

# **EXPLORING FUTURE FINANCE TRENDS IN CENTRAL GOVERNMENT AND LOCAL GOVERNMENT**

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## INTRODUCTION

I should start by noting that what I am going to present in this paper will focus more on the context in which the finance team – and for that matter the whole of a council – will be operating rather than on financing trends as such. From my perspective, this is a more valuable approach given the nature of the changes for local government that will result from the enactment of the new Local Government Bill.

In this paper what I want to do is:

- ▶ Deal with some of the myths surrounding the Bill – what it is and what it is not.
- ▶ Consider the nature of the shift in the role of local government from a provider of traditional services to a community outcomes focus.
- ▶ Look at the changing central government/local government relationship.
- ▶ Discuss the development of new structures for service delivery.
- ▶ Assess the role of other major local or regional institutions such as community trusts and energy trusts under the new Bill.
- ▶ Speculate about likely developments in the early years of the new Act.

## THE MYTHS

The Local Government Bill has been spoken of as providing local government with a “power of general competence”. Normally this is understood as the power for an organisation to undertake any lawful activity. The best known expression in legislation of a power of general competence is Section 16 of the Companies Act 1993 which provides that *“subject to this Act, any other enactment, and the general law, a company has, both within and outside New Zealand, full capacity to carry on or undertake any business or activity, do any act or enter into any transaction”*.

A quick review of some of the provisions in the new Bill makes it very clear that, whatever else the Bill does, it certainly does not confer a power of general competence on local government. Consider, for example, the provisions dealing with water. Territorial authorities providing water supply and wastewater services in their district at the commencement of the Act must continue to do so and maintain their capacity. The section also seeks to prohibit the privatisation of water and wastewater assets and to limit the involvement of the private sector in management. Other sections effectively force local authorities to provide, at no charge, the capacity required to support fire fighting (a very significant additional cost in the provision of reticulated water).

In another set of provisions that I will come back to below, the Bill proposes controls over the governance of council-controlled organisations that, in some respects, are incompatible with the requirements of good governance. Their impact may severely limit the ability of local authorities to adopt organisational structures most fitted to the activities they wish to undertake or enable.

From a local authority perspective, therefore, the Bill falls far short of delivering the promised “power of general competence”. Rather, from this perspective, it is better thought of as a major tidying up exercise, removing much of the prescriptive detail in the former legislation but still making it very clear that central government wants clear limits on the discretion that can be exercised by local authorities.

A quite different view comes from the business community. Federated Farmers recently presented a petition to the Local Government and Environment Select Committee asking that the government stop the Bill and *“undertake an integrated first principles review of the functions, powers and funding of local authorities, involving representatives from local and central government, business organisations, and ratepayer groups”*.

In support of this, Federated Farmers and their fellow members within the Local Government Forum have been arguing that the Bill would *“allow local authorities the “power of general competence” and empower them to promote ‘social, economic, environmental and cultural wellbeing’ without any definitions about what this means”*.

The same theme has been a regular feature of the business media. The Independent for 9 October 2002, in an editorial entitled *“Local Government Law Will Shaft Business and Farming”* states that *“Essentially, the Bill increases local authority powers to carry out activities not permitted under the current legislation”* and goes on to assert that *“The key concern among business people and farmers is a motion called the ‘power of general competence’ to be conferred on local government. This means local authorities will be free to do anything within their proposed new and expanded purposes, unless it is specifically prescribed by Parliament, whereas the current legislation stipulates specifically what authorities can do.”*

The National Business Review, on 11 October, reporting the government’s response to the Federated Farmers petition in an article entitled *“No Rethink on Local Body Bill”* pushes the same line: *“The law change will give local councils far wider powers .... “*.

The criticisms display a woeful ignorance of the present legislation. Anyone who has worked closely with local government is aware that the Act is not just a series of narrow, prescriptive statements. It also contains provisions which are very wide ranging charters. The most notable is Part 36 “Recreation and Community Development”. That part of the Act gives local authorities virtually unlimited powers to support and enable a very wide range of welfare, social and community development activity. It is extremely difficult to think of anything in the social, environmental and cultural area that the new Act will enable but the present Act would not.

This is not to deny that the business community has legitimate concerns about the impacts of activities undertaken by local government. The debate about the fairness of rating systems, and how rate burdens are distributed, is a very real one. So is the impact of compliance costs.

At the same time, it needs to be recognised that, in some of these areas, local government is doing no more than what it is required to do by central government legislation. Anyone who has followed funding debates will be very aware of the concern within the local government sector over the “unfunded mandate” – the practice of central government of devolving new

functions on local government, or exiting existing central government functions in a way that effectively requires local government to take up the role, without providing additional funding.

Finally, it is worth noting one other matter, especially as most of this audience comprises people with a finance responsibility in local government. It is standard practice for business to attack councils on the basis that rates increases exceed the rate of inflation. Implicit in the attack is the assumption that the sole purpose of rates is to finance operating expenditure.

In practice, as we all know, rates also represent the one means that local authorities have for raising the equivalent of equity capital. It never ceases to amaze me that local authorities themselves report rates increases without distinguishing between operating and capital. My guess (I have not done the analysis) is that if local authorities reported rates increases in a way that separated out the operating and capital components, many local authorities would report rates increases for operating expenditure at or below the level of inflation.

## **FROM PROVIDER OF TRADITIONAL SERVICES TO A COMMUNITY OUTCOMES FOCUS**

This is the heart of what the new Bill is seeking to achieve. It represents the completion of a reform process that began in the 1980s and has comprised:

- ▶ Amalgamation – creating multi-purpose local authorities with, generally, sufficient scale to operate with an acceptable measure of efficiency.
- ▶ Improving financial management – from random bookkeeping to generally accepted accounting principles.
- ▶ From traditional services to community outcomes.

It is really important to understand that the shift to a community outcomes focus is more than just an incremental change. In potential, at least, it represents a fundamental shift in the role and accountability of local government.

To illustrate why I argue that this is the case, I want to look at several factors including the way in which government has presented the legislation, some of the specific terminology, and a comparison between the way in which the present Act and the new Bill deal with the central component of local government planning and activity – variously the long term financial strategy and the long term council community plan.

First, look at what the then Minister of Local Government said in her introductory speech on the Bill:

*“Mr Speaker this Bill is, above all, about ‘empowerment’.*

*Not as some might imagine, the empowerment of councils to exert greater influence and authority over their electors, but rather, empowering New Zealanders within their local communities to exercise ever greater control over their lives and over the environments in which they live.”*

Next, look at the purpose statements in clause 3 of the Bill. The stated purposes include:

- ▶ Establish the role of local authorities in the democratic governance of communities.
- ▶ Enable local authorities to play a broad role in promoting the sustainable social, economic, environmental and cultural wellbeing of their communities.
- ▶ Enable local authorities to:
  - Decide which activities they undertake on behalf of their communities.
  - Decide the manner in which they undertake those activities.
- ▶ Enable and encourage local authorities to work together and with other organisations to:
  - Promote local priorities; or
  - Achieve local outcomes; or
  - Contribute to the outcomes and priorities of other levels of government that are supported by their communities.
- ▶ Make local authorities accountable to their communities by requiring:
  - Open decision-making; and
  - The provision of information to members of their communities; and
  - The provision of appropriate opportunities for members of their communities to contribute to local government decision-making processes.

