

# *Integrity Plus 2013*



*New Zealand*

*National Integrity System Assessment*

## ***Additional Paper***

*Fitness for Purpose – New Zealand Local  
Government: Securing integrity and good  
governance within a bipartite constitution*

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# Fitness for Purpose – New Zealand Local Government

## Securing integrity and good governance within a bipartite constitution

### Executive Summary

#### Scope of the paper

This Executive Summary aims to give a broad sweep the main points of the full paper.

The paper's scope encompasses many values common between Transparency International's (TI's)<sup>1</sup> own adopted values, those of TINZ, the New Zealand TI Chapter and also those of many other international and New Zealand institutions. The values are not held in isolation but in relation to the various institutions' own relevant purposes. The title indicates the assumed importance of 'fitness for purpose' of the local government sector and its constituent councils. The paper explores a selected range of relevant values by identifying those that are significant to local government and that assist in evaluating its overall 'fitness for purpose'.

Many values do relate to local government. It can be hard, and perhaps at the risk of being counterproductive, to try to disentangle them because their meanings often can overlap or be interdependent. Two values are selected in the title heading above as being especially applicable to the theme of this paper. These bear brief examination along with the expression 'fitness for purpose' and with references to an "unwritten" and "bipartite" constitution.

*Fitness for purpose* is taken here to mean "good at doing [its] job". It is in frequent use in government and management literature and here means, more precisely, *fitness for purpose* as applied to local government as a sector and/ or to an individual local authority having clear, defined individual purposes, or a common collective set of purposes, and supporting the achievement of key objectives and outcomes<sup>2</sup>. It is also examined in relation to wider concepts based on theories of local government. It is used here mainly for evaluative reasons pertaining to local government in New Zealand and to its fitness generally for fulfilling key prescribed purposes, objectives and outcomes.<sup>3</sup> And it is used to evaluate local government's "fitness" with regard to both its internal and external environments.

*Bipartite Constitution* means simply that central and local government are the two partners, or *spheres*, of government within the Constitution. The constitutional setting is crucial for local government because, as a partner of central government, its internal and external environments both impact on councils' individual performance and on the sector's collective effectiveness. Central government is a vital part of local government's "external" environment because of the many and profound ways its own activities impact on local government.

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<sup>1</sup> Transparency International based in Berlin.

<sup>2</sup> See, for example, Sir John Bourn, *Public Sector Auditing – Is it Value for Money?* John Wiley & Sons, Ltd, Chichester, England, p256

<sup>3</sup> Note for example, that 'fit for purpose' was applied to an influential report, and to subsequent reports, concerned with identifying and elaborating the strategic choices open to local authorities and with the challenges for local authorities of prioritising and strategic objectives in relation to service improvement, democratic renewal and community leadership. '*Fitness for Purpose II*' <http://www.dmu.ac.uk/research/research-faculties-and-institutes/business>

## **The Constitution and central and local government**

Central and local government are also the largest players in New Zealand's overall system of governance.

The focus is on local government, as a group of institutions each in its own right, with a broad framework and diverse shared values. In New Zealand, as already observed, local government is widely acknowledged to be a partner with central government. They coexist within New Zealand's "unwritten" Constitution.

For various reasons, including some fine points, they are jointly the sources of the legitimate institutions of governance within the Constitution and also form the main basis for democratic accountability. They have been described in several sources as the two "spheres" of government. The Constitution comprises a number of conventions and various written documents supported by relevant precedents in constitutional law. New Zealand has a unitary system of Government and a bicameral Parliament, since it abolished the former Legislative Council (Upper House) in 1951.

The relationships between central and local government have evolved since 1842 when legislative provision for local government was first made. Apart from fluctuations in numbers of local authorities before 1989, and the emergence of some regional structures from 1974, the biggest change can be said to have come about in 1989 with the Local Government Amendment Act 1989 (amending the Local Government Act 1974) and the Resource Management Act 1991 (which brought about changes to reinforce and complement the 1989 provisions). An amendment in 1996 introduced a requirement on councils to prepare long term financial strategies. Further major systemic changes accompanied the introduction of the LGA 2002<sup>4</sup>, introducing in the Act a general empowerment for councils and by requiring those to prepare long term council community plans (now long term plans).

Local government now comprises 78 separately elected territorial authorities (including unitary authorities) with 67 territorial and 11 regional councils.

The existence of territorial authorities and regional councils by law does not mean there is a federation. There is not. Councils work together as constituent parts of local government. The electoral systems for central and local government are different. (Local government does not, in the main, follow the party basis of the parliamentary system.).

### **"Fitness for purpose" and "values"**

"Integrity" is key to TI's overall value set. In this context, it means several things. One is that openness is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public sector entities.<sup>5</sup> Integrity comprises both straightforward dealing and completeness and depends on honesty and objectivity, and high standards of probity and propriety in the stewardship of public funds and resources, and these together with effectiveness and efficiency in the management of an entity's affairs.

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<sup>4</sup> Local Government Act 2002

<sup>5</sup> *Ibid.*, p12

Within TI's values, integrity contributes to a world in which government, politics, business, civil society and the daily lives of people are free of corruption.<sup>6</sup>

For present purposes it means that *anyone who is managing public resources should do so with the utmost integrity and that public entities ... must meet Parliament's and the public's expectations of an appropriate standard of behaviour in the public sector.*<sup>7</sup>

“Good governance” in this paper is based on the premise that corruption is a symptom of poor governance, pointing to the need for a broader assessment of ‘integrity systems’ – against a wider set of objectives around *good governance*, transparency, participation and accountability – i.e., an ‘*integrity-plus*’ approach that extends to institutions, laws, procedures, practices and attitudes in place<sup>8</sup>. The paper explores several elements of *good governance*. These are: independence; openness and transparency; accountability; integrity; clarity of purpose; and effectiveness. They are complementary to both *integrity* and *good governance* and could not realistically be excluded from *fitness for purpose* analysis without distorting it or without resulting in an incomplete evaluation of *integrity* in local government. Thus, it includes the wider concepts of *integrity plus*, which will promote good governance and that should thereby also help to deter and to combat any corruption in NZ local government.

Though not a *single* written document, the Constitution does comprise several written documents and several conventions. Only Parliament, as the supreme institution, has primary law-making power. Local government has many subordinate law-making, regulatory and other powers that it derives from primary legislation. Local authorities are accountable directly to their own communities for their performance in undertaking their functions and responsibilities. These include local representation, regulation and the provision of local goods and services. The LGA 2002 contains many values that local authorities must observe and many operational requirements based on those values. This paper examines how these provide a good basis for accountability.

## Methodology

The Transparency International New Zealand (TINZ) 2013 National Integrity Plus NIS Assessment also extends and updates an earlier approach (2003) to a new one that is more comprehensive and prescriptive. The Integrity Plus NIS Report for 2013 (which this paper accompanies) comprises twelve key institutional “pillars”, including ‘The Public Sector’, of which ‘Local Government’ has been selected as a ‘sub-pillar’. The NIS ‘*integrity-plus*’ approach overtakes *the narrow focus on corruption to assess NZ against best practice standards of transparency and accountability, taking account of (its) unique constitutional*

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<sup>6</sup> Transparency International, *Our Values – Democracy: A Statement of Vision, Values and Guiding Principles*, Transparency, International. Adopted by the Transparency International Annual Membership Meeting in Prague, 06 October, 2001 and updated by the Transparency International Annual Membership Meeting in Bali, 28 October 2007 and the Transparency International Annual Membership Meeting in Berlin, 16 October, 2011.  
[http://www.transparency.org/whoweare/accountability/a\\_statement\\_of\\_vision\\_values\\_and\\_guiding\\_principles](http://www.transparency.org/whoweare/accountability/a_statement_of_vision_values_and_guiding_principles)

<sup>7</sup> Auditor General of New Zealand, *Principles to underpin management by public entities of funding to non-government organisations*, (A good practice Guide), OAG, Wellington, 2006, p23

<sup>8</sup> Murray Petrie, (Deputy Chair, TINZ; Co-Director, 2013 NZ NIS), *The 2003 NIS and Enhancements for the 2013 Assessment – The NIS Concept*, (PowerPoint Presentation), Wellington, 13 November 2012.

and cultural features.<sup>9</sup> It also assesses *the wider quality of governance in NZ with a focus on ensuring that power is exercised in a manner that is true to the values, purposes and duties for which it is entrusted to, or held by, institutions and individual office-holders (a ‘corruption-plus’ approach).*<sup>10</sup>

This Local Government ‘sub-pillar’ paper is therefore a companion to the New Zealand 2013 National Integrity Assessment Report and is associated mainly with the NIS Public Sector Pillar, local government being part of the public sector. “Local government” findings in the NIS Report are also incorporated as parts of the ‘Public Sector’ pillar. Questions that have been pursued through research about different aspects of “Integrity Systems” for each pillar where applicable, and answers to them to evaluate NZ local government’s “fitness for purpose”, recognise that individual communities and authorities have different and distinct characteristics.

### Findings and summary conclusions

#### Local government’s “fitness for purpose”

This paper concludes that New Zealand local government is abundantly fit for purpose.

Since 1989, local government in New Zealand has experienced fundamental changes in its structures and in its performance requirements. Local authority numbers dropped from 691 to 84 in 1989. Almost all single-purpose, “ad hoc” authorities, disappeared to be merged into new multi-function councils or to be abolished. From 1989, all local authorities were required to prepare annual plans and to roll these over each year for a further two years out. Councils also had to undertake accrual accounting and report accordingly. This meant that councils gained financial information on their use of all resources, which had not been the case with cash accounting. From 1996, they were required to prepare long term financial strategies and funding policies to guide themselves on appropriate funding sources and on allocations of expenditures. From 2002 they were to prepare, through strategic planning, 10 year “long term council community plans” (LTCCPs) on behalf of their communities and also to update annual plans where necessary. The LGA 2002 also incorporated new “purposes” provisions. These required councils to prepare the LTCCPs so as to fulfil wellbeings outcomes as their communities defined them. A 2012 amendment narrowed the “purposes” definitions but they were still related to community needs. It also redefined LTCCPs as Long Term Plans.

Local authorities must report annually on their performance and present audited reports. Local government is subject to comprehensive oversight by independent authorities, including parliamentary bodies and judicial and quasi – judicial institutions.

From 1989, when significant radical changes first occurred, New Zealand local government’s performance-based management systems rapidly became modern and advanced by international public sector and local government standards. The form of decentralisation introduced, with spatial and boundary arrangements which until 2013

<sup>9</sup> Transparency International NZ, Transparency Times – Prosperity through Transparency. Statement by Suzanne Snively , Executive Chair, TINZ, *No Complacency for Corruption on the Anniversary of 100 Years of Public Service Act*, p. 2, April 2013.

<sup>10</sup> Transparency International New Zealand, *A National Conversation on Integrity – TINZ 2013 Integrity Plus National Integrity System Assessment*, <http://www.transparency.org.nz/index.php/component/content/article/> Updated on Wednesday 8 May 2013.

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have remained very similar, provided a balance between regional councils and territorial local authorities performing ranges of functions that could fit within their respective boundaries and within their capabilities to perform their designated multiple functions. The form and function combinations that eventuated have mostly appeared to support the provision of local public goods and services effectively and efficiently. It seems probable that many "transaction costs" that the former single purpose authorities would have generated have also dissipated. The Government's analysis prior to 1989 of the intended optimal governance and management arrangements that eventuated with the passing of the 1989 legislation was based on well considered technical advice.

Local government in 2013 has developed, since 1989 in particular, into an effective and efficient arm of government. It was designed to that end. The functions entrusted to local government are either those that the market could not have provided efficiently or those that for other reasons merited public provision. New Zealand local government law includes a range of possible provisions with incentives for councils in providing goods and services to do so competitively, where applicable.

An assessment of councils' performance nation-wide through independent audit and surveys, concerning matters of integrity and transparency, reveals very high standards with relatively minor infringements and no widespread corruption.

On a different criterion, this paper has also paid considerable attention to economic and spatial implications for local authorities paying attention, also as to their "fitness for purpose", to taking into account how their institutional arrangements are designed to encourage optimal combinations of jurisdictions and boundaries and the assignment of different functions to those jurisdictions. With the analytical variables involved, and the allocation of similar functions respectively to city, district and regional councils, it has not been possible to "prove" pure "optimality" or therefore to prove "fitness of purpose" on that basis. The local and international literature may not have proved the "pure" point but it has highlighted the difficulties in coming to a conclusive judgment and has helped evaluate the "fitness for purpose" of New Zealand local government.

These difficulties have entailed reconciling different economic theories and principles concerning "second [or next] best" outcomes from reorganisation and concerning the diminution of "transaction costs" likely to arise from the extreme option of single-purpose or single function authorities. In theory, these might be efficient solutions where based on their ability, by definition, to contain or to "internalise" the single function. In practice, they have tended not always to be so clear cut. The extreme of the "single-purpose" authority essentially failed during its existence in New Zealand prior to 1989 because they were seen to generate "transaction" and inter-authority cooperation and duplication costs; and because their prolific numbers and disparate local boundaries had become sources of general public confusion and of poor accountability.

The alternative structural alternative, which generally now prevails in New Zealand, is the multi-functional authority. Boundaries and functions are decided on several criteria. One is the nature of "communities of interest" which are important parts of reform decisions and are undertaken through thorough processes of public and stakeholder

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consultation. Other criteria are technical, being the focus below.

Experience has also shown that few if any perfect "fits" of numerous different functions within a single territorial boundary are likely to occur. This is because of the difficulty of achieving optimal "allocative efficiency" from a sub-national tax base and also of achieving a single territorial boundary to accommodate several different functions where each function to be contained within it will have its own supply areas or 'market' areas and where those will also potentially differ from the supply areas of other functions. As a consequence, the perfectly "optimal", arrangement is an elusive one. Witness (as noted above) the several hundred single-purpose authorities with their own disparate local boundaries that existed in New Zealand before 1989 (totalling 453 as at 1988). These were either abolished or folded into territorial authorities.

In theory, multi-functional authorities might usually be seen as "sub-optimally" efficient to the extent that their boundaries are unable to contain perfectly the effects – both beneficial and negative – of all their several functions. Thus, In the case of a multi-function authority, some individual function "spillovers" across boundaries are still likely to occur because they are typically differentiated in space. "Sub-optimality" then becomes a "second best" or "next best" outcome.

In practice, decisions about an authority's boundaries and the matter of how its significant (and other) functions should best be contained can be expected to turn on one or a few of the predominating and significant functions in determining the best realistic balance among all functions to help decide an overall arrangement – including boundaries and other mechanisms – on its assessed merits

Other mechanisms can include cooperative and 'collaborative' arrangements among neighbouring councils where appropriate and where these can be used as alternative means (other than just boundary changes) to successfully capture or "internalise" "spillover" effects across existing boundaries. In New Zealand, the LGA 2002 provides such mechanisms and incentives for councils to do this as necessary. The main paper examines different ways of coping with the efficiency question.

The structuring and sizing of councils has been based on community population sizes and distributions, with city and district councils having broadly similar ranges of functions, though often with each function having different significance to each council depending on its community needs. It is difficult to generalise on the matter of "optimum" match of scale, boundaries and allocation of functions concerning councils of different population sizes and service requirements though often containing similar ranges of functions. Regional councils were originally formulated to be based mainly on natural catchment and resource management functions and having land areas extending across a number of territorial authorities with more than one significant urban centre. Territorial authorities are generally more oriented to fulfilling community physical resource and urban planning needs. Even so, many territorial authorities based on mid-size urban centres often have both urban and rural communities of interest.

Recently, we have seen more evolution in the form and structure of local government. The establishment of the Auckland Council in 2009 has taken in large urban and

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regional (spatial) planning and management functions though Auckland still has extensive non-urban hinterland. Auckland Council has also been vested with those spatial planning and sustainable development responsibilities, substantially abolished across New Zealand in 1991 together with the Town and Country Planning Act 1977, that for Auckland now also sit alongside its existing Resource Management Act functions. There is movement to create a new Wellington “super city” though on a smaller scale than Auckland. The other changes can also be expected to manage urban growth with other mergers that are in prospect. What can be said is that from a “fit” and “fitness” perspective, New Zealand local government does amount to being “fit for purpose” and the processes for accommodating and responding to change are alive and well.

### **Local government’s independence and freedom from external interference**

The unwritten nature (i.e., as in a single document) of New Zealand’s Constitution, which is the basis for the existence and continuity of local government, is not evidentially a cause of serious instability in local government or a matter of widespread public concern. The arrangements do not necessarily and in themselves hinder systemic or legislative changes, as some Constitutions may do, e.g., where they impede legislative changes that would benefit modernisation of the local government sector. The New Zealand Constitution allows such opportunities.

Historically, there was no excessive external or wide-ranging interference in local government’s activities. There were isolated examples. But in recent years, this has changed rapidly with a number of matters in which ministers have reserved rights to over-rule councils’ decision-making and the Government has varied the purposes and responsibilities of local government with no evidential regard to the costs to residents or their communities.

Within the Constitution, there is evidence of a need for a better working relationship between central and local government – the “two spheres” of government. This report identifies some examples of possible corrective actions. Another report has identified several areas in the relationship where central government’s attitude implies that local government is its agent. The law is clear that local authorities are accountable to their own communities, except where a statute may place duties with different types of accountabilities on local authorities on quite specific matters. Several critics have proposed that central and local government should join forces to prepare, and agree on, a protocol or protocols for working together collaboratively. During the Local Government New Zealand Conference, 2013, members voted unanimously to seek constitutional recognition for local government.

The absence in itself of a single documented Constitution does not cause worrisome instability in local government or obstruct necessary changes, e.g., in order to modernise local government, and there is no serious widespread public concern. Local government has a collective voice through both Local Government New Zealand and its

### **Local government’s independence and freedom from external interference**

own member councils to express views on proposed legislative changes.

Historically, there was no excessive external or wide-ranging interference in local government’s activities. There were isolated examples. But in recent years, this has changed rapidly with a number of matters in which ministers have reserved rights to over-rule councils’ decision-making. Examples (expanded in the full paper) include with aquaculture in Marlborough, the Government’s “affordable housing accord”, proposed RMA changes allowing the Minister to change district plans if his view is that the plan has given insufficient weight to a national policy statement, removal of Environment Canterbury Councillors and suspension from re-election in time for election in 2013 and arbitrary new intervention powers in LGA (amended 2012). These examples could also be seen as harbingers of future possible interventions, and threats to previously open and transparent environments, in the absence of “rule of law”-based assurances concerning government and ministerial decisions.

Public and published reports have identified instances where central government authorities have tended to view local authorities as their agents. One was a report that the Government had itself commissioned on local regulatory issues. Other reports have included independent critical reviews either of general dysfunctional relationships or relationships between the government and some local authorities, each on a “one-on-one” basis. Some appear to be misconceptions on the part of a central government agent as to the direction of accountability of local authorities for their actions and performance. The law is clear. Local authorities are accountable to their own communities. Within the law, there is not a “master and servant” relationship between central and local governments.

There is a need for a better working relationship between central and local government – the “two spheres” of government. Several critics have proposed that central and local government should join forces to prepare, and agree on, a protocol or protocols for working together collaboratively.

There is a strong case to extend discussion of proposals already made publicly that central and local government should seek ways of working together collaboratively to build mutual respect and smooth any “bumps”. During the Local Government New Zealand Conference, 2013, members voted unanimously to seek constitutional recognition for local government.

### **Existence and adequacy of statute law promoting high quality performance against best practice standards**

Local government is subject to detailed and comprehensive statute law setting out its purposes and operational modes. This promotes high levels of performance against best practice standards of transparency and accountability and against citizen expectations in New Zealand’s advanced democracy. There are high standards and levels of local government performance judged by outcomes and outputs generated.

**Existence and adequacy of statute law promoting high quality performance against best practice standards**

Changes since 1989 to the law relating to local government have all aimed to promote high levels of performance against best practice standards of transparency and accountability and against citizen expectations.

The LGA 2002 requires councils to prepare long term (strategic) plans incorporating provisions that set out community outcomes to be identified on behalf of each community.

The Government and independent authorities oversee Local Government comprehensively on its performance in meeting its statutory responsibilities. These entail identifying and realising outcomes for each local community (in delivering advocacy, goods and services that communities want) as well as maintaining anticorruption standards.

In 2012, the Controller and Auditor General, in reporting on local government's ability to meet its future needs, expressed general satisfaction with local authorities' efforts to: deliver services in prudent and sustainable ways, remarking that even some arrangements that might have appeared unusual were found to be "fit for purpose" and not imprudent.

The introduction of general empowerment in the LGA 2002 extended discretions to local government to make decisions outside the previous prescriptive requirements, though amendments to the Act in 2012 then amended earlier (2002) provisions that had included in the local government "purposes" section broad powers to promote the wellbeing of communities with a narrower and more prescriptive provision.

Councils have responsibilities under 130 Acts of Parliament. The LGA 2002 is the central policy and operational statute for local government but it also has extensive policy, plan-making and regulatory responsibilities under the Resource Management Act (RMA) 1991 and the Public Transport Management Act (PTMA) 2003.

All local authorities are audited on the basis of their performance, stewardship, probity and compliance.

**Legal & resource provisions supporting transparency & accountability**

Legal and resource provisions are fit for purpose and support local authorities' achievement of high standards of transparency and accountability.

The availability of resources, subject to the ability of councils to justify and sustain their requirements annually, is fit for purpose to the requirements of local authorities. Local authorities have the powers to tax property through rating and associated mechanisms and to charge for the provision of services. Some councils are highly dependent on rates and others minimally so. By world standards, New Zealand local government generally is not heavily dependent on central government funding.

**Legal & resource provisions supporting transparency & accountability**

Long-term (strategic) and Annual Plan processes are robust and encourage transparency and accountability.

Extensive provisions in the law empower local authorities to make allocative and regulatory decisions.

All local authorities are audited on the basis of their performance, stewardship, probity and compliance. Elected members' pecuniary interests are overseen through the Local Authorities (Members Interests) Act.1968.

There is comprehensive legal provision for and oversight by communities, by ministers and by independent statutory bodies of local authorities' activities.

Under the LGA 2002, councils are individually accountable and must plan by consulting with, and then by reporting to, their communities on their performance in implementing Long Term and Annual Plans and other (e.g., resource management) policies and plans. The LGA 2002, together with other major statutes, has explicit and complementary purposes of enhancing local government's responsiveness and accountability to communities in meeting their needs. Councils have statutory duties and authority, in undertaking their functions, to secure revenue through different rating and charging mechanisms. The law prescribes fiscal responsibility standards. Through mandatory funding policies, local authorities judge who benefits and who pays.

Chief Executives, as the chief administrative officers, are legally the sole employers and managers of staff on behalf of their councils. Financing resource requirements is addressed in councils' plans.

**Comprehensive and effective mechanisms are in place for ensuring prudent and transparent use of local authority resources and for preventing and combating corruption by elected members and officers.**

**Statutes provide for comprehensive and close oversight of local authorities. Several provisions of the LGA 2002, and of other statutes, are integrity focused. All local authorities are required in law to adopt and implement codes of conduct, to ensure prudent stewardship and the efficient and effective use of (councils') resources and to conduct business in an open, transparent and democratically accountable manner. Branches of the Executive, independent statutory authorities and the courts variously provide such oversight. The legislative provision and machinery are both comprehensive and rate highly for integrity. There is no evidence of wide-spread existence of corruption in local government, whether at elected member or officer levels. Instances thereof have been few and generally negligible. Nationally based local government (i.e., local authority and officer) associations are active in providing guidance to their members in their efforts to pursue activities that help promote good performance, accountability, transparency and probity and that discourage fraud, theft and corruption.**

**Comprehensive and effective mechanisms are in place for ensuring prudent and transparent use of local authority resources and for preventing and combating corruption by elected members and officers.**

There is considerable legal provision for and oversight by communities, by ministers and by independent statutory bodies of local authorities' activities.

Several authorities ensure integrity – e.g., the Auditor-General, the Parliamentary Commissioner for the Environment, the Ombudsmen, the Remuneration Authority and the Environment Court. Elected members' pecuniary interests are overseen through the Local Authorities (Members Interests) Act.1968.

Local Government Act 2002 provisions ensure that councils consult communities in their plans to undertake activities and to obtain revenue to fund services provided; and then that councils report back to their communities and are audited annually.

The Resource Management Act 1991 (RMA) prescribes additional major policy, planning and consent-making responsibilities for all local authorities and also applies if necessary to the actions and integrity of both elected members and employees in undertaking their own relevant duties.

The Environment Court has roles in mediation and alternative dispute resolution and exists as an appellate authority in relation to the content of proposed policies and plans and consents mostly prepared under the RMA.

National associations from local government assist their members, including elected members and employees, through information, mentoring and training provision. The Office of the Auditor General also supplies various forms of guidance, including technical guidance, implementing integrity transparency and accountability requirements and combating corruption.

The main body of the paper summarises some important information drawn from factual bases about councils' and national associations' approaches to preventing and combating corruption.

Arguably, there is potential for integrity breaches by either elected members or employees but there is little, if any, evidence of either.

## Local Government

### Fitness for Purpose – New Zealand Local Government

#### Securing integrity and good governance within a bipartite constitution

In this evaluation and assessment of the “fitness for purpose” of New Zealand (NZ) local government, selective coverage of its history and its constitutional setting is essential to provide a framework for an analysis, within the main TI values, of NZ local government and because those values are also reflected in the purposes and principles guiding it. The analysis in this paper is based on the premise that corruption is a symptom of poor governance, pointing to the need for a broader assessment of ‘integrity systems’ – against a wider set of objectives around *good governance*, transparency, participation and accountability – i.e., an ‘*integrity-plus*’ approach that extends to institutions, laws, procedures, practices and attitudes in place<sup>11</sup>. These elements could not realistically be excluded from the analysis without distorting it or without resulting in an incomplete evaluation of integrity. Thus, it includes the wider concepts of *integrity plus* that will promote good governance and that should thereby also help to deter and to combat any corruption in NZ local government.

The Transparency International New Zealand (TINZ) 2013 National Integrity Plus NIS Assessment also extends and updates an earlier approach (2003) into a new one that is more comprehensive and prescriptive. The Integrity Plus NIS Report (which this paper accompanies) comprises twelve key institutional “pillars”, including ‘The Public Sector’, of which ‘Local Government’ has been selected as a ‘sub-pillar’. The NIS ‘*integrity-plus*’ approach overtakes *the narrow focus on corruption to assess NZ against best practice standards of transparency and accountability, taking account of (its) unique constitutional and cultural features*.<sup>12</sup> It also assesses *the wider quality of governance in NZ with a focus on ensuring that power is exercised in a manner that is true to the values, purposes and duties for which it is entrusted to, or held by, institutions and individual office-holders (a ‘corruption-plus’ approach)*.<sup>13</sup>

This Local Government ‘sub-pillar’ report (or paper) is therefore a companion to the New Zealand 2013 National Integrity Assessment Report and, because of its substance and scope, is associated mainly with the NIS Public Sector Pillar, local government being a key component. However, some core local government issues – while clearly falling within the main ambit of the wider public sector – also relate to other NIS pillars or sub-pillars, e.g., civil society, business integrity systems, environmental governance and Treaty of Waitangi. Other pillar reports focus on those. Local government issues also variously relate to other pillars. From this standpoint, local government issues are seen rather as being also linked

<sup>11</sup> Murray Petrie, (Deputy Chair, TINZ; Co-Director, 2013 NZ NIS), *The 2003 NIS and Enhancements for the 2013 Assessment – The NIS Concept*, (PowerPoint Presentation), Wellington, 13 November 2012.

<sup>12</sup> Transparency International NZ, *Transparency Times – Prosperity through Transparency*. Statement by Suzanne Snively, Executive Chair, TINZ, *No Complacency for Corruption on the Anniversary of 100 Years of Public Service Act*, p. 2, April 2013.

<sup>13</sup> Transparency International New Zealand, *A National Conversation on Integrity – TINZ 2013 Integrity Plus National Integrity System Assessment*, <http://www.transparency.org.nz/index.php/component/content/article> Updated on Wednesday 8 May 2013.

horizontally across pillars; and they depict the local government sector as a “beam” that joins the vertical pillars to ‘The ‘Public Sector’ pillar inclusive of local government. “Local government” findings in the NIS Report are also incorporated as parts of the ‘Public Sector’ pillar. Questions posed through research about different aspects of “Integrity Systems” for each pillar where applicable, in this case mainly the Public Sector and the Local Government Sub-Pillars, are drawn from the main NIS questions. This paper also uses answers to them to evaluate NZ local government’s “fitness for purpose”, while recognising that individual communities and authorities have different and distinct characteristics. As TI is still in the process of evolving an LIS draft pillar for local government, this paper is based on and adapted to the NIS research format.

## 1. Fitness for purpose, integrity and good governance: the concepts

*Fitness for purpose* is now used in a wide range of applications, but generally meaning ‘good for doing its job’<sup>1415</sup>. It came into frequent use in government and management literature from about 2006 in relation to a UK minister’s allegation that his department was “(not) fit for purpose” – not good at doing its job.<sup>16</sup> Here, it is taken to mean, more precisely, *fitness for purpose* as applied to local government and/ or to an individual local authority having clear, defined individual purposes, or a common collective set of purposes, and supporting the achievement of key objectives and outcomes<sup>17</sup>. It is also examined in relation to wider concepts based on theories of local government. But here, the term *fitness for purpose* is used mainly for evaluative reasons in relation to local government in New Zealand and to its fitness generally for fulfilling key prescribed purposes, objectives and outcomes.<sup>18</sup> This paper also evaluates local government’s fitness with regard to both its internal and external environments, to which its constitutional setting is crucial. as these both impact on councils’ individual performance and on the sector’s collective effectiveness. The paper focuses at the sector level, as being more manageable for its purpose, rather than at individual, council level.

*Bipartite Constitution* means simply central and local government are the two partners of government within the Constitution.

## 2. The matter of terminology

### 2.1 Integrity in particular

Integrity and good governance in the title of this report are integral to the purposes of TI International, TINZ and NIS Plus, notably in regard to the theme of fitness for purpose. Those terms are also widely upheld by other sectors of society and the economy. The IFAC,<sup>19</sup> for example, has provided useful guidance in a number of publications. They have marked similarities and there are parallels between TI based principles and many principles

<sup>14</sup> See, for example, John Ayto, *Fit for purpose*, Learning English – Keep your English up to date – Fit for purpose, <http://www.bbc.co.uk/worldservice/learningenglish/uptodate>.

<sup>15</sup> MacMillan Dictionary, Fit for purpose – definition, <http://www.macmillandictionary.com/dictionary/british/fit-for-purpose> - definition of fit for purpose by Macmillan Dictionary

<sup>16</sup> *Ibid*.

<sup>17</sup> See, for example, Sir John Bourn, *Public Sector Auditing – Is it Value for Money?* John Wiley & Sons, Ltd, Chichester, England, p256

<sup>18</sup> Note for example, that ‘fit for purpose’ was applied to an influential report, and to subsequent reports, concerned with identifying and elaborating the strategic choices open to local authorities and with the challenges for local authorities of prioritising and (setting) strategic objectives in relation to service improvement, democratic renewal and community leadership. ‘*Fitness for Purpose II*’ <http://www.dmu.ac.uk/research/research-faculties-and-institutes/business>

<sup>19</sup> IFAC: The International Federation of Accountants, see Annex 4

that the IFAC and other institutions recommend for particular application to the public sector. It is then a small step to link these to local government, as below, to establish a basis to evaluate local government from different viewpoints: those of elected councils and members; those of staff; and of results achieved (both outcomes and outputs) by each council as measured by external reporting on its performance.

*Integrity* generally means the quality of having strong moral principles<sup>20</sup>.

In relation to the public service in New Zealand, *integrity* has been a feature of official documents. In 1957, the then Public Service Commission's *Manual of Instructions* bade public servants to maintain high standards of integrity<sup>21</sup>. In one area of service conduct, integrity was seen to overlap with qualities of impartiality, courtesy and efficiency<sup>22</sup>. In 1954, the New Zealand Public Service *Official Circular* republished a UK Treasury Circular which endorsed an extract from the UK Woods Committee Report<sup>23</sup> to the effect that the actions of the civil servant should bear constantly in mind that the citizen has the right to expect not only that his affairs will be dealt with effectively and expeditiously but also that his personal feelings, no less than his rights as an individual, will be sympathetically and fairly considered<sup>24</sup>. Perhaps this was an early understanding of the link between performance management and integrity.

Within TI's values, *integrity* contributes to a world in which government, politics, business, civil society and the daily lives of people are free of corruption<sup>25</sup>. The NZ Auditor General has listed *integrity* as one of several principles together supporting a principles-based approach to guide the management of public resources in New Zealand. For present purposes it means, as the NZ Auditor General has also advocated, that *anyone who is managing public resources should do so with the utmost integrity and that public entities ... must meet Parliament's and the public's expectations of an appropriate standard of behaviour in the public sector*<sup>26</sup>. The public entity must ensure that [an entity] using ... public resources ... is capable of and is, managing the resources with a standard of conduct the public expects in the use of its taxes and rates<sup>27</sup>.

## 2.2 Transparency, governance and related values

### 2.2.1 Good governance, integrity, transparency, accountability, effectiveness & efficiency

TINZ's objectives and guiding principles include promoting transparency and good governance and ethical practices in the private and public sectors in NZ, while contributing to the international effort to reduce corruption and promoting good governance and ethical

<sup>20</sup> Concise Oxford English Dictionary, *Integrity*, Judy Pearsall (ed), Oxford University Press, tenth edition, revised, 2002), p735

<sup>21</sup> Public Service Manual of Instructions, 1957, Para. L. I

<sup>22</sup> K. J. Scott, *The New Zealand Constitution*, Oxford at the Clarendon Press, 1962, p152

<sup>23</sup> Of 20 August 1954

<sup>24</sup> /K.J. Scott, *op. cit.*, p153

<sup>25</sup> Transparency International, *Our Values – Democracy: A Statement of Vision, Values and Guiding Principles*, Transparency, International. Adopted by the Transparency International Annual Membership Meeting in Prague, 06 October, 2001 and updated by the Transparency International Annual Membership Meeting in Bali, 28 October 2007 and the Transparency International Annual Membership Meeting in Berlin, 16 October, 2011.

[http://www.transparency.org/whoweare/accountability/a\\_statement\\_of\\_vision\\_values\\_and\\_guiding\\_principles](http://www.transparency.org/whoweare/accountability/a_statement_of_vision_values_and_guiding_principles)

<sup>26</sup> Auditor General of New Zealand, *Principles to underpin management by public entities of funding to non-government organisations*, (A good practice Guide), OAG, Wellington, 2006, p23

<sup>27</sup> *Ibid.*, p324

business practices<sup>28</sup>. A main point of this paper is to describe what machinery is in place that provides for local authorities to “be good at doing [their] job<sup>29</sup>”. This includes the provision of mechanisms to ensure that institutions have a good basis – including human and financial resources and requirements for good conduct – to instil integrity into what they do. Mechanisms include the law and regulation and the ways they act in common to bring about high levels of integrity, good governance, transparency, accountability, effectiveness and efficiency. These words all appear in the LGA 2002.

