

Review of Local Government Act 2002
Engagement and Decision-making Provisions

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Executive Summary

The Local Government Commission (the Commission) is required by s.32 of the Local Government Act 2002 (the Act) to review the Act as soon as practicable after the 2007 local body elections.

The purpose of this assignment was to assist the Commission with the review of Part 6 of the Act (from the local authority perspective) with particular focus on the decision-making and consultation provisions. The Commission wished to understand the extent to which the Act has changed operating practice in local government, the experiences (both good and bad) that councils have had with these provisions and any concerns that may warrant legislative review.

The councils that participated in the Review were selected by the Commission and represent a mixture of metropolitan, provincial and rural local authorities across the country. We interviewed elected members and officers from two regional councils, five city councils (one of which was a unitary authority) and seven district councils.

Separate meetings were held with elected members and officers at each council and each meeting lasted about two hours. The meetings were independently facilitated by Peter Winefield or Mary Richardson.

This report provides a summary of the key findings from the consultation.

Decision-making

Councils appeared to understand the need to think broadly and long-term, engage with their communities and establish partnerships with other agencies. Systems have been developed to support this.

There is a positive attitude about the decision-making process and we heard anecdotal evidence of improvements in the quality of decision-making.

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 (s. 76 – 79) are worth independent legal review. This may or may not recommend legislative review.

Our work suggests that there may be merit in developing of 'best practice' guidelines or case studies that highlight the extent of analysis that might be appropriate in a variety of situations and the types of considerations that might be worthwhile.

There was little evidence from the discussions that the identification of community outcomes has assisted the decision-making process or that they are well integrated into the decision-making process. However, the community outcome processes have reportedly been helpful in engaging with and developing relationships with the community. We believe that the concept of community outcomes and their place in the

decision-making process need more time to mature. We do not believe that legislative change would be beneficial at this stage.

There was wide support for the LTCCP in terms of achieving integrated decision-making and long-term thinking. However, there was a view that the LTCCP had limited value as a consultation document. There was also consistent criticism of Audit's strict compliance focus in the 2006 LTCCP round.

Significance policies are reportedly dismissed as being of little help/relevance. In fact, it was acknowledged that some had been designed to provide maximum flexibility.

Our Conclusions Regarding Decision-making

Overall, there was little appetite for change in the decision-making provisions and on the basis of what we heard; there was little need for change. The only caveats to this are:

- The need to consider a legal review of the decision-making provisions, especially s.76 – 79 to identify whether local authorities are exposed to unreasonable or unnecessary risk.
- The need to consider the development of some 'best practice' guidelines around decision-making.
- The need to review the effectiveness of significance policies and the significance provisions of the Act - with a view to identifying a path forward.
- The need to introduce the concept of 'significance' into the review of financial policies under s.102.
- The need to closely monitor the effectiveness of community outcomes in the whole strategic setting and decision-making framework.

Consultation

The concepts of community engagement and consultation are accepted and generally regarded as helpful. Councils are getting better at identifying the most useful forms of consultation and managing the consultation process. Some forms of consultation and engagement being used are quite enlightened and illustrate a high level of maturity.

Councils are well aware of the risks around consultation (fatigue, capture, paralysis, bias etc) and are introducing a range of techniques to deal with this.

There was an acceptance that whilst the 'special consultative procedure' (SCP) is a formal process, it has a place as consultation of last resort. However, there was a concern that invoking a SCP on some decisions was excessive.

Maori consultation was not identified as an issue for local authorities. There are various techniques and arrangements in place. The main issue raised was Maori capacity (in terms of resource) to deal with the range and complexity of issues.

We felt that there would be benefit in the development of some case studies highlighting the different approaches councils take to consultation. Whilst there is no 'one size fits all' there are some innovative techniques being used that are worth sharing.

Our Conclusions Regarding Consultation

Overall, based on the interviews, there was no appetite for and no apparent need for legislative change around consultation (other than the fourth bullet point above regarding the introduction of the concept of 'significance' into s.102).

Other Matters

There was mixed opinion as to whether the Act had altered the role of elected members – the views ranged from “Yes, *absolutely, it’s much bigger*” to “No, *not at all*”.

There appeared to have been little structural change (committee structures, community board roles etc) as a result of the Act.

One council raised the possibility of legislative change to annual plan requirements that would result in a more succinct document. At face value this appeared to have some merit.

1. Introduction

The Local Government Commission (the Commission) is required by s.32 of the Local Government Act 2002 (the Act) to review the Act as soon as practicable after the 2007 local body elections. The specific requirement in the legislation is as follows (part only):

s32 Review of operation of Act and Local Electoral Act 2001

- 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.*

The purpose of this assignment was to assist the Commission with the review of Part 6 of the Act (from the local authority perspective) with particular focus on the decision-making and consultation provisions. The Commission wished to understand the extent to which the Act has changed operating practice in local government, the experiences (both good and bad) that councils have had with these provisions and any concerns that may warrant legislative review.

2. Methodology

The councils that participated in the Review were selected by the Commission and represent a mixture of metropolitan, provincial and rural local authorities across the country. We interviewed people from two regional councils, five city councils (one of which was a unitary authority) and seven district councils.