The clause is, admittedly, something of a mixed bag. It does, however, contain some quite strong indicators of the new role including an outcomes focus, a focus on working with other organisations – and other levels of government- and the provision of appropriate opportunities for members of their communities to contribute to local government decision-making processes.

Next, consider what the Bill actually says. Clause 73 provides:

**“73 Process for identifying community outcomes and priorities**

- (1) *A local authority must, not less than once every 6 years, carry out a process to identify community outcomes and priorities for its district or region.*
- (2) *The purposes of the identification of community outcomes and priorities are-*
  - (a) *to enhance decision-making by aligning the activities of the local authority with community objectives; and*
  - (b) *to provide scope to measure the contribution of the local authority to the achievement of community objectives; and*
  - (c) *to provide a mechanism for setting priorities for the activities of the local authority; and*
  - (d) *to promote the better co-ordination and application of community resources.*
- (3) *A local authority may decide for itself the process that it is to use to identify community outcomes and priorities under **subsection (1)**, but the local authority-*

- (a) *must, before finally deciding on that process, take steps-*
- (i) *to identify, so far as practicable, the other bodies capable of influencing either the identification or the promotion of community outcomes and priorities; and*
  - (ii) *to secure, if practicable, the agreement of those bodies to the process and to the relationship of the process to any existing and related plans; and*
- (b) *must include in the process an opportunity for public submissions.”*

That clause starts with an obligation to identify community outcomes and priorities. Note particularly the word “identify”. It is a very different expression from “decide” or “determine”. There is an obvious implication that the outcomes themselves exist apart from the local authority and the responsibility being given the local authority is to go and find them. That is reinforced by the purpose statements in subclause (2), the first of which is *“To enhance decision-making by aligning the activities of the local authority with community objectives”*. Note that it is the activities of the local authority that are to be aligned with community objectives, not the community objectives that are to be aligned with the activity of the local authority. Again, the direction of the process is from the community to the local authority and not the other way around.

As advisers working closely with local government, MDL thought that this represented such a significant change that it should do some checking to find out whether the Bill really meant what it appeared to say. To do so, I spent time with officials who had been closely involved in the advice that went to ministers and in the drafting of the legislation. The feedback I got was that yes, indeed, that is exactly what the legislation is intended to mean. It is also consistent with the Minister’s statement that the Bill is about empowering communities.

There appear to be a number of factors underlying the shift. The first is a concern, politically, that local authorities have not been sufficiently responsive to their communities. Public consultation under Section 716A has generally disappointed expectations that it would provide an effective means for public influence over local authority decision-making.

The recently retired Controller and Auditor General, David McDonald, in his departing report to Parliament on local government *“Local Government – Looking Back and Looking Forward”* had this to say on consultation:

*“An associated challenge is for councils to meet their consultation obligations in a sound and open fashion. During my tenure I have had a number of complaints by ratepayers and other parties about the way that their council has undertaken consultation. These sorts of complaint were a catalyst for my report on ‘Public Consultation and Decision-Making in Local Government’. The recommendations in the report – the importance of which will be increased under the additional consultation requirements proposed by the Local Government Bill – will present councils with more rigorous yardsticks within which they will need to work.”*

Another factor has been the growing recognition of the need to take a coordinated approach, at a local or regional level, in seeking significant social, cultural, environmental and economic

outcomes. Both in New Zealand and elsewhere, central governments have become increasingly aware of the need for local engagement in implementing their programmes. Separately, they have also recognised that the unique characteristics of different communities (using the term communities in the geographic sense) means that a “one size fits all” approach will normally be inappropriate. Coupled with this, there is a growing recognition that in order to get the support and understanding necessary to achieve good outcomes, local leadership is a critical factor.

Elsewhere, this has been generally recognised as the principle of subsidiarity – that the best decisions are taken at the level at which the impacts of the decision will be felt.

Finally, I detect behind the purpose of the new Bill a growing sense of the importance of drawing on local knowledge, networks and capabilities. Interestingly, this can be seen as a shift away from the idea of “nanny state” as the heart of the welfare state system, towards more of a sense of people taking responsibility for determining their own futures.

In this respect an interesting parallel can be drawn between current circumstances and the origins of local government. We got local government in New Zealand as a means of delivering, for the diverse communities of 19<sup>th</sup> century New Zealand, core public services such as roads, rivers control, harbour works, water and sanitation. Theoretically all of these could have been delivered through the use of market mechanisms. In practice, for reasons such as transaction cost and free-rider problems, the use of a collective mechanism, with the power to compel, was seen as an essential step in achieving what were then priority outcomes for New Zealand communities.

There is a similar situation facing New Zealand today. If there is any difference, it is that the issues we now face are inherently more complex. They concern outcomes in areas such as education, health care, law and order, the needs of ageing populations, and so on. That we should be turning again to bodies with the power to act collectively on behalf of their communities should not be seen as a surprise.

What does all of this mean for the finance team? From my perspective, a further shift in role away from the random bookkeeping function that characterised local government finance until the late 1980s. At the risk of some oversimplification, the way I would describe the shift is from bookkeeper to financial manager to chief financial officer. The changes of the 1990s had a very strong focus on compliance with generally accepted accounting principles and on ensuring the comprehensive capture and reporting of financial information.

The shift which the new Bill represents is from simply capturing data to using it in support of the local authority’s outcomes focus. To see why I say this, contrast the provisions in the current Act on the contents of the long-term financial strategy and in the Bill on the contents of the long-term council community plan.

Section 122L of the present Act spells out the requirements for content of the long-term financial strategy as follows:

***“122L Content of long-term financial strategy***

*The long-term financial strategy required by section 122K of this Act shall cover—*

- (a) *The estimated expenses, including an allowance for the cost of debt servicing and for the decline in the service potential of assets, necessary to meet the identified needs of the local authority over the period of the strategy:*
- (b) *The reasons why activities giving rise to the estimated expenses are to be engaged in:*
- (c) *The proposed sources of funds to cover the estimated expenses:*
- (d) *Estimated cash flow projections for the period of the strategy, including the results of any planned asset sales and changes in working capital:*
- (e) *Estimates in relation to the creation and realisation of reserves, investments, and assets:*
- (f) *Estimated changes in the level of equity over the period of the strategy:*
- (g) *Estimated long-term borrowing requirements for the period of the strategy:*
- (h) *Estimates of commitments and contingencies for future events that the local authority could reasonably expect to occur and are associated with the actions that the local authority could reasonably expect to take:*
- (i) *Such other financial and non-financial information as is necessary to meet the requirements of section 122C(1) of this Act.”*

The emphasis is overwhelmingly on the numbers with only marginal references to the activities that are to result.

