

# Reaping the Benefits: Local Government Act 2002 in Practice

A presentation by Peter McKinlay to the NZIPA  
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## INTRODUCTION

In this paper I present a practitioner's perspective of the Local Government Act 2002, considering the potential it has to contribute to the better governance of New Zealand's communities.

First, a word of qualification. By practitioner, I mean someone who has had close to 20 years experience working as a consultant specialising in public policy, strategy and corporate governance, with a particular interest in both local government and local governance.<sup>1</sup>

LGA 2002 can be seen as a significant step forward, by New Zealand, to recognising the role of local government as an instrument in local governance. Recollect that the then minister of Local Government, Sandra Lee, in her first reading speech introducing the local government bill had this to say:

*"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."*

This has often been overlooked in commentary on the legislation. Regrettably, much discussion about the Act has been dominated by the view that its effect (if not its purpose) was to increase, significantly, the powers of local government in opposition to the communities of interest within its district (especially business and farming interests).

Before dealing with the substance of the impact of LGA 2002, it is worth putting this myth to rest (especially as it was repeated in Graeme Bush's paper distributed as background reading for the seminar).

Initially, LGA 2002 was promoted as a shift from what was seen as a highly prescriptive piece of legislation, to a more empowering statutory framework. The Government's discussion document "Review of the Local Government Act: Consultation Document" had this to say about the power of general competence:

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<sup>1</sup> For those who are not familiar with the difference, local government refers to the formal statutory structures that form part of our system of government. Governance has to do with the institutions, processes and traditions for dealing with issues of public interest. It is concerned with how decisions are taken and with how citizens (or stakeholders) are accorded a voice in this process. The need for the concept of governance derives from the fact that today government is widely perceived as an organisation. In its early form government was seen as a process whereby citizens came together to deal with public business. Today, government is viewed as one of several institutional players, like business or labour, with its own interests. The emergence of government as a free standing organisation in society with its own agendas and interests has created the need for a word to describe a process distinct from government itself (adopted from the Governance Co-operative a group of Canadian government and non government organisations).

*"The Government considers that the present Local Government Act is too prescriptive in nature, and that local councils should have broader powers in order to work more flexibly and to be more responsive to the needs of their particular communities. It is therefore proposed that local authorities be granted a power of general competence."*

This sounded alarm bells, especially for the business community, which envisaged a world in which local councils, virtually unconstrained by legislative restriction, could spend ratepayers' dollars on a wide range of social service, welfare and community initiatives of little practical value.

In reality, that was a major misunderstanding. First, government resiled significantly from providing local government with a power of general competence. Instead, the Act endows local authorities with all the powers of a natural person "for the purposes of performing its role". In other words, in contrast to (say) company law where the power of general competence first emerged, a purposive test remains. Secondly, local government's decision making powers are constrained by what is probably the most onerous set of consultation and decision making requirements ever imposed on a governing body in the history of New Zealand. Next, there are other major constraints such as the effective prohibition on the sale of water or wastewater assets to the private sector or on entering into long term management contracts with private sector providers.

Finally, the much-feared powers to undertake a wide range of social, welfare and community development activities at the expense of the ratepayer were already present in the Local Government Act 1974. Although that Act had earned a deserved reputation for its prescriptive provisions, it was also, in parts, effectively a power of general competence, most notably in part 36 of the Act dealing with recreation and community development. This was an extraordinary set of provisions which were well known to local authorities and people experienced in the sector, but appears to have been something of a public secret, concealed from many of the critics of LGA 2002.

On balance, the view of informed commentators on LGA 2002 is that local authorities probably have somewhat lesser powers and certainly face far greater compliance costs than was the case under the Local Government Act 1974.

With that out of the way, I want to turn to the main focus of this presentation: LGA 2002 in practice. From my view as a practitioner, the real significance of LGA 2002 is a combination of the way in which it defines the role of local government, and its provisions for what amounts to community based strategic planning.

LGA 2002 redefined the statutory role of local government. Amongst other things, the combination of sections 10 and 11 of LGA 2002 results in each council (district, city, regional) having a statutory role to promote the social, economic, environmental and cultural wellbeing of communities, in its district or region, in the present and for the future.

