

# S O L G M

NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



## ***Strengthening Local Democracy***

**A Background Paper  
prepared by the  
Society of Local Government Managers  
for the  
Local Government Commission**

**March 2007**

## Summary of Recommendations

SOLGM recommends:

### Principles

1. That the Local Government Commission adopt the principles on page 11 as the underpinning for its review of the Local Government Act and the Local Electoral Act.

### Service Delivery

2. That all aspects of the Local Government Act that relate to service delivery be reviewed to ensure they are consistent with the principles and purpose of the Act.

### Functional Legislation

3. That a phased review of the following legislation relating to local government be undertaken to ensure consistency with the purpose and principles of the Local Government Act:
  - all functional legislation;
  - the remaining provisions of the Local Government Act 1974; and
  - the Local Government Member's Interests Act 1968.

### Community Outcomes

4. That the Public Finance Act 1989 be amended to require central government agencies to report on their involvement in the community outcomes process and their actions in promoting community outcomes.
5. That schedule 10, clause 15(c) of the LGA be deleted.

### Schedule 10 Disclosures

6. That local authorities retain the flexibility to determine the composition of their "groups of activities".
7. That schedule 10 clause (2) disclosures relating to costs and revenue requirements be amalgamated into a single disclosure requirement.
8. That schedule 10 clause 3 (1)(a), relating to the inclusion of a summary of the latest assessment of water and sanitary services in the LTCCP, be deleted.

### Annual Plan

9. That the requirement to prepare an annual plan be retained.

### **Amendments to LTCCPs**

10. That section 97(1)(d) be amended to only cover changes involving significant activities.
11. That section 102 be amended to require an LTCCP amendment only in cases of significant change (assuming the Commission does not agree that these policies need not be included in an LTCCP).
12. That section 141 be amended to require that sale of endowment land must be undertaken via the special consultative procedure, rather than as an amendment to the LTCCP.

### **LTCCP Adoption Dates**

13. That consideration be given to amending the requirements that all LTCCPs be adopted on fixed cycles.

### **Audit Reports**

14. That the requirement for an audit report on the LTCCP be retained.

### **Summary LTCCPs**

15. That requirements to prepare summaries of the LTCCP be retained.

### **Consultation Procedures**

16. That the definition of “public notice” be reviewed to ensure that consistency with technological developments.

### **Financial Management**

17. That procedures for the adoption and amendment of funding and financial policies be amended to allow for consultation via the special consultative procedure (and outside the LTCCP).
18. That the requirement to have policies on public private partnerships be amended to require policies only where the local authority wishes to engage in such a partnership.
19. That the Commission consider whether the LGA should require local authorities to adopt a policy regarding rates relief on Maori freehold land.
20. That the Commission note the impact the adoption of International Financial Reporting Standards will have for local authority financial statements.
21. That provisions prohibiting borrowing denominated in foreign currency be deleted.

22. That the Commission recommend that local authorities be exempted from the signature and disclosure requirements of the Securities Act.

### **Development Contributions**

23. That powers to assess development contributions be extended to regional councils.
24. That development contributions be permitted in respect of infrastructure owned by council controlled organisations.
25. That the cap on reserve contributions be removed.

### **Bylaws**

26. That the Commission recommend that regulations be made establishing which breaches of bylaws are infringement offences and setting fees; and
27. That powers to make liquor bylaws be extended to regional councils with respect to property controlled by regional councils.

### **Water and Sanitary Assessments**

28. That responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards.
29. That the requirements for local authorities to conduct assessments of water and sanitary services be deleted from the Local Government Act 2002.

### **Representation Reviews**

30. That the deadline for sending determinations of representation arrangements, appeals, objections and other relevant information be advanced by 3 months, and all preceding deadlines be advanced the same amount.

### **Nomination**

31. That section 61 be amended to require the lodgement of candidate profile statements and nomination forms at the same time.
32. That section 55(2)(e)(ii) be deleted thus requiring payment of the deposit on lodgement of other documents.
33. That section 25 be clarified to allow electoral officers to decline to accept nominations from prospective candidates where no evidence of citizenship is provided.

### **Ratepayer Electors**

34. That the prescribed form for ratepayer electors in Schedule 1 of the Local Electoral Regulations be amended to specifically include trusts.

**Candidate Profile Statements**

35. That clause 29(2), Local Electoral Regulations be amended to allow for publication and display of candidate profile statements following close of nominations.

**Nomination Day**

36. That nomination date be moved forward to the 57<sup>th</sup> day before election day.

**Voting Methods**

37. That the Local Electoral Act or Regulations be amended to require that voting documents include notice that it is an offence to complete another person's voting document without authority, or to interfere or fraudulently mark, deface or destroy a voting document.
38. That a new provision be introduced in Regulation 6, Local Electoral Regulations, prohibiting the collection of other persons' voting documents in large numbers by any person or organisation and then posting or delivering them to the electoral officer.
39. That consideration be given to the likely effectiveness of the Tasmanian voter signature system in New Zealand local elections.

**Voting Period**

40. That the voting period remain at three weeks.

**Voting Documents**

41. That consideration be given to prescription in terms of establishing differences between STV and FPP documents, standardised terminology, font size and type, and the treatment of any issues for election which an election is not required.
42. That further research be undertaken on the impact candidate order may have on election outcomes.

**Election Processes**

43. That progressive processing of voting documents become a standard electoral process, left to the discretion of the electoral officer.
44. That supply of lists of people returning voting information be charged at the actual and reasonable cost of producing the list.
45. That the STV calculator source code remain unpublished.

**Election Management**

46. That management of local authority elections continue at a local level.

47. That nationwide education and voter awareness/participation campaigns be conducted by the Electoral Commission.

#### **Licensing Trust Boundaries**

48. That the Sale of Liquor Act be amended to introduce a process to align licensing trust boundaries with meshblocks in time for roll preparation for the 2007 local elections.

#### **Transitional Arrangements**

49. That all elected members take office the day after public notice is given of the official election result.

## Table of Contents

<b>Summary of Recommendations</b>	<b>2</b>
<b>Table of Contents</b>	<b>7</b>
<b>Introduction</b>	<b>9</b>
<b>PART ONE: LOCAL GOVERNMENT ACT 2002</b>	<b>10</b>
<b>1.0 Introduction to Part One</b>	<b>11</b>
<b>2.0 Community Outcomes</b>	<b>22</b>
2.1 The Value of Community Outcomes	22
2.2 Central Government and the Outcomes Process	23
2.3 Intra-authority Cooperation	24
2.4 Monitoring and Reporting Community Outcomes	24
<b>3.0 LTCCP/Annual Plan/Annual Report Cycle</b>	<b>26</b>
3.1 Schedule 10 Disclosures	27
3.2 Annual Plan	29
3.3 Amendments to LTCCPs	30
3.4 LTCCP Adoption Dates	31
3.5 Audit of LTCCPs	32
3.6 Summaries of LTCCPs	35
3.7 Decision-making Procedures	35
3.8 Consultation Procedures	35
Summary: Revised content of accountability documents	37
<b>4.0 Financial Management and Borrowing</b>	<b>39</b>
4.1 Funding and Financial Policies	40
4.2 Generally Accepted Accounting Practice	43
4.3 Borrowing Powers	44
4.4 Development Contributions	46
<b>5.0 Bylaws</b>	<b>49</b>
5.1 Infringements	49
5.2 Liquor bylaws	49
<b>6.0 Assessments of Water and Sanitary Services</b>	<b>50</b>
<b>PART TWO: LOCAL ELECTORAL ACT 2001</b>	<b>52</b>
<b>7.0 Introduction to Part Two</b>	<b>53</b>
<b>8.0 Representation Reviews</b>	<b>55</b>
<b>9.0 Candidate Nominations</b>	<b>56</b>
9.1 Submission of Documents and Fees	56
9.2 Proof of Citizenship	56

<b>10.0</b>	<b>Ratepayer Electors</b>	<b>57</b>
<b>11.0</b>	<b>Candidate Profile Statements</b>	<b>58</b>
<b>12.0</b>	<b>Extension of Period Between Close of Nominations and Dispatch of Voting Documents</b>	<b>58</b>
<b>13.0</b>	<b>Voting Methods</b>	<b>60</b>
13.1	Integrity of Postal Voting	60
13.2	Alternative Voting Methods	61
13.3	Alternative Polling Facilities	61
<b>14.0</b>	<b>Voting Period</b>	<b>63</b>
<b>15.0</b>	<b>Voting Documents</b>	<b>64</b>
15.1	Quality of Voting Documents	64
15.2	Candidate Order	64
<b>16.0</b>	<b>Election Processes</b>	<b>66</b>
16.1	Early Processing	66
16.2	Supply of Lists	67
16.3	STV Calculator	67
<b>17.0</b>	<b>A Central Agency to Administer Local Elections?</b>	<b>68</b>
17.1	Justice and Electoral Committee Position	68
17.2	SOLGM Position	69
<b>18.0</b>	<b>Licensing Trust Boundaries</b>	<b>71</b>
<b>19.0</b>	<b>Transitional Arrangements</b>	<b>72</b>
	<b>Appendix: Individuals Participating in the development of this paper</b>	<b>73</b>

## Introduction

The Society of Local Government Managers (SOLGM) thanks the Commission for the opportunity to contribute to the Commission's review at an early point in the process.

SOLGM represents approximately 570 local government managers (including Chief Executives and other managers with significant management, policy or strategic development responsibilities) with membership spanning all of the disciplines required in local government. Its vision is

*“professional quality leadership producing better local government managers”.*

SOLGM has worked closely with Local Government New Zealand (LGNZ) in preparing this paper. However it is primarily the responsibility of the SOLGM Financial Management Working Party (FMWP) and the SOLGM Electoral Working Party (EWP). The FMWP is SOLGM's primary advisor on local government financial matters including the financial aspects of strategic planning. The EWP is our advisor on electoral matters – including those relating to the conduct of elections for district health boards.

This document is organised into two parts. The first, deals with aspects of the Local Government Act 2002 (the LGA), in particular the planning, accountability and financial management aspects of that legislation. The second part puts our views on the Local Electoral Act 2001 (the LEA).

In preparing the LGA related aspects of this submission we:

- conducted a survey of local government managers' perceptions of working with the LGA. We surveyed all Chief Executives, finance, asset management and planning/policy managers in August 2006 (i.e. the period immediately following the adoption of 2006-16 LTCCPs). Around 190 managers answered – a response rate of around 52 percent;
- tested our understanding of the key results from the survey and the policy implications at two “Countdown to 2009” seminars held during November 2006;
- further considered the policy implications of some of the changes in both a technical working group and through the SOLGM Financial Management Working Party; and
- released an exposure draft of this paper via the SOLGM Good Practice Toolkits website and sought comment from the sector.

We have also been able to consider the information LGNZ gathered during the “roadshow” process that organisation ran in September/October 2006.

Many of the LEA matters have been raised in our submissions to the Commission's 2005 review, and were discussed in the Commission's report on the results of that review. These matters have been the subject of a process of re-examination through their inclusion in the exposure draft.

We would be happy to meet with the Commission to discuss the issues raised in this submission, and any other matters the Commission may wish to raise. We would also like to clarify the process the Commission intends to follow from this point.

**Part One:  
Local Government Act 2002**

## 1. Introduction to Part One

### A principled analysis of the LGA is necessary ...

1. The section 32 review of the LGA and LEA is a review of the operation of these Acts which must include:
  - the impact of conferring full capacity, rights, powers and privileges upon local authorities;
  - the cost-effectiveness of consultation and planning procedures;
  - the impact of increasing participation in local government and improving representation on local authorities.
  
2. It is vital that the Commission approach its task from a principle based framework. Such a framework provides a filter for considering the evidence and proposals that the Commission receives in a consistent and rational way.
  
3. Part One of this paper has the five principles articulated in the LGNZ submission to the Local Government and Environment Select Committee on the (then) Local Government Bill<sup>1</sup> as its underpinning. These principles were:
  - a) *subsidiarity* – decisions should be made by the level of government closest to the community affected by the decision unless there are clear reasons for decisions being made at a higher level;
  - b) *participation and democracy* –where practicable the new legislation should enhance democracy through providing easy access and opportunities for citizens to articulate their views and take part in decisions. Note that “easy access” also includes the production of documents that are ‘user-friendly’ – as we shall see later there has been some doubts that the LTCCP in its present form is necessarily user-friendly;
  - c) *collaboration and partnership* – wherever possible reform should result in decision-making and service delivery structures that avoid duplication and enhance collaboration;
  - d) *accountability and transparency* – proposals should ensure that the accountability for decision-making is clear and processes employed are transparent; and
  - e) *reasonable compliance* – prescribed processes and outcomes must be tempered by an understanding of the scale or significance of the issues being considered, the ability of communities to meet costs relative to benefits, and the capacity of the institutions.
  
4. These principles form an excellent basis for the Commission to approach its review of the legislation.
  
5. Much of this document (and indeed of the review) focuses on the balance between the second, third and fifth of these principles. Many of the recommendations made later in this document, when taken as a set, should be able to encourage better levels of participation at reasonable cost to the community.

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<sup>1</sup> LGNZ 2002 pp 6-7.

### **Recommendation 1: Principles**

**That the Local Government Commission adopt the above principles as the underpinning for its review of the Local Government Act and the Local Electoral Act.**

***The purpose of the LGA is important but the “jury is still out” as to whether the Act has achieved the purpose ...***

6. Section 3 of the LGA sets out the purpose of the Act as being to “provide for democratic and effective local government that recognises the diversity of New Zealand communities”. Central to that appear to be the:
  - clarification of the purpose of local government (*to enable democratic local decision-making and action by, and on behalf of communities and to promote social, economic, environmental and cultural well-being of communities in the present and for the future<sup>2</sup>*);
  - provision of a framework and powers to allow communities to decide which activities they undertake and the manner in which they will undertake them;
  - promotion of accountability to the community; and
  - provision for local authorities to take a broad role in promoting the social, economic, environmental and cultural well-being of the community, taking a sustainable development approach.
7. Although not part of the purpose of local government as such, section 4 of the Act is also central to the relationship between central government, local government and communities. This section clarifies that it is central government that has obligations and responsibilities under the Treaty of Waitangi and that *local government has no such responsibility*. Section 4 does however refer to certain specific obligations *under the LGA*.
8. Little *systematic* evidence has been gathered to date regarding levels of participation in local government since enactment of the LGA. It should also be noted that as a framework, the LGA provides residents and ratepayers with *rights* to participate (either through elections or in particular processes). On the other hand it appears that the section 32 obligations focus on whether people *actually* participated – or a focus on the end when the LGA is more about means<sup>3</sup>. It should also be noted that in some circumstances increased participation is not a measure of good process, but of controversial issues or deficient processes.
9. Accepting these limitations, then it should also be noted that what *anecdotal* evidence there is tends to be largely inconclusive. Table One (overleaf) shows that turnout was down at the only local government elections since enactment of the LGA (the October 2004 elections). This pattern held across every type of

<sup>2</sup> Section 10, LGA.

