.17%)</td>
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<td></td>
<td>16,180</td>
<td>10,536</td>
<td>8,699</td>
<td>8,902</td>
<td>7,299</td>
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<td></td>
<td>(1.59%)</td>
<td>(0.98%)</td>
<td>(0.78%)</td>
<td>(0.78%)</td>
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<td>13,039</td>
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<td>6,102</td>
<td>6,535</td>
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<tr>
<td></td>
<td>(1.18%)</td>
<td>(0.67%)</td>
<td>(0.31%)</td>
<td>(0.51%)</td>
<td>(0.39%)</td>
<td>(0.47%)</td>
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Not surprisingly, given the efforts required to register, turnout of non-resident ratepayer electors is relatively high.

### NON-RESIDENT RATEPAYER VOTER TURNOUT

<table>
<thead>
<tr>
<th>Year</th>
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<th>City councils</th>
<th>District councils</th>
<th>Community boards</th>
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<tbody>
<tr>
<td>1989</td>
<td>67%</td>
<td>72%</td>
<td>63%</td>
<td>68%</td>
</tr>
<tr>
<td>1992</td>
<td>67%</td>
<td>73%</td>
<td>65%</td>
<td>69%</td>
</tr>
<tr>
<td>1995</td>
<td>60%</td>
<td>79%</td>
<td>71%</td>
<td>65%</td>
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<tr>
<td>1998</td>
<td>76%</td>
<td>81%</td>
<td>86%</td>
<td>82%</td>
</tr>
<tr>
<td>2001</td>
<td>67%</td>
<td>72%</td>
<td>63%</td>
<td>68%</td>
</tr>
<tr>
<td>2004</td>
<td>81%</td>
<td>83%</td>
<td>95%</td>
<td>88%</td>
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<tr>
<td>2007</td>
<td>76%</td>
<td>85%</td>
<td>80%</td>
<td>80%</td>
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Given the high cost per vote, electoral officers periodically question the value of the retention of this franchise. We understand it was a Government policy decision to retain the franchise and we make no recommendation in this regard.

A range of suggestions has been made to simplify enrolment procedures for the franchise. These include removing the requirement for confirmation of enrolment of ratepayer electors for whom council records show they still own the property, reviewing the publicity and information requirements on councils relating to the franchise, and a simplified enrolment form.

We noted that in South Australia there is no requirement to enrol first before casting a non-resident owner vote. We are not in a position at this time to recommend removal of the non-resident ratepayer enrolment process in New Zealand. However, we believe this may be feasible given councils’ increasing technological capabilities and resulting capacity to provide information, and subsequently voting documents, directly to non-resident ratepayers. We believe the option of removing the enrolment requirement should be investigated. If this proves not to be feasible, we would support the suggestion from one submitter that the need for confirmation of enrolment prior to each triennial election be reconsidered. If an enrolment process is retained, we agree that the enrolment form should be reviewed and made simpler.

We recommend that the SOLGM electoral working party be encouraged to undertake work on options relating to the need for enrolment on the non-resident ratepayer electoral roll and/or the need for triennial confirmation of enrolment and if enrolment is found to be necessary, simplification of the prescribed enrolment form in the Local Electoral Regulations.

We would also support a technical amendment to section 39(1)(b) of the Local Electoral Act which requires councils to provide information on qualifications and enrolment procedures with rates assessments/notices. The requirement is for this information to be provided before September in election year. Given the electoral roll closes in August, we agree it would be beneficial for section 39(1)(b) to identify a date earlier in the year.

We recommend an amendment to section 39(1)(b) of the Local Electoral Act to identify an earlier date by which councils are to provide with their rates assessments/notices, information on qualifications and enrolment procedures for the non-resident ratepayer franchise.

We are aware of a call for provision for an unpublished non-resident ratepayer elector roll. Given statutory provision, at both parliamentary and local level, for an unpublished residential electoral roll, we believe there are equal grounds for an unpublished non-resident ratepayer roll.

We noted that under the Electoral Act there is provision for the Chief Registrar to direct that a person’s name, residence and occupation not be published on a particular electoral roll. The Chief Registrar has to be satisfied, on the application of the person concerned, that publication on the roll would be prejudicial to the personal safety of that person or his of her family. We believe a person should also be able to make such an application to the local electoral officer in respect of the non-resident ratepayer roll.
We recommend consideration be given to provision in the Local Electoral Act for compilation of unpublished non-resident ratepayer rolls for local elections.

Finally, we are aware of the need for two technical amendments to the Regulations.

We recommend the following technical amendments to the Local Electoral Regulations: the term “rateable” be substituted by “rating” on the two occasions it occurs in regulation 16(2); and Schedule 1 to specifically include “trusts” as bodies for which persons may be eligible to be non-resident ratepayer electors.

3. Voting method

The Local Electoral Act provides a choice of voting method for local authorities including booth, postal and electronic voting. However, at present only booth and postal voting are prescribed for use (in regulations). In other words, introduction of electronic voting would not necessarily require any amendment to the Act but would require promulgation of detailed regulations.

The Local Electoral Act provides that, unless the territorial authority resolves otherwise, postal voting shall be used for local elections. The Act also provides for the territorial authority to finally determine the voting method to be used for all elections in a particular area at triennial elections in the case of any conflict. On this basis, we believe the present provisions for local discretion on voting methods is appropriate and should be retained.

We recommend no change to the Local Electoral Act providing local discretion on choice of voting methods.

Postal voting was made mandatory in 1989 on the basis that it would boost voter turnout. This proved to be the case with overall voter turnout increasing from 46% in 1983 to 57% in 1989 (figures are not available for 1986). With the exception of Hutt City Council in 1992, all local elections have been conducted using postal voting since 1989.

The introduction of postal voting doubled voter turnout in some areas. For example, Auckland City Council turnout increased from 30% in 1983 to 60% in 1986 when it voluntarily introduced postal voting. On the other hand, Hutt City Council voter turnout dropped to 22% when it reverted to booth voting in 1992.

We noted that after the initial positive impact of postal voting on voter turnout, voter turnout has more recently returned to pre-postal voting levels. It is argued by some that new initiatives are now required to boost turnout. One possible initiative is introduction of electronic voting.

We believe that introduction of electronic voting is a matter of ‘when’ rather than ‘if’. However, we are aware from overseas research that electronic voting is not a panacea for falling voter turnout. At least in the short term, the availability of electronic voting is likely to result in votes cast electronically replacing those that would have been cast using another voting method. In the longer term it may provide a more attractive method for younger electors but this would depend on other initiatives to engage these electors.

In the meantime, we believe it is important that work commences on the issues and options, including elector authentication and security issues, relating to the introduction of electronic voting. We believe both the SOLGM electoral working party and the Department of Internal Affairs should take an active role in this work. This should include consultation and, where appropriate, collaboration with the Chief Electoral Office with a view to appropriate consistency of approach with possible electronic voting at parliamentary elections.

We noted that, among other benefits, electronic voting is likely to have a positive impact on the incidence of informal voting as the voter would be automatically prompted if making a mistake when voting.

We recommend the SOLGM electoral working party and the Department of Internal Affairs commence work on issues and options relating to the introduction of electronic voting in local elections.

Anecdotal information is produced from time to time reflecting on the integrity of postal voting including voters completing others’ voting documents and bulk collection of voting documents within the community. Little in the way of corroborated evidence has been produced to justify serious
consideration of removal of the postal voting option particularly given its initial positive impact on turnout and cost efficiencies (particularly in conjunction with early processing of voting documents).

Some initiatives have been taken to address concerns raised. The SOLGM electoral working party adopted, as good practice for the 2007 elections, the recommendation of the Justice and Electoral Committee that a clear statement be included on voting documents advising that it is an offence under sections 123 and 124 of the Local Electoral Act to complete another person’s voting document (unless authorised under Regulation 34) or to interfere with or fraudulently mark, deface or destroy a voting document. We endorse the recommendation that such an offence notice on voting documents be prescribed.

**We recommend implementation of the recommendation of the Justice and Electoral Committee for an amendment to section 75 of the Local Electoral Act requiring a statement to be included on voting documents relating to offences under sections 123 and 124.**

The SOLGM electoral working party has also set out other recommended good practice steps for electoral officers in its good practice code relating to postal voting. We believe that good practice guidelines are likely to be more effective than attempts to statutorily prescribe further processes, procedures and restrictions (for example prohibiting the ‘bulk’ collection of completed voting documents by unauthorised individuals).

We understand that the SOLGM electoral working party initially suggested the Tasmanian voter signature system as an option for authenticating the right elector completed the right voting document. This would have significant resource implications to introduce which would have to be weighed against the true extent of the problem. We believe other initiatives identified above are of a higher priority at this stage and propose that no work be done on this suggestion at this time.

**We recommend development and dissemination of further good practice guidance relating to postal voting processes and procedures including the integrity of this voting method.**

### 4. Voter turnout

Overall voter turnout has gradually declined since 1989. The 1989 elections are a useful benchmark as these were the first elections following local government reorganisation, and postal voting was mandatory for all local authorities for the first time. In line with overseas trends, turnout for the 2007 continued the pattern since 1989 of generally declining voter turnout.

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<td>45%</td>
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<tr>
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<td>50%</td>
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<td>45%</td>
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<td>District councils</td>
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<td>District mayors</td>
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<tr>
<td>Community boards</td>
<td>54%</td>
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<td>50%</td>
<td>50%</td>
<td>46%</td>
<td>42%</td>
<td>41%</td>
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Reviews of voter turnout patterns in local government/sub-national elections in the United Kingdom, certain Australian states and Ireland have identified the following as significant factors:

- lack of proportional representation
- proportion of finance raised locally
- extent of local government powers
- population size and urban/rural ratios
- level of interest and activity in local government business

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7 Code of Good Practice for the Management of Local Authority Elections and Polls prepared by SOLGM electoral working party.
• novelty of postal voting
• level of effectiveness of voter information and education.

We agree with submitters that in-depth comparative analysis is required to identify the impact of such factors on voter turnout in New Zealand local authority elections. In the meantime we noted that the impact of the following factors has previously been identified in the New Zealand context:

• size, geography and nature of regions and districts
• occurrence of mayoral elections
• particular local issues.

In short, New Zealand local elections voter turnout can be seen to be generally higher in smaller districts/regions and the further south one goes. A submission to the 2004 inquiry concluded from a detailed statistical analysis that competitive mayoral contests also had particularly strong effects on overall voter turnout. Local issues may also impact on voter turnout such as a particularly contentious issue and/or the simultaneous holding of a poll on this or other issue. As noted elsewhere in this report, other factors that may impact on voter turnout include the number of candidates and the quality/layout of voting documents.

The Commission’s 2007 post-election survey investigated barriers to voting among those who only voted in some elections, and those who did not vote at all. It found:

• The main reasons for respondents voting in only some elections relate to lack of information – in general or about candidates (44%) – and a decision to only vote for candidates respondents knew (21%).
• Key barriers to voting at all are apathy or lack of effort (39%), not knowing the candidates or who to vote for (26%), and being too busy or running out of time (22%).

Suggestions by non-voter respondents for encouraging voting included:

• provision of more information about the candidates and candidates’ policies (24%)
• enabling other practical factors such as adoption of online voting and promotion of the voting period (18%).

As noted above, we believe more in-depth research is required on all the factors that impact on voter turnout in New Zealand local elections. This research should include the impact of the three week voting period which was introduced in 2001. Some call for a return to two weeks on the basis three weeks is too long with electors putting aside their voting pack and then forgetting/losing interest in completing the voting documents.

Respondents to the post-election survey were asked if reducing the voting period from three to two weeks would affect their voting behaviour. Large majorities of both voters (87%) and non-voters (71%) said reducing the period would make no difference to how likely they would be to vote. Also 11% of respondents said they would be less likely to vote with a reduced period (compared to 17% saying they would be more likely). Significantly, younger respondents (aged 18 to 24 years) indicated they would be less likely to vote if the period was reduced than respondents overall (23% versus 8% overall).

A reduction in the voting period is likely to have a negative impact on overseas voters though this could be reduced by introducing electronically-enhanced voting facilities as occurs with parliamentary elections (i.e. down loadable voting documents and ability to scan/e-mail or fax completed documents). We believe these initiatives should also be adopted for local elections.