## 2.2.2 Governance, good governance, policy making by elected members & management

This paper refers to ‘governance’ frequently as well as to ‘good governance’. The latter is put into context next. As to the meaning of ‘governance’ itself, this needs to be put in context too as it also arises below and is cited, as such, in the LGA 2002 (not being defined in the Act’s main ‘Interpretation’ but appearing in the interpretation to Part 10). It appears in a few places<sup>30</sup>, most significantly in relation to the governance and management of local authorities and community boards and to the definition of local governance principles and statements. The distinction made between ‘governance’ and ‘management’ in the LGA is obviously important. It picks up on recent international usage which has been said to relate to the *shift from government to governance* resulting from the public sector reform processes that have been taking place.<sup>31</sup> This has also been distinguished against wider contexts including (where applicable): interventions by central governments to limit local authorities’ abilities to act autonomously in representing the wills of their constituents (and from local government not being constitutionally enshrined); and – in the shift from government to governance – in a proliferation in policy tools used to tackle a range of social and economic issues. Theoretical tensions around legitimacy under the ‘new governance’ have been identified through: increased capacity of (and demand for) the system to provide efficiently and effectively; the role of civil society in governance; and through the democratic process.<sup>32</sup>

In that the LGA 2002 distinguishes between ‘governance’ and ‘management’ without defining them separately, it may be useful, in clarifying the distinction and because the current usage in policy terms has moved in the direction of the ‘governing state, to go to the etymological roots of ‘governance’. With Greek and Latin roots, the English words – ‘government and ‘governance’ – mean ‘steersmanship’ and ‘helmsmanship’<sup>33</sup> (distinct from management) – through which it has been said run the common thread of power.<sup>34</sup> For present purposes, public sector governance is used in its broadest sense as concerning relationships between authoritative decisions and government performance<sup>35</sup>. The new governance incorporates but transcends government and the state and includes the private sector and civil society in policy making, implementation and direction-setting.<sup>36</sup> These

<sup>28</sup> Transparency International (New Zealand) Inc., Objectives and Guiding Principles, Rule 4, Objectives, [www.transparency.org.nz/index.php/online/69/-tinz-guiding-principles](http://www.transparency.org.nz/index.php/online/69/-tinz-guiding-principles)

<sup>29</sup> Macmillan Dictionary, *op. cit.*

<sup>30</sup> Local Government Act 2002, ss. 8; 39; 40, 43, 55, 274.

<sup>31</sup> Nicola Brackertz, *Reconciling efficiency and democracy: the challenges at the local government level*. (A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, Swinburne University of Technology, Melbourne, Australia, 2009), p6

<sup>32</sup> *Ibid.*, pp. 6-7

<sup>33</sup> A. J. Catanese and A. W. Steiss, *Systemic Planning: Theory and Application*. (D. C. Heath and Company: Lexington, Mass., 1970).

<sup>34</sup> V. O. Key, *Politics, Parties and Pressure Groups*, (Thomas C. Crowell: New York, 1959), p4

<sup>35</sup> L. E. Lynn, C. J. Heinrich and C. J. Hill, *Improving Governance: A New Logic for Empirical Research*, (Georgetown University Press, Washington, DC), p7.

<sup>36</sup> Brackertz, et. al., *op.cit.*, p27,

distinctions can also be important in view of the impact that reference to ‘governance’ can also be inferred from some common usage of it in modern management applications that might be seen to play down the significance of the role of local *policy* making by elected political representatives and the responsibilities of local government to make decisions and to set directions.<sup>37</sup>

### 2.2.3 Principles and securement of good governance

As noted above, *good governance* is also among TINZ’s objectives and guiding principles. Recently, a UN High Level Report has proposed that 12 areas for post -2015 UN goals, including three new goals, that include one for “good governance and effective institutions”, be added to the original 2000 Millennium Development Goals<sup>38</sup>,

A UK Report<sup>39</sup> has defined *corporate* governance as ‘the system by which organisations are directed and controlled’ and it identified three principles of corporate governance: openness, integrity and accountability.<sup>40</sup> Within this formulation, openness is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public sector entities.<sup>41</sup> Integrity comprises both “straightforward dealing” and completeness and depends on honesty and objectivity, and high standards of probity and propriety in the stewardship of public funds and resources, and management of an entity’s affairs. It also depends on the effectiveness of the internal control framework and on the personal standards and professionalism of an entity’s people reflected in the quality of its financial and performance reporting.<sup>42</sup> ‘Accountability’ is defined and used in this paper as ‘the obligation to answer for responsibilities conferred’ and depends on all parties having a clear understanding of those responsibilities, on having clearly defined roles through a robust structure and by submitting themselves to external scrutiny.<sup>43</sup>

*Good governance* has broad international usage, acceptance and application.

The IMF defines governance as “the traditions and institutions by which authority in a country is exercised for the common good. This includes the process by which those in authority are selected, monitored, and replaced (the political dimension); the government’s capacity to effectively manage its resources and implement sound policies (the economic dimension), and the respect of citizens and the state for the country’s institutions (the institutional respect dimension)”<sup>44</sup>. The IMF has also disabused readers that may think so of the view that governance and corruption are one and the same. It noted that by contrast to governance, corruption is defined more narrowly as “the abuse of public office for private gain”<sup>45</sup> In the same context, it cited a statement by the Africa Commission to the effect that

<sup>37</sup> This interpretation is based on a discussion between the writer and one reviewer of an earlier draft of this paper.

<sup>38</sup> Secretary-General of the UN, *Secretary-General commends high level panel report’s call to place sustainability at centre of post-2015 development agenda*, Secretary-General SG/SM/15064, DEVI/2990, 30 May 2013. <http://www.un.org/News/Press/docs/2013/sgsm15064-doc-htm>

<sup>39</sup> The Cadbury Committee (U.K.), *Report of the Committee on the Financial Aspects of Corporate Governance*, December 1992.

<sup>40</sup> *Ibid.*, p11

<sup>41</sup> *Ibid.*, p12

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Daniel Kaufman (IMF), *Back to Basics – 10 Myths About Governance and Corruption*, Finance and Development A quarterly magazine of the IMF, Vol. 42, No. 3, September, 2005, p1 retrieved from:

<http://www.imf.org/external/Pubs/FT/fandd/2005/09/basics.htm>

<sup>45</sup> *Ibid.*

“good governance is the key ... Unless there are improvements in capacity, accountability, and reducing corruption ... other reforms will have only limited impact.”<sup>46</sup>

The British and Irish Ombudsman Association (BIOA) has set out six high level principles of *good governance*: independence; openness and transparency; accountability; integrity; clarity of purpose; and effectiveness<sup>47</sup>. For this paper, and focussing on the independence of local government in New Zealand, the BIOA construct is significant, illustrating (in a circular shaped principles diagram), the principle of independence being at the core that is surrounded by four supporting principles. Effectiveness surrounds them all. It defines Independence as ‘ensuring and demonstrating the freedom of the office-holder from interference in decision making’<sup>48</sup>. The BIOA context is, of course, that of an Ombudsman’s role. The BIOA position is that there should be governance arrangements which ‘ensure and safeguard the independence of the (office holder)’<sup>49</sup>. That sentiment is reiterated in this paper, in reflecting on the independence of local government and on its fitness to do its job.

The UK Office for Public Management Ltd (OPM) and the Chartered Institute of Public Finance and Accountancy (CIPFA) issued a publication addressing a good governance standard for public services.<sup>50</sup> This developed (coincidentally also in a circular shaped diagram) a standard comprising six core principles.<sup>51</sup> The central core focuses on the organisation’s purposes and on outcomes for citizens and service users. Four quadrants immediately surround the core and focus on:

- Performing effectively in clearly defined roles;
- Promoting values for the whole organisation and demonstrating good governance through behaviour;
- Taking informed, transparent decisions and managing risk;
- Developing the capacity and capability of the governing body to be effective.

### 2.3 Terminology and the Local Government Act 2002

The New Zealand LGA 2002 also incorporates aims of “effectiveness”, ‘efficiency’, ‘accountability’ and ‘transparency’ as part of its guiding purposes and principles. These, therefore, are ineluctable parts of this discussion.

The values of ‘accountability’ and ‘transparency’ are addressed more comprehensively below. ‘Effectiveness’ and ‘efficiency’ also receive attention. ‘Economy’, ‘efficiency’ and ‘effectiveness’ are classic ingredients of ‘value for money’, a summary of how well a public entity has used its resources in discharging its functions.<sup>52</sup> ‘They are also important for communities in gauging the efficacy of their local authorities’ governance performance – a crucial need in evaluating their ‘fitness for purpose’.

‘Effectiveness’ is commonly taken to mean ‘the extent to which outputs achieve desired outcomes (or to which an organisation realises its stated objectives). Effectiveness

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<sup>46</sup> *Ibid.*

<sup>47</sup> British and Irish Ombudsman Association, *Guide to principles of good governance*, October 2009.

<sup>48</sup> *Ibid.*, p6

<sup>49</sup> *Ibid.*, p7

<sup>50</sup> The Independent Commission on Good Governance in Public Services (ICGGPS), *The Good Governance Standard for Public Services*, OPM and CIPFA, London, 2004

<sup>51</sup> *Ibid.*, p4

<sup>52</sup> Sir John Bourn, *Public Sector Auditing*, John Wiley & Sons Ltd, Chichester, 2007, pp56-57

measures tend to be ‘concerned with the strength of the relationship between a given intervention and outcomes.’<sup>53</sup>

‘Efficiency’ in the Act tends rather to mean capacity to progressively reduce the cost of producing the goods and services for which resources are provided.<sup>54</sup> ‘Efficiency’ is attributed assorted other meanings; one is when referring to the efficient allocation of resources. Schick puts this as meaning the capacity to establish priorities within the budget, including the capacity to shift resources from old priorities to new ones, or from less to more productive uses, in correspondence with the government’s objectives.<sup>55</sup> Here, however, is an intersection of ‘effectiveness’ and ‘efficiency’ where they can mean more or less the same thing – a concern for achieving outcomes as being more important than outputs.

It is clear that the context of ‘effectiveness’ and ‘efficiency’ in the public sector is that of public goods provision and the allocation of resources to avoid or minimise “negative externalities” or to maximise (within the bounds of reasoned policy) positive ones.

While the LGA 2002 does not as such separately define either ‘efficiency’ or ‘effectiveness’, its provisions do include these terms (or their adjectives). Both are used in the LGA to describe: ‘good quality’ as part of the ‘purpose of local government’;<sup>56</sup> by extension, the role of a local authority,<sup>57</sup> the principles relating to the manner in which local authorities should give effect to their identified priorities and to articulate their communities’ desired outcomes,<sup>58</sup> in making efficient and effective use of their resources.<sup>59</sup> The terms are susceptible to wide definition without there being a firm statutory one. At the very least, it seems possible to say that the Act’s provisions encompass those circumstances where government provision of public goods through public agencies is an appropriate response to market failure<sup>60</sup>, responding to the likelihood of there occurring as a result ‘positive externalities’ or the availability and consumption of some ‘merit’ good. That is an assumption here in evaluating local government’s ‘fitness for purpose’.

Arcane or not, this technical depiction of changes in policy thinking does reflect much of the approaches to the reforms of the New Zealand public sector from 1984 (for central government) and from 1989 (for local government). The Government’s Economic Statement published in 1987 indicated the basis on which local or regional government would be selected and that it would be subject to the following principles<sup>61</sup>:

- Where the net benefit would exceed that of all other institutional arrangements;
- The subsidiarity principle (i.e., that the allocations of functions should be based on appropriate communities of interest; on the achievement of operational efficiencies; on clear, non-conflicting objectives; on trade-offs between objectives that were explicit and transparent; and on strong accountability mechanisms).

<sup>53</sup> Ellis, K & Mitchell, S, 2002, ‘Outcome-focused Management in the United Kingdom’, *OECD Journal on Budgeting*, 1 (4), pp.111-128

<sup>54</sup> Schick, A, 2001, ‘The changing role of the central budget office’, *OECD Journal on Budgeting*, 1 (1), p. 13

<sup>55</sup> *Ibid.*

<sup>56</sup> Local Government Act, 2002, s10(1)

<sup>57</sup> *Ibid.*, s11(a)

<sup>58</sup> *Ibid.*, s14(1)(a)(ii)

<sup>59</sup> *Ibid.*, s14(1)(e) & (g)

<sup>60</sup> David L. Weimer & Aidan R. Vining, *Policy Analysis – Concepts & Practice*, Prentice Hall, N. J., 3<sup>rd</sup> ed, 1999, p236

<sup>61</sup> Michael Bassett, *Reform of local and regional government*, Government Economic Statement, (17 December 1987), Wellington Government Printer, p62

These expressed principles still apply to the present form and functions of New Zealand local government. They include efficiency criteria. But the usually understood meaning of ‘subsidiarity’ is in the principle that “political power should be exercised by the smallest possible unit of local government”,<sup>62</sup> as noted later. The paper returns to this below.

But in the Government’s 1987 application of the term, it will be necessary to revisit (below) the concept of ‘efficiency’ because it has many meanings in different contexts. In light of its meaning given in the principles established for ‘local and regional government’ above, its applicability in assessing the sector’s ‘fitness for purpose’ cannot reasonably be overlooked. ‘Efficiency and ‘subsidiarity’ are also discussed below under the sub-heading: *Subsidiarity and efficiency under different guises*.

### 3. Evaluating local government’s “fitness for purpose”

#### 3.1 What amounts here to “fitness for purpose”?

Evaluating the “fitness for purpose” of NZ local government in this paper entails numerous considerations including facts, values and events that have influenced the evolution of the local government sector.

To evaluate local government’s present *fitness for purpose* with particular attention to securing integrity and good governance, the paper adapts and attempts to respond to some questions from research undertaken as part of the Public Sector Pillar NIS Analysis under the TINZ 2013 NIS Plus Review, so as to reflect local government attributes as closely as possible to how they are commonly expressed, and including also attributes that it might share with central government and its agents.

“Fitness for purpose” in this paper addresses matters of how well or how badly New Zealand local authorities:

- Are generally found to be meeting their own performance targets – i.e., evaluated against agreed outcomes and outputs (or against ‘significance’ criteria as defined in the LGA and applied appropriately); the Auditor-General’s audited reports of all local authorities are taken as the main sources of evidence of the findings.
- Local authorities’ assigned functions and forms are likely to contribute to achievement of optimal allocative efficiencies and technical or productive efficiency;
- They maintain and sustain their overall resources capability to those same ends;
- They meet other criteria set out or implied in the LGA and other relevant Acts, which give local government particular functions or responsibilities (i.e., in promoting integrity and transparency), to decide which functions or responsibilities will include anticorruption and to implement them, rules of governance and conduct, compliance, stewardship of resources, probity, legal and regulatory requirements, democratic accountability, effectiveness, efficiency and economy (therefore performance) and consultation.

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<sup>62</sup> Microsoft Encarta College Dictionary (St Martin’s Press, New York, 2001), p1436

### 3.2 Some criteria to estimate ‘fitness for purpose’

In her 2012 report on matters arising from the 2012–22 local authority long term plans, the Auditor General<sup>63</sup> observed, in responding to the diverse range of circumstances and community requirements confronting each council, each community having its own demands, that the arrangements that each council had devised were generally found to be ‘fit for purpose’.

This paper proceeds first to examine the concept of *fitness of purpose* against several criteria, most of which appear in legislation covering the performance and activities of local authorities. For this purpose, ‘performance’ has a two pronged meaning.

On one hand, it relates to the value-for-money (VFM) considerations in exploring how and whether councils meet their prescribed outcome or output ‘performance’ requirements or whether they gave appropriate priority to matters of ‘significance’ as seen by their own communities.

On the other hand *allocative* ‘efficiency’ can also amount to ‘effectiveness’ where the organisation is ‘doing the right things’<sup>64</sup>. This is a matter of getting what they do in line with what their communities want them to do. If it is also ‘doing things right’, then again it is also being ‘efficient’ not just from an allocative point of view but also from administrative, technical or ‘productive’ efficiency viewpoints.<sup>65</sup>

Local authorities, for example, perform many tasks which contribute to social, economic and cultural outcomes that communities seek. Providing libraries no doubt contributes to all those outcomes and, no doubt, can reasonably be evaluated in relation to literacy, health and cultural objectives and attributed partly, at least, to a local authority. Local authorities also have other duties – such as regulation and maintaining standards in relation to those duties that entail maintaining integrity and anticorruption both in-house and in the community. Examples in New Zealand include preparing and applying codes of conduct, maintaining anticorruption programmes and monitoring and correcting them where necessary, being open with information and building local authorities’ purposes.

Second, this paper also examines the legal and real status of local government’s independence. This inevitably addresses the constitutional and legal basis for local government and the nature of its operating environment, taking into account the effect of its working relationships with central government.

Third, the paper examines the use of purpose oriented criteria in local government – as contained in various statutes and also in councils’ own performance planning and reporting. This is done in relation to the *fitness for purpose* theme and especially to corporate governance, management and accountability.

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<sup>63</sup> Lyn Provost, *Auditor-General’s Overview – Matters Arising from the 2012 – 22 local authority long term plans*, Office of the Auditor-General, New Zealand, 3 December 2012, pp. 7-8; 12

<sup>64</sup> Peter F. Drucker, *The Effective Executive – The Definitive Guide to Getting the Right Things Done*, HarperBusiness, New York, 1993, synopsis. Retrieved from: <http://results.com/book-summaries/leadership-and-management/leadership>

<sup>65</sup> Claudia Scott, “Efficiency and Democracy”, in *An Agenda for Local Government – Proceedings from the New Local Government Conference*, (ed. P. McDermott et. al., Local Government Studies Occasional Paper Series No. 2, Massey University, Palmerston North ), p147

These are important for many reasons – including transparency, accountability, effectiveness, and efficiency. For evaluating *fitness for purpose*, those themes in New Zealand are part and parcel of performance evaluations and audits of all 78 local authorities (which encompass Council Controlled Organisations [CCOs]) that comprise local government. The Auditor General annually publishes overviews of what are in effect, and which reflect, local authorities’ “average” or “median” planning performance derived from the individual external audits undertaken. The Office of the Ombudsmen also reports annually on local authorities’ effectiveness in making available official information as required by law and measures these, for example, by way of complaints received, resolved or not. This information is drawn together later in different parts of the paper concerning different criteria and according to where each criterion happens to apply. The paper also examines a range of measures that councils have in place (many resulting from their obligations under the LGA regarding the preparation of governance statements, codes of conduct, LTPs, Annual Plans and policies and plans under the Resource Management Act (RMA) 1991 and the Public Transport Management Act. (PTMA) 2003.

Fourth, the paper provides information about the adequacy of local authorities’ human and financial resources and their evaluated performance in allocating and managing those resources. There is also a comparison of sources of local government revenues between New Zealand and selected other countries.

Fifth, the paper addresses the promotion of integrity in local government. Much of this comes from OAG and Office of the Ombudsmen (OO) surveys, audits and publications. And the paper examines measures in place to combat fraud, theft and corruption in local authorities and summary results of surveys of the incidence of these three characteristics of “bribery and corruption” across local government as reported in 2011. In this light, the paper also examines what means are available from within and outside local government to help local authorities in coping with the multiple tasks of maintaining and applying appropriate standards and preventing and combating corruption. Many local government sector representative organisations also contribute to building capacity and capability broadly. This is a positive approach to how local authorities can, and do, go about developing and meeting prescribed standards.

Sixth, the paper incorporates a section on the local government institutional reform process outcome post-1989. Important outcomes will include the ways in which local government collectively, and councils individually, are shaped and resourced in order to be effective.

Some historical oversight of changes in local government before 1989 should first be helpful.

### **3.3 Why institutions and structures influence *fitness for purpose***

The post-1989 overview starts by comparing the main 1989 reforms with the institutional arrangements that were in place beforehand, together with a summary of their main problems. This assesses also the main features of the local government sector in place by 2012.

While the 1989 institutional reform outcomes are still very visible in 2012 (and 2013), many changes that occurred in the intervening period since 1989 are still in place. The “post – 1989 reform outcome” part of the paper addresses some partly theoretically based questions about the economic efficiency and effectiveness of the institutional arrangements (from 1989

and subsequently). This approach aims to add to any other conclusions about the sector's "fitness for purpose" obtained from factual and actual analysis, including from external audit overviews. Also included is reference to the significant changes associated with those in the resource management law reform (RMLR) process but not fully placed in law until 1991 with the passage of the Resource Management Act, 1991. Those have impacted considerably on local government's functions, structures, responsibilities and outputs.

Another concern arising from institutional reforms in recent years has been a growing tendency for the Government to intervene in local government institutional arrangements, so that these come to compromise local government's ability to influence local outcomes. Example are provided in §9.4 and §9.5. The impacts can be significant for local government's 'fitness for purpose'. In recent years, the Government has tended, through legislative changes, to vary the purposes and responsibilities of local government with no evidential regard to the costs to residents or their communities. It also has tended to intervene with ministers overruling councils' decisions in several areas<sup>66</sup>. Many interventions have been destabilising.

A World Bank report has found many instances internationally where decentralisation's promise for more accountable government has been compromised, where reforms have been introduced without the accountability implications having been thought through and where the supply and demand sides necessary in building appropriate local governance structures fail to have been left unbalanced, so that local governments fail to be left adequately accountable to citizens<sup>67</sup>. This is a significant risk factor for future New Zealand local government and the paper returns to the matter of Government intervention below in the context of constitutional relationships between the two "spheres" of government.

The concept of *fitness for purpose* is a useful framework giving an overview of local government and to appreciate what this report is about<sup>68</sup>. It examines the meaning of *purpose(s)* (and of some of its synonyms) as applied to different aspects of local government. One meaning will be as is provided in the Local Government Act 2002 (including in the 2012 amendment)<sup>69</sup> for two reasons, and in other statutes.

One reason for using statutory definitions to discuss the "purposes" of local government is that those are what Parliament, as the highest public law making authority, has determined them to be.

A second reason is that the statutory meaning of the *purposes* of local government has from time to time replaced earlier definitions, lately in 2002, subsequently (in 2010) and then by amendment in 2012. The changes in the meaning of the *purposes* between 2002 and 2012, and in how they affect councils' service delivery choices, may well have some noteworthy future significance for local governance and for how local authorities (after having consulted

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<sup>66</sup> Comment supplied by email on 20 September 2013 by interviewee and respondent to draft report circulated 16 September 2013 for comments.

<sup>67</sup> Serdat Yilmaz, Yakup Beris and Rodrigo Serrano-Berthet, *Local Government Discretion and Accountability: A Diagnostic Framework for Local Governance*. World Bank Social Development Working Papers, Local Governance and Accountability Series, Paper No. 113/ July 2008, p.1

<sup>68</sup> The term *fitness for purpose* in this paper means 'good at doing its job' and, for local government, this implies how well or how badly given its legislated powers and allocations of resources (as referenced above).

<sup>69</sup> *Annex 1* to this report also provides a 'side-by-side' comparison, as between 2002 and as amended in 2012, of the meanings of the terms 'community outcomes' and the intent of the LGA's purposes and principles relating to local authorities and including the replacement of the term 'well-being' in relation to 'community outcomes' (2002) by the term 'interests' (in 2012).

with their communities) will go about ascertaining at least three things: first, what the *outcomes* are that the communities want to occur; second, what the expressions of those *outcomes* should be; and third, how the local authorities will plan for and decide what mixes of *outputs* (local public goods, services and regulation) they should provide to result in the *outcomes* sought. This point is further expanded below.

### 3.4 Subsidiarity and efficiency under different guises

This paper does also explore wider meanings of *purpose* as in considering “proper”<sup>70</sup> roles of local government (i.e., in a conceptual or normative sense and as the literature has canvassed) and how effectiveness and efficiency considerations are factors in the allocation of functions between different levels (e.g., between central and local government<sup>71</sup>) and between different types of local government (e.g., as between multi-function and single-purpose) local authorities. It is timely to consider now how efficiency concepts are and may be used in relation to local government.

For comparative purposes now, it is noted that the definition of a “proper” role for local government in New Zealand was used officially in 1960 and that its essential features, though not the actual term ‘proper’, were also reflected in the Government’s local government reform policy in 1987. The Economic Statement 1987 effectively coupled those features of a ‘proper’ role with the term, ‘subsidiarity’. The 1960 and 1987 policy positions are summarised below, followed by some consideration of both ideas with a view to comparing the 1960 and 1987 policy statements. It is hoped then to come to a reasoned view about how ‘fit for purpose’ the structure, functions and governance of local government appear to be in 2013, given both the present statutory purpose of local government and the matter of the extent to which those features reflect the main characteristics of the ‘subsidiarity’ principle.

So far, the wider concept of *subsidiarity* has been addressed cursorily. Subsidiarity – the principle that political power should be exercised by the smallest possible unit of local government – is a term now well known in discussions about local government<sup>72</sup>. So subsidiarity can also be about “sub-local” government. The most common form in New Zealand is that of “community board” where it can exercise such power. This form is addressed in §3.9 below.

In 1960, the Secretary of Local Government observed in a submission to a Local Bills Committee investigation into local government<sup>73</sup> that the *proper* role of local government involves three principles, abbreviated as follows: (a) that: it should cover the administration of all problems of peculiar local interest or importance; (b) each administering authority should have a common community of interest yet strong enough to discharge all its functions economically and efficiently and to warrant the central government devolving to it those local matters that the central government presently administers, and that the authority should employ a competent and qualified executive staff; and (c) that the final responsibility for as many local government functions as possible should be concentrated in the hands of one

<sup>70</sup> Secretary of Internal Affairs, *Submission to the Local Bills Committee*, Inquiry into the Structure of Local Government, (House of Representatives, Government Printer, Wellington, 1960)

<sup>71</sup> Note here that comparisons will not include discussion of federated systems of government but are limited to the unitary system of government as is the case in NZ and the UK.

<sup>72</sup> Microsoft Encarta College Dictionary (St Martin’s Press, New York, 2001), p1436

<sup>73</sup> Secretary of Internal Affairs, *Submission to the Local Bills Committee*, op. cit., 1960.

authority in each particular area or region, for the purpose of coordinated planning and execution of regional development.

The *proper* role of New Zealand local government as stated in 1960 (taken together with the above accompanying principles that the Secretary of Local Government then proposed), and the *subsidiarity principle* as stated in 1987, appear to be quite similar. However, the Minister of Local Government, in 1987, saw the reality quite differently.

### 3.5 A view of the shape of local government before 1989

Before reviewing briefly the main ideas, it is helpful to recall how New Zealand local government changed. Over the lengthy period up to 1988 from its origins, it developed basically two forms of territorial authority – municipal and county multi-function authorities and a host of single-purpose ‘ad hoc’ local bodies. There were also a few regional and united councils or regional planning authorities.

In 1987, the Government saw the weaknesses in local government essentially as:

- Confusion between councillors and senior management as to their roles;
- A built-in bias towards inefficiency resulting in from the absence of contestability in the provision of council services, most of which were provided in-house;
- Confusion between the commercial and non-commercial objectives in the management of council trading activities;
- The lack of appropriate incentives and accountability arrangements to enable elected representatives to hold managers accountable for resource use; and
- The diseconomies of scale in resource use and recruitment of quality management of too many small authorities.<sup>74</sup>

### 3.6 How the Government and the Treasury saw the task of reform

The Treasury’s 1987 brief<sup>75</sup> also took an overview of the roles and limits of private arrangements and of centralised government as did an Officials’ Coordinating Committee on Local Government in 1988, which issued two separate reports.<sup>76 77</sup>

For local government, the 1987 Government Economic Statement also took into account alternative ways of delivering local public goods and services efficiently. The brief also assessed the possible effectiveness of private arrangements and of alternative Government (here, local government) interventions to do so.<sup>78</sup> This resulted, through the LGAA 1989, in significant changes to local authorities’ conventional means of goods and services delivery. Applying the principle that ‘net benefit from reforms [should] exceed that of all other institutional arrangements’, several new approaches to delivery were mandated (in selected circumstances). Related principles driving these included the introduction of competitiveness and contestability of some delivery functions with other public or private suppliers in a market. One mechanism was the introduction of ‘Local Authority Trading Enterprises’ (LATES), now known as Council Controlled Organisations (CCOs). These were

<sup>74</sup> Peter McKinlay, *Local Government Reform: What was Ordered and What has been delivered?* Research Monograph No. 2, New Zealand Local Government Association Inc., 1994, p6

<sup>75</sup> The Treasury, *Government Management: Brief to the Incoming Government 1987*, Vol. 1, Wellington, 1987

<sup>76</sup> The Officials’ Coordinating Committee on Local Government, *Reform of Local and Regional Government, A Discussion Document*, Wellington, New Zealand, February 1988

<sup>77</sup> The Officials’ Coordinating Committee on Local Government, *Reform of Local and Regional Government, Funding Issues, A Discussion Document*, Wellington, New Zealand, December 1988

<sup>78</sup> The Treasury, *op. cit.*, p30

often referred to in common parlance under the rubric of ‘privatisation’. Rather than being privatised, however, LATEs were actually decentralised, largely independent public sector trading entities with their own boards reporting to the principal local authorities in each case. They were able to trade their services with external consumers but were subject to statutory rules, such as competitive pricing procedures, being aimed to preserve their competitiveness or contestability with any alternative suppliers in a relevant market. The relevant rubric was “competitive neutrality”. Some other functions – where there may already have been an alternative competitive provider market or where there was no need for the functions – were simply abolished or divested.

In reviewing the role of government, as such, the Treasury depicted *government* as a monopolist of coercive powers being a fundamental outcome of a condition of scarcity and the resulting competition between individual groups of individuals, for scarce resources. To enable collective gains, the Government provides the framework within which interactions occur by prescribing the rights of individuals – property rights (concerning control over resources), human rights (concerning their power vis-à-vis each other) and civil rights (concerning their relationship with the state).<sup>79</sup> It stated that the Government’s objectives could be “broadly encapsulated” by the terms effectiveness and efficiency: effectiveness in the translation of the preferences of voters into outcomes; and efficiency in the conduct of government administration.<sup>80</sup> The Treasury noted that proposals for constitutional reform might result in a better realisation of voter preferences but set this aside as a wider question. It also said that, besides the Constitution, the institutional structures through which an elected Government manages its affairs determines how well it would be able to realise broad voter preferences and that the brief [would] suggest directions of reform that should lead to more effective and efficient administration.<sup>81</sup>

The above summary of Government reform policy now sets out the background of the two 1987 statements on the Government’s view of the principles intended to guide the reform of local and regional government, including that of subsidiarity.

The Treasury’s brief also elaborated its position on ‘local and regional’ government. It noted that scarcity of physical and human resources is the basic constraint a society faces. It noted the importance of managing competing demands for resources in a way that takes into account the welfare of all those affected. And it noted the problems of limits on and costs of obtaining information (for decision making), of decision makers as actors within the constraints of ‘bounded rationality’.<sup>82</sup> It also identified, in addition to the foregoing problems, that of opportunism<sup>83</sup> (or incentive problems) in considering the organisation of the state – this also being an integrity issue. The matter of efficiency for local government was considered broadly and together with issues of public goods, property rights and contracting (and transaction) costs.<sup>84</sup>

The brief also focused on the matter of local democratic control and decision making and in particular to the ‘devolution of decision making power by central government to locally

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<sup>79</sup> *Ibid.*, pp51 – 53 ,

<sup>80</sup> *Ibid.*, p52

<sup>81</sup> *Ibid.*, pp52 – 53

<sup>82</sup> *Ibid.*, p11

<sup>83</sup> *Ibid.*, p23

<sup>84</sup> *Ibid.*, pp28-30

elected bodies through a centrally determined legislative framework'.<sup>85</sup> This approach was favoured ahead of others (including other instruments of government policy)<sup>86</sup> because (it asserted) better solutions will result if those making decisions are close to the problems being addressed and therefore that those who have the information should make the decisions.<sup>87</sup> Even so, the brief identified a need to be concerned with the effectiveness of this institutional option and to be sensitive over the method by which this particular form of decentralisation is achieved, and in particular with regard to the accountability and incentives it would create (including the circumstance where central government might provide the bulk of resources which the local authority would administer).<sup>88</sup>

The above is an evidence based summary of the Government's declared intentions at the time of how it went about reasoning its decisions that then determined the form and functions of local government still recognisable in 2013.

### 3.7 Functions, form, efficiency: subsidiarity and 'net benefit'

The Government Economic Statement of December 1987<sup>89</sup> set the basis for the then forthcoming local reforms. To recap, the two main criteria (above) adopted as preconditions for the intended reforms were where the net benefit would exceed that of all other institutional arrangements; and where the *subsidiarity principle* (covering allocations of functions being based on appropriate communities of interest, operational efficiencies being achieved, on there being clear, non-conflicting objectives, on there being trade-offs between explicit and transparent objectives, and on there being strong accountability mechanisms)<sup>90</sup> would apply.

The Government's policy reasoning underlying the 1987 Economic Statement and as summarised above hopefully throws light on its decisions about efficiency and the form and functions of local government and therefore, it can be assumed, also about its appropriate or 'proper' role.

The 1987 Economic Statement also effectively defined, for the Government's own *legislative* purposes, how it intended the *subsidiarity* principle to apply according to the matters it described in the second part of the statement given above. This bears comparison to other definitions, in order to maintain confidence in its robustness. Relevant here is the link between efficiency, subsidiarity and the 'proper' role of local government. In the 1960s era, there was an evident, common perception of local authorities being essentially technical and/or administrative entities,<sup>91 92</sup> often with little by way of recognised characteristics such as democratic accountability, representation, community advocacy or *governance*. Yet, references to local *government*, especially in the Local Government Commission Act 1967, repeatedly used the term *government*.<sup>93</sup> That local *government* should perform a *steering* role then seems to have been reinforced, as reflected in references above to the meaning of *governance*, including those of *steersmanship* and *helmsmanship*.

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<sup>85</sup> *Ibid.* p39

<sup>86</sup> *Ibid.* p35

<sup>87</sup> *Ibid.*, p39

<sup>88</sup> *Ibid.*, p40

<sup>89</sup> Michael Bassett, *op. cit.*, p62

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.* Note the Secretary of Internal Affairs' expansion of the meaning of 'proper' role of local government.

<sup>92</sup> Local Government Commission Act, 1967, s12

<sup>93</sup> *Ibid.*, s2

Most of the functions of the single purpose, territorial authorities and united or regional councils were reassigned from 1 November, 1989 – either to new, multi-functional regional councils or territorial authorities, to other mainly sub-national entities in the public sector or were abolished. An important point of clarification about local government in the post 1989 period is that, despite the Minister’s statement of the basis on which “local or regional government” (as a preferred institutional arrangement) would be selected, it was not a two tier system that was established so much as a non-federated system of *local* authorities with complementary functions, some functions of which needed a regional reference point and others a territorial one. Regional councils’ positions in relation to territorial authorities are not of a tutelage nature. Together they constituted local government and still do.