The principal means the Act spells out for undertaking this new statutory role are:

- The carrying out of a process to identify community outcomes for the intermediate and long-term future of its district or region, including identifying, so far as practicable, other organisations and groups capable of influencing either the identification or the promotion of community outcomes and securing, if practicable, their agreement to the process.

- Preparing, as the local authority's basic planning document, a long term council community plan which is based on describing community outcomes, how they have been identified, how the local authority will contribute to furthering them and how it will work with other local organisations, regional organisations, Maori, central government, and non government organisations and the private sector to further those community outcomes.

The practical effect of the legislation is to position local authorities as the lead party in the development of a long term strategic plan for their communities, to be developed in conjunction with other key influencers from the public, private and voluntary/community sectors.

In practice, what we now have is a situation in which the Act requires councils to give effect to the purpose of local government which includes to "promote the social, economic, environmental and cultural well being of communities, in the present and for the future".

This is a major shift. Furthermore, it is an obligation rather than a power. Councils cannot say that their role is confined to the traditional "roads rats and rubbish" and they are not going to have anything to do with this environmental and social nonsense. If they say that, then they are in breach of the Act.

Part of the reason for the change, as articulated by Sandra Lee, is to empower communities. That is clearly the purpose of the much more comprehensive and detailed accountability provisions in the legislation (dealing both with public consultation, and with a decision making process which, on its terms, obliges local authorities to involve the public at each of the four stages in any decisions that it makes). It is a separate question, which I will not go into today, whether these changes enhance public accountability and involvement or have the reverse effect. My tentative judgement is that the complexity of the new decision making rules is likely, in practice, to disempower both communities and elected members, increasing the powers of local government bureaucracies by virtue of the fact that it is they who run what are now very complex systems.

The origins of the new legislation appear to lie in a mix of influences including:

- A growing awareness of public discontent with the way that the consultation/public engagement provisions of the Local Government Act 1974 were operating. There is a lesson here for central government as well as it follows much the same process as was incorporated in the previous legislation. Consultation requires an authority to state its proposed course of action, allow the public a reasonable time to make submissions, including the opportunity to appear before the authority in person, and then to make an open minded decision. Increasingly, the public reaction to this process was one of "we do not want to be consulted about your answer to your question, we want to be consulted about what the question should be".
- A recognition that, increasingly, the outcomes that the government itself wish to achieve could not simply be mandated from Wellington but required the ability to work closely with local networks and organisations.
- Associated with that, a recognition that internationally, decision making on a range of significant social and other issues was increasingly seen as best undertaken at a regional or local level – typically the lowest level which encompassed the greater part of the impacts of the decision (broadly along the classic 80/20 rule).

Another influence was an awareness that one of the intentions behind the Local Government Act (No. 3) 1996 had not been realised. This legislation introduced a new and comprehensive set of financial management provisions including the requirement for the preparation of a long term financial strategy – which was to set out the council's intentions for the activities it would undertake over at least the next ten years, the means of funding those,

and the reasons for undertaking them. It was anticipated that this would, in practice, result in local authorities undertaking strategic planning which encompassed not only their own activities, but expected developments within the district as a whole (recognising that the primary role of local government was to service/facilitate activities by others).

In practice, this did not result. Some authorities prepared strategic plans – of varying quality. Most did not. Too often, long term financial strategies were arithmetic extrapolations of annual plans (which focused on the current and next two years).

Under LGA 2002, councils are required to go through what is known as the community outcomes process, and prepare a long term council community plan based on those outcomes (relevant extracts from the legislation are included in the appendix to this paper).

Note that the outcomes with which the local authority is concerned are not those of the local authority but those of the community. The obligation on a local authority is to identify the community's outcomes, including organisations who can contribute to the process. The long term council community plan is to be outcome based and quite explicitly prepared on the basis that the local authority will be responsible for part only of the outcomes concerned – in respect of most of them, its role will be working with other parties, including central government agencies, seeking the delivery of those outcomes.

Where are we at in this process? From my experience, it is very much early days. The shift requires a quite significant culture change not just within local government, but within the community and within central government. Currently, most local authorities are preparing their first long term council community plan, doing so under transitional provisions which state that they do not have to follow the full community outcomes process for this first LTCCP<sup>2</sup>.

It is hard to resist the impression that most local authorities are treating the community outcomes process as an extrapolation of their traditional approach to public consultation. One probable consequence is that parties who really need to get involved in a substantive way have yet to see the relevance – they may regard it as yet another local authority driven attempt to impose a set of outcomes, rather than, as should be the case, seeing the local authority as effectively the trustee for the community in developing the community's strategic plan.