<sup>3</sup> A somewhat clichéd analogy is that of the horse and water, the Act sets processes for getting the horse to water, but the final decision whether or not to drink is one for the horse.

electoral contest (including the District Health Boards). Turnout in the 2004 elections was, broadly speaking, comparable with that experienced in the 1970s and 1980s.

10. However, attempting to ascribe causality to the legislative framework based on this evidence, would be somewhat “courageous”. In 2004, 10 local authorities chose to use the STV system for processing votes along with the 21 DHBs (where STV is mandatory). The Department of Internal Affairs has noted the largest decrease in turnout occurred in areas where all elections were conducted under STV – although there were only four of these, and all were below average size)<sup>4</sup>. It is also unclear whether the relevance of particular local issues had any impact on overall turnout - and noting that in 2004 most local authorities had just completed a major piece of public engagement about the issues facing the community with the preparation of transitional LTCCPs. A lower than normal number of “open “ Mayoral races (i.e. races where the Mayor had decided not to seek reelection) may also have played some part.

**Table One: Percentage of Voter Turnout, 1989-2004<sup>5</sup>**

<b>Turnout</b>	<b>1989</b>	<b>1992</b>	<b>1995</b>	<b>1998</b>	<b>2001</b>	<b>2004</b>
Regional councils	56	52	48	53	49	45
District councils	67	61	59	61	57	51
District Mayors	67	61	59	59	56	52
City councils	52	48	49	51	45	43
City mayors	50	48	49	51	45	43
Community boards	54	49	50	50	46	42
DHBs	-	-	-	-	50	46

Source: Department of Internal Affairs 2006, Local Authority Election Statistics 2004, Table 3.3, page 23.

11. Of course, voting in a local election is only one means that citizens have to make their views known and this needs to be factored into any consideration of electoral turnout. Other mechanisms include LTCCP, Annual Plan, and various processes available under other legislation such as the Resource Management Act 1991, Land Transport Management Act and the like. These other avenues mean that, unlike central government, there is no “one and only opportunity” to have one’s say.
12. In a similar vein the evidence is similarly mixed with respect to actual participation in planning processes. Although we are aware of local authorities that received record numbers of submissions on their documents, the average number of submissions received by councils participating in the survey fell from around 450 at the 2003/4 LTCCP to 360 per council in 2006. Of course this decrease may be the result of many factors (lack of a “big” issue, general happiness with the direction proposed in the draft LTCCP, the level of opportunity

<sup>4</sup> See Justice and Electoral Committee (2005) *Inquiry into the 2004 Local Government Elections*, Table 7 for further detail. We are aware of a statistical analysis that suggests electoral system and turnout are unrelated (from the statistical standpoint).

<sup>5</sup> Includes both residential and ratepayer franchises.

- people had to put views before the issue of a draft) etc and is not determinative in and of itself. However it is an indicator that overall levels of participation in the planning process are not likely to have increased<sup>6</sup>.
13. As we shall see later in this section, it is not obvious that the legislative framework is any more empowering than that previously. The so-called “greater empowerment” in the Act is in fact more of an amalgamation of a wide array of specific powers already conferred upon local government. Further, there is a host of more functional<sup>7</sup> legislation and associated regulations that have been largely untouched and therefore remain as detailed and prescriptive as they ever were.
  14. In a similar vein, we shall also see that the Act is not fully empowering with respect to the “manner in which local authorities undertake their activities”. The Act appears to fixate on some aspects of service delivery, especially though not exclusively, with respect to water and wastewater.
  15. The Act has, by and large, been successful in establishing that the role of local government has been to promote community wellbeing as defined by the community through the accountability process. It is not though, as clear that action to promote community wellbeing is generally a matter of community choice. For example, some within the community (and some within local government) are under the impression that local authorities are obliged to promote all four of the so-called well-beings, when it is permissible for a community to decide it wants its local authority to “stay out of” cultural well-being<sup>8</sup> or social well-being. All that is required is a consideration of the impacts of decisions on the various aspects of wellbeing.
  16. Local government’s Treaty responsibilities have been clarified, at least with respect to the Local Government Act. However, the few obligations local government has to Maori under the LGA are not well understood by the community at large. Public misconceptions abound – especially with regards to the obligation to consider how to build Maori capacity to participate in local government and around Maori land rating. This review provides another opportunity for government to explain what obligations exist and why.
  17. It should not be any real surprise that “the jury is still out” on the achievement of the purpose of the Act. The purpose of the Act is aspirational to some extent. It is also reliant on attitudinal change in the general public, and in local authorities themselves when such change takes a while to take effect. Local authorities have only just completed the first full LTCCPs under the Act, and are only now beginning to recognise the resulting benefits that strategic planning can generate

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<sup>6</sup> We should also note that there is some anecdotal evidence of improvements in the quality of submissions received, especially in some rural communities.

<sup>7</sup> For the purposes of this paper we shall define functional legislation as that legislation which related to local government’s conduct of a particular activity or related activities. Examples that tend to have most impact on the day-to-day “business” of local government include the Resource Management Act, the Land Transport Management Act, the Biosecurity Act and the like.

<sup>8</sup> This is perhaps not surprising given most international work around community wellbeing tends to recognize only three dimensions – social, environmental and economic.

in terms of a reduction in annual plan process. It is for this reason that the Department of Internal Affairs evaluation of the impact of the legislation is structured to take place over a ten year timeframe.

18. This is not to say that the section 32 review has no value – it is of tremendous value, but as a kind of “health check” of the legislation rather than as the “last word”. The review presents an opportunity to identify any “bugs” in the legislation and remove them as part of the process of continual improvement within the sector.

***The objective of any change should be to streamline the Act rather than “starting again” ...***

19. On the whole, few local government managers would support large scale change to the requirements of the LGA.
20. The sector has been through a considerable period of “bedding in” the legislative changes over the last three years and this will continue. Good practice is still developing in many areas (including, but not limited to, the development of community outcomes and translating those into action; operating under the decision making framework; asset management plans; performance management frameworks that reflect the intent of the Act<sup>9</sup> and triennial agreements). The full benefits of the legislation in terms of the reduction in size and complexity of annual plans may not become evident until the 2007/8 annual planning process has been completed. Other benefits such as greater engagement with central government and other parties will become more apparent as the outcomes process generates greater confidence and trust. As understanding of the legislation grows, local authorities will most likely be able to identify techniques for “working smarter” with the legislation.
21. There has been, and continues to be, considerable investment in developing the systems and processes necessary to comply with the Act. The value of some of that investment would be reduced if significant change were made.
22. This is not to say that the LGA is perfect as it is and that no change is necessary. Some parts of the Act lack internal consistency. And, as we shall make evident shortly, the accountability regime, far from making local affairs more transparent to the public, appears to have mired some potential readers in a morass of detail. But these changes are more in the nature of a streamlining of the legislative requirements and some level of “ironing out the kinks”. We consider that the policy objectives underpinning the Act (improved opportunities for participation in the decision-making processes around the promotion of community well-being) are worthwhile and that the basic framework and concepts of the Act are fundamentally sound.

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<sup>9</sup> In his recent parliamentary report *Local Government: Result of the 2004/5 Audits* the Auditor-General also noted that performance management frameworks were an area where practice was still evolving. Similar comments were made about some aspects of the decision-making framework.

***The LTCCP and the related processes are extremely useful disciplines but the focus of the present LTCCP appears to be somewhat misdirected ...***

23. The heart of the present accountability regime is the long-term council community plan (LTCCP). The purpose of the LTCCP and its information and procedural requirements is to provide a mechanism through which local authorities and their communities can debate and make strategic choices. The choices made in the LTCCP are then given effect in subsequent annual plans and progress is reported upon in the annual report.
24. Local government management has found the LTCCP process to be challenging but largely beneficial. The following are the most commonly identified benefits from the LTCCP process:
- a greater strategic focus;
  - improved asset and financial plans<sup>10</sup>, and better financial forecasting in general;
  - some improvement in the level of public understanding of the process; and
  - greater clarity and certainty over council plans.
25. However, being a first attempt at a full LTCCP<sup>11</sup> many councils found the process quite challenging. Respondents to the survey also identified negative impacts such as the time and resource cost, and impacts on staff.
26. The LTCCP, in its current form, appears to contain too much detail to be a useful tool to engage the general public (although we do note some sector groups find the detail helpful). The general public is most interested in the following:
- what they get in terms of levels of service, associated performance measures and major changes therein; and
  - what it is likely to cost them (levels of rates and charges).
- But the information requirements of an LTCCP run to some 5 ½ pages in schedule 10 of the LGA, and this does not count an additional six pages relating to funding and financial policies and their contents in sections 103-110.
27. Feedback from the SOLGM survey of local government managers suggests that some elements of the community found the LTCCP difficult to navigate, and the length of the document perhaps a little intimidating. Even so-called summaries of LTCCPs (that in some cases ran to 20 pages) were not helpful in some communities.
28. The most basic purpose of an accountability regime is to ensure that the public is provided with information to form the basis of an informed assessment about the future direction of the council (plan) and performance of the council (report).
29. We consider the focus of the LTCCP should be on the key strategic issues that the local community faces. While there are some areas where gains could be

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<sup>10</sup> Although we note there is still considerable variation across the sector.

<sup>11</sup> The first LTCCPs were prepared in either 2003 (nine self selected councils) or 2004 and did not require information on community outcomes, summaries of waste management plans, and summaries of assessments of water and sanitary services. Those first LTCCPs also did not undergo an audit process.

made, we noted that even the very shortest LTCCPs struggled to keep below 250 pages in length (some were well over 400, and the biggest single document we are aware of was 530 pages). In later sections of this paper we provide a proposal for an accountability regime that meets these requirements in a robust and transparent way.

***The unnecessary level of prescription with regards to service delivery does not sit well with the remainder of the Act ...***

30. The Act firmly establishes the promotion of community well-being as “the” business of local government. To this end local government has broad powers in undertaking this business.
31. On the other hand some parts of the Act appear to be fixated with certain aspects of service delivery. In particular;
  - there are prescriptive provisions governing some aspects for the delivery of water and wastewater services;
  - some Schedule 10 disclosures require the local authority to specify “how” the addition, maintenance, replacement and renewal of assets will be undertaken;
  - obligations to consult on proposals to change the mode of delivery of a significant activity (section 88); and
  - local authorities are required to adopt a policy on partnerships with the private sector.
32. These provisions appear to be a product of the timing of development of the LGA, and an overreaction to the privatisation/commercialisation of public services that had characterised the period 1984-1993. SOLGM considers that provisions of this nature are inconsistent with the remainder of the Act. These provisions appear to confuse “means” with “ends” and are extremely inconsistent with the notion elsewhere that it is for local communities to determine their own “path to well-being”. The provisions also run counter to the “outcome” focus that central government is attempting to instil into its own activities, and that the Act seeks to instil into local government.
33. Local authorities are already under obligations to:
  - give effect to their priorities in an effective and efficient manner (section 14(1)(a)ii LGA);
  - exercise prudent stewardship and the effective and efficient use of resources (section 14(1)(g) LGA); and
  - take into account the reasonably foreseeable future needs of future generations.

It is, therefore, questionable whether there is a need for prescription where local authorities are already under obligations to consider the full impact of delivery decisions.
34. The above restrictions and additional disclosure requirements should be reviewed for their consistency with other provisions of the Act.

## **Recommendation 2: Service Delivery**

**That all aspects of the Local Government Act that relate to service delivery be reviewed to ensure they are consistent with the principles and purpose of the Act.**

***To date, the so-called “greater empowerment” has not seen any real expansion of the range of local government activities ...***

35. Some central government politicians, business sector representatives and media have suggested the so-called “greater empowerment” purportedly conferred on local government by section 12 of the Act is a licence for local authority expansion into activities that are “outside of core business”. It has even been claimed that expansion into “non-core” activities has acted as a driver on rates.
36. The term “greater empowerment” is something of a misnomer. Local government’s powers under the Local Government Act 1974 were wider than many supposed and the phrase “greater empowerment” implies.
37. What the Local Government Act 2002 actually did was replace part of a large set of quite specific provisions empowering local government to do very specific things<sup>12, 13</sup> with a single general provision. That general provision provides full status, capacity and powers to undertake any act or thing which the council deems necessary to fulfil its purpose. The general provision is limited in the legal sense by the provisions of the Act (i.e. the accountability requirements and the more specific limitations) and of any other Act. It should also be noted that the economic and political limits on the funding base also act as a significant practical limitation.
38. We are unaware of any robust evidence that local government as a sector is undertaking a wider range of activities than it did prior to 2002. As the Funding Project Team’s Phase Two report notes:
 

*“in the few cases where councils have taken on additional responsibilities these have proved to be small in scale, and operational in nature<sup>14</sup>”.*
39. In fact, it is difficult to think of any examples of things local authorities are interested in doing today, that they could not have done prior to 2002. Many of the examples cited are, in fact, various forms of grants to community organisations, where local government has had a role for many years. Some of

<sup>12</sup> One of the better examples was a specific power to install and maintain town clocks.

<sup>13</sup> It transpires that section 12 of the LGA is not dissimilar to the now repealed section 598 of the Local Government Act 1974, subsection (1) of which read “The council may, either singly or jointly with any other local authority or any other organisation or group or body of persons (whether incorporated or not), 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 and may promote or assist in promoting cooperation in and coordination of welfare activities in the district.”

<sup>14</sup> Joint Central/Local Government Funding Project Team (2006), *Local Government Funding Issues: An Update*, page 27.

the other examples cited have involved the provision of a service that either central government or the private sector have been unwilling or unable to provide and again have been things councils have done for some years (so for example some councils subsidise GPs to come to small rural communities and have done so since the mid-1990s, another council subsidises a post office in an isolated coastal community and the like).

40. The Commission will, no doubt, receive comment from some sector groups that the greater empowerment of local government has been a major driver of the level of rates increases. In fact the Funding Project reports suggest that it is the provision of infrastructure that is the driver<sup>15</sup>.