The councils chosen and who agreed¹ to participate were:

- Kaipara District
- Waitakere City
- Manukau City
- Environment Waikato
- Stratford District + South Taranaki District (combined)
- Hastings District
- Hutt City
- Nelson City
- Hurunui District
- Environment Canterbury
- Queenstown / Lakes District
- Dunedin City
- Southland District

¹ No council declined to participate

The Commission made all meeting arrangements and the councils themselves selected who would attend the meetings. The meetings were held during September and early October 2007 at the respective council offices. Correspondence prior to the meetings explained the purpose of the meetings to ensure that participants had time to consider matters in advance and this background information was repeated by the Commission representative (either Gavin Beattie or Michael Coles) at the introduction to each meeting.

Participants were also advised that the discussion was confidential and that this report would only convey general themes. It would not quote individuals and it would not be possible from the report to identify which council said what. The intention of these qualifications was to encourage open and frank discussion.

Meetings were split between elected members and officers at each council and each meeting lasted about two hours. The meetings were independently facilitated by Mary Richardson or Peter Winefield. Mary and Peter are both local government consultants (independent of the Commission) who have a broad knowledge of the legislative framework and significant management experience in the sector.

All participants contributed openly and constructively and while perceptions and experiences differed between councils there were some consistent themes that emerged and these are discussed in the report.

It is important to note that this was essentially a perception survey. For example, we did not seek documentary evidence of decision-making analysis or the quality of consultation process. Whilst this approach could be criticised, given the nature of the participants, the subject matter and the process used, we have no reason to doubt the validity of the conclusions.

Finally, it should be noted that the sample size was relatively small. Other councils may have conflicting views.

3. Decision-making

3.1 Background

The Local Government Act 2002 requires greater rigor with respect to local government decision-making processes than was the case under the 1974 Local Government Act. Prior to the 2002 Act there was no statutory prescription around decision-making methodology. Local authorities could make decisions however they chose and they could take into account (or exclude) such matters as they considered appropriate, at their discretion. The key clauses that regulate local authority decision-making processes are summarised below.

Section 76 says “*every decision*” made by a council must follow the decision-making process in the Act.

Section 77 says a local authority “*must*”:

- Seek to identify all reasonably practicable options for achieving the objective of a decision; and
- Assess those options by considering:
 - The benefits and costs of each option in terms of the present and future social, economic, environmental and cultural wellbeing of the district or region;

- The extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option;
- The impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority;
- Any other matters that, in the opinion of the local authority, are relevant; and
- If any of the options involve a significant decision in relation to land or a body of water take into account the relationship of Maori and their culture and traditions with their ancestral land, water, waahi tapu, valued flora and fauna and other treasures.

Section 78 says a local authority “*must*”, in the course of its decision-making give consideration to the views and preferences of persons likely to be effected by, or have an interest in, the matter. That consideration must be given:

- When the problem and objectives related to the matter are defined;
- When reasonably practicable options are identified;
- When reasonably practicable options are assessed and proposals developed; and
- When proposals are adopted.

Section 79 is a discretionary provision that says that the degree to which the above sections apply is at the discretion of the local authority and should be guided by the significance of the matter affected by the decision, the principles of the Act set out in section 14, the Council's resources and the extent to which the nature of the decision and the circumstances allow consideration of a range of options or the views of other people.

Section 90 requires that councils adopt a ‘significance policy’. This policy sets out the approach the council will take to determining the significance of issues and any thresholds, criteria or procedures that a council will use to help determine significance.

Section 97 requires that certain decisions can be taken only if provided for in an LTCCP. These are significant decisions relating to level of service, strategic assets and decisions that impact the capacity of, or cost to, the council of any activity identified in the LTCCP.

3.2 Questions

In the course of the interviews we asked questions around the topics listed in 3.2.1 to 3.2.6 below. In those sub-sections we provide a summary of comments received (split into elected member comment and staff comment) as well as some general observations. Where possible the report attempts to identify any difference between the opinion of regional, city or district council elected members or staff.

3.2.1 *What changes have you observed in decision-making since the introduction of the Local Government Act 2002?*

Elected Members

Most elected members from regional, city and district councils believed that they were making more informed decisions since the introduction of the Act. They reported that they were “...*more likely to consider more aspects in more detail*”, including the context in which a matter emerges; the conditions or

events which sit behind it; the other agencies involved; and the stakeholders' views and aspirations regarding the matter under consideration. Some elected members from city councils reported that they are also more likely to consider whether decisions are consistent with previous decisions and with their council's policies, strategies and plans.

Elected members from regional, city and district councils also reported that they are more likely to consider a range of options, particularly for any significant decision. Some elected members, particularly those from district councils, reported that previously there had been a tendency for only one option to be presented and considered.

