Statement of Policy
Direction for Review of
Local Government Act 1974

9 November 2000
Introduction

Approach to Review of Local Government Act 1974

1 This document provides a brief outline of the approach being taken in current work towards the development of a new Local Government Act (LGA). It is being released at this time because the Government believes that the review raises important issues of interest to all New Zealanders. A formal process of public consultation will be carried out when a more fully developed set of proposals for the possible contents of a new LGA have been developed. This will take place in 2001.

2 In the meantime this document gives people information about the direction of the detailed work which is now underway and the opportunity to comment on that direction while policy proposals are still being developed. It is intended that the new LGA will be enacted during 2002.

Participation of Local Government Sector in the Review

3 The development of proposals for a new LGA is being carried out by officials from central and local government working together. The participation of local government officials reflects the support of Local Government New Zealand (the representative organisation of New Zealand’s local authorities) for the objectives and directions of the review.

Reasons for the Review

4 The pre-election policy statements of both parties making up the Coalition Government identified the need for significant reform of the legislation governing New Zealand’s system of local government. The LGA is the major statute which constitutes New Zealand’s system of local government, and sets out many of it powers and responsibilities.

5 The need for reform of the Act reflects a range of concerns. The style of much of the current Act is detailed and prescriptive. This imposes costs on local authorities and requires constant amendments to try to meet changing circumstances. The task of keeping such a large and detailed body of legislation up-to-date has become increasingly impracticable over recent years. A more flexible legislative framework is needed to respond to the demands of our increasingly diverse society, and the increasing pace of change in the world.

6 As a result of decades of ad hoc amendment, the current Act no longer reflects a consistent and coherent view of the role and purpose of local government. The Government wants to clearly establish the place of local government within our democratic system of government, with appropriate roles, responsibilities, powers and accountabilities.
Government’s Policy Direction for Local Government

Key Aspects of Government’s Policy Direction for Local Government

7 The Government has identified a set of statements that outline the key aspects of its policy direction for local government. These statements summarise the results Government wants from the review of the LGA. These results are that the review should aim to achieve a new statute which:

- reflects a coherent overall strategy on local government;
- will involve a move to a more broadly empowering legislative framework under which local authorities can meet the needs of their communities;
- involves the development of a partnership relationship between central and local government; and
- clarifies local government’s relationship with the Treaty.

Each of these is elaborated upon briefly below.

A Coherent Strategy for Local Government

8 The Government wants a new LGA to reflect a clear focus on local authorities as part of our overall structure of democratic government. It does not see local government as just a means of delivering a set of specified goods and services, with its role being defined in an ad hoc and piecemeal way. Rather local government should be based on clearly articulated principles concerning communities’ rights for representation, leadership, participation, diversity, fairness and accountability.

A More Broadly Empowering Legislative Framework

9 The historic approach to designing local government legislation has generally been a highly “prescriptive” one which has sought to set out in considerable detail what local authorities can do and how they can do it. This does not recognise either the diverse nature of our communities, or the need for the legislation to provide local government with the flexibility to respond to changing circumstances. The Government does not believe this approach is sustainable into the 21st century.

10 The Government believes that more emphasis should be placed on ensuring that the local authorities are responsive and accountable to the communities they represent, and on providing greater scope for communities to make their own choices about what their local authorities do and how they do it. This suggests that the range of activities local authorities can undertake should be stated more broadly and flexibly in the legislation. This will also require a greater focus on the design of rigorous decision-making and accountability processes, rather than detailed statements about what local authorities can do and how.
**Partnership Relationship**

11 The Government believes that central and local government should be viewed as two arms of our system of government, with a shared focus on contributing positively to the well-being of communities. The social, economic and environmental problems confronting New Zealand are not capable of being solved by central government alone. They require local government along with community groups, non-government organisations and business to be able to work together to find solutions. The legislation needs to give local government sufficient scope for it to be able to work in partnership with central government, and with the community and business, to advance the aspirations of local communities.

**Treaty of Waitangi**

12 The revision of the LGA provides an opportunity to consider the relationship between local government and Maori. *Local Government New Zealand* has sought guidance from central government on this relationship and any Treaty of Waitangi related issues. The process of carrying out the review will involve consultation on these matters. This will be part of the consultation on the proposed contents of a new LGA during 2001.
Scope of the Review

Constitutional Position of Local Government

13 New Zealand does not have a written constitution which sets out the place of local government. Some recent commentary on the reform of local government law has identified options involving fundamental constitutional reform to include recognition of the place of local government. This is not proposed. The roles, responsibilities, powers and accountabilities of local government will continue to be defined in legislation and enacted by Parliament. The provisions of the legislation will continue to define both the powers of local authorities, and the powers of Ministers in relation to local government.

Reorganisation of Structure of Local Government

14 The aim of the review is to develop a coherent set of laws about what local authorities can and cannot do, how decisions are made concerning what local authorities and their communities choose to do, and how they do those things. The Government’s intention in undertaking this review is not to initiate another round of local authority amalgamations, such as occurred during the late 1980’s. The processes within the legislation for consideration of proposals for boundary alterations and amalgamations are, however, within the scope of the review.