We recommend an amendment to the Local Electoral Act to provide for electronically-enhanced provision and return of voting documents for overseas voters as occurs at parliamentary elections.

On the basis of the information available, we do not believe there is sufficient evidence at this time to support a reduction in the voting period to two weeks.

Other suggestions relating to factors that may impact on voter turnout include:

• moving polling day from the second Saturday in October to the third Saturday in order to avoid the school holidays
• moving the close of voting from 12 noon to 5.00 p.m. on the Saturday of polling day.
Moving polling day from the second to the third Saturday in October will mean that it clashes with Labour weekend in some years and this should be avoided. In respect of the second suggestion, we do not believe that moving the close of voting to 5.00 p.m. would have a significant impact on voter turnout and would result in a delay in announcing a number of preliminary election results until the Sunday. We therefore do not support either suggestion.

We recommend no changes to the Local Electoral Act relating to the length of the voting period, polling day or close of voting until research indicates such changes are likely to impact positively on voter turnout.

We believe enactment of a provision allowing for an Order in Council to change polling day in any particular year either for all local elections or for a particular election would be beneficial. This would ensure that polling day does not clash with a particular event such as school holidays should there be a change in future. Notice of any change in polling day would have to be given well in advance given the planning involved in the lead-up to the elections. The provision would also allow for a change in polling day as a result of some form of national emergency.

It would also be useful to provide for polling day for a particular election(s) to be changed either because of a local emergency of some type or a need to modify the statutory timetable. For example, because of a procedural problem requiring action to rectify but for which there is insufficient time.

At the 2007 elections, two examples occurred where consideration could have been given (if provision had existed) of moving polling day to allow reprinting of voting documents. In one location the voting document referred to an incorrect number of vacancies and in another location the order of candidates’ names on the voting document was different from the one that the council had resolved. While the elections at both locations were conducted without legal challenge, an Order in Council provision would allow flexibility in considering options to address such concerns in the future.

We recommend consideration of provision in the Local Electoral Act for an Order in Council to move polling day for all local authorities or for a particular local authority, on advice provided by the Minister of Local Government.

One submitter called for the removal of the provision for electoral officers to provide lists of electors who have voted to candidates or candidates’ agents for the purpose of approaching those who have not voted. The submitter believed this enables “potential for undue influence” on electors. We see this as an established electoral practice that occurs at both parliamentary and local elections and believe it can be seen to have a positive impact on turnout. We noted there is currently provision to charge for copies of these lists ‘at a reasonable price’ whether the list is provided on paper or electronically.

Arisng from its 2004 inquiry, the Justice and Electoral Committee made a recommendation that the Government fund a single electoral agency to be responsible for improving voter turnout and awareness of general and local elections, and also a similar recommendation in respect of education and information on all electoral systems used in New Zealand. We noted that LGNZ supported these proposals and suggested that the Electoral Commission be the agency to perform both functions.

We agree that the two functions, relating to voter turnout and electoral systems, are related and we believe there would be benefit in one organisation carrying out both. The Electoral Commission currently carries out these functions in relation to parliamentary elections and it has necessary expertise in the area. Given this and the clear synergies in turnout issues and electoral systems between parliamentary and local elections, we believe the recommendations should be given careful consideration.

Currently a range of agencies have an interest in these matters and, given this fact, LGNZ has for the last two elections convened a coordinating committee for agencies involved in publicity and education activities associated with local elections. This arrangement has worked well given it does not have a formal mandate or necessary resources, apart from those of the individual agencies, to take significant new initiatives around voter awareness and education.

We are aware that the Department of Internal Affairs undertakes certain education and publicity activities in relation to local government, including specific local elections publicity exercises. We do not see this as conflicting with or duplicating proposed responsibilities for the Electoral Commission.
The two roles would be managed under Vote Local Government and complement each other based on the expertise and resources of both organisations.

The Justice and Electoral Committee has previously recommended consideration of combining the three agencies currently responsible for different aspects of parliamentary elections (Chief Electoral Office, Electoral Commission and Electoral Enrolment Centre). Should such a proposal proceed, this may have implications for the elector awareness and education functions.

**We recommend consideration of formally assigning to the Electoral Commission responsibility for voter turnout and awareness, and education on electoral systems associated with local elections.**

We believe one of the key factors in increasing participation in local government generally, and in elections in particular, is enhanced understanding of the nature and role of local government. To enhance understanding we believe that information needs to be provided to citizens from an early age. In this regard we applaud the revised focus of the new New Zealand school curriculum and particularly the ‘participating and contributing competency’ which we understand aims to encourage students to value community and participation for the common good.

We also commend LGNZ for its coordination of a group of local and central government agencies for a project aimed at *Growing Active Citizens*. The long-term objective of the project is to increase active participation in local communities, local government and other decision-making processes. This initiative reflects research indicating that those who do not vote in their youth are less likely to vote in later adult life, while those who vote early on continue to vote throughout their life.

One of the first resources developed by this group was *Kids Voting*. As a result, 83 schools and over 8,000 students took part in this project at the October 2007 elections supported by 43 councils. Feedback suggested that the initiative was successful in meeting its aim of raising awareness amongst young people about New Zealand’s electoral processes and to increase their personal understanding, belief and confidence in the system.

Finally we believe that the SOLGM electoral working party’s good practice code is another important vehicle to promote initiatives across the country in relation to local elections including those which may encourage increased voter turnout. Examples include helpful location of facilities to accept returned voting documents and provision of useful information and assistance to electors including information and promotion in other languages and for assisting the disabled.

**We recommend development and dissemination of further good practice guidance relating to initiatives to promote voter turnout.**

In summary, we believe a number of procedural issues, addressed throughout this report, may encourage voter turnout at local elections. These include: enhanced quality and accessibility of candidate profile statements along with earlier availability and greater promotion of these documents, and enhanced quality of voting documents including improved instructions. We also believe steps should be taken to facilitate the return of voting documents and recommend as a first step necessary legislative changes to introduce electronically-enhanced voting facilities for overseas voters as occurs with parliamentary elections. Further research into voting behaviour is also necessary along with more formal assignment of responsibility for promoting voter education and turnout in relation to local elections.

### 5.7 The appointment and role of the electoral officer

#### 5.7.1 Purpose

The Local Electoral Act requires local authorities to appoint an electoral officer who must be in office at all times. The Act sets out the roles, functions and powers of electoral officers.

#### 5.7.2 Submissions

We received two submissions relating to the position and role of local electoral officers. The proposals made were:

- management of local authority elections continue at a local level
- some form of training or certification of electoral officers be investigated.
We also noted the recommendations of the Justice and Electoral Committee arising out of its 2004 inquiry on roles and responsibilities for the management of local authority elections as set out in Appendix 2. In addition, we noted the Commission’s recommendations in its initial report on the review of the two Acts.

### 5.7.3 Issues and options

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<th>Principle</th>
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<th>Impact</th>
<th>Options</th>
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| • Public confidence in, and understanding of, local electoral processes | Uniform rules on:  
- appointment of electoral officer by local authority  
- electoral officer to act independently of elected body, accountable to courts through recounts/inquiries  
- electoral officer responsible for conduct of election or poll with uniform powers and duties including power to contract out tasks  
- territorial authority electoral officer to carry out some core functions on behalf of other electoral officers | • Current roles generally seen to work satisfactorily  
• Significant use of private contractors with some loss of local knowledge and experience in running local elections  
• One electoral service provider had significant problems processing STV votes in 2004  
• Possible confusion in role of local authority chief executive and communications staff in relation to local elections  
• No formal supervising/advisory structure in event of problems/issues | • Legislative status quo with enhanced education, training and good practice guidance  
• Limit appointments to local authority officers  
• Remove focus on territorial authority electoral officer to encourage shared services  
• Central agency appointments/supervisory role in relation to local elections |

### 5.7.4 Analysis

Current local electoral officer arrangements reflect a model that has been in place for many years. It is based on the territorial authority electoral officer carrying out the core election tasks for all elections in the area i.e. including for the regional council, district health board and any licensing trust. These core tasks are compilation of electoral rolls, the issuing and receiving of ordinary and special votes, and any other delegated task (for example processing and counting of votes).

District health boards are required to appoint a territorial authority electoral officer from within their district as their electoral officer. In addition, licensing trust elections are conducted by territorial authority electoral officers.

Local authorities have discretion as to whether they appoint a local authority officer or private contractor as their electoral officer.

As a result of these provisions, the core electoral officer functions for the 73 territorial authorities were undertaken as follows in 2007:

- 9 by an employee of Independent Elections Services Ltd a private election services company
- 8 by an employee of electionz.com a private election services company
- 1 by an independent contractor
- 55 by a local authority officer (in one case two territorial authorities had a common electoral officer) with:
  - 5 of these having an employee of Independent Election Services as deputy electoral officer
  - 4 of these having an employee of electionz.com as deputy electoral officer.

The vote processing and counting arrangements for territorial authorities in the 2007 elections were as follows:

- 14 carried out by Independent Election Services
- 36 carried out by electionz.com
- 23 carried out by own electoral officer using one of three different software processing systems.
In respect of the 21 district health board elections in 2007, vote processing and counting arrangements were as follows:

- 5 carried out by Independent Election Services
- 10 carried out by electionz.com
- 6 carried out by own electoral officer using same software processing system as for local authority election.

These arrangements worked satisfactorily in 2007 with either preliminary or progress election results being announced in all cases on either the Saturday (polling day) or Sunday. We noted that STV election results were in a number of cases later than FPP election results but we do not see this as significant. It reflects the nature of STV counting and the need for all votes to be processed together before counting can commence.

The recommendations of the Justice and Electoral Committee from its 2004 elections inquiry, relating to responsibility for the conduct of local elections, arose as a result of the significant delay (up to three weeks) in the announcement of the STV election results managed by one service provider. This service provider (electionz.com) used different software in 2007 and did not sub-contract out this function as it had done in 2004. Generally it met all expectations of its clients in 2007.

We do not believe there is a strong case for a central government agency (new or existing) assuming more direct responsibility for local elections. Such responsibility could include appointment of local electoral officers and/or for the conduct of local elections or some form of supervisory role.

Apart from the problems experienced by one service provider with processing and counting votes under the new STV system in 2004, local elections have and should continue to run smoothly. It is also worth noting that local elections are now significantly more complex than parliamentary elections and the experience in running these elections is at the local level not with central government.

The Department of Internal Affairs assumed a leadership role in coordinating the response to the processing problem experienced at the 2004 elections. While not a formal statutory role, this worked well and was ready to be re-established in 2007 if required.

Other roles the Justice and Electoral Committee proposed be assumed by a new central agency are currently being handled efficiently by existing agencies as follows:

- publishing of code of good practice and developing memoranda of understanding between local authorities (by the SOLGM electoral working party)
- approval of general formats for voting documents and managing and maintaining the STV calculator including the appointment of an independent certifier for any modified or new counting program (by the Department of Internal Affairs).

We believe the roles of the Police and the courts in relation to local elections are best considered in conjunction with any future review of central agency functions associated with parliamentary elections.

Given the level of involvement of private contractors as electoral officer or deputy electoral officer, limiting appointments to local authority officers as recommended by the Justice and Electoral Committee would have significant impact. It is also questionable whether there is sufficient knowledge and experience in all 73 territorial authorities for this to occur without a drop in current performance standards.

For the above reasons, we do not support the Justice and Electoral Committee’s recommendations. We recommend no change to the Local Electoral Act relating to roles and responsibilities in the conduct of local elections including electoral officers being appointed by local authorities and then acting independently of that body.

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8 Local elections involve a far greater level of complexity than parliamentary elections as a result of the following: the FPP/STV option; overlaid regional council/district health board/licensing trust elections; the postal/booth voting option; at large/wards/mixed system option; optional Māori wards/constituencies; discretion over community boards; partial coverage of licensing trusts with some not aligning to meshblocks; dual candidacy; candidate profile statements; and options about order of candidates on voting documents.
While we do not recommend any fundamental change to the current roles and responsibilities of local electoral officers, we do believe there is scope to further enhance the efficient management of local elections.