Now look at the provisions of Part 1 of Schedule 8 which sets out the information to be included in long term council community plans:

**“1 Overview**

*A long-term council community plan must, to the extent determined appropriate by the local authority, -*

- (a) *Describe community outcomes and priorities for the local authority’s district or region in terms that allow for their measurement over time:*
- (b) *Describe how the community outcomes and priorities have been identified.*
- (c) *Describe the local authority’s roles in furthering the community outcomes and priorities:*
- (d) *Describe how the community outcomes and priorities relate to other key strategic planning documents or processes:*
- (e) *Outline how the local authority will, in furthering the community outcomes and priorities, work with –*
  - (i) *Other local organisations and regional organisations; and*
  - (ii) *Maori, central government, and non-government organisations; and*

- (iii) *The private sector:*
- (f) *State how the local authority will monitor and, not less than once in every 3 years, report on the community's progress towards achieving community outcomes and priorities.*

## **2 Group of activities**

*A long-term council community plan must, in relation to each group of activities, -*

- (a) *Identify the activities within the group of activities and the rationale for delivery of the group of activities (including the community outcomes and priorities to which the group of activities primarily contributes):*
- (b) *Include a statement of expected service performance of the group of activities, including relevant measures of performance such as time, location, cost, quantity, and quality:*
- (c) *Outline any significant negative effects that any activity within the group of activities may have on the social, economic, environmental, or cultural well-being of the local community:*
- (d) *Identify the major assets used in activities within the group of activities and identify, in relation to those assets, -*
  - (i) *How they will be replaced:*
  - (ii) *The balance between debt and cash financing of replacement assets:*
  - (iii) *The cash requirements for replacement of those assets:*
  - (iv) *The revenues required in each year covered by the plan in order to fund the cash expenses and cash requirements over the life of those assets:*
  - (v) *The progress towards the identified cash requirements and the implications of not, in any year, making a significant contribution towards those cash requirements:*
- (e) *Identify, in relation to each activity within the group, -*
  - (i) *The major asset purchases and the major asset sales that the local authority proposes to make over the period of the plan; and*
  - (ii) *The reasons why the local authority proposes to make those purchases or sales:*
- (f) *Include the estimated expenses for each year in relation to the group of activities:*
- (g) *Identify how the costs and other expenses are to be managed, having regard to the importance of the sustainable delivery of service to the community:*
- (h) *Identify the estimated revenue levels, the other sources of funds, and the rationale for their selection for each activity within the group."*

The new emphasis is completely different. The first part dealing with overview is focused almost entirely on outcomes and how they were identified. The numbers start to come into

play in the second part dealing with group of activities, but even here the outcomes emphasis is strong.

Earlier, I suggested that the role of the finance team under the new Bill – or more specifically, that of its leader – would become that of chief financial officer (the term is already used by some local authorities). By this I mean that the role is expanding so that it is not simply financial control but an integral part of the local authority's decision-making process in building from desired outcomes to outputs, programme design and resourcing. Considered this way, the balance of the role is shifting from substantially operational to substantially strategic.

One of the major challenges for the finance team will be how to shift from the resourced based focus of the long term financial strategy to the outcomes based focus of the long term council community plan. New Zealand's record in the public sector generally in dealing with outcomes has been relatively disappointing. During the 1990s there was a long running debate between the Treasury and the Audit Office over whether and how ministers could report against outcomes – as the Public Finance Act appeared to require they should do. The Treasury took the stance that reporting against outcomes – in effect being held accountable against outcomes – was inappropriate because most outcomes depended on a complex interaction of a number of different causes making it virtually impossible to sheet home responsibility.

That attitude is now changing. Within central government there is a growing acceptance that, at least at a programme level, an outcomes focus is both possible and valuable.

Although attitudes have clearly been changing, the apparent measure of confidence, expressed by the Local Government Bill, that local government can deliver comprehensively on outcome planning and reporting when central government has found it so difficult could seem somewhat puzzling. The experience MDL has had, as a consultancy, with different local authorities that have attempted to integrate an outcome focus within the current annual plan/LTFS process also suggests that there is some distance to go.

Part of the problem, and it is one that finance teams will need to resolve, is the lack of discipline in preparation of strategic documents. Far too many strategic plans or other high level planning documents have been overloaded with aspirational statements and fallen short on the more practical components – for example clear definition of the objectives that will represent achievement of the aspirations, or of the specific strategies intended to deliver the objectives.

Fortunately, we can look elsewhere for guidance. In the development of outcomes based reporting, we can draw on the experience of other countries. One useful example is the United States, where the federal government is shifting towards an outcome based budgeting framework – to come into effect from the 2005 financial year. To give a flavour of what is intended, the following is a quotation from the relevant Office of Management and Budget circular:

*“Your agency should use the strategic plan to help align its current budget structure with its missions and goals. Major changes to the budget presentation to bring about much greater integration of budget and performance are proposed for FY 2005. The framework for this integration*

*will be based on the general goals in your strategic plan .... To support a major ongoing initiative assessing the effectiveness of federal programmes, the strategic plan should include, where known, the outcome goals being used in this assessment, and selectively identify related output goals as well.”*

*“In matching programmes and activities to your mission and goals, the strategic plan can also help in realigning and re-engineering functions and operations. Preparation of a plan also provides an opportunity to consider programmes and activities that can be terminated, reduced in scope, or transferred elsewhere.”*

*“Strategic plans should guide the formulation and execution of the budget. Your strategic plan is a tool to be used in setting priorities and allocating resources consistent with these priorities.”*

That is broadly the task that the new Bill is posing for the finance team. Starting with community outcomes, you will be required to develop a long term council community plan that identifies activities, allocates resources, identifies outputs, and sets a basis for evaluation which (in an ideal world) will establish a seamless relationship between identified community outcomes and the activities your local authority undertakes.

In real life, the process is unlikely to be quite as straightforward as that for reasons that include:

- ▶ A probable difficulty in identifying desired community outcomes (no single voice speaks for the community).
- ▶ Some very real concerns over who has responsibility for what outcomes.
- ▶ Almost certainly a mismatch between the outcomes the community wishes and the resources available to achieve those.
- ▶ Problems of causality – just what activities will generate what outcomes, and to what extent is it possible to control outcomes.
- ▶ A relative lack of expertise in outcomes-based planning and management.

Nonetheless, it looks as though this will be the task. How will it be best approached? By seeing it as an ongoing process of incremental improvement rather than some kind of big bang that requires 100% effectiveness at the end of the first round.

