

# The Local Government Act Review - highlights of the local government bill

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## Abstract

As the result of a review of the Local Government Act 1974, a Bill to replace this Act was introduced into Parliament on 19 December 2001. The Bill is expected to be passed into law mid 2002 and will take effect from July 2003. The Bill sets out a statement of purpose for local government and provides for the general empowerment of local authorities while at the same time making them more transparent and accountable. Local authorities will be able to respond to the needs of their communities through mandatory improved consultative procedures. For the first time the sustainable social, environmental, cultural, and economic well-being of communities is included in a statutory definition of the purpose of local government.

The Bill also makes many changes to specific council services and procedures, which taken together represent considerable improvements on the current legislation.

## Introduction

Comprehensive reviews of the three main pieces of legislation relating to the constitution of local government have been undertaken or completed over the last 18 months. These are the Local Elections and Polls Act 1976, the Rating Powers Act 1988, and the Local Government Act 1974.

As a result of these reviews:

- a new Local Electoral Act 2001 was passed in May 2001
- a Local Government (Rating) Bill was reported back to Parliament by select committee on 3 December 2001
- a Local Government Bill was introduced into Parliament on 19 December 2001.

The common aim of the new Act and Bills is to make local government more *responsive to community needs* and more *accountable to communities*. They provide a balance between flexible decision making processes and local discretion on the part of local authorities, with the rights of individuals and communities to participate in and understand what the local authority is doing on their behalf, through consultation processes.

The current 1974 Local Government Act is widely acknowledged to have out lived its 'use by' date with a number of serious limitations.

- It is, in essence, a collection of legislative bits and pieces, some of which are over a century old, with other more open-ended provisions added since the 1980s.

- For the most part, it is prescriptive, based on the doctrine of *ultra vires*.
- It is cumbersome, time consuming and expensive to interpret, and lacking in structural coherence.

The Government identified four objectives for the review of this Act. These were to develop a statute that:

- reflected a coherent overall strategy for local government
- involved a move to a more broadly empowering legislative framework
- involved the development of partnership arrangements between central and local government
- clarified local government's relationship to the Treaty of Waitangi.

The November 2000 Policy Statement on the Local Government Act identified four principles to guide how a system of local government could operate. They were that local government should:

- acknowledge, value and respond to the diversity of the interests and rights of local citizens and groups of citizens
- involve and be accountable to their citizens through open and transparent processes, including communication, participation, and consultation
- provide local citizens and groups of citizens with choices over the ways their different needs are met and promoted

- undertake its activities in an efficient, effective, and environmentally sustainable manner.

In turn, the main elements of the review that were outlined in a public consultation document, released in June, were:

- the purpose of the local government
- the powers of local government
- the relationship between Maori, the Treaty of Waitangi, and local government
- streamlining and enhancing the effectiveness of local government legislation.

It should be emphasised that the review does not propose any constitutional change. Local government will continue to be a “creature of statute” - with its only powers those granted to it by Parliament under the legislation it enacts. The power of general competence (see below), therefore, does not confer independent legislative authority on local authorities.

## A new statement of purpose for local government

Whilst the 1974 Local Government Act contains a large multi-clause statement setting out the purpose of local government, it has little practical effect over the rest of the Act. By contrast the Local Government Bill establishes, in a simple and clear way, a new purpose of local government. This will be central to the operation of the new Act. The Bill states that the purpose of local authorities will be:

“To enable local decision-making, by, and on behalf of, individuals in their communities, to democratically promote and action their social, economic, environmental, and cultural well-being in the present and for the future”.

Within this statement, a number of important concepts are pulled together –

- a general statement of the role of government and local democracy – *“local decision-making and action”*
- a statement that the focus of local government is its citizens and communities, both as beneficiaries and participants
- an acknowledgement of the role of local government – *“social, environmental, cultural and economic”*
- the need to focus on outcomes – the *“well-being”*
- the importance of sustainability – *“in the present and for the future”*

## A power of general competence

Much of the 1974 Local Government Act reflects a view that everything local government does should be authorised in law in detail. Councils should only be allowed to undertake those activities which were clearly allowed or could be reasonably implied by the legislation. Ultimately this approach led to an act which was overwritten, difficult to understand, and often out of keeping with modern needs.