**We recommend development and dissemination of further good practice guidance relating to:**

- the role of the electoral officer including job profiles and person specifications
- contracts for the provision of services
- job training including the option of certification of electoral officers.

We also believe there are potential benefits from encouraging further sharing of local electoral service provision between local authorities. As noted, current arrangements largely reflect a traditional model of the territorial authority electoral officer undertaking core electoral functions for all elections being conducted in that area.

These functions originally comprised compilation of electoral rolls, issuing of voting documents, counting of votes and any other delegated tasks. This had to be modified with the introduction of STV at large elections for district health boards, as under these circumstances votes have to be centralised and then counted at one location.

This contrasts with the traditional model where all territorial authority electoral officers in a region could count the FPP votes from their district for the regional council before they were accumulated for the council as a whole. As a consequence, the task of counting votes is now the responsibility of all electoral officers under the Local Electoral Act and subject to delegation arrangements by way of memoranda of understanding between all electoral officers in the area.

We believe it would be beneficial for the Local Electoral Act to be amended to remove the remnants of the traditional territorial authority model (i.e. sections 16 to 19) and make all electoral officers responsible, in the first instance, for undertaking all electoral officer functions. We believe this would encourage electoral officers in a region to reach a consensus on the best arrangements for that region. This may result in the status quo or possibly more regional or sub-regional arrangements to best meet the circumstances of the local area. The arrangements would be recorded in the memoranda of understanding that electoral officers currently enter into for triennial local elections.

A potential benefit of a more regional or sub-regional approach is that it could address concerns about a shortage of knowledge and experience for maintaining the present model based on 73 territorial authority electoral officer positions. It would also avoid the risk of some local authorities believing they have no choice but to engage one of the private sector service providers. A shared services model would also be likely to facilitate necessary future capital investment in areas such as electronic voting.

**We recommend amendments to sections 16 to 19 of the Local Electoral Act to provide that all electoral officers are responsible for all electoral tasks in the first instance.**

We noted the Local Electoral Act currently prohibits the appointment of the local authority chief executive as electoral officer “unless the local authority concerned is satisfied that no other course of action is reasonably practicable in the circumstances”.

No local authority chief executive is now an electoral officer and we do not believe this is likely again in the future. We therefore recommend removing this qualification on the prohibition of appointing chief executives to effect a full prohibition on such appointments.

**We recommend an amendment to section 14 of the Local Electoral Act to provide a full prohibition on the appointment of a local authority chief executive as that authority’s electoral officer.**

We also believe, to ensure that all local authorities meet their statutory obligation to have an electoral officer in place at all times, that they should be required to name this officer in their annual report.

**We recommend amendments to the Local Government Act, the New Zealand Public Health and Disability Act, and the Sale of Liquor Act to require local authorities to name their electoral officer in their annual report.**
5.8 The conduct of local elections and polls

5.8.1 Purpose
The Local Electoral Act and Local Electoral Regulations set out a range of provisions relating to the conduct of local elections and polls covering such issues as the election timetable, electoral rolls, voting documents, processing and counting voting documents, announcing results, certain elected member issues, and other miscellaneous issues.

5.8.2 Submissions
We received a number of submissions on a range of issues relating to the conduct of local elections and polls covering:
- the election timetable
- voting documents including in relation to the different electoral systems, candidate order and the quality of documents generally
- vote processing and counting arrangements
- certain elected member issues
- miscellaneous issues including offence provisions and election records.

We also noted the recommendations of the Justice and Electoral Committee arising out of its 2004 inquiry as set out in Appendix 2. In addition, we noted the recommendations of the Commission in its initial report in July 2005.

We address the issues as follows:
1. Legislative framework
2. Election timetable
3. Voting documents
4. Candidate order on voting documents
5. Vote processing and counting
6. Elected member issues
7. Election data
8. Electoral records
9. STV technical issues
10. Electoral offences
11. Licensing trust boundaries
12. Miscellaneous issues.
5.8.3 Issues and options

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<th>Impact</th>
<th>Options</th>
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<tr>
<td>• Public confidence in, and understanding of, local electoral processes</td>
<td>Uniform rules on: • compilation of rolls • election systems and procedures including those for protection of freedom of choice of voters and secrecy of vote, minimum requirements for voting documents, early processing, offences, disputed elections, extraordinary vacancies</td>
<td>• Some problems experienced in 2004 in processing of STV voting documents • A number of administrative changes could improve the efficient conduct of elections and polls e.g. timetable, quality of voting documents, election results, electoral records • Agreed good practice can only be recommended, actual compliance is up to the electoral officer • Some concerns re the priority Police may place on investigating alleged offences</td>
<td>• Legislative status quo along with further good practice guidance • Remove/reduce options for order of candidates on voting documents • Prescribe code of good practice • Address/preserve certain issues including end-to-end processing and counting assurance requirements, timetable, quality of voting documents</td>
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5.8.4 Analysis

1. Legislative framework

We noted a high level of satisfaction of electoral officers with the local electoral legislative framework comprising the Local Electoral Act and Local Electoral Regulations accompanied by SOLGM’s Code of good practice for management of local elections and polls. In responding to the survey, some electoral officers did comment on the need to refer back and forward between the Act and the Regulations to identify the required provision.

We believe a review should be undertaken of the consistency of provisions in the Local Electoral Act and in the Local Electoral Regulations in relation to the purpose of the Act of providing for matters of detail in regulations. We noted, as one example, the need for an amendment to the Act to provide another week in the election timetable (addressed below). We consider such an adjustment, which does not compromise the rights of either candidates or electors, should be able to achieved by way of regulation given the purpose of the Act.

We recommend, as part of any future comprehensive review of the Local Electoral Act, a review of the consistency of the provisions of the Act and the Local Electoral Regulations in relation to the purpose of the Act to provide for matters of detail in regulations.

2. Election timetable

Electoral officers sought an additional week in the election timetable after the close of nominations and before voting packs are mailed to electors.

Electoral officers have a matter of a few days (including the weekend following the close of nominations on the Friday) to process all nominations and approve the final layout of voting documents. This can be very stressful given the propensity of most candidates to delay the submitting of nominations until the last minute. Also in some cases there is a need to negotiate with candidates on matters such as the contents of the candidate profile statement and names and affiliations that are to appear on the voting document.

SOLGM 2007 Post Local Elections Questionnaire indicated 99% of electoral officers considered the framework of Local Electoral Act, Local Electoral Regulations and SOLGM’s Code of Good Practice was either ‘excellent’ or ‘good’.
The pressure is also compounded by the fact that at the 2007 elections, one printing house printed all 2.84 million voting packs for the country entailing 462 different voting documents and 100 different candidate profile statement booklets.

The pressure may be seen to contribute to errors that occur from time to time on voting documents. This included in one case in 2007 the wrong instructions about how many candidates to vote for and, in another case, the wrong order of candidates on the voting document. Other errors that have occurred include wrong or absent photos in the candidate profile statement.

An extra week is seen as highly desirable to mitigate the concerns outlined and to facilitate ongoing work to enhance the quality of voting documents sent to electors. It can be achieved by bringing initial deadlines forward a week including nominations opening 57 days (rather than 50 days) before polling day. Alternatively, it could be achieved if the voting period was reduced from three to two weeks. However, we do not recommend such a reduction.

We acknowledge that an additional week will lengthen the whole election period that some argue is too long now. On balance, we believe the advantages of an additional week outweigh such concerns. We noted that the Justice and Electoral Committee also recommended the extra week.

We recommend implementation of the Justice and Electoral Committee recommendation for an extra week in the election timetable by section 5 of the Local Electoral Act providing that nomination day shall be the 57th day before polling day.

3. Voting documents

The Local Electoral Act provides minimum requirements regarding the information that voting documents must contain. These requirements cover directions to voters and certain information relating to the particular election including information to identify the elector from the electoral roll and the voting documents issued to him or her.

Voting documents may also include information the electoral officer considers necessary to ensure electors have reasonable and equal opportunities to vote (including information in other languages) and that the secrecy of the vote is maintained. The Local Electoral Regulations provide that voting documents may be combined, be double-sided, and use different colours.

The Local Electoral Act provides that the Secretary for Local Government must approve general formats for voting documents. This reflects the fact that, given the variety of issues and combination of factors applying at a local election, it is not practicable to prescribe one common format or detailed layout requirements.

At the last two elections the Secretary for Local Government has approved voting document formats submitted by the SOLGM electoral working party. The proposed formats were submitted following considerable work by the working party including the use of focus groups of electors and expert advice.

There were some issues in 2004 around the quality of voting documents from one printer and in particular the colour distinction between the FPP and STV election issues. The voting documents used in 2007, all provided by one printer, were seen as an improvement over their 2004 counterparts.

The SOLGM electoral working party advised that it sees enhancing the quality of voting documents as a "work in progress" and indicated it proposes to consider further enhancements for the 2010 elections. We encourage it in this important work. On this basis we do not recommend at this stage any particular amendments to the provisions of either the Act or the Regulations relating to voting documents.

We recommend that the SOLGM electoral working party be encouraged to undertake further work to enhance the quality of voting documents including consideration of:

- prescription of separate voting documents when the two different electoral systems are being used
- the ranking instructions for STV elections
- the double column format of some voting documents.
4. Candidate order on voting documents

The Local Electoral Regulations provide that local authorities may resolve that candidates' names be arranged in one of three ways on the voting document. The options are alphabetical order, pseudo-random order (one randomised order of candidates for all documents) or random order (all documents have a different candidate order). At the 2007 elections, the number of territorial authorities using each option was as follows:

- alphabetical: 56
- pseudo-random: 9
- random: 8

We received several submissions on the matter of local discretion on the choice of candidate order including proposals that the choice be removed and random order of candidates be prescribed. We also noted the recommendation of the Justice and Electoral Committee that further work be undertaken on the impact of candidate order on election outcomes, including overseas research, and that this work should include a further possible option of a 'rotational alphabetical' order.

We undertook some analysis and research, including a review of international research, on this issue.

Our analysis of results at the 2007 elections (from an incomplete set of data)\(^\text{10}\) did show that the order of candidates on the voting document had an impact on election outcomes. Candidates whose names were early in the alphabet (and therefore early in the candidate profiles booklet) and early on alphabetically ordered voting documents were up to 4% more likely to be elected than those whose names were later in the alphabet.

Interestingly, this effect did not disappear, as might be expected, when candidates' names were listed in pseudo-random order or random order on the voting document. It is likely this is as a result of candidates' names still being listed alphabetically in the candidate profiles booklet.

To address fully the effect of being early in the alphabet and alphabetical ordering we believe it would be necessary to have the same order in the booklet as on the voting document. However, such a step is likely to hinder voters in finding their preferred candidates in the booklet and would be very expensive to implement as each booklet would have to be printed separately.

Our analysis also found there was a significant bias in favour of candidates in the left column of voting documents when there was more than one column of candidates. This needs to be considered in relation to the arguments for and against particular order options. Under the pseudo-random order option (i.e. one set random order), for example, the advantage for candidates being in the left column effectively replaces the advantage of having a name early in the alphabet, though at least it is not pre-determined.

In addition to the 'primacy' effect (i.e. positive effect of being early on the list of candidates) other research has identified a 'recency' effect (i.e. positive effect of being towards the end of the list in terms of voter recall of names). Yet other research has identified the downsides of random ordering of candidates includes the possibility of this leading to 'donkey' voting (i.e. just ticking or ranking candidates from the top of the list).

We concluded that any analysis on this issue is unlikely to be definitive. A range of factors needs to be taken into account including such matters as the number of candidates, their profile or degree of name recognition, the amount of candidate information available, any dual candidacies and the electoral system (i.e. is the voter voting for candidates up to the number of vacancies or ranking a greater number of candidates). For example, the degree of name recognition may either in part compensate for the alphabetical order of the candidate's name (i.e. name is later in the alphabet) or reinforce the apparent advantage (i.e. name is early in the alphabet).