## **THE CHANGING CENTRAL GOVERNMENT / LOCAL GOVERNMENT RELATIONSHIP**

In this section I provide an overview of the way government policy is developing, and consider the implications for central government and local government relationships.

Until the election of the Labour/Alliance coalition government in 1999, the primary focus of successive New Zealand governments had been on a “hands-off” approach to intervention for either economic or social objectives. Rather, successive governments since 1984 saw their principal responsibilities as:

- ▶ Setting the right frameworks so that “the market” or other non-government actors could get on with delivering the kinds of outcomes that society wanted.
- ▶ Treating the government’s social role as primarily one of providing a “safety net” for people who were unable to support themselves through the market.

Consistent with this, very little emphasis was given to matters such as regional economic development, social development or community development. Individual departments had relatively minor responsibilities in these areas, often as a hang over from long established policy (for example, the community development policies of the Department of Internal Affairs which had their origins in the late 1970s/early 1980s) or specific support programmes for employment generation such as the BIZ programme or the work of the Community Employment Group, all of which were seen as something of an exception to the general non-interventionist thrust.

The Labour/Alliance coalition (and now the Labour/Progressive coalition) came with a different emphasis, sometimes referred to as “the third way”. This is an approach that is neither purely market nor purely interventionist, in a sense of trying to micro-manage the economy or society. Rather, it seeks to combine the best of using market tools with targeted intervention, ideally in collaboration with other interests especially regional or local economic, social or community groups (including but not limited to local government).

The rest of this section looks at how government policy is shifting, and being implemented in practice, by considering a number of different areas. It starts with science, mainly because the fact that this emphasis is coming through in something that would normally be seen as quite distant from social policy, emphasises the way in which the new approach is influencing all government policy. This is followed by a brief comment on the work of the Treasury and the Ministry of Economic Development and then a more specific look at social service activities including the Ministry of Social Development, tertiary education, and health. Finally, the implications for local government are considered.

## **Science**

The Ministry of Research, Science and Technology, as the government’s principal adviser on science policy, has been undertaking a significant reappraisal of the way in which science research is funded and delivered. As part of this it has just published a report “*An Appraisal of Crown Research Institutes 1992-2002*”. That report includes the statement:

*“Although CRIs do not contribute directly through their research to government’s social outcomes, they are being asked increasingly to be aware of the social context in which much of their research sits. The increased attention of government to its strategic social policy knowledge needs has been reflected in the identification of seven priority knowledge theme areas:*

- *The changing nature of work.*
- *Developing human capabilities – knowledge and skills.*
- *Disparities between groups – how to change the picture.*
- *Enhancing positive social outcomes – developmental risk and protective factors.*

- *Measuring and understanding social wellbeing.*
- *Social connectedness.*
- *Social and cultural identities.*

*The wide ranging and active policy development and implementation programme that government has initiated across the entire tapestry of its operations serves to emphasise the importance of the research of the CRIs in the overall matrix ...”*

## **The Treasury**

The Treasury’s briefing to the incoming government begins with a section on “*Why Growth Matters*”. It includes the following statements:

*“Higher living standards for New Zealanders means having in our lives the things we value. This varies from person to person and changes over time – it is likely to include such things as good health, a satisfying job, a high-quality natural environment, material goods, community participation, security, freedom, opportunities, and a whole host more. Most New Zealanders also place a high value on social characteristics such as social inclusion, trust among people and groups, cultural richness, democracy, and the absence of significant poverty.”*

*“Growing incomes gives individuals and families choices, and provide the means to acquire many of the things we value - including better essentials as well as more extras. Economic growth also gives the government choices. This includes the ability to invest more in education, health, environmental protection, physical and social infrastructure, and assistance to those in need, and to provide for those who will retire in future decades.”*

Consistent with this, a considerable amount of Treasury’s work is now concerned with understanding matters such as:

- Deprivation – where does it occur, what are its causes, and what policy measures might government introduce to mitigate it.
- The nature of sustainable development.
- Building an inclusive society (in this respect, partly reflecting the work of the Social Inclusion Unit within the cabinet office of the Blair Labour Government in the United Kingdom).

## **Ministry of Economic Development**

The Ministry, under governments of the 1990s when it was known as the Ministry of Commerce, built up a reputation as being one of the economic “drys” within the public sector. With the re-emphasis on government involvement in economic development (and with the Hon Jim Anderton as one of its ministers), the Ministry has shifted its stance substantially (although it still has a very strong economic base).

As with the Ministry of Social Development, the Ministry of Economic Development recognises the need to integrate social and economic development and to work in a

collaborative way at a regional/local level. Its briefing to the incoming government, in a section titled “.... and support regions to achieve their potential” states:

*“The fundamental economic forces that drive changes in the regional economies are powerful. Effective and sustainable development policies must work with those forces.*

*This points to using regional development policy as a catalyst: prompting people in regions to develop networks and the expertise to make and implement local decisions effectively. Central government is uniquely placed to foster networks and relationships and the sharing of information within and between regions. This is in part because there is significant complexity in bringing a large number of parties together and often a lack of trust between them.*

*The regional partnerships established over the last two years have included central and local government, business, iwi and other regional players. The inclusion of iwi recognises the importance of Māori economic development to regional development. Future work needs to consider how iwi can best utilise the resources under their management for their benefit - and ultimately the benefit of their regions.*

*Capability issues facing firms also face many regions. In part this is a problem of co-ordination. However, the small size and large number of district and city councils means that scarce human capital and assets are spread thinly. Central government can address these issues while maintaining appropriate local representation.*

*Regional development policies must be tailored to the development potential and characteristics of each region. They also require that central government co-ordinate its own work - a goal being pursued on several fronts. Co-ordination is being built into regional strategies. The State Services Commission is leading work on this aspect of the Review of the Centre. Te Kapinga, an initiative funded by the 2002 Budget, is designed to improve the co-ordination of the government's Māori economic development programmes. Other work, particularly by the Ministry of Social Development is also focused on improving government co-ordination.”*

The tone could be seen as suggesting somewhat less confidence in regional capability than appears from the equivalent parts of the Ministry of Social Development's briefing papers (below), but the overall thrust is the same.

### **Ministry of Social Development**

The Ministry of Social Development is the government's lead adviser on social policy. Its briefing to the incoming government emphasises the need for coordination across a broad range of policy including the integration of economic and social development. The introduction to the briefing starts with the statements:

*“Social development is a process of co-ordinated social change to promote the wellbeing of the population as a whole. It goes hand in hand with economic development. It aims to improve health, education, housing, employment, living*

*standards and safety, rather than focusing on any one outcome to the exclusion of others.*

*Social development requires us to have a view of people's lives as a whole rather than focusing on specific sectors, departmental groupings or population groups.*

*To be sustainable, economic and social development must complement each other."*

The emphasis is not just at a national level. The briefing speaks of social development at the local level in these terms:

*"An effective social development strategy will also require enhanced inter-agency collaboration where services are delivered. It will require improved links and planning between central government agencies in each region, and between those agencies and:*

- *Local government;*
- *Community and voluntary sector groups; and*
- *Iwi/Maori groups.*

*The links need to work on the strengths of these different forms of organisation and be based on mutually sought outcomes."*

Note the emphasis on mutually sought outcomes. Here what is being suggested is that central government cannot do it on its own and does not have the sole right to determine what ought to be done to achieve social development. Instead, the emphasis is much more on working together (the same emphasis as appears in the advice being given by the Ministry of Economic Development).