Many elected members from city and district councils stated that the Act encouraged them to take a long-term view and more strategic approach to decision-making. They also noted that they are now more likely to make governance and policy decisions rather than focusing on operational details. Some reported that when they had initially been elected to Council elected members had spent time debating minor operational matters, for example one Councillor reported that "*...we discussed the make of the trucks or cars the Council would purchase for its fleet.*"

Some elected members, particularly those from district councils, indicated that they were now more likely to consider social well-being and attempt to consider the four well-beings in their decision-making.

However, some elected representatives from regional, city and district councils believed that the decision-making requirements are overly prescriptive and add unnecessary time delays and costs.

Staff

Most council officers reported that that the Act reinforced their decision-making processes. They believed that the Act simply reflected the new and more robust decision making processes their council (and in some cases the sector as a whole) had developed over the 5 to 10 years prior to its introduction.

However, others also identified changes which they considered had directly flowed from the Act. For example, most officers reported that their councils had introduced new reporting standards/templates to coincide with the introduction of the Act with some noting that the actual effectiveness of the template was still a 'work in progress'. These new report templates aimed to ensure that all requirements were considered prior to decisions being made. Officers identified a variety of governance structures and processes to support decision-making. Some councils have committees, in others elected members hold portfolios. However, it appeared that these, or similarly, structures were in place prior to the Act.

Officers also reported that they are now required to gather and use a wider range of information in order to understand the matter under consideration and the variety of perspectives involved. They also noted that they are now required to consider and present a range of options to council. Many district council officers noted that previously officers had simply put up a single option in the form of a recommendation or "fait accompli". Officers from one district council reported that the Act reinforced that 'do nothing' is an option where previously there had been a tendency to believe that Council needed to take

action on each issue presented to it. They stated that the Act confirmed that *“...doing nothing is sometimes the best option. It is not necessary for Council to address every matter, as naturally occurring events may mitigate the matter.”*

Some commented that their concerns at the time the Act was introduced had not been borne out. However, a few from both city and district councils still had concerns regarding the threat of judicial review.

Most officers believed that the sector is continuing to refine its decision-making processes. Some argued that there was still room for improvements, for example the identification and assessment of options. Some raised concerns that elected representatives (and in some cases local government leaders generally) abilities to make strategic decisions varies significantly. A few officers from city and district councils believed that some elected members lacked the analytical ability to absorb and consider all the information required by decision-making processes.

Our Comment

Sections 76 to 82 set out expectations concerning the approach that should be reflected in local authority decision-making. The general intent was to avoid prescribing procedural requirements, to avoid a “one size fits all approach” to either different decisions or different councils and avoid hard requirements that might form the basis of viable legal challenges in respect of specific decisions.

However, a number of elected members and officers from regional, city and district councils expressed concern that the Part 6 provisions of the Act were too prescriptive and there is now more scope for people to seek judicial review. A number of CEOs from district and city councils reported that discretion in s.79 still leaves them feeling vulnerable and open to challenge. While the risk of challenge is slim for most decisions it does exist. We are not qualified to provide an opinion as to whether the wording of these provisions presents such a risk that it warrants legislative change. There is very limited case law on this point to guide us. We believe that this warrants legal review.

The interviews suggest that the local government sector is continually evolving and refining its processes, including its decision-making processes. It is difficult to identify whether changes in the decision-making culture of councils were a direct result of the Act.

Finally, it would be fair to say that there is a wide variation in the skill and capacity of local authorities (both at staff and elected member levels) to effectively apply the decision-making provisions.

3.2.2 *How has the decision-making process assisted the sustainable development approach?*

Elected Members

There appeared to be a variety of interpretations of a “sustainable development approach.” Some elected members reported that their council had always taken a sustainable development approach, particularly in their infrastructure areas. Others reported that they are still coming to terms with what sustainable development means.

Some elected members, particularly those from district councils, stated that the new processes (including the report templates) act a trigger to consider sustainable development. Others believed that sustainable development “...is simply another tick box on the report.”

Staff

Many officers from regional, city and district councils acknowledged that a sustainable development approach is fundamental to decision-making. However, most city and district council officers reported that their council is still grappling with what sustainable development means and how to apply it to decision-making. A few officers reported that their councils have developed sustainable development frameworks and are attempting to incorporate these into organisational planning and decision making.

Our Comment

The sustainable development principle is one of 11 principles governing the way local authorities must provide for the present and future needs of their communities (s14). The sustainable development approach is described in section 14(h) of the LGA as:

‘(h) in taking a sustainable development approach, a local authority shall 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.’*

This clause encourages local authorities to take into account the interests of future as well as current communities and to consider all aspects of wellbeing. However, there appears to be a lack of knowledge and skill in this area. Few of the councils we spoke to were confident that they fully understand how to apply a sustainable development approach in the context of their council’s decision-making.

The concept of ‘sustainable development’ implies long-term and broad thinking, community engagement and local partnerships. In theory at least, these are now part of the culture and language of local government. However, it has to be acknowledged that terms such as ‘sustainable development’, ‘community outcomes’, ‘well-beings’ and so on are inherently vague and subject to a range of interpretations.