Our review of international research also confirmed that a definitive solution to this issue is unlikely. This research is limited and is often specific to the environment in which it is conducted. Some researchers

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\(^{10}\) The analysis was of election results for candidates from territorial authority and district health board elections where the order of candidates was known, with the exclusion, for statistical reasons, of candidates whose names began with the letter x, y or z. The analysis comprised in excess of 4,000 candidates.
have concluded that there are significant effects on electoral outcomes from the order of candidates while others say that much of the research leading to such conclusions is methodologically flawed and fails to take into account other explanations.

There are two levels of questions to be addressed on this issue:

- Should local authorities have discretion to choose the order of candidates?
- Which ordering should be adopted if there is to be no local discretion?

On the first question, our limited analysis revealed no significant impact from candidate order on voter turnout or the incidence of blank and informal votes in that particular election. More analysis is required to test this finding. This testing needs to include analysis of the impact candidate order in one election has on the other election issues on combined voting documents.

We believe, in principle, that the order of candidates should at least be consistent for all elections on combined voting documents.

However, we acknowledge that given the non-alignment of local authority and district health board boundaries, as we noted when considering the impact of choice of electoral system, it is possible to achieve such consistency on a regional basis in only a few areas of the country.

Given this, the next best option could be seen as one uniform order of candidates for all voting documents throughout the country. However, at this time given the limited research available that could be applied to New Zealand local elections, we are not in a position to recommend one uniform candidate order.

More analysis is required before such a recommendation could be made including the further option suggested by the Justice and Electoral Committee of an ‘alphabetic rotational order’. We noted that this option would be cheaper than random order and has the advantage of maintaining alphabetical order to assist voters finding their preferred candidates without the downside of the ‘primacy’ effect.

**We recommend more analysis be carried out on a preferred order of candidates for voting documents including the option of alphabetical rotational order.**

5. Vote processing and counting

Following the problems experienced in 2004 by one provider in the processing of STV voting documents, and as recommended by the Justice and Electoral Committee, considerable work was undertaken prior to the 2007 elections on end-to-end assurance of processing and counting systems. This work was aimed at ensuring both public and local authority confidence in these systems for future elections.

The work was led by the SOLGM electoral working party and resulted in good practice guidelines being provided for electoral officers in time for the 2007 elections. The good practice guidelines documented a generic end-to-end processing and counting system and recommended:

- detailed understanding of the particular end-to-end system to be used at the election and appropriate staff training
- adoption of appropriate risk management strategies
- independent testing of software to be used as ‘fit for purpose’
- independent auditing of manual processes to be used at the election
- submission by the electoral officer of the independent auditor’s software certificate and manual processes report to the local authority prior to the election.

While adoption of the guidelines could only be recommended to electoral officers, the main service providers and electoral officers at many local authorities voluntarily adopted them. This was at a significant cost in some cases.

The SOLGM electoral working party proposed that a requirement for end-to-end assurance for vote processing and counting systems be prescribed by way of regulation. While this can be a significant cost, we believe it is necessary to provide the desired public confidence that processing and counting systems have been appropriately tested and are fit for the purpose for which they are intended to be used.

We believe this will address any concerns about adoption of recommended good practice being left to the discretion of electoral officers. Given the diverse nature of local elections, we do not believe that,
as an alternative, prescribing a comprehensive code of good practice, including on end-to-end system assurance, is appropriate or practicable for local elections in New Zealand.

We recommend new regulations be promulgated for a generic requirement to achieve end-to-end assurance on vote processing and counting systems used for local elections.

We noted that the Justice and Electoral Committee recommended removal of the requirement for local authorities to determine, by resolution, whether electoral officers may process (not count) voting documents during the voting period. It considered that this should be left for electoral officers to determine.

This recommendation is based partly on the implications of one local authority failing to pass the required resolution either deliberately or by oversight. The consequence is that effectively no electoral officers can process voting documents in that region.

It also reflects the fact that early processing has now become the norm with all local authorities passing the required resolution for the 2004 and 2007 elections. Early processing allows considerable cost savings to be achieved, with the ability to spread the work over the three-week voting period, and it facilitates production of earlier and more accurate election results following the close of voting.

We do not see early processing of votes as an issue requiring local authority determination based on a need for discretion to reflect local diversity. Given it is now well established and universally applied, we believe the adoption of early processing should now be a management issue.

We recommend implementation of the Justice and Electoral Committee recommendation for the repeal of section 79 of the Local Electoral Act requiring local authorities to determine whether early processing of voting documents is to take place at local elections and the matter be left for electoral officer discretion.

6. Elected member issues

We received submissions on issues relating to when elected members come into office and provisions relating to by-elections to fill vacancies.

The SOLGM submission referred to the current provision that members elected unopposed come into office on polling day and other members come into office the day after being declared elected. The submission noted that there can be delays between the preparation and publication of the required public notice declaring election results and this can result in some public confusion.

We question the point of members elected unopposed coming into office at a different time to those who are successful at elections. No members can act until they have made the required declaration at the first meeting of the new council. Current members remain in office until new members come into office.

We recommend section 115 of the Local Electoral Act be amended to provide that all members, whether elected unopposed or not, come into office at the same time i.e. the day after declaration of the result of the election.

We received a number of submissions about the current provisions, applying to both local authorities and community boards, requiring the holding of a by-election to fill vacancies. The concerns relate primarily to the delay that might occur and the cost involved. It has been proposed that vacancies occurring soon after triennial elections, say 3 months, could be filled by the highest polling unsuccessful candidate and later vacancies, in the case of community boards, could be filled by appointment by the board.

We acknowledge the holding of a by-election to fill a vacancy occurring as a result of insufficient candidates or a retirement soon after a triennial election can result in delays. This is as a result of restrictions on notification requirements over the Christmas/January period. We also acknowledge the cost of a by-election can be seen as significant.

We noted it was a Government policy decision generally to treat local authorities and community boards in the same manner in the legislation. This consistency of treatment was aimed at assisting public understanding and to not be seen to treat community boards in some sort of lesser manner.

Issues to be considered in providing for the appointment of the highest polling unsuccessful candidate
include how close must a subsequent retirement be to the election, and what happens if that candidate is no longer available. Such a provision also assumes that voters would have voted the same way if they had the knowledge that one candidate would retire soon after the election.

An acknowledgement of the cost of a by-election was made, in the case of community boards, with an amendment in 2002. This allowed for a community board to make an appointment to fill a vacancy that was still not filled as a result of a by-election being notified (i.e. there is no requirement to keep calling for nominations if this is unsuccessful the first time).

On balance we believe the present provisions are appropriate.

We recommend no change to the Local Electoral Act relating to the holding of by-elections.

We are aware of the need for an amendment to the Sale of Liquor Act to bring it into line with the more recent Local Electoral Act. Currently the former Act allows a licensing trust to resolve to fill a vacancy by way of a by-election within 12 months of the next triennial general election. On the other hand, the Local Electoral Act provides the options of filling such a vacancy by appointment or to leave the vacancy unfilled. We believe this provision should also apply in respect of licensing trusts.

We recommend that the Sale of Liquor Act be amended to provide that a vacancy occurring on a licensing trust within 12 months of the next triennial election may either be filled by an appointment or left vacant.

7. Election data

We noted the recommendations of the Justice and Electoral Committee arising out of its 2004 inquiry relating to the availability and format of election data, both electronic data and the public notices of official results. We believe the former are largely matters of good practice and encourage the SOLGM electoral working party to consider this matter.

We understand that the working party also intends addressing the format and usefulness of official election results, particularly relating to STV results, and again we encourage it in this work. We noted that any change to official election results would be a matter for regulations.

We recommend the SOLGM electoral working party be encouraged to consider the availability and accessibility to the public of election data, including electronic data, and also the format of official election results as prescribed in the Local Electoral Regulations.

8. Electoral records

The Local Electoral Act requires electoral officers to secure voting documents and other specified materials as soon as practicable following the election or poll and to deposit these with the Registrar of the nearest District Court. The Registrar must keep these records secure for a period of 21 days following declaration of the official election/poll results or, as the case may be, until the completion of any recount or inquiry. The records are then to be destroyed.

We received a submission on these provisions proposing that electoral officers should retain all electoral records in a secure environment and then destroy these records after the required period. We support this suggestion in principle. We believe the Department of Courts is also likely to support the suggestion.

However, we believe more consideration and consultation is required before making final recommendations. We are aware, for example, that the current provisions were largely carried over from the previous Act and reflect their origin in booth voting conducted using mainly manual paper-based methods. Since that time there has been an increasing use of technology to assist the conduct of local elections.

This raises the question of the appropriateness and practicality of the depositing and destruction of electronic records in addition to paper-based documents. The issue of access to electoral records for research purposes is also raised periodically and needs to be addressed.

We recommend consideration be given to appropriate provisions in the Local Electoral Act and Local Electoral Regulations for the securing and destruction of all electoral records, including electronic records, following local elections including the issue of access to records for research purposes.
9. **STV technical issues**

The Justice and Electoral Committee recommended that the New Zealand method of STV (based on Meek’s method) be retained at least for the 2007 elections. It also recommended that further consideration be given to whether the STV source code and XML files should be published.

The adoption of Meek’s method of STV (subsequently renamed the New Zealand method following modifications to apply for elections in this country) was a Government policy decision. We received no submissions on the form of STV to be used in New Zealand STV elections and believe, given the investment in the New Zealand method, that it should be retained as long as STV remains an option for local authorities.

*We recommend no change at this time to the Local Electoral Act relating to the New Zealand method of STV.*

We do not believe that the STV source code (that used for the STV calculator to count STV votes) should be published. This is on the basis that the STV calculator was not only independently certified (by KPMG), as required by the Act, but also independently audited by another party (Price WaterhouseCooper) prior to that.

Publishing the code runs the risk of dubious challenges to election results thereby potentially prolonging the declaration of election results. Publishing the code also increases the likelihood of security breaches during an election.

*We recommend no change to the Local Electoral Act relating to the publishing of the source code for the STV calculator or any other STV counting program used in local elections.*

We also do not support publishing of XML files as these are essentially only technical input files for the STV calculator. Full calculator (output) reports are available from the electoral officer on request following an election.

10. **Electoral offences**

We received a submission proposing that additional offence provisions be enacted in the Local Electoral Act. One proposed offence relates to physical or verbal abuse of an electoral officer. Departmental legal advice was that while there is adequate provision in the Crimes Act for more extreme cases, such as imprisonment for up to 7 years for threatening to kill, it would be beneficial for there to be specific provision in the Local Electoral Act making it an offence for any person to obstruct the electoral officer in the conduct of his or her duties under the Act.

The second proposed offence relates to the maintenance of order in an official election place or location. Such a provision did exist in the previous Act but was not carried over into the Local Electoral Act in the belief that it was not necessary given the prevalence of postal voting. An equivalent provision exists for parliamentary elections in the Electoral Act.

*We recommend consideration of amendments to the Local Electoral Act to:*

- make it an offence to obstruct the electoral officer in the conduct of his or her duties under the Act
- require the electoral officer to maintain order in official election places and provide for the arrest or removal of any person suspected of committing or attempting to commit an offence under this Act, or willfully obstructing the proceedings or causing a disturbance, or conducting themselves in a disorderly manner.

In the interests of completeness in maintaining order at elections, we believe regulations should also be considered relating to the conduct of scrutineers.

*We recommend consideration of a new regulation to regulate the conduct of scrutineers following the close of voting at local elections.*

Finally, we noted that a number of the offence provisions in the Local Electoral Act were carried over from the previous Act and relate more directly to a booth voting environment. We understand that a thorough review of local electoral offences was not conducted at the time of the enactment of the Local Electoral Act. This was for both time reasons and as it was considered such a review would be
best conducted in conjunction with any review of offences relating to parliamentary elections.

We believe a comprehensive review of local electoral offence provisions should be undertaken including in relation to any present barriers to actively encouraging electors to vote.

*We recommend that a comprehensive review of all offence provisions under the Local Electoral Act be carried out bearing in mind the voting methods currently or likely to be used at future local elections.*

11. Licensing trust boundaries

We received submissions proposing that the Sale of Liquor Act be amended to introduce a process to align licensing trust boundaries with meshblocks. The Justice and Electoral Committee also made a similar recommendation arising out of its 2004 inquiry.