This approach is increasingly at the heart of the way the Ministry is working at a practical level to achieve outcomes that are priorities for government. One example is housing. In a separate briefing note for Prism<sup>3</sup> Limited<sup>1</sup> prepared to give an overview of the way the Ministry is working with local government, the Ministry describes its involvement in the Northland/East Coast/Bay of Plenty housing project in the following terms:

*"MSD is leading work to address the persistent issue of substandard housing in Northland, the East Coast/Tairāwhiti and the Eastern Bay of Plenty. The approach is to set the housing 'problem' in a wider social development context which gives appropriate consideration to links between the presenting issue and health, education and training, infrastructure, community development, income and employment, poverty and other social problems. The project operates at two levels:*

- *On the ground intervention to address the immediate housing issues.*
- *Policy work to achieve regional social development plans (with a strategic focus) in each of the three regions. In each case, this work involves both the territorial local authorities in the region, and iwi -with wider consultation with*

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<sup>1</sup> McKinlay Douglas Limited's joint venture with the New Zealand Institute of Economic Research and the Institute of Public Policy at the Auckland University of Technology

*groups at the community level.”*

In practice, in this case government has taken the view that dealing with the housing problem had to be done in a way that would also confront the overarching issues of poverty, opportunity and capacity and that it was important to address other needs as well including:

- ▶ Employment and incomes.
- ▶ Public and personal health issues.
- ▶ Education and skills.
- ▶ Infrastructure

It is our understanding that ministers, local authorities and community/iwi/Maori groups have all been clear that a “bottom-up” development process is preferable to a “top-down,” Wellington-based policy process. Officials have accordingly adopted a regionally-driven process in which communities, supported by central government, play an integral part.

The Ministry’s emphasis is now very much one of working from the bottom up, engaging the local community and in many respects letting the local community set the agenda.

In the course of our discussions with the Ministry, we have detected a strong interest in making this its preferred way of working. It reflects a growing understanding that central government simply does not have the resources or local knowledge that would allow it, on its own, to achieve the social and economic outcomes it seeks. Instead, if it is to do so, then collaboration is essential.

## **Health**

The same theme of engagement can now be seen coming through the Ministry of Health and district health boards. Since the passage of the New Zealand Public Health and Disability Act, district health boards have had a statutory obligation to prepare and consult on strategic and annual plans. So far the process has not seen a great deal of public engagement. Timing considerations and apparent tight control from the Ministry over the process followed by each district health board gave the first round of consultation a very strongly top down appearance.

That is changing. In August of this year the Director General of Health issued consultation guidelines for the Ministry of Health and district health boards relating to the provision of health and disability services. The foreword to the document spells out the key understandings that underlie the consultation guidelines in the following terms:

*“One of the fundamental principles of the New Zealand Health Strategy is an acknowledgement of the special relationship between Maori and the Crown under the Treaty of Waitangi.*

*Another fundamental principle is the importance of community engagement and consultation on health services to ensure quality decision-making and policy development in health.*

*Consultation is a subset of community engagement that encompasses the*

*seeking of views from the community on a specific proposal or issue and is more effective when built on relationships of trust.*

*A considerable body of knowledge and experience about public consultation has been developed over the last 10 years and over that time expectations on both sides for the consultation process have become more sophisticated.*

*Done properly, consultation can help create a greater understanding by the wider community of the role of district health boards (DHBs) and the Ministry of Health (the Ministry) and can strengthen external relationships, particularly with consumers and providers.”*

District health boards themselves are showing a greater awareness of the importance of engagement with their communities including working jointly with other community representatives. As an example of this practice, Good Health Wanganui (the Wanganui district health board) and the Wanganui District Council jointly undertook a major health needs assessment of the Wanganui population.

### ***Tertiary Education***

The public rhetoric in this area has focused very strongly on a shift from what was seen as the largely competitive system under governments of the 1990s to a more cooperative and collaborative approach. The government has developed a tertiary education strategy. The introduction by the Minister of Tertiary Education, the Hon Steve Maharey, includes the statement:

*“Although this document looks to a five year horizon, it is not intended as a static plan that will remain unchanged over the period. A key aspect of this strategy is the ongoing strategic dialogue that supports it and which will ensure that it remains a dynamic and living document. Effective implementation will require a partnership between government and a wide range of stakeholders, including the sector itself, and the regions, industries, and communities that it serves.”*

A key aspect of the implementation of the strategy is the development, by tertiary education organisations, of charters and profiles - charters as the basic statement of mission and organisational character and profiles as the activities that they will undertake and the contributions they expect those to make to the government’s strategic objectives.

The guidelines issued for the preparation of charters and profiles elaborate on the requirement for collaboration at a regional level. First, regarding the relevance of their activities, the guidelines note:

*“In terms of relevance, organisations will need to consider their contribution to regional and national skill needs, for instance, relative to the contribution that may be made by other organisations in the same or related fields.”*

This is strengthened in the section of the guidelines dealing with effective engagement with stakeholders which provides:

*“One of the government’s key goals in the reform of tertiary education is to*

*strengthen connections between tertiary education organisations and ensure they become more responsive to the needs of their stakeholders. This will require an active approach to engagement that involves establishing a meaningful dialogue with stakeholders, particularly through the process of developing charters and profiles.*

*The emphasis will be on effective engagement and quality consultation rather than quantity. Developing a relationship management plan will be an important part of the process of creating charters and profiles.”*

The first step in developing the relationship management plan is to identify stakeholders. Eight categories are cited. Learners, staff and alumni are three, other providers and particular government agencies make up two. The remaining three are iwi and Maori organisations; industry associations, specific employer or industry groups or special purpose sub-groupings within industry associations; regional and community interest groups.

The clear implication, which is being followed through in practice as draft profiles start to be developed, is that tertiary education organisations will need to be closely networked with their communities. No longer will they be able to act as standalone entities pursuing their own objectives and with their major relationships being with central government.

### ***Implications for Central Government/Local Government Relationships***

It seems clear that most central government departments are very aware of the provisions of the Local Government Bill, both the new emphasis on community outcomes and the stated purpose of enabling and encouraging local authorities to work together and with other organisations to “... *contribute to the outcomes and priorities of other levels of government that are supported by their communities.*”

As earlier material in this paper demonstrates, this is not just the result of a changing sentiment on the part of central government. It is also a consequence of realising that, for the kind of outcomes central government is now seeking, local collaboration is necessary.