This should not be seen as surprising. Changes of this magnitude normally take some years to come fully into effect. I recall Sir Bryan Elwood, who was the chair of the Local Government Commission for the quite substantial local government reforms of the late 80s and early 90s, commenting that he thought it would take something like two or three electoral cycles before most local authorities had councillors who would operate under the new paradigm rather than the old (this was a particular reference to the intention of those changes to impose a policy/management split on council operation – prior to 1989, councils had been direct employers of staff and councillors had felt free to interfere on a regular basis with operational management).

For this sort of reason it is probably still far too early to be assessing the likely impact. Here, we can draw a parallel from England. There, local government legislation was rewritten in 2000 with the passage of the Local Government Act 2000. Section 2 of that Act included a provision providing that every local authority was to have power to do anything which it considered likely to achieve the promotion or improvement of the economic, social and environmental well being in its area.

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<sup>2</sup> Some nine councils (the number may not be exact) were early adopters, producing their first LTCCP for the 2003/2004 year.

In late 2003 the Improvement and Development Agency commissioned a paper looking at experience with the use of the new well being power<sup>3</sup>. Despite its sustainable development origins, the paper took a broad view of how local authorities had used the power. The paper notes: “the UK government has stated that its purpose in introducing the power of wellbeing under section 2 of the Act was to reverse that ‘traditionally cautious approach’ until now taken by local authorities in improving the quality of life of their communities. Three years on from its introduction the power does not yet appear to have secured the innovation and improvement at first anticipated among communities across the UK, although there are some signs recently of greater use of it” and “It seems, three years on from its enactment, that it is now time to revisit the powers of wellbeing and to help ensure that they are used effectively and as they were intended. It is important to assure users of how they can use the powers and to clarify any boundaries.”

New Zealand is only one year out from the enactment of the new requirement to promote what are now known as the “four well beings”, so it is perhaps not surprising that we are still at a very early stage in genuine adaptation to the new environment.

Central government itself has been relatively slow to understand the potential of the new provisions and the part that central government agencies will need to play if those provisions are to be effective. Too often it seems that central government agencies, when invited to take part in the outcomes process, hand the responsibility over to people who seem to regard their role in the outcomes process as simply one of taking notes to be reported back to head office. There are exceptions. The Ministry of Social Development gets an honourable mention for the proactive approach it is taking (this Ministry was moving towards more of a partnership process even before the Act was passed, with a growing emphasis on local social development as a partnership process with the community). District Health Boards are often referred to as the group of agencies who are most aware of the Act’s potential. This has interesting implications as DHB’s themselves are required to prepare annual and strategic plans in consultation with their communities but those plans are, in practice, subject to a veto by the Minister of Health – something which does not apply to the community outcomes process.

What I expect to see happen is the gradual development of a community outcomes emphasis starting from instances where there are strong incentives at a local level to use the new process. What I am saying here is that some kind of generic and holistic application of the outcomes process is unlikely to result, at least in the near term future. Instead, the likelihood is that specific outcome sets will attract attention and the provisions of LGA 2002 will be used to advance those. To illustrate what I mean by this, I take three examples from our own current involvements: rates postponement, housing and energy plans.

## **Rates Postponement**

Rates have always been controversial. New Zealanders neither like nor accept the fact that this is an asset tax (and a gross rather than a net one at that) rather than either a tax based on ability to pay, or a form of user charge based on the value of the services rendered.

Rates are also controversial because of the apparent discretion that local authorities have to determine the proportion of the rate take that will be extracted from different sectors of the community. Differential rates have been a particular bug bear of both the business and the farming communities.

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<sup>3</sup> “Making the Most of the Power of Well Being for Sustainable Development: Transforming Innovation into Action”.

There is also very substantial resistance, in the residential sector – the recent public controversy over Auckland Regional Council rates provides a good example of this.

One group which faces particular difficulty in meeting their rates obligations is the so called “asset rich, income poor” elderly: retired individuals or couples who own a debt free home and whose income is New Zealand superannuation plus, perhaps, a small amount of investment income. This describes the situation of perhaps two thirds of New Zealand’s retired.