The lack of alignment between licensing trust boundaries and meshblocks creates administrative difficulties for electoral officers and risks error in the allocation of voting rights to electors. While some issues can be dealt with administratively or under existing legislation, any change to the external boundaries of licensing trust districts requires an amendment to the Sale of Liquor Act. That Act currently does not provide for any alteration of boundaries.

The Commission has previously recommended that the Sale of Liquor Act be amended to give the Commission the power to consider and determine any proposals for such change. This would ensure that the same organisation considers any changes to both local government and licensing trust district boundaries.

To date, no such amendments have been made to the Sale of Liquor Act.

To make progress on this issue Commission staff have been working with Statistics New Zealand and the Electoral Enrolment Centre to get as much licensing trust data as possible on the Electoral Enrolment Centre’s system. Statistics New Zealand has coded all meshblocks for complying licensing trust districts and wards and provided that data to the Electoral Enrolment Centre.

In a small number of cases it has been possible to alter meshblock boundaries to conform with licensing trust district boundaries. However, until the legislation is amended, a number of licensing trust district boundaries will continue to differ from meshblocks.

*We recommend amendments to the Sale of Liquor Act to require licensing trust boundaries to align with meshblocks and to provide for the Local Government Commission to consider and determine proposals to alter licensing trust boundaries to assist the efficient administration of elections.*

12. Miscellaneous issues

Effect of irregularity on result of election or poll

We noted that the Justice and Electoral Committee arising from its 2004 inquiry, recommended that consideration be given to whether the threshold under section 98 of the Local Electoral Act is too high. This arose from a submission to the Committee that the section be amended to allow a District Court Judge, when considering a petition for an inquiry into the conduct of an election or poll, to determine that an irregularity *may have* materially affected the result of the election or poll. On this basis, the Judge should be able to declare the election or poll void.

At present the provision requires the Judge to be of the opinion that the irregularity materially affected the result. We do not believe a new level of subjectivity for the Judge’s opinion is appropriate given the consequences of voiding an election or poll.

*We recommend no change to the Local Electoral Act relating to the effect of an irregularity on the result of an election or poll.*

Updating of eligible electors

We received a submission from the Electoral Enrolment Centre proposing that it provide a list of post electoral roll closure deletions to electoral officers as at the day before polling day being the last possible day to enrol. This will enable electoral officers to remove and disqualify any votes cast by people no longer eligible to be enrolled in that area.
This reflects the fact that after final rolls are prepared, a number of people subsequently become ineligible to vote by moving to another area, by death or for other reasons such as being imprisoned for a term of three years or more. We believe this is a helpful initiative to ensure only eligible voters are able to vote in a particular area and to save time validating special votes following the election.

The Electoral Enrolment Centre also proposed providing to electoral officers both preliminary and final lists of electors who have enrolled or updated their details since the roll closed. Special votes cast by these electors have to be sent to the local Registrar of Electors to confirm their eligibility to vote. This proposal will also enable the electoral officer to validate votes for counting and as a result provide quicker election results. Again we think this is a helpful initiative and we commend the Electoral Enrolment Centre. Neither proposal requires legislative change.

**Automatic recounts of votes**

We received one submission proposing that where the difference between a successful and unsuccessful candidate is small, the Local Electoral Act provide for an automatic recount of votes. The submitter suggested that a ‘small’ difference be defined as 5 votes or 0.1% of total votes.

The proposal would be a significant departure from current accepted practice that it is the right of any candidate to seek a recount of votes on the payment of the prescribed deposit ($750). This also applies in respect of parliamentary elections. The Judge who conducts the recount must, subject to any other order, subsequently direct the return of the deposit. The present approach avoids the issue of determining what constitutes a ‘small’ difference for cases where an automatic recount was to apply.

Given its wide acceptance and the receipt of only one submission on the current recount provision, we do not support any change.

**Preliminary and progress election results**

We received one submission proposing that the provision for ‘preliminary’ election results in the Local Electoral Act be replaced with ‘progress’ results. This is on the basis of the prevalence of contracting out of vote counting and the receipt of preliminary results (the count of all ordinary votes and any validated special votes) either late on polling day or the next day.

The submitter says that in order to meet public expectations, it (a council) is in the habit of releasing progress results on polling day. It believes, as a result, provision for a preliminary result is “superfluous” given its lack of timeliness.

We understand that the vast majority of elections, including a number of STV elections, did produce preliminary results on polling day and accordingly we do not support the proposal. We acknowledge a number of electoral officers do release progress results starting soon after the close of polling and we believe this is helpful in meeting public expectations and taking public and media pressure off for the release of results. There is, however, no statutory requirement to release progress results and this is appropriate.

### 5.9 Summary of areas for improvement

#### 5.9.1 Where improvements need to be made

Based on the analysis presented in this chapter, the following table summarises where we believe the operation of the Local Electoral Act could be improved in order to further advance the policy intent for achieving democratic local government.
### Areas Where Operation of the Local Electoral Act Could Be Improved

<table>
<thead>
<tr>
<th>Provision</th>
<th>No Significant Concerns</th>
<th>Still Bedding in</th>
<th>Needs Attention</th>
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<tbody>
<tr>
<td><strong>Electoral System</strong></td>
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<tr>
<td>Separate Māori representation</td>
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<td>• fair and effective representation</td>
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Note: **✓✓** signifies issues we believe require priority attention
### 5.9.2 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 ELECTORAL ACT

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Appendices
APPENDICES

Appendix 1: Local Government Commission's July 2005 (initial) report recommendations
Appendix 2: Justice and Electoral Committee recommendations arising from its inquiry into the 2004 local elections
Appendix 3: Submissions and other input
Appendix 4: Local authority engagement with Māori
Appendix 5: Social research commissioned
Appendix 6: Reports and papers
Appendix 7: Purpose, role, powers and principles of local government
Appendix 8: Examples of collaboration
Appendix 9: Public perceptions on inputting into decision-making
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Appendix 1

Local Government Commission’s
July 2005 (initial) report recommendations

The Local Government Commission’s initial report to the Minister of Local Government in July 2005 recommended the following amendments to the Local Electoral Act 2001:

1. all consecutive statutory deadlines under Part 1A of the Local Electoral Act 2001 should be moved forward by three months, and the final date for forwarding appeals and objections on representation reviews to the Commission under section 19Q should be changed to 15 October in the year preceding the triennial election of members, with the Commission continuing to have until 10 April in election year to issue its determinations

b) the Commission, in its determinations on representation arrangements under Part 1A of the Local Electoral Act 2001, should be able to prescribe community board delegations to apply for the next triennium

c) the statutory timeframe between the close of nominations and the dispatch of voting documents should be extended by one week, starting the whole election process one week earlier and calling for nominations on the 57th day before polling day. This will require amendments to:
   - section 5 of the Local Electoral Act 2001, changing the definition of nomination day to the 57th day before polling day; and
   - regulation 10 of the Local Electoral Regulations 2001, as follows:
     - a) in clause (1), changing the date from 7 July to 30 June
     - b) in clause (2), changing the date from 6 July to 29 June
     - c) in clause (3), changing the reference from “50th day” to “57th day”
     - d) in clause (4), changing the reference from “50th day” to “57th day”

d) the word “trust” should be included in section B of the ratepayer enrolment application form, contained in Schedule 1 of the Local Electoral Regulations 2001

e) section 25 of the Local Electoral Act 2001 should state that an electoral officer has the ability to refuse a nomination if proof of citizenship is not provided

f) section 55(5) of the Local Electoral Act 2001 should be amended so that nominations can only be inspected by a member of the public after nominations have been accepted, being after the close of nominations

g) section 61 of the Local Electoral Act 2001 should be amended to require candidates to submit their candidate profile statement at the same time as their nomination form

h) clause 29(2) of the Local Electoral Regulations 2001 should be amended to clarify that local authorities may publish or display candidate profile statements following the close of nominations rather than during the voting period

i) sections 18 and 79 of the Local Electoral Act 2001 should be amended to provide that progressive processing of voting documents applies by default to all elections where postal voting is used, unless resolved otherwise by the territorial authority responsible for elections in that local government electoral area
section 115(2) of the Local Electoral Act 2001 should be amended to make it clear that an elected candidate comes into office on the day after the day on which the candidate is declared elected by public notice under section 86 of the Local Electoral Act 2001.

2. recommended the following amendments to the Local Government Act 2002:
   a) section 156(2) of the Local Government Act 2002 should be amended as follows:
      (2) A local authority may, by resolution publicly notified, amend a bylaw-
      (a) by making editorial changes to clarify meaning, or to make amendments of a temporary nature, provided that amendments of a temporary nature shall only be made after notification of those who in the opinion of the local authority are likely to be affected by the amendment and after public notification of the amendment and its duration; and
   b) the Local Government Act 2002 should be amended to make it clear that local authorities are able to make donations for purposes outside their city, district or region.

3. identified the following areas of the Local Electoral Act and the Local Government Act as requiring further specific monitoring, leading towards the Commission's wider review under section 32 of the Local Government Act:
   a) the representation review provisions under Part 1A of the Local Electoral Act
   b) the order of candidates' names on voting documents
   c) electoral expenditure limits and advertising requirements under Parts 5 and 7 of the Local Electoral Act
   d) elector participation in the electoral process
   e) administration of local elections including contracting out of electoral functions
   f) decision-making, consultation and accountability requirements under Part 6 of the Local Government Act.
Appendix 2

Justice and Electoral Committee recommendations arising from its inquiry into the 2004 local elections

The Justice and Electoral Committee in its report to Parliament in August 2005 on the conduct of the 2004 local elections recommended as follows:

Representation reviews

1. The Local Electoral Act should allow for more than one proposal to be initially consulted on, with the decision about the final proposal to be made in the light of the consultation.

2. Where local consultation processes have been properly undertaken the results be given weight and be clearly reflected in the decision of the Local Government Commission. But if the Commission is minded to make a determination that is significantly different from local proposals, the Local Electoral Act be amended to at least allow for a further consultation round.

3. The review processes in the following areas be strengthened: timetable for reviews, delegations to community boards, and review guidelines need to be adhered to (including by the Commission).

4. The present provision for diversity, in the form of local decision-making about local representation arrangements for territorial authorities and, where applicable, regional councils (that is, size of council, discretion on “at large”/wards/mixed systems, and establishment of community boards), be retained.

5. Where a city or district’s boundaries are expanded, that a representation review of the district or the city must be conducted prior to the next local elections.

Voting methods

6. A clear statement be included on the voting document advising that it is an offence under sections 123 and 124 of the Local Electoral Act to complete another person’s voting document (unless authorised under Regulation 34) or to interfere with or fraudulently mark, deface or destroy a voting document.

7. Further work be done to ensure integrity relating to the collection of voting documents.

8. The efficacy of the Tasmanian voter signature system in the New Zealand context be examined.

9. Options for alternative polling-day facilities should be explored (for example, polling booths in supermarkets).

Voting period

10. The voting period be limited to 2 weeks to allow a more concentrated advertising campaign to focus people on their responsibility to participate in the democratic process.

11. There should be special arrangements for the early dispatch of voting documents to electors with overseas postal addresses.

12. Polls should close at 5.00 pm on polling day.

13. Polling day should be moved to the third Saturday in October to avoid coinciding with the school holidays and Labour Day weekend.
Voting documents

14. Work be undertaken to identify ways to improve the quality of voting documents and that guidance be provided to electoral officers in this area.

15. There should be a clearer distinction between FPP and STV issues where both systems are used on combined voting documents.

16. Further work be undertaken on the impact of candidate order on election outcomes, including overseas research. This work should also include a further possible option of a "rotational alphabetical" order.

Candidacy and candidates

17. Where community board members stand for more than one community board, they must indicate their preferred board and relinquish any other community board positions.

18. All candidates be required to include their principal place of residence (suburb/locality and city/district/region) in their candidate profile statement, which is not to be included in the 150 word limit.

19. Where a candidate is standing for more than one position, this information be included in the candidate's profile statement, which is not to be included in the 150 word limit.

20. Candidate profile statements be set out clearly, with an easily readable type face.

21. Candidate profile statements should be published as soon as practical following the close of nominations.

22. Candidate information should be made available upon request in accessible formats, such as large print, and should be included on local authority websites.