It may be useful to counterbalance the theoretical analysis in this paper with reference back to the Local Government Commission opinion expressed in 1988 and published in a memorandum to assist authorities affected by the 1989 local government reorganisation.<sup>9495</sup> The Commission, in exercising one of its statutory responsibilities, remarked that the improvement of local government required the creation of:

- a smaller number of units;
- managerially and technically stronger units;
- units which correspond with and serve existing rather than historical communities of interest;
- units which can perform allocated functions in an efficient and effective manner, though the wise use of limited resources and the advantages of possible economies of scale;
- units which through electoral processes and service delivery techniques can be more responsible to the input and needs of local people;
- units which generally have a multi-purpose functional capacity and responsibility;
- jurisdictional boundaries which as far as practicable can be made common for cost and benefit in relation to functions and which serve a similar community of interest.

The distinction between regional councils and territorial authorities introduced in 1989 generally still applies in 2013, though reforms since 2009 – especially in the consolidation of the eight former territorial authorities together with Auckland Regional Council into a new “Auckland Council”, structured as a unitary authority, have introduced new dimensions. With a new set of governance arrangements and new spatial planning responsibilities, and with new reforms in the making (e.g., in Wellington, Northland and Hawkes Bay) at the time of writing, these do now appear to be breaking the mould. This paper addresses the more recent reforms later based on theory and policy principles and seeks to draw these together.

### 3.8 ‘Optimal’ and optional institutional arrangements for local government

#### 3.8.1 An impossible task?

However, to consider the principles and issues first, it is useful to start with the view expressed by John Stuart Mill, 19<sup>th</sup> century political philosopher, that: *the very object of having a local representation is in order that those who have any interest in common, which*

<sup>94</sup> Local Government Commission, Memorandum to assist authorities affected by local government reorganization, 1988

<sup>95</sup> See, Peter McKinlay, Local Government Reform: What was ordered and what has been delivered. New Zealand Local Government Association Inc., Research Monograph Series, Paper No. 1, December 1994, Appendix I, p43

*they do not share with the general body of their countrymen, may manage that interest by themselves; and the purpose is contradicted if the distribution of the local representation follows any other rule than the grouping of those joint interests. There are local interests peculiar to every town, whether great or small, and common to all its inhabitants; every town, therefore, without distinction of size, ought to have its municipal council.*<sup>96</sup> Mill then asserted that, where there are “local” matters exceeding the grouping of the joint interests involved, then those compel the general government to take things upon itself which would be best left to local authorities if there were any that whose authority extended to the entire metropolis.<sup>97</sup>

A difficult task, certainly, but one where consistent principles can be applied to the task of deciding how *optimal* sets of arrangements can best be devised to fit common local arrangements at different levels of ‘localness’. In the 1860s, Mill clearly put “community” at the top of his list. That viewpoint still prevails through the principle of *subsidiarity*.

Finding a “right” size, structure and package of functions has been a perennial issue world-wide. Thinking seems to have moved on past earlier and often singular obsessions with amalgamation as a perceived solution to inefficiency in local government based on ‘economies of scale’. The 1989 reforms had their own principles, and extensive consultation preceded them. Bush has, and entirely reasonably, remarked that local government structure is not amenable to scientifically verifiable universal laws; rather political preferences and judgments permeate the issue of optimum size or capacity of a local authority.<sup>98</sup> Those limitations confront any attempt to do so and there have been many.

This paper has set out to assess the “fitness for purpose” of local government. Another review of how the policy behind the politics might be conceived still seems to hold some promise for at least two reasons.

First, “fitness for purpose” depends on judgments – in part intuitively made – of how institutional arrangements being put in place can bring together local government structures and functions across a national or a state jurisdiction to match overall “fit” with overall “purpose” across numerous sub-national jurisdictions and each having individual territorial requirements based on their physical geographies (including how their populations are distributed locally), on their resource constraints and on their resource opportunities. A national framework was devised in New Zealand’s 1989 reforms described briefly above. This might be seen as a national level set of preferences for a national system of local government.

Second, and once a perceived optimal national set of arrangements has been agreed, each local authority operating within it will need to structure its own arrangements in accordance with a range of statutory purposes. If there is to be democratic accountability, the “optimisation” will need built-in freedom of choice for each local authority to tailor its own institutional arrangements in accordance with its own community’s set of local preferences and conditions.

At both levels, the processes seek to obtain optimal arrangements from deliberate institutional designs.

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<sup>96</sup> John Stuart Mill, *Utilitarianism, Liberty and Representative Government*, J. M. Dent & Sons Ltd, London. Reprinted 1962, p.350

<sup>97</sup> *Ibid.*

<sup>98</sup> Bush, *op. cit.*, p.238

To do so, it therefore takes in more than one approach. One is to judge how “fit” will be achieved taking into account a number of factors that can contribute to “purpose”. An example is to view institutional design as a factor in enabling local government to represent and advocate for its communities and provide for local public goods and services. Approaches will also include both ‘ex ante’ and ‘ex post’ overviews of the performance of local authorities, and of local government as a sector. Of course, ‘ex ante’ will have to see how communities view their councils’ long term plans. ‘Ex post’ will see how well they did using, for example, external audit, records of local authority activities compared to their plans and from other sources covering positive and negative instances of councils’ behaviour. These approaches, in accordance with the law, are explicit parts of planning and reporting in New Zealand local government.

Taking those into account, this paper also reflects on how New Zealand local government and local authorities “look” when based on criteria developed from recognised theory – in this case, linked to elements of public sector economics – where those criteria help to gauge “goodness of fit” of functions with form and structures. It also helps think about how, in reality, a mix of these factors may yield only a sub-optimal (or a “second” or “next best”) result.

A best “fit” for different functions in relation to (or within) the single boundary of a multi-function local authority can be a case in point. As noted under heading 5.4 below, and as enabled in New Zealand by the LGA 2002<sup>99</sup>, *collaborative* approaches between adjoining local authorities can otherwise simplify the task for councils to deal with what are otherwise inter-authority ‘spillovers’ (e.g., by charging, contracting or agreements). “Collaboration” can be an alternative, or a supplement, to structural solutions in some instances and already occurs in New Zealand. As noted, the law also gives councils legitimate bases to do so.

### 3.8.2 “Optimal” arrangements based on functions and forms

Here the paper draws on some work by Professor David Lowery<sup>100</sup> and others to help also in drawing informed conclusions about criteria for estimating optimum size, structure and resource allocation in New Zealand local authorities. Lowery has described the views of the ‘consolidationist’ and the ‘fragmentationist’ schools of thought on local government institutions. It is useful to see the viewpoints of both sides to evaluate the New Zealand arrangements and also to compare these with some official viewpoints identified as part of the review process prior to 1989, because doing so should help in linking some fundamental principles with strategic realities including the requirement to formulate long term plan purposes, functions and form (viz., in devising local level institutional arrangements that, at the best, will support the achievement of local outcomes where those arrangements include multiple functions and entity structures).

To the *consolidationist* school, the first purpose of jurisdictional boundaries within metropolitan regions lies in how they create, modify and help articulate the content of citizens’ self-interest and then provide processes to resolve conflicts of interests. Following the *consolidationist* school, in a multi-function local authority where different services are likely to have correspondingly different natural catchments or areas of benefit, reasoned

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<sup>99</sup> LGA 2002, s.41

<sup>100</sup> David Lowery, *A Transactions Costs Model of Metropolitan Governance: Allocation Versus Redistribution in Urban America*, University of North Carolina at Chapel Hill, (undated but c. 2001), Abstract

compromises based on agreed policies should be possible. Any evaluation of the appropriateness of a selected, multi-function jurisdiction should bear in mind any differences between the “natural” or “ideal” packages (“catchment areas”) – in other words between the “natural” boundaries of each distinct function – local good – that needs to be contained (or ‘internalised’) within the responsible jurisdiction.

The *fragmentationist* school will normally stress, as a criterion for selection of institutional arrangements, the efficiencies from given boundary arrangements that can contain (or “internalise”) individual functions based on the area of impact, or the “catchment”, corresponding to each individual function. Taken to the extreme, this view might suggest a different single purpose authority for each function or set of interests. It is reminiscent of that part of New Zealand local government, with several hundred ‘single purpose’ local authorities existing prior to 1989, though that ‘ad-hoc’ proliferation of authorities came about incrementally. The political and technical transaction costs caused by the existence of many single purpose authorities were likely considerable and the resulting form of local government confusing for members of the local community and other stakeholders. With the potential for collective decision making by other possible alternative means, whether cross-boundary or within a single, multi-function jurisdiction, those other means could reduce transaction costs in ways that favour a multi-function option.

The image of *consolidated* local government relying on a monopolistic local bureaucracy is something of a caricature that the public choice school has highlighted on the policy front, but service provision and production – in all types of government arrangements – is today (rather) a complicated mix of direct and both public and private third party actors seen to be heterogeneous in the extreme.<sup>101</sup>

Another consideration in selecting jurisdictional boundaries lies in the facilitation of ‘sorting’, especially by way of defining and providing distinguishable tax and service packages. At a fundamental level, boundary-determined distinctions between allocative and redistributive choices are likely to need to identify property rights and political transaction costs which must be overcome in the adoption of metropolitan wide urban policies.

A third consideration in selecting jurisdictional boundaries is also to define the political property rights that largely determine the natures of independent self-interests.

### 3.9 ‘Actual’ and ‘proper’ roles of local government in theory

An American study<sup>102</sup> in 1970 examined some ‘actual’ and ‘proper’ roles of local government, there being a distinction between them based on the identification of one role for local government in terms of its *actual* perceptible performance and of another with its so-called *proper* (or appropriate) role based on a principled public values system. The major distinction identified was (as in the case of New Zealand local government) that it is part of a participatory democracy, exists to *govern* (i.e., to represent constituents, to decide priorities

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<sup>101</sup> *Ibid.*

<sup>102</sup> A. F. Leemans, *Changing Patterns of Local Government*, International Union of Local Authorities, The Hague, 1970

among and to allocate different community values,<sup>103</sup> to allow community members to air complaints<sup>104</sup> and to arbitrate among conflicting interests.<sup>105</sup>

Some studies have examined the matter of efficiency in decentralised versus centralised systems, and others the matter of obtaining optimal arrangements for providing local public goods and services under different structural arrangement. One area of study has explored the conditions under which “efficiency” may be obtained.

The school of thought on which that study is based – i.e., the “fragmentationist” school<sup>106</sup> – follows the thinking of public choice theory on which Ostrom’s writing is based (see below).

The reason for local government and the meaning of “local” come to what the primary community of interest is in each case, and why, and how it may help in defining jurisdictional boundaries and deciding on local taxes and charges. It also comes to the *subsidiarity* principle and the matter of devolving matters to the lowest level consistent with there being the ability and competence to address them. Reasons for allocating functions and for deciding the levels and structures to undertake them will be based on communities of interest as well as on technical considerations. Should a public good or service be provided centrally or locally, and why? If locally, what is the most appropriate size of an authority and why? How can its area of jurisdiction and boundaries be designed to “internalise” the benefits of provision to the relevant community? If not, can the service also be provided to others outside the relevant jurisdictional boundary, assuming the demand is there, and subject also to charges being levied for its provision in order to prevent the ‘free-rider’ problem? (The possibility of *collaboration* is introduced above.) Should a local authority be multi-function or single-purpose? What is a ‘relevant’ community where the jurisdiction delivers different services each with a different “natural” supply catchment area. (It is assumed that where a jurisdiction ‘internalises’ the costs of services supplied, it can tax or charge for them directly.) It will need to judge, as a matter of policy, what might be the best arrangement of different functions within the multi-function jurisdiction to balance the community’s “revealed” preferences.

There is no claim here to having the last word. There are many questions. These have been critiqued in literature having to do with several possible types of reform. This paper cites a number of possibilities and adds a caveat based on the writing of Dollery and Robotti.<sup>107</sup> They acknowledge, despite an alleged<sup>108</sup> comparative paucity of scholarly investment in the analysis of local government that a great deal has still been accomplished building on seminal work by Wallace Oates.<sup>109110</sup> Taking work by Oates together with the said caveat into account, there are some basic points to note about local government reforms common to local government worldwide and that should help the assessments (below) of NZ local government’s “fitness for purpose”.

<sup>103</sup> David Easton, *The Political System*, (A. A. Knopf; New York, 1953), p132

<sup>104</sup> H. J. Luping, *The Local Government Commission: The Problems of Amalgamation*, (Xerox Research Paper in New Zealand Government and Politics: Political Science Honours, Department of Political Science and Public Administration, Victoria University of Wellington, 1965), p13

<sup>105</sup> Oliver P. Williams, “A Typology for Comparative Local Government”. In Philip B. Coulter (ed), *Politics of Metropolitan Areas – Selected Readings*. (T. Y. Crowell Coy, New York, 1967, p56

<sup>106</sup> David Lowery, *A Transactions Costs Model of Metropolitan Governance: Allocation Versus Redistribution in Urban America*, University of North Carolina at Chapel Hill, (undated but c. 2001), Abstract

<sup>107</sup> Brian Dollery and Lorenzo Robotti, *The Theory of Local Government Reform – Introduction* (in Brian E. Dollery and Lorenzo Robotti, “The Theory and Practice of Local Government Reform”, Edward Elgar Publishing, Cheltenham, UK, 2008),

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, p. xi

<sup>110</sup> Wallace E. Oates, *Fiscal Federalism*, New York, Harcourt Brace Jovanovich, 1972

Dollery and Robotti propose four main elements of reform<sup>111</sup>. *Jurisdictional reform* is about revising the “authority and autonomy” of local government relative to other tiers of government. *Functional reform* is about the “formal and informal” roles and responsibilities of local government entities. *Financial reform* is about local government’s revenue and expenditure dimensions. *Reform of the internal organisation, administrative and managerial apparatus* includes the structure and functions of council and committee as well as administrative units and of asset and resource management. Structural reform takes in the reconfiguration of local government in terms of numbers, types and sizes of local authorities (e.g., territorial or special purpose bodies)<sup>112</sup>.

There is the notion that changes to local government’s structure can affect “the operational efficiency of municipal governance without diminishing the efficacy of local democracy”<sup>113</sup>. This carries also the idea that, in a decentralised system of local government, it is *conceptually* possible to identify an optimum size for local government and that structural reform programmes should “strive to modify the number and size of local councils to approximate this to approximate this optimum size.”<sup>114</sup> This idea also underlies the attempt in this paper, pursued below, to judge the “fitness for purpose” of New Zealand local government today.

Returning to Oates<sup>115</sup> and his successors, Oates claimed that the traditional theory of public finance has made a strong case for a major role for fiscal decentralisation. Oates set out an allocative efficiency case for such a major role. (This is related to the well-known Tiebout theorem where Tiebout provided modifications to earlier decentralisation models so that people could ‘reveal’ their preferences for local public outputs and generate “efficient” outcomes in the public sector.<sup>116</sup>) Based on improved allocation of resources in the public sector, this has four premises.

One is that regional or local governments are better placed than central governments to adapt outputs of public services to the preferences of regional or local consumers. Central solutions presume that one size fits all. And they may do in the rare case of ‘pure’ public goods. A second premise is that given there being multiple households, individuals can seek out jurisdictions that provide the (decentralised) outputs they want. Third, compared to central government monopoly suppliers, decentralised public good providers in some cases can face competition from neighbouring alternative providers with greater competitive incentives. Fourth, decentralisation may better encourage experimentation and innovation with individual jurisdictions being freer to adopt new public policy approaches.<sup>117</sup>

Oates has argued that decentralisation<sup>118</sup> can be a more efficient approach because, in the case of locally supplied public goods, jurisdictions can be better devised to avoid ‘spillovers’, or negative ‘externalities’. We will look at different possible ways to do this. But the

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<sup>111</sup> Dollery and Robotti, *op. cit.*

<sup>112</sup> Dollery and Robotti, *op. cit.*, p16.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Wallace E. Oates, *On the theory and practice of fiscal decentralisation*, Centro di Ricerca Interdipartimentale di Economia delle Istituzione, CREI Working Paper no. 1/2007, pp2-3

<sup>116</sup> *Ibid.*, p.5. The Tiebout Theorem aimed to simplify a technical difficulty that a conventional decentralisation model had caused by requiring that there be no mobility of economic units across jurisdictional boundaries. The Tiebout Theorem proposed that decentralisation models should be permitted to occur under modified assumptions. In this way, it was assumed that people could exercise locational choice as a way expressing their preferences for local public goods.

<sup>117</sup> *Ibid.*, pp.2-3

<sup>118</sup> *Ibid.*

argument is that the optimum allocation of functions occurs where there is “a close [geographical] fit” between the jurisdiction providing the service and the population that benefits from it.<sup>119</sup> Even so, there are at least three logically possible relationships between the “boundaries” of a collective good and the boundaries of the government providing it. One is where the collective good reaches beyond the boundaries of the council that provides it. This is a cause of inefficiency because the benefits of the council’s activity provide an external economy which is less than optimal<sup>120</sup>. A second is that the collective good reaches only a part of the constituency that provides it and so generates an ‘internality’, meaning that the good reaches only a subset of the population in a jurisdiction. Efficiency will also be suboptimal because there will still be a need (If partial) for some local public goods<sup>121</sup> so they will have to be provided in any case. The third possible relationship is where the boundaries of the collective good are the same as the jurisdiction that provides it<sup>122</sup>. This would be optimally efficient in principle. But as seen below, such optimal efficiency can be more difficult to achieve the more different and the more disparate functions a multi-function local authority with a single jurisdictional boundary has to provide. This is a significant local government reform policy issue.

Ostrom argued similarly,<sup>123</sup> drawing analogies between local private and public sectors where: local government equates to an economic market situation; public agencies replace business firms; municipal services replace consumption goods; and citizens function as consumers. Ostrom also drew attention to the efficiency need to ‘internalise’ external effects not only between private actors where there might otherwise be uncompensated effects but between neighbouring local jurisdictions where, without there being alternative means to ‘package’ functions, there may well be ‘external’ or ‘spillover’ effects between jurisdictions. The ‘free rider’ problem, as identified above and where citizens in one jurisdiction use public goods or services provided by another, may be resolved through the use of taxing or alternative charging mechanisms.<sup>124</sup>

The third part of Ostrom’s ‘proper’ role describes [local] public goods as the maintenance of preferred states of community affairs<sup>125</sup> where a ‘package’ of different locally provided goods and services involve trade-offs between the community, or parts of it, and the local jurisdiction is accepted. Most likely, the optimum ‘package’ will contain many imperfections but somewhere there will be a more or less acceptable balance of conflicting community goals influencing the content of local policies.<sup>126</sup> The likely institutional outcome is a multi-function territorial local authority that is the ‘package’ of the activities it undertakes within its boundaries.<sup>127</sup> The ‘package’ meets four of Ostrom’s criteria, those being:

- Control – requires that the boundary conditions of a political jurisdiction include the relevant set of events to be controlled,<sup>128</sup>

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<sup>119</sup> *Ibid.*

<sup>120</sup> Mancur Olson Jr., *Strategic Theory and its Applications – The Principle of “Fiscal Equivalence: The Division of Responsibilities among different levels of government.* (In *American Economic Review*, 1969, vol. 59, Issue 2, pp. 479 m- 487), p. 482

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Vincent Ostrom et. al., “The Organisation of Government in Metropolitan Areas: A theoretical enquiry”. In Jay S. Goodman (ed), *Perspectives on Urban Politics.* (Allyn & Bacon, Inc: Boston, 1970, pp. 98 – 121)

<sup>124</sup> *Ibid.*, p103

<sup>125</sup> *Ibid.*, pp103-107

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*, p106

<sup>128</sup> *Ibid.*, p107

- Efficiency – comprising dual standards of favourable scale economies and effective control;<sup>129</sup>
- Political representation – requires the inclusion of the appropriate political interests within its decision making arrangements;<sup>130</sup>
- Local self-determination – requires that the implementation of the other three criteria be controlled by decision of the citizenry in the local authority.<sup>131</sup>

It should be noted, since this paper is to assess the ‘fitness for purpose’ of New Zealand local government, that its present arrangements should be able to be seen to reflect the above criteria to a greater or lesser extent. In making this judgment, it may also be necessary to accept that in any unitary state only a “second best” allocation of resources can occur where a number of small jurisdictions compete for mobile firms and households by supplying local public goods and factors of production<sup>132</sup>. At the local level, there may still be only an incomplete set of tax instruments at the local authority’s disposal to achieve an efficient allocation<sup>133</sup>. This view has it that if taxes are available at the local level and if local authorities maximise net land rents generated within their jurisdictions, they will have the correct instruments and the correct incentives to realise an efficient allocation. In this situation, the proponents of this view speak of a *first-best* policy at the local level<sup>134</sup> rather than simply a second-best policy. It is a viewpoint to consider in judging the “fitness for purpose” of New Zealand local government and considering also that it denies, virtually by definition, the possibility otherwise of there being first-best allocation other than at the central government level.

### 3.10 A New Zealand scenario

#### 3.10.1 Applying principles to the assignment of functions

Yet another contributor has proposed, in a discussion related to New Zealand local government, a response to questions of ‘effectiveness’ and ‘efficiency’, a modified approach using three principles to help assign functions. This approach is based on the view<sup>135</sup> that councils’ *core business* is decision making (and that thereby excludes tangible services from qualifying either individually or collectively to be categorised as another core service), i.e., that:

- Local (rather than central) government should be responsible for providing those services where preferences vary substantially among local communities, together with willingness to pay the associated costs in tax;
- Local (rather than central) governments should predominantly finance services;
- Where preferences do not vary substantially between local jurisdictions, and where there are powerful allocative efficiency and equity arguments against decentralised

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<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> Dietmar Willisch and Jorg Hulshorst, A Second-Best Theory of Local Government Policy, in *International Tax and Public Finance* 7, 5-22(2000) 2000, Boston. Kluwer Academic Publishers. Retrieved: <http://link.springer.com/article/10.1023/A:10087496282737#page-1>

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Local Futures Research Project, *Local Government Strategy and Communities*, Institute of Policy Studies, School of Government, Victoria University of Wellington, 2006, p42

provision, there is no reason for services to remain local government responsibilities.<sup>136</sup>

Compared to the reality of New Zealand local government, that may add up to a rather extreme assumption.

The New Zealand Local Government Futures Research Project<sup>137</sup> observed – as is worth reiterating here – that these principles acknowledged a tension between the democratic utility of decision making and the consideration of allocative efficiency, where economies of scale might indicate a preference in favour of regional or national decision making.<sup>138 139</sup> This proposition rests on the argument that councils' *core* business is decision making and that responsibility for services should be considered only in clear cases of market failure. Otherwise, services (it is argued) should be delivered by external providers under contract<sup>140</sup>.

That there may be a tension between the points of view raises two related points germane to the main objective of this paper – i.e., to ascertain whether New Zealand local government is 'fit for purpose'.

First, is the fact that the structural form and the functions of New Zealand local government that were implemented from 1989 remain quite similar in 2013, irrespective of some boundary changes and amalgamations that have occurred during the intervening period. The decisions imposed in 1989 were based on relevant policy analysis and consultation, including with major stakeholders.

Second, is a comment on the allocations of functions carried out in 1989, to which the matters of whether there might be market failure and whether responsibility for delivery deserves some response. The theoretical implications need to be understood in light of the actual powers provided to councils and of the practical implications for them in implementing those powers, in order to consider the broader 'fitness for purpose' picture.

### 3.10.2 Options to apply according to different principles

The LGA 2002 incorporated provisions that differentiated between the matters of *having responsibility for* the delivery of services and of *delivering* services, as such. The differentiation has to do with whether and where functions had been clearly devolved to councils to *take responsibility* and to *fund* directly or to *take responsibility and* to use their discretion in deciding *what different operational means*, if any, should be used to deliver council funded services. Taking responsibility for service delivery (i.e., for *the provision* of services) is not necessarily the same thing as *delivering* them because of the possibilities of alternative service delivery.

Many options were made available in 1989, and remain available in 2013 for councils to choose. One was direct provision and delivery. A second was a 'corporatised' option achieved by setting up 'Local Authority Trading Enterprises' [LATEs] (CCOs) which would not be wholly council funded or which may be able to operate fully "off-budget" with

<sup>136</sup> Stephen Bailey, *Local Government Economics: Principles and Practice*, Macmillan, Basingstoke, pp226

<sup>137</sup> Local Futures Research Project, 2006, *op. cit.*, p42

<sup>138</sup> *Ibid.*, p42-43

<sup>139</sup> Bailey, *op.cit.*, p223

<sup>140</sup> Local Futures Research Project, 2006, *op. cit.*, p43

independent revenue sources. To substantiate whether a LATE could act competitively in a market with other suppliers, would be based on a variety of possible tests. One example was in the road contracting sector, by applying competitive pricing procedures. Thus, a council could be responsible for provision – i.e., for guaranteeing and underwriting it – but might deliver it directly or not. As above, a LATE (or a CCO) might do this. Or, as further options, the council might contract delivery out competitively to a private provider or providers. This local government scenario is one, no doubt among many possible illustrations, of *how* the ‘net benefit’ incurred might turn out to exceed ‘all other institutional arrangements’ with the use of a mix of different possible arrangements. These depended on matters such as competitiveness, contestability, the existence of public goods, the assessed sustainability of different options, perceptions of welfare need and equity (‘merit goods’) and sometimes least of all, ownership. And they depended on trial and error guided by expressed principles.

### 3.11 Subsidiarity: local & “sub-local” government in New Zealand

*Subsidiarity* as introduced in §2.3 above means that “political power should be exercised by the smallest possible unit of local government”<sup>141</sup>. It is also common to see *subsidiarity* as being used to refer to citizen participation in local governance. There has been considerable movement in international thinking over recent years in the matter of citizen participation being generated through the use of ‘social capital’, responsible governance and citizen centred governance’

Units of local government in New Zealand smaller than territorial authorities are community boards<sup>142, 143</sup>. Some councils delegate authority to community boards to make decisions, being the only mechanism to create boards. Their main functions are to advocate for and represent community interests, to report to their councils on matters referred for consideration, to make annual submissions to their councils on expenditure, to maintain an overview of services that their councils provide in the community, to communicate with community organisations and special interest groups and to undertake any responsibilities that the council delegates to them.<sup>144</sup> The roles of community board members are varied and are to have from 4 up to 12 members, comprising elected and appointed members, the latter comprising no more than half the total number of members. It may possibly be said that they are subsidiary bodies where and if they exercise political power at a level lower and smaller than a local authority but it should also be remembered that a board’s power is not entrenched and that council can withdraw such a delegation of authority. Community Boards are based on suitable configurations of ‘communities of interest’. Wards and constituencies are geographical divisions of local authorities for electoral and representation purposes.

In 2009, the Royal Commission on Auckland Governance<sup>145</sup> proposed arrangements for Auckland governance, in particular, one option among other alternatives considered, that would have resulted in an Auckland Council as a unitary authority and six local councils with specified local functions and no community boards.<sup>146</sup> It considered that, at the next level

<sup>141</sup> Microsoft Encarta College Dictionary (St Martin’s Press, New York, 2001), p1436

<sup>142</sup> The Local Electoral Act 2001 provides for community boards. Community Boards are provided for under

<sup>143</sup> The LGA 2002, Part 4 provides for the existence, governance and management of Community Boards.

<sup>144</sup> Local Government New Zealand – We are LGNZ, *Community Boards*, updated 9 September 2013

<sup>145</sup> Royal Commission on Auckland Governance, *Volume 1, Report*, retrieved from: [www.royalcommission.govt.nz](http://www.royalcommission.govt.nz), March 2009

<sup>146</sup> *Ibid.*, p.323

down, local councils would be able to focus on local matters and to have effective community engagement mechanisms with clearly defined statutory powers and responsibilities, removing the need for community boards.<sup>147</sup>

In the event, the Government disregarded the Commission's recommendation and legislated for a single unitary authority for greater Auckland, without the Commission's proposed six local councils, while retaining the community board mechanism.

At the time of writing, there is change afoot.

In March 2012, the Government's Better Local Government Programme envisaged two phases of work with a first Bill enacted in 2012 and a second proposed for mid-2014<sup>148</sup>. This sought agreement to apply the Auckland local boards' model where relevant to other regions in New Zealand where relevant. If implemented, new provisions reflecting aspects of the Auckland model will provide for other unitary authorities smaller than Auckland (where they exist) will be subject to statutorily mandated community boards not dependent on the discretion of the governing body.<sup>149</sup>

The Local Government Commission, which has statutory responsibilities to recommend to the Government changes to local government, has several proposed changes "in the pipeline"<sup>150</sup>. These appear likely to result over coming years in more and larger unitary authorities and thus in fewer local authorities than now exist.

#### 4 Purposes & principles of the LGA 2002 & of local government

The purpose of the Act (Table 1 below) as amended in 2012 and the *purposes* and *principles* (Tables 2 and 3) that in turn apply to local government in NZ rank above others in the hierarchy of provisions in the Act.

**Table 1, s3, Purpose of the Local Government Act 2002**

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.

Like the purposes and principles of local government itself, copied in Tables 2 and 3 below and as compared (i.e., to the purposes and principles variously in place in 2002 and in 2012

<sup>147</sup> Royal Commission on Auckland Governance, *op. cit.*, p.324

<sup>148</sup> Report by the Minister of Local Government to the Cabinet Economic Growth and Infrastructure Committee, *Better Local Government: Local Boards outside Auckland*, 20 June 2013.

<sup>149</sup> *Ibid.*, p.3

<sup>150</sup> Local Government Commission, *Update*, 19 September 2013.

for local government), the Act’s own purpose (Table 1 above<sup>151</sup>) was also amended in 2012 by replacing the four well-being’s previously covered. The possible effects of the changes in 2012<sup>152</sup> covering the *purposes* both of the Act and of local government, and the *principles* of local government, are discussed below because the Act’s own purposes and principles explicitly encompass, together, values of integrity, governance, transparency (openness) and accountability and also coincide with the values of TI.

Table 2 below compares alongside-each other the *purposes* of NZ local government as first inserted in the LGA in 2002 (column 1) and then by way of amendment in 2012 (column 2). The Act’s own purposes, and then the purposes and principles prescribed for local government, sit at the top in the hierarchy of the Act’s provisions and together they provide the strategic direction for how the Act’s other provisions should be fulfilled. They are therefore highly significant in this discussion.

<b>Table 2: s10: Purposes of New Zealand Local Government</b>	
<b>s10, LGA 2002 (Col. 1)</b>	<b>s10, LGA 2002 as amended in 2012 (Col. 2)</b>
<p><b>10. Purpose of local government</b></p> <p>(1) The purpose of local government is –</p> <p>(a) To enable democratic local decision-making by, and on behalf of, individuals in their communities; and</p> <p>(b) To promote their social, economic, environmental and cultural well-being in the present and for the future.</p>	<p><b>10. Purpose of local government</b></p> <p>(1) The purpose of local government is –</p> <p>(a) to enable democratic local decision-making and action by, and on behalf of, communities; and</p> <p>(b) to meet the current and future needs of communities for good-quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost-effective for households and businesses.</p> <p>(2) In this Act, <b>good-quality</b>, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are –</p> <p>(a) efficient; and</p> <p>(b) effective; and</p> <p>(c) appropriate to present and anticipated future circumstances.</p>

Table 3 below contains the text (current in July 2013) of the LGA 2002 ‘Principles relating to local authorities’. Its relevance to the theme of this paper is clear though the internal consistency within it of some ‘Principles’ is discussed below.

<b>Table 3: s14: Principles relating to local authorities</b>
<p>(1) In performing its role, a local authority must act in accordance with the following principles:</p> <p>(a) a local authority should—</p> <p>(i) conduct its business in an open, transparent, and democratically accountable manner; and</p> <p>(ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:</p> <p>(b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and</p> <p>(c) when making a decision, a local authority should take account of—</p> <p>(i) the diversity of the community, and the community’s interests, within its district or</p>

<sup>151</sup> Local Government Act 2002, Amendment Act, 2012, (LGA 2002 AA 2012), s3

<sup>152</sup> *Ibid.*, ss3, 10, 14

**Table 3: s14: Principles relating to local authorities**

<p>region; and</p> <p>(ii) the interests of future as well as current communities; and</p> <p>(iii) the likely impact of any decision on the interests referred to in subparagraphs (i) and (ii):</p> <p>(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:</p> <p>(e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and</p> <p>(f) a local authority should undertake any commercial transactions in accordance with sound business practices; and</p> <p>(fa) a local authority should periodically—</p> <p>(i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and</p> <p>(ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and</p> <p>(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and</p> <p>(h) in taking a sustainable development approach, a local authority should take into account—</p> <p>(i) the social, economic, and cultural interests of people and communities; and</p> <p>(ii) the need to maintain and enhance the quality of the environment; and</p> <p>(iii) the reasonably foreseeable needs of future generations.</p> <p>(2) If any of these principles conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i) [above]</p>
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## 5. Local government purposes, principles, outcomes & significance

### 5.1 Purposes and principles of the LGA 2002: a matter of purity?

The overall purpose of the Act is *to provide for democratic and effective local government that recognises the diversity of New Zealand communities* (Table 1 above). Through the Act’s own purpose *and* the purposes and principles of local government itself (Tables 2 and 3), councils must also seek to achieve sustainable development and intergenerational equity objectives, to take these into account in their planning and operational activities and, “in performing their roles”, to provide for the qualities of transparency, democratic accountability, effectiveness and efficiency.

The reference, first introduced in the LGA 2002 ‘purpose of local government’ clause (Table 2) in the forms of the four broad outcomes that had then qualified the concept of *wellbeing*, and had given councils a wide discretion to decide what activities they would undertake, subject to the provision that *they had consulted their communities in making the decision*. The four broad outcomes were [to promote] *social, economic, environmental and cultural well-being*. Together with general empowerment, also introduced in 2002, that may have been more permissive than had ever before been the case with local authorities’ decision-

making discretions. That has been disputed.<sup>153</sup> Nevertheless, the 1974 Act was still highly prescriptive and far more so than the 2002 Act.

In March 2012, the Minister of Local Government announced a new eight point plan to reform local government. The first point was about refocusing its purpose. The Minister said that the proposed changes were ‘about central and local government working together in challenging financial times to secure a brighter future for New Zealand.’<sup>154</sup> The Department of Internal Affairs had advised the Minister in its December 2011 ‘Briefing Notes’ that “local authorities operate autonomously of central government and are empowered to decide which activities to choose and how to pay for them. Councils make these decisions in consultation with the local communities that supply much of their funding and they are accountable to these communities, not to Ministers – including the Minister of Local Government”.<sup>155</sup> <sup>156</sup> Cheyne remarks that while local government (in 2002) was given a power to promote the four *wellbeings*, the *wellbeings* provision was not a prescription; indeed the 2002 Act sought to avoid prescription and instead to be permissive.<sup>157</sup>

This changed with the 2012 amendments. In both the Act’s and Local Government’s purposes (Tables 1 and 2 above),<sup>158</sup> the removal of the *wellbeings* sub-clause that the 2012 amendments to the LGA 2002 had effected, also removed their direct link between the prior references to *social, economic, environmental [and] cultural [outcomes]* that had clearly described the intended scope of *wellbeing* in the Act before its 2012 amendment.