***There is a need to review other legislation ...***

41. There is a tension between the “community empowerment” focus of the LGA and the more narrowly drawn powers and requirements of other functional legislation. The former is a more empowering statute that encourages “could do” thinking<sup>16</sup>, the latter is perhaps a more “can only do” set of laws<sup>17</sup>.
42. As local authorities progressed further into the 2006 process it became more apparent that the relationships/linkages between the accountability instruments of the Local Government Act 2002 and other statutory processes were not clear. Of particular concern are the linkages (or lack thereof) between the LGA and the following instruments:
- district plans, regional plans and regional policy statements prepared under the Resource Management Act 1991;
  - pest management strategies under the Biosecurity Act 1993; and
  - gaming policies under the Gambling Act 2003.
43. These policies and strategies have been developed through processes of public consultation, and set a policy direction and carry with them expectations of levels of service. These aspects of content are reflected in some of the content of LTCCPs, particularly in terms of the implications for levels of service. Inclusion of this information in the LTCCP effectively creates a public expectation that change can be made when in some cases the documents have been through more stringent processes than the LTCCP, and there is no lawful opportunity for change.
44. An example of a model which is operating with some success, at least in this area, is the preparation of land transport programmes under the Land Transport Management Act 2003 (LTMA). Section 13 of that Act allows a local authority the choice of incorporating its land transport programme into the LTCCP (provided it

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<sup>15</sup> Further information can be found in Funding Advisory Group (2007), *Local Government Funding: A Statement of Issues, a background paper to the Independent Inquiry on Local Government Rating* (available on [www.solgm.co.nz](http://www.solgm.co.nz)).

<sup>16</sup> The use of the term “could do” rather than “can do” reflects local government’s reliance on local funding and on the processes for planning and accountability in Part Six of the LGA

<sup>17</sup> Of course some prescription will always be necessary especially where the local authority is considering options that might impinge on property rights or involve the use of coercive powers to tax.

meets the disclosure requirements of the LTMA) and undertaking the necessary consultation through that process.

45. Although not strictly an issue with the LGA the relationships between functional legislation and the LGA creates some practical difficulties and barriers to promoting community well-being. The Commission should be considering these barriers in its consideration of the impact of conferring greater empowerment, and thus making a recommendation that the linkages between the LGA and functional legislation need clarification.
46. We note there are reasonably substantial parts of the Local Government Act 1974 that are still in force. These include various road management powers, powers relating to watercourses, drainage and river clearance schemes and divestment thereof, parking stations, and navigation.
47. Part of the process of harmonising functional legislation with the LGA needs to be a review of the remaining provisions of the 1974 Act.
48. The findings of the Local Government Funding Project<sup>18</sup> have highlighted the bulge in infrastructural development and maintenance that has been forecast in the 2006-16 LTCCP documents. Much of this is governed by the very functional legislation discussed here. If the legislation remains in its present state then it will act as a real blockage to doing this work in an efficient way.
49. It should also be noted that some critical pieces of legislation that impact upon the sector do not have the same philosophical background. The Land Transport Management Act does not require transport planning to be on a ten-year basis (or longer). This means that LTCCPs, Regional Land Transport Strategies and government funding can not be lined up beyond the first year. This obviously hampers the medium-term and long-term planning for local authorities. Another example is the fact that the RMA is based on primarily environmental well-being whereas the LGA has the four well-beings at its heart. The RMA's focus therefore leads to major decisions being made from a purely environmental viewpoint, whereas Council planning (incorporating issues that have to use RMA processes) takes a much wider perspective.
50. Although it is not functional legislation, strictly speaking, the Local Government Members Interests Act 1968 is another piece of legislation which is in need of a review. As the Auditor-General's 2005 report<sup>19</sup> pointed out:
  - the language of the act is archaic and difficult to follow;
  - it is unclear what bodies are covered by the Act;
  - criminal sanction is the only remedy available for a breach, yet may not always be the most appropriate means for resolving a breach, especially where the breach is of a lesser nature;
  - the provisions that "deem" when members have a pecuniary interest have some inconsistencies; and
  - key exemptions for the "discussing and voting" rule are confusing.

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<sup>18</sup> See Joint Central/Local Government Funding Project Team (2006) for further details.

<sup>19</sup> See Office of the Auditor-General (2005), *The Local Government Member's Interests Act – Issues and Options for Reform* pp 10-17 for further discussion.

**Recommendation 3: Other Legislation**

**That a phased review of the following legislation relating to local government be undertaken to ensure consistency with the purpose and principles of the Local Government Act:**

- **all functional legislation;**
- **the remaining provisions of the Local Government Act 1974; and**
- **the Local Government Member's Interests Act 1968.**

## 2. Community Outcomes (Sections 91, 92 and Schedule 10<sup>20</sup>)

51. Local authorities are not the only parties involved in promoting community wellbeing. Central government, the voluntary sector and the private sector also play a role. The intent of the community outcomes process was to provide a mechanism where each of these “players” could agree upon the desired outcomes, prioritise them (if desired), and agree upon actions to promote the desired outcomes. The legislation has been designed in a way that seems to suggest that the local authority’s judgements about its role in promoting community outcomes would form much of the local authority’s justification for the non-mandatory activities that they entered into.
52. Our discussions with local government managers revealed the following:
- there was little variation between the outcomes of different local authorities (statements along the lines of “we will be healthy, wealthy and wise” are one cynical summation of community outcomes) and between the final results and those the local authority “expected”;
  - practical difficulties around getting the other players to engage in processes for identification of community outcomes or the monitoring of community outcomes;
  - concern that placing an obligation to monitor and report on the achievement of community outcomes on the local authority could see local authorities held accountable for results that were beyond their power to influence;
  - patchy engagement from central government agencies. Some departments (such as the Ministry of Social Development, many District Health Boards, and local police commanders) made a concerted effort to take part in community outcomes processes. Others equally capable of promoting community outcomes have generally not been involved. There was also some evidence of agencies taking part in community outcomes processes in only those communities where they had agencies i.e. rural local authorities tended to find it harder to get central government engagement; and
  - a perceived lack of commitment from central government to committing to actions to further the achievement of community outcomes, especially with commitments of resources. Patchy engagement and commitment from central government departments also undermines the degree to which the community outcomes process can contribute to the achievement of central government’s overarching priorities (sustainability, economic transformation, building national identity and families-young and old).

### 2.1 The Value of Community Outcomes

53. It is not surprising that there was a large degree of homogeneity in the community outcomes, or that community outcomes were generally quite predictable. United Nations research into similar initiatives for identifying and

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<sup>20</sup> Clauses 1 and 15 only.

promoting community wellbeing tend to suggest there are 8-10 dimensions of wellbeing that emerge across the world<sup>21</sup>.

54. However the value of the outcomes process is not just derived from the preparation of a list of community outcomes (which might well be identical to those of the neighbouring authority). The process is also an opportunity to debate priorities among the outcomes (which may well be different from community to community). The outcomes process is also an opportunity to agree on actions to promote community outcomes. The actual process of identifying community outcomes also carries benefits in terms of the establishment, development and maintenance of relationships between the various parties involved in the process.
55. The full potential of the outcomes process has not been realised as yet. For example the 2004/5 Auditor-General's Report to Parliament suggests some local authorities did not undertake a prioritisation exercise at all, and the results of the exercises others undertook were not evident in some LTCCPs. This is an area where gains will be made over time.

## **2.2 Central Government and the Community Outcomes Process**

56. The outcomes process is effectively a series of conversations as to how to implement community based policy to promote well-being. This is a different process from the more "silo-based" policy that central government agencies tend to operate. However, if the outcomes process is to play the role in promoting community wellbeing that Parliament contemplated, then the full spectrum of agencies will need to get involved in a wider range of processes than has been the case to date.
57. We are aware that the Department of Prime Minister and Cabinet has previously encouraged agencies to participate in outcomes processes. This is a further recognition of the partnership that central and local government must take in the promotion of community wellbeing.
58. We do not favour a mandatory requirement on government departments (or any other body) to participate in the outcomes process. Not all departments have a role in promoting community well-being at the local level, for example it is difficult to see the Ministry of Defence or the Department of Customs as having a role. Compulsion is also not usually an incentive for the kind of constructive engagement the outcomes process requires.
59. The partnership between central and local government could be better supported by a more generic requirement on central government agencies to prepare a statement that:
  - explains what role the agency considers it has in promoting the wellbeing of local communities; and either

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<sup>21</sup> The OECD describes these as longevity and quality of life; physical security; social connectedness and relationships; standard of living; rewarding work; time and leisure; knowledge, skills and education; culture and identity; social, economic and political freedoms; and the physical environment (both natural and built).

- explains how the agency has contributed to the furtherance of community outcomes; or
- explains why the agency does not consider it has a role in promoting the wellbeing of local communities.

This would form part of the statutory contents of Statements of Intent and Annual Reports of Crown agencies under sections 38 and 45 of the Public Finance Act 1989. In the longer-term an even more effective solution would be to place similar requirements into the performance agreements of department chief executives.

### **2.3 Inter-authority Co-operation**

60. All local authorities (i.e. both territorial authorities and regional councils) are under an obligation to carry out processes to identify community outcomes. This requirement raises the possibility of process duplication or alternatively the potential for conflict between the community outcomes adopted by the territorial and regional council.
61. There are real benefits in local authorities working together to identify community outcomes (we use the term “regional approaches” as a shorthand descriptor for this). The benefits include:
- an increased likelihood of attracting central government departments and other nationally based organisations to the process;
  - promotion of better co-operation between local authorities in regards to other matters; and
  - promotion of better coordination between local authorities.
62. We acknowledge that legislation mandating “regional” approaches is impractical. Regional boundaries are largely based on catchments, which tends to lend itself well towards environmental type outcomes, but possibly not towards others. Other groupings of authorities might form more naturally, for example rather than a Canterbury Regional Process there might be more logic in clusters in South Canterbury, Christchurch and environs, and North Canterbury. Over time we would expect to see local authorities using vehicles such as the triennial agreement (section 15) to agree upon joint approaches.

### **2.4 Monitoring and Reporting Community Outcomes**

63. Local authorities are required to monitor and report progress towards the achievement of community outcomes. There are two levels of monitoring requirement:
- section 92 requires that local authorities monitor and report on progress not less than once every three years; and
  - clause 15, schedule 10 requires local authorities to report the results of any measurement undertaken during a particular year, in the relevant annual report for the year.
64. As their name implies, community outcomes belong to the community not just the local authority. A local authority is one party working towards the achievement of community outcomes, thus all who have worked together to identify community

outcomes should have joint responsibility for their achievement (or otherwise). The three yearly reports can be released as a joint report of all agencies (and it appears most will be done in this way) but the annual report is a statutory document of the local authority. The requirement to report any measurement of community outcomes in a local authority's report creates public confusion as to which agencies have responsibility for achieving outcomes i.e. achieving outcomes will be seen as entirely as a local authority responsibility. The annual reporting requirement should be deleted.

#### **Recommendations 4 and 5: Community Outcomes**

**That:**

- 4. the Public Finance Act 1989 be amended to require central government agencies to report on their involvement in the community outcomes process and their actions in promoting community outcomes; and**
- 5. clause 15(c), schedule 10 of the LGA be deleted.**

### 3. LTCCP/Annual Plan/Annual Report Cycle (Part Six and Schedule 10)

65. Parliament seems to have viewed the changes to the accountability regime as being the *quid pro quo* for the perceived changes to local authority empowerment. They were also seen as an important part of the “business” of promoting community well-being i.e. the information flow from the local authority to the community was seen as an important input into determining what community well-being actually is and what was required to promote it.
66. The central point of accountability in the LGA is the LTCCP. Section 93(6) of the LGA defines the purpose of the LTCCP as:
- “(6) The purpose of a long-term council community plan is to---*
- (a) describe the activities of the local authority; and*
  - (b) describe the community outcomes of the local authority's district or region; and*
  - (c) provide integrated decision-making and co-ordination of the resources of the local authority; and*
  - (d) provide a long-term focus for the decisions and activities of the local authority; and*
  - (e) provide a basis for accountability of the local authority to the community; and*
  - (f) provide an opportunity for participation by the public in decision-making processes on activities to be undertaken by the local authority.”*
67. The intent was that the LTCCP would ultimately become the primary focus for public consultation and debate, and that the annual plan would become more of a link to the budget-setting process and the means for consulting on necessary changes. SOLGM generally endorsed the intent of this approach in our submissions on the then Local Government Bill and repeats its general support for the LTCCP/annual plan/annual report cycle of accountability.
68. However the experiences of local authorities in 2003/4 and in 2006 have highlighted that:
- the required disclosures have produced LTCCPs of such length and complexity that they provide real disincentives for the public to engage in the process;
  - there are areas where disclosures appear to be duplicatory (or at least substantially the same); and
  - there are some concerns about the level of cost involved in preparing these documents, although to some degree some of the cost was incurred in developing systems and a base of underlying information that might be better viewed as something more akin to a “one-off” investment.

Having said this, it needs to be remembered that the costs of meeting these accountability requirements are ultimately met by the ratepayer.

69. Local communities are mostly interested in two things: what the local authority is actually going to do and how much it will cost. A good accountability regime must ensure that this detail is not lost in a torrent of other information.
70. In preparing this submission therefore, we have paid particular attention to the requirements of schedule 10 and how they contribute to an overall product that focuses attention on the strategic issues each local authority faces. This has involved detailed consideration of each element in schedule 10, how this has operated in practice and the benefits that disclosure brings.
71. The results of this work (and our consideration of financial management issues) are set out in a revised set of accountability requirements on pages 28 and 29 of this paper. These are entirely consistent with the intent of the legislation and with our understanding of the level and nature of information that the public find most useful while:
- removing duplication;
  - removing redundant information; and
  - permitting the greater use of summaries (particularly of policies and of some of the financial disclosures) with signposts as to where to go to obtain more detailed information.

### **3.1 Schedule 10 Disclosures**

#### **Groups of Activities**

72. The bulk of schedule 10 disclosures are contained in Schedule 10, clause 2 which requires disclosure of certain service delivery and funding information at the level of “groups of activity”. Some have raised concerns that the level at which disclosure is “pitched” is at too *high* a level, and that disclosure at groups of activities can hide important information especially with regard to performance measures and funding information.
73. The requirement to disclose at this level appears to have been motivated at least in part as an initiative to reduce compliance costs. Our view is that the definition of “groups of activities” in section 5 of the LGA<sup>22</sup> is sufficiently flexible to allow local authorities to configure their “groups” so that their disclosures meet the requirements and spirit of the Act. This flexibility should be retained.

#### **“How” Assets will be Managed**

74. Schedule 10, clause 2(1)(d) contains several requirements to disclose “how” the local authority intends to:
- assess and manage the asset and manage the asset management implications of changes to demand or service levels ((2)(1)(d)(i));

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<sup>22</sup> One or more related activities provided by, or on behalf of, a local authority or council controlled organisation.

- undertake the provision of additional asset capacity ((2)(1)(d)(iii));
  - undertake the maintenance, renewal and replacement of assets ((2)(1)(d)(vi));
- for each group of activities.

75. It is not clear what information the legislation contemplated would be disclosed. We understand that the auditors accepted a wide range of approaches in fulfilling this disclosure. The use of the word “how” seems to suggest it is matters of process or of mode of delivery that Parliament had in mind. This in turn strongly suggests the driver was a concern regarding modes of service delivery. Given that Parliament imposed a requirement to undertake the special consultative procedure before changing modes of delivery of a significant delivery this information appears to be redundant (as it is already up for consultation).