23. Consideration be given to implementation of a consistent approach to declarations of conflicts of interest by candidates for both councils and district health boards.

24. All candidate documents (nomination, deposit and profile statement) must be lodged together.

25. Signage requirements should be consistent with those for general elections.

26. During the course of the election, hard copies of lists of those people who have voted be made available on a cost-recovery basis and, where they are available, electronic copies be made available for no charge.

Accessibility

27. There should be dedicated phone contact and independent election staff to assist with the voting process.

28. Where a local authority has a significant population of non-English speaking groups, the electoral officer should be encouraged to provide information with the voting documents in those languages.

Awareness and encouraging voter turnout

29. The Government should fund a single electoral agency to be responsible for improving voter turnout and awareness in general and local elections.

Education and information on STV

30. The Government should fund a single agency to be responsible for education and information on all electoral systems used in New Zealand.
Civics education

31. The Ministry of Education should be encouraged to strengthen the place of citizenship education in the curriculum and make more teaching resources available for this purpose.

Election data

32. Web versions of official electronic information which conform to government web accessibility standards should be available and an XML (eXtensible Mark-up Language) publishing solution should be developed for creating and storing electronic information.

33. The prescribed details for official election results should be reviewed together with the format of available STV calculator reports to ensure the information is as useful and understandable as possible.

Choice of electoral system

34. The present arrangements for electoral systems (STV mandatory for district health boards and optional for councils and licensing trusts) and the means available to review decisions, should be retained at least for the 2007 elections.

35. The present statutory provision for diversity, by way of local decision-making, on the matter of local electoral system should be reviewed after the 2007 elections.

Form of STV

36. The New Zealand method of STV be retained at least for the 2007 local authority elections.

Roles and responsibilities

37. Consideration be given to forming a single agency by 2008 (in conjunction with any review of parliamentary election structures under the Electoral Act 1993) to oversee local elections.

New organisational structure for local elections to be considered

38. The Electoral Enrolment Centre continue to provide lists of enrolled electors to local electoral officers for compilation of local electoral rolls.

39. The Department of Internal Affairs continue to administer the Local Electoral Act 2001 and the Local Electoral Regulations 2001; provide policy advice to the Minister of Local Government on local electoral matters; and provide general advice and information in response to queries on local government, including local elections.

40. The Ministry of Health continue to administer the New Zealand Public Health and Disability Act 2000 in respect of district health board elections; provide policy advice to the Minister of Health on district health board elections; and provide general advice and information in response to queries on district health boards, including district health board elections.

41. A central government agency:
   - publish a code of good practice for the conduct of local elections; develop memoranda of understanding for the conduct of local elections with appropriate agencies and bodies; approve general formats for voting documents; manage and maintain the STV calculator which it licenses to local authorities; appoint an independent certifier for any new or modified computer counting program used at a local election (such as the STV calculator);
   - provide information on local elections (including district health board elections) to the public and to candidates through electoral officers; provide education and information on electoral systems; and promote awareness of and participation in local elections; coordinating local-authority activities.
42. The New Zealand Police continue to investigate alleged offences against the Local Electoral Act.

43. The District Court continue to conduct recounts of votes and inquiries into the conduct of particular local elections, and to receive, retain and destroy completed voting documents.

44. Responsibility for appointing local electoral officers, conducting local elections, and receiving complaints regarding the conduct of local elections be considered further as we recognise that local authorities may express concern at these functions being undertaken by a central agency.

45. Until any new structure for local elections is agreed, the appointment of local electoral officers should be limited to council officers.

**Local authority resolutions on early processing**

46. That the requirement for local authority resolutions to permit the early processing of voting documents be removed and the matter be left for the electoral officer to determine.

**Provision for an extra week in the election timetable**

47. That there be an extra week in the election timetable after the close of nominations and before voting documents are mailed to electors.

**Licensing trust boundaries**

48. That the Ministry of Justice be consulted to determine whether licensing trust boundaries can be defined by meshblocks.

**Effect of irregularity on result of election or poll**

49. Consideration be given to whether the threshold under section 98 of the Local Electoral Act is too high.

**STV calculator**

50. Further consideration be given to the most appropriate method of providing the required assurance around vote processing and counting systems including the need/practicability for “end-to-end” certification.

51. Further consideration be given to whether the STV source code and XML files should be published.

**Processing and counting of votes**

52. The roles and responsibilities of electoral officers and counting contactors should be clear, well understood and formally documented.

53. A complete “end-to-end” counting process should be formally documented.

54. All parties should adhere to applicable codes of “best practice” for developing and operating in an information systems environment.

55. Electoral officers should have a good understanding of the contractor’s approach, understand the key steps and controls within that approach, and consider the need, nature and extent of pre-count verification of the system and controls.

56. Electoral officers and contractors need to be able to recognise the impact of any “failure”.

57. A risk management plan and mitigating strategies are required.

58. Sound communication is required between electoral officer and contractor at all times.
Appendix 3

Submissions and other input

1. Submissions

Society of Local Government Managers: Strengthening Local Democracy (March 2007)

Local Government New Zealand:

Supplementary submission (June 2007)
Metropolitan sector submission (July 2007)
Regional affairs committee submission (September 2007)

Local authorities:

Auckland City Council
Auckland Regional Council
Central Otago District Council
Christchurch City Council
Dunedin City Council
Environment Southland
Gore District Council
Greater Wellington Regional Council
Hamilton City Council
Horizons Regional Council
Hutt City Council
Manukau City Council
Napier City Council
Rangitikei District Council
Waitaki District Council
Waitomo District Council
Wanganui District Council
Whakatane District Council
Wellington City Council

Central Government Agencies:

Department of Building and Housing
Civil Defence and Emergency Management
Electoral Enrolment Centre
Ministry of Culture and Heritage
Ministry of Health
Ministry of Social Development
Ministry of Women’s Affairs
SPARC (Sport and Recreation New Zealand)
Statistics New Zealand

Other:

Cockle Bay Residents and Ratepayers Association
Federated Farmers
Grant Kirby
Local Government Forum
Colin MacGillivray
National Council of Women
New Zealand Public Service Association
Councillor Jim Pringle, Environment Bay of Plenty
Rural Women New Zealand
2. Discussions

Local Authorities

Commission staff, with the assistance of independent facilitators, held face to face discussions with council officers and elected members (in separate sessions) from 14 councils\(^1\), primarily around Part 6 of the Local Government Act 2002. The findings, along with the list of participating councils are contained in *Review of Local Government Act 2002 Engagement and Decision Making Provisions*, Mary Richardson and Peter Winefield, November 2007 which is available on our website www.lgc.govt.nz.

Central Government Agencies

The following agencies, while not providing formal written submissions, shared their views and experiences as follows:

- Office of the Auditor-General (on Part 6 of the Local Government Act and codes of conduct/conflicts of interest)
- Chief Ombudsman (on Local Government Act)
- Parliamentary Commissioner for the Environment (on sustainability)
- Ministry of Economic Development (on community outcomes process)
- Ministry for the Environment (on community outcomes process and interface of Local Government Act with Resource Management Act)
- Ministry of Transport and Land Transport New Zealand (on interface of Local Government Act with Land Transport Management Act legislation)
- Te Puni Kōkiri (on local authority engagement with Māori)

Other

The Commission met with Local Government Rates Inquiry panel members and representatives of the Commission also met with the Community Boards Executive Committee and the Local Government Forum.

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\(^1\) The selected councils were: Kaipara District, Waitakere City, Manukau City, Environment Waikato, Stratford District and South Taranaki District (together), Hastings District, Hutt City (council officers only), Nelson City, Hurunui District, Environment Canterbury, Queenstown-Lakes District, Dunedin City and Southland District.
Appendix 4

Local authority engagement with Māori

1. Sources of information

In forming our recommendations on Māori engagement, we considered:

- the legislative and regulatory framework
- a range of studies, reports, and good practice guides
- submissions to the review
- responses to our survey of all councils
- input from Local Government New Zealand, Te Puni Kokiri, the Ministry for the Environment, the Department of Internal Affairs, the Ministry of Social Development, and the Ministry of Health
- advice from the Office of the Auditor-General and the Society of Local Government Managers
- interviews with selected local authorities and Māori representatives (see below for a list of interviewees).

2. Local authorities and Māori representatives interviewed

Christchurch
Te Rūnanga o Ngāi Tahu:
  Donald Couch: Deputy Kaiwhakahaere
  Paul Horgan: Toitū te Whenua

Environment Canterbury:
  John Glennie: Natural Resources Policy Manager, Environment Canterbury
  Bob Tai: Māori Liaison Manager, Environment Canterbury
  Jude Pani: Manager Secretariat Democracy Services, Environment Canterbury

Manukau
Manawhenua forum:
  Lucy Tukua (Deputy Chair and Ngati Paoa)

Te Ora o Manukau (collective of Māori signatories to “healthy cities”)
  Tony Kake (Chair)
  Lee Cherie King (Pae Arahi)

Manukau City Council:
  Moana Herewini (Manager, Te Tiriti o Waitangi Relationships)
  Ree Anderson (Director, Environment)

New Plymouth
Te Atiawa:
  Grant Knuckey (Deputy Chairperson, New Plymouth District Council Iwi Liaison Committee and Chairperson of Puketapu Hapū, Ngāti Te Whiti Hapū, Te Atiawa)
  Peter Moreahu (Puketapu Hapū, Ngāti Te Whiti Hapū, Te Atiawa)
  Anaru Wilkie (Puketapu Hapū)

New Plymouth District Council:
  Aroha Chamberlain (Kaitakawaenga of Iwi Relationship Team)
  Louise Tester (Senior Policy Analyst, Corporate Policy and Strategy)

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2 A full list is provided in the background paper Local Authority Engagement with Māori which is available on the Commission’s website www.lgc.govt.nz.
Appendix 5

Social research commissioned

We commissioned Colmar Brunton to conduct the following suite of social research:

1. **Post (local) elections survey 2007 (relating to Chapter 5)**
   - **Topics explored:**
     - demographic profile of voters and non-voters
     - motivations and barriers to voting
     - awareness of, and preferences with respect to, electoral systems
     - awareness and usefulness of advertising and other information
   - **Methodology:**
     - 100 telephone interviews conducted in each of eight local authorities: Far North District, Manukau City, Carterton District, Wellington City, Marlborough District, Christchurch City, Waimate District, and Invercargill City
     - eligible voters (persons over 18 years of age)
     - quotas set for voters and non-voters (within each local authority) to ensure final sample was not unduly biased towards voters
     - local authorities selected for inclusion in the survey on the basis of possessing particular characteristics, including location (North or South Island), local authority type (urban, provincial or rural), voter turn-out (high, average or low) and electoral system used (STV or FPP)

2. **National survey on knowledge of, and participation in, local government (relating to Chapters 3 and 4)**
   - **Topics explored:**
     - knowledge of local government
     - knowledge of regional and local councils
     - awareness and knowledge of community boards
     - awareness of council processes (LTCCP and representation reviews)
     - awareness of what councils do and provide
     - awareness of the wider role of council
     - consideration of the needs of future generations
     - participation in council decision-making
     - influencing council decision-making
     - motivations and barriers to voting
   - **Methodology:**
     - national telephone survey of 1035 people aged 18 years and over
     - quotas set for voters and non-voters to ensure the final sample was not unduly biased towards voters
     - 53 booster interviews conducted with Māori to ensure that the final sample of 1035 included at least 150 Māori voters and non-voters.
3. Submitters’ experiences (Report No. 1: Understanding experiences of interacting with local government; a qualitative study)

Topics explored:
- submitters – who they are and what do they want from local government
- perceptions of engaging with local government
- perceptions of council performance against the principles of consultation

Methodology:
- 24 qualitative individual in-depth interviews in Auckland, Northland, Canterbury, Nelson and Southland
- each interview took up to an hour
- participants included both those who had made submission(s) as an individual and those who had made a submission(s) on behalf of a community group
- findings from this research were not intended to be statistically robust, but to provide depth and to inform the quantitative survey of submitters that followed

4. Submitters’ experiences (Report No.2: Understanding experiences of interacting with local government; a quantitative study)

Topics explored:
- who makes submissions to council
- the process of making a submission: finding out about the issues, time spent preparing a written submission, presenting in person at council meetings
- overall evaluation of the public consultation process
- perceptions of council performance against principles of consultation
- likelihood of making another submission

Methodology:
- respondents drawn from unculled lists provided by 14 councils of people who had submitted to their 2006-07 annual plan or LTCCP
- councils were: Kaipara District, Manukau City, Waitakere City, Environment Waikato, South Taranaki District, Stratford District, Hastings District, Hutt City, Nelson City, Environment Canterbury, Hurunui District, Dunedin City, Queenstown-Lakes District and Southland District
- respondents asked to answer questions with reference to their most recent submission (therefore, although all respondents had made a submission relating to an annual plan and/or LTCCP, not all were focusing on that submission during the interview)
- 301 telephone surveys
- separate analysis by individual versus community group submitters, first time submitters versus more experienced submitters
Appendix 6

Reports and papers

The following is a non-exhaustive list of reference material by general topic heading sourced during the review. A more comprehensive list, particularly around community engagement and including local authority engagement with Māori, is available from the Commission upon request.