The amendment now requires Councils instead, in meeting the current and future needs of communities, to provide *good-quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost-effective for households and businesses*.<sup>159</sup>

The 2012 replacement amendments have arguably placed *means* ahead of *ends* and have in effect changed the operational meaning of outcomes to outputs. The amendments do not in themselves identify as the primary *real* purposes, the *outcomes* and their *impacts* that communities might seek to have come about as results of their councils’ activities. Rather, these provisions now seem to define for councils what categories of outputs the law intends them to target rather than first to seek their communities’ views on *their* preferred outcomes.

By doing this, and by repealing the *wellbeing* outcome, the 2012 amendment has now not only put means before ends but its amendment of the Act’s ‘purposes’ and ‘principles’ sections also appears to provide a double bias against councils exercising their discretions under general empowerment provisions. First, it does this by giving nominal precedence in the ‘purposes’ and ‘principles’ clauses to the provision of *local infrastructure, public services and regulatory functions*. And second, those same sections of the Act now also include a “beneficiaries” target group (i.e., households and businesses) to gain the benefits that any of

<sup>153</sup> McKinlay has noted, however, that the LGA 1974, contrary to understanding, already contained a wide general power. See Peter McKinlay, *Reaping the benefits: Local Government Act 2002 in Practice – Power of General Competence, the Myth*. A presentation to the NZIPA Conference, 2004.

<sup>154</sup> Department of Internal Affairs, *Better Local Government*, Wellington, New Zealand Government, 2012, p3

<sup>155</sup> Department of Internal Affairs, *Briefing to the Incoming Minister of Local Government*, retrieved from: <http://www.dia.govt.nz/pubforms.nsf/URL/Brief/BriefingLocalGovernment2011.pdf>, 2011

<sup>156</sup> Christine Cheyne, *Better Local Government Reform Proposals: Improving or Diminishing Local Government? Policy Quarterly*, Vol. 8, Issue 2, May 2012, p38

<sup>157</sup> *Ibid.*

<sup>158</sup> Local Government Act 2002, ss 3 & 10

<sup>159</sup> *Ibid.* See also Table 2 above.

these three categories of outputs would convey. This configuration might thereby predetermine what priorities councils' may *otherwise* set arising from their wider communities' expressed preferences.

It is noted that the 'principles' section of the 2002 Act, 2012 Amendment (Table 3 above)<sup>160</sup> does also include reference to "desired outcomes" remarking, for the particular purposes of collaborating<sup>161</sup> and cooperating with other local authorities, that it should do this as *it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources*. The purposes of the Act itself<sup>162</sup> and the 'Interpretation'<sup>163</sup> in addition both describe "community outcomes" as being *the outcomes that a local authority aims to achieve in meeting the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions*. The Act also became more confusing in 2012. Why?

The definition of 'community outcomes', in association with the 'outputs' framing<sup>164</sup> of section 10 introduced in 2012, still appears to presuppose what outcomes communities may wish their councils to aim at and no longer seems to retain the 2002 discretions (also in s10 in its 2002 version) that related to *wellbeings*. This seems contradictory.

From this, there may be a question (and a fine point) about what discretion a council would now have, where some 'community outcomes' sought do not include either one or more of the three *infrastructure, public services and regulatory* categories, to decide how to choose its expenditure priorities between an expressed outcome and one or any of those three 'output' categories? There may therefore also be a question about how much decision-making discretion a council has (depending on particular circumstances but where conflicting demands for resources have arisen) between providing local infrastructure, local public services or regulatory functions, on one hand, and on the other, by providing outputs that do not fall within any of these categories but that would (in a community's and council's views) cater to other social, economic, and cultural 'interests of people and communities, as being of higher priority. Even if fine points, these are enshrined in law and deserve attention.

The principles (Table 3) still incorporate directions to councils, in taking a sustainable development approach to performing their roles, to take into account *the social, economic, and cultural interests of people and communities* and they identify, among those principles, the intergenerational needs of communities.

This may have given rise to an issue that is simply an irritation borne of the Government's desire to intervene in local authorities' decision making, but which seems to have been unnecessary, and an impediment to continuing good practice. The provision in the principles<sup>165</sup> that a council in this situation should "conduct its business in an open, transparent, and democratically accountable manner" may provide a legal recourse in any instance of dispute but it seems to be an otherwise puzzling and unnecessary one.

## 5.2 'Significance' and 'significant' in making decisions

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<sup>160</sup> Ibid., s14

<sup>161</sup> Ibid., s41( )

<sup>162</sup> Ibid., s3

<sup>163</sup> Ibid., s5

<sup>164</sup> Ibid., s10(1)(b)

<sup>165</sup> Local Government Act 2002, s14(1)(a)(i) ,

The LGA 2002 also has in place two additional provisions – those of ‘significance’ and that of ‘significant’<sup>166</sup> – that guide councils in making decisions. ‘Significant in relation to ‘any issue, proposal, decision or other matter, means that [it] has a high degree of significance’. ‘Significance’ describes any applicable matter, as assessed by the local authority, ‘in terms of its likely impact on, and likely consequences for:

- the district or region;
- any persons who are likely to be particularly affected by, or interested in, the ‘matter’; and
- the capacity of the local authority to perform its role, and the financial and other costs of doing so.

These terms were used in the LGA 1974 including in the 1989 amendments but not then defined. The Act now requires all local authorities to adopt a policy on ‘significance’<sup>167</sup>. This must set out:

- the local authority’s general approach to determining the significance of proposals and decisions in relation to issues, assets, or other matters; and
- any thresholds, criteria or procedures that the local authority is to use in assessing the extent to which [those matters] are significant.

It is a question for local authorities as to when and on what issues communities expect to be consulted and informed. It is a matter of judgment for local authorities, subject to the ‘significance’ criterion<sup>168</sup>. The significance criteria ought in practice also to revert a council’s decisions to the content of its adopted long term and annual plans and the various ‘purposes’ or ‘intent’ statements they contain.

### 5.3 The LGA 2002: 2012 amendments

The merits or otherwise of the amended Act were debated at its Bill stage.

The Government’s stated reason for amending local government’s ‘purpose’ clause in 2012 (see Table 1 above)<sup>169</sup> was that: *the broad purposes of the LGA 2002 covering social, economic, cultural [and] environmental well-being are [were] unrealistic... [and that] ... it creates false expectations about what councils can achieve and confusion over the proper roles with respect to central government and private sector.*<sup>170</sup>

In a public statement, Local Government New Zealand observed that *as a result there [had previously been] considerable diversity in the range of activities that councils provide, reflecting the different circumstances cities, towns and communities find themselves in*<sup>171</sup>. According to Local Government New Zealand and the Society of Local Government Managers (SOLGM) in a joint discussion document responding to the Government’s

<sup>166</sup> Local Government Act 2002, s3, *Interpretation*, p. 24

<sup>167</sup> *Ibid.*, s90, p.

<sup>168</sup> Office of the Auditor General, *Significance policies – what is meant by ‘significance’ and ‘significant’?* section 2.3, p9.

Retrieved from: <http://www.oag.govt.nz/2004/lg-2002-03/paty2-03.htm>

<sup>169</sup> Local Government Act 2002, s10

<sup>170</sup> The Department of Internal Affairs, *Better Local Government – March 2012*, <http://www.dia.govt.nz/policy-Advice-Areas---Local-Government-Policy-Areas>, p5

<sup>171</sup> Local Government New Zealand; *Role of Local Government*, <http://www.lgnz.co.nz/lg-sector/role/> updated July 2012, p1

statement about the then proposed Bill<sup>172</sup>, no evidence to date had been produced in support of the Government's claims.

The above discussion is instructive in this paper because, included in the Act's purposes, is that of promoting the accountability of local authorities to their communities.<sup>173</sup> It is also relevant to local authorities' discretions in striving to achieve their individual fitness for their purposes under the applicable law.

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<sup>172</sup> Local Government New Zealand, *The Local Government Act 2002 Amendment Act 2012: A Discussion Document by Local Government New Zealand and SOLGM*, July 2012,

<sup>173</sup> Local Government Act 2002, S3(c)

## 5.4 Collaboration

The LGA 2002 ‘principles relating to local authorities’<sup>174</sup> direct that ‘a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources’.

This appears to be beneficial in at least two ways (and has also arisen in discussion – see §3.8 and §5.2 above). One is simply common sense that there is positive gain to be made in cooperating and collaborating where possible. The other is that, in making efficient use of resources, there is a valuable incentive to use these means (viz., either collaboration or cooperation) to deal with otherwise difficult tasks (and consequences) of ‘internalising’, by whatever legitimate means, the provision of a service where it does not fit easily or neatly within a fixed jurisdictional boundary. Such means can, since 2012, seem as legitimate within the meaning of the Act.

## 6. Local & central government as constitutional partners

### 6.1 A bipartite Constitution & the two spheres within it

Attention is paid here both to New Zealand’s Constitution and to some relevant history for a number of reasons. One is that New Zealand has an “unwritten” constitution which, in several and most ways, covers the constitutional legality of the branches – the two “spheres” – of central government and local government. The Local Government Act 2002, Local Government (Rating) Act 2002 and Local Electoral Act 2001 “provide for those spheres in which forms of local government have authority.”<sup>175</sup> The Local Government Act, together with the two other statutes referred to above have, as the Government has put it,<sup>176</sup> provide an empowering framework that allows local authorities to represent the diverse needs of their communities.

A second reason, having two aspects, for considering the Constitution is that central and local government are the only two arms of New Zealand government that have formal constitutional status and that attention has been paid in the public arena to ways of improving the formal basis for how these might work together within the existing constitutional framework.

Third, is that there is a perceived general acceptance of the existing constitutional form and, for that matter, not much dissatisfaction with it among the preponderance of citizens of the historical legacy.<sup>177</sup> <sup>178</sup> Rather, as in one perspective on “constitutional realism”, the meaning of a law, or constitution, exists in the understandings and actions of those people involved in the application and interpretation of it.<sup>179</sup> In this perspective, a constitution is

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<sup>174</sup> Ibid., s.14(1)(e)

<sup>175</sup> Matthew S. R. Palmer, *What is New Zealand’s Constitution and who interprets it? Constitutional realism and the importance of public office-holders*, 17 PLR 145, 2006

<sup>176</sup> Department of Internal Affairs, Strategy for Evaluating Local Government Legislation, Retrieved from: [http://dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-mateial-Our-research-and-Reports](http://dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-mateial-Our-research-and-Reports), 15/03/2013

<sup>177</sup> James Allan, *Why New Zealand Doesn’t Need a Written Constitution*, Agenda, Volume 5, No. 4, 1998, p. 488

<sup>178</sup> Note that at the time of writing this paper there is still a Constitution Review Commission sitting with no conclusions available.

<sup>179</sup> Matthew Palmer, *op. cit.*, p. 134

made up of the structures, processes, principles, rules and even culture that *constitute* the ways in which government power is exercised.<sup>180</sup> The supporting fact in New Zealand, following Sir Kenneth Keith’s encapsulation of the essence of New Zealand’s constitution in his introduction to the NZ 1990 Cabinet Office Manual (revised 2001),<sup>181</sup> is that the Constitutional Arrangements Committee of New Zealand’s House of Representatives accepted this as the ‘most authoritative [current] treatment of the sources of New Zealand’s constitution and that this document (as noted by the Committee itself) now has the constitutional advantage of having been signed up by successive executive governments of different political persuasions.<sup>182 183</sup> This does not have the force of an entrenched statute but has been seen as a source of stability.

NZ is one of three countries without a single “written” constitution.<sup>184 185</sup> That is, NZ’s Constitution, while not contained or codified in a single, written document, comprises several<sup>186</sup> documents and conventions. Nor, therefore, is NZ local government’s scope defined in such a single, written constitutional document. Its provisions and powers are found in numerous statutes, the main three as cited above. NZ’s constitution is often referred to in short-hand as “unwritten” but it has several written components spread among several different documents. These components all have implications for the powers and the authority that both the Executive and local government exercise under laws of Parliament. The other two countries without a single “written” constitution are the UK and Israel.<sup>187</sup> As with the UK, but not as with Israel, NZ is a parliamentary sovereignty.

The UK and NZ share the same sovereign. And NZ also has a Westminster system of government. But NZ, with the combination of its “unwritten” Constitution, its unitary system of government, its unicameral legislature (since 1951) and a mixed member proportional (MMP) system of voting in parliamentary elections (predicated since 1993) has a virtually unique Constitution when seen in an international setting.

It was noted in 1988<sup>188</sup> that the collection of developments and proposals for public sector restructuring (at that time) illustrates a recurring, probably everlasting, set of questions for the organisation of public power in our constitutional system.<sup>189</sup> The statement was accompanied with a list of the “powerful set of institutions” that the Constitution Act 1986 has recognised. In addition to those already cited above, and also to New Zealand’s constitutional conventions and practice, there is a further point that the power and the association of those conventions are even more significant since the government – the ‘ministry’ – must (by virtue of comprising parliamentarians) have the support of the House of Representatives and in practice thereby control it.<sup>190</sup> Even the protected powers of judges of the High (and higher) Courts with independent tenure of office under the Constitution Act 1986, which are the exceptions under this guarantee, had to be read against the powers –

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<sup>180</sup> *Ibid.*

<sup>181</sup> On the Constitution of New Zealand: An Introduction to Foundations of the Current Form of Government, NZ Cabinet Office, Cabinet Manual, <http://www.dpmc.govt.nz/cabinet/manual/index.html> (viewed 9 February 2005)

<sup>182</sup> Constitutional Arrangements Committee, n 1, p.19

<sup>183</sup> Matthew Palmer, *op. cit.*, p. 137

<sup>184</sup> *Ibid.*, 2006, p133, 2006

<sup>185</sup> James Allan, *Why New Zealand Doesn’t Need a Written Constitution*, Agenda, Volume 5, No. 4, 1998, p. 487

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.* and Rodney Brazier, *Constitutional and Administrative Law*, Penguin Books, (7<sup>th</sup> edition), London, 1994, p. 8

<sup>188</sup> *Ibid.* Sir Kenneth Keith, *Constitutional Relationships, in Devolution and Accountability*, “Studies in Public Administration, No. 34”, (ed) John Martin & Jim Harper, Proceedings of the 1988 Conference of the New Zealand Institute of Public Administration, 1988, GP Books, p9

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.* Note that the introduction of MMP, replacing the FPP, voting system has somewhat modified that situation.

legislative and other – of Parliament and the ministry, and against the lack of any express constitutional reserving of judicial power.<sup>191</sup>

There is also an unresolved question of law – in both the UK and NZ – about just how far the law-making power of Parliament can extend. There are also many areas of human activity that have remained unregulated by specific law, leaving the question of what is not regulated and not prohibited may [then] be permitted?<sup>192</sup> This point may be seen as peripheral to the present discussion but is made to leave open for contemplation the matter of how important for local government was the introduction of provisions in the LGA 2002 that provided for ‘general empowerment’ (discussed substantively elsewhere in this paper) and, also, how real, and if so, how significant for them is the subsequent diminution of the scope of local authorities’ ‘general empowerment’ brought about by the 2012 LGA amendment that deleted the *wellbeings* reference, and in deciding among and in funding all of local communities’ priorities?

Many matters surrounding LG’s early history and structures have been formative for LG today. Describing some historical events that have been formative of the local government framework as it exists today, and that laid the basis for some present day operational functions of local government, should help to enhance our understanding of the actual and possible effects of the existing constitutional framework on the local government sector.

The Westminster Parliament, through the NZ Constitution Act 1852, granted a Representative Constitution to the Colony of NZ.<sup>193</sup> The timing of the establishment of NZ local government corresponded closely to the establishment of the British colony of NZ.<sup>194</sup>

Though NZ, practically speaking, was self-governing for 90 years the NZ Parliament was legally subordinate to the Parliament of the UK until 1947. In 1947, NZ gained full control when the NZ Parliament passed the Statute of Westminster Adoption Act. The UK Parliament also enacted the NZ Constitution Amendment Act at NZ’s request. Some anomalies still existed even after the passage of the Statute of Westminster Act, 1947. But the Constitution Act, 1986 removed the then still existing power of the UK Parliament to make law for NZ when the NZ Constitution “...was finally and completely ... ‘repatriated’ ... to NZ”.<sup>195</sup>

The Constitution sits above statute and common law. Under New Zealand’s “unwritten” Constitution, Parliament can pass common law by common majority and does so for all the legislation including statutes that apply to local government.

The law setting out the purposes, principles and functions of local government must be a key consideration here because it can be a transparency incentivising and constraining force on the Government where it seeks to have passed any legislation that applies to local government. So will the nature of NZ’s Constitution for several reasons. First, is because the Constitution is “unwritten”, and is codified in not one but in several different documents and also defined by numerous conventions. (Key documents containing the conventions include some incorporated in statutes though often not legally enforceable and, together with

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<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*, p. 3

<sup>194</sup> Graham Bush, *Local Government & Politics in New Zealand*, (2<sup>nd</sup> ed), Auckland University Press, 1995, p. 1

<sup>195</sup> *Ibid.*, p. 4

constitutional conventions (rules established through frequent use and custom), are found in a number of documents including: the (NZ) Constitution Act 1986; the NZ Bill of Rights Act 1990; the Electoral Act 1993; the Standing Orders of the House of Representatives; other UK and NZ legislation; and judgments of the courts.<sup>196</sup> Some relevant UK legislation is also part of NZ law.)

The New Zealand Constitution is therefore not the ‘basic’ law as in most countries that would need significantly more than a simple majority to change.<sup>197</sup> It defines through law-making the principles on which the legal system is based.<sup>198</sup> The Sovereign appoints the Governor-General (GG) on the Prime Minister’s advice. The GG exercises the Queen’s royal powers (i.e., prerogative powers) as set out in the Letters Patent 1983 and can make regulations and his assent is required for all bills that the House of Representatives is to pass before they become law. Constitutional convention requires the GG to follow the advice of Ministers (i.e., by the Government). A situation where the GG can exercise independent authority is unusual.<sup>199</sup> The law applying within the Constitution, will obviously have implications for the stability of local governance and the maintenance of integrity. The LGA 2002 incorporates provisions that apply principles of integrity, accountability, transparency, and openness to councils as corporate entities, elected members and appointed officials alike.

## 6.2 The dynamic of the central/ local government interface

The Constitution, as further discussed below, has some profound implications for the operation of local government and for the rights and wellbeing of communities. Statute law provides for the existence of central government, local government and the judiciary and of numerous independent authorities that report to Parliament (and not to the Executive). Local government has statutory responsibilities and functions, many of which are to provide local public goods and services and local regulation. To fulfil these functions, local government also makes (subordinate) legal decisions including resource management plans and policies, transport plans, building approvals and by-laws. Local government also has extensive consenting powers regarding the same matters.

Thus, both central government and local government have law and regulation making responsibilities in common though of different applications and dimensions. Both arms of government are creatures of the Constitution. Both have popularly elected representatives but with different electoral and representational characteristics. Central government, as the main sponsor of the primary statute law, effectively defines the statutes that empower and limit local government’s responsibilities under the 130 statutes that it administers. Local government is not an agent of central government.<sup>200</sup> It has several different accountability lines but is primarily responsible to its own communities in law.<sup>201</sup>

Over recent years, and notably since 2006, there has been recurring public reference to the matter of how central and local government do coexist, and perhaps how they also *should*

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<sup>196</sup> Ibid., p2

<sup>197</sup> Sir Geoffrey Palmer & Dr Matthew Palmer, *Bridled Power – New Zealand Government under MMP*, Oxford University Press, New Zealand, 1997, pp.40-41;312

<sup>198</sup> Ministry of Justice, New Zealand, The New Zealand Legal System, <http://www.justice.govt.nz/publications/global-publications/1/the-new-zealand-legal-system>, p1

<sup>199</sup> Ibid.

<sup>200</sup> Local Futures Research Project, *op. cit.*,2006, p14

<sup>201</sup> Local Government Act 2002, ss10 & 14

coexist better, as the partners in NZ's system of public governance.<sup>202</sup> One part of the answer is the matter of how “fit”, in terms of its statutory mandates and available resources, local government is for its purpose or purposes. Related is its level of independence in law and in practice. Among other matters that through research and survey have included findings in relation to questions repeated in this paper about the independence of local government from external interference, are the matters of its relationships with central government and how central government's own law-making activities affect the abilities of local government to be “fit”, and to sustain its fitness, for its many purposes. This issue is broached below.

From 2003, the Institute of (Governance and) Policy Studies undertook a Local Futures Research Project on Strategic Planning in Local Government under a five-year Government funded research programme. This was in conjunction with several participating local authorities. One very crucial observation for this report from the programme<sup>203</sup> was *that while local government is a creature of statute, it operates as a largely autonomous provider of services, funded separately by property taxation and held accountable by voters. In the absence of well-defined constitutional or fiscal relationships, local and central government are most accurately regarded as two spheres of collective decision-making, each with revenue-collection powers to fund the implementation of its particular policies and programmes.* Subsequently, there has been distributed public and written discussion about both the constitutional and operational relationships between the central and local government, and how they may still be enhanced, which this paper identifies and develops.

### 6.3. NZ's Constitution & local government – their evolution to date

New Zealand's constitution law has been described as flexible because Parliament can amend it by the ordinary legislative process.<sup>204</sup> This is a factor in this paper because, as Scott noted over 50 years ago, the constitution law (including the Constitution Act 1852) was rarely amended in New Zealand. The term “*the*” Constitution even came to be applied to the Constitution Act 1852 in the light of many of its provisions that were contained in it made it the kind of document that was usually called a “Constitution”.<sup>205</sup> Nevertheless, it (and its successor) were, and still are, constitutions. While constitution law may rarely be amended, ordinary law is amended frequently, as in the instances of changes to any of the 130 statutes that can have major political and administrative impacts on local authorities, in particular on the stability over time of their operating environments. This paper continues to use the term “unwritten” Constitution as shorthand if for no other reason. It also continues to stress the importance of the Constitution for local government. The NZPC report quoted from Palmer to the effect that “the theory and place of local government in the political system does not derive from any formal constitutional entitlement” but then proceeded to explain that local government evolved from a practical contrivance lacking any developed constitutional conception of the powers with which it should be entrusted’.<sup>206</sup> That absence is increasingly seen as an issue requiring attention.

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<sup>202</sup> Local Futures Research Project, *op. cit.*, p14; New Zealand Productivity Commission, *Towards better local regulation*, May 2013, p17

<sup>203</sup> *Ibid.*, p14

<sup>204</sup> K. J. Scott, *op. cit.*, 1961, p20

<sup>205</sup> *Ibid.*, p2

<sup>206</sup> PCNZ, p45

New Zealand’s “unwritten” Constitution has its antecedents in the United Kingdom (UK) form of Constitution and remains similar in many ways. But aspects of NZ’s Constitution and its institutional arrangements have also come to differ since 1852 in some significant respects highlighted here. Examining matters of *what* has evolved hopefully will clarify questions around matters of *why* and *how* they have come to differ; and why they are important for NZ local government.

## 7. The evolution of NZ local government

### 7.1 Some milestone changes

From 1876 to 1989, local government was based on a system covering both municipal and county authorities, though a Municipal Corporations Ordinance created settlements as boroughs as early as 1842. This system did not survive and the municipal and county structure of local government was not properly in place until 1876. For over 100 years its main feature was then one of incremental change with some notable outstanding events. The evolution phase, while continual, has had some milestones that identify respectively with 1842, 1876, 1976, 1989, 1991, 1996, 2002, 2010 and 2012. These have all been important but this paper focuses on some more recent (1989, 1991, 1996, 2002 and 2012) reforms, since they are more so for understanding local government now and earlier events are treated more superficially. The inclusion of 1991 among these milestones above was because it was the year that the Resource Management Act (RMA) became law and because of its scale and the impacts it has had since on local government and its communities. Though hugely important in New Zealand local government, this paper pays it only some attention. The main Public Sector Pillar report includes a separate “sub-pillar” item on the RMA.

Key changes in local government in 1989 are also relevant here because those brought through the Local Government Act 1974, Amendment Act 1989, in addition to extensive structural reforms, corresponding to reforms of local government’s governance, transparency and management arrangements.

The Local Government Act 2002 as then enacted required all local authorities to prepare Long Term Council Community Plans (LTCCPs) on their communities’, and not on councils’ own behalves and to involve communities in the preparation of those and annual plans.

The Local Government Act 2002 departed from previous methods (under the 1989 and earlier legislation) of simply prescribing powers and functions and of directing councils to meet either *output* or *input* requirements. The 2002 Act widened the previous purposes of local government and gave councils powers through the LTCCPs to identify and to seek to achieve *outcomes* in keeping with the Act’s purposes and principles for local government (Tables 2 and 3 above). The 2012 amendment also changed the title of LTCCPs to become instead that of long term plans (LTPs).

The Local Government Act 2002 introduced the “powers of general competence” (or general empowerment provisions) and the 2012 amendments retained those empowerment provisions though subject, for statutory consistency, to matching changes in the 2012 purpose and principles provisions. The 2012 change seemed to imply a diminution of councils’ policy making discretions compared to its 2002 innovation because of the redefinition of the purpose clause (i.e., in 2012).

In sum, present day local government has significant governance responsibilities in New Zealand's overall system of government, particularly through the Local Government Act in effect since 2002. Nevertheless, local government continues to sit below central government within that system. The removal of the former “*wellbeings*” requirements in 2012 has in part, but still effectively, diminished local authorities' powers of general competence. Other earlier advances, however, remain. For example, the Local Government Act retains, among the values incorporated in its ‘principles’ clauses and elsewhere, those of transparency, accountability, democratic decision making, outcomes achievement (though without the *wellbeings* and/or), efficiency and effectiveness.

## 7.2 Changes in local government since 1876

### 7.2.1 Genesis & evolution of New Zealand local government

To many, local government reform signifies structural reform. The information provided above illustrates that governance and empowerment issues have been just as important and possibly, since 1989, even more so.

Local government at present is the evolved product of many years of reform. From 1876 to 1989, local government was based on a system covering both municipal and county authorities, though a Municipal Corporations Ordinance created settlements as boroughs as early as 1842. This system did not survive and the municipal and county structure of local government was not properly in place until 1876. For over 100 years its main feature was then one of incremental change with some notable events.

The present system of local government has emerged from New Zealand's early history of representative government when the New Zealand Constitution Act 1852 was enacted. This saw the creation of six provinces with essentially local government functions though initially with some other functions (e.g., police and immigration) that subsequently became the responsibility of central government. The Legislative Council passed what was the founding document of New Zealand local government in 1842, the Municipal Corporations Ordinance.<sup>207</sup> <sup>208</sup> In 1853, New Zealand's population, distributed unevenly among the provinces, was about 32,000. Isolation complicated the task of central government in exerting unified control. Over the next fifteen years the population increased more than ten-fold with the nation's government absorbing many provincial functions. Local Government was established by the Counties and Municipal Corporations Acts of 1876. The Government intended to abolish 314 roads boards existing in 1875 and to create 41 counties to incorporate their functions. In the event, 63 counties were created but proved inadequate to the task of performing other functions of a sub national nature. This led to the proliferation over time of single-purpose ‘ad hoc’ local authorities to 453 in number by 1988.

In the 1920's, there were some notable piecemeal attempts to bring about local government reforms. Legislation consolidated municipal reform in 1933,<sup>209</sup> being one of the few remarkable events at the time. Proposals for significant reforms were on the parliamentary timetable in 1939 but were shelved until the end of WW II. Those plans were revived in 1944. The system had degenerated to one of *piecemeal legislation, parochial interests, rural*

<sup>207</sup> Institute of Policy Studies, Victoria University of Wellington, Local Futures Research Project, “Local Government, Strategy and Communities”, (School of Government, VUW, 2006), p3

<sup>208</sup> Graham Bush, “Local Government and Politics in New Zealand”, (Auckland University Press, Second edition, 1995), p.3

<sup>209</sup> Young, *op. cit.*, p32

*depopulation, administrative subdivision, declining quality of staff and financial weakness*<sup>210</sup>. In 1944, a parliamentary select committee defined the urgent problem of local government as being a mismatching of areas and communities of interest.

But the proliferation of local authorities over many years did not change significantly until 1989 (when the functions and categories of local governments were also redefined and reallocated). The following comparison<sup>211</sup> in Table 4 is striking for its ‘sameness’ in numbers of municipalities and of counties over 25 (and even over 38) years:

**Table 4: Numbers of Local authorities in New Zealand, 1950 – 1988**

<b>Authorities</b>	<b>1950</b>	<b>1960</b>	<b>1970</b>	<b>1975</b>	<b>1988</b>
Municipality (city or borough)	134	143	138	135	116
County	125	119	107	106	80
Independent town board	28	15	10	8	-
Dependent town boards	18	12	5	0	-
Town Councils and District Councils	-	-	-	-	21
Community (including District Community) Councils	-	-	-	-	136
Auckland Regional Authority	-	-	-	-	1
Regional Councils	-	-	-	-	2
United Councils	-	-	-	-	20
Single-purpose, ad hoc <sup>1</sup> , local authorities	547	662	618	546	453
<b>Totals</b>	<b>852</b>	<b>951</b>	<b>878</b>	<b>795</b>	<b>829</b>

*Note: In total, 138 special purpose authorities were excluded from the 1989 local government reform and 691 included.*

### 7.2.2 The 1974 changes

In 2002, Parliament enacted a milestone local government act that extended the scope of local government’s independence in its own governance regime by giving local authorities – though conditionally and as noted above – powers of general competence by which they could decide to carry out functions other than those already authorised by law. Though little detailed attention can be given here to the Local Government Act 1974 prior to 1989, it has been noted that the 1974 Act (despite its many prescriptive provisions) provided a power to do anything that would promote community well-being<sup>212</sup> – an advantage that may have been too little understood or realised.

The Local Government Act 1974 was a watershed in the history of local government and possibly the greatest advance in a century of frustrated reform.<sup>213</sup> It strengthened the Local Government Commission, established a form of regional government (by 1980), created – in advance of subsequent legislation – a hybrid district council and facilitated citizen involvement through two types of community councils. The LGA 1974 also introduced some

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*, p41; and Robert Howell et. al., “The Unfinished Reform in Local Government The Legacy and the Prospect”, (Occasional Papers in Local Government Studies, Massey University, Number 3, 1996), pp 13 – 14

<sup>212</sup> Local Government New Zealand and Society of Local Government Managers, ‘The Local Government Auckland Council 2002 Amendment Auckland Council 2012: A Discussion Document’, p14

<sup>213</sup> *Ibid.*, p2

new, ‘buttressing’ principles to the legislation.<sup>214</sup> There were significant reforms of local authorities’ rating and funding systems in the 1970s. The LGA 1974 also introduced the concept of ‘regionalism’ – this was to be realised in the creation of varied forms of authorities<sup>215</sup> – regional planning authorities, united councils and later regional councils. Regional planning and civil defence were the main functions. A multi-function Auckland Regional Authority had already been established in 1963.

The changes ‘radically’ strengthened the LGC, established regional “government” by 1980 and facilitated citizen involvement through two types of community councils.<sup>216</sup> Nevertheless, during the years around 1974, New Zealand sustained severe economic downturn. Bassett observed that from 1976 – 1984, and despite some noises of interest from the two main parties, the matter of territorial amalgamation was placed in the “too hard” basket.<sup>217</sup>

### 7.2.3 The role of the Local Government Commission in reform

The first Local Government Commission (LGC) was constituted in 1946 as an independent statutory authority with a broadly defined mandate to review local authorities’ functions and districts and to inquire into various proposed forms of reorganisation. While the enabling legislation did not then address the LGC specifically to matters of efficiency, the Select Committee did note an expectation of redrawn and redistributed boundaries that would lead to local government’s ‘effective ministration’ through its (new) duties to the development of New Zealand. The LGC has, as its main tasks, to report to the Minister and the Government on reorganisation and good governance issues in local government.

In proceeding to the future 1989 reforms, begun in December 1984 with the introduction of the Local Government Amendment Bill 1989, the Minister of Local Government enlarged and strengthened the LGC and reintroduced poll provisions on the amalgamation schemes.<sup>218</sup> The Government gave the LGC a broad legislative role and, as the then LGC Chairman saw it, an opportunity to fashion a system of local government with structures that its communities would find reasonably acceptable.<sup>219</sup> ‘Community of interest’ continues to be a primary criterion for the LGC to take into account. As noted, the number of authorities reduced from in 1989 from 800 to 86. (There are now 78.) The LGC keys to success in 1989 were:

- The LGC had no grand plan and was able to be flexible as to outcome as it carried out its work;
- It was openly willing to support an agreed local solution over a preferred one to meet the reform objectives;

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<sup>214</sup> Graham Bush, ‘The Historic Reorganisation of Local Government’, in: *The Fourth Labour Government: Politics and Policy in New Zealand* (ed. Martin Holland and Jonathan Boston), Second Edition, Oxford University Press, Auckland, 1992), p.234

<sup>215</sup> *Ibid.*, p54

<sup>216</sup> *Ibid.*

<sup>217</sup> Michael Bassett, *The Context of Local Government Reform, : Politics, History and Place: The New Zealand Experience*, in: McDermott et. al., *An Agenda for Local Government: Proceedings from the New Local Government Conference*, Local Government Studies Occasional Paper Series 2, 1995, p32

<sup>218</sup> *Ibid.*, p33

<sup>219</sup> Sir Brian Elwood, *From Theory to Practice: The New Zealand Experience*. In: McDermott et. al., *An Agenda for Local Government: Proceedings from the New Local Government Conference*, Local Government Studies Occasional Paper Series 2, 1995, p313

- The Government clearly supported reform and backed the LGC's work with the necessary political commitment.<sup>220</sup>

The LGA 2002 continues to provide for the LGC and confers several powers and duties on it. It may provide information about local government and promote good practice. It may report and make recommendations to the Minister of Local Government as it sees appropriate.<sup>221</sup> It must consult with the Minister and any local authority as the LG 2002 provides. Its primary concerns are to do with local government reorganisation and amalgamations. It must also report triennially after each local government election to the Minister on aspects of the local electoral system, on the operation of the LGA 2002 and on the Local Electoral Act 2001.

Anyone can apply to the Local Government Commission requesting reorganisation changes to the constitution or the boundaries of a district or region on matters set out in the LGA 2002.<sup>222</sup>

At the time of writing, the Commission is implementing the process to consider the processes of reorganizing a number of districts and regions (in Wellington, Wairarapa, the Hawkes Bay and Auckland).<sup>223</sup>

#### 7.2.4 Proceeding from the 1989 reforms

Changes in local government from 1989 to 2012 have brought, in addition to extensive structural reforms, corresponding reforms to its governance, transparency and management arrangements and to its constitutional position within the overall arrangements of government. This summary speaks to the 1989 – 2012 period of change, and in the main retrospectively, because of the immense changes that period has brought to the powers, governance and management of local authorities.