### **Disclosures of Expenditures and Funding Sources**

76. There are several places in schedule 10, clause 2 where local authorities are required to disclose expenditures:
- the estimated costs of additional asset capacity, divided by each of the matters where additional capacity is required and how these costs will be met (clause (1)(iv) and (1)(v));
  - how the costs of the maintenance, renewal, and replacement of assets will be met (clause (1)(vi))<sup>23</sup>; and
  - the estimated expenses of achieving and maintaining levels of service provision, included the estimated expenses associated with maintaining the service capacity and integrity of assets together with how these expenses are to be met (clauses 2 (b) and (c)); and
  - a statement of estimated revenue levels, the other sources of funds, and rationale for their selection in terms of section 101(3) (clause 2 (d)).
77. These disclosures are largely duplicatory, and to the extent that there are differences between them appear to be somewhat confusing (in particular the slight changes between the requirements of clauses 1 and 2). The important point is that ratepayers have a clear indication of the cost of meeting the proposed levels of service.
78. The disclosures need to be combined so that there is a single set of requirements to show:
- the cost of providing the levels of service for the group of activities in question over the life of the plan. In the LTCCP this would be a summary statement broken into the operational and capital expenditure, but local authorities would prepare a more detailed break down of the costs of additions to capacity, maintenance, renewals as part of their underlying base of information;
  - the estimated sources of revenue (including operating and capital revenue) over the life of the plan – on a similar basis to the cost information; and

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<sup>23</sup> Strangely there appears to be no requirement to disclose the estimated cost of maintenance, renewal and replacement in schedule 10, clause 1.

- an explanation for the choice of revenue sources in terms of section 101(3). In the interests of transparency the explanation should be of the choice of sources for the first year, and then on an exceptions basis for subsequent years (i.e. explain any changes).

### **Water and Waste Assessments**

79. A subsequent section of this paper recommends that requirements to assess water and sanitary services be moved to District Health Boards. It then logically follows that an LTCCP would not need to contain a summary of an assessment prepared by a third party.

#### **Recommendations 6-8: Schedule 10 Disclosures**

**That:**

- 6. local authorities retain the flexibility to determine the composition of their “groups of activities”**
- 7. schedule 10 clause (2) disclosures relating to costs and revenue requirements be amalgamated into a single disclosure requirement;**
- 8. schedule 10 clause 3 (1)(a) be deleted.**

### **3.2 Annual Plan (section 95)**

80. Under the LGA regime the annual plan now serves two roles:
- the link between the LTCCP and the annual rates levy and information needed to provide the value proposition (i.e. levels of service);
  - **the** vehicle for making minor departures from the LTCCP and **one** vehicle through which the more substantial changes (i.e. amendments) to the LTCCP can be made.
81. We are aware of suggestions that the annual plan is no longer necessary where no changes are planned i.e. all the consultation has already taken place. Although we can understand why this suggestion has been put forward we disagree, at least while the rate-setting process remains an annual one. We further note that the nature of many submissions (small amounts often for very small pieces of capital work, or some form of community grant) are unlikely to come forward in the LTCCP process. Removal of the annual plan requirement is likely to add to current negative perceptions that some parts of the community have regarding their ability to influence the rates burden. We also note that there is no other vehicle available in legislation for making small scale changes, if these are necessary. The Annual Plan process is also a good opportunity for the local authority to formally meet and engage with the community regarding progress against the LTCCP.

### **Recommendation 9: Annual Plan**

**That the requirement to prepare an annual plan be retained.**

### **3.3 Amendments to LTCCPs (sections 97, 102 and 141)**

82. The Act prescribes that changes of a particular nature can only be made in an LTCCP, or as an amendment to the LTCCP and thus require the special consultative procedure, an auditors report and the like. These include:
- significant changes to service levels of a significant activity (including starting or stopping an activity);
  - transfer of ownership or control of a strategic asset;
  - construction, replacement or abandonment of a strategic asset;
  - decisions that 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 or annual plan;
  - any amendment of a section 102 policy; and
  - any sale of endowment land.
83. It appears this requirement was to ensure that local authorities retained a strategic focus throughout the three year “life” of the LTCCP and that tradeoffs continued to be made in full knowledge of the service level and financial consequences. The requirement ensures that LTCCPs retain their robustness over the three years and is supported for this reason.
84. It can be seen that “significance” is a key determinant of the circumstances where amendments to LTCCPs are required. The Act, quite correctly, draws a distinction between decisions that require an amendment to the LTCCP and day to day circumstances that give rise to change from what was in the LTCCP that do not require amendments. To do otherwise for example, might give rise to documents that are reproduced frequently with trivial changes at each amendment.
85. However, three of the so-called triggers for amendment appear to encompass **any** change regardless of scale.
86. Section 97(1)(d) applies to any activity identified in an annual plan or LTCCP regardless of the size of the activity or its importance to the community. Linking this section to significant activities ensures consistency with section 97(1)(a) and is more in keeping with the intent of the provision.
87. Section 102(6) specifies that any amendment to a funding and financial policy may only be made as a section 93 amendment to an LTCCP. Unlike many of the other categories of amendment there is no qualifier for significance attached i.e. all amendments to these policies are treated as an amendment and must for example have a summary and an audit opinion regardless of their size or scope. This is the reason why around half of the 30 councils amending LTCCPs in the

- 2007/08 Annual Plans are making amendments<sup>24</sup>. This is an extremely cost-ineffective process for making changes of a minor nature. The requirement to undertake amendments to the LTCCP should be tied to the test of significance, where a proposed change is not significant then the special consultative procedure will be sufficient.
88. Section 141 allows local authorities to sell or exchange endowment properties (that is property gifted to the community by private individuals usually with some specific objective or purpose in mind<sup>25</sup>). However, any sale or exchange must either be part of an LTCCP or an amendment to an LTCCP. This leads to the farcical situation where local authorities may be required to amend an LTCCP because they wish to sell or exchange quite small pieces of property. Local authorities can only sell endowment property if they are satisfied that the proceeds of the sale/exchange will be used in a way that is consistent with the endowment and have offered the donor or their successor a chance to comment. Beyond this all that should be required is a special consultative procedure – so that for example, users of a park, can make their views known.
89. Many local authorities are working through the process of determining what changes are significant and require amendments as part of the 2007/8 Annual Plan process. The feedback we have received is that many have found it difficult to determine the level of significance of some changes and some have had to take legal or audit advice. Some have called for greater clarity around the statutory definition of significance – we do not support this, and consider that as experience in working with the legislation grows this will become less of an issue.

#### **Recommendations 10-12: Amendments to LTCCPs**

**That:**

- 36. section 97(1)(d) be amended to cover changes involving significant activities;**
- 37. section 102 be amended to require an LTCCP amendment only in cases of significant change (assuming the Commission does not agree that these policies need not be included in an LTCCP); and**
- 38. section 141 be amended to require that sale of endowment land must be undertaken via the special consultative procedure, rather than as an amendment to the LTCCP.**

### **3.4 LTCCP Adoption Dates**

90. Related to the question of LTCCP amendments there has been some discussion within the sector of the merits of allowing adoption of a “new” LTCCP on the same basis as long-term financial strategies under the preceding legislation. In other words, rather than a common three yearly cycle for all local authorities (i.e. 2006, 2009 etc), a local authority would be required only to adopt an LTCCP at

<sup>24</sup> These range from amendments as major as a complete overhaul of a policy on development contributions to several local authorities that are making minor changes to their remission or postponement policies.

<sup>25</sup> A common form of endowment is land that has been gifted for the purposes of a park or reserve.

least once every three years (i.e. a local authority that adopted an LTCCP in 2006 could do so again in 2007, and rather than adopting another in 2009, would not have to do so until 2010).

91. Some of the advantages of moving to this regime are:
- greater flexibility for local authorities to respond to changing circumstances without being penalised by having to, for example, do three LTCCPs in a triennium (with the resultant cost and consultation burden);
  - greater perceived responsiveness to any sudden shifts in community needs and preferences; and
  - as local authorities move the dates at which they adopt their LTCCPs this has the impact of spreading the workload for auditors.
92. On the other hand, some of the disadvantages of a change of this nature are likely to include:
- a possible loss of strategic focus may result from having the opportunity to “do things over”;
  - a common date lends itself well to a common communications approach; and
  - regional initiatives (such as a regional community outcomes process) may be discouraged or become more complicated, and in a similar vein, may have some impact on the willingness/ability of central government to get involved in these sorts of processes.
93. The Commission should explore this idea further.

#### **Recommendation 13: LTCCP Adoption Dates**

**That consideration be given to amending the requirements that LTCCPs be adopted on fixed cycles.**

### **3.5 Audit of LTCCPs (sections 84 and 94)**

94. This requirement created more comment than any other aspect of the legislation in the recent SOLGM survey.
95. The overwhelming majority of managers considered the process was useful, in each of the four categories of respondent<sup>26</sup> the percentage of responses finding the audit process “moderately” or “very” useful was well over 70 percent (and in the case of finance and strategic planners was almost 80 percent).
96. On the other hand, the audit process, has also been cited as one of the significant drivers of cost in preparing an LTCCP and that some councils did not

<sup>26</sup> Chief Executives, finance managers, asset managers and policy managers.

capture any value from the process. Others raised concerns about the timeliness of the audit process vis-à-vis council's own processes.

97. The audit process was not designed to be a tool that would primarily generate benefits for the **local authority**. As the following from the Local Government and Environment Select Committee demonstrates the intended beneficiary of the process was the **local community**:

*"The auditor's report would .... contribute to the information necessary for communities to assess the quality of the long-term plan (sic) in the draft stage and after adoption."<sup>27</sup>*

98. The insertion of this requirement appears to have been based, in part, on concerns about the quality of forecasting and estimating approaches taken to developing long-term financial strategies (the precursor to LTCCPs in the Local Government Act 1974). In particular the requirement may have been motivated by concerns that some local authorities were not making effective provision for infrastructure<sup>28</sup>. There was an expectation that the audit requirement would aid in the development of good practice approaches and over time generate further improvement in the robustness of documents.

99. There is some evidence to suggest that some of the expected improvements in the robustness of documents has materialised in the 2006 LTCCPs. In the recent SOLGM survey:

- 55 percent of policy people said that there had been moderate or significant improvement in systems and a further 31 percent indicated some improvement;
- about 50 percent of asset managers reported that improvements had been made to asset management plans during the LTCCP process (although some also reported plans had been confirmed as being of sufficient standard) and a further 16 percent found deficiencies which will need to be rectified; and
- 38 percent of finance managers reported that improvements had been made to systems and modelling during the LTCCP process (although some also reported systems and modelling had been confirmed as being of sufficient standard) and a further 16 percent found deficiencies which will need to be rectified.

100. The recent report of the joint Central/Local Government team *Local Government Funding Issues: An Update* further alludes to gains since the transitional LTCCPs:

*"The project team acknowledges that LTCCPs in all of the case study authorities (seven territorial authorities of different sizes and factual circumstances) showed improvements from the transitional LTCCPs of 2003 and 2004 in terms of process and their ability to promote the kinds of*

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<sup>27</sup> Local Government and Environment Select Committee 2002, *Report on the Local Government Bill 2001*, page 14.

<sup>28</sup> The historically large capital expenditure programmes and resulting levels of rates increase forecast in the current set of LTCCPs tend to support this.

*community discussion and debate intended by the Local Government Act 2002.*

*Most also showed some improvement in asset management planning although some issues were identified:*

- *service levels were not well developed in some local authorities, with a reliance on customer satisfaction measures;*
- *information on the condition of infrastructure was incomplete, particularly reticulated infrastructure; and*
- *in some local authorities there was reliance on commercially produced templates which had the effect of obscuring important information.<sup>29</sup>*

101. The audit process has also provided local government with a future direction for improvement of LTCCPs – mostly around performance management frameworks although several local authorities had more serious issues with asset management plans and in one case with the sustainability of its overall financial strategy.
102. The above views are a majority view, and are not shared by all. There is an alternative view that suggests that the cost of “meeting the audit requirements” was one of the significant drivers of cost in preparing an LTCCP. In some cases the direct cost of the audit added as much as one percent to the rates requirement. While those who hold this view acknowledge that the audit process has helped identify some of the “stragglers” in terms of process they would also suggest that in their own councils the process yielded them no more benefit than a “peer review” by another local authority would have done. Several have suggested that the audit process is intrusive.
103. We consider that both auditors and local government have learned a substantial amount from the 2006 LTCCP process, and that both should acknowledge (and have) that there is scope for process improvement before 2009. It appears much of the focus of the 2006 audit process was in checking the robustness of the underlying base of information from which financial forecasts were prepared. Issues with the underlying base of information have been, or are, being addressed and this should become less of a focus in 2009.
104. In our view the audit of LTCCPs is an important part of the accountability process and should be retained in its present form. The main areas for improvement are more in the nature of practice issues and should be addressed in the next two years.

#### **Recommendation 14: Audit Reports**

**That the requirement for an audit report on the LTCCP be retained.**

<sup>29</sup> Joint Central/Local Government Funding Project Team, *Local Government Funding Issues: An Update*, pp 9-10.

### 3.6 Summaries of LTCCPs

105. The LGA introduced the concept of summaries, both for the LTCCP and the annual report. It appears that the purpose of the summary LTCCP was to stimulate general public interest in the LTCCP process by providing information which highlights the key issues and points to where further information was available.
106. SOLGM considers that the summary LTCCP is a valuable part of the consultative process. If done well, the summary serves as a basis for mass-communication to the community (e.g. dropped into every letter box) and can act as a stimulant for participation. The discipline of having to prepare a summary can also act as a useful tool for local authorities as they prepare the full plan i.e. in helping refine thoughts as to what the really significant issues are.

#### **Recommendation 15: Summary LTCCPS**

**That the requirements to prepare a summary LTCCP be retained.**

### 3.7 The Decision-Making Process

107. 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 an 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.
108. Section 79 offers local authorities the flexibility to design decision-making processes 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.
109. 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.

### 3.8 Consultation Procedures

110. The special consultative procedure set out in section 83 requires local authorities to give public notice of a statement of proposal. The definition of public notice means “a notice published in 1 or more daily newspapers circulating in the ... local authority or 1 or more other newspapers that have at least an equivalent circulation within the local authority” and also includes “any other public notice that the local authority considers desirable in the circumstances”.

111. The rationale for using the newspaper as the basis for the statutory minimum when giving notice is that the newspaper a method of communication that is both cheap, readily accessible and therefore widely circulated. But there is a worldwide trend away from newspapers as people's means for accessing information on a regular basis, and a trend towards use of electronic media (especially the internet).
112. With this in mind, it may be appropriate to consider whether the mandatory requirements of public notice need to be "future-proofed".