No council appeared to fully assess the impact of a decision on all aspects of wellbeing or to confidently make tradeoffs between aspects of wellbeing. It has to be acknowledged that this is an intrinsically difficult requirement but it is hard to ascertain whether the lack of assessment of this provision is due to lack of skill or lack of will. Whatever the underlying reason, it supports the need for some ‘best practice’ guidelines. This may well be a more effective initiative than legislative change.

3.2.3 ***Have 'community outcomes' informed and guided the council's decision-making?***

Elected Members

Few elected members were able to provide examples of how their community outcomes had directly influenced a decision. However, most reported that the community outcomes act as a general guide to decision-making.

Some elected members reported that the community outcomes process highlighted certain issues and made their council more aware of community concerns. For example, several elected members from both city and district councils mentioned that their community outcome process had highlighted the issue of community safety. They reported that as a result their council is more likely to prioritise this issue.

Few elected members could recall more than one of their community outcomes, but all said that community outcomes are referred to in the reports to Council and that decisions are assessed against their impact on community outcomes. Some elected members from regional, city and district councils noted that people presenting to the Council are using the community outcomes to advocate for certain issues or actions. A few were concerned that community outcomes raised community expectations regarding the scope of council activity.

Some elected members from district and city councils questioned the level of commitment from central government agencies to work with local government to identify and contribute to the achievement of community outcomes.

Some elected members from both district and city councils also raised concerns about their lack of participation in the community outcome process. They reported that their processes were largely officer-lead.

Staff

Several officers stated that their community outcomes are key drivers for decision-making. However, most were unable to provide an example of a decision which was altered as a consequence of considering community outcomes.

Other regional, city and district council officers reported that the community outcomes can be nebulous, "*...with strong feel good factor*". They believed they provide no guide for decision-making: "*...any decision could be, and in fact is, aligned one or more of the outcomes.*" One officer stated that "*...the council could do nothing and still say we contributed to the outcomes.*"

Despite the s.77 provisions, officers from regional, city and district councils reported that it is often difficult to directly link decisions to the achievement of community outcomes. No officer provided examples of how their council ensures it promotes outcomes in an integrated manner. Again this is a difficult requirement and could be aided by some 'best practice' guidelines.

Many officers believed the process of developing community outcomes is more useful than the output. City and district council officers identified 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 their communities.

Some officers noted that the decision-making process requires that local authorities identify and consider how options affect i) community well-being and ii) community outcomes. They believed that there is confusion between community outcomes and community wellbeing and this dual assessment process leads to over-analysis. One officer noted the potential confusion if an option was assessed as having negative effect on wellbeing and positive effect on community outcomes, or visa versa. (Fluoridation is an obvious example here. Community outcomes may identify 'pure water' and non 'fluoridated water' etc. However, a decision not to fluoridate would have a negative impact on health and wellbeing, particularly for children from lower socio economic communities).

Most officers believed that their community outcome 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 statements will become more precise.

Some regional, city and district council officers raised concerns regarding the integration of regional, city and district outcomes. Some also raised concerns about the process of developing regional and district outcomes i.e. "should they be bottom up or top down". Similar concern was raised about the integration of community outcomes with regional or local outcomes and priority processes lead by government agencies (i.e. for the development of regional plans and strategies) and by district health boards.

Our Comment

Under the decision-making requirements in the Act, a local authority must consider "...the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner." For each option, they need to consider:

- To what extent will this option contribute to the achievement of current and future community outcomes?
- How will this option affect the achievement of the outcome? Can any negative or positive implications be identified?

There was little evidence that the community outcome provisions have achieved their purpose.

Community outcomes appear to have limited impact on local authorities and their decision-making. Local authorities appear to have struggled to clearly link their decisions to community outcomes or to understand how to promote community outcomes in an integrated manner. Our view is that this could be because: a) the outcomes were poorly developed/confused; b) the outcomes are so high level they are meaningless; or c) in some case their decision-making discipline is lax.

There also appears to be some confusion about the relationship between district and regional outcomes and between outcomes and prioritisation processes of local government, central government and other agencies. In

some cases there appeared to be a multiplicity of outcomes and priorities with little, if any, connection between them.

3.2.4 *Has the LTCCP informed and guided the council's decision-making?*

Elected Members

Most elected members from regional, city and district councils reported that the LTCCP processes had driven a more strategic and longer-term approach to planning.

A number of city and district council elected members raised concerns about the amount of time and money the LTCCP process consumed. Many also highlighted the costs associated with the two stage auditing. Some officers and elected members raised concerns regarding the requirement to have the Statement of Proposal for a change to an LTCCP audited.

Staff

Officers reported that the LTCCP has made decision-making easier as it provides a solid framework for decisions.

A number of officers (particularly in the smaller councils) stated that the audit requirements are onerous and costly.

Our Comment

The LTCCP provisions appear to have facilitated long-term thinking, an integrated approach and the identification of strategic issues. However, there needs to be a balance found between Audit's desire for detailed control over the interpretation of legislative provisions and the form of the LTCCP and allowing local authorities room to exercise reasonable discretion. The interviews suggest that if Audit NZ continues to take a hard-line approach it could cause resentment and ultimately have a perverse affect.