For that cohort, rates can comprise a very substantial proportion of the income they have left over after meeting the essential costs of daily living. Particularly because rates are so visible as a payment, they can appear to be the charge that prevents people from going to the doctor, visiting relations, paying the cost of joining clubs or taking part in other recreational activity and so on.

The Rating Powers Act 1988 and the Local Government Act 1974 together gave local authorities the power to postpone the payment of rates on the grounds of hardship. Expert advice suggested that this required the council to administer the equivalent of an assets and income test. The demeaning nature of this process, and the fact that most councils did not promote the availability of postponement, meant that very few people applied for or were granted postponement. This despite the fact that most councils were very aware that the “asset rich, income poor” elderly, in particular, quite often found payment of rates a very real difficulty.

The Local Government (Rating) Act 2002 and LGA 2002 have changed the rules dramatically. Councils may now adopt whatever postponement policy they wish so long as they do so through the consultative process (essentially, that means publish the policy in their LTCCP and adopt it only after public consultation).

Arguably, the new statutory responsibility to promote the four well-beings creates a presumption that, so long as doing so does not impose a cost on other ratepayers, councils should allow this category of ratepayers to choose whether they pay their rates as they fall due or when they finally sever their connection with the property (sale or death).

Such a policy is currently being adopted by a consortium of six councils with the expectation that, over time, most if not all councils in New Zealand will become members of the scheme and adopt similar postponement policies<sup>4</sup>. Although not strictly within the community outcomes framework, this approach quite clearly fits the spirit of the new legislation. It seems also likely that as it evolves, it will take a much more explicit community outcomes approach with a focus on an improved quality of life for New Zealand’s older citizens. Certainly, this has been the approach of the councils involved, recognising that the new legislation has placed a greater emphasis on considering how their decisions, and the way they plan their activities, impact on community well-being.

## **Housing**

We have recently completed, for Local Government New Zealand and a group of councils, a report on the role of councils in the provision of affordable housing. The context for the report is the growing concern over housing affordability, especially for low-income households in paid employment in major metropolitan centres and in New Zealand’s growth areas.

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<sup>4</sup> A consortium approach is being applied as this apparently simple concept is in fact extraordinarily complex to implement and carries with it significant economies of scale on occasions.

As part of the work for the report, we have scoped current practice and policy in England, Australia, Canada and the United States. We found some quite strong common themes. One concerned the ownership and management of affordable rental housing. There was a general view that such housing is best managed by dedicated expertise based organisations and not by local government. Instead, local government's role was seen as the more strategic one of identifying housing need within its communities and means for addressing them.

This emphasis ran from England, which has had a very highly centralised and publicly owned social housing sector for many years, but is now shifting that into the not for profit sector, to the US whose housing policy, in respect of low income households, is oriented towards private sector or not for profit provision.

The second strong theme was that housing strategies are necessarily a regional or local issue, even though the centre may set the framework. Here, the common theme was the superior knowledge and networks that local entities had, as compared with central agencies. In England, the government has recently established nine regional housing boards one of whose roles are developing regional housing strategies. In parallel with this, local authorities are also expected (required) to develop their own housing strategies.

In Australia, there is increasing emphasis on local authorities as the key agencies in developing housing strategies even though, traditionally, local authorities have not been involved in housing provision (with a few exceptions).

Our report is now with Local Government New Zealand for consideration. A key recommendation, drafted in conjunction with officials of Local Government New Zealand, if adopted will result in the preparation of a guide to the development of local/regional housing strategies within the community outcomes process (it will be an interesting task, recognising that housing is actually an input and the outcomes are quite diverse – not just shelter but access to education, healthcare, employment and participation in the community).

## **Energy Plans**

In most parts of New Zealand today, the future of energy provision is seen as a major concern. Issues vary from region to region but include matters such as:

- Reliability and supply.
- Cost.
- Availability of supply – the impact of transmission constraints.
- The effect of the expiry of the requirement, under the Electricity Act, that lines companies maintain existing lines until the year 2013.
- Development of alternative means of generation – micro-hydro, wind power, solar power etc.
- Energy efficiency.

Several months ago my firm took the initiative of approaching the Energy Efficiency and Conservation Authority, suggesting that it might like to act as the catalyst for the development of what we termed regional energy plans. We did not specify any particular content. Rather, we:

- Made the point that for most regions of New Zealand, there were significant uncertainties regarding their energy future – (the kinds of issues listed above).
- Noted that the community outcomes/LTCCP process appears to provide an ideal framework for these matters to be considered at a regional/local level.