**Recommendation 16: Consultation Procedures**

**That the definition of "public notice" be reviewed to ensure that consistency with technological developments.**

## Summary: Proposed Contents of Accountability Documents

With the above proposals implemented the shape of the accountability documents would look like the following.

### **Revised Content of LTCCPs**

#### **1. Discussion of strategic issues and options**

(This is something that would not require legislative backing and would instead be a good practice item)

#### **2. Outcome information**

- what the outcomes are;
- what the local authority expects its contribution to be;
- how the outcomes relate to other strategic documents;
- what the contributions of others will be (optional); and
- the monitoring regime.

#### **3. Service delivery information (by group of activity)**

- scope of the group of activity;
- reason for undertaking the activities that make up the group;
- significant negative effects;
- service levels and performance measures;
- expenses; and
- funding sources and explanation.

#### **1. Policy Summaries**

- Significance policy;
- All funding and financial policies (see following sections); and
- Waste management plan.

#### **5. CCOs**

- Names of CCOs;
- Policies with respect to ownership/control;
- Activities of CCO; and
- Performance measures.

#### **6. Development of Maori Capacity**

#### **7. Forecast Financial Statement (including balanced budget statement)**

#### **8. Funding Impact Statement**

#### **9. Significant Assumptions**

#### **10. Audit Report**

**Revised Contents of Annual Plan**

- 1. Service Delivery Information**
  - Service levels;
  - Significant additions and disposals;
  - Expenses; and
  - Funding information.
- 2. Funding Impact Statement**
- 3. Forecast Financial Statements**

**Revised Contents of Annual Report**

- 1. Service Delivery Information**
  - Scope of the group of activity;
  - Identified effects;
  - Comparison of actual and intended levels of service and explanation; and
  - Description of major acquisitions and replacements of assets, why, and any variances
- 2. CCO Disclosure**
  - Actual performance against identified measures; and
  - Report on achievement of ownership/control policies.
- 3. Financial Statements**
- 4. Other disclosures** (payments to CEOs and Members, severance etc)

## 4.0 Financial Management and Borrowing (Sections 100 to 122)

113. The financial management requirements of the Act include the following elements:
- the balanced budget requirement (section 100);
  - a general set of obligations with respect to financial management including a set of matters for consideration with respect to funding decisions (section 101);
  - a set of funding and financial policies and specification of the contents of each of these (sections 102-110);
  - an obligation to prepare all financial statements in accordance with Generally Accepted Accounting Practice (GAAP) (section 111); and
  - powers and obligations with respect to borrowing (sections 112-121).
114. As a general point many of these requirements were drawn largely from the financial management reforms of 1996 that became Part VIIA of the Local Government Act 1974. Many of the disciplines were “moved into” the LGA intact or with changes to:
- ensure that local authorities were not forced down a path to using particular funding instruments (one of the criticisms of the previous provisions was that there was, arguably, a presumption that the general rate was to fund the residual after user charges and targeted rates had been ruled out);
  - provide more flexibility (so for example, the balanced budget principle was amended so that local authorities could depart from a “balanced budget” if it were considered prudent to do so); and
  - ensure that local authorities considered the impact that their choices had on the social, economic, environmental and cultural wellbeing of the community.
115. These requirements are viewed internationally as being “leading edge policy” for financial management by sub-national government. Recent inquiries into financial sustainability in several Australian states<sup>30</sup> have recommended that local government in these states be required to adopt a revenue and funding policy and work through the disciplines of section 101.
116. Many of the issues that the public raise with these provisions are not issues of legislative design but are actually “practice” issues. One of the most common of these is concern that councils are “required” to “fund depreciation” by the balanced budget provision. In fact, a local authority is not required to operate a balanced budget if it considers that it is prudent not to do so following consideration of levels of service, intergenerational equity and the policies the local authority has adopted under section 102.

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<sup>30</sup> See, for example, Financial Sustainability Review Board (2005), *Rising to the Challenge: Towards Financially Sustainable Local Government in South Australia* and Independent Inquiry into the Financial Sustainability of Local Government (2006), *Are Councils Sustainable – Final Report of the Independent Inquiry*.

117. For the most part then, local government managers are generally comfortable with the financial management regime. The issues we raise in this section relate as much to our stated goal of streamlining the accountability process than issues with financial management as such.

#### **4.1 Funding and Financial Policies**

118. Section 102 of the LGA places local authorities under a requirement to adopt a set of funding and financial policies as part of the LTCCP. These policies are:
- revenue and financing policy – a statement of policies that the local authority has with respect to funding operating and capital expenditure;
  - investment policy – a statement of policies regarding the acquisition, management and disposal of investments;
  - liability management policy – a statement of any policies that the local authority has with respect to borrowing;
  - development/financial contributions policy – this policy is a requirement regardless of whether or not the local authority wishes to assess either of these forms of contribution. These policies explain which of these tools are being used to fund what pieces of growth related capital expenditure, the methodology for determining the contribution, and “triggers”;
  - partnerships between the local authority and the private sector;
  - remission and postponement on Maori freehold land; and
  - remission and postponement policy for land other than Maori freehold land (not mandatory unless the local authority wishes to remit or postpone rates).

These documents cover quite different circumstances and thus do not have an explicitly stated purpose in the legislation. However these can be seen as promoting greater transparency in the management of local authority finances (in particular, though not limited to, explaining the basis for the funding system) and promoting a better informed public.

119. Our concerns about the set of policies are:
- some add little value;
  - some of these documents need not be in the LTCCP; and
  - the process for amending these policies (i.e. an amendment to the LTCCP under sections 84 and 93) may be unnecessarily resource intensive for some policies.

#### **Section 102 Policies – Do They Add Value?**

120. The two policies where the degree of “added value” is of most concern are the policy on public private partnerships (PPPs) and the policy for the remission and postponement of rates on Maori freehold land.

121. The policy on PPPs sets out circumstances under which local authorities intend to commit resources to partnerships with the private sector<sup>31</sup>. The areas where local authorities are most likely to enter into public private partnerships (PPPs) involve the provision of network infrastructure (e.g. roads, water) and some types of community facility (e.g. stadia). There have been several high profile “issues” with PPP in overseas jurisdictions that carried unexpected cost and other consequences for the public sector. The policy ensures that local authorities and their communities have thought about the risks involved before entering into these arrangements<sup>32</sup>. While this is a laudable objective, a mandatory policy is not necessarily the only way to achieve the objective. There may be some advantage to amending the requirement to have a mandatory policy with something akin to requirements for remission and postponement policies on general land i.e. only those local authorities that wish to enter into these arrangements need adopt a policy. We also note roading PPPs (especially those involving tolling) are partially regulated by the Land Transport Management Act 2003<sup>33</sup>, and certain conditions are placed on water PPPs by the Local Government Act 2002<sup>34</sup>.
122. The requirement to have a policy on remission and postponement of rates on Maori freehold land is a mandatory requirement. Use of these powers can alter the incidence of the funding burden either from one category of ratepayers to another (remission) or from today’s ratepayers to tomorrow’s (postponement). The scope and requirements of this policy are not well understood by the general public, and even by some local authorities. The requirement is only to have a policy and explain what the policy is in terms of the matters listed in Schedule 11 of the LGA. There is no requirement to remit or postpone rates on this category of land (although some clearly see it as such an obligation). In a similar vein, Maori freehold land is a specific category of land not of ratepayer, and includes only land where the Maori Land Court has made an order determining the land to have this status. However public perception is that this applies to any land owned by Maori. The requirement appears to stem from central government’s desire to ensure that further alienation of Maori freehold land does not occur and that local authorities should take account of the differences in tenure, ownership and cultural context when making rating decisions (which are captured in the matters listed in Schedule 11). The policy documents the local authority’s judgements with respect to those matters and decisions on remission and postponement policies. Given the importance of the policy objective to the government a mandatory policy is probably necessary (some local authorities with relatively little of this category of land may not consider the issue a priority otherwise). But it is not clear what debate was ever held with the public regarding the importance of the objective, in the context of the Local Government Act, and what local government can/should be doing.

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<sup>31</sup> The definition of private sector in section 107(2) includes only “one or more persons engaged in business” thus the most common form of local government commitments of resource - grants, loans etc to the community and voluntary sector are **not** included.

<sup>32</sup> The requirement to have a PPP policy may also have been a reflection of the policy views of the then Minister of Local Government which could be summarised as supporting private financing of such projects but being wary about private ownership of the infrastructure in the long-term.

<sup>33</sup> Sections 46-64.

<sup>34</sup> Section 130.

## Inclusion in the LTCCP

123. The key factors that should determine whether a particular policy should be included in the LTCCP are:
- the level of interest in, and impact arising out of the particular policy; and
  - the importance of the policy in understanding the LTCCP and its implications and hence the degree to which the accountability of the local authority to its community is promoted.
124. We suggest that when these tests are applied **none** of the section 102 policies **need** be incorporated into the LTCCP, although there may be cost and transparency factors that may make inclusion in the LTCCP desirable in some circumstances<sup>35</sup>. For the most part however the public will only be interested in summaries of the policies (including information on where to obtain a copy of the full policy). This would place the section 102 policies on the same footing as other policies of at least equal (and in some cases probably greater) importance in understanding the LTCCP (in particular the significance policy).
125. This is not the same thing as saying that these policies should not be subject to consultation. These policies record:
- the judgements the local authority has made in regards to the allocation of the funding burden (for example that all properties should contribute a minimum amount through the uniform annual general charge)
  - likely risks (for example, that some investments of a commercial nature may not deliver the expected return) and mitigation procedures.
126. Therefore the public has the right to make their views known. But consultation via the LTCCP is not the only means for this. The requirement should be only that policies are adopted and amended via the special consultative procedure.
127. In further support of this position we note that:
- disclosures of the costs of meeting service delivery objectives, the funding thereof, and the rationale for funding in that way is required content in the schedule 10 disclosures both for the LTCCP (clause 2(2), schedule 10) and the Annual Plan (section 85);
  - information regarding the rates to be struck is also part of the required content elsewhere in the LTCCP (the funding impact statement); and
  - some of the policies (especially the investment, liability management, and remission and postponement policies) are unlikely to be amended frequently.
128. We view this as a key step in making LTCCPs a more transparent and accessible document for ratepayers.

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<sup>35</sup> In 2006, many local authorities actually moved their funding and financial policies into a volume separate from the service delivery aspects of the LTCCP (mostly schedule 10 disclosures).

## 4.2 Generally Accepted Accounting Practice

129. Requirements to comply with GAAP have been part of local government law since 1996. Local government has “got on with” the job of preparing prospective financial information in a manner that complies with GAAP<sup>36</sup> without significant difficulty. However there have been two more recent issues.

### Price Change and LTCCPs

130. Some in the local government sector have questioned the requirement to adjust the prospective financial information in the 2006 LTCCPs for the effects of price change<sup>37</sup>. The requirement to incorporate the effects of price change is a requirement of GAAP standards relating to prospective financial information which requires that information be prepared on the basis of the best information available to the local authority at the time. Some in the sector have commented that the requirement to show the impact of inflation added another cost factor to the forecasts in LTCCPs and created community concern at the likely scale of future rates increases.
131. SOLGM considers that the intent of the Local Government Act (informed participation in local government) is best met if the effects of price change are incorporated into plans and reports. Failure to do otherwise generates a systematic bias (underestimation) of the true cost of local services and thus is misleading to the ratepayer e.g. if inflation is 2.5 percent over 10 years then the cost of a particular project could be understated by 25 percent, more if the present rate of increase in construction costs continues at the present pace. While we accept that forecasts of inflation can be (and usually are) “wrong” to some degree any reasonable forecast of inflation is likely to be closer to the final result than a “zero price change” assumption.

### Future GAAP Standards

132. The Commission should note that the requirement to comply with generally accepted accounting practice (GAAP) set down in section 111 of the LGA is about to further add to the complexity of the accountability regime. New Zealand is in the process of transferring to the International Financial Reporting Standards (IFRS). It appears that compliance with IFRS is likely to add significantly to the disclosures that accompany financial statements (which are part of the content of the LTCCP, Annual Plan and Annual Report), many of which are of little or no relevance. IFRS standards are based largely on American corporate financial reporting standards and thus are designed to meet the needs of the international capital market. It seems somewhat ironic that local government is bound to adhere to financial reporting standards developed to meet the needs of a capital market that it is prohibited from accessing under section 113!

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<sup>36</sup> GAAP standards are not specified in local government legislation, but rather are determined by the Accounting Standards Review Board. These standards are, as a general rule, designed to be sector neutral i.e. apply to the private and public sectors.

<sup>37</sup> One local authority received an adverse audit opinion for not incorporating the effects of price change into its projections, a second received an “except for” opinion for inflating its estimates of operational expenditure but not capital.

### 4.3 Borrowing Powers (sections 113 -121)

#### Borrowing in Foreign Currency

133. Section 113 of the Act sets out the borrowing powers for local authorities. Provided that local authority borrowing is in accordance with the “rules” the local authority sets in its liability management policy, the only other restriction is that local authorities may not borrow in foreign currency.
134. During 2002 we learned that central government had expressed concerns that overseas investors may not understand the independent status of New Zealand local government and therefore expect that central government would assume responsibility for local government’s debts in the event of a default (even though no local authority has defaulted on a debt since the 1920s). This issue has since been resolved with the requirement that all loan documents must state that central government is not a guarantor.
135. A second reason for the prohibition appears to have been concern at possible financial risk caused by speculation in foreign currency as, for example, occurred in Orange County in the mid 1990s. The rigorous and transparent regimes for planning and reporting begun in 1996 and continued in the LGA have significantly reduced any such risk.
136. The option of borrowing overseas would provide councils with an additional instrument through which to make effective financing decisions where it were to the financial advantage of the local authority<sup>38</sup>. In particular wider borrowing powers allow local authorities better access to tools for spreading the cost of assets over its useful life and may place some degree of downward pressure on current ratepayers<sup>39</sup>.
137. The main risk in such transactions lies in movements in exchange rates and possible lack of expertise in some of the smaller local authorities. The local authorities we have spoken to have all indicated that they would adopt a policy of fully hedging to manage foreign exchange risks. It has also been suggested that borrowing overseas could become economic only at very high (by local government standards) amounts (in hundreds of millions) which means only the larger authorities where expertise is more concentrated, would enter into these transactions.
138. We submit section 113 should be deleted.

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<sup>38</sup> Treasury advises us that the its Debt Management Office is currently able to obtain more favourable rates for borrowing in New Zealand, in part due to some degree of “hollowing out” of the local market as firms take their needs overseas. This may however, not always be the case

<sup>39</sup> Figures compiled by the Office of the Auditor-General suggest that, based on the 2006-16 LTCCPs only one dollar in five of the \$30 billion capital works programme will be funded via borrowing i.e. local authorities are judging that current ratepayers should meet 80 percent of the cost of LTCCPs.