3.2.5 *Are you comfortable that the Act provides enough discretion around the decision-making process?*

Elected Members

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. They noted that the Act unhelpfully defines "significant" as a matter that "has a high degree of significance".

No elected member appeared to use their council's Policy of Significance to determine the extent and degree of compliance required in the decision-making process.

Elected members identified a range of indicators of the significance of an issue:

- Extent to which the decision flows from the LTCCP.
- Net cost to the Council.
- Whether the options identified are radically different to each other.

- Whether the matter under consideration will be controversial within the community.

The majority of elected members in district councils reported that they are largely guided by staff advice regarding the significance and level of compliance. However, some elected members said that the significance of a decision was discussed with the committee chairs prior to a report being presented to council.

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 for this very reason. They identified that a number of the elected members are developers and the provisions constrained their ability to “... *buy, sell and develop property all over the place.*”

Staff

Many officers from regional, city and district councils reported that they find it difficult to determine whether decisions or proposals are significant. Some noted that decision-making is an iterative process and as they moved through the decision-making process they are continually reassessing significance.

A number of officers reported that they found particular difficulty determining whether a proposal represents a significant change to levels of service. (If the change and the activity is significant, the decision must be made via the LTCCP (section 97(1)(a)). Some officers also criticised the requirement to have proposals regarding levels of service audited.

Council officers did not appear to use their policy of significance 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.

Our Comment

While the legislation prescribes a detailed decision-making process, it also allows for the process to be adapted to differing circumstances. Not all matters will warrant the application of a full analytical and consultative decision-making process.

While s.79 provides a broad discretion there is a lack of confidence that the council’s approach to the discretion would be supported by the court, if challenged. The lack of statutory precision in this area and the absence of case law on this point left some feeling uneasy.

Under Section 90 of the Local Government Act 2002, the Council is required to have a policy on significance. This policy must outline the Council’s general approach to determining the significance of proposals and decisions. It must also list assets that the Council considers to be strategic assets. The policy, and any amendment to it, must be adopted by special consultative procedure. No officer or elected members reported that they found their policy on

significance a useful tool. Given the importance of the concept of 'significance' in the decision-making framework, clearly this is a major problem.

3.2.6 *What specific changes would you like to see in the decision-making framework?*

Elected Members and Staff

Some officers and elected members sought greater clarity around significance and discretion, including clarity around determining the nature, extent and degree of compliance necessary. Others simply felt that council should be given unrestrained discretion.

Our Comment

Elected members and officers made few concrete suggestions regarding specific changes to the decision-making framework beyond the need to consider whether local authorities are exposed to unreasonable risk in terms of their application of discretion under s.79.

3.2.7 *Decision-making Summary*

We anticipated that many elected members and officers would voice significant dissatisfaction with the current statutory framework for decision-making and accountability. Elsewhere (for example the recent Rating Review) the framework has been described onerous, complex, confusing and overly prescriptive. At the time of its introduction, a number of people in the sector criticised the prescriptive nature of the legislation. However, the councils we spoke to were not overly negative about the decision-making requirements.

We have debated the reason there was little negative comment in our interviews. Peter's opinion is that it is because in practice, councils generally take a pragmatic rather than a compliance approach to the provisions and as so few decisions are ever challenged, the perceived risk is minor. Mary's view is that while more rigour around decision-making is probably warranted, the councils are developing a greater understanding of the legislation and attempting to meet the requirements of the provisions.

Most councils reported that changes had taken place in the sector prior to the legislation. Many believed that the Act reflected these changes. Many councils also reported that good practice is still emerging, particularly in terms of assessment well-being and sustainability.

The main concerns raised by councils regarding the decision-making framework relate to i) the LTCCP audit requirements, ii) the lack of clarity concerning the application of s.79. and iii) the requirements around the special consultative procedure (discussed in the following section). As noted above, we have some additional concerns relating the degree of risk sections 76 – 79 pose to local government, the effectiveness of the community outcomes framework in a strategic sense and in terms of decision-making and practical difficulties around the significance policy.

4. Engagement & Consultation

4.1 Background

Before the Act there was a general obligation to consult with stakeholders and in certain situations a 'special order' process or a 'special consultative procedure' was required. The Local Government Act 2002 requires the Council to consider the views of persons likely to be affected by, or to have an interest in the issue at each stage of the decision-making process. However, this does not require a formal consultative process for every decision.

Some of the key requirements of the Act with regard to community engagement are set out below:

Section 14: One of the eight overarching 'principles' relating to local government is that a local authority should... '*make itself aware of and have regard to the views of all its communities*'. Clearly, community engagement is regarded as a cornerstone of the Act.

Section 91: The whole 'community outcomes' process is about identifying how the community wants its future to be and the decision-making provisions referred to earlier require all decisions to be assessed against those outcomes.

Section 78: This is a requirement that a local authority give consideration to community views at every stage of the decision-making process. (See also clause 3.1 above).