In 2013, and after some changes since 1989, NZ has 78 local authorities in all. These comprise 11 regional councils and 61 territorial authorities (including 11 city and 50 district councils) and the Chatham Islands Council. Six unitary councils in all, including the Auckland Council, undertake the functions of both territorial authorities and regional councils. Unitary authorities have evolved since the 1989 reforms. They are counted above under the 61 territorial authorities although the Chatham Islands Council also undertakes the regional council functions of a unitary authority. Most councils have second tier bodies and most of those are community boards; but, in the case of the Auckland Council only, these are known as local boards. Board members are elected members.

During the 1980s, the Government instigated a process of preparation for far-reaching reform, culminating in the 1989 reforms. The Government's 1987 Economic Statement indicated the basis on which local or regional government would be selected, which was to be subject to the principles indented and described below.<sup>224 225</sup> The Local Government Amendment Act (No. 2) 1989 [LGA 2 1989] reflected central government policy for local

<sup>220</sup> *Ibid.*

<sup>221</sup> Local Government Act 2002, ss30, 31

<sup>222</sup> Local Government Commission, Questions and Answers, Retrieved:

[http://www.lgc.govt.nz/lgcwebsite.nsf/wpg\\_URL/Reorganisation-QuestionsandAnswers/](http://www.lgc.govt.nz/lgcwebsite.nsf/wpg_URL/Reorganisation-QuestionsandAnswers/), p.2

<sup>223</sup> Local Government Commission, Local Government Reorganisation, , Retrieved:

[http://www.lgc.govt.nz/lgcwebsite.nsf/wpg\\_URL/Reorganisation-Index/](http://www.lgc.govt.nz/lgcwebsite.nsf/wpg_URL/Reorganisation-Index/), p.1

<sup>224</sup> Michael Bassett, *Reform of local and regional government*, Government Economic Statement, (17 December 1987), Wellington Government Printer, p62

<sup>225</sup> Michael Wearne, *Policy Development Issues for Infrastructure Planning and Provision: Local Government Reform in New Zealand*, New Zealand Local Government Association Research Monograph Series, Paper No. 2, January 1995, p3ff

government based on those principles. After the principles were announced, they caused great consternation in local government; the Deputy Prime Minister and Minister of Local Government then indicated that the Government had rejected them and that their inclusion in the December 1987 Economic Statement had been an oversight.<sup>226</sup> Looking at changes that the reforms brought in 1989 suggests, nevertheless, that their basic intended shape prevailed. The 1987 Economic Statement covering local government was as follows:

- Where the net benefit would exceed that of all other institutional arrangements;
- The subsidiarity principle (i.e., that the allocations of functions should be based on appropriate communities of interest; on the achievement of operational efficiencies; on clear, non-conflicting objectives; on trade-offs between objectives that were explicit and transparent; and on strong accountability mechanisms).

There has been attention above to many deeper implications of the 1989 reforms. Following is a brief picture of the 1989 changes, and together with them, the advent of the Resource Management Act 1991.

### 7.2.5 What else arrived with the LGA (No. 2) 1989 and RMA 1991?

Both the 1989 changes to the LGA 1974 and the arrival of the new Resource Management Act 1991 (RMA 1991) brought significant changes and challenges to the local government sector. The passage of the RMA 1991<sup>227</sup> also saw removed, or modified, provisions which had been in previous legislation and that the Government believed would create inefficiencies and distortions in the operation of 'the' market.<sup>228 229</sup> The Government had a view of 'the wide socio-economic objectives of [then] current legislation, particularly the Town and Country Planning Act 1977, as promoting unnecessary and poorly targeted interventions which imposed high costs on society'.<sup>230</sup> The close association in both ideology and practice between the then local government and the resource management law reforms (RMLR),<sup>231</sup> however, have to be important in this discussion because they both impinged on notions of efficiency and effectiveness and on the Government's views at the time about the desirable extent of state intervention and regulation. As Boston *et. al.*, observed, without the structural remaking of local government, it is difficult to believe that such radical change in environmental administration could have taken place.<sup>232</sup>

### 7.2.6 The Local Government Amendment (No. 2 Act) 1989

Reform from 1989 was to achieve results oriented policy delivery instead of primarily input and compliance delivery as had been the case before 1989. It emphasised the importance of planning and reporting on results. It emphasised 'communities of interest' and sought, through amalgamations, to achieve economies of scale. Councils also were required to adopt full accrual accounting and reporting systems.

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<sup>226</sup> Bush, *op. cit.*, 1992, p.238

<sup>227</sup> Resource Management Act 1991

<sup>228</sup> See, for example Caroline L. Miller, *Implementing Sustainability – The New Zealand Experience*, Routledge, Abingdon, Oxon, 2011, p19

<sup>229</sup> Lindsay Gow, *Resource Management Law Reform in the context of other reforms*, in Morgan, R. K., Memon, P. A., and Miller, M. A. (eds) "Implementing the Resource Management Act – Conference Proceedings, Dunedin": Environmental Policy and Research Centre, University of Otago, 1991, p56

<sup>230</sup> *Ibid.*

<sup>231</sup> RMLR: This shortening of the title 'Resource Management Law Reform' process became the title in common use of the process itself.

<sup>232</sup> Jonathan Boston, John Martin, June Pallot and Pat Walsh, *Public Management: The New Zealand Model*, Oxford University Press, 1996, p170

The pattern of numerous single purpose and multi-function authorities arguably was the main feature of local government until 1989. The 1989 reforms amalgamated the functions of the 691 multi-functional and 'special purpose' local authorities (where they were not abolished) into 86 councils within new structures and with newly allocated functions to regional, city and district councils as described above.

Efficiencies were to result from separations of functions internally (e.g., between operations and regulation), by subjecting councils to disciplines in considering how to deliver services (e.g., directly, through council owned businesses such as local authority trading enterprises [LATEs] – the 'corporatised' model – now known as council controlled organisations [CCOs] or by contracting service delivery out).

This started with the LGAA 2 1989 amendments. These reforms were to mirror in many ways the reforms of central government itself, begun in 1984 (with the return of the Labour Government to office) and pursued after 1987 with its reelection in that year. The nature of changes brought about in both was heavily influenced by international approaches exemplified by the *new public management* school of thought following which reforms, on the basis of given assumptions, came to emphasise the benefits of business-like approaches to the performance of their responsibilities by virtually all public sector entities.

As noted, local government operating modes before 1989 were mainly input driven and councils, in the main, could act only in ways that a statute permitted. The 1989 local government reform turned much of this on its head. While local government's responsibilities and functions were still subject to its legislation, councils (as in the case of central government entities) were required to prepare forward-looking annual plans in consultation with their communities

The Local Government Act 1974, through its milestone 1989 amendment, completely turned this around. From 1989, councils had to account for undertaking 'significant' activities' which corresponded roughly to how central government was directed under the Public Finance Act to plan for and report on the delivery of outcomes and outputs. Councils had to prepare annual plans in consultation with their communities and to account for undertaking 'significant activities' (or delivering outputs) in the quest for results through annual planning.

Despite the absence of a mandated corporate strategic planning provision in the Act, it did require councils to add to annual plans, indicative medium term two year plans in advance, to be rolled over annually. Most councils understood the strategic prerequisites and treated the three year rolling time frame strategically. The Act included disciplines on decision making to encourage transparency and accountability, to avoid conflicts of interests or roles and to support efficiency. Disciplines included requirements for wide consultation in the preparation of plans, mandatory accrual accounting. Also required was separation of policy/regulatory and service delivery functions (reflected both in councils' political decision making and in management structures), to avoid conflicts of interest where a council may have both 'player' and 'referee' roles in relation to an activity. Separation had multiple objectives. Two others were, first, to reduce competitive advantage where councils competed in the market; and second to improve accountability to their communities for councils' performance.

Until 1996 they had no mandated longer term planning requirements and until 2002, no general empowerment.

So local government after 1989, in short, was ‘purpose’ and ‘plan’ driven while before 1989 it was input driven, with its activities mainly prescribed, and councils (then lacking general empowerment) essentially had little discretion to undertake activities not authorised by statute. The 1989 amendments to the LGA 1974 also brought radical changes that, in short, moved local government from inputs to outputs (as a major approach to meeting their communities’ needs), by reducing the numbers of local authorities across New Zealand and by abolishing many single purpose bodies and amalgamating the functions of many in new, and markedly fewer, territorial and regional local authorities.

### **7.2.7 The Resource Management Act 1991**

The 1989 reforms were also accompanied by the significant other changes under the RMA 1991. Before 1991, transitional provisions enabled the implementation of approved planning schemes approved under the Town and Country Planning Act.

These reforms were accompanied by other changes worth noting in that they were accompanied in short order (under the Resource Management Act 1991) by the replacement of some 25 natural resource and planning statutes and by repealing and replacing them, primarily through the Resource Management Act, with more than 150 other laws and regulations<sup>233</sup>. This introduced a new regime for the administration of local government’s traditional town and country planning and natural and physical resource management responsibilities. It also reversed the former focus on the ‘beneficial use’ and ‘command and control’ approaches of its predecessors by focussing instead on regulation and by managing the effects of activities on the receiving environment, i.e., on ‘externalities.’<sup>234</sup> And it removed a previous focus from the now repealed Town and Country Planning Act 1977 that had provided for regional and united councils to address, in regional planning schemes, a spatial dimension of strategic planning. Such a focus has been restored in the Local Authorities (Auckland Council) Act 2009 [LGACA 09] with a requirement to prepare a spatial plan for Auckland.<sup>235</sup>

At the time of writing, there is a proposed Bill to amend the RMA<sup>236</sup>. Among public comments and submissions on the Bill, many have raised concerns about its likelihood to have adverse effects on the independence and transparency of local government. These are addressed under §9.3 below.

### **7.2.8 Local Government Amendment Act (No. 3) 1996**

The Local Government Amendment Act (No. 3) 1996 [LGAA 3 1996] is referenced in this part of the paper because it signalled the move to long term planning for local government when local authorities were mandated to prepare Long Term Financial Strategies [LTFs].<sup>237</sup> The significance of the amendments is reviewed below (see §10.2.3) by reason of their contributions, which have remained in current legislation, to transparency, accountability, openness and to sustainability and intergenerational equity.

<sup>233</sup> David Young, “Values as Law: The History and Efficacy of the Resource Management Act”, (Institute of Policy Studies, Victoria University of Wellington, 2001), p1

<sup>234</sup> Ibid., p2

<sup>235</sup> Local Government (Auckland Council) Act 2009, ss3 (Purpose of the Act); s79, Spatial Plan for Auckland

<sup>236</sup> Resource Management Reform Bill. This Bill passed its third reading in the House of Representatives on 27 August 2013.

<sup>237</sup> Local Government Amendment Act, 1996, especially ss122C and 122F

The LGAA 3 1996 introduced new provisions to prepare long term financial strategies (but without a requirement to prepare long term strategic plans in support). However, these changes brought fiscal responsibility into the lexicon of local government and are now acknowledged in the Local Government Act 2002.

### 7.2.9 Auckland: breaking the mould – Local Government (Auckland Council) Act 2009

The Auckland Council was established under the Local Government (Auckland Council) Act 2009 (LGACA 09)<sup>238</sup>. It differs from the Local Government Act in many respects, but the Auckland Council is otherwise subject to the Local Government Act 2002 (as amended in 2012) and in other applicable statutes and has the customary range of local government functions including the provision of Long Term Plans, annual plans and policies and plans under the RMA. But Auckland Council is also vastly different from other councils in its population size, the scale and diversity of its metropolitan and urban issues and by carrying out several other functions. Auckland is by far New Zealand's most populous local authority with a population of about 1.5 million, amounting to about one-third of New Zealand's approximately 4.5 million in 2013. It is a large local authority by most standards and (within Australasia) its population exceeds that even of Brisbane City. For these reasons, in the New Zealand context, its democratic accountability and community board structures differ from other local authorities. AC is also a Unitary Authority.

AC has significant public transport and transport planning responsibilities (under the Public Transport Management Act (PMTA) 2003) and also comprehensive spatial planning responsibilities under the LGACA unlike other councils. In addition and with AC being a unitary authority under the LGA 2002 and the LGACA, AC also has both regional and territorial responsibilities (to prepare district plans and Regional Policy Statements and Plans and under the Resource Management Act). The spatial plan provisions were developed to apply to (and be open through consultation to contributions from) all including the general population, the private sector and the government.<sup>239</sup>

Under the spatial plan provisions it retains, uniquely among local authorities at present, the duty to plan for Auckland's social, economic, environmental and cultural well-being *and* to fulfill these requirements by outlining a high-level, forward oriented and sustainable development strategy for Auckland. It is interesting here that, although the LGACA 09 did acquire the four *wellbeings* as a requirement *for focusing the spatial plan*, this separate inclusion appears inconsistent with the 'purpose' section of the LGA 2002 which remains also the 'purpose' section for the AC (being its principal Act) given that the LGACA 09 did not modify it. The sustainable development objective is firm within the LGACA 09<sup>240</sup>.

### 7.2.10 Full circle or future direction?

As already noted (§3.3 above), there were significant changes in 1989 and 1991 to New Zealand's planning and environmental legislation. As a matter of policy direction, these included the abolition of the Town and Country Planning Act 1977 [TCPA] (with the introduction of the RMA, both in 1991.) These changes saw the disappearance of the previous planning instruments and the introduction of new ones. The new 'policy' and 'plans'

<sup>238</sup> Local Government (Auckland Council) Act 2009 (LGACA)

<sup>239</sup> *Ibid.*, s79

<sup>240</sup> Local Government Act 2002, *Principles*, s.10

requirements moved away from a ‘forward’ planning approach in favour of a ‘sustainable management’ approach that emphasised rather the task of managing the adverse effects of activities and not strategic directions for growth. This change was based on government views that the TCPA (in particular) promoted unnecessary and poorly targeted interventions that imposed high costs on society<sup>241</sup>. The RMA reflected this view and still does. It does not provide explicitly for strategic development planning, though councils have prepared policies and plans under the RMA. As the Royal Commission on Auckland observed, growth and development management do not fall entirely in the realm of resource management and the RMA focuses of effects and impacts of development than on its nature, timing and scale.<sup>242</sup> And despite the existence of regional policy statements under the RMA, the Cabinet paper confirmed that RMA plans and decisions are effects-based and reactive, do not provide a clear development strategy nor comprehensive information on a full range of matters and have proven to be problematic in large urban environments experiencing rapid growth and where economic, social and environmental issues are interconnected<sup>243</sup>.

The Local Government (Auckland Council) Act 2009 [LGACA 2009] introduced and mandated the preparation and adoption of a *spatial plan* for Auckland. The Ministry for the Environment recommended this approach to provide a clear strategic direction for the growth and development of the Auckland Region and its communities, including social, economic, cultural and environmental objectives and to enable effective management of rapid growth in the region.<sup>244</sup>

There have been some perceptions that spatial planning is a new paradigm for New Zealand, it has a long tradition in the northern hemisphere and that it is likely to be widely adopted in New Zealand<sup>245</sup>.

The last point is turning out to be so. But the other observations ignore the fact that spatial planning is not new. At both the regional and territorial levels it has been around in New Zealand for many years even if using different terminology. It has been implemented by regional planning authorities in major urban areas and is not a new concept to urban and regional planners. Many past experiences will be worth reviewing in future and local lessons should be used to inform us.

One of the main reasons for implementing the Town and Country Planning Act 1977 was the pressure of major urban development in the Auckland Region and the absence of appropriate and sufficient planning instruments under the Town and Country Planning Act 1953 to manage it.<sup>246</sup> The First Schedule to the Town and Country Planning Act 1977 listed matters to be dealt with in regional planning schemes, including social, economic and environmental resource matters, public works and utilities planning and regional programming. The thrust of the Auckland Regional Planning Scheme, adopted by the Auckland Regional Authority in 1988, was that of growth management.

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<sup>241</sup> Gow, *op. cit.* (See also §7.2.5 above)

<sup>242</sup> Ministry for the Environment (MFE), Office of the Minister, Cabinet Paper – *Spatial Planning Options for the Auckland Council*, (reporting back to Cabinet [and its directions] to AGR on a number of matters associated with planning and a spatial plan (AGR Min (09) 9/1 referred, p.1, para. 3

<sup>243</sup> *Ibid.*, para. 48

<sup>244</sup> *Ibid.*

<sup>245</sup> Ivan, *Spatial Planning – a new paradigm for planning in New Zealand?* Retrieved 11 November 2013,; mhtml:file://, posted 14 September 2011.

<sup>246</sup> Based on the writer’s personal experience and knowledge.

Both the Auckland and Wellington Regional (Planning) Authorities initiated regional capital works programmes (APEX and COPEWELL respectively) to coordinate infrastructure planning and development within their regions<sup>247</sup>.

It can be observed that some changes been, or are being, revisited. Cheyne (and others) have noted the proclivity for many different though related plans to be generated in some regions and the lack of an integrated regional spatial planning framework together recognising the need for a framework that would reduce the complexity of the urban planning system<sup>248</sup>.

Cheyne also notes the need for new plans not just to result in overlays across existing plans but to align existing, relevant plans; and that spatial plans (in line with provisions of the LGACA) should also help align central and local government objectives<sup>249</sup> Cheyne refers to other means of strengthen in local democracy (e.g., the possibility of further empowering local mayors) and posits the point also taken up elsewhere in this paper about the need to rebalance central-local government relations<sup>250</sup>.

Cheyne concluded (over a year ago) that throughout local government structural change is imminent if not already occurring as a result of momentum for reform and reviews being undertaken as part of austerity measures. That is still the case. Reform pivots on the relevance of good democracy and good planning. Certainly, there are elements of *full circle* and in the evolution of local government in *future directions*.

## 8. Local government in 2013

### 8.1 Key question

Is New Zealand local government “fit for purpose”?

#### Summary findings

New Zealand local government is abundantly fit for purpose.

### 8.2 Functions

Local government has a wide range of statutory and non-statutory functions. The LGA 2002 has, since 2012, set out<sup>251</sup> core services for a local authority to be considered in performing its role:

- Network infrastructure;
- Public transport services;
- Solid waste collection and disposal;
- The avoidance or mitigation of natural hazards;
- Libraries, museums, reserves, recreational facilities, and other community infrastructure.

<sup>247</sup> Michael Wearne, *Regional Planning and Budgeting*, New Zealand Planning Council Staff Paper No. 1, May 1982, p.44ff (prepared as part of the New Zealand Planning Council Public Sector Study)

<sup>248</sup> Christine Cheyne, *Changing Shape of Local Government*, Paper presented to the New Zealand Planning Institute Conference, Blenheim, 2 May 2012, p.3 (Paper cites observations by Wilde and Benham)

<sup>249</sup> *Ibid.*

<sup>250</sup> *Ibid.* p4

<sup>251</sup> Local Government Act 2002, s11A

Local government's functions and responsibilities have usefully and more generally been described as having six broad themes<sup>252</sup>:

- Control of nuisances (e.g., through environmental protection);
- Regulation of activities (e.g., through the medium of district and regional plans and the issuing of consents under the Resource Management Act);
- Planning (strategic, environmental and transport planning);
- Community improvement (including libraries, recreation facilities, roads, urban renewal and economic development);
- The operation of utilities.

## 9. Local government independence within the Constitution

### 9.1 Key questions

To what extent is the constitutional and legal independence of local government safeguarded and is it free from external interference in its activities?

Thus, to what extent: (a) is local government constitutionally and legally independent and free from external interference in its activities; and (b) is it independent also in practice?

#### Summary findings

Parts (a) and (b) of the foregoing questions are interdependent but the response to each focuses on the different matters of how the law and its practical implementation provide for local government independence.

The unwritten nature (i.e., as in a single document) of New Zealand's Constitution, which is the basis for the existence and continuity of local government, is not evidentially a cause of serious instability in local government or a matter of widespread public concern. The arrangements do not necessarily in themselves hinder systemic or legislative changes, as some Constitutions may do, e.g., where they impede legislative changes that may benefit modernisation of the local government sector. The New Zealand Constitution offers such opportunities.

Historically, there was no excessive external or wide-ranging interference in local government's activities. There were isolated examples. But in recent years, this has changed rapidly with a number of matters in which ministers have reserved rights to over-rule councils' decision-making and the Government has varied the purposes and responsibilities of local government with no evidential regard to the costs to residents or their communities. Examples are cited and discussed below.

Within the Constitution, there is evidence<sup>252</sup> of a need for a better working relationship between central and local government – the “two spheres” of government. This report identifies some examples of possible corrective actions. Another report has identified several areas in the relationship where central government's attitude implies that local government is its agent. The law is clear that local authorities are accountable to their own communities, except where a statute may place duties with different types of accountabilities on local authorities

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<sup>252</sup> Institute of Policy Studies, Victoria University of Wellington, Local Futures Research, Local and regional council Project, *Local Government, Strategy and Communities*, (School of Government, VUW, 2006), p ; and Graham Bush, “Local Government”, In R. Miller (ed), *New Zealand Government and Politics*. Oxford University Press.

on quite specific matters. Several critics have proposed that central and local government should join forces to prepare, and agree on, a protocol or protocols for working together collaboratively. During the Local Government New Zealand Conference, 2013, members voted unanimously to seek constitutional recognition for local government<sup>253</sup>.

## 9.2 Local government is a major part of NZ's governance

The Minister of Local Government noted in a March 2012 Review that New Zealand cannot afford to let some councils underperform, mismanage important decisions or worse, risk failure. There is too much at stake.<sup>254</sup> It is noted already above that, as well as amending the reference to wellbeing as a core part of the local government purposes clause and replacing it with different requirements, the Government also increased its own powers under the 2012 amendments to the LGA to intervene in council's activities.

The responses below to the questions above about local government independence and external interference address the question directly, in its narrower context. The Minister's statement quoted above is a prelude to the Government's own question about whether it needed additional powers to intervene. It believed it did, and supplemented the then intervention powers in the LGA by adding new ones to refocus the purpose of local government.<sup>255</sup> It is clear that such a refocus was around the four wellbeings provision and the Government's expressed concern to clarify that councils should not try to replace services provided by the private sector.<sup>256</sup> It is not clear what evidence may have created that concern.

To address the fitness for purpose of NZ Local Government, it is also necessary to examine constitutional, institutional and contextual matters affecting local government. Why?

Answers to these questions will be more complex than the implication of the Minister's views simply that the Government needs to intervene more to prevent "failure".<sup>257</sup> Responses below will contend with the matters of integrity, good governance and why the Constitution is relevant to those answers. The answer is also relevant to the powers that have been given in law to all of local government's purposes, principles, functions and powers (as obtained through the 130 statutes) and to local authorities' capacities in overall resource terms. As the NZPC has observed, In the absence of explicit legal or fiscal relationships, local and central government are most accurately regarded as two spheres of a system of collective decision making, each with revenue collection powers to fund the implementation of its particular policies and programmes and accountable to their respective voters<sup>258</sup> The other sphere of the collective decision-making system is clearly central government,

The extent of the independence of local government, and its freedom from external interference, does depend on what the law requires through any of the 130 statutes with

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<sup>253</sup> Sourced from comment received by email on 20 September 2013 and from an interviewee and commentator on the first draft of this report, circulated on 16 September 2013

<sup>254</sup> Minister of Local Government, (Hon. Dr Nick Smith), *Better Local Government* – (an eight point reform programme), March 2012, (Department of Internal Affairs, <http://www.dia.govt.nz/Policy-Advice-Areas-Local-Government-Policy-Advice-Areas-Local-Government-Policy-Better-Local-Government>), p8

<sup>255</sup> *The Local Government Act 2002 Amendment Act 2012: A Discussion Document by Local Government New Zealand and the Society of Local Government Managers*, November, 2012, p6

<sup>256</sup> Minister of Local Government, (Hon. Dr Nick Smith), *Better Local Government*, *op. cit.*, p.5

<sup>257</sup> Minister of Local Government, *op. cit.*, March 2012 , p8

<sup>258</sup> PCNZ, *op. cit.*, p25

which local government has to contend. By the same token, it also depends on how often the law is changed and what exceptions may be made to it.

Good governance, transparency and accountability are given above as key terms of reference for this report and are constituents of integrity. These terms will all inevitably be engaged in relation to some discussion about application of the word purpose and in relation to local government. For example, the NZPC has also observed that purpose in relation to accountability can have several contexts and several different meanings.<sup>259)</sup>

This is also why local government happens to have different lines of accountability for different purposes but (as is pursued below, direct accountability only to its communities). For example, it has no direct statutory accountability to the Minister of Local Government though the Minister has different powers of intervention with different levels of impact on a council. In the absence of a written Constitution that otherwise might provide for the scope of local government's powers and for those of central government to intervene in them, or to modify them through law, there is room for central government to intervene arbitrarily and room also for central government unintentionally, as well as intentionally, to impose extra tasks and costs associated them on local government.

It is even more complicated. The NZPC report highlighted four areas of accountability of local government.<sup>260</sup> This paper recounts the NZPC's views under the major heading, Accountability.

### 9.3 Government's legislative capacity and its statutory powers

As noted elsewhere (both in relation to the unicameral system and also to the change in 1993 to the law that replaced the FPP with the MMP system of voting), under NZ's parliamentary system a government in office – whether standing alone or as a coalition – is constitutionally able to propel legislation through Parliament. With there being no single, written Constitution, this power is unfettered apart from the will of Parliament.

The Local Government Act provides the Minister with powers to act in relation to local authorities, i.e., to assist them and or intervene in their affairs in certain situations<sup>261</sup>. How 'interventionist' for legitimate reasons this has been is debatable. The Government identified these powers of intervention as a range of options to step in to help councils deal with crises – or to avoid them. The Government said, in its explanatory notes<sup>262</sup>, that it was introducing a graduated mechanism for Government assistance and intervention. The powers available now include:

- Request for information
- Appoint a Crown Review Team
- Appoint a Crown Observer
- Appoint a Crown Manager
- Appoint a Commissioner
- Call a general election

<sup>259</sup> NZ Productivity Commission, *Towards Better Local Regulation, Final Report*, May 2013, p17

<sup>260</sup> *Ibid.*, pp. 36-38

<sup>261</sup> Local Government Act 2002, s253

<sup>262</sup> Department of Internal Affairs, *op. cit.*, p5

Councils can also ask for help.

The Local Government New Zealand and Society of Local Government Managers' Discussion Document on the LGA 2002 Amendment Bill 2012 observed 'that, despite the Minister's assertion to the contrary, local authority activity had not expanded since 2002 and that none of the 'significant problems' that the legislation had been designed to solve arose out of any expansion of activity. The discussion document<sup>263</sup> noted that on occasions when councils had had to resolve problems voluntary collaboration within the sector has been used and referred to several extensive existing oversight provisions presenting other options, eg:

- Office of The Auditor General checks on for, and reports on, Long Term Plans for fiscal prudence
- Office of The Auditor General may enquire into any aspect of a council's decision-making where some irregularity may have been identified
- The Office of the Ombudsmen also has an oversight role and can enquire into a council decision and overturn a decision made by a committee or sub-committee
- Citizens can take action through the courts for failures to adhere to consultation
- The Minister already had powers of intervention in place that could be triggered by a disaster or by a failure of a local authority to perform its functions, duties and responsibilities.

A cause of concern to local government about frequent changes in the legislation – for example to the purposes and principles clauses of the LGA – is the significant effect that this has on councils, residents and communities without apparent regard to cost. This wide area of concern is addressed separately under heading §9.4 below.

There have been some notable interventions in recent years. The following instances have been significant.

### 9.3.1 Kaipara District Council

In 2012 the Minister, following a request from the council itself, a review and a report on the Kaipara District Council identifying serious governance and financial challenges to it beyond the ability of councillors to resolve, replaced the council with commissioners until 2015 and deferred the 2013 election until then.

### 9.3.2 Hamilton City Council

In 2011, the Hamilton City Council decided not to proceed with the scheduled Hamilton 400 in 2012 because (in 2011) the event had been reported as having run at a considerable loss. The council allegedly accepted a \$1.25 million payout from V8 Supercars Australia to exit from the applicable seven-year contract.<sup>264</sup> Following allegations of unwise spending, and an audit report in 2011 which showed that a total cost to Hamilton of the event of \$40 million, including \$3 million unauthorised spending, another Auditor-General's report<sup>265</sup> concluded that alleged conflicts of interest on behalf of some councillors had not occurred and that it would not have been appropriate to seek recovery of Council's losses from individual

<sup>263</sup> Local Government New Zealand and Society of Local Government Managers discussion document, *op. cit.*, p14

<sup>264</sup> Wikipedia, Hamilton 400, retrieved on 10/09/13 from: <http://en.wikipedia.org/wiki/Hamilton+400>, p.1

<sup>265</sup> Auditor-General, *Auditor-General will not inquire into Hamilton City Council*, dated 26 September 2012, retrieved 11/09/13: <http://oag.govt.nz/media/2012/hamilton-city-council>, pp.1-2

councillors. The Auditor-General also noted that that the Council was taking steps to respond to expressed concerns and for the Council to implement and embed necessary changes.

### 9.3.3 Environment Canterbury – the Canterbury Regional Council

In 2010 the local government and environment ministers appointed commissioners to replace the Regional Council elected members to oversee Environment Canterbury's governance responsibilities and to improve its relationships with the region's 10 territorial authorities and improve work on a freshwater water management strategy. This action was preceded in February 2010 with an investigation, which the Minister for the Environment had commissioned under the RMA, into the performance of Environment Canterbury.<sup>266</sup> Simultaneously, the Minister for Local Government commissioned a non-statutory assessment of ECan's governance and policy functions.<sup>267</sup> The Review TOR were set broadly but focussed on the adequacy of the ECan's performance in delivering on the adequacy of the Canterbury Water Management Strategy. The Review concluded that ECan's performance on water policy and management fell short of what was essential.<sup>268</sup> The Group recommended the establishment of a new Regional Water Authority under its own Act and that its members are appointed by the joint Ministers.

While observing that the Christchurch earthquake events had made the Canterbury overall situation unique, the joint ministers also *announced [their] intention to review E-Can's governance arrangements in 2014 and to extend commissioner governance until 2016*. In her October 2012 report, the Auditor-General also noted the need for all parties in Canterbury to contribute to earthquake recovery collaboratively.

In response, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (ECanAct) had introduced a new and temporary system of governance to Environment Canterbury (i.e., the Canterbury Regional Council) by replacing elected local authority members with appointed Commissioners and suspending elections, initially until 2013.<sup>269</sup> (Citing as reasons to extend the term following progress made under the Commissioners and disruptions caused by the 2011 and 2012 earthquakes, the Government scheduled the extension of the Commissioners' term to 2016 with an intervening ministerial progress review in 2014<sup>270</sup> .)

This was later extended to 2016, no doubt with the event of the 2013 local government elections in view.<sup>271</sup>

Much public debate occurred about these decisions and actions. This raised commentary on legal and constitutional issues that the ECan Act had generated, including that its introduction broached formal rule-of-law issues – in particular, requirements that law should be general and prospective in operation. The ECan Act applied retrospectively to the detriment of affected individuals and organisations, denied individuals and organisations

<sup>266</sup> Ministry for the Environment, *Investigation of the Performance of Environment Canterbury under the Resource Management Act and Local Government Act, Executive Summary*. November, 2010.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> New Zealand Law Society, *Suspension of Environment Canterbury elections breaches constitutional values*, statement by New Zealand Law Society, retrieved: <http://www.lawsociety.org.nz/home/for-the-public/for-the-media/latest-news/news/november/2010>

<sup>270</sup> TVNZ, National News, *Environment Canterbury Commissioners to stay*. Retrieved from: <http://tvnz.co.nz/national-news/environment-canterbury-stay-5068304>, published 7 September, 2012

<sup>271</sup> *Ibid.*

access to the Environment Court for protection of their rights or interests (e.g., to lodge appeals under the RMA) and authorised statutory regulations suspending sections of the RMA which regulate the activities of regional councils.<sup>272</sup> A paper written for the NZ Law Society Rule of Law Committee observed that this retrospective law was not justified even in certain limited situations that could otherwise apply and described the legislation, in denying the equal protection of the law, to be constitutionally repugnant.<sup>273</sup>

### 9.3.4 Christchurch City Council: *Earthquake Recovery Act usurps Council's resource management & planning powers*

Another set of constitutional concerns, between the September 2011 and February 2012 earthquakes was the passage and fast tracking of legislation (resulting in the Christchurch Earthquake Recovery Authority [CERA] Act 2011) to establish the Christchurch Earthquake Recovery Authority (CERA). This also superseded some existing law (as in the case of Environment Canterbury and as noted above) that applies to governance by regional councils. That law was passed with urgency<sup>274,275</sup>, and with limited public consultation, while conferring on the Minister and CERA powers to override primary and subordinate legislation without Parliament's agreement and again broaching both rule of law and access to justice common law precepts.<sup>276,277</sup> The CERA Act affects both Ecan and Christchurch City Council (CCC) although the substantive issues that each has experienced are different.

The CERA Act sets out the framework to rebuild Christchurch after the 2011 earthquake and is applied to rebuilding after the 2012 quake. The Act provides for the development of a 'Recovery Strategy' and gives the Minister for CERA and its CEO several powers, which include the acquisition and disposal of land, revoking and documents or resource consents issued under the RMA, directing a local authority to take any action or make any decision and to carry out any works including the erection, demolition or removal of any building.<sup>278</sup> These powers sit outside the RMA and the Public Works Act 1981 and are subject to very limited appeal rights where resource management issues are at stake.<sup>279</sup> Once in place, documents required under the CERA Act, with very short time frames, will override any "inconsistent RMA document" including a proposed regional policy statement, a current or proposed plan and any change or variation to any of them.<sup>280</sup> There is a view that Cantabrians could be left out of the process all together.<sup>281</sup>

### 9.3.5 Christchurch City Council – *consent accreditation powers suspended*

In June 2013, the Minister for Earthquake Recovery announced – following advice to the CCC from International Accreditation New Zealand (IANZ) – that CCC would have until 28 June to raise its standards for consenting and issuing procedures to acceptable levels in

<sup>272</sup> Professor Philip Joseph, *Environment Canterbury legislation - a paper written for the NZLS Rule of Law Committee*, (New Zealand Law Journal, June 2010, pp. 193 - 196).

<sup>273</sup> *Ibid.*, pp.193-194

<sup>274</sup> NZPD, Hansard, *Urgent Debates Declined - Canterbury Earthquake Recover Minister - Judicial Decision Regarding Use of Powers*, 25 July 2012

<sup>275</sup> Chapman Tripp, *Special fast-track process for CERA Bill*, 12 April 2011.

<http://www.chapmantripp.com/publications/Pages/Special-fast-track-process-for-CER...>

<sup>276</sup> Professor Philip Joseph, *op. cit.*, p.193.