## Requirements of the Securities Act

139. Although not legally prohibited from issuing debt securities on the open market (in the same manner as companies do) there are practical issues for local authorities that wish to do so. Local authorities must meet the same disclosure requirements as corporate borrowers i.e. preparation of a prospectus and investment statement, and having that documentation signed by every elected member. The net effect of the requirement has been the withdrawal of local authorities from the public debt securities market. Since 1998 only one local authority – Auckland City Council - has issued debt securities to the public. With that exception, all local authority borrowing has since been from financial institutions.
140. The Securities Act 1978 is designed to promote investor confidence by reducing risk (through information disclosure and civil/criminal liability to remove fraud). But local government both inherently, and by its statutory obligations, already operates in a manner that achieves these policy objectives. Local authorities:
- are public bodies with no incentive to engage in fraudulent or unfair conduct, thus any inaccuracies will be the result of genuine error rather than intent to mislead;
  - cannot be wound up for default, and have negligible risk of default in any case;
  - have powers to support their financial commitments through a mandatory tax, and can pledge the revenue from a tax as security and empower a receiver on behalf of debt-holders to directly enforce that security;
  - are open to far greater disclosure requirements with regard to their finances, plans and prospects than any other body (public or private).
141. The requirement that documents be signed by every elected member is a considerable practical constraint on local authorities borrowing. If even one member does not sign the documentation then debt securities cannot be issued on the public market. Thus it is possible for elected members who oppose particular projects to enforce their will on the majority by refusing to sign.
142. In our view, an exemption from disclosure and signature requirements of the Securities Act is a pragmatic and non-controversial measure that would enhance local authorities borrowing powers. We commend this to the Commission.

### **Recommendations 17-22: Financial Management**

**That:**

- 17. procedures for the adoption and amendment of funding and financial policies be amended to allow for consultation via the special consultative procedure (and outside the LTCCP);**
- 18. the requirement to have policies on public private partnerships be amended to require policies only where the local authority wishes to engage in such a partnership;**

19. **the Commission consider whether the LGA should require local authorities to adopt a policy regarding rates relief on Maori freehold land;**
20. **the Commission note the impact the adoption of International Financial Reporting Standards will have for financial statements;**
21. **the provisions prohibiting borrowing denominated in foreign currency be deleted; and**
22. **the Commission recommend that local authorities be exempted from the signature and disclosure requirements of the Securities Act.**

#### **4.4 Development Contributions (sections 198-223)**

##### **Regional Council Powers**

143. Section 198 of the LGA provides territorial authorities with the power to require development contributions to recoup cumulative costs of growth. Most territorial authorities have now adopted policies that allow them to access these powers. Councils have chosen to apply development contributions because they consider that new developments should be required to pay for the new or upgraded infrastructure that councils must invest in, in order to meet the needs of that new development. The alternative would be for the whole community to bear the cost through higher rates (whether in upfront payments or to repay debt). Many local authorities do not consider it reasonable that current (or future) ratepayers should bear the full burden of funding infrastructure that is required to service growth.
144. Regional councils were not granted these powers under the LGA. There is no difference between regional and territorial authorities with respect to the ability to own assets, including infrastructure. Some (such as Auckland Region and Greater Wellington) fund significant regional parks acquisition and passenger transport infrastructure.
145. With the provisions allowing transfer of activities between the two spheres of government the lines between regional and territorial activity may “blur” in which case funding powers should be duplicatory. For example, the Land Transport Management Act 2003, removed the constraint on regional councils owning and funding passenger transport infrastructure.
146. Section 103(2) of the LGA identifies a number of sources of funding that are available to local authorities, including rates, fees and charges, borrowing, interest and dividends, proceeds from the sale of assets, etc. “Development contributions” are the only funding source in this list not available to regional councils. All other sources are available to both regional and territorial authorities.

147. Regional councils have more limited powers to levy financial contributions under the Resource Management Act. Some regional councils (for example those with responsibilities for flood control) are able to make use of these powers to fund some of their capital expenditure. However, the powers are not sufficiently broad or relevant to be able to be used by regional councils to fund their growth related capital expenditure in areas such as transport and regional parks.
148. The requested amendments would assist regional councils to meet their responsibilities under the financial management provisions of the LGA (Section 101). These responsibilities require local authorities to have regard to a range of factors including the distribution of benefits between the community as a whole and any identifiable part of the community; and the extent to which the actions or the inactions of groups (or individuals) contribute to the need to undertake the activity. The ARC, like many councils, faces enormous public resistance to rates increases, partly because ratepayers do not consider they should bear the burden of costs imposed by others. The absence of a power to charge development contributions prevents regional councils from considering whether new development should pay for a fair share of the new regional infrastructure (such as parks and passenger transport) required to service that development. We therefore recommend that the power to levy development contributions be extended to regional councils.

### **Reserve Contributions**

149. Section 199 of the LGA allows councils to levy developers for a contribution for the purposes of a reserve. Section 203 sets a maximum contribution of 7.5 percent of the value of allotments created by a subdivision, of the value equivalent of 20 square metres of land for each additional household unit.
150. Some local authorities consider that the artificial maximum set in Section 203(1) does not enable them to collect sufficient reserve contributions to provide for the active and passive reserve needs of new residents into the future. The option offered in the act of does not work as when there is a development that has no subdivision; then part (a) cannot apply or likewise with (b) it is not necessarily known at a subdivision stage how many household units would be constructed. Therefore the option of “the greater of” cannot apply in practice.
151. There is no reason in principle why councils should be able to determine (in consultation with their communities) appropriate contribution levels and levels of service for community infrastructure but not for reserves. Both activities are aimed at providing for social, environmental and cultural wellbeing.
152. The 7.5%/20m<sup>2</sup> formula in Section 203(1) has historically had the advantage of certainty, allowing developers to factor contribution levels into project costings. This certainty would still be maintained through development contributions for reserves, calculated in accordance with the Schedule 13 methodology, being specified in the schedule of development contributions under Section 203 (1).
153. Removal of the cap would be consistent with the LGA 2002 Schedule 13 approach for other growth-related infrastructure.

**Recommendations 23-25: Development Contributions**

**That:**

- 23. powers to assess development contributions be extended to regional councils;**
- 24. development contributions be permitted in respect of infrastructure owned by council controlled organisations; and**
- 25. the cap on reserve contributions be removed.**

## **5.0 Bylaws (sections 143-161)**

### **5.1 Infringements**

154. The Local Government Act 2002 provides for regulations to be made prescribing breaches of bylaws that are infringement offences, along with an infringement fee. Preparing these regulations is a responsibility of the Department of Internal Affairs. DIA has not prepared these regulations, and as a result local government's abilities to enforce bylaws lack teeth. A substantial amount of policy work has been done in this area in recent years – it is time to match the power to regulate and the power to enforce.

### **5.2 Liquor Control Bylaws**

155. Section 147 provides territorial authorities with powers to make bylaws regarding the consumption, possession and bringing of liquor into public places including places that are “under the control of the local authority”. This power is used mainly to regulate liquor in certain public places, and at certain times (e.g. New Years Eve liquor bans in Queenstown and Whangamata) but is also used to promote public safety on council property and protect that property from damage. However regional councils own property too, mostly various regional parks, but also some council buildings and the like. It is not obvious to us why the power to regulate consumption etc of liquor on council property was not extended to regional councils, it has the appearance of an oversight.

#### **Recommendations 26 and 27: Bylaws**

**That:**

- 26. the Commission recommend that regulations be made establishing which breaches of bylaws are infringement offences and setting fees; and**
- 27. powers to make liquor bylaws be extended to regional councils with respect to property controlled by regional councils.**

## 6.0 Assessments of Water and Sanitary Services (Sections 123– 129)

156. These sections require territorial authorities to undertake an assessment of the state of all water and sanitary services (not just those publicly owned/operated) within the district. This includes the following:
- water supply;
  - wastewater disposal;
  - “works for the collection and disposal of refuse, nightsoil, and other offensive matter<sup>40</sup>”;
  - public toilets; and
  - cemeteries/crematoria.
157. The assessment is essentially a document that assesses the :
- quantity and quality of the supply (whether public or private) of services provided;
  - likely future demand for the services and the options for meeting those demands (including any role the territorial authority has);and
  - risks from the provision or non-provision of any service.
158. The assessment must be adopted via special consultative procedure, with a summary going into the LTCCP. Local authorities are also required to consult the nearest Medical Officer of Health.
159. This was a last minute inclusion in the then Local Government Bill and did not have the same level of scrutiny that many of the other proposals received. The local government sector viewed this as a transfer of responsibility from central government without compensatory resourcing. In particular this applied to obligations to assess services not owned/operated by the local authority, unlike local authority services there is not necessarily any asset management, growth forecasts and the like from which to draw information to perform the assessment.
160. The only statement of policy rationale for this requirement we are aware of appears in the Select Committee report on the Local Government Bill which noted that:

*“Territorial authorities have a duty under the Health Act 1956 to improve, promote and protect public health within their districts. This requirement implies that councils need to identify the essential service needs of their communities and either provide those services themselves or maintain an overview if the service is provided by others. The Bill makes this role explicit.<sup>41</sup>”*

and:

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<sup>40</sup> Section 25 (c) Health Act 1956

<sup>41</sup> Local Government and Environment Select Committee 2002, Report on the Local Government Bill, page 26.

*“We consider that the assessment and reporting provisions bring the information on water and sanitary services into the public domain ... This is in accordance with the Government’s statement of policy direction which says communities should have greater scope to make their own choices about what local authorities do and how they do it.”<sup>42</sup>”*

161. While it is correct to say that local authorities have the Health Act responsibility identified above, the same is equally true of the Ministry of Health (see section 3A of the Health Act 1956) and of the District Health Boards (section 22(1)(a) of the New Zealand Public Health and Disability Act 2001). Section 22(1)(h) also sets out another objective for DHBs, namely:

*“to foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services”*

In and of itself the Health Act offers no justification for the allocation of this responsibility to local government.

162. Further the obligations and powers placed on District Health Boards seem to suggest that assessing the state of water and sanitary services seems to fit more within the scope of these organisations. Section 23(1)(g) of the New Zealand Public Health and Disability Act 2001 requires DHBs:

*“to regularly investigate, assess, and monitor the health status of its resident population, any factors that the DHB believes may adversely affect the health status of that population and the needs of that population for services”*

163. This strongly suggests to us that an assessment of water and sanitary services sits more logically inside what appears to be a wider process of identifying health needs and risks. While we do not disagree that territorial authorities will hold information that is relevant (such as growth forecasts, water quality indices and the like) this is best viewed as an input to the process not as an excuse to place this requirement on local authorities. District Health Boards appear to have a wider and more appropriate range of powers regarding the collection of information to prepare an assessment.

#### **Recommendations 28 and 29: Water and Sanitary Assessments**

**That:**

- 28. responsibility for assessing non-local authority water and sanitary services be transferred to District Health Boards; and**
- 29. the requirements for local authorities to conduct assessments of water and sanitary services be deleted from the Local Government Act 2002.**

<sup>42</sup> Local Government and Environment Select Committee 2002, pp 26-27

## **Part Two: Local Electoral Act 2001**

## 7.0 Introduction to Part Two

164. SOLGM also welcomes the opportunity to provide input into the Commission's deliberations on the Local Electoral Act 2001 (the LEA). The electoral process lies at the heart of the relationship between local authorities and the communities they serve. Local elections serve many purposes not the least of which are:
- a forum for communicating and debating community values and priorities; and
  - **the** ultimate accountability for elected members. Local elections effectively serve as a triennial "performance review" of the elected members, by the community.
165. SOLGM has had a long history in the development of policy and good practice with respect to local electoral matters. SOLGM was a partner, with LGNZ in the development of a principle-based framework<sup>43</sup> that largely formed the policy foundations of the LEA. Those principles form the basis of this part of the paper and are:
- a) **Fairness** - representation arrangements must be fair to all persons.
  - b) **Universal Franchise** - every qualified person must have a reasonable and equal opportunity to:
    - cast an informed vote in the election of their representative(s)
    - nominate one or more candidates for election;
    - accept nomination as a candidate for election without unnecessary impediment or obstacle.
  - c) **Secrecy** - every person entitled to vote must have a reasonable opportunity to cast their vote in secret and free of immediate pressure or influence.
  - d) **Transparency and Accuracy** - the process for every election must maintain the secrecy of the individual vote and be open, transparent, certain and capable of subsequent audit.
  - e) **Certainty of Outcomes** - for every election held there will be a result.
  - f) **Local Flexibility** - Electoral systems must be those that best meet the needs of local communities. There must be freedom for each territorial authority to choose, from appropriate methodologies, the voting methodology used in the election.
166. SOLGM has actively participated in the two reviews that have taken place since the enactment of the LEA:

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<sup>43</sup> Joint Local Government New Zealand/SOLGM Working Party (2000), *A New Legislative Framework for Local Government Elections*, page 12.

- the Justice and Electoral Committee's Inquiry into the 2004 Local Elections; and
  - the Local Government Commission's 2005 *Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001* ("the Initial Review").
167. SOLGM is also an active participant in the process of developing the Local Electoral Regulations (and as a statutory instrument pursuant to the LEA we will also be making comments on those regulations) and the SOLGM Code of Good Practice in Local Elections.
168. At this point SOLGM would like to reiterate the comments we made to our submission to the Initial Review that:
- there is a high (and in some cases increasing) level of satisfaction with the operation of the key provisions of the Act and Regulations, despite the additional requirements on those responsible for the preparation and dispatch of voting documents<sup>44</sup>; and
  - the level of significant problems/issues arising from the legislative framework was relatively low.
169. The legislation is working well. However, there are several amendments of a technical/machinery nature which would improve the conduct and management of future local government elections. These are the focus of this part of the paper.
170. By their very nature elections are political processes and during the course of the 2007 triennial elections it is highly likely that issues/problems with the legislation will be encountered that have not been raised in previous elections. It may well be that in the period immediately after the 2007 elections SOLGM may wish to add further matters to this part of the submission.

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<sup>44</sup> The Commission's 2005 review highlighted the following as sources of additional pressure; the introduction of candidate profile statements; the responsibility for the conduct of DHB elections; and the introduction of STV.

## 8.0 Representation Reviews

171. We are aware that other parties (mostly Local Government New Zealand) will be making comments to the Commission around the more political aspects of local government electoral arrangements including:
- the Commission's 2005 proposal that it be able to prescribe community board delegations, where it has determined representation arrangements under Part 1A of the LEA; and
  - matters relating to the application of the so-called +/- 10 percent rule vis-à-vis other factors that the Commission may take into account when determining representation arrangements.
172. We do, however, wish to support the proposals regarding the timeframes for determining future representation reviews that we see local authorities forwarding all appeals, objections and material relevant to any proposed representation arrangements by 15 October in the year preceding local elections. In effect this moves this step of the process (and all preceding steps) forward three months.
173. Local representation is the core underpinning of local democracy. Decisions about local representation should only be made after consultation and debate. We note comments that the Commission made in its report on its initial review to the effect that most determinations are the subject of appeals and objections, and that the volume of these is impacting on its ability to:
- undertake broader inquiries with respect to those determinations under review; and
  - meet with the local authority, appellants and objectors "on their home ground".
- The latter in particular is an important part of process in that it allows people to put their objections to the Commission "in person". Without this the general public will consider the Commission's determinations to be made in a non-transparent way.