Section 82 of the Act sets out consultation principles that local authorities "must" follow in relation to any decision:

- a) *that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:*
- b) *that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:*
- c) *that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:*
- d) *that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:*
- e) *that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:*
- f) *that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.*

A Council must comply with the principles of consultation in a manner considered, at the Council's discretion, to be appropriate. In determining what is appropriate the Council must have regard to various matters including the nature and significance of the decision

or matter, including its likely impact from the perspective of those who will or may be affected by the decision.

Sections 83 to 88 set out the circumstances in which a ‘special consultative procedure’ (SCP) must be used and the process for doing so. Essentially, the SCP is a formal consultation process that requires (in summary):

- Development of a formal ‘statement of proposal’
- Public notice of the ‘statement of proposal’
- An invitation for public submissions on the ‘statement of proposal’
- Hearing of submissions
- Advice to submitters of the council’s decision - and the reasons for that decision.

4.2 Questions

In the course of the interviews we asked questions around the topics listed in 4.2.1 to 4.2.6 below. In those sub-sections we provide a summary of comments received (split into elected member comment and staff comment) as well as some general observations.

4.2.1 *What changes have you observed in your council’s approach to consultation since the introduction of the Act?*

Elected Members

Many elected members from regional, city and district councils believed they had experienced few changes in consultation processes as a result of the Act. They argued that their Councils had always communicated with and consulted residents, using the internet, weekly newspaper publications, and the local media: *“We were doing it anyway the Act simply cemented it”*

However, other elected members believed that their councils undertook significantly more consultation. Some district and city council elected members considered that they over consulted their communities. These elected members argued that many people *“...just want councils to get on with it and not ask them their opinion constantly.”* Some also voiced concerns that the special consultative procedure is overly prescriptive and delaying decision-making while others felt that it was a useful end-process and the quality of submissions (especially from the professional community) was very good.

Many elected members from district councils described their use of community boards and community development committees. Similarly, elected members from a regional council discussed the use of catchment or river committees to consult their communities.

Staff

Council officers from regional, city and district councils argued that their councils had shifted from viewing consultation as a legal requirement to regarding it as good management practice prior to the Act. Officers, particularly those from city councils, believed their councils and many other councils have gone further than the legislative consultation requirements.

Some officers accepted that there is a range of benefits that councils accrue through community engagement, including

- Improved effectiveness - Services are better targeted to align with what people want and do not want.
- Mandate for action - Councils implement their decisions with increased confidence;
- Monitoring public opinion - Public satisfaction can be monitored over time and changes made in a timely manner before problems escalate
- Underpinning and improving a sense of community wellbeing and reinvigorating local democracy
- Increased public confidence in Council

However, others were also critical of the consultation requirements. They raised concerns about over-consultation, lack of interest, uninformed feedback, and processes being derailed by minority interest groups.

Many officers in city and district councils reported that their council had increased the number of consultation and/or community engagement staff since the Act. Officers stated that best practice is continually developing.

Our Comment

The word “consultation” is used by councils to describe a range of processes to engage with the community, ranging from the prescribed processes in the Act such as the special consultative procedure to informal processes such as expos, e-mail chat groups, focus groups or anecdotal local knowledge.

4.2.2 *What consultation methods do you find successful/unsuccessful?*

Elected Members

Elected members reported that their consultation methods vary according to the matter under consideration, the people whose views are being sought and the importance of the decision. They believed that many of the informal consultation methods are more effective than the formal methods.

In smaller district councils the councillors felt that they had good contacts with the community and knew the main issues in their area. Some elected members also identified the role of community boards and committees in gathering and representing community views.

Staff

Officers described a range of approaches used to gather community views. For example, the use of community expos or interactive websites. They believed that these were often more effective than formal processes.

Many officers noted that councils usually hold a great deal of information both solicited and un-solicited, that can be used to demonstrate the views of the community, or sections of the community. This means that they do not need to re-consult at each point of decision-making.

Officers noted that engagement plans and timetables have to be flexible; working at the pace of the community and to use existing networks and processes to consult.

Some officers, particularly those from a regional councils and rural district councils discussed the difference between consultation and ongoing engagement. They noted that consultation has a 'once and for all' quality: participation only at a particular moment on confined terms, often only after fundamental policy directions have been established. They believed that 'consultation' elicits only particular kinds of information from consumers. In comparison they believed that 'engagement' involves sustained and continuing processes in different ways at all stages of planning and implementation. They reported that engagement has an emphasis on in depth ongoing deliberation and dialogue and focused on "finding common ground".

A few described examples of community engagement processes and structures which they have established to facilitate regular dialogue. For example, a district council described its community development committees and a regional councils it establishment of catchment groups.

Our Comment

The principles in Section 82 are *principles*, not prescriptions and the legislation gives councils the freedom to use any consultation method so long as they observe the principles appropriately (the exception being the requirement around the special consultative procedure).

As well as the traditional methods (for example, community surveys, focus groups and public meetings), councils are using increasingly sophisticated methods in the attempt to seek community views and engage them in decision making processes. The most successful forms of consultation seem to be where the community was involved in planning and managing the consultation process. For example, consultation led by community development committees or councils attending community liaison meetings to gain feedback rather than organising single-focus public meetings. We also noted different structural approaches used for consultation. For example, Southland District has an extensive community board network whereas Kaipara District has no community boards and relied on networking with citizens and community groups via bi-annual community meetings. Both strategies appeared to work well.