EECA's response was positive. On the basis of that, we have had discussions with a number of regional councils (and others) and have generally had a very positive response. We have just completed a detailed proposal for starting the process of developing regional energy plans.

In a way, I regard this as the most significant illustration of the potential of LGA 2002 in practice. Rates affordability was already on the agenda of councils before the legislation was changed. Most were acutely aware that they had to find some alternative means for enabling older ratepayers to meet their obligations without simply shifting them onto other ratepayer groups. The situation was not quite the same with housing, as local authorities have generally been very reluctant to engage with central government out of a fear that central government's real intent is to cost shift to local government. However most councils are very well aware of the pressures that affordability is imposing on their communities. It is a crucial factor, for example, in economic development.

Energy was something of a contrast. A number of councils have become involved with energy efficiency in their own businesses but few have seen themselves as having a role in terms of the energy futures of their communities. Regional councils have been more closely involved but largely in their role as environmental regulator.

Accordingly, the positive reaction to the suggestion of using the community outcomes/LTCCP process can be seen as very encouraging, at least by those who see merit in strategic planning at a local/regional level as both a desirable practice and one that must necessarily involve not just the council and the "usual suspects" but other stakeholders such as the business community and central government.

## **CONCLUSION**

From my perspective, it is very early days to be assessing the impact of the Act. As noted, the performance of central government itself is still very patchy. There are some early adopters, but most government agencies still seem relatively unaware of the potential of the processes under LGA 2002 and how they can help them achieve their objectives.

Both within local government, and in the communities it serves, we are still at the early stages of change. This is not a cause for pessimism. Rather, it is simply a recognition that major organisational change, especially when coupled with a fundamental restatement of role and purpose, is not something that takes place overnight.

In assessing the likely impact, I am reminded of an exchange I heard some years ago on national radio. An unnamed economist was asked to give his opinion of a recent event. His response? "I am an economic historian, ask me again in ten years time."

# Appendix

## Process for identifying community outcomes

- (1) A local authority must, not less than once every 6 years, carry out a process to identify community outcomes for the intermediate and long-term future of its district or region.
- (2) The purposes of the identification of community outcomes are:
  - (a) to provide opportunities for communities to discuss their desired outcomes in terms of the present and future social, economic, environmental, and cultural wellbeing of the community; and
  - (b) to allow communities to discuss the relative importance and priorities of identified outcomes to the present and future social, economic, environmental, and cultural well-being of the community; and
  - (c) to provide scope to measure progress towards the achievement of community outcomes; and
  - (d) to promote the better co-ordination and application of community resources; and
  - (e) to inform and guide the setting of priorities in relation to the activities of the local authority and other organisations.
- (3) A local authority may decide for itself the process that it is to use to facilitate the identification of community outcomes under subsection (1), but the local authority:
  - (a) must, before finally deciding on that process, take steps:
    - (i) to identify, so far as practicable, other organisations and groups capable of influencing either the identification or the promotion of community outcomes; and
    - (ii) to secure, if practicable, the agreement of those organisations and groups to the process and to the relationship of the process to any existing and related plans; and
  - (b) must ensure that the process encourages the public to contribute to the identification of community outcomes.

## Obligation to report against community outcomes

- (1) A local authority must monitor and, not less than once every 3 district or region in achieving the community outcomes for the district or region.
- (2) A local authority may decide for itself how it is to monitor and report under subsection (1), but the local authority must seek to secure the agreement of organisations and groups identified under section 91(3)(a) to the monitoring and reporting procedures, including the incorporation of any research, monitoring, or reporting undertaken by those organisations and groups.

## Schedule 10

### Community outcomes

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

- (a) describe the community outcomes for the local authority's district or region.
- (b) describe how the community outcomes have been identified.
- (c) describe how the local authority will contribute to furthering community outcomes.

- (d) describe how the community outcomes relate to other key strategic planning documents or processes.
- (e) outline how the local authority will, to further community outcomes, work with:
  - (i) other local organisations and regional organisations;
  - (ii) Maori, central government, and non-government organisations; and
  - (iii) the private sector.
- (f) state what measures will be used to assess progress towards the achievement of community outcomes.
- (g) 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.