In simple terms, this clearly provides an opportunity for a closer working relationship between central government and local government (something that we have already seen demonstrated through the half yearly “summit meeting” that takes place between senior ministers and local government representatives).

The implications, though, are more than just the simple proposition that departments and local authorities now have both good reason for collaborating and the beginnings of a mechanism for doing so. There are important questions around how that collaboration will take place. As the Bill is drafted, the principal instrument is almost certainly going to be the process that the local authority establishes for identifying community outcomes, with its obligation to identify, so far as practicable, the other bodies capable of influencing their identification and securing the agreement of those bodies to the process and to the relationship of the process to any existing and related plans.

We have 86 local authorities (74 territorial, of which four are unitaries, and 12 regional councils). Of our various ministries and departments, probably in the order of 30-40 have a sufficient impact on community outcomes that they should be part of the process. Ditto for

22 district health boards, eight universities, 20 polytechnics and a large number of Crown entities.

How will this process be effectively coordinated? Presumably this is a matter that Local Government New Zealand and government will consider with a view to trying to minimise transaction costs.

One issue stands out. Should departments and ministries seek to collaborate primarily at a regional level or at a local level? Is this provision going to have a major impact on the relative importance of regional and territorial authorities?

What does seem clear is that we are entering into a new phase in the role of local government that could provide very real opportunity for it to influence, significantly, the way central government both develops policy and manages services delivery. Equally, we could be entering a phase in which central government achieves much greater effective control over local government if the latter is insufficiently strategic in its response to the new legislation.

Again, the impact on the finance team could be quite considerable. If your planning, reporting and accountability processes are now driven off community outcomes, and the process of identifying those is strongly influenced or dominated by outside parties, what networks and information sources do you require?

## **NEW STRUCTURES FOR SERVICE DELIVERY**

In this part of the paper I am going to confine my remarks to those parts of the Act that will impact on the development of new structures for service delivery.

The past decade or so has seen an increasing interest in adopting different structures for service delivery, with quite a strong emphasis on cross-boundary structures. Indeed, there are parts of the country where, on the kind of logic that is normally applied to local authority amalgamation, the pressure for further amalgamation is being relaxed through integrating service delivery. Examples include:

- ▶ The joint approach to district planning amongst the three territorial local authorities in the Wairarapa.
- ▶ The emergence of economic development agencies, and associated economic development strategies, covering more than one local authority. Examples include the Wellington Regional Economic Development Agency, Venture Taranaki, Vision Manawatu and the newly emerging Auckland Regional Economic Development Strategy.
- ▶ Initiatives to develop region-wide waste disposal facilities – such as the initiative that has been underway in Canterbury.
- ▶ Joint approaches to road maintenance – such as the 10 year performance based contract to provide road maintenance services for the Western Bay of Plenty and Tauranga district councils and Transit New Zealand.
- ▶ Consideration of joint options for service delivery and/or management in areas such as water and sewerage, for example the recent agreement between the South Taranaki

District Council and the New Plymouth District Council, providing for the latter to manage the former's engineering group.

Individual local authorities, also, have been exploring options for different structures for service delivery. In the early part of the last decade there was a strong interest in the use of local authority trading enterprises, particularly in transport related areas.

More recently there has been an increased interest in the use of trusts, especially for cultural and recreation purposes. Perhaps the best known example is the Wellington Stadium Trust, but there have been a number of others in areas such as museums, art galleries, libraries, economic development and tourism.

A common theme running through the decision to explore a different structure for service delivery has been an interest in improving the quality of governance. Factors local authorities have considered include:

- ▶ Putting in place activity specific governance – thus drawing on the interest and skills of individuals who may want to focus on a single activity rather than on the whole business of a local authority.
- ▶ Associated with that, getting a much better governance/management relationship – with more time for the governing body to focus.
- ▶ Tapping into linkages within the community – whether business or otherwise – that may be reluctant to work directly with the council itself.
- ▶ Developing structures that are “fit for purpose”, something that is particularly important when the activity needs to work with commercial partners, and in harmony with commercial timeframes and understandings.

There is a very real risk that the new Bill will significantly undermine the opportunity to create ratepayer (and resident) value through the use of activity specific structures. This paper has already noted the restrictions that the Bill proposes in terms of dealing with water and wastewater assets.

More generally, the Bill introduces a new framework for the governance of what are described as council-controlled organisations. Under the Bill:

- ▶ A trust is a CCO if one or more local authorities have the right, directly or indirectly, to appoint 50% or more of the trustees.
- ▶ A company is a CCO if:
  - Equity securities carrying 50% or more of the voting rights are held by one or more local authorities or controlled, directly or indirectly, by one or more.
  - One or more local authorities have the right, directly or indirectly, to appoint 50% or more of the directors.

If any component of the governance structure is a CCO, then the full scope of the legislation comes into force. [Note: Currently Part 4, along with the majority of the Act, would not come into force until 1 July 2003.] Impacts include:

- ▶ The requirement to use the special consultative procedure when establishing a council-controlled organisation – which, for a CCO with several councils involved, means several consultations.
- ▶ A CCO that is a company must complete a statement of corporate intent. A non-company CCO is required to have a written performance agreement. With several local authorities involved, presumably each document would need to be negotiated with each local authority.
- ▶ Clause 49 currently requires a local authority that is a shareholder in a CCO to have in place a process for approval or endorsement by that local authority of the directions and strategies, planning outcomes and activities, financial and non-financial targets, and outcome measures of that organisation, and regularly to undertake performance monitoring. Again, with several local authorities involved, each would have to go through that set of processes, and presumably try and reconcile the outcomes with other participants in the same CCO.

The CCO provisions not only capture trusts and companies, but also any organisation defined as meaning “... *any partnership, trust, arrangement for the sharing of profits, union of interest, cooperation, joint venture, or other similar arrangement; but does not include a company or a committee or joint committee of the local authority*”.

It seems clear that these provisions were put in place because of a concern that local authorities were unable to exercise sufficient control over the arm’s length organisations they had established. The specific trigger seems to have been the experience of Auckland City Council with Metrowater Limited (a LATE that it had established to own and manage its retail level water and wastewater services). There were suggestions that Metrowater was failing to acknowledge the Council’s social objectives for water and wastewater management (especially dealing with low income/non paying customers), citing the need to act commercially.

Ministerial reaction to the claimed inability<sup>2</sup> of the Council to influence Metrowater was to conclude that the legislation needed to be changed to make it clear that LATEs were required to comply with the social objectives of their owners. The result was an amendment to Section 594Q of the Local Government Act 1974. It continues to provide that the principal objective of a LATE is to operate as a successful business but defines this as including “... *achieving the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of corporate intent*”.

As those familiar with the principles of good governance will understand, that provision risks severely undermining the ability of local authorities to hold directors accountable for commercial performance. Ironically, it also carried with it the risk of passing responsibility for social objectives from the Council to the board of a LATE (a risk inherent in the way in which statements of corporate intent are prepared).