By contrast the Bill establishes clear and broadly-based powers for local authorities. It will extend to councils a broad mandate to engage in activities intended to advance community well-being and will give them broad powers in relation to carrying out those activities.

This moves away from the established view that the job of a local council is simply to deliver a limited range of services, such as dealing with ‘rats, roads, and rubbish’. It also sees the role of local government as much richer than being a community-owned utility provider. Instead, it sees local government as undertaking a broadly-based local governance role involving a range of activities that reflects the values, aspirations, needs and circumstances of their communities.

### What powers will local authorities have under the Bill?

The petroleum sector, like all industry groups, is concerned to know how the new powers of general competence will affect it. The Local Government Bill proposes that a council, whether regional, or a city or district, will have:

- “(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights and privileges”.

These powers are not new to New Zealand. They are the same as those conferred on Māori incorporations under the Te Ture Whenua Māori Act 1993 and to companies under the Companies Act 1992.

Taken together, the proposed purpose and the proposed powers will, over time, provide for considerable change to how local government goes about its business. The emphasis will be less on “does the Act allow this?” and more on “does the community want this?”

There will not, however, be radical change as even the 1974 Act, whilst imperfectly expressed, was beginning to allow for more flexible powers in a range of council activities. The new Act will make clear that local authorities will be the mechanism by which New Zealanders in their local communities promote, in a sustainable way, their social, economic, environmental, and cultural well-being.

### How will those powers be applied?

It is important to note that local government is not being given an unfettered power. Council powers will have to be exercised in a way consistent with the overall purpose of the new Act and the purpose of local authorities.

There will also be specific limiting provisions in the new Act, for example:

- As far as *regulatory powers* are concerned, these will have to be specifically and clearly provided for in the Act. For the making of bylaws in particular, key features of the new process in the Act will be:

- a requirement for councils to consider whether making a new bylaw is in fact the best way to address the problem
- if a bylaw will have significant impact, a special consultative procedure must be used
- a requirement to review all bylaws within five years of the introduction of the Act, or the introduction of the particular by-law
- a sunset clause of five years for any bylaw not so reviewed.
- *Other specific limiting provisions* will include specific processes for community involvement in decision-making, statements of general principles of local government management, and processes for regional councils to undertake new activities.

Other Acts will continue to apply to local government activities. These will include:

- the power to tax under the *Local Government (Rating) Act*
- local elections under the *Local Electoral Act*
- mandatory roles and responsibilities under the *Resource Management Act*, the *Building Act*, the *Biosecurity Act*, the *Health Act*, and the *Transport Act*
- checks and balances legislation such as the *Local Government Official Information and Meetings Act* and the *Ombudsmens Act*
- general law, such as the *Occupational Safety and Health Act* and the *Employment Relations Act*.

Councils will not be able to do those things that are the exclusive powers of other agencies. The common law, except where it is specifically over-ruled by the new Act, will continue to apply to local authorities.

The last-resort powers of the Minister of Local Government will continue. These include the power to initiate reviews of the performance of a local authority, and the power to appoint a commissioner to manage the affairs of a local authority should it become dysfunctional or wilfully refuse to act in the performance of its duties.

## Democracy, participation and consultation

The Local Government Bill proposes a four-pronged approach to the consultation and participation processes:

- the introduction of a new mechanism, the Long Term Council Community Plan (LTCCP)
- a modified annual plan
- streamlined and specified consultative procedures
- reporting back to the community, through the annual report.

The LTCCP will be a key element for the petroleum industry, as for all sectors of the economy. It is intended to integrate activities aimed at social, economic, cultural and environmental outcomes and will provide the big picture of how all a council's work is intended to link together taking in a 10 year time horizon. The plan will be detailed for the first 3 years, then mainly in outline for the remaining 7 years. The plan will be updated every third year.