Chapter 2: Overview

Department of Internal Affairs, May 2007, Review of the initial rollout of the local government legislation – 2001 to 2004


Local Government KnowHow, jointly prepared by Society of Local Government Managers, Local Government New Zealand and Department of Internal Affairs, including the following individual guides: Rating (released July 2002), Governance (released March 2003), Decision-making (released March 2003), Regulation and Enforcement under the Local Government Act (released July 2002), Assessments of Water and Sanitary Services (released August 2003) and The Local Government Act 2002.

Chapter 3: Responsive local government


Cheyne, Christine, 2004, Participation, leadership and urban sustainability (PLUS) – National report – New Zealand

Cheyne, Christine and Veronica Tawhai, July 2007, Māori engagement with local government: knowledge, experiences and recommendations

Controller and Auditor-General, 21 June 2004, Local government: Results of the 2002-03 audits, Report to the House of Representatives

Controller and Auditor-General, 18 July 2005, Local government: Results of the 2003-04 audits, Report to the House of Representatives

Controller and Auditor-General, 2 June 2006, Local government: Results of the 2004-05 audits, Report to the House of Representatives

Controller and Auditor-General, 21 June 2007, Local government: Results of the 2005-06 audits, Report to the House of Representatives

Controller and Auditor-General, 22 June 2007, Matters arising from the 2006-16 long-term council community plans, Report to the House of Representatives

Controller and Auditor-General, 12 September 2007, Good practice guide: Turning principles into action: A guide for local authorities on decision-making and consultation

Controller and Auditor-General, 17 June 2008, Local government: Results of the 2006-07 audits, Report to the House of Representatives

Copus, Colin, 2003, Re-engaging citizens and councils: the importance of the councillor to enhancing citizen involvement, Local Government Studies, Vol 29, No.2

Department of Internal Affairs, 2004, A snapshot survey of New Zealand local government during 2002-2003 (survey results)

Department of Internal Affairs, 2004, Survey of New Zealand local government update 2003-2004 (survey results)
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<td>Department of Internal Affairs, Strategy for evaluating local government legislation</td>
<td>2006</td>
<td>Analysis of community outcomes from draft long-term council community plans</td>
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<td>Department of Internal Affairs, Public knowledge about local government (survey findings)</td>
<td>2007</td>
<td>Barriers and enablers to participation in local government – a qualitative report</td>
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<td>Local Futures, August 2005, Local government consultation and engagement with Māori</td>
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<td>Local Futures Research Project, 2006, Local government strategy and communities, Institute of Policy Studies, School of Government, Victoria University of Wellington</td>
<td>2006</td>
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<td>Local Government Rates Inquiry, August 2007, Funding local government, Report to the Minister of Local Government</td>
<td>2007</td>
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<td>Local Government New Zealand, 2004, Engaging with communities over outcomes: A review of innovative approaches to meeting the LGA 2002 challenge of identifying community outcomes</td>
<td>2004</td>
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<td>Local Government New Zealand, 2004, Improving the reputation of local government (survey findings)</td>
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<td>Local Government New Zealand, January 2007, Co-management: Case studies involving local authorities and Māori</td>
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<td>Local Government New Zealand, October 2007, Frequently asked questions on council-Māori engagement: A resource to support councils</td>
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<td>New Zealand Council of Social Services, August 2005, Promoting community well-being: A study of the involvement of councils of social services in local authority community outcome processes</td>
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<td>2009</td>
<td></td>
</tr>
</tbody>
</table>

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- Controller and Auditor-General, May 2004, Local authorities working together
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Appendix 7

Purpose, role, powers and principles of local government

1. The **purpose** of local government is:
   • to enable democratic local decision-making and action by, and on behalf of, communities; and
   • to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future. (section 10)

2. The **role** of the local authority is:
   • to give effect … to the purpose of local government…; and
   • to perform the duties, and exercise the rights, conferred on it by or under this Act or any other enactment. (section 11)

3. **Powers**: for the purposes of performing its role, a local authority has:
   • full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
   • for (these) purposes, full rights, powers and privileges. (section 12(2))
   • A local authority’s ‘full capacity, rights, powers and privileges’ are “subject to this Act, and any other enactment, and the general law” (section 12(3))
   • “A territorial authority must exercise its powers … wholly or principally for the benefit of its district” (section 12(4))
   • “A regional council must exercise its powers … wholly or principally for the benefit of all or a significant part of its region, and not for the benefit of a single district” (section 12(5))
   • The purpose of local government and a local authority’s ‘full capacity, rights, powers and privileges’ “apply to a local authority performing a function under another enactment to the extent that the application of those provisions is not inconsistent with the other enactment” (section 13).

4. In performing its role a local authority must act in accordance with the following **principles** (set out in section 14):
   (a) a local authority should -
      (i) conduct its business in an open, transparent, and democratically accountable manner; and
      (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner;
   (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
(c) when making a decision, a local authority should take account of –

(i) the diversity of the community, and the community’s interests, within its district or region; and

(ii) the interests of future as well as current communities; and

(iii) the likely impact of any decision on each aspect of well-being referred to in section 10:

(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:

(e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and

(f) a local authority should undertake any commercial transactions in accordance with sound business practices; and

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and

(h) in taking a sustainable development approach, a local authority should take into account –

(i) the social, economic, and cultural well-being of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.
Appendix 8

Examples of collaboration

1. Between Councils

Councils in some regions, such as Waikato, have chosen to take a regional approach to planning for their community consultation. This collaborative approach to working through the community outcomes processes is enabling Waikato organisations (under the umbrella of ‘Choosing Futures Waikato’) to:

- share understanding about issues across the region
- explore ideas to progress community outcomes
- identify indicators for tracking progress in achieving outcomes.

Other examples include:

- ‘Our Way Southland’ a community outcomes focused co-operative working group involving the four Southland councils
- ‘Community Outcomes Bay of Plenty’ (see later in this appendix for more detail).

2. Between central and local government

In addition to the initiatives cited in the main body of this report, the Commission is aware of the following further examples:

Transport related (as supplied by the Ministry of Transport)

- Land transport committees: The Ministry of Transport has ongoing liaison with local authority land transport committees with stakeholder representatives attending local government meetings including regional land transport committees. The Ministry consults widely when developing policy that impacts the regions and many of the teams are in regular informal contact with officers at the local and regional level.

- New Zealand Transport Strategy: This was to be launched in early July 2008 as an update of the strategy released in 2002. The overall goal is to help New Zealand achieve an affordable, integrated, safe, responsive and sustainable transport system. The strategy will inform any new strategies and the implementation and revision of existing transport strategies. It will also influence regional strategic planning documents such as regional transport strategies and regional growth strategies. It will provide clearer guidance, timeframes and targets. To achieve the proposed targets central and local government will need to work together using a collaborative approach. There will also have to be a whole-of-government effort.

- ‘Sea change’: This is the domestic seafreight strategy which was launched in May 2008. It sets the target of doubling the current domestic seafreight’s share of inter-regional freight by 2040. It is not just about shipping - the concept of intermodality is fundamental to all the transport strategies and there are also obvious links to other energy and environmental initiatives. This will involve both local and central government working together.

- Integrated approach to planning: Project to develop an integrated approach to transport and land use planning which is seen as a key contributor to achieving a sustainable transport system. The objective of the project was to identify gaps and barriers within both areas of planning. This strategy has involved multi-agency input including Ministry of Transport, Ministry for the Environment, Local Government New Zealand, Civil Aviation, On Track, Civil Aviation Authority, Land Transport New Zealand and Maritime New Zealand. The Ministry of Transport has worked closely with central and local government agencies around land use planning and is a signatory to the NZ Urban Design protocol which was developed by Ministry for the Environment.

The Local Government and Community Branch of the Department of Internal Affairs advised that most district health boards (DHBs) report that they are part of collaboration initiatives (e.g. intersectoral forums) that involve central and local government agencies working together on community outcomes identified by their respective communities. These include, in particular, safe communities, healthy lifestyles, and housing. In some situations collaborative work has not necessarily flowed from the community outcomes
process, but has been at the request of the DHB to advance a DHB priority such as ‘Healthy Eating’.

Examples of collaborative health-related work include the following examples:

- Rodney District Council has a memorandum of understanding with the Waitemata DHB (WDHB) confirming strategic alignments and joint priorities. WDHB is also an active participant in the Rodney Social Well-being Advisory Group established as an initiative between the Council and Ministry of Social Development and involving all the key government agencies (including Housing NZ, NZ Police, Ministry of Economic Development, Work and Income, Family and Community Services – a division of the Ministry of Social Development, Te Puni Kokiri). This group meets monthly and is currently developing a social well-being strategy for Rodney (drawing on community outcomes and the local services mapping exercise carried out by the Ministry of Social Development).

- North Shore City is currently in the process of establishing a social well-being advisory group similar to that operating in Rodney. Waitemata DHB has also taken part in an intersectoral Northcote child and youth project which resulted in the establishment of a health provider network for service providers in the area. The DHB Child and Family Service has a responsibility for maintaining this network.

- ‘Community Outcomes Bay of Plenty’: In September 2005 nine local authority and 22 central government heads and regional managers agreed to join ‘Community Outcomes Bay of Plenty’ (COBoP). COBoP signatories to the memorandum of understanding include: Environment Bay of Plenty, the Kawerau District, Opotiki District, Rotorua District, South Waikato District, Taupo District, Tauranga City, Western Bay of Plenty District and Whakatane District Councils, Lakes DHB, Bay of Plenty DHB, ACC, Career Services Rapuara, Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of Labour, Housing New Zealand, Ministry of Culture and Heritage, Ministry of Agriculture and Forestry, Ministry of Economic Development, Ministry of Education, Ministry of Justice, Ministry of Social Development (including Child Youth and Family), New Zealand Police, New Zealand Trade and Enterprise, Te Puni Kōkiri, Sport and Recreation New Zealand. Staff from these organisations joined subgroups to work on the community outcome themes of: economic transformation, environmental well-being, housing, safe and healthy community. The governance group set the priority areas for sub-group activity and determined the type and level of their agency involvement.

3. Mandated roles for Department of Internal Affairs and Ministry of Social Development

The Department of Internal Affairs and the Ministry of Social Development have specific roles agreed by Cabinet. They are mandated to facilitate central and local government engagement. The Department is to facilitate the central and local government interface around the community outcomes process, and the Ministry is to continue to “develop its coordination role to promote effective relationships between local authorities and social sector departments represented at the local level” (POL Min (04) 12/15).

The Department has taken a number of initiatives to draw more central government agencies into interagency work with local government in order to make better use of resources, and improve service delivery. It is also endeavoring to build central government officials’ understanding of the community outcomes process and their role in it. Examples of this include:

- the ‘Pen to Paper Profiles’ (case studies of successful collaboration between central and local government)
- publication of examples of good practice (around central-local government collaboration) on the Department’s website and through newsletters and e-bulletins
- annual workshops that provide information about the community outcomes process, central government’s role in it, and the value of integrated planning and collaboration
- national level intersectoral forums that include central and local government
- the development and presentation of joint roadshows with Statistics NZ on regional indicators to assist local authorities to monitor and report on achieving community outcomes.
Appendix 9

Public perceptions on inputting into decision-making

The following are findings from our national survey *Knowledge of, and participation in, local government* (see Appendix 5 for methodology).