Responsibilities Outside the Local Government Act

15 The current review is of the LGA. This includes the provisions which constitute the system of local government, and the provisions concerned with its governance and accountability and some of its functions. Significant areas of local government responsibilities relating to specific functions are contained in separate pieces of legislation. These are not within the scope of the current review, although the review may have implications for those other pieces of legislation which will be considered subsequently.

16 There are strong links between the LGA review, the review of the Local Elections and Polls Act and the review of local government funding decision processes and powers. Officials are currently progressing each of these reviews.
4 Purpose and Principles of Local Government

Role and Purpose of System of Local Government

17 The Government believes that the new LGA needs to be based on clear statements about the overall role and purposes of the system of local government. These in turn require a clear view of what we think local government actually is - what makes local government different from central government or from other local community organisations.

What Local Government Is

18 Both the localness, and the governmental character of local government are seen as important.

19 Local government is local not just in its focus, but in its purpose. It exists because it is intended to operate for the benefit of the members of its communities, be they at the local or regional level. It is the members of local communities who elect councils, fund their activities, and to whom councils should be primarily accountable. This is what distinguishes local government from the local arms of the central government, which may operate locally but do so in accordance with national policy priorities. Local government’s “unique proposition” is that it has the capacity (within its powers as defined by Parliament) to act as the “agent” of the local community allowing it to make choices that reflect local values and priorities.

20 Local government is also governmental in character. It involves making collective decisions within a range of possible objectives, and it has some coercive powers to tax (property rates) and regulate. The benefits and obligations for individuals which arise from the existence of local government are inclusive as a “right” of membership of society - we cannot be excluded from the benefits or choose to opt out of the obligations. This is what distinguishes it from non-government organisations.

The Government suggests that the system of local government can be defined as:

“a nation-wide system of democratically elected local governments through which collective decisions can be made and acted upon locally by and on behalf of citizens.”

1 “Citizens” includes those individuals, groups or organisations, and commercial enterprises that comprise a particular community.
Why We Have Local Government

21 The over-riding goal of all governments, both central and local, should be to advance the well-being of the population. There are varying views on the means of achieving this. The Government believes this can appropriately be summarised as involving a focus on facilitating sustainable development for people and their environments, through:

- the balanced pursuit of social, economic and environmental objectives; and
- a focus on the wellbeing of future as well as current generations.

22 Systems of local government do not exist to advance a purpose separate from that of central government. They exist because the goals of government as a whole are more likely to be achieved by having systems of independent local government advancing local aspirations, coexisting with central government - and each playing appropriate roles.

The Government believes that a statement of the over-riding purpose of the system of local government (why we have it) could be along the lines that it is:

"to enable local decision-making by and on behalf of citizens in their local communities to promote their social, economic and environmental wellbeing in the present and for the future."

Principles for Local Government

23 The Government considers that the development of a new LGA may be advanced by identifying a set of principles which set out clear expectations on how a system of local government should operate. These could guide the design of new legislation, and could possibly also be expressed directly in the legislation.

A possible set of such principles might be along the lines that local government should:

- acknowledge, value and respond to the diversity of the interests and rights of local citizens and groups of citizens;
- involve and be accountable to their citizens through open and transparent processes, including communication, participation and consultation;
- provide local citizens and groups of citizens with choices over the ways their different needs are met and promoted; and,
- undertake its activities in an efficient, effective and environmentally sustainable manner.
Community Outcomes

24 Sound processes will be required to enable councils to identify the social, economic and environmental outcomes that their communities want them to pursue. Those processes will involve councils securing a community mandate for activities that are intended to advance the achievement of particular outcomes. Identifying something as a desired community outcome does not necessarily mean that it will be possible for a local authority to make it happen. There are many desirable outcomes that governments of all types have limited capacity to bring about.

25 Decision-making processes will be required involving identification of what specific actions a local authority intends to undertake in pursuit of the desired outcomes. This will involve a range of activities such as information gathering, consultation, policy development, planning, service delivery, funding and the monitoring of outcomes. Effective accountability requires that the desired outcomes, the actions intended to advance them (outputs) and those responsible for those outputs, be transparently identified. It also requires that these outcomes have been arrived at through open consultative planning and policy development processes.

Advancing Desired Community Outcomes

26 Government recognises that there are a variety of ways in which governments can act to advance their communities desired outcomes. This does not always involve a local authority undertaking specific activities which require the exercise of legal powers (such as the delivery of services or the making and administration of regulations). It can simply involve local authorities seeking to influence the actions of other independent decision-makers such as central government, businesses, or voluntary organisations, by carrying out informal information dissemination, brokerage, co-ordination, facilitation and representational activities to further those desired outcomes (community leadership). The effectiveness of this role will rely on the legislation relating to planning, representation, consultation and accountability processes, as well as co-ordination and communication between central and local government.