With the replacement of the present Act by the Bill that provision goes. Instead, the policy objective it is intended to promote – greater accountability of arms-length entities to councils

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<sup>2</sup> I used the term “claimed inability” as it seems reasonably clear from an analysis of what was going on that the problem lay not in the legislation but in the way in which Auckland City Council had gone about setting its expectations of Metrowater Limited in its statement of corporate intent.

– will be covered by Clause 49. If the Bill still includes that clause in its present form, potential consequences include:

- CCOs, with a single controlling council, will face the distinct possibility that the council will take over the right to approve all of the key strategies, policies etc currently the responsibility of directors or trustees.
- Potential director or trustee appointees, with any significant experience or understanding of the requirements of good governance, will be reluctant to put themselves forward – unless they have a clear understanding that the council will not act as Clause 49 makes possible.
- Councillors themselves are at risk of being classed as “deemed directors” potentially exposing them to personal liability.
- There is potential for very real conflict between the legal duties of directors and trustees under legislation and case law applying specifically to those roles, and the provisions of Clause 49.
- If a CCO has more than one council in a controlling position, there is potential for very real confusion if different councils take different stances on what the CCO’s strategies and policies should be.

At least some councils aware of the potential impact of the provisions dealing with CCOs are looking for ways of avoiding the application of that part of the Act whilst still being able to establish arm’s length organisations. The good news is that there do appear to be available mechanisms – and ones that are still able to respect the intent of accountability to the council and through it to the community.

Not all councils, and not all advisers, will necessarily understand how to manage these issues – and even if they do, there is a distinct possibility that individual councillors or the community served by a particular council, may be opposed to their application as they can be seen by people unfamiliar with the process of governance as undermining the role of the council.

The message with which I wish to conclude this part of the paper is that local government needs to treat the problems with the CCO provisions very seriously. If they are passed into legislation, then an immediate objective should be monitoring what happens with their implementation and, if the concerns expressed in this paper are borne out, seek amending legislation. The objective of more efficient delivery and reducing costs to ratepayers demands that councils have flexible structures that are well governed.

## **THE ROLE OF OTHER MAJOR LOCAL OR REGIONAL INSTITUTIONS**

One of the unique characteristics of the New Zealand public sector environment is the presence of a number of institutions that have the capability of playing a very major role at a local or regional level but have limited or no effective legal accountability to the communities they serve. The two main categories are community trusts and energy trusts (in some parts of the country, licensing trusts and land trusts are also significant). For the purposes of this paper I am going to assume that the audience has a general familiarity with the nature and role of community and energy trusts. For those who want a bit more background, I

recommend reading “*Public Wealth and Trusts*” published by the Institute of Policy Studies at Victoria University. The paper is available at [http://www.vuw.ac.nz/inst-policy-studies/policy\\_papers.html#pp11](http://www.vuw.ac.nz/inst-policy-studies/policy_papers.html#pp11).

Most of these trusts have the capacity to play a very major role within the communities they serve. Not all are fully exploiting their potential. Thus:

- ▶ Most community trusts have, generally, been applicant driven in terms of the grants that they make.
- ▶ The majority of energy trusts are what is known as “rebate trusts”, with all or the majority of their income being distributed to customers as rebates, usually based on the customer’s connection to the lines network of the company in which the energy trust has an ownership interest. Some trusts distribute grants rather than or as well as rebates. As with community trusts, they too tend to be applicant driven.

Neither group of trusts has a statutory obligation to consult with the community it serves on matters such as distribution policy. However, there are encouraging signs that a number of trusts are recognising the desirability of gaining community input.

Perhaps more importantly, there is also a growing perception that their role is capable of being much more than simply a distributor of rebates or of grants driven substantially by the nature of the applications they receive. Last year, New Zealand’s community trusts commissioned a review of the community trust sector. The review’s authors quoted, with obvious approval, from a recent Harvard Business Review article “Philanthropy’s New Agenda: Creating Value”. The concern of the article’s authors was the relative lack of focus by foundations on the outcomes from their activities, even though many US foundations have almost as broad a community mandate (by virtue of their benefactors’ intentions) as community or energy trusts in New Zealand. The authors commented:

*“... if foundations serve only as passive middlemen, as mere conduits for giving, then they fall far short of their potential and of society’s high expectations. Foundations can and should lead social progress. They have the potential to make more effective use of scarce resources than either individual donors or the government. Free from political pressures, foundations can explore new solutions to social problems with an independence that government can never have. And compared with individual donors, foundations have the scale, the time horizon and the professional management to create benefits for society more effectively. Whether foundations are, however, fulfilling their potential is an open question. Not enough foundations think strategically about how they can create the most value for society with the resources they have at their disposal. Little effort is devoted to measuring results. On the contrary, foundations often consider measuring performance as unrelated to their charitable mission.”*

With the enactment of the Bill it seems inescapable that community trusts and energy trusts will come within the category of “... other bodies capable of influencing either the identification or the promotion of community outcomes and priorities”. In many of New Zealand’s communities, the distribution capability of these trusts considerably exceeds the

extent to which local authorities can undertake discretionary spending to promote social, environmental, cultural and economic outcomes.

The initial reaction of community and energy trusts to an invitation to take part in the community outcomes process is likely to range widely. Some are already seeing this process as a potentially valuable tool in helping them get a better focus on what they do (and very much in the spirit of the HBR quote above). Others may regard even an invitation to join in the process as an unwarranted intrusion in their affairs.

Overall, though, the likely result in the medium term is that community and energy trusts will come to see the process as a useful way of enhancing their accountability to the communities they serve. As part of this, they are likely to become part of the shift towards better information on outcomes, and the relationship between outcomes and activities – potentially providing the council finance team with another perspective on what will be one of their core responsibilities.

## **LIKELY DEVELOPMENTS**

In this section I am going to engage in a little bit of crystal ball gazing in predicting what might happen once the new Local Government Bill is in place.

The range of potential outcomes is very considerable. At one end, it is possible to envisage the dawn of a new age of local governance, with local authorities becoming the centre of a very well networked and effective process of identifying and delivering on community outcomes. At the other end of the spectrum, it is possible to predict a world of increased compliance costs, litigation, and further public disillusion with the governing process.

Let me look first at the optimistic scenario. The Bill does provide a blueprint for something that, for the first time, could see the key influencers within New Zealand's communities working more or less to a common agenda. What will it require to achieve that? First and foremost, it seems to me that local authorities themselves must recognise that the intent behind the Bill is for a quite fundamental shift in the way they go about serving their communities. This includes:

- ▶ A view, explicit in the Bill, that local authority activity should be driven by the community's desired outcomes – not the preferences or prejudices of local authorities themselves.
- ▶ As part of this, there should be genuine collaboration amongst the major influencers on community outcomes.