**How important is it to have a say?**

82% of respondents indicated they felt it was important to have a say in council decisions. Only 7% felt it was not important to have a say. Within this finding:

- As may be expected, voters were more likely than non-voters to say it is either "important" or "very important" that they have a say (90% versus 76% of non-voters).
- Non-ratepayers are more likely than ratepayers to say it is "neither important" nor "unimportant" that they have a say (21% versus 8% of ratepayers).
- There were however no differences by income or location (urban, provision or rural).

**How likely are the public to have a say?**

Respondents were then asked how likely or unlikely it is that they would give their views to council on an issue that they felt was important.

Just over two-thirds of respondents said they are "quite likely" or "very likely" to give their views to councils about an issue they felt strongly about. Within that, the following groups are more likely to indicate they would have a say:

- voters compared to non-voters
- people over 35 years of age compared to people under 35
- those with a combined income over $50,000 per annum compared to those with incomes below that level.

There were no other statistically significant differences by demographic groups.

The gap between 82% of respondents saying it is important to have a say and 67% stating they would have a say, may highlight a difficulty faced by councils when attempting to get public input into decision-making. A question is whether this disjoint simply reflects human nature or do councils and/or the Local Government Act through various processes, knowingly or unknowingly, put in place barriers to public participation?
Why wouldn’t you have a say?

Respondents who stated they were unlikely to give their view to council were asked for there reasons. These are presented below:

<table>
<thead>
<tr>
<th>Reasons for being unlikely to give views to council</th>
<th>(n=223)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apathy/not interested</td>
<td>39</td>
</tr>
<tr>
<td>Can’t be bothered/too lazy/too much hassle/leave it to others/don’t have time</td>
<td>31</td>
</tr>
<tr>
<td>Not interested/have no strong views</td>
<td>9</td>
</tr>
<tr>
<td>Won’t achieve anything/make any difference</td>
<td>25</td>
</tr>
<tr>
<td>Council does not listen/does not take us seriously/outcome pre-determined</td>
<td>19</td>
</tr>
<tr>
<td>Need numbers to be heard/one person doesn’t make a difference</td>
<td>5</td>
</tr>
<tr>
<td>I’m elderly/too old/elderly not heard/listened to/input wouldn’t matter</td>
<td>3</td>
</tr>
<tr>
<td>Perceived process difficulties</td>
<td>10</td>
</tr>
<tr>
<td>No easy channel of communication/council not accessible</td>
<td>6</td>
</tr>
<tr>
<td>Don’t know the process/how to make a submission/speak up</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>15</td>
</tr>
<tr>
<td>I’m shy/timid/don’t like speaking in front of people</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
</tr>
<tr>
<td>Reasons for being likely/not saying very unlikely*</td>
<td>10</td>
</tr>
<tr>
<td>No reason</td>
<td>4</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>3</td>
</tr>
</tbody>
</table>

Note: Comments made by less than 3% of respondents are not shown, but are included within their respective ‘nett’ category.

*Some respondents provided reasons for not being ‘very unlikely’, even though they are unlikely to give their views overall.

Base: Total number of responses = 223.

In summary, key reasons for being unlikely to give views to council are apathy or lack of interest (39%) and the perception that giving views will not achieve anything or make a difference (25%).

Demographic differences of note included:

- Those who live in one of New Zealand’s main cities are more likely than provincial or rural residents to say that they cannot be bothered or are too lazy (40% versus 18% and 19% respectively).
- Those with a combined income of $50,000 or less per year are more likely than those with an income over $50,000 to say that they cannot be bothered or are too lazy (39% versus 17%).
- Women are more likely than men to express apathy about giving views to council (54% versus 26% of men).
Appendix 10

References to “significant”, “significance” and “significantly” in the Local Government Act 2002

Instances where the term “significant” occurs in the Local Government Act 2002 include:*  
- “significant decision” (sections 76 and 77)  
- “significant activity” (sections 88 and 97)  
- “significant new activity” (section 16)  
- “significant infrastructure” (section 130)  
- “significant assumptions” (section 201)  
- “significant assets” (Schedule 10, clause 11(b))  
- “significant forecasting assumptions and risks” (Schedule 10, clause 11(a))  
- “significant negative effects” (Schedule 10, clause 2(1)(c))  
- “significant variation” (Schedule 10, clauses 3 and 15)  
- “significant policies and objectives” (Schedule 10, clauses 4 and 16)  
- “significant part” of its region (section 12(5)).

Instances where the term “significantly” occurs in the Local Government Act 2002 include:*  
- “significantly inconsistent with” (section 80)  
- “alter significantly” (section 97)  
- “significantly affect” (section 97).

Instances where the term “significance” occurs in the Local Government Act 2002 include:*  
- “significance of all relevant matters” (section 79)  
- “significance of the decision or matter” (section 82(4)(c))  
- “significance of proposals and decisions” (section 90)  
- “determining significance” (sections 90 and 281, and Schedule 10, clause 7).

* Note that these lists are indicative rather than exhaustive.

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Appendix 11

Participation model

**IAP2 Public Participation Spectrum**
Developed by the International Association for Public Participation

<table>
<thead>
<tr>
<th>INFORM</th>
<th>CONSULT</th>
<th>INVOLVE</th>
<th>COLLABORATE</th>
<th>EMPOWER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Participation Goal:</td>
<td>Public Participation Goal:</td>
<td>Public Participation Goal:</td>
<td>Public Participation Goal:</td>
<td>Public Participation Goal:</td>
</tr>
<tr>
<td>To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.</td>
<td>To obtain public feedback on analysis, alternatives and/or decisions.</td>
<td>To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.</td>
<td>To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.</td>
<td>To place final decision-making in the hands of the public.</td>
</tr>
<tr>
<td>Promise to the Public:</td>
<td>Promise to the Public:</td>
<td>Promise to the Public:</td>
<td>Promise to the Public:</td>
<td>Promise to the Public:</td>
</tr>
<tr>
<td>We will keep you informed.</td>
<td>We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.</td>
<td>We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.</td>
<td>We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.</td>
<td>We will implement what you decide.</td>
</tr>
<tr>
<td>Example Techniques to Consider:</td>
<td>Example Techniques to Consider:</td>
<td>Example Techniques to Consider:</td>
<td>Example Techniques to Consider:</td>
<td>Example Techniques to Consider:</td>
</tr>
<tr>
<td>• Fact sheets</td>
<td>• Public comment</td>
<td>• Workshops</td>
<td>• Citizen juries</td>
<td></td>
</tr>
<tr>
<td>• Web Sites</td>
<td>• Focus groups</td>
<td>• Deliberate polling</td>
<td>• Ballots</td>
<td></td>
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<tr>
<td>• Open houses</td>
<td>• Surveys</td>
<td>• Consensus building</td>
<td>• Delegated decisions</td>
<td></td>
</tr>
<tr>
<td>• Public meetings</td>
<td></td>
<td>• Participatory decision-making</td>
<td></td>
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</table>

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## Appendix 12

### Membership of STV Councils in 2004 and 2007

<table>
<thead>
<tr>
<th>Council</th>
<th>Features</th>
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</thead>
</table>
| **Kaipara District**| **2004:** 10 councillors and 4 wards (2, 2, 3 and 3 councillors per ward)  
Gender: 8 males, 2 females  
Ethnicity: all Pākehā  
Age: 1 in 40's, 9 in 50's or 60's  
**2007:** 8 councillors and 3 wards (2, 3 and 3 councillors per ward)  
Gender: 6 males, 2 females  
Ethnicity: all Pākehā  
Age: 1 in 30's, 7 in 50's or 60's |
| **Papakura District**| **2004:** 8 councillors and 4 wards (2 councillors per ward)  
Gender: 5 males, 3 females  
Ethnicity: 6 Pākehā, 2 Māori  
Age: 3 in 30's, 1 in 40's, 4 in 50's or 60's |
| **Matamata-Piako District**| **2004:** 11 councillors and 3 wards (4, 4 and 3 councillors per ward)  
Gender: 8 males, 3 females  
Ethnicity: all Pākehā  
Age: all in 50's or 60's |
| **Thames-Coromandel District**| **2004:** 8 councillors and 3 wards (4, 3 and 1 councillors per ward)  
Gender: 7 males, 1 female  
Ethnicity: all Pākehā  
Age: 2 in 40's, 6 in 50's or 60's  
**2007:** 8 councillors and 3 wards (4, 3 and 1 councillors per ward)  
Gender: 8 males  
Ethnicity: all Pākehā  
Age: 2 in 40's, 6 in 50's or 60's |
| **Kapiti Coast District**| **2004:** 10 councillors and 5 wards (2, 1, 1 and 1 councillors per ward and 5 at large)  
Gender: 6 males, 4 females  
Ethnicity: all Pākehā  
Age: all in 50's or 60's  
**2007:** 10 councillors and 5 wards (2, 1, 1 and 1 councillors per ward and 5 at large)  
Gender: 4 males, 6 females  
Ethnicity: all Pākehā  
Age: 1 in 20's, 1 in 40's, 8 in 50's or 60's |
<table>
<thead>
<tr>
<th>Council</th>
<th>Features</th>
</tr>
</thead>
</table>
| Porirua City            | 2004: 13 councillors and 3 wards (5, 5 and 3 councillors per ward)  
Gender: 6 males, 7 females  
Ethnicity: 8 Pākehā, 3 Māori and 2 Pasifika  
Age: 5 in 40’s, 8 in 50’s or 60’s  
2007: 13 councillors and 3 wards (5, 5 and 3 councillors per ward)  
Gender: 9 males, 4 females  
Ethnicity: 7 Pākehā, 2 Māori, 4 Pasifika  
Age: 2 in 20’s, 1 in 30’s, 4 in 40’s, 6 in 50’s or 60’s |
| Wellington City         | 2004: 14 councillors and 5 wards (3, 3, 3 and 2 councillors per ward)  
Gender: 9 males, 5 females  
Ethnicity: 13 Pākehā, 1 Māori  
Age: 1 under 20, 3 in 40’s, 10 in 50’s or 60’s  
2007: 14 councillors and 5 wards (3, 3, 3 and 2 councillors per ward)  
Gender: 6 males, 8 females  
Ethnicity: 13 Pākehā, 1 Māori  
Age: 2 in 20’s, 4 in 40’s, 8 in 50’s or 60’s |
| Marlborough District    | 2004: 13 councillors and 4 wards (7, 3, 2 and 1 councillors per ward)  
Gender: 10 males, 3 females  
Ethnicity: all Pākehā  
Age: 1 in 40’s, 12 in 50’s or 60’s  
2007: 13 councillors and 4 wards (7, 3, 2 and 1 councillors per ward)  
Gender: 10 males, 3 females  
Ethnicity: all Pākehā  
Age: all in 50’s or 60’s |
| Dunedin City            | 2004: 14 councillors and 6 wards (4, 3, 3, 2, 1 and 1 councillors per ward)  
Gender: 11 males, 3 females  
Ethnicity: 1 of part Māori heritage, 13 Pākehā  
Age: 4 in 40’s, 10 in 50’s or 60’s  
2007: 14 councillors and 6 wards (4, 3, 3, 2, 1 and 1 councillors per ward)  
Gender: 11 males, 3 females  
Ethnicity: 1 of part Māori heritage, 13 Pākehā  
Age: 4 in 40’s, 10 in 50’s or 60’s |
| Chatham Islands         | 2004: 8 councillors at large  
Gender: 4 males, 4 females  
Ethnicity: 2 Pākehā and 6 Māori/Moriori  
Age: 3 in 30’s, 3 in 40’s, 2 in 50’s or 60’s  
2007: 8 councillors at large  
Gender: 4 males, 4 females  
Ethnicity: 2 Pākehā and 6 Māori/Moriori  
Age: 3 in 30’s, 3 in 40’s, 2 in 50’s or 60’s |
Notes