It appears that consultation is a 'work-in-progress' (probably more so that decision-making).

4.2.3 What are the challenges and risks around community consultation?

Elected Members

Both elected members and staff expressed concern that consultation processes can be dominated or captured by particular interest groups: "...a *minority is able to get its way at the cost of the silent majority.*" They believed that the special consultative procedure provides an opportunity for determined opponents, or well-organised sectional interest groups, to dominate or drag out the decision-making process and to create media controversy.

Elected members also discussed concerns that consultation can falsely raise expectations, increase costs and delay decision-making.

Staff

Officers identified a number of risks associated with consultation and engagement, for example

- Paralysis – it can slow down decision-making with contentious issues being difficult to resolve.
- Avoidance - some elected members avoid making hard decisions by constantly putting off those decisions pending further consultation i.e. the temptation is to conduct even more consultation in search of consensus.
- Timing - it can be time consuming and frequently takes much longer than anticipated or allowed.
- Costs - can be resource intensive for council and the community participants/submitters
- Bias – Council can be persuaded by persistent representations from well-organised and/or well-resourced groups

Some noted that if community engagement/consultation exercises are not conducted in good faith and do not fully engage the community, they can be perceived as tokenism or manipulative exercises designed to defuse opposition. Pressure to make a decision quickly can truncate the consultation process and lead to dissatisfaction.

Officers highlighted the need for councils to have well-qualified staff leading consultation and for councils to ensure that staff involved in consultation have adequate training. Some suggested that there was a skill shortage in the sector.

Some suggested that councils should work with other agencies operating in the area to avoid repetitive consultations with a community on the same or similar subject matter.

Some officers from district councils raised concerns that sometimes consultation becomes a substitute for good governance and sound policy making. They believed that at times their elected members choose to consult and re-consult rather than make a tough decision.

Our Comment

All councils appeared interested in developing new and better ways to consult with the community to an extent well beyond the statutory requirements. The SCP is increasingly viewed as the “minimum standard”.

Local authorities find that they are dealing with an increasingly diverse range of interest groups and communities of interest. Associated with this is an increasing diversity of community expectations.

Council officers appeared to be well aware of the risks and challenges associated with consultation and many had put processes in place to mitigate these.

4.2.4 *Has engagement with Maori been successful? What are the issues?*

Elected Members

Elected members reported that the way in which their council targets Maori is influenced by the specific issues and how much Maori will be affected by any decision. They identified a number of mechanisms that they use to consult with Maori, for example liaison committee, MOUs and Maori liaison staff. Elected members from a regional council identified the important role Maori elected members had played in establishing Maori consultation process.

Staff

Officers reported that their councils have formal and informal mechanisms to interact with Maori communities in their area. Most reported that these processes had been in place prior to the Act.

Some officers raised concerns that often Maori do not have the capacity to participate i.e. they do not have enough resource to deal with all the issues referred to them. No officer discussed methods they had used to build Maori capacity.

Officers from two district councils identified processes that they had put in place to improve staff knowledge and ability to consult with Maori, for example Te Reo lessons.

Our Comment

Local authorities have an obligation to encourage contributions to decision-making by Maori. Local authorities must:

- Establish and maintain processes that provide opportunities for Maori to contribute to decision-making processes;
- Consider the ways in which the local authority may foster the capacity among Maori to participate in decision-making; and
- Provide relevant information to Maori for the above two purposes.

All councils consulted appear to have processes in place to consult with Maori. However, few appear to have focused on capacity-building to enhance Maori capacity to take part in decision-making processes

4.2.5 *How do you find the SCP process? What are the issues?*

Elected Members

Elected members raised a number of concerns regarding the SCP, including

- it was too time consuming
- the procedure was overly complex
- it was too prescriptive
- the audit requirements were too onerous and expensive
- it duplicated consultation which had already taken place

Some elected members believed that the SCP was one of the least effective ways of finding out community views. Other elected members commented that

they found some of the most intelligent and thoughtful comments came from submitters at the SCP stage.

Staff

Officers raised similar concerns to those expressed by the elected members (above). However, some officers reported that their councils have chosen the special consultative procedure even when it was not required by the legislation.

Many officers believed that the requirement to use the SCP for every change to a LTCCP, even minor changes, was too onerous. A number of officers highlighted the requirements around changes to their LTCCP, for example the requirement to have their SOPs to amend the LTCCP audited. However, one council stated that they found Audit's approach to amendments to the LTCCP to be reasonable and pragmatic.

Some officers noted that the legislative requirement to review all bylaws within 5 years of the commencement of the Act has meant that councils have had more SCP processes than would normally be expected.

Our Comment

The special consultative procedure was introduced to the Local Government Act 1974 (the Act) in 1989 as part of a package of accountability reforms. Nearly two decades have now elapsed. The special consultative procedure has two key merits: it is open through being publicly notified, and anyone can make submissions. The procedure provides an opportunity for community feedback on major proposals before they are finalised. However, the special consultative procedure is not by itself sufficient to maintain public confidence in the decision-making process. It does not remove the responsibility for determining what additional consultation may be required or desirable.