Range of Activities of Local Government

27 The purposes of, and principles for, local government are seen as a starting point for considering the design of a new LGA. They also provide a base for considering what range of activities local authorities might be able to become involved in, and how they might be able to do so. In general they suggest a broad role for local government, with flexibility for local communities to make choices about the range of the activities of their local authorities, and opportunities for different communities to arrive at different answers.
28 This is not, however, the same thing as suggesting that local authorities should have complete freedom of choice as to the activities they choose to undertake or not to undertake, or how they choose to undertake them. Nor is there any intention on the part of Government to withdraw from areas for which central government is currently responsible, by passing responsibility over to local government.

29 There will still be some things which local authorities should not be permitted to do, and others which they will continue to be required to do, as well as a range of activities which they may choose whether or not to do. The further work to be undertaken early next year includes developing detailed proposals on precisely which activities should be required, which should be subject to council discretion, and which should be prohibited areas for local government. Some preliminary conclusions have, however, been drawn.

Matters for Central Government

30 There are a range of areas of government activity which are appropriately matters of national policy for central government, and not local government, including:

• national public goods (such as defence);
• areas of national economic policy such as interest and exchange rate policy;
• conduct of New Zealand’s international relationships;
• direct income transfers among families and households through the taxation and benefit systems;
• exercise of specific powers reserved for other public authorities such as the Police; and,
• the role of principal funder of core social services.

Compulsory Local Government Activities

31 There are areas of activity which local government should still be required to undertake, including their roles in national regulatory systems such as those under the Resource Management Act, the Biosecurity Act, and the Building Act.

Matters for Local Choice

32 This still leaves a potentially broad range of activities within which local communities may exercise choices over whether or not their councils should be involved. These would include:

• the “traditional” areas of local authority focus in providing local public goods and services,
• a potential range of subsidiary roles in support of social service providers such as;
  • measures to ensure access by the community to services;
  • supporting other providers of social services (including central government agencies and the voluntary sector) through grants, subsidised services or rates concessions;
  • the provision of some specific services at less than full cost (such as subsidised public housing);
• co-ordination among social service deliverers within a district; and
• some aspects of decentralised delivery within national policies and funding arrangements.
• measures to promote local economic development; and
• local regulation.

33 The best approach may not be for the legislation to attempt to specify all such activities in detail. An alternative may be for permitted activities to be defined along the lines that they are:
• not prohibited;
• not inconsistent with other law; and
• undertaken in terms of a specified process for obtaining a mandate from the community.

Regulatory Issues

34 The Government is conscious of the need for the review to focus on key issues in relation to local government’s regulatory roles, including the means of promoting best regulatory practice in local government.
Allowing a broader range of choice over the range of activities local government may undertake, inevitably raises the questions of how those choices would be exercised. Government considers that it is desirable for there to be a specific process for obtaining community mandate for local authorities to either enter into significant new activities, or withdraw from significant existing ones. The design of such processes will be considered as part of ongoing work.
Local Government Powers

36 Local government needs a range of powers necessary to undertake its activities. Government is keen to reduce any fragmentation and unnecessary prescription in the way the powers available to local authorities are provided for in legislation. Factors relevant to developing the powers needed by local authorities to carry out their activities are:

• that they are commensurate with what is reasonably necessary to carry out the range of activities local authorities are to be able to undertake (fit for purpose);
• that they are not so vague and broad as to allow unreasonable intrusions on individual and property rights;
• that there are appropriate rights of appeal and review;
• that they provide an appropriate range of choices about how things are done in order to reflect diverse community aspirations and preferences; and,
• that they provide scope for joint action in partnership with other government and non-governmental bodies.

37 Government recognises, however, that there is a range of areas where some degree of prescription is necessary and desirable. These include:

• the need for specialised mandating, and accountability (including financial management) requirements;
• regulatory activities, where a prime function of the law is to limit the powers of the regulator to encroach on individual and property rights; and,
• other specific areas where Parliament might wish the legislation to limit the range of flexibility that it would offer.
Local Government Accountability and Governance

38 The approach being taken to the review is that the likelihood of a broader range of permitted activities for local government will require rigorous provisions for mandate and accountability to local communities. The current financial management provisions of the LGA (added in 1996) are recognised as having resulted in significant improvements in local authority financial management and accountability. These provisions are, however, rather ad hoc and involve considerable compliance costs for local authorities. Issues and options on which further work is being undertaken include:

- the potential for a strategic planning focus that articulates the outcomes sought from involvement in particular activities;
- the design of decision-making frameworks that focus on the consideration of relevant information and on high levels of transparency;
- the provision of understandable information to members of the public;
- the identification of appropriate provisions requiring public consultation and participation in decision-making processes that reflect the significance of the issue or activity concerned;
- ways of enhancing participation by and accountability to citizens; and
- specific procedures for obtaining mandate for entry to and exit from significant discretionary activities.
Invitation to Comment

Commenting on Policy Direction for Review of Local Government Act

39 This document sets out the general direction of the work underway on the review of the LGA. Formal public consultation on the review will be undertaken in 2001 when detailed policy options have been developed and considered by Government. Individuals and groups are welcome to make comment on the issues outlined in this document in the meantime. These can be addressed to:

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Obtaining Additional Copies of this Document

40 Additional copies of this directions document can be obtained from the Department of Internal Affairs at the above address, or from the Department’s website: www.dia.govt.nz