The task is much easier to define than to perform. First, the term “community” has a misleading sense of certainty about it. In practice, the community is made up of a bewildering variety of different interests – economic, ethnic, cultural, gender, and age based differences are only some of the factors that mean arriving at a consensus across a geographic community is not an easy matter.

Secondly, finding an effective and efficient means of collaboration amongst the different major influencers will not be straightforward. It is not just a matter of central government/local government cooperation. It is equally a question of how other significant

organisational interests become engaged – ranging from community and energy trusts to business organisations, the voluntary/community sector, and so on.

Making this work is going to require local authorities to understand and empathise with the vision that underlies the Bill. For them, the principal challenge will be developing a process that is effective to engage the community and others, and be seen, genuinely, as a process of identifying the community's desired outcomes.

This is going to require leadership at two levels. First, politicians themselves will need to embrace the new environment. This biggest risk is likely to be the traditional New Zealand one of patch protection (consider, for example, how regional councils and territorial local authorities might square off around the issue of their respective roles in identifying community outcomes). I am sufficient of an optimist to believe that there will be enough local authorities whose politicians are prepared to see and seize the vision to believe that we will at least have some good examples for others to follow.

The second challenge is for council management, especially those within council such as the finance team, who have the primary responsibility for managing the planning, reporting and accountability cycle. It would be deceptively easy to see the changes as just another step in ongoing compliance – perhaps a beefed up form of Section 716A consultation. That would be to miss an opportunity. The Act is not about simply imposing greater compliance costs (although it certainly does so in some areas). It is very much about shifting focus.

Again, I think we probably have enough senior council managers capable of seeing what is required to ensure that there will be good examples for others to follow – and demonstrations of the benefits that can come from getting the process right and leveraging off the strategic opportunities it undoubtedly presents.

Now for the somewhat pessimistic scenario. As I have already suggested, it is quite possible that at both the political and the management level, local authorities will focus on form rather than substance and treat the requirements of the Bill as though they were more incremental than system changing.

In my view that would be a mistake, and one with potentially serious consequences. Consider, first, the way in which local authorities have been protected over the past few years against significant criticism. All of us know that there are substantial elements within the business community, including groupings such as Business New Zealand and Federated Farmers, who have been strongly critical of the way in which local authorities have managed their affairs. Much of this criticism has been directed to the way in which the rating burden has been allocated amongst different categories of ratepayers.

The present Local Government Act provides very significant protection for local authorities against any challenge to the decisions they make on the allocation of the rating burden. Section 122I dealing with compliance not only leaves it over to the local authority to decide what on reasonable grounds is appropriate in terms of extent of analysis etc, but also makes it the responsibility of the local authority to make judgements about fairness and equity and to make judgements concerning the extent to which the principles of financial management apply to any particular case *“which judgements may reflect the complexity and inherent subjectivity of any benefit allocation for specified outputs and the complexity of the economic, social, and political assessments required in the exercise of political judgement concerning*

*rating*". That is complemented by Section 122W(2) dealing with limitation of review, stating that where any person wishes to make a challenge *"that person shall make that challenge by way of a written submission to the local authority in the course of the special consultative procedure"*. That provision has been widely seen as excluding the jurisdiction of the courts.

The Bill does not contain any equivalent provisions. In other words, the protection against challenge, and the very wide ranging discretion given local authorities, will no longer apply.

There is another factor that comes into play as well, at least when developing the process for identifying community outcomes. The Bill merely requires a local authority to establish a process. It does not spell out how that process should be established. This is in contrast to the normal approach of legislation dealing with local authority planning, reporting and accountability (including consultation). Typically, it is highly detailed. In practice what this does is provide local authorities with a very real protection. So long as they can tick all the boxes that the legislation requires, then generally their decisions will be beyond challenge.

Leaving it over to local authorities to determine what process they should follow, and removing the present statutory protections against challenge, can be seen as making local authorities highly vulnerable to challenge (probably by way of judicial review) unless their approach to establishing their process is very robust and clearly reflects the spirit and intent of the legislation.

What could this mean in practice? Consider the position of organisations such as Business New Zealand or Federated Farmers concerned to influence the community outcomes process, at least in identifying economic and environmental outcomes. One obvious focus of both groups will be on defining community outcomes in the economic area supportive of business growth. This will clearly include ensuring least cost and light-handed regulation.

Local authorities presented with that view from what are important sections of any community will not necessarily be bound to accept that those have been identified as community outcomes for the purposes of the Bill. Clearly, other interest groups within the community will also be presenting what they identify as desirable community outcomes. The challenge for the local authority will be finding a way of achieving a balance so that it can argue that, based on the input from different parties, it has finally identified what can be seen as an appropriate set of community outcomes.

The risk that local authorities face, if their processes are not robust, is that they will face legal challenge. In this respect it needs to be recalled that the reason local authority rating decisions have been free from legal challenge in recent years is not the absolute fairness and reasonableness of all local authority rating decisions, or the absence of any interest in challenging them, but a set of legal protections that put them effectively beyond challenge. With those gone it seems inevitable that parties who believe they have a grievance will again resort to the courts.

The risk is a very real one. The potential damage to local authorities that are challenged is far more serious than simply having a rates decision set aside. The possibility is one of derailing the whole of a very important planning process, making it difficult for local authorities to perform functions. To mitigate this risk, the task for politicians and, more importantly, for those who have responsibility for managing the process itself will include ensuring that the process they adopt:

- ▶ Has genuinely identified those organisations that, in terms of the Bill, are entitled to be part of the process.
- ▶ Has fair and reasonable means of moving from the input of different community interests to a single “community outcome” in each outcome area.
- ▶ Itself has a measure of legitimacy in the sense that the organisations involved, by and large, are satisfied that the process is fair and appropriate.

New skills will be required both in process management and in developing the information needed to show the linkages between the input from different organisations, the community outcomes as identified by the local authority, the activities that those outcomes support, and the way in which it is proposed they be funded.

My concern, with my pessimistic hat on, is that one or more of three things may happen:

- ▶ Local authorities may take a form rather than substance approach.
- ▶ Local authorities themselves may not have the skills and understanding needed to get effective compliance.
- ▶ The relationship between local authorities and those organisations likeliest to challenge what they are doing may not have a sufficient basis in trust and understanding for people to work effectively together in resolving what will be very difficult issues.

## **CONCLUDING REMARKS**

So, we have two quite different scenarios for what might happen. On balance, I remain an optimist. There is a great deal of work going on within local government and between local and central government preparing for the community outcomes process. Ideally, local government will be starting to take the initiative in engaging non-government actors whose involvement will be important.

Finally, I think we are moving into an environment in which most people, most of the time, are aware that the future performance of New Zealand as an economy and society is critically dependent on how effectively we work in our individual communities. If I am right in that judgement, then the basic understanding of the importance of making the new Bill work is already in place.