The LTCCP will build on the gains of Part VIIA (Financial Management) of the current Act. This has been widely recognised as bringing better planning disciplines to local government. The new planning process will maintain this discipline but have broader focus with less emphasis on pure cost/benefit analysis, and:

- will include the identification of community needs and how the council proposes to meet those needs
- will provide the community with a clear road map of where the council intends to take it
- accordingly, should result in a strategy owned and accepted by the community.

The long-term economic development of the communities served by a council will be an important part of the LTCCP. For companies in the petroleum industry, early consultation with relevant councils, before the preparation of their first LTCCP in 2003-4 could be desirable, so that relevant individual councils are aware how developments in the petroleum sector might contribute to the future economic development of a region.

## Governance and a accountability

Governance - the role, functions, and process of collective decision making - is a key role of local authorities. In this context the elected council is the governing body, and has to manage twin relationships with its communities and with the chief executive of the local authority.

In relation to its communities, the governance role involves:

- identifying community views, values, preferences and priorities, and balancing particular interests against whole community interests
- translating community wishes into defined outcomes
- monitoring, evaluating, reporting (including evaluating the effectiveness of the choice of outputs), and reliable reporting to the community on performance.

There is also an overlap here between governance and accountability – the listening, leading, taking of responsibility, explaining, and describing. It is the decision-making processes that generate and communicate information about issues, options, costs, and benefits, which place the right obligations on decision-makers and confer matching rights on the community.

One implication is the recognition of the reality that in a democracy, the accountability of elected members is not reducible to “whether the plan was delivered”; it is also about “whether the plan was the right one”.

## **The Treaty of Waitangi**

The 1974 Local Government Act contains no mention of the Treaty and almost no reference to iwi/Maori. The Government has decided that the Bill will contain a package of practical provisions with an express acknowledgement of the principles of the Treaty. Councils will be required to establish and maintain processes to provide opportunities for Maori to contribute to local government decision-making processes. Councils will also have to consult Maori before significant decisions, and consider cultural and spiritual values of Maori when making decisions related to land and bodies of water. It is expected that best-practice guidelines will be developed to assist councils to successfully implement the required practical provisions.

The Bill also contains provisions to amend the Local Electoral Act so that councils can consult with their communities on the question of introducing separate Maori wards or seats within a council’s area. Rather than central government making decisions on the issue, it was seen as preferable that communities make their own decisions on whether there should be separate Maori seats on their council.

## **Other issues**

Some other issues the review examined will be of interest to industry. The Bill contains provision for councils to charge development contributions for their increased infrastructure costs that arise from land development. The contributions will be for the costs or part of the costs associated with the incremental provision of reserves and network infrastructure for roading and other transport, water, wastewater, and

stormwater collection and management. A reserve development contribution may be charged on subdivisions including commercial/industrial subdivisions. A network infrastructure development contribution may be charged on commercial/industrial/administrative subdivisions and developments. This charge will be standardised across the country.

The Bill requires councils to retain ownership of potable water and wastewater services. Where a council seeks to contract out delivery of these services, any contract shall be no longer than 15 years. If a council, in providing future capacity, wishes to enter into a joint venture arrangement, it will be able to do so, provided it retains ownership of the asset.

### **Petroleum tax**

The 1974 Act provides for a local authority petroleum tax to supplement the revenues of councils. The revenues are not tied to any particular functions or activities. The tax is set at 0.66 cents per litre of petrol and 0.33 cents per litre of diesel. The tax yielded \$ 26.4 million in the year to 30 June 2000, an amount equivalent to about 1 per cent of all councils’ rates revenue. As the rationale for this tax was formulated over 25 years ago, it is timely to re-examine it and it will be reviewed by officials in 2002. In the meantime the provisions will be retained in the 1974 Act.

## **Summary**

The new Local Government Bill contains many significant changes from the current Local Government Act. Arguably the most significant is the establishment in statute of a clear and succinct statement of the purpose of local authorities. The new statement makes clear that the purpose of local government is not to be a narrow one. Instead it will promote, in a sustainable manner, the social, economic, environmental and cultural well-being of people and their communities.

## **Author**

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