<sup>277</sup> Stuff.co.nz. John Hopkins, *CERA Bill threatens democracy*, Fairfax NZ News, 14 April 2011.

<sup>278</sup> Allison Arthur-Young et. al., Russell McVeagh, *When the dust finally settles, will Cantabrians really have the Christchurch they really want?* New Zealand Lawyer Online. Monday, 6 May, 2013. Retrieved from:

<http://www.nzlawyermagazine.co.nz/Archives/Issue164/164F5/tabid/3466/Default.aspx> p.2 of 6

<sup>279</sup> *Ibid.* pp.2 & 3 of 6

<sup>280</sup> *Ibid.*, p.4 of 6

<sup>281</sup> *Ibid.*, p.6 of 6

order to retain its accreditation.<sup>282</sup> Accreditation was subsequently removed.<sup>283</sup> The Minister of Local Government appointed a Crown Manager under recent powers inserted in the LGA 2002. This is the only occasion on which a New Zealand Council has lost accreditation.

### 9.3.6 Aquaculture in Tasman and Waikato Regions

Amendments to legislation in 2011 introduced a new power for a minister to intervene in and amend approved and operative regional coastal plans under the RMA without usual consultation procedures such as public notification calling for submissions, objections or appeal purposes. Specifically, amendments to the Tasman Regional and Waikato Regional Coastal Plans were made through the Aquaculture Legislation Amendment Bill (No. 3).<sup>284</sup> This Bill also amended four existing statutes.<sup>285</sup> The Bill has enabled the Government to take a more active role in aquaculture planning and consenting and the Minister of Aquaculture has been empowered to recommend the making of regulations to amend provisions in regional coastal plans relating to the management of aquaculture activities in the coastal marine area. Explanatory notes to the Bill indicated the Government's intention to use such change provisions where current plan provisions "present the greatest barriers to aquaculture growth or [where] the opportunities are greatest"<sup>286</sup>.

### 9.3.7 Auckland Council – the Housing Accord

Another example of central government intervention has been its proposals, in engaging the Auckland Council in a housing accord to encourage fast-track development, to introduce as well a new law that would allow the Government to override local government planning and consenting functions and to authorise developments in certain circumstances.<sup>287</sup>

In June 2013, the Minister of Local Government presented and supported before Parliament's Social Services Select Committee the passage of a Housing Accords and Special Housing Areas Bill that would reflect aspects of the Auckland Accord<sup>288</sup> by creating Special Housing Areas on brownfield and Greenfield sites where the Government could override local government planning and consenting functions and empower the head of the Ministry of Business Innovation and Employment to authorise developments in some conditions.<sup>289</sup> The Minister of Housing and the Auckland Council signed the Accord on 3 October 2013.

## 9.4 Scope for Government interventions or effects on LG – intended and unintended

These examples cover the Costs of Central Government policy and regulations on Local Government and the NZPC findings on these.

<sup>282</sup> Fairfax NZ News, Press Reporters, [stuff.co.nz](http://www.stuff.co.nz/national/8794459/Ultimatum-in-consent-crisis), *Ultimatum in consent crisis looms*, Retrieved from: <http://www.stuff.co.nz/national/8794459/Ultimatum-in-consent-crisis>

<sup>283</sup> Chris Hutching, *Christchurch City loses consenting accreditation*, in The National Business Review, Monday, 1 July, 2013, Retrieved from: <http://www.nbr.co.nz/article/christchurch-city-loses-consenting-accreditation>

<sup>284</sup> Aquaculture Legislation Amendment Bill (No. 3), 2011, clauses 100 and 101 and Schedules 1 and 2 respectively

<sup>285</sup> the RMA 1991, the Fisheries Act 1996, the Maori Commercial Aquaculture Claims Settlement Act 2004 and the Aquaculture Reforms (Repeals and Transitional Provisions) Act 2004.

<sup>286</sup> New Zealand Aquaculture Legislation Amendment Bill (No. 3) 2011, Amendments to [Tasman and Waikato] Regional Coastal Plans, Clauses 100 and 101; and Explanatory Note: Government Leadership and Changes to regional coastal plans. Retrieved from: <http://www.legislation.govt.nz/bill/government/2010/0239/21.0/whole>, pp.1 and 2 of 72

<sup>287</sup> The National Business Review (NBR), *Auckland Council: housing bill an affront to 'local democracy'*, Thursday, 13 June, 2013.

<sup>288</sup> Fairfax NZ News, *Housing legislation 'last resort'*, 12 June 2013, Retrieved from: <http://www.stuff.co.nz/national/8787034/Housing-legislation-last-resort>

<sup>289</sup> NBR, op. cit.

Two issues arise, namely whether:

1. central government imposes uncompensated costs on local government to fulfil central government objectives; and whether
2. there is confusion and stress around where local government does, or should, sit in NZ's constitutional arrangements.

There is evidence of both. These seem to be symptomatic of a lack of consensus among local and central government, or parts thereof, about which is responsible for functions or actions where they both share interests.

#### 9.4.1 Cost shifting to local government

First, 'cost-shifting' is a relatively new term in New Zealand for a long experienced phenomenon. During discussion of the very first LGA (The Municipal Bill) in 1842, the new settlers of Port Nicholson representative noted that the Bill would impose new responsibilities on councils but gave them no ability to levy dues for the provision of services upon those who would benefit<sup>290</sup>.

Local Government New Zealand (LGNZ) has reported on it<sup>291</sup> as has the New Zealand Productivity Commission<sup>292</sup>.

In conjunction with the Local Futures Research Project, the matter of 'cost shifting' – if then not defined as such – was noted in 2006<sup>293</sup> in a published article about costs that the Local Government Act (LGA) 2002 had imposed through requirements on all local authorities to prepare Long Term Council Community Plans (LTCCPs). There the Mayor of Invercargill, Tim Shadbolt, was quoted to the effect that Parliament has the right to force "us" (local government) to have a LTCCP – whether we want to do one or not. He said that the (new) legislation places new pressures on authorities, requiring them to adopt the roles of facilitator, negotiator and catalyst in strategy development. Achieving outcomes for communities often requires alignment of the strategies and activities of other councils, central government agencies and organisations in the private and community sectors, which has created difficulties presented to local government in aligning changing central government positions to fit LTCCPs in preparation together with the complexity of applying an outcome based planning approach to all councils and of resolving tensions between the strategic implications of the LGA 2002 and Resource Management Act (RMA) 1991<sup>294</sup>.

The LGNZ study<sup>295</sup> identified, and provided examples of numerous cases of cost-shifting due to central government requirements on local government. 'Cost shifting' here means the cost of central government decisions impacting on local government activities and can include reductions in central government funding, e.g., for committed works or programmes that leave local authorities to pick up the costs. Examples include cuts in funding to services such as school swimming pools, costs created by Treaty settlements. 'Raising the bar' means costs that legislation or regulations create by raising service delivery standards to

<sup>290</sup> LGNZ, *The Impact of Government Policy and Regulations on the cost of Local Government: a report on the extent of costs imposed on local government by legislation and regulation from 2006 until 2012*, LGNZ, November 2012, Part One, p9

<sup>291</sup> *Ibid.*

<sup>292</sup> Productivity Commission of NZ (PCNZ), (Draft Report) *Towards better Local Regulation*, February, 2013

<sup>293</sup> Mike Reid, Claudia Scott & Jeff McDonald, *Strategic Planning under the Local Government Act 2002: Towards Collaboration or Compliance?*, Policy Quarterly, IGPS, Vol. 2, No. 2, 2006, p18

<sup>294</sup> *Ibid.*, p23

<sup>295</sup> LGNZ. *op. cit.*, November 2012, Part One

levels higher than communities would ordinarily be willing to pay for. These include water and waste water standards, administration of dog control legislation and the emissions trading scheme. ‘Regulatory creep’ means the problems created when governments increase the numbers and/or complexity of (existing) regulations. Examples included the Health (Drinking Water) Amendment Act 2007, the Public Transport Management Act 2008, the Land Transport Amendment Act 2008 and the cost of preparing codes of practice for utilities access.

The NZPC report canvasses these same issues and notes the ability of Ministers to intervene in local government affairs under different circumstances<sup>296</sup>. In doing so, it identifies areas of ministerial discretion to intervene not being subject to checks on the exercise of that discretion (though with requirements to report subsequently and publicly thereon).

Proposed legislative changes are subject to preparation by officials of Regulatory Impact Statements (RIS) before the bills’ passages through the House of Representatives<sup>297</sup>. The RIS accompanying the clause in the bill which eventually resulted in amendments to s3 of the LGA which resulted in the 2012 repeal of the *wellbeing* clause, and that also referred to previous (2010) amendments that had required councils to have regard to a list of ‘core services’<sup>298</sup>, noted:

*‘The principal risk is that making it easier for the government to get involved in council affairs will lead to the government getting more involved. This could threaten the democratic control of councils, and undermine important principles of government such as local autonomy and local choice’<sup>299</sup>.*

The Officials’ briefing to the Incoming Minister of Local Government then advised him, about the respective roles of central and local government, that:

*‘Within the Local Government portfolio, local authorities operate autonomously of central government and are empowered to choose which activities to undertake and how to pay for them. They make these decisions in consultation with the local communities that supply much of their funding. They are accountable to these communities, not Ministers – including the Minister of Local Government’<sup>300</sup>.*

The relevant LGA 2002 amendment was passed in 2012.

#### 9.4.2 Stress around local government’s place in NZ’s constitutional arrangements

The NZPC (in agreement with the Local Futures Research Project [LFRP] 2006) notes<sup>301</sup> that for regulatory systems to work well, the actors involved must have mutual respect for and understanding of other actors and their roles. It cites the LFRP in considering the

<sup>296</sup> PCNZ, op. cit., p27

<sup>297</sup> The NZ Treasury website records that, to help ensure that the regulatory process is open and transparent, Regulatory Impact Statements (RISs) prepared to support the consideration of regulatory proposals are published at the time the relevant bill is introduced to Parliament or the regulation is gazetted, or at the time of Ministerial release. A RIS provides a high-level summary of the problem being addressed, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.

<sup>298</sup> Submission of the Public Service Association, *Submission to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill*, July, 2012, p7

<sup>299</sup> RIS, para. 128

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*, p29

constitutional position of local government – with local government being a largely autonomous provider of local services, funded separately and held accountable by voters. *In the absence of well-defined constitutional or fiscal relationships, local and central government are most accurately regarded as two spheres of a system of collective decision making...*

The NZPC Report counselled, among other possible solutions, that (in this case for the purposes of regulatory design requirements):

- the interface between central and local government should be improved with local authorities recognised as ‘co-producers’ of regulatory outcomes; and that
- central government agencies need to enhance their knowledge of the local government sector and increase their capability to undertake robust implementation analysis; and that
- meaningful engagement and effective dialogue with local government needs to occur early in the [regulatory design] policy process”.

The NZPC also noted that, “to move forward will require both central and local government to demonstrate a commitment to fostering a more open and productive relationship and interface. To this end, there would be significant value in developing a ‘Partners in Regulation’ protocol, which articulated an agreed set of behaviours and expectations that would apply when developing and implementing local regulation.

*“The protocol would aim to promote a constructive interface between central and local government by:*

- developing a common understanding of, and respect for, the roles, duties and accountabilities of both spheres of government; and
- articulating an agreed set of principles to govern the development of regulations with implications for the local government sector.

“The protocol would be a jointly created document signed by the Government and representatives from the local government sector. To signal strong commitment, it could be signed by the Prime Minister and the Minister of Local Government. This would increase the protocol’s status as a ‘whole-of-government’ document. It is equally important that local government illustrates ownership and commitment to the protocol. For this to occur, signatories to the protocol must be seen by the sector as legitimate representatives with the authority to ‘speak for councils’.

“The Commission does not envisage that the protocol would be a legally binding document. However, the requirements of the protocol should be added to the Cabinet Office Manual, along with a directive that the principles be complied with in formulating local regulation in all but exceptional circumstances. At the same time, progress towards implementing the protocol should be included in the performance assessments of relevant central government agencies. Likewise, the protocol should include a provision that local authorities include a ‘statement of intent to comply’ in their annual reports”<sup>302</sup>.

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<sup>302</sup> *Ibid.*

The NZPC Report also attended to subject matters relevant to local government other than just regulatory design. It implies at least that the authors see possible scope for improvement within the existing constitutional arrangements and not by changing them.

Cheyne also writes about this area of stress or tension, to the effect that the 2002 reform proposals (now mainly being part of the law) had significant implications for the relationship between the two spheres of government<sup>303</sup>. Cheyne envisaged that if (the) reforms were imposed from outside, then risks of the (then current) perceptions of increasing centralisation would be magnified<sup>304</sup>. She also suggested, in the context of the importance of an autonomous sphere of local government, that the Government's *Better Local Government*<sup>305</sup> proposals tended to misunderstand the accountability mechanisms, including consultation and auditing, which themselves are 'grounded in recognition of local government's relative degree of independence from central government'<sup>306</sup>. Cheyne also observed that allowing a suitable level of discretion can maintain a balance that recognises local government as a sphere of government essential for constitutional reasons, namely to act as a check on the power of central government<sup>307</sup>.

#### 9.4.3 Constitutional considerations for the stability of local government

Compared to the case with statute law, which is passed through simple majority voting in Parliament, a single "written" Constitution would not so easily be passed or overturned in Parliament because it would typically require more than a simple majority, it would thereby broadly define the powers of the Executive and of local government and balance between them, and these would then take precedence over ordinary statute law.

In New Zealand, the "unwritten" Constitution leaves with the Executive the power to pass legislation by a simple majority. Under this Constitution and under certain other circumstances there is potentially a degree of political instability for either level of government whether due to uncertainty or to mutual disrespect.

In the case of local government this could occur because ultimately central government has the power to determine statutorily the purposes and scope of local government, its powers and its own responsibilities, governance activities and activities. Parliament has virtually unlimited power to 'make or unmake' any law it wishes.<sup>308</sup> The effect of the MMP electoral system in having created (as at present with a coalition partnership) should leave less likelihood of the rapid passage of significant pieces of legislation than prevailed under an FPP Parliament where simple majority voting in Parliament could rush legislation through. With the absence of an upper chamber in Parliament, the Executive can still change the basis of local government, the extent of its powers and the assumptions on which it exercises those. The impact of the introduction of the MMP electoral system in 1993 to replace the FPP system is considered separately below.

This mix of scenarios is also important for local government stability. In NZ, there are a number of constitutional features that carry the potential to cause instability for local

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<sup>303</sup> Cheyne, *op. cit.*, May 2012, p38

<sup>304</sup> *Ibid.*

<sup>305</sup> Department of Internal Affairs, *op. cit.*, 2012

<sup>306</sup> Cheyne, *op. cit.*, May 2012, p38

<sup>307</sup> *Ibid.*, p40

<sup>308</sup> A. V. Dicey, *Introduction to the Study of the law of the Constitution*, 10<sup>th</sup> ed., Macmillan, London, 1959, pp. 406 – 11; <sup>308</sup> Sir Geoffrey Palmer & Dr Matthew Palmer, *Bridled Power – New Zealand Government under MMP*, Oxford University Press, New Zealand, 1997, p. 7

government in its operating environment. Some such features (especially when they happen to be mutually supportive) include: the “unwritten” nature of the Constitution; there being a unitary system of government; there being a unicameral system of Parliament (without an “upper house” since 1951); and the existence of a first-past-the-post (FPP) electoral system (until 1993).

The NZ system of government is also unique in being a unitary (not a federal) system *and also because it has a unicameral legislature*. The previous upper house, i.e., the Legislative Council of the Legislature, abolished in 1951<sup>309</sup> Had, for several reasons commonly been seen as ineffective as a guardian of the Constitution though for some time it had not opposed the wishes of the Government on a major matter<sup>310</sup>

Many critics thought that the possible effectiveness of an entrenching provision would be slight in safeguarding the Constitution and that implementing such a provision would be problematic.<sup>311</sup> So the Constitution remained unwritten. Several factors are important for sustaining the independence of and stability for local government in carrying out its governance and substantive responsibilities to its communities and other affected stakeholders.

#### 9.4.4 Local Government seeks constitutional recognition

At its 2013 Annual Conference, LGNZ unanimously adopted a remit proposed by the Wellington City Council and supported by five other councils that:

1. Local Government New Zealand promote an amendment to the Constitution Act 1986 that gives constitutional expression to local government within New Zealand’s democratic governance arrangements.
2. Local government – its essential place and significance – be reflected in any future constitutional arrangements for New Zealand that may emerge out of the [current] constitutional review process.

The Conference forwarded the remit to the 2013 AGM for consideration (where it was passed unanimously and without discussion).

The remit was driven by recent changes to the LGA 2002, particularly changes to the purpose and role of local government, noting that this was about the frequency with which ministers have meddled with local government’s role and powers in recent years on the basis that there is now a situation where new ministers feel it is a duty to change councils’ role and processes without any regard to the cost to residents or their communities.

#### 9.4.5 General Empowerment – The Power of General Competence

The LGA 2002 had also introduced the ‘powers of general competence’ (or general empowerment provisions) consistent with meeting the purpose and principles as above.

The 2012 amendment has retained the general empowerment provisions though subject of course, for statutory consistency, to matching changes in the 2012 purpose and principles provisions.

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<sup>309</sup> K. J. Scott, *The New Zealand Constitution*, Oxford University Press, 1962, pp. 10 -11

<sup>310</sup> Palmer & Palmer, *op. cit.*, pp. 3

<sup>311</sup> *Ibid.*, pp.10 – 12

Based primarily on three sections of the LGA 2002<sup>312</sup>, councils were provided with *powers of general competence*, or with *general empowerment* as is now more commonly expressed, to enable them to pursue the *wellbeing* outcomes given in s10 (see Table 2).<sup>313</sup>

## 9.5 The effect of NZ's MMP electoral system on the stability of local government

'Pros' and 'cons' of MMP have been widely debated. Whether for or against, it is likely on balance that significant or important legislative changes receive more considered parliamentary scrutiny than they did under FPP. Analysis has suggested that, this part of the constitutional base for changes in legislation affecting local government is, and will be, more stable than it was under FPP.

The change from an FPP to an MMP electoral and voting system at the national government level occurred in 1993, following the passage of a nation-wide referendum. The change from FPP to MMP was seen broadly to make for a better democratic system in NZ<sup>314</sup>. This may be a matter of conjecture, if not trial and error. More to the point may be the matter that MMP, compared to FPP, has generally brought a political need for (for what to date have been) coalition MMP governments to secure the support of multiple government parties for proposed legislation<sup>315</sup>. Thus, it is reckoned that, in an MMP coalition government, Ministers are in a less commanding position than were their FPP counterparts, due to the need to ensure the support of multiple government parties for proposed legislation.<sup>316</sup> A conclusion is that parliamentary law-making was a much simpler and quicker process than it is under MMP. Ministers are no longer the omnipotent force they once were. Consultation and concession are now a vital component of implementing government policy through statute<sup>317</sup> and political management requires extensive consultation across party lines, and 'determination and firmness ... coupled with a willingness to engage and listen to those with widely differing perspectives.'<sup>318 319</sup>

Depending on the type of government in office, MMP governments generally have considerably less control over their bills than did FPP governments. The influence of select committees over government legislation has grown under MMP. It has been concluded that MMP has introduced more need for support and cooperation agreements among parties with more structured and predictable legislative majorities (significant under multi-party governments), that MMP has produced a significant rebalancing of the constitution and the disappearance of what many had seen under FPP as an elective dictatorship or the likelihood of a return to an overly executive-dominated constitution.<sup>320</sup>

A number of other aspects of NZ's overall governance seen in a historical context have also had implications for local government stability, effectiveness and integrity. To these, this paper has added the matter of *subsidiarity* because it brings focus onto economic, efficiency,

<sup>312</sup> LGA, 2002, Ss. 10, 12 & 14

<sup>313</sup> See also *Local Government, Strategy and Communities*, Institute of Policy Studies, Victoria University of Wellington, New Zealand, 2006, pp 55-56

<sup>314</sup> Ryan Malone *Rebalancing the Constitution: The Challenge of Government Law-Making under MMP*, Institute of Policy Studies, Wellington, 2008, p129

<sup>315</sup> *Ibid.*

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*, p227

<sup>318</sup> George Tanner, 'Confronting the process of statute-making' in Rick Bigwood (ed), *The Statute: Making and Meaning* (LexisNexis, Wellington 2004) 49 52

<sup>319</sup> Malone, *op. cit.*, p227

<sup>320</sup> *Ibid.*, pp 227, 232, 233

representational and jurisdictional issues that should be considered in the making of decisions about the <sup>321</sup>allocation of functional responsibilities between different levels of government – those being central and local government in this context. ‘Subsidiarity’ was added to the Government’s lexicon for local governance criteria<sup>322</sup> in 1987 and could well do with being reintroduced in relation to any formal approach to central-local government relationships.

## 9.6 Effects of New Zealand’s system of elected local government representation

For information purposes, it is noted here that the electoral system in local government is not based on ‘parties’ as those in the parliamentary system are. Local government elected members enter politics on ‘tickets’ rather as representing political parties.

Bush puts it strongly – and “as a comforting difference, which is absolutely fundamental for one school of thought” – in that the country’s local bodies are “largely unafflicted by partisanship”.<sup>323</sup> Bush attributes this characteristic naturally enough to the association of local representation with community.<sup>324</sup> Nevertheless, he records that there is evidence that despite dislike of partisan politics, voters appreciate the cue given by candidate affiliations.<sup>325</sup> In New Zealand, there are some non-party groupings, e.g., Citizens and Ratepayers. Many elected councillors are independents. It can also be noted that many local government statutes confirm the accountability of councils to their communities and – far more rigorously than is the case with parliamentarians – set out procedures and processes that councils must follow in *being* accountable to their communities for delivering on community outcomes. Together, these mandate levels of accountability for councils and elected members in terms of integrity, transparency, performance and probity.

While this is not the place to debate the merits of the party and ‘non-party’ systems, it is interesting to note the extent to which New Zealand’s system reflects the history of New Zealand itself. Much of the ethos of local government has been based on property ownership<sup>326</sup> and the evolution of the local government system being oriented to provide physical infrastructure including roads for all, rather than to contemplate wider issues, more commonly in the sphere of central government, of income distribution and economic and social welfare. This difference between local government electoral characteristics in New Zealand and the UK may partly be explained, despite their similar overall land areas, by differences in population sizes and concentrations resulting perhaps more in demands on UK local government to resolve ‘health, safety and welfare’ types of resource allocation policy and distributional issues than is the case with New Zealand local governments. If so, then it may also reflect in part why NZ local government has tended to be less ideologically driven than in the UK – because local government there is influenced more by such wider resource allocation considerations and that attract the interests of parties rather than of independents.

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<sup>321</sup> *Ibid.*, pp. 3 - 4

<sup>322</sup> Michael Bassett, *Reform of local and regional government*, Government Economic Statement, (17 December 1987), Wellington Government Printer, p62

<sup>323</sup> Bush, *op. cit.*, p.260

<sup>324</sup> *Ibid.*, pp.20-261

<sup>325</sup> *Ibid.*, p.264

<sup>326</sup> Jean Drage, *A Balancing Act – Decision-making and representation in New Zealand’s Local Government*. Institute of Policy Studies, Victoria University of Wellington, 2008, p.59

## 9.7 Prospects for a constitutional accord

### 9.7.1 Benchmarks and comparisons

It has been suggested that New Zealand's communities, local government and democratic arrangements are not well served by ad hoc and fragmented reviews and that lack a strong and clear vision for local government as a sphere of government that plays a vital constitutional role<sup>327</sup>.

There are plenty of places to search for benchmarks. Cheyne<sup>328</sup> cited overseas examples of processes and institutional innovations such as the establishment of a Mayors' Cabinet to give directly elected mayors Reid explored the future possibility of constitutional status for local government, questioning the logic of New Zealand – with a small population in regard to its size and population distribution – remaining as centralised as it is<sup>329</sup>. It is true that New Zealand local government has a high degree of financial independence from central government relative to most other OECD country situations but also that many public sector functions are still highly centralised (as in the case of health, education and social welfare)<sup>330</sup>

There are also different reasons for seeking the development of accords between central and local government, such as to improve their joint workings on regulatory affairs for efficiency reasons (see §9.4.2 above).

There have been significant if small steps in the recent past towards types of accords. In 2000, the Prime Minister established a Central/Local Government Forum which the PM chaired and which used to meet twice yearly that has strengthened the common issues that face both central and local government.

The possibility of codifying the Constitution in the UK has now been debated for some time with the Political and Constitutional Reform Select Committee there having issued a relevant Consultation Paper. Much of the UK support for a proposed Constitutional Code is to break the centralised nature of English governance and to reinforce democratic local accountability of councils to communities<sup>331</sup> and also (with improving "localism" in mind) to seek out examples of specific ways in which the power of general competence would enable local authorities to extend their role beyond that conferred by the 'well-being' powers.<sup>332</sup>

There is ground for comparative research. As noted earlier, the UK and New Zealand similarly have unwritten constitutions. But there are significant differences in our systems of government, including local government. One authoritative response<sup>333</sup> to the UK Committee advised that the (proposed) Code should reflect: the constitutional position of local government; the primary accountability of local authorities to local people; and the

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<sup>327</sup> Bassett, op. cit., p.262

<sup>328</sup> *Ibid.*

<sup>329</sup> Mike Reid, "Local Government's Quest for Constitutional Status", in *Along a Fault Line – New Zealand's Changing Local Government Landscape*, Ed. Jean Drage, et. al., Dunmore Publishing, Wellington 2011, pp.27-38

<sup>330</sup> Jean Drage, *A Changing Landscape*, (in *Along a Fault-Line –New Zealand's Changing Local Government Landscape*, Jean Drage, Jeff McNeill and Christine Cheyne, eds, Dunmore Publishing Ltd, Wellington, 2011), p. 12

<sup>331</sup> Colin Copus, *Magna Carta 2.0: we need a code to manage central and local government*, The Guardian Professional, Public service reform hub, 30 January 2013. Retrieved 13/04/13 from: <http://www.guardian.co.uk/local-government-network/2013/2013/jan/30/code-central-local-government>

<sup>332</sup> Andrew Le Sueur, 'Fun-loving guys', government 'doing anything that individuals do' and the rule of law. UK Constitutional Law Group. Retrieved 08/03/13, <http://ukconstitutional.law.org/tag/local/local-government/>

<sup>333</sup> Professors George Jones & John Stewart, *Mapping the path to codifying – or not codifying – the UK's Constitution, Response to the Political and Constitutional Reform Select Committee*, 2 July 2012. Retrieved from: <http://www.publications.parliament.uk/pa/cmselect/cmpolcom/writev/mapp>

responsibility of local authorities for community wellbeing and the use of community resources. It also stressed the need for local authorities to have a wide scope for local choice to discharge that responsibility. It urged the principle that “local authorities should draw most of their revenues from their own voters with taxes whose rates they determine”. This certainly reflects New Zealand local government’s present reality. New Zealand’s comparative independence internationally on central government funding is illustrated in §11.2 and Table 5 below.

In the UK, local government would no longer be seen as just an agent of central government. Codification should neither bring inflexibility into the system of government nor enhance the roles of judges but enable civil servants, ministers and parliamentarians to have a significant strategic role, leaving the judiciary to adjudicate on only a few disputes cases not settled outside the courts.<sup>334</sup>

In the UK, there was reportedly no wide demand for codification of either the central – local government relationship but, in the respondents’ view, a need to do so to achieve a healthy system of government and a healthy polity and for elected representatives of the people to give a lead.<sup>335</sup>

These are useful points of comparison to consider.

### **9.7.2 Improving the central and local government partnership**

There is a need, identified by several commentators and in particular the New Zealand Productivity Commission, to bring about collaboratively, improvements in the ways that local and central government work together. To do so would not be a ‘hit and miss’ affair. It would be a programmed approach based on mutual respect and expectations. Local and central government, as the two spheres within our already bipartite constitution, would aim for a smoother, future relationship.

## **10 Corporate transparency and accountability**

### **10.1 Key questions**

To what extent are provisions in place in local government to ensure appropriate standards of transparency and accountability in corporate governance and management (including strategic, service, financial, human resource and information and regulatory management and the procurement and delivery of local public goods and services) and how effectively are these implemented?

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<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

## Summary Findings

*Local government is subject to detailed and comprehensive statute law setting out its purposes and operational modes. This promotes high levels of performance against best practice standards of transparency and accountability and against citizen expectations in New Zealand's advanced democracy. There are high standards and levels of local government performance when judged by outcomes and outputs generated. Legal and resource provisions are fit for purpose and support local authorities' achievement of high standards.*

### 10.2 Basis for performance against best practice standards

Accountability has wide application. This part of the paper focuses on accountability rather for the quantity and quality of local public goods and services that councils provide to their communities and their members than for compliance and probity reasons.

Most changes since 1989 to the law relating to local government have aimed to promote high levels of performance against best practice standards of transparency and accountability and against citizen expectations. The main statutes that form the basis for local authority performance are contained in the LGA 2002 (as amended to date).. The purposes and principles clauses are discussed above. Following below is an analysis of planning, accountability, transparency and reporting modalities.

The Government and independent authorities oversee Local Government comprehensively on its performance in meeting its statutory responsibilities. These responsibilities entail identifying and realising outcomes for each local community as well as actively maintaining anticorruption standards. In 2012, the Controller and Auditor General, in reporting on local government's ability to meet its future needs, expressed general satisfaction with local authorities' efforts to: deliver services in prudent and sustainable ways, remarking that even some arrangements that might have appeared unusual were found to be fit for purpose and not imprudent.

### 10.3 Institutions, mechanisms and oversight

#### 10.3.1 Transparency & accountability

Transparency is an important institutional outcome for local government. It is a feature of local government law and the practice that it generates. These together promote transparency and accountability in the widest sense and provide a good basis for integrity. They can carry both legal and political sanctions for default or failure to deliver this outcome.

#### 10.3.2 The 1989 basis

The Local Government Amendment (No. 2) Act 1989 introduced wide-reaching changes to replace an essentially input and prescription based Act to one that was output driven. This reflected, though in different ways, the earlier central government Public Finance Act amendments that had introduced an outcome and output based approach for central government agencies to adopt. A comparison of these, for methodological reasons, is found elsewhere in this paper.

The Local Government Amendment (No. 2) Act 1989 introduced (at the time) radically new accountability and accounting disciplines. These included<sup>336</sup> a transparency requirement that local authorities should conduct their affairs in a manner that is comprehensible and open to the public. Clear objectives were to be established for each authority's activities and policies, conflicting objectives and conflicts of interest were to be resolved in a clear and proper manner and its regulatory functions were to be separated from its other functions. "Separation" was also a requirement of the Act in relation to the design of each council's management structure. There were additional requirements about the availability of information among the council, its local communities, community boards and central government.

The same part of the Act included<sup>337</sup>, despite its curiously worded title, one of the most significant provisions which addressed the preparation of annual plans through a special consultative procedure.<sup>338</sup> The Act's special consultative procedure requirements are addressed below. Together, the annual plan provision and the special consultative procedures formed the core accountability procedures of the Act. The other Annual Plan provisions<sup>339</sup> required the Plan to outline the council's financial proposals in detail for the next financial year (FY) and in general for the following two FYs. The plan had to set out the council's significant policies and objectives (and those of any of its trading enterprises<sup>340</sup> or other subordinate organisations),

The Act required a local authority to adopt this procedure in certain instances. In this instance, with preparation of an annual plan, a council was required to take a number of actions in a given sequence that constituted a process of public consultation. This began with the requirement to put a proposal before a meeting of the local authority and then publicly notify it and give 'persons interested in it' opportunity to make submissions on the proposal with reasonable time to do so. Open hearings of submissions were required, as was making all written submissions on the proposal publicly available, subject to there being no legal reason why it should not do so.

### 10.3.3 The 1996 basis and strategic planning

The Local Government Amendment (No. 3) Act 1996 went even further, though it was strange in the way that it provided for councils to prepare long term financial strategies without a required long term strategic plan 'per se' (an omission later rectified in the 2002 Act) to support a financial strategy. The 1996 amendment nevertheless, and through the Long Term Financial Strategy (LTFS), required councils to set out matters such as future cash flows, and the reasons for being engaged in activities. There was an expectation that local authorities would make realistic assessments.<sup>341</sup> It did not work entirely that way. Several councils simply extrapolated their annual plans. One review of a few councils'

<sup>336</sup> Local Government Act 1974, Amendment (No. 2) Act 1989, s223C, s (1) Conduct of Affairs

<sup>337</sup> *Ibid.*, s223D, Annual report to public concerning plans

<sup>338</sup> *Ibid.*, s716A, Special consultative procedure

<sup>339</sup> Local Government Act 1974, Amendment (No. 2) Act 1989, s223D, ss (2), (3), (4), (5), (6), Annual report to public concerning plans

<sup>340</sup> Local Authority Trading Entity (LATE) was a corporate entity set up by a council where it was expected to be more efficient in delivering goods and services to the public than by the council delivering it directly and where there was insufficient private sector supply for the market to do so competitively, i.e., there was a particular 'market failure'. LATEs have since been replaced by Council Controlled Organisations (CCOs).

<sup>341</sup> Peter McKinlay, *Practical Implications of the Strategic Linkages between the LTCCP & AMP (asset Management Plan)*, presentation to the 8<sup>th</sup> Annual Local Government Asset Management Conference, Auckland, McKinlay Douglas Ltd, April 2005, p3

LTFS's, where the councils were experiencing rapid growth, showed that projected expenditures on infrastructure were virtually flat.<sup>342</sup>

Since the 1996 amendment had required councils to prepare long term financial strategies, it was clear though implicit that a planning basis was expected. The preparation of an LTFS had to be undertaken after proper consultation with communities served by local authorities. Long term planning was to be expressed in terms of outcomes and outputs. The Amendment Act gave new purposes to local authorities to promote prudent, effective and efficient financial management<sup>343</sup>. The amendment required them to specify “principles of financial management” in their decisions, to provide a structured framework for decision-making on financial management, to provide an effective and appropriate avenue for public participation in financial decision-making, and to explain their selections of funding mechanisms. It also sought to clarify the appropriate exercise of local authority local authority autonomy in financial policy and funding decisions.<sup>344</sup>

The “principles” applied to local authorities’ management revenues, expenses, assets, liabilities, investments and financial dealings. The implementation of the “principles” included making prudent, adequate and effective provision in their LTFSs and annual plans for the local authorities’ expenditure needs and the assessment of the benefits and costs of different options in making any decision with significant financial consequences.<sup>345</sup>

Of particular note in the 1996 amendment was the nature of the way it addressed the funding of expenditure needs, i.e., by containing relevant economics sourced criteria for allocating expenditure in relation to the incidence of benefits it would convey whether on private or public users.

#### **10.3.4 Planning, reporting and oversight mechanisms**

Through statutory Long Term and Annual Plan and reporting provisions, the laws explicitly promote good performance by local authorities against each community’s identified and expressed outcomes for its own local authorities. And the Local Government and other Acts incorporate mechanisms to deter corrupt or fraudulent behaviours. The Local Government Act 2002 sets out principles for good governance and accountability.