### **Recommendation 30: Representation Reviews**

**That the deadline for sending determinations of representation arrangements, appeals, objections and other relevant information be advanced by 3 months, and all preceding deadlines be advanced the same amount.**

## 9.0 Candidate Nominations

### 9.1 Submission of Documents and Fees

174. The Local Electoral Amendment Act 2002 amended requirements of section 61(2)(b) of the LEA to permit candidates to submit their Candidate Profile Statement (CPS) separate from their nomination form. In addition section 55(2)(e) permits the candidate to delay paying the deposit up to noon on nomination day. Thus electoral officers may need to complete as many as three transactions with a candidate (assuming that the candidate's nomination form and CPS meet the requirements).
175. For most candidates the deposit (\$200) is a comparatively small amount, and the obligation to pay and the point at which the deposit is payable is known well in advance. We can see no rationale for allowing separate payment.
176. Separation of the nomination form and CPS came from a recommendation by SOLGM to the 2002 Justice and Electoral Committee Inquiry into the 2001 elections, largely in response to concerns that the late submission of forms coupled with the CPS requirements had created an additional "rush" of administrative tasks on nomination day. At the time SOLGM realised there was the potential for additional transactions, and experience from 2004 has shown that the extra time taken to handle the three transactions (form, payment, and CPS) if processed independently of each other, outweighs any benefit achieved by separation of the nomination form and CPS.
177. Accordingly we recommend that the original intent of section 61 of the LEA be restored by amending section 61 to require lodgement of the nomination form and CPS at the same time. We further recommend that section 55(2)(e)(ii) be deleted thus requiring payment of the deposit on lodgement of nomination forms.

### 9.2 Proof of Citizenship

178. Section 25(1) of the LEA provides that people wishing to offer themselves for election must be on the electoral roll and be a New Zealand citizen. The latter was a new requirement in 2004. Unlike the former requirement, citizenship is not something which can be easily verified, other than by requiring candidates to provide proof (passport, birth certificate etc).
179. Yet section 25 is not clear that electoral officers have the authority to decline nominations where no proof of citizenship is provided. There was at least one case in 2004 where it was discovered that a successful candidate was not a New Zealand citizen<sup>45</sup>. In those circumstances the council concerned was required to go through the by-election process, at an additional cost to the local authority.
180. The Commission has correctly noted that the cost and risks of this kind of circumstance are sufficient to warrant legislative clarification. We concur and

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<sup>45</sup> Local government is not alone in this. In 2002 a successful Parliamentary list candidate was found to be ineligible for office three days after election night (but before the final result was announced).

add that the supply of evidence of eligibility is one of the most basic requirements to sustain public confidence in the universal franchise and in the transparency of the system. We further note that having to prove citizenship is a requirement that New Zealanders are used to (entering state funded tertiary education, applying for some benefits, applying for documents of national identity and the like). That proof would involve supply of a passport, birth certificate, or certificate of citizenship under the Citizenship Act 1977.

### **Recommendations 31-33: Candidate Nominations**

**That:**

- 31. section 61 be amended to require the lodgement of candidate profile statements and nomination forms at the same time**
- 32. section 55(2)(e)(ii) be deleted thus requiring payment of the deposit on lodgement of other documents; and**
- 33. section 25 be clarified to allow electoral officers to decline to accept nominations from prospective candidates where no evidence of citizenship is provided.**

## **10.0 Ratepayer Electors**

181. SOLGM considers that section B of the prescribed ratepayer election form contained in schedule 1 of the Local Electoral Regulations should widen the reference ‘... a firm, company, corporation, society (etc) ...’ to include trusts. This is based on the nature of the 2004 ratepayer enrolments and questions electoral officers received during that process. While the term “etc” conceivably includes a trust, this would give greater clarity. While many trusts are charitable in nature the property they own is a rating unit (for the purposes of the Local Government Rating Act 2002) and even those that are “exempt” rates will generally be contributing targeted rates for water, sewage, and refuse.

### **Recommendation 34: Ratepayer Electors**

**That the prescribed form for ratepayer electors in Schedule 1 of the Local Electoral Regulations be amended to specifically include trusts.**

## 11.0 Candidate Profile Statements

182. Section 62 of the LEA obliges electoral officers to comply with any requirements regarding the publication, display or distribution of CPS to electors. At the present time the only such requirements are in clauses 29(1) and (2) of the Local Electoral Regulations which provide that:
- voting documents must be accompanied by the CPS of each candidate; and
  - CPS may be published or displayed during the voting period, in any manner the electoral officer considers appropriate.
183. Some local authorities have put CPS on their websites following close of nominations rather than waiting until the voting period. This provides a convenient way for interested parties to see the CPS rather than having to use the LGOIMA procedures. More importantly, this practice provides interested electors with more time to study the CPS. It is also helpful to the media and candidates themselves.
184. While sensible this practice is not clearly authorised by the Local Electoral Regulations. We recommend that clause 29(2), Local Electoral Regulations be amended to make it clear that local authorities may publish or display CPS following the close of nominations rather than having to wait for the voting period before doing so. We note that the Justice and Electoral Committee report Inquiry into the 2004 Local Authority Elections also recommends that CPS be published as soon as practicable following the close of nominations.

### **Recommendation 35: Candidate Profile Statements**

**That clause 29(2), Local Electoral Regulations be amended to allow for publication and display of candidate profile statements following close of nominations’.**

## 12.0 Extension of Period Between Close of Nominations and Dispatch of Voting Documents

185. Some statutory requirements introduced in the LEA have increased pressure on organisations responsible for the preparation and dispatch of voting documents. These requirements include:
- CPS and the checking and publication thereof;
  - the responsibility for the conduct of DHB elections (often with large numbers of candidates and/or different voting systems). The logistical challenge of preparing, checking and distributing CPS booklets for what in some instances were territorial, regional and DHB elections should not be underestimated: and
  - the introduction of STV as a voting system with different voting systems and the accompanying guidance information.
- As a general rule local authorities had four days from the close of nominations to get material to their mail agency.

186. The experience of 2004 shows that the statutory deadlines were met but with some tradeoff in the quality of the voting documents (including the font and layout issues that were identified in the Justice and Electoral Committee's report on the 2004 elections). As the Commission itself notes errors made in the process of getting documents to the mail agencies resulted in additional costs to local authorities.
187. Our 2005 submission to the Initial Review offered three options:
- changing the date of the elections from the second Saturday in October to the third Saturday; or
  - decreasing the nomination period by one week; or
  - starting the election process one week earlier i.e. by calling for nominations on the 57<sup>th</sup> day before the election rather than the 50<sup>th</sup> day (with changes to various other dates in the Local Electoral Regulations). This was, and still is, our preferred option. The Justice and Electoral Committee has also supported this option.
188. The Commission's 2005 report suggested that the Commission agreed the election period should be extended and that moving nomination day forward was the "most effective and least disruptive means of achieving this extension"<sup>46</sup>.

**Recommendation 36: Nomination Day**

**That nomination date be moved forward to the 57<sup>th</sup> day before election day.**

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<sup>46</sup> Local Government Commission (2005), *Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001*, page 23.

## 13.0 Voting Methods

189. SOLGM has no position on the merits of the Single Transferable Vote (STV) system vis-à-vis the First Past the Post (FPP). Each has its merits and disadvantages, and is therefore a matter for local choice. The bulk of our comments relate to postal voting.

### 13.1 Integrity of Postal Voting

190. From time to time, concerns are raised about the integrity of postal voting. The Justice and Electoral Committee reported some submissions that sought a return to mandatory booth voting owing to:

*“concerns about the integrity of postal voting, including possible threats to the secrecy of individual votes, personation of voters and a perceived lack of security around voting documents<sup>47</sup>.”*

191. In New Zealand these concerns usually focus on concerns about persons completing the voting documents of other persons in their household, or the documents of other electors who have left that address.
192. It has generally been recognised that in some cases a dominant person in a household may complete some other household member’s voting documents. We are not aware of any research on how widespread this is. The commonly accepted wisdom is that such a practice is not sufficiently widespread to adversely diminish the integrity of postal voting.
193. The number of voting documents returned as ‘Gone No Address’ (GNAs) reported by electoral officers also suggests that the majority of electors are honest and do not complete another person’s voting document that they receive by mistake. For example, in Wellington City approximately 3,000 voting documents were returned to the electoral officer as GNAs. As GNAs are received by electoral officers they can verify that they have not been tampered with.
194. A further issue that is sometimes raised is the return of postal voting documents to the electoral officer by hand. In 2004 we were aware that some local authorities had fewer than 1 percent of the vote returned by hand, in other cases as much as 15 percent of the vote was returned in this way. This facility particularly caters for those who complete their voting documents too late in the voting period to post them back before close of voting at noon on polling day. The provision allowing the return of voting documents by hand is consistent with the principle in the Act for ‘... *all qualified persons to have a reasonable and equal opportunity to ... cast an informed vote (section 4)*’ and should therefore be retained.

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<sup>47</sup> Justice and Electoral Committee 2005, *Inquiry into the 2004 Local Authority Elections*, page 15.

195. Another concern occurs where people have collected voting documents and delivered or posted them on behalf of other electors. This practice raises questions about party organisations or other groupings diminishing the integrity of postal voting<sup>48</sup>. Some electoral officers indicated there were instances where one person delivered a household's votes – 2 to 3 voting documents. We are unaware of any "bulk" hand delivered returns of voting documents.
196. Our submission to the Justice and Electoral Commission Inquiry into the 2004 elections offered three options to reduce the potential for misuse of voting documents. These were:
- placing a warning on voting documents that it is an offence to complete another person's voting document without authority or to interfere with or fraudulently mark, deface or destroy a voting document;
  - introduce a provision in the LEA prohibiting people or organisations collecting, posting or otherwise delivering voting documents in large numbers; and
  - introducing a similar system to Tasmania where voters are required to sign the return envelope, with a random sample of signatures being checked. To work in New Zealand this would require some form of information exchange between councils and the Electoral Enrolment Centre, most probably the Centre sending electronically scanned signatures to local authorities. The Justice and Electoral Committee expressed some interest in this concept, but also accepted that there were time and cost issues. We also note that there may also be privacy and possibly security issues.
197. The Justice and Electoral Committee recommended further work on the merits of the Tasmanian system. We would support the system in principle, but consider that the first two of the above measures could be introduced quickly and easily.

### **13.2 Alternative Voting Methods**

198. We are aware that some organisations have sought the introduction of alternative forms of voting, especially to help those with disabilities to vote. This includes e-voting and telephone voting. We have concerns at the lack of safeguards and guarantees of preservation of voter secrecy and the integrity of e-voting.

### **13.3 Alternative Polling Facilities**

199. The Justice and Electoral Committee recommended that options for alternative polling facilities (e.g. supermarkets) be explored. It is unclear whether the Commission was referring to polling booths for booth voting (in which case the recommendation is unnecessary as electoral officers may designate any place to be a polling booth subject to requirements of the Act), or to additional places for the delivery of postal votes. The latter is only an effective means for gathering votes from "last minute" votes – others can be placed in any postbox. No further legislative or regulatory action is necessary.

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<sup>48</sup> We are aware of a 2005 case in England which involved fraudulent completion of postal voting forms by operatives of a political party.

**Recommendations 37-39: Voting Methods**

**That:**

- 37. the Local Electoral Act or Regulations be amended to require that voting documents include notice that it is an offence to complete another person's voting document without authority, or to interfere or fraudulently mark, deface or destroy a voting document;**
- 38. a new provision be introduced in Regulation 6, Local Electoral Regulations, prohibiting the collection of other persons' voting documents in large numbers by any person or organisation and then posting or delivering them to the electoral officer;**
- 39. consideration be given to the likely effectiveness of the Tasmanian voter signature system in New Zealand local elections.**

## 14.0 Voting Period

200. SOLGM is aware that there is some support (including from the Justice and Electoral Committee) for shortening the voting period from three weeks to two weeks.
201. Shortening the period in this way is, in our view, contrary to the principles set out in section 4 of the LEA, and especially those relating to providing all voters with a reasonable and equal opportunity to cast a vote. Mail delivery times will mean that the loss of a week will greatly reduce the time available for voters to vote in rural areas and from overseas voters<sup>49</sup>. Sudden changes without necessary justification to the voters will also contradict one of the other principles regarding to building of public confidence through the provision of a regular election cycle.
202. Shortening the election period will also increase the costs of administering local elections through increases in processing costs. Effectively the shorter election period means that local authorities cannot capture the full benefits of progressive processing as additional staff will need to be taken on to manage the increased volumes of votes in a shorter period.
203. There is little evidence to support **any** hypothesis regarding any direct linkage that the length of the voting period has on the turnout. Evidence from the 1998, 2001 and 2004 elections tends to suggest that there are two peaks in the return of voting documents:
- an initial peak shortly after receipt of voting documents: and
  - a peak closer to the close of voting (including those delivered at the last minute).
- We suggest that these peaks reflect fairly typical human behaviour (e.g. there is a group of people who are procrastinators by nature), in which case similar behaviour will be observed regardless of the length of the voting period.
204. The Justice and Electoral Select Committee was of the view that a two week election period would enable a “more concentrated advertising campaign to focus people on their responsibility to participate in the democratic process.” We note there is, at this time, little evidence to suggest that advertising or the lack thereof plays a role in encouraging turnout, though it is likely that advertising combined with media coverage builds awareness<sup>50</sup>.
205. The Justice and Electoral Committee also favours an extension of the close of polling from midday on polling day to 5pm on polling day suggesting that this would create a greater sense of “occasion” and thus encourage turnout. SOLGM is not opposed to this “in principle” but does note that a 5pm close means that results will be declared later than has previously been the case – especially with respect to DHB elections or other elections where there are centralised vote processing centres. Timing of election results was an issue in the 1996 and 2002 Parliamentary elections, local government would need to ensure public expectations were carefully managed regarding the issue of preliminary results.

<sup>49</sup> We also support amendments to allow the early dispatch of voting papers to overseas voters.

<sup>50</sup> We understand a Local Government New Zealand commissioned piece of research showed that some 97 percent of respondents were aware that the 2004 local elections were underway.