The Act sets out a series of steps that a local authority must follow when using the SCP. Most councils consulted believed councils should have greater discretion in when and how to use the SCP; the documentation (i.e. statement of proposal and summary of proposal) and whether proposals needed to be audited.

4.2.6 *What specific changes would you like to see in the consultation process?*

Elected Members and Staff

Elected members and staff identified a small number of specific changes to the consultation provisions, including the changes to the SCP (discussed above).

A major issue for some is that relatively minor changes to financial policies (e.g. development contribution or rating policies) are required (by s.102(6)) to be run as LTCCP amendments. This can drive/result in poor and or perverse outcomes. Some elected members and staff identified that this is the only area of the Act where the concept of 'significance' is ignored and a number identified it as an area that needs urgent legislative review.

A few raised concerns about the requirement to use the SCP to adopt an annual plan. (An ancillary issue raised by one council was that although they had no problems with the annual plan requirements in Schedule 10, these were

unnecessarily complicated by the requirements of s.95. They believed that without the s.95 requirements, the AP could be about 100 pages less.)

Our Comment

Again no council expressed a desire for major legislative change or amendment but legislative change to allow more flexibility around the review of financial policies is probably warranted. Most councils appeared to want clarity around good practice and some flexibility around the use of the SCP.

4.2.7 Consultation Summary

This project demonstrated that a considerable body of knowledge and experience on good consultation processes exists within the local government sector. While many councils have struggled with the consultation provisions there is growing awareness of the need to manage the consultation process more carefully and to utilise more effective forms of consultation.

Not only are local authorities using traditional methods, such as public meetings and consultation documents to engage with the public but many are increasingly using 'consumerist' approaches such as service satisfactions surveys, and complaints/suggestions schemes. Innovative forms of public engagement, such as visioning exercises, expos and interactive websites are becoming increasingly common and tend to be driven by local factors, rather than as a response to legislative directive. Many councils have also developed particular processes targeted at hard-to-reach groups, such as young people, Maori and minority ethnic groups and people from lower socio-economic communities.

Most councils consulted appear to be aware of the benefits and the risk associated with consultation. Most appear to have embraced the consultation principles. However, the more prescriptive components of the Act appeared to have less support i.e. the SCP and the requirements that LTCCP Statements of Proposals are audited.

After the Act was passed, local government sector organisations and the Department of Internal Affairs produced a series of high-level guidance material. Many councils consulted believed there was a need for more specific advice as local authorities have gained more experience in implementing the Act and in undertaking consultation and community engagement processes.

Other than relatively minor change to financial policies no council expressed a desire for major legislative change or amendment.

5. Other Issues

At the conclusion of the meetings, we invited council representatives to raise any other LGA issues. This drew a variety of responses, many of which were unrelated to the purpose of this Review. These can be seen in the notes of the meetings. However, four issues are worth noting here. They are summarised below.

5.1 Role of Elected Members

We asked elected members whether their role had changed as a result of the Act. Responses ranged from "*yes, most definitely, hugely*" to "*No*". Those responding "*yes*" identified changes such as:

- *“Workload and responsibility has increased.”*
- *“We are working more at policy/strategy level - where once issues were simple and common sense, now they are complex.”*
- *“We are more involved in community issues, for example the proposed closure of a local maternity hospital.”*
- *“It has become a full time job.”*

Those who had the opposing view (i.e.no change in role) stated:

- *“You still need the same skills: empathy, broad background, be able to read a lot”*
- *“LTCCP hasn’t changed our representative role.”*
- *“One reason we are successful is that we pay our elected members so little – they all have to have other jobs. This ensures they know what’s going on in the ‘real world’ and it means business is dealt with efficiently.”*

5.2 Effect on Other Governance Structures

We asked whether the Act has resulted in changes to governance structures i.e. committee structures, community boards and the like. There was little response to this question. Apparently, few consequential changes had occurred.

5.3 Change to Annual Plan Format

One council raised an issue relating to the annual plan. The basic argument was that given the annual plan only allows minor variations from the LTCCP, there is little rationale for an SCP process. This council argued that it simply elevates community expectations. An ancillary matter raised (more compelling than the first) was whether there is merit in a shorter format annual plan to avoid replication of LTCCP information (e.g. levels of service and performance measures) and to achieve a more succinct document).

5.4 Interface between between LGA 2002 and RMA 1991

A number of councils discussed the interface between Part 6 of LGA 2002 and RMA 1991, for example provisions regarding

- Sustainability
- Planning
- Decision-making
- Consultation
- Monitoring of outcomes
- Maori provisions

There was some discussion regarding whether, the decision-making requirements of section 76 of the LGA apply to decisions under the RMA and if LGA provisions impose an additional, and entirely separate, set of procedural requirements on decision-making. Most councils reported that in exercising their discretion under s. 79 they consider the statutory context that the RMA provides for those decisions. They believed that most LGA requirements are satisfied adequately by RMA processes.