There is comprehensive statutory provision for and oversight by communities, by ministers and by independent statutory bodies, of local authorities’ activities.

Extensive provisions are in place to empower local authorities to make decisions within the law and the introduction of general empowerment in 2002 extended local government’s available discretions to do so. All local authorities are audited on the basis of ‘value for money’, performance, stewardship and compliance.

Local government operates, and administers its responsibilities, under numerous statutes and is accountable for various functions under these, primarily through the Local Government Act 2002. Local authorities have the power to tax property through rating and to charge for the provision of services.

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<sup>342</sup> *Ibid.*

<sup>343</sup> Local Government Act 1974, Local Government Amendment (No. 3), s122B

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*, s122C

Some councils are highly dependent on rates and others minimally so – rather on other local sources of income such as local user fees and charges. Councils are accountable and must plan by consulting with, and then by reporting to, their communities on their performance in implementing Long Term and Annual Plans. The Local Government Act, together with the Local Electoral Act 2001 and the Local Government Rating Act 2002 aim to work together to provide a coherent framework for local government and to enhance<sup>346</sup> its responsiveness to community needs and its accountability to those communities. Councils have statutory duties and authority to undertake their functions and to secure revenue through a range of rating and charging mechanisms. The law provides means of achieving fiscal responsibility and financial prudence<sup>347</sup>. Through mandatory funding policies, local authorities judge who benefits and who pays and provide transparent policy reasons for their decisions.

Chief Executives employ staff on behalf of their councils as the chief administrative officers and are the only persons who, under the law, may hire, fire, sanction or instruct staff. Financing human resources and capital requirements is part of the Long Term Plan and annual plan process.

Changes in 1989, 2002, 2010 and 2012 to the law relating to local government changes have aimed to promote high levels of performance against best practice standards of transparency and accountability and against citizen expectations in New Zealand's advanced democracy.

Provisions of the Local Government Act ensure that councils consult communities in their plans to undertake activities and to obtain revenue and in expending it for services provided and then that councils report back and are audited annually. Reports on both performance and financial compliance have to be audited. The Government and independent authorities variously oversee local government on its performance in meeting these requirements under the law including councils' successes in instituting and implementing anticorruption standards.

The Auditor-General audits all public entities, including local authorities, for several purposes including performance accountability, probity and stewardship.

There are several oversight mechanisms.

Elected members' pecuniary interests in relation to the making of contracts between local authorities and their own elected members, and to restrictions on the actions of such members when matters are under consideration where they have a pecuniary interest, are overseen through the Local Authorities' (Members' Interests) Act 1968. The Auditor General can institute proceedings where there are complaints. Under this Act, the Auditor-General also decides applications by members for exemptions or declarations of pecuniary interest relating to the discussion and voting rule in the Act in relation to the approval of contracts over stated levels in a financial year. And the Auditor-General provides guidance to elected members and officers on compliance with the Act.

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<sup>346</sup> Department of Internal Affairs, *Building a safe, prosperous and respected nation*, in "Resource material – Our Research and Reports – Strategy for Evaluating Local Government Legislation, Retrieved 15/03/2013 from" [http://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-material-Our-Research-and-Reports](http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Our-Research-and-Reports).

<sup>347</sup> LGA 2002, 2012 amendments introduced changes to the fiscal responsibility provisions.

In 2012, the Controller and Auditor General, in reporting on local government's ability to meet its future needs, expressed general satisfaction with local authorities' efforts (under the long term plan provisions) to: deliver services in prudent and sustainable ways; to plan prudentially and by not raising rates to unreasonable levels. Even some seemingly unusual arrangements were found to be fit for purpose rather than imprudent.

The Ombudsman also has significant oversight roles. The Ombudsmen's primary purposes are to inquire into complaints against public entities local authorities, and can decide whether grounds to investigate exist following receipt of a complaint. The relevant statutes are the Official Information Act (OIA) and the Local Government Official Information and Meetings Act (LGOIMA). The latter sets out circumstances about information required to be available. The Ombudsmen can also invoke and investigate complaints under the Protected Information Disclosures (or 'whistleblowers') Act (PIDA) but it has been little used.

The Ombudsmen do not have jurisdiction to investigate administrative decisions and recommendations or acts done or omitted, by local authorities at full council meetings. However, decisions of individual council members or of a council committee (not being a "committee of the whole") may be subject to investigation. The reason for exempting "committees of the whole" from the Act is probably because local authorities are made up of democratically elected representatives, and often deal with policy matters<sup>348</sup>.

With this range of oversight mechanisms already in place, it is not clear what other if any "problem" examples may have concerned the Government in introducing the new intervention powers (described in §9.3 above) to the Local Government Act 2002 amendments in 2012. With the powers that were already in the 2002 Act and that are also available to the Office of the Ombudsmen and Office of the Auditor General, and with local government now being empowered to use voluntary collaboration in the sector to resolve problems, it is difficult to judge otherwise how the government rationalised these additional powers of intervention.

While local authorities do have considerable independence within the Local Government and Auckland Council Acts, the 2012 amendments may well be seen as an example where that independence has been threatened by external interference. It is also an example of changes that can be made potentially to all local authorities and of threats that can be made to local government's stability through legislative amendments under an unwritten constitution. In the New Zealand circumstances, there appear to have been few 'significant problems' as foreseen by the government, there are already several means in place to mitigate those few 'problems' and the need for the new provision of such direct ministerial interventions is questionable. The few arguably 'significant' problems experienced in recent years are also briefly described in 9.3 above. And these do seem to be 'few' for the size of New Zealand's system of local government.

Local government has a collective voice through both Local Government New Zealand and its own member councils to express views on proposed legislative changes and other matters.

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<sup>348</sup> Mai Chen, *New Zealand's Ombudsmen Legislation: The Need for Amendments after almost 50 Years*, (2010) 41 VUWLR

### 10.3.5 Accountability as a statutory requirement

So, what does ‘accountability’ demand as a criterion under the Act for local authorities to fulfil? A lot – not only their accountabilities to fulfil the letters of the law but also for their performance in what they achieve by effecting outcomes and outputs and for sustaining their corporate effectiveness in doing so. This entails abundant procedural requirements including maintenance and stewardship of public resources.

‘Accountable’ or ‘accountability’ is a term used or a requirement used in parts of the LGA 2002, though the ‘interpretation’ does not define it. The LGA 2002 provides for the governance and accountability of local authorities and requires<sup>349</sup> territorial authorities and regional councils to have governing bodies (viz, the elected councils themselves) that are responsible and democratically accountable for their decision-making. ‘Accountability’ of a council to its community also applies, for example, in relation to the provision of long term and annual plans. This is local authorities’ main basis for their accountability. For the purposes of this paper, as noted, accountability is taken to mean the answerability for actions taken or not taken by an agent to a principal in a formally agreed relationship.

Bourn stresses the ‘slipperiness’ of the meaning of concepts including that of accountability, noting the importance of keeping matters in context.<sup>350</sup> Accountability can have different meanings and they can also conflict with each other. How this can occur is described above in the context of local government’s independence and its relationships with central government.

Accountability’ is one of the pivotal terms in this paper. One reason to address it is precisely because it is slippery and means different things. As the New Zealand Productivity Commission Zealand (NZPC) has remarked, local government is accountable, not only to [its] communities as above, but also in other respects and directions.<sup>351</sup> For example, it is for local authorities not just in delivering goods and services (outputs) but also in developing their own capabilities<sup>352</sup>.

In the absence of explicit statutory recognition of a line of accountability, a local authority is not accountable to the relevant Minister or government department for the exercise of its regulatory powers<sup>353</sup>,

The NZPC Report on local regulation also outlines the nature of local government’s eight constitutional relationships and accountabilities.<sup>354</sup> These can be cited as follows:

Local Government’s multiple accountabilities	
<b>With its own communities</b>	The only direct political accountability of councils for their governance and management to their own communities
<b>With central government</b>	Responsible in context-specific ways to a minister or department for operational matters where an Act determines. But no direct line of

<sup>349</sup> LGA, 2002, s.41

<sup>350</sup> Sir John Bourn, *Public Sector Auditing*, John Wiley & Sons Ltd, Chichester, 2007, pp92 – 95

<sup>351</sup> Productivity Commission of New Zealand (PCNZ), *Towards better regulation*, Wellington, June 2013

<sup>352</sup> *Ibid.*, p9

<sup>353</sup> *Ibid.*, p.25

<sup>354</sup> *Ibid.*, p.36-8

<b>ministers and departments.</b>	accountability to the Minister or Department for the exercise of its statutory powers. The NZPC agreed with the concept of local and central government being regarded as “two spheres of a system of collective decision making, each with revenue collection powers to fund the implementation of its particular policies and programmes. <sup>355 356</sup> It is incorrect generally to characterise local authorities as agents of central government.
<b>With the Minister of Local Government (MLG)</b>	The Minister has primary responsibility for policy and legislation affecting local government. Except where statute explicitly provides, the Minister is not answerable for specific local authority operational performance and cannot intervene in their decisions. Unless the law provides, local authorities are not accountable to the Minister for the exercise of their powers. A recent amendment to the LGA 2002 gave the Minister additional powers to intervene in defined circumstances.
<b>With other central government institutions.</b>	Some other institutions exercise powers relating to local government. The DIA provides information to the MLG and other public sector stakeholders and the public. The LGC advises the MLG on local government structure and amalgamation.
<b>With Parliament</b>	Parliamentary offices such as the Controller and Auditor General, the Parliamentary Commissioner for the Environment and the Ombudsmen have various powers of oversight over local authorities.
<b>With the courts</b>	Local authorities are subject to the courts’ and to tribunals’ jurisdiction and are subject to judicial review. The courts hear appeals against local authorities’ decisions under several statutes.
<b>With their communities</b>	The ultimate accountability to councils’ own communities is the triennial local election. The LGA 2002 provides the basis for democratic local decision making for communities and the Local Elections Act 2001 sets out how the local electoral system works. Other means, such as public meetings and open council meetings and the provision information are also parts of this framework.
<b>With Maori</b>	While the Treaty of Waitangi is with the Crown, there is a clause in the LGA 2002 that providing that the Crown’s obligations under the Treaty are recognised and respected by placing obligations on local authorities to facilitate Maori participation in local decision making processes. Other clauses in the LGA 2002 and the RMA 1991 are also part of this framework, with respect to consultation and participation.

### 10.3.6 The language of accountability in assuring high performance

Management literature comprehensively covers performance management internationally. New Zealand legislation covers the meanings of ‘results’ in the public sector in different ways – e.g., outcomes, outputs and ‘significance’, using different methodologies and processes.

As a significant innovation, the Local Government Act 2002 departed from previous approaches (that were in place under the 1989 and earlier legislation<sup>357</sup>) to new ways of codifying powers and functions and of directing councils simply to meet either *output* or *input* requirements that seemed to attached to the terms ‘significant’ and ‘activities’ previously

<sup>355</sup> Ibid., p.35

<sup>356</sup> Local Futures Research Project, 2006, pp.13-14

<sup>357</sup> McKinlay, *op. cit.*, 2004

used but not defined in the LGA 1974. 'Significance' and 'significant activities' gained preeminent use from the 1989 amendment to the LGA 1974 despite the absence of definitions of these words used in the LGA, and contrarily, the use of 'outcomes' and 'outputs' in the PFA that provided legitimacy for central government agencies in deciding their priorities against performance based criteria.

The LGA 2002 did introduce the concept and use of 'outcomes' by widening the previous purposes of local government and inserting four outcome criteria that supported the desired achievement of community 'wellbeing'. It also gave councils powers through the obligation to prepare Long Term Council Community Plans and Annual Plans to identify and to seek to achieve *outcomes* in keeping with the Act's purposes and principles for local government (above). (The 2012 amendment also modified the Act by redefining LTCCPs as long term plans (LTPs). The abbreviated term 'LTP' is used in this paper.)

Following the 2012 amendments, the LGA 2002 now stresses the concepts of 'effectiveness' and 'efficiency' in the conduct of a local authority's business and are clearly implied in relation to meeting community outcomes as part of the purpose of long term plans.<sup>358</sup> These arise in relation to the purpose of reorganising a local authority and in relation to delegation of council decision making, as to a council committee.<sup>359</sup>

The main accountability of local authorities is to their communities while central government ministries, departments, entities and corporations are accountable for performance to portfolio ministers.

The Chairman of the 2007 Commission of Inquiry into Local Government Rates<sup>360</sup> separately observed in 2008 that local government management reform has followed a somewhat different path, borrowing some elements from the central government reforms, but adopting different approaches in others<sup>361</sup>. He also noted that there are significant differences in the complex and detailed legislation governing local government management – mainly the Local Government Act 2002 (LGA) – but also that preceding legislation to the 1989 amendments (i.e., amendments to the LGA 1974) had introduced new accountability mechanisms including annual planning process and special consultative procedures. The 1996 amendments to that Act had strengthened financial planning and reporting and required public consultation on long term financial strategies<sup>362</sup>.

One different and important approach has been between the accountability frameworks. The central government approach (defining outcomes and outputs) has long been in place for planning and reporting. The local government approach prescribed in the LGA 2002 is a development of earlier approaches based essentially on which activities are significant. Reference to 'activity/ies' has been used in earlier local government legislation. Reference to 'significant' and 'significance' has also been made since the LGA 1974 but they were not defined. The LGA 2002 now defines both terms<sup>363 364</sup>. These are to help attribute degrees of importance of an issue, proposal, decision or matter as the local authority assesses them

<sup>358</sup> LGA 2002, s.93(6)

<sup>359</sup> *Ibid.*, ss.24(A) & 31 respectively

<sup>360</sup> See [www.ratesinquiry.govt.nz](http://www.ratesinquiry.govt.nz)

<sup>361</sup> David Shand, *Perspectives on Local Government Management*, Paper presented to Victoria University of Wellington Symposium on 'After the Reforms', 29 February, 2008, p1.

<sup>362</sup> *Ibid.* pp1-2

<sup>363</sup> LGA 2002, s5

<sup>364</sup> See Office of the Auditor General New Zealand, *Significance Policies, What is Meant by 'Significance' and 'Significant'?* retrieved from: <http://www.oag.govt.nz/2004/lq-2002-03/p-art2-03.htm>

and as it takes into account the likely impacts and consequences for the local authority, for its inhabitants and its area and for its own capacity to carry out the work. This is a different policy approach to identifying priorities than central government uses. But in the removal of the *wellbeing* outcomes in the 2012 amendments to the purposes clause, and with the replacement of it by what are essentially prescribed statements of outputs, it appears to have introduced some opacity to the meaning of ‘outcomes’ for planning, reporting and accountability purposes.

Other than (as above), by defining ‘community outcomes’,<sup>365</sup> the LGA 2002 contains no definitions of outcomes. This was also noted<sup>366</sup> with the observation that “outcomes” [had been] obviously linked to achieving the four *wellbeings* – ‘social, economic, environmental and cultural’ – set out in the Act as the key goals of local authorities, that ‘community outcomes’ are intended to reflect strategic choices and tradeoffs and that establishing these linkages may be challenging. Establishing community outcomes is a process that the LGA requires councils to enter in preparing its LTPs.

There are also numerous *references* to (not definitions of) outcomes in other parts of the LGA<sup>367</sup>. Also, the LGA contains no reference to or definition of outputs. If the many references in the Act to ‘activities’ are intended to stand in for ‘outputs, they would be incorrect. Outputs are ‘things produced’. Their ‘value’ is meaningless in themselves and without knowledge of what purpose they fulfil.

In the LGA 2002, references to ‘significant’ and ‘significance’ form a main part of the basis for local authorities to judge what activities are important. Councils may be assisted by the fact that they are also required to be ‘effective’ and ‘efficient’.

By way of comparison, the following definitions relevant to the various qualities relating to integrity, including outcomes, outputs and impacts are quoted from s2 of the Public Finance Act 1989. These may help informally to understand the task of ensuring accountability for purpose from local authorities under the LGA. From the PFA 1989, as below:

<i>Outcome</i>	(a) means a state or condition of society, the economy, or the environment; and (b) includes a change in that state or condition
<i>Impact</i>	means the contribution made to an outcome by a specified set of outputs, or actions, or both
<i>Outputs</i>	(a) means goods or services that are supplied by a department, Crown entity, Office of Parliament, or other person or body; and (b) includes goods or services that a department, Crown entity, Office of Parliament, or other person or body has agreed or contracted to supply on a contingent basis, but that have not been supplied
<i>Output</i>	(a) includes the full cost of producing and supplying outputs measured in

<sup>365</sup> Local Government Act, 2002, ss.3, 5

<sup>366</sup> *Ibid.*, p9

<sup>367</sup> E.g., Local Government Act 2002, S14(1)(a), a local authority giving effect to its desired outcomes; S14(1)(f), a local authority collaborating with others; S65(1) performance monitoring having regard to outcomes; S77(1)1(b)(ii), outcomes in relation to local authority decisions; S93(6)(b), Long Term Plans —description of a district’s or region’s community outcomes; S101(3)(a)(i), Financial management – funding of activities in relation to community outcomes; Schedule 10, Part 1, S1 – Community outcomes to be provided for in Long Term Plans; Schedule 10, Part 1, S2 – Community outcomes as rationale for delivering groups of activities; Schedule 10, Part 3, S23(b), Reporting in annual plans on effects of delivering groups of activities.

<i>expenses</i> accrual accounting terms; and (b) includes the full allocation of overhead costs
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The PFA provisions offer a way or a methodology of establishing linkages – a logic chain of sorts – between ‘activities’, from what outputs they produce, to what changes the outputs make to the state of things (outcomes), and also what contribution (i.e., impact) a specified set of outputs will make to the outcomes. Put another way, what are the key activities intended to contribute to the achievement of the outcomes (as opposed to the administrative activities necessarily undertaken to provide the infrastructure for the policy, program or initiative)?

### 10.3.7 Planning and reporting

The LGA 2002 stresses the concepts of ‘effectiveness’ and ‘efficiency’ in the conduct of a local authority’s business (and are clearly implied in relation to meeting community outcomes) as part of the purpose of long term plans<sup>368</sup>. These arise in relation to the purpose of reorganising a local authority<sup>369</sup> and in relation to delegation of council decision making as to a council committee<sup>370</sup>.

The Local Government Act 2002 as then enacted required all local authorities to prepare Long Term Council Community Plans on the communities’ behalves, not on councils’ own behalves, and to involve communities in the preparation of those and annual plans for making and implementing decisions about the provision and funding of local public goods and services, and for the councils’ regulatory responsibilities.

## 11. Local government resources

### 11.1 Key question

To what extent local government has adequate resources to carry out its duties, functions and responsibilities?

#### Summary Findings

*The necessary authorities for resources are in place. Long-term (strategic) and Annual Plan processes are robust and encourage transparency and accountability. The availability of resources, subject to the ability of councils to justify and sustain their requirements annually, is fit for purpose to the requirements of local authorities. By world standards, New Zealand local government generally is not heavily dependent on central government funding.*

### 11.2 Institutions & Mechanisms in place – Resources

Local government operates, and administers its responsibilities under 130 statutes. The core statute is the Local Government Act 2002. Councils are individually accountable and must plan by consulting with, and then by reporting to, their communities on their performance in implementing Long Term and Annual Plans and other (e.g., resource management) policies and plans. The Local Government Act 2002, together with the other major statutes, has explicit and complementary purposes of enhancing local government’s responsiveness and accountability to communities in meeting their needs. Councils have

<sup>368</sup> LGA, 2002, S93(6)

<sup>369</sup> *Ibid.*, S24A

<sup>370</sup> *Ibid.*, S31

statutory duties and authority, in undertaking their functions, to secure revenue through different rating and charging mechanisms. The law prescribes standards for fiscal responsibility. Through mandatory funding policies, local authorities judge who benefits and who pays.

Some relevant points here have been made above in other contexts but bear repeating for this one.

Chief Executives, as the chief administrative officers, are legally the sole employers and managers of staff on behalf of their councils. The LGA 2002<sup>371</sup> also requires councils to prepare employment and remuneration policies. Financing these and financing capital required for infrastructure is part of the LTP and AP process.

Local authorities have the powers to tax property through rating and to charge for the provision of services. Some councils are highly dependent on rates and others minimally so because they are able to charge for “non-public” goods and services used.

Local government operates under, and administers its responsibilities, under numerous statutes and is accountable for various functions under these. Prime among them is the LGA 2002 under which councils are accountable and must plan and report to their communities for their performance in implementing LTPs and APs. The LGA 2002, together with other statutes cited earlier, underscores the need for local authorities to respond to community needs and to account to the communities.

The LGA 2002 provides councils with the statutory authority to undertake their functions and the Local Government Rating Act 2002 (LGRA 2002) to secure revenue through a range of rating mechanisms and the ability to levy charges where feasible on users that councils provide. The law requires councils to prepare rating and funding policies as part of the preparation of their LTPs and/or APs. And the concept of financial prudence is also built into the LGA. The AP process is subject to public consultation. Funding policies involve local authorities judging who benefits and who pays and the annual plan must include a list of rating related items to go into a draft annual plan.

Local authorities in effect have the ability to tax property through rating and to charge for the provision of services. The adequacy of resources, of course, depends on the ability and willingness of communities and users as expressed during annual planning phases – in their councils’ expenditure proposals – to bear proposed levies and charges. Some councils are highly dependent on rates and others minimally so and can charge for providing services. By world standards, New Zealand local government generally is not heavily dependent on central government funding and is very well resourced.

### **11.3 Locally raised versus national revenue for local government**

This comparison of New Zealand with three other developed Commonwealth countries (i.e., Australia, Canada and the United Kingdom [UK]) helps to illustrate the relative independence of local government revenue sources in each country. This is based on the premises generally that the relative independence of local from central government via subsidies or from any other source of public financial support can be an important indicator of local

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<sup>371</sup> Local Government Act, 2002, s42

government's overall political independence. That independence can arise from local government having its own legitimate sources of tax revenue or other non-tax revenues.

Differences among countries' jurisdictional structures can, in making comparisons among countries, result in deceptive results unless each comparison is placed properly in context.

It is recalled that New Zealand's system of government is a unitary one. Unlike many federated systems (commonly having three or more levels of government), but like the UK, it has two levels only – central and local. New Zealand local government is significantly independent of central government for revenue. As noted, the UK is also a non-federated system and Canada and Australia have provincial and state systems of government interpolated between the federal (or Commonwealth) and local levels. In the latter two cases, federal and state/provincial levels both provide funding to local government. The effect of these in each country, and for the comparisons below, should be seen more clearly in Table 5A below.

This comparison first (Table 5 below) quantifies in percentage terms the 2009 structure of public revenues across all levels of government in each of the comparator countries.

Country	Central government %	State government %	Local government %	Social contributions %	%
New Zealand	90.4	0.0	9.6	0.0	100.0
Australia	60.7	33.4	5.9	0.0	100.0
Canada	36.5	42.7	11.9	0.9	100.0
United Kingdom	89.6	0.0	10.4	0.0	100.0

Table 5 shows how the presence of a state system of government (Australia and Canada) impacts on the size of central governments' own (lesser) revenue shares. It is interesting to note, even without state systems, how close to each other local government revenue shares are among the four countries.

It is relevant for understanding Tables 5 above (and 5A below) that taxes other than social contributions represent the largest share of general government revenues in all OECD countries, with grants and revenues comprising the remainder. New Zealand and Australia rely on general taxes other than social contributions and they finance welfare through general taxation. In the UK, Australia and New Zealand, social security funds are already included in central government.<sup>373 374</sup>

<sup>372</sup> OECD (2011), "Public Finance and Economic Revenue Structure by Level of Government", Version 1, last updated 24 June 2011 Chapter 3, in *Government at a Glance 2011* OECD Publishing,

<sup>373</sup> OECD (2011), "Structure of general government revenues", in *Government at a Glance 2011*, OECD Publishing. [http://dx.doi.org/10.1787/gov\\_glance-2011-8-en](http://dx.doi.org/10.1787/gov_glance-2011-8-en)

<sup>374</sup> See Table 5A

Table 5A below has two parts, comprising information derived from similar sources but covering two different years – 2006 and 2009. The part based on 2009 has (as in Table 5) also been drawn directly from OECD data. The part of Table 5A utilising 2006 data is apparently derived from OECD sources. The 2006 data is especially useful in this context because – while more dated – it has been further disaggregated and shows more discrete information than was readily available from the 2009 published OECD data sets. The 2006 additionally shows both tax and other non-tax sources (including fees and charges, investment income, trading surpluses, sales of goods and services and redistributed business rates). Table 5A shows, for 2009, the three main ‘taxes’ categories of local government revenue that OECD has defined for its data sets covering all OECD member countries, including the four listed in the tables.

The 2006 information in Table 5A has been derived from an independent published and referenced source and is recorded correctly in Table 5A from that source, though it also apparently has an earlier OECD source.

It should be noted for the record that the country revenue source details (in percentages) for Australia and the UK add to 90% and 98% respectively (not to 100%). There is no information to hand about the two discrepancies. However, the local government *local tax* revenue shares in Table 5A are very similar for the 2006 and 2009 years. The 3 year gap will have contributed to the small percentage differences in the ‘first line’ numbers between the 2006 and 2009 data, both recorded in Table 5A.

Despite the aforementioned discrepancies, Table 5A (for 2006) remains very useful for comparative purposes. From Table 5A, the following is noted:

- New Zealand local government’s own tax sources are about 54% of its total revenue. Together, user fees/charges, investment income and sales of goods and services accounted for about 35% of revenue. Thus, its total revenue sources independent of central government comprised 89% of its total revenues. Government transfers were 11%. (From a separate NZ Auditor-General Report in 2011, in the period 2008/09 to 2010/11, rates revenue (mainly from property taxes) comprised about 54% of total operating revenue, apart from some slight year to year variations.<sup>375</sup> This level of independent local government tax revenue is high by international standards.) Other than rates, local government’s other main sources of public funding for its activities were central government road transport subsidies (nearly 15% of total operating revenue), development levies (i.e., development impact fees) and vested assets (about 4%). Transport subsidies recognise the considerable national (“public good”) benefits that accrue from locally provided roads.)
- Australian local government revenues were 38%. Other government transfers are likely to be a combination of state and federal grants.
- Canada appears similar with ‘other government transfers’ likely comprising provincial and federal sources.
- UK local government undertakes a much wider range of functions than in the other three countries. It is notable that only about 16% of local government tax revenue is obtained locally. Non-tax revenues appear to be low. Government transfers of 46%

<sup>375</sup> Controller and Auditor-General, Local government: *Results of the 2010/11 audits*, Wellington, New Zealand

indicate a highly centralised system of government and a low level of local government financial independence.

Table 5A below enables the following summary comparison among the four selected OECD countries:<sup>376</sup>

**Table 5A: Composition of local government revenue in four developed Commonwealth countries**

Revenue per Cent	2009 <sup>377</sup>				2006 <sup>378</sup>			
	New Zealand	Australia	Canada	UK	New Zealand	Australia	Canada	UK
Taxes other than social contributions	53.3	35.6	39.4	12.9				
Social contributions	0.0	0.0	0.0	1.9				
Grants + other revenues	46.7	64.4	60.6	85.2				
<b>Totals 2009 only</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>				
Own taxes					54.0	38.0	41.0	16.0
Investment income					7.0	0.0	3.0	0.0
User fees/charges					9.0	0.0	0.0	12.0
Other government transfers					11.0	13.0	41.0	46.0
Other non-tax revenues					0.0	15.0	0.0	0.0
Trading surpluses					0.0	32.0	0.0	0.0
Sales of goods and services					19.0	0.0	15.0	0.0
Redistributed business rates					0.0	0.0	0.0	16.0
<b>Totals 2006 only</b>					<b>100.0</b>	<b>90.0</b>	<b>100.0</b>	<b>98.0</b>

<sup>376</sup> Ilias Dirie, *Municipal Finance: Innovative Resourcing for Municipal Infrastructure and Service Provision*, Commonwealth Local Government Forum, p.262

<sup>377</sup> OECD (2011), "Public Finance and Economic Revenue Structure by Level of Government", *op. cit.*, Chapter 3.

<sup>378</sup> Dirie, *op. cit.*, p. 262

A wider comparison among OECD countries<sup>379</sup> also noted that revenue structures and transfers between government levels illustrate the degree of fiscal autonomy of sub-central governments and their ability to shape public policy and public service delivery. This comparison shows that New Zealand local government is less reliant among most of its counterparts (ranked fifth among 30 OECD countries) on 'grants and other revenues'. It is noted above that New Zealand local government's reliance on tax revenues within its total revenues is also low by international standards. The OECD also noted that revenue transfers among levels of government illustrate the financial interdependence among them while collected taxes can be considered a proxy of the fiscal autonomy of sub-central governments<sup>380</sup>.

## 12 Promoting integrity for elected members & employees

### 12.1 Key questions

*Are there comprehensive and effective mechanisms in place for prudent and transparent use of local resources and for preventing and combating corruption by elected members and officers?*

Particular issues are:

- to what extent are there provisions in place to ensure the integrity of elections conduct?
- to what extent there are provisions in place to ensure that local government elected members and employees have to report and be answerable for their actions; and
- how such provisions work in practice; and
- to what extent and how local government seeks to deter corruption by promoting integrity and to inform and to educate the public in fighting corruption.

### Summary Findings

*Legal and resource provisions are fit for purpose and support local authorities' achievement of high standards of transparency and accountability.*

*Statutes provide for comprehensive and close oversight of local authorities. Branches of the Executive, independent statutory authorities and the courts variously provide such oversight. The legislative provision and machinery are both comprehensive and rate highly for integrity.*

*Several provisions of the LGA 2002 are integrity focused. All local authorities are required in law to adopt and implement codes of conduct, to ensure prudent stewardship and the efficient and effective use of (councils') resources and to conduct business in an open, transparent and democratically accountable manner. Branches of the Executive, independent statutory authorities and the courts variously provide such oversight. The legislative provision and machinery are both comprehensive and rate highly for integrity. There is no evidence of wide-spread existence of corruption in local government, whether at elected member or officer levels. Instances thereof have been few and generally negligible.*

<sup>379</sup> OECD, *Government at a Glance 2009, Government Revenues, Revenue structure by level of government*, [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org)

<sup>380</sup> OECD (2011), "Revenue Structure by level of government", in OECD Publishing. [http://dx.doi.org/10.1787/gov\\_glance-2011-9-en](http://dx.doi.org/10.1787/gov_glance-2011-9-en), Chapter 3. *Government at a Glance 2011*,

*Nationally based local government (i.e., local authority and officer) associations are active in providing guidance to their members in their efforts to pursue activities that help promote good performance, accountability, transparency and probity and that discourage fraud, theft and corruption.*

## 12.2 Elections & Governance in local authorities

### 12.2.1 Local Elections Act 2001

The Local Electoral Act 2001 covers the holding and timing of, and procedures for local authority elections. Notable is that new voting provisions – single transferable voting (STV) – were introduced in 2001. This was considered to best match New Zealand’s essentially non-party voting system. The Local Electoral Act 2001 also introduced provisions to assist the introduction and use of new technologies in administering elections and voting.

### 12.2.2 Governance principles and requirements

The LGA 2002 also sets out the meaning of *governance principles*<sup>381</sup> (see also Table 6 below) and the means (*Local governance statements*)<sup>382</sup> that councils must use to provide for governance. These will be considered below in conjunction with, as is relevant, the need to ensure corporate transparency and accountability and with maintaining integrity.

Another matter is the accountability of local government to different ‘agents’ for doing different things. Under certain conditions, it is *not* accountable to another party (except, in accordance with the LGA, to its own communities) for doing certain *other* things. These different circumstances and conditions are discussed in 10.1.5 above:

**Table 6: s14, LGA 2002 Governance Principles**

A local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and
- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and
- (d) a local authority should be a good employer; and
- (e) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

In fulfilling these principles, local authorities are subject to other requirements relevant to the matters of integrity, transparency, democratic accountability, effectiveness and efficiency. Among these, they are each required to:

<sup>381</sup> Local Government Act 2002, s39

<sup>382</sup> *Ibid.*, s40

- prepare and make publicly available triennially local governance statements including information on their local authorities' functions, responsibilities and activities, on relevant local legislation conferring power on them; on members roles and conduct, on governance, policies for liaising with Maori, on management structures and relationships, remuneration and employment policy, on equal employment opportunities and on systems for public access to them and to their elected members and on processes for requests for official information.
- have a governing body and chief executive (CE). A regional council's governing body must comprise members elected in accordance with the Local Electoral Act 2001 (LEA 2001) and a chairperson elected by the council's members. A territorial authority's governing body comprises a mayor and members elected at large.
- appoint a CE whose responsibilities are to maintain and manage the council's activities and systems and employment, on behalf of the local authority, of its staff. The CE is obliged to maintain appropriate standards of integrity and conduct among employees.
- adopt a code of conduct setting out how elected members should: conduct themselves and behave towards one another, staff and the public; and about disclosure of information; and provide short explanations of the Local Government Official Information and Meetings Act 1987 (LGOIMA 1987).

## 13. Integrity of elected members and employees of local authorities

### 13.1 Key questions

Are there comprehensive and effective mechanisms in place for ensuring prudent and transparent use of local authority resources and for preventing and combating corruption by elected members and officers?

#### Summary findings

Statutes provide for comprehensive and close oversight of local authorities. Several provisions of the LGA 2002 are integrity focused. All local authorities are required in law to adopt and implement codes of conduct, to ensure prudent stewardship and the efficient and effective use of (councils') resources and to conduct business in an open, transparent and democratically accountable manner. Branches of the Executive, independent statutory authorities and the courts variously provide such oversight. The legislative provision and machinery are both comprehensive and rate highly for integrity. There is no evidence of wide-spread existence of corruption in local government, whether at elected member or officer levels. Instances thereof have been few and generally negligible.<sup>383</sup> Nationally based local government (i.e., local authority and officer) associations are active in providing guidance to their members in their efforts to pursue activities that help promote good performance, accountability, transparency and probity and that discourage fraud, theft and corruption.

There is considerable legal provision for and oversight by communities, by ministers and by independent statutory bodies of local authorities' activities.

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<sup>383</sup> Two examples are reported as follows: Fairfax NZ News, Two charged over \$840,000 council fraud, retrieved from: <http://www.stuff.co.nz/auckland/local-news/north-shore-times/43183>, 25 November 2010; and: Laurilee McMichael, The New Zealand Herald, Council investigated by SFO, [http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c\\_id](http://www.nzherald.co.nz/rotorua-daily-post/news/article.cfm?c_id), 20 June, 2013.

Despite the absence of widespread public concern about external interference in local authorities' decision-making, some recent individual concerns are reviewed in the main paper.

There are several authorities ensuring integrity – e.g., the Auditor-General, the Parliamentary Commissioner for the Environment, the Ombudsmen, the Remuneration Authority and the Environment Court. Elected members' pecuniary interests are overseen through the Local Authorities (Members Interests) Act.1968. Some are mentioned earlier with different reference points.