**Recommendation 40: Voting Period**

**That the voting period remain at three weeks.**

## **15.0 Voting Documents**

### **15.1 Quality of Voting Documents**

206. We are aware that there has been some negative comment about the quality of voting documents in some elections including issues around layout, size of typeface, clarity of instructions and the use of both sides of the paper. Our submission to the Justice and Electoral Committee agreed that some documents could have been more user friendly.
207. This is in large part a function of the new requirements to run DHB elections and in the preparation of STV information in voting, in the same time frames as preceding elections. Earlier we recommended an increase in the period between close of nominations and dispatch of voting papers that should address most of the quality control issues raised by the Committee.
208. There are also what are often termed “good practice” issues. SOLGM recognises this and is in the process of reviewing its Code of Good Practice in Local Elections in advance of the 2007 electoral process. Good practice in areas such as the distinction between STV and FPP issues where more than one system is in use<sup>51</sup> will evolve over time.
209. We also submit that greater prescription in some areas may be desirable including:
- clear colour distinctions between voting documents for STV and FPP elections;
  - standardised terminology used to refer to elected members;
  - standardised font size
  - listing of issues not subject to election on voting documents so as to alleviate potential confusion as to why, for example, they are not voting for particular offices.

### **15.2 Candidate Order**

210. It has been suggested that the order in which candidates are listed can have an impact on the chances of some candidates relative to others – the hypothesis being that where names are unknown to the voter there is an element of “ticking the top box(es)”. Under the regulations local authorities have three options available to them – alphabetical order, random order (with the order varying from paper to paper), pseudo-random order (with the order fixed on all papers).

<sup>51</sup> As was the case in 70 of the 74 territorial authorities at the 2004 local elections.

211. In 2004 seven local authorities chose random order and five chose pseudo-random order. Thus the available data cannot be used as a firm basis for drawing any conclusions about the impact on turnout. Previous research on candidate order in FPP elections showed that candidate order had a negligible impact, but of course this research would benefit from validation in an STV environment.
212. The Justice and Electoral Committee has recommended that further work be undertaken on the impact that the order of candidates names has on election outcomes. If ordering of names is having an impact then it could be argued that form design is a systemic factor that is not providing all candidates with an equal opportunity to be elected. From this standpoint further research would be valuable, if only to disprove the hypothesis.

#### **Recommendations 41 and 42: Voting Documents**

**That:**

- 41. consideration be given to prescription in terms of establishing differences between STV and FPP documents, standardised terminology, font size and type, and the treatment of any issues for election which an election is not required; and**
- 42. further research be undertaken on the impact candidate order may have on election outcomes.**

## 16.0 Election Processes

### 16.1 Early Processing

213. The processing of votes before the close of voting has allowed Electoral Officers to introduce significant efficiencies into the conduct of their elections and also enabled the early announcement of preliminary results. The benefits fall into three broad categories:

#### 1. *Cost efficiencies*

- fewer staff need to be employed overall – saving on wages and training
- training able to be done more quickly
- better staff utilisation and ability to manage resources
- ability to have higher skilled people involved in vote processing
- reduced need for casual staff on election Saturday
- simplified logistical requirements
- better utilisation of equipment so that less equipment needs to be leased
- fewer staff and less equipment so that less space required to be rented
- fewer staff improves the security aspects of the election process

#### 2. *Less work and staff pressure*

- creates better atmosphere for vote processing
- more emphasis on accuracy
- spread staff workload more
- reduced pressure on computer systems
- increased ability to deal with technical problems
- identification of process issues more quickly

#### 3. *Earlier result announcement*

- quicker and more accurate preliminary result on polling day
- ability to give candidates a more accurate time when preliminary results will be available
- increased ability to commence the second count
- quicker results appreciated by candidates and the media
- special votes able to be processed earlier.

214. We also note that in the three elections in which this process has been available, there have been no issues with security of the processed voting documents or of the secrecy of the results.

215. Amendments in 2004 to sections 18 and 79 of the Local Electoral Act changed the situation by requiring all local authorities (territorial authorities, regional councils, DHBs and licensing trusts) to make a resolution to adopt early processing. This could potentially have exposed electoral officers to an interesting dilemma in cases where early processing was available in some, but not all elections (in effect the safest course would have been not to process any

forms early thus one body effectively gets veto over others). Given the above benefits, progressive processing of voting documents should now be accepted as a standard electoral process. Where postal voting is used for an election (or poll), then progressive processing of voting documents should be automatically applied without any requirement for a local authority resolution. The number of days during which progressive processing would operate within the three week voting period should be left to the discretion of the Electoral Officer.

## **16.2 Supply of Lists**

216. Section 68(6) empowers electoral officers to supply candidates or their scrutineers with lists of the names of people who have returned voting documents, at either no cost or a reasonable price, and in a form determined by the electoral officer. The Justice and Electoral Committee recommends that lists be supplied on demand, in whatever form requested, free of charge in the case of electronically supplied information.
217. The retrieval of electronic information has costs in power and computer time, especially if there is additional “tailoring required” (say of particular locales in a Mayoral election) or where more than one territorial is conducting the vote on behalf of a regional council or DHB. This is in effect a subsidy for candidates, especially those with “machines” for whom this is of most advantage.

## **16.3 STV Calculator**

218. We are aware that the public’s level of understanding, and hence confidence in, the process of counting votes under the STV system is not as high as it could be. There has been some suggestion that the STV source codes and XML files should be published to provide greater transparency. SOLGM agrees transparency is important, and has developed a process that requires the independent certification of the software used in an election (in conjunction with the providers) and an end to end assurance for the processing and counting of votes cast in an election or poll. SOLGM considers that the system of tight control through licensing and certifying the STV calculator used for the 2004 local elections provided necessary assurance for the public to have faith in the outcome of the STV results.
219. In relation to the publication of the XML files it is not clear what advantage there is to be gained. It could result in elector confusion and result in unsubstantiated challenges to election results.

### **Recommendations 43-45: Election Processes**

**That:**

- 43. progressive processing of voting documents become a standard electoral process, left to the discretion of the electoral officer;**

- 44. supply of lists of people returning voting information be charged at actual and reasonable cost of producing the list; and
- 45. the STV calculator source code remain unpublished.

## 17.0 A Central Agency to Administer Local Elections?

### 17.1 The Justice and Electoral Committee Position

220. The Justice and Electoral Committee made several recommendations regarding the potential for greater centralisation of local election processes, including the following:

- a single state funded agency should be responsible for improving voter turnout and awareness in general and local elections;
- a single state funded agency should be responsible for education and information on all electoral systems used in New Zealand;
- 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;
- 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;
- further consideration be given to the responsibility for the appointment of local electoral officers, conducting local elections, and receiving complaints regarding the conduct of local elections. Until any new structure for local elections is agreed, the appointment of local electoral officers should be limited to council officers.

## 17.2 The SOLGM Response

221. Taken together these recommendations, bluntly put, represent a considerable overreaction to the difficulties that a small number of electoral officers experienced with the processing of STV votes in 2004.
222. To put this issue in context, 236 (86 percent) of 274 local authority (including licensing trust and community boards) and DHB elections ran smoothly with preliminary results released on polling day. Also, it must be appreciated that these were the first local elections for decades where STV was being used for 10 territorial authority elections and 21 DHB elections. Furthermore, we understood that only four applications for recounts were made in 274 elections and there were no petitions for inquiries.
223. The STV data processing issue was a disappointment, but represents a failure of a supplier to deliver on its contractual obligations rather than a flaw in the system of local elections run by electoral officers. It is, of itself, no reason for introducing central agency responsibility for or oversight of local elections. Indeed had a central agency been responsible all that would have occurred is that the Minister and his department would have been held responsible, but without any credible case to deny responsibility!
224. SOLGM is aware that there has been some discussion around merging three Government agencies (Chief Electoral Office, Electoral Commission, and Electoral Enrolment Centre). However, SOLGM is strongly of the view that it is inappropriate to include responsibility for local elections in such an organisation. Even if that responsibility was simply to extend to 'oversight' SOLGM would be opposed to it.
225. The system of local authority elections is complex and is based on the long held premise that each local authority is responsible for appointing an electoral officer who is totally responsible for conducting its election. There is no parallel between local elections and the Parliamentary General Election, where there is a Chief Electoral Officer responsible for the oversight and running of the elections to elect one Parliament at a single election, under a single system.
226. History shows that our current system of local authority elections, each organised and run by independent electoral officers, has been corruption free, transparent and has the confidence of electors and candidates. As part of the normal election environment, there have been applications for recounts and petitions for inquiry for particular local authority elections. They have never been of such a nature or extent to call into question the integrity of the overall local election system.
227. The local government sector through the initiatives of the SOLGM Electoral Working Party and Local Government New Zealand's Co-ordinating Committee harness necessary input from other agencies involved in local elections – New Zealand Post, Ministry of Health, Department of Internal Affairs, Electoral

- Enrolment Centre, and the Electoral Commission. These arrangements complement the local government sector's significant practical and technical knowledge and experience about running local elections and using postal voting. This critical knowledge and experience does not exist in any one central government agency, and given that most electoral officers tend to serve other functions within local authorities<sup>52</sup>, is something that could not be accessed easily. This also suggests that central government agencies would not find the task of promoting good practice easy to achieve.
228. Turning to the electoral officer issue, SOLGM would oppose any centralisation of the powers to appoint electoral officers. Local electoral officers operate outside of any direction from any member of the local authority (except in matters where the authority has power to make a resolution) or even the Chief Executive. A large degree of independence is assured that would not necessarily be the case with a centralised appointment. To this end we note that under section 18 of the Electoral Act, the Chief Electoral Officer is subject to the direction of the Minister of Justice.
229. Limiting appointments to council staff alone flies in the face of what has been common practice for many years. At present there are two main contractors providing election management services – Independent Election Services and electionz.com.
230. In 2004, Independent Election Services experienced no disruption problems with the elections it conducted, while electionz.com conducted its FPP elections without any disruption.
231. Both these providers have expertise, experience and resources to contribute to the running of local elections. It should be left to individual local authorities to exercise sound judgement as to the capability and capacity of each provider to conduct their election vis-à-vis conducting it in-house, as it is with almost every other substantive area of local government activity.
232. In summary, there is no need for a central agency to be responsible for or have oversight of local elections.
233. We would however support some centralising of funding and responsibility for education and voter awareness/participation campaigns. While local authorities have jointly and severally run campaigns in the past, some local authorities have been “free-riders” when it came to contributing to such a campaign. A centralised approach would be better able to take advantage of economies of scale in promotional and distributional expenses. It would also demonstrate central government's commitment to one of the key objectives of its strategic direction for local government – building participation in the local decision-making process. Given that local government effectively acts as central government's agent in the conduct of DHB elections, there are benefits for central government in promoting understanding of STV. We consider that on the basis of its experience both in conducting elections and in electoral matters in general the Electoral Commission is the best place for this responsibility.

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<sup>52</sup> Usually, though not always, in the finance and corporate services industry.

**Recommendations 46 and 47: Election Management**

**That:**

**46. management of local authority elections continue at a local level; and  
47. nationwide education and voter awareness/participation campaigns be conducted by the Electoral Commission.**

**18.0 Licensing Trust Boundaries**

234. A long standing issue faced by electoral officers is that some licensing trust external boundaries do not coincide with meshblock boundaries and some actually dissect individual property boundaries. The outcome is that Electoral Officers need to manually, rather than electronically, check and allocate electors from split meshblocks onto the electoral roll for licensing trusts. This is a time-consuming and costly exercise, and is not error-free.
235. As the Commission is aware, under the Local Government Act, local authority boundaries must coincide with meshblock boundaries. SOLGM previously submitted on the Sale of Liquor Amendment Bill (No 2) 1999 that the Act be amended to:
- (a) require licensing trust external boundaries to coincide with statistical meshblock boundaries; and
  - (b) to empower the Governor-General, on the advice of the Minister of Justice, to alter the external boundaries of licensing trusts under sections 185 and/ or 209 of the Act.
236. The submission was unsuccessful. Therefore, it is suggested that, in its current review of the Local Government Act 2002, the Commission recommend a consequential amendment to the Sale of Liquor Act to introduce a process to align licensing trust boundaries with meshblocks.

**Recommendation 48: Licensing Trust Boundaries**

**That the Sale of Liquor Act be amended to introduce a process to align licensing trust boundaries with meshblocks in time for roll preparation for the 2010 local elections.**

## 19.0 Transitional Arrangements

237. Our 2005 submission highlighted a small “disconnect” between the two provisions of the LEA regarding the date on which successful candidates come into office. Section 86 requires that electoral officers must declare the official result of the election by public notice. Section 115(1) provides that candidates who were declared elected before polling day (i.e. where the number of positions is greater than or equal to the number of candidates) assume office on polling day. But section 115(2) provides that candidates who were elected (i.e. where a vote was actually conducted) take office the day after which they were declared elected.
238. On some occasions there can be short delay between the preparation of a declaration of results and the public notification of those results. Thus there is the potential for confusion in a situation where some members may have taken office while others have not<sup>53</sup>. A minor change to section 115 should clarify this situation.

### **Recommendation 49: Transitional Arrangements**

**That all elected members take office the day after public notice is given of the official election result.**

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<sup>53</sup> This was exacerbated in 2004 by the late declaration of results in some elections that were held under the STV system.

## **Appendix A: Individuals Participating in the Development of this Paper**

### **SOLGM LGA Review Technical Group**

Those individuals whose names are marked “\*” are also members of the SOLGM Financial Management Working Party:

- Graham Sewell, Senior Policy Analyst – Strategic Development, Hutt City Council;
- Mike Reid, Manager Governance, Local Government New Zealand\*;
- Victoria Owen, Policy Analyst Governance, Local Government New Zealand;
- David Foster, Director Finance, Manukau City Council\*;
- Don Mackay, Manager Good Practice and Policy, SOLGM\*;
- Michael Hodder, Governance and Community Services Manager, Rangitikei District Council;
- Mike Nield, Director Corporate Services, Taranaki Regional Council\*;
- David Ward, Corporate Services Manager, Tasman District Council\*;
- Philip Jones, Group Manager Revenue and Finance, Western Bay of Plenty District Council\*.

### **SOLGM Financial Management Working Party**

- Roy Baker, General Manager Corporate Services, Christchurch City Council;
- David Smith, Chief Executive, SOLGM;
- Glen Williams, Corporate Services Manager, Manager South Taranaki District Council;
- Christine Jones, Group Manager–City Directions, Tauranga City Council;
- Wes ten Hove, Chief Executive, Masterton District Council (Chair);

### **SOLGM Electoral Working Party**

- Graeme Cox, Christchurch City Council
- Max Robertson, Council Secretary, Christchurch City Council
- Pam Jordan, Council Secretary, Dunedin City Council
- Warren Stevens, Group Manager Finance and Regional Services, Environment Waikato
- Dale Ofoske, Independent Election Services
- Barry Rollo, Manager Secretariat, New Plymouth District Council
- Peter Guerin, Chief Executive, Rotorua District Council
- Ross Bly, Special Projects Officer, Wellington City Council