Otherwise, Local Government Act 2002 provisions ensure that councils consult communities in their plans to undertake activities and to obtain revenue to fund services provided; and then that councils report back to their communities and are audited annually.

The Resource Management Act 1991 (RMA) prescribes additional major policy, planning and consent-making responsibilities for all local authorities and also applies if necessary to the actions and integrity of both elected members and employees in undertaking their own relevant duties.

The Environment Court has roles in mediation and alternative dispute resolution and exists as an appellate authority in relation to the content of proposed policies and plans and consents.

National associations representing different facets of local government are active in assisting their members, including elected members and employees, through information and training provision. The Office of the Auditor General also supplies various forms of guidance.

The main paper summarises some important information drawn from factual bases about councils' approaches to dealing with and preventing corruption.

Arguably, there is potential for integrity breaches by either elected members or employees but there is little, if any, evidence of either. Where there is, a council will if necessary consult with the NZ Police or with the Serious Fraud Office (SFO).

### **13.2 Integrity oversight & guidance mechanisms**

Communities, ministers and independent statutory bodies by law give comprehensive and oversight of local authorities' activities.

Extensive provisions in the law empower local authorities to make decisions.

The introduction of general empowerment in the LGA 2002 enabled local authorities to do so. The Auditor-General audits all public entities, including local authorities, for several purposes including performance accountability, probity, compliance and stewardship. Oversight therefore has several, often overlapping, purposes including effectiveness, efficiency and integrity.

There are several sources of oversight of local government in NZ, as described already above.

A selective record of the Auditor-General's overviews of local government since 2010 is as follows:

Auditor-General's overviews	Findings and conclusions
<p><b>Matters arising from the 2012-22 local authority long term plans (LTPs)</b></p>	<p>Generally satisfied with local authorities' response to this challenge. The "direction of travel" is positive. Because long term plans (now) must include a financial strategy, and of the need for a productive debate on prudence and sustainability, they have concentrated on those matters rather than on service delivery.</p> <p>Overall, local authorities are planning to live within their means, and they are not raising their rates to unreasonable levels to do so. [Much] capital expenditure is ... to upgrade systems to meet new standards... Many local authorities are also expected to repay some or all (of their) debt during the 10m year period of the LTPs. Net income always stays positive, and local authorities stay within the golden rule of fiscal policy that governments should borrow only to invest.</p> <p>Local authorities have a diverse range of circumstances and community requirements. [These] have led to arrangements that might appear unusual (e.g., levels of debt). However, these arrangements are generally fit for purpose rather than imprudent.</p> <p>[No] audit reports raised concerns about the financial prudence of local authorities' forecasts.</p>
<p><b>Overview of better practice in setting local authorities' performance measures</b></p>	<p>Performance information has improved since the 2006-16 LTCCPs [though] its quality in performance measures could be higher, more appropriate and more meaningful.</p>
<p><b>Results of the 2011/12 audits of local government</b></p>	<p>Was a demanding year for local authorities. Only one (of 76) local authorities did not adopt its annual report within the statutory time frame, this being a significant improvement compared to previous years.</p>
	<p>Local authorities have generally good anti-fraud frameworks.</p>
	<p>The creation of the new Auckland Council and group had largely gone well.</p>

Next is a further set of examples of the Auditor General's guidelines to local authorities.

Auditor General's guidance	Remarks or notes
<p><b>Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968</b></p>	<p>Revised every three years at the time of the local authority elections for the guidance of new members. Purposes are to protect the integrity of local authority decision making so that members are not affected by personal motives, such as pecuniary interest, when they vote and that they do not solely enter contracts worth over \$25,000 annually with their own authority.</p>
<p><b>Good practice guide on conflicts of interest and bias.</b></p>	<p><i>Managing conflicts of interest: guidance for public entities</i> (June 2007)</p>
<p><b>Good practice guide on</b></p>	<p>Issued June 2006. Covers principles for good</p>

<b>principles to underpin management by public entities of funding to non-government agencies.</b>	management of public resources and risk management with case studies. .
<b>Severance payments.</b>	A guide for the public sector.
<b>Procurement.</b>	Guidance for public entities.
<b>Audit committees</b>	Guide setting out principles and practices to set up and operate audit committees in the public sector.
<b>Codes of conduct</b>	An examination of councils' experiences in developing and using their codes newly required under the LGA 2002
<b>Public Communications</b>	Good practice guide for managing public communications by local authorities in particular situations.
<b>Relationship between a Local Authority's CE and Elected Members</b>	Managing these relationships in "the grey area" between governance and administration.

### 13.3 Audit and Risk Management

#### 13.3.1 Outline and introductory remarks

It can be said that the actions of local government are often more rigorously subject to transparency requirements than are those of central government. For example, under most circumstances (e.g., under the LGA, LGOIMA, the Public Transport Act) the matters of how councils consult their communities are subject to minimum legal standards as are their obligations to ensure that the public can attend council and committee meetings. This level of transparency is not similarly applied to the Executive and to central government institutions in making their own decisions. Many are made "behind closed doors" and are not subject to public consultation requirements.

Arguably, there is potential for integrity breaches by either elected members or employees but there is little, if any, evidence of either. Information is provided below for local government nation-wide from OAG and OO reports and from a public sector survey that OAG commissioned on fraud, theft and corruption.

#### 13.3.2 Risk management, audit and internal control.

The OAG is proactive with these matters having, for example, issued guidelines to the public sector including councils on Audit Committees<sup>384</sup>. Many councils operate audit committees, and national associations for local government (see Annexes) provide a range of assistance to councils on financial management and control. The fraud sections of this report (below) also provide information on how councils deal with fraud prevention and with breaches by staff.

As part of its guidance on audit committees, the OAG has noted that such a Committee should be independent and advise the Chief Executive on the quality of risk management

<sup>384</sup> Controller and Auditor-General, Audit Committees in the public sector, issued 26 March 2008  
 Retrieved: 31/07/13. <http://www.oag.govt.nz/2008/audit-committes>

processes. The Committee should review whether current and comprehensive risk management frameworks are in place and whether there are sound strategic risk management plans in place. There should be fraud control plans, processes and systems in place to capture and investigate fraud related information<sup>385</sup>. §13.3.3 provides information on ways in which New Zealand local authorities respond to such advice.

### 13.3.3 Fraud, theft and corruption: a summary of the evidence

Through her regular audits, or for a different reason, such as a request from a council for assistance, the Auditor-General is vigilant towards the public sector (and local government) regarding possible corruption and fraud. The paper has variously summarised above the OAG's oversight and guidance roles for local government. Much of that is aimed to assist local authorities in ways to prevent corruption and fraud.

Consulting firm Deloitte published a Bribery and Corruption Survey of Australia and New Zealand<sup>386</sup> in 2012. It noted that historically, bribery and corruption has not been high on the risk agenda for organisations in either country. But increasing enforcement by the SFO<sup>387</sup> has 'put the activities of wayward activities and individuals under the microscope'<sup>388</sup>. There is a growing focus on offshore operations and increasing exposure to foreign bribery and corruption. Less than 30 per cent of countries covered by TI's surveyed regions internationally have scored 'one' on Deloitte's Index (including New Zealand), meaning that that their public sectors are not perceived to pose a serious corruption risk.<sup>389</sup> Deloitte nevertheless warned against complacency and recommended to all organisations to have strong and effective bribery and corruption policies in place to manage risks and to communicate to stakeholders that it is doing so.

Two separate examples of alleged corruption have been noted.

One has been acceptance by current ACT MP, John Banks of an "illegally anonymous" \$50,000 Auckland mayoral campaign from one Kim Dotcom that should have been declared<sup>390</sup>.

The other has occurred as the result the use by contractors in the rebuilding of Christchurch City following the 2010 and 2011 earthquakes of the use of illegal migrants, payment of miniscule wages and violation of visa restrictions<sup>391</sup>.

### 13.3.4 Office of the Auditor General commissions surveys of local government

The Auditor-General (AG) audits virtually all local authorities, and is statutorily the auditor of all council controlled organisations. All local authorities must supply the AG with copies of nominated plans and reports and respond to any requests the AG makes.

In August 2008 through 2009 the OAG commissioned Price Waterhouse Cooper (PwC) to undertake a Global Economic Crime Survey from which it ascertained that 21% of NZ

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<sup>385</sup> *Ibid.*, p.46

<sup>386</sup> Deloitte, *Deloitte Bribery and Corruption Survey: A storm on the horizon?* – 2012

<sup>387</sup> *Ibid.*, p.1

<sup>388</sup> Deloitte, *op. cit.*

<sup>389</sup> *Ibid.*, p.5

<sup>390</sup> Robert Gregory and Dan Zirker, *Clean and Green with Deepening Shadows? A Non-Complacent View of Corruption in New Zealand*. Paper presented to the 8<sup>th</sup> Annual Conference of The Asian Studies Association of Hong Kong, The Hong Kong Institute of Education, Tai Po, 8 – 9 March 2013, p.20.

<sup>391</sup> *Ibid.*

respondents were public sector organisations and 42% had suffered from an economic crime in the 12-month period preceding the survey. Of the NZ public sector respondents, 50% reported that they had suffered fraud in that same period.

From February – June 2011, PwC undertook an online fraud awareness survey for the OAG of a number of public sector organisations, of which 22.3% comprised Local Government organisations. PwC published the fraud awareness survey findings in November 2011<sup>392</sup> and the OAG published findings and results on-line also in 2011.

The survey was to increase the public sector’s awareness of fraud risk, recognition of the benefits of preventing and detecting fraud activity and of responding.<sup>393</sup> The survey covered fraud, theft and corruption. ‘Fraud’ was taken to mean an intentional and dishonest act involving deception or misrepresentation. ‘Theft’ was, dishonestly and without claim or right, to take or deal with any property with intent to deprive any owner permanently of the property or interest in it. ‘Corruption’ was the abuse of entrusted power for private gain (e.g., soliciting, receiving gifts or gratuities to perform part of an official function or to omit to do so.

Here, the report draws from the survey overview and summaries. From the survey, there were 1,472 with a total response rate of 74% across the public sector. There were 172 respondents in local authorities with 47 local authorities represented out of 78 in total.

NZ generally reportedly has a “clean” image in the matter of fraud, ranking highly in international and domestic surveys measuring public trust in government and in our systems and controls.<sup>394</sup>

Fraud awareness, prevention and detection are the responsibility of each council’s governing body and its management. Local authorities in NZ have good anti-fraud frameworks with most councils having fraud policies, clear policies on gifts and most with codes of conduct for staff.

Despite the generally “clean” NZ image, the OAG concluded from the survey of respondents in local authorities that:

- 38% of those respondents were aware of at least one incident of fraud or corruption in their authority within the preceding two years.
- Of those fraud incidents 87% were committed by an internal person acting alone and mainly at an operational level.<sup>395</sup>
- Money lost was mostly low; 63% reported losses of less than \$10,000.
- The monetary loss for 14% of fraud incidents was between \$10,000 and \$100,000; and 2% were losses exceeding \$100,000. Here, 21% of respondents did not know how much money was lost.

In descending order, the most frequent types of fraud were:

- theft of cash – 36%

<sup>392</sup> Office of the Auditor-General / PwC, *Public Sector Fraud Awareness Survey – Findings*, November 2011.

<sup>393</sup> OAG, Office of the Auditor-General, *New Zealand, Public Sector Fraud Awareness Survey – Finding*: retrieved: <http://www.oag.govt.nz/2011/public-sector-fraud/fraud-awareness-survey>.

<sup>394</sup> OAG, Office of the Auditor-General New Zealand, *Overview*: retrieved: <http://www.oag.govt.nz/2012/-fraud/fraud-summary-local-authorities/part1.htm>

<sup>395</sup> OAG, Office of the Auditor-General New Zealand, *Part 3: incidents of fraud in local authorities – Summary of our fraud survey results for local authorities*: retrieved: <http://www.oag.govt.nz/2012/-fraud/fraud-summary-local-authorities/part3.htm>, p.1

- theft of property, plant and equipment or inventory – 17% combined
- payroll fraud – 9%
- false invoicing – 7%

Most successful fraud detection mechanisms were internal “tip-offs” other than formal “whistle-blowing” internal controls and internal audit. Where fraud had occurred, respondents noted that 43% of incidents had been reported to an appropriate law enforcement agency.

Also from the survey, and specifically from local authorities, a number of findings were of particular interest and relevance from an internal control and risk management perspective. These findings (selected from the local authorities surveyed) include the following:

Percentage of organisations Surveyed %	Organisations' actions or initiatives taken as revealed from local authority survey
63	had designated a person responsible for fraud risks, including investigations
80	interviewees had confidence that managers understood their responsibilities for preventing and detecting the risks of fraud and corruption
50	review their fraud controls on a regular basis
49	of new employees undergo pre-employment screening including criminal history checks
91	organisations had cultures that encouraged employees in raising concerns about fraud or corruption without risk of retaliation
76	of organisations had Protected Disclosure (i.e., “whistleblower) policy
86	of organisations take proactive steps to reduce fraud and corruption risks when raised
89	of organisations monitor credit card expenditure;
93	of organisations monitor staff expenses
81	of organisations take seriously inappropriate expense claims, including for personal purchases, resulting in disciplinary action
71	of organisations review internal controls as part of every fraud investigation

In the matter of preventing fraud, the OAG emphasised the need for clear and consistent messages from the top including the policies.<sup>396</sup> Local authorities continue to provide good anti-fraud frameworks by having fraud policies and codes of conduct but half of respondents claimed not to be receiving regular communication about these – a lower incidence than for the wider local government sector and the public sector overall. The OAG noted the importance of organisational cultures receptive to fraud discussion combined with the provision of clear guidance and fraud awareness training from their employers. The OAG also recommended the regular use of pre-employment checks of potential employees and often “due diligence” checks of suppliers.

<sup>396</sup> OAG, Office of the Auditor-General New Zealand, Part 2: *Detailed results for local authorities Preventing fraud– Summary of our fraud survey results for local authorities*: retrieved: <http://www.oag.govt.nz/2012/-fraud/fraud-summary-local-authorities/part3.htm>, p.1

### 13.4 The Ombudsman

The Ombudsmen primary purposes are to inquire into complaints against public entities local authorities, and can decide whether grounds to investigate exist following receipt of a complaint. The relevant primary statute for local authorities is the Local Government Official Information and Meetings Act (LGOIMA). It sets out circumstances about information required to be available to the public about official meetings and to people where a council is holding information about them. The other statute of interest to local government (as to all other public sector entities) is the Protected Disclosures Act 2000 – commonly referred to informally as the “Whistleblowers Act” – under which the Ombudsmen can deal with requests for advice and guidance about alleged serious wrongdoing<sup>397</sup>

Arguably, there is potential for integrity breaches by either elected members or employees but there is little, if any, evidence of either.

The Office of the Ombudsmen (OO) reports annually to Parliament. Reports are disaggregated by sector and enable readers to identify where and how the OO has received complaints from or with regard to local authorities. Next is an overview.

The Ombudsmen’s 2012 Report has identified the following in relation to local government.

Comparisons among the two reporting years to June 2011 (Year 1) and 2012 (Year 2) respectively are available. These are given only for the OO’s brief to deal with official information complaints under the LGOIMA 1987. In regard to timeliness of dealing with complaints, many were outside the OO’s jurisdiction. In these cases, with response targets of 90%, the OO achieved 70% in Year 2. For complaints that the OO declined to investigate or resolved informally, it achieved 80% against a target of 90%.

It achieved 100% against a target of 70% for completing urgent investigations within time (i.e., within 4 months of receipt) and 89% (against a target of 70%) within 122 months of receipt.

Significant (10+) complaints were received mostly in the three councils of Auckland, Wellington and Christchurch. For all city councils, total complaints received nearly doubled between the two years. For all district councils there was a reduction of about 2% and regional council a reduction of about 55%. The OO noted that members of the public appear to be making good use of their rights to request information under the LGOIMA and to complain to the Ombudsman if dissatisfied. Individuals accounted for 76% of LGOIMA complaints and the media 15% in 2012.

Little use is made in NZ of the Protected Disclosures Act. This is up to 3 in any year, possibly due to lack of awareness or that the protections it provides are unsatisfactory.<sup>398</sup>

### 13.5 Local authority capacity building initiatives to enhance good governance, performance and integrity

<sup>397</sup> Ombudsman, *Report of the Ombudsman for the year ended 30 June 2012*, to the House of Representatives pursuant to section 29 of the Ombudsmen Act 1975.

<sup>398</sup> *Ibid.*, p.63

Individual councils, and the local government sector itself, take responsibility in establishing mechanisms and taking initiatives to provide for good governance, integrity and to prevent bribery and corruption. Some are statutory requirements. Some of these, as described in the statutory governance principles (Table 4) and in the requirements for the contents of local government statements, are to contribute to regular good governance and management, and to serve as a basis for a sustainable organisation. Some may not necessarily be stipulated in the Act but may be covered in its general requirements or be contractual requirements of a CEO and other relevant staff. As part of human resource management systems councils often have their own systems to provide for staff training, mentoring and technical support.

Examples are: to provide local governance statements,<sup>399</sup> to adopt codes of conduct for all members of the authority;<sup>400</sup> and to make provision for minimum standards of consultation (under a range of circumstances). Others may contribute to best practice for good management while also being important as a basis for anticorruption initiatives. Examples of these may include having in place internal control, risk management and audit systems and Audit Committees.

In addition to councils' own initiatives, local government's sector organisations (e.g., Local Government New Zealand [LGNZ] the Society of Local Government Managers [SOLGM], the Association of Local Government Information Managers [ALGIM], INGENIUM/IPWEA NZ/ ALGENZ] and the former Local Government Industry Training Organisation [LGITO], merged since 2011 with the State Services training organisation, 'Learning State'), provide a range of contributors that provide training, mentoring, focused seminars, other programmes and information. Some external organisations provide a range of assistance to professionals that work in and outside local government. For example, the NZ Planning Institute offers assistance that focuses on local government needs in planning and resource management.

From information about the above organisations, it is possible to observe that there is considerable networking among and within them. All the local government sector organisations are formally established, each with its own corporate governance arrangements and structures.

Local Government New Zealand (LGNZ) had, as its most recent predecessor, the New Zealand Local Government Association (Inc), [NZLGA]. NZLGA came into being in 1989 through a merger of the former Municipal Association of New Zealand, the Counties Association and Catchment Association. 1989 was a year of radical reform for local government with the creation of territorial authorities and regional councils, the need for the then new NZLGA to help them build capacity and the commencement of work to prepare the future Resource Management Act of 1991. NZLGA and LGNZ have both represented the local government sector New Zealand-wide as advocates and policy advisors and LGNZ has a similar governance structure headed by a National Council of territorial authority and regional council mayors and chairpersons responsible to all councils – all being members – through a decentralised system of zone and sector committees.

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<sup>399</sup> Local Government Act 2002, s.40

<sup>400</sup> *Ibid.*, s15

SOLGM and INGENIUM (Engineers for Public Assets), now IPWEA NZ, have a strong formal working arrangement, agreed during 2012, to give local government a stronger coordinated approach for advocacy purposes and to work together more closely.<sup>401</sup>

In June 2013, INGENIUM (representing public assets infrastructure engineers and managers),<sup>402</sup> merged with its Australian counterpart (IPWEA – Institute of Public Works Engineers Australia) to become the New Zealand division of the new Institute of Public Works Engineers Australasia representing public works professionals in both countries.<sup>403</sup> IPWEA NZ's objectives include fostering the sharing of knowledge among engineers, asset managers, others working with public assets, local government elected members and similar domestic and overseas organisations.

An Association of Local Government Information Managers (ALGIM) whose Executive includes members drawn from local authorities and from the Office of the Auditor General (OAG) gives sector wide support to councils and staff with regard to the interests of the information, communication and technology (ICT) sector within New Zealand's city, district and regional councils. It provides best practice in the local government ICT sector through professional development, scholarships, training, events, awards and networking, and offers leadership through toolkits, advocacy, and research and shared services<sup>404</sup>.

Some selected information is compiled below that will illustrate from a range of initiatives some that have been undertaken by the above named organisations. These were directed at a range of audiences as indicated in Annex 2, Tables 1 – 3. This information is not intended to be exhaustive.

As provided above through examples, the OAG also supplies focussed practice notes, information packages and training opportunities for local authorities, elected members and officials.

## 13.6 Procurement

### 13.6.1 Key question

*What provisions are there in place to reduce and avoid corruption risks and to safeguard integrity in public procurement in local government?*

#### Summary findings

This subject is mainly covered by the NIS in its Procurement pillar. However, local government procurement practice tends to follow the lead of a few larger councils, some of which have in place their own systematic procurement plans<sup>405</sup>. Naturally, procurement management is also about risk management. Many councils follow the New Zealand Transport Authority (NZTA) guidelines, which have partly to do with their being linked to the provision of road construction subsidies.

<sup>401</sup> SOLGM, Announcement at the 2012 SOLGM Annual Conference in Auckland. Retrieved from: [https://solgm.org.nz/Category?Action=View&Category\\_id=837](https://solgm.org.nz/Category?Action=View&Category_id=837) (11/0/72013)

<sup>402</sup> *Ibid.*

<sup>403</sup> IPWEA NZ, *What's New – INGENIUM embraces change to become IPWEA NZ*, Retrieved from: <http://www.ingenium.org.nz/pages/37/whatsnew.htm> (20/06/2013)

<sup>404</sup> ALGIM, What is ALGIM? Retrieved from: <http://www.algim.org.nz/about-us/>

<sup>405</sup> E.g., Christchurch, Auckland, and Wellington (City) Councils.

In addition, the OAG has issued Procurement Guidelines for public sector entities<sup>406</sup>.

In addition, the Society of Local Government Managers (SOLGM) has instituted as part of its Good Practice Toolkits, a risk management/ legal compliance programme that is available to local authorities<sup>407</sup>

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<sup>406</sup> OAG, *Procurement guidance for public entities, Part 3: Strategic Procurement Planning*. Retrieved: <http://www.oag.govt.nz/2008/procurement-guide/part3.htm>

<sup>407</sup> Society of Local Government Managers, *SOLGM Good Practice Toolkits Website*. Retrieved: <http://www.solgm.co.nz/>

## Annexes

<b>Annex 1: Comparison of LGA 2002 and LGAA 2012 amendments</b>			
<b>Sections of the LGA</b>	<b>Col. 1, LGA 2002 original provisions</b>	<b>Sections of the LGA</b>	<b>Col. 2, LGA 2002 provisions incorporated by 2012 amendments</b>
5(1)	<b>Community outcomes</b> means the outcomes that a local authority aims to achieve in order to promote the social, economic, environmental, and cultural well-being of its district or region, in the present and for the future	5(1)	<b>Community outcomes</b> mean the outcomes that a local authority aims to achieve in meeting the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions”.
5(1)		5(1)(new)	...“ <b>good-quality</b> , in relation to local infrastructure, local public services, and performance of regulatory functions, has the meaning given in <b>section 10(2)</b>
10(b)	...to promote the social, economic, environmental and cultural <b>well-being</b> of communities in the present and in the future.	10(1)(b)	...to meet the current and future needs of communities for <b>good-quality</b> local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.”
10		10(2)(new)	<b>good-quality</b> , in relation to [the above], means infrastructure, services, and performance that are: Efficient; and Effective; and Appropriate to present and anticipated future circumstances.
5(1)	<b>Significance</b> , in relation to any issue, proposal, decision, or other matter that concerns or is before a local authority, means the degree of importance of the issue, proposal, decision, or matter, as assessed by the local authority, in terms of its likely impact on, and likely consequences for,— (a)the current and future social, economic, environmental, or cultural well-being of the district or region: (b)any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter: (c)the capacity of	5(10)	<b>Significance</b> , in relation to [the same matters listed opposite] proposed to cover: (a)the district or region (b)any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision, or matter: (c)the capacity of the local authority to perform its role, and the financial and other costs of doing so

<b>Annex 1: Comparison of LGA 2002 and LGAA 2012 amendments</b>			
<b>Sections of the LGA</b>	<b>Col. 1, LGA 2002 original provisions</b>	<b>Sections of the LGA</b>	<b>Col. 2, LGA 2002 provisions incorporated by 2012 amendments</b>
	the local authority to perform its role, and the financial and other costs of doing so		
14(1)(c)(iii)	<p><b>14Principles relating to local authorities</b></p> <p>(1)In performing its role, a local authority must act in accordance with the following principles:</p> <p>(c)when making a decision, a local authority should take account of—</p> <p>(iii)the likely impact of any decision on each aspect of <b>well-being</b> referred to in <a href="#">section 10</a> and:</p>		(iii)the likely impact of any decision on the <b>interests</b> referred to in subparagraphs (i) and (ii).
14(1)(h)(i)	<p>(1)In performing its role, a local authority must act in accordance with the following principles:</p> <p>(h)in taking a sustainable development approach, a local authority should take into account—</p> <p>(i)the social, economic, and cultural <b>well-being</b> of people and communities; and</p>	14(1)(h)(i)	Replace <b>well being</b> with <b>interests</b> .
14(1)(h)(i)	(2)If any of these principles, or any aspects of <b>well-being</b> referred to in <a href="#">section 10</a> , are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).	14(1)(h)(i)	Replace <b>well-being</b> with <b>interests</b> .
14(2)	(2)If any of these principles, or any aspects of well-being referred to in <a href="#">section 10</a> , are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).	14(2)	(2)If any of these principles, or any aspects of <i>interests</i> referred to in <a href="#">section 10</a> , are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

## Annex 2, Table 1 – Local Government New Zealand (LGNZ)

Categories modules	& Topics & Formats	Audiences
<i>Governance Modules Focused training. Positive results.</i>	Business Presentation Skills	Elected members
	Workshops	
	Chairing meetings	Elected members
	Workshops	
	Conflicts of interest	Elected members
	Workshops	
	Effective directorships	Elected members
	Workshops	
	Financial Governance – revision (in-house, own-council)	Elected members
<i>Newly Elected Members Workshops The right choices</i>	Introduction to local government	Elected members
	Workshops	
	Roles & responsibilities of an elected member	Elected members
	Workshop	
	Understanding orders	Elected members
	New Mayors	Elected members
	Re-elected Mayors	Elected members
	New & re-elected members (also for community board members)	Elected members
	New Regional Chairs	Elected members
Strategic Insight	Audit & Finance Committees – roles & functions	Elected members or staff
	Establishing & maintaining working relationships with your CE	Elected members or staff
	Understanding & maximising relationships with China	Elected members or staff
	Economic Leadership	Elected members or staff
	Financial Governance 201	Elected members or staff
Skills Development	A practical guide to public consultation	Elected members or staff
	Decision-making – how it really works	Elected members or staff
	Media & Presentation - How to present the right message	Elected members or staff
	Understanding Te Ao Maori	Elected members or staff
	Asset Management	Elected members or staff
	Financial Governance 101	Elected members or staff

**Annex 2, Table 1 – Local Government New Zealand (LGNZ)**

<b>Categories modules</b>	<b>&amp; Topics &amp; Formats</b>	<b>Audiences</b>
	RMA – How it really works	Elected members or staff
<i>Community Workshop</i>	<i>Boards</i> Build relationships. Create Value	Elected members – community board members
<i>Assorted Events</i>	District Licensing Agency training New Mayors Re-elected members District Licensing Committees Training New Elected Members New Regional Chairs	

## Annex 2 – Table 2, Society of Local Government Managers (SOLGM)

Categories & Formats modules	Audiences
<p><i>Learning development</i> &amp; <i>Building skills &amp; capability in local government</i></p> <p>SOLGM Open Business School</p> <p>Ongoing learning &amp; development of local government managers &amp; staff. Tailored to sector needs.</p>	Managers & staff
<p>SOLGM Webinar series</p> <p>Short, relevant training sessions &amp; seminars</p>	
<p>SOLGM Annual Summit 2013</p> <p>Annual event: learning; sharing ideas; networking with peers</p>	Chief Executives, senior & emerging managers
<p><i>Introduction to Project Management for Local Authorities</i></p> <p>Introduction to Project Management for local authorities</p>	Local government managers
<p><i>Legal Compliance Programme</i><sup>408409</sup></p> <p>Supply of Good Practice Toolkits, 2005<sup>410</sup></p> <p>Revised versions of Health &amp; Safety Bylaw-making and LIMS (Land Information Memoranda) published</p> <p>Revisions commenced of reviews of Dog Control, LGOIMA (Local Government Information Act), Privacy, Rates Rebates and National Dog Database modules under preparation</p> <p>Risk Management/ Legal Compliance Programme.</p> <p>Work in preparation</p>	
<p><i>Legal Compliance Modules</i></p> <p>Bylaw making</p> <p>Resource consenting</p> <p>Rating – billing &amp; collection process</p> <p>Dog control</p> <p>Employment</p> <p>LGOIMA</p> <p>The Privacy Act</p> <p>Enforcement</p> <p>Land Information Memoranda (LIMS)</p> <p>Building Consents</p> <p>National Dog Database</p> <p>Liquor Licensing</p>	

<sup>408</sup> SOLGM, Updates on Legal Compliance Programme, retrieved from: [http://www.solgm.org.nz/Story?Action=View&Story\\_id=57](http://www.solgm.org.nz/Story?Action=View&Story_id=57)

<sup>409</sup> SOLGM, Legal Compliance Modules, retrieved from: [http://www.solgm.org.nz/Category?Action=View&Category\\_id=622](http://www.solgm.org.nz/Category?Action=View&Category_id=622)

<sup>410</sup> Retrieved from: [www.solgm.co.nz](http://www.solgm.co.nz)

**Annex 2 – Table 2, Society of Local Government Managers (SOLGM)**

Categories & Formats modules	Audiences
Property Sales, Acquisitions & Leases Tendering & Procurement Health & Safety Rates Rebates	
<i>Pulse e-magazine</i> Updates to members on leading, learning, news, recognising excellence, conferences, promotion of good practice initiatives, legislative developments, overseas local government events	

**Annex 2, Table 3 – Learning State – The Skills Organisation (formerly LGITO)**

Categories & Formats modules	Audiences
Workplace Development programmes	
A great start Induction & Cadetships programmes	Central & local government staff
Better outcomes Administration, compliance & public service skills to serve the NZ public better	Central & local government staff
Meeting the Challenge Leadership & management. Developing public sector people. Providing leadership & helping employees in the public sector achieve their potential	Central & local government staff
Broaden your skills Communication, writing, project management. Strengthening skills in business communications, writing & project management	Central & local government staff
Skills recognition Getting recognition for existing skills workplace skills – formal assessment against benchmarked standards on the New Zealand Qualifications Framework	Central & local government staff

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### Annex 3, Persons interviewed in preparation of this paper

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Person	Capacity	Date
Dr Mike Reid	Principal Policy Advisor, Local Government New Zealand, Wellington	21 February 2013
Mr Kevin Brady	Formerly Auditor and Controller General of New Zealand Now private capacity	7 March 2013
Mr John Sutton	Principal Policy Analyst, Policy Group, , Department of Internal Affairs, Wellington	12 March 2013
Mr Bruce Robertson	Assistant Auditor General – Local Government, Office of the Auditor and Controller-General, Wellington	18 March, 2013
Ms Rosalind Plimmer	Plimmer Consulting, Wellington	20 March, 2013
Ms Karen Thomas	Chief Executive, Society of Local Government Managers, Wellington	25 June, 2013

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### Annex 4. Persons from whom comments received on draft paper

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Dr Mike Reid	Principal Advisor Policy, Local Government New Zealand, Wellington
Dr Jean Drage	Writer on local government affairs, political scientist

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## GLOSSARY

Full Name	Abbreviation
Association of Local Government Engineers New Zealand	ALGENZ
Association of Local Government Information Managers	ALGIM
Auckland Council	AC
Auckland Regional Authority	ARA
Auckland Regional Council	ARC
Auckland Royal Commission	ARComm
Auckland Urban Area	AUA
British and Irish Ombudsman Association	BIOA
Central Government	CG
Chartered Institute of Public Finance and Accountancy (UK)	CIPFA
Chief Executive Officer (s)	CEO(s)
Chief Executive(s)	CE(s)
Christchurch City	CC
Christchurch City Council	CCC
City Council(s)	CC(s)
Community Board(s)	CB(s)
Controller and Auditor-General of New Zealand	AG
District Council(s)	DC(s)
Engineers for Public Assets	INGENIUM
First Past the Post (Electoral System)	FPP
Greater Wellington Regional Council	GWRC
Hutt City Council	HCC
Institute of Public Works Engineering Australasia	IPWEA
Institute of Public Works Engineering Australasia – New Zealand	IPWEA NZ
International Monetary Fund	IMF
Local Authorities (Members Interests) Act 1968	LA(MIA)A 1968
Local Elections Act 2001	LEA 2001
Local Futures Research Project 2006	LFRP
Local Government (Auckland Council) Act 2009	LGACA
Local Government (Members' Interests) Act 19??68	LGMIA 19
Local Government (Rating) Act 2002	LGRA 2002
Local Government Act 1974	LGA 1974
Local Government Act 2002	LGA 2002
Local Government Act 2002 Amendment Bill 2012	LGAB 2012
Local Government Amendment Act (No. 2) 1989	LGAA 2 1989
Local Government Amendment Act (No. 3) 1996	LGAA 3 1996
Local Government Commission(s)	LGC(s)

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SECURING INTEGRITY AND GOOD GOVERNANCE WITHIN A BIPARTITE CONSTITUTION

Local Government Industry Training Organisation	LGITO
Local Government Loans Board	LGLB
Local Government New Zealand	LGNZ
Local Government Official Information and Meetings Act 1987	LGOIMA
Long Term Council Community Plan(s)	LTCCP(s)
Long Term Plan(s)	LTP(s)
Mixed Member Proportional (Representation System)	MMP
New Public Management	NPM
New Zealand	NZ
New Zealand local government	LG
New Zealand Productivity Commission	NZPC
Office for Public Management Ltd (UK)	OPM
Office of The Auditor-General, New Zealand	OAG
Office of the Ombudsman	OO
Official Information Act	OIA
Ombudsman Act	OA
Price Waterhouse Cooper	PwC
Protected Disclosures Act 2000	PDA
Ratings Act 2001	RA 2001
Regional Council(s)	RC(s)
Regional Plan(s)	RP(s)
Regional planning scheme	RPS
Regional Policy Statement(s)	RPS(s)
Resource Management Act 1991	RMA 1991
Resource Management Law Reform	RMLR
Road Information Steering Group (Committee of INGENIUM)	RIMS
Serious Fraud Office, New Zealand	SFO
Society of Local Government Managers	SOLGM
Spatial Plan	SP
Territorial Local Authority(ies)	TLA(s)
The Independent Commission on Good Governance in Public Services (UK)	ICGGPS
The International Federation of Accountants	IFAC
Town and Country Planning Act 1953	TCPA 1953
Town and Country Planning Act 1977	TCPA 1977
Value for money	VFM
Wellington City Council	WCC
Wellington Region	WR
World Bank	WB