

## Part 2: The Local Government Act 2002 & its implications

### Local Government Act 2002

The Local Government Act 2002 has begun to transform local and regional governance in New Zealand. The Act has four key features: a power of general competence; a pronounced emphasis on local democracy and public participation; a focus on sustainable development and the four community well-beings, social, economic, environmental and cultural; and finally the introduction of a new 10-year planning instrument, the LTCCP.

The power of general competence is set out in Section 12, which deals with status and powers.

‘For the purpose of performing its role a local authority has:

- a) full capacity to carry on or undertake any activity or business, do any act, or enter any transaction
- b) for the purpose of paragraph (a), full rights, powers and privileges.’

Local democracy is embedded in a section of the Act specifying the purpose of local government as enabling democratic local decision-making and action by, and on behalf of, communities (Section 10(a)). Its importance is reinforced in a series of principles relating to local authorities including enjoining openness, transparency and democratic accountability (Section 12 (1) (a) (i)) and indicating a responsibility for a local authority to ascertain and have regard to the views of all of its communities (Section 14 (1) (b)). In its decision-making the need to take account of the diversity of the community and the community’s interests is stressed (Section 14 (1) (c) (i)).

Local and regional councils remain in essence representative democratic institutions. But their operations are defined in a way reminiscent of the term ‘maximum feasible participation’, which originated in the United States. A representative democracy with high levels of participation is more responsive and lively at local level.

The Local Government Act also ‘provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach’ (Section 3 (d)).


This is elucidated further by applying this quadruple bottom line to the present and future (Section 10 (b)).

The most comprehensive account of this feature is outlined in this way:

‘in taking a sustainable development approach, a local authority should take into account:

- (i) the social, economic and cultural well-being of people and communities
- (ii) the need to maintain and enhance the quality of the environment and
- (iii) the reasonably foreseeable needs of future generations.’ (Section 14 (1) (h)).

One of the striking features of the sustainable development provisions of the Act is that they are value-laden not value-free. They reflect the values embedded in social democratic, green and even conservative



political philosophies. They are, however, incompatible with neo-liberalism, because of the degree of public intervention required to implement them. A pure free-market approach with its creation of winners and losers and its shorter-term focus is simply unable to deliver the quadruple bottom line well-beings, let alone the inter-generational responsibilities outlined in these sections.

The LTCCP is a new planning instrument that is a statutory expression of longer-term strategic planning that emerged in local authorities earlier without a direct basis in statute. The existence of Long Term Financial Strategies which had a 10-year purview in earlier Acts was the source of longer-term strategic planning exercises. If financial planning focused on a 10-year period it was essential to know not just what was to be spent but also how it was to be spent and on what. Clearly that required consideration of the more general and strategic directions for regions and cities and districts to pursue if expenditure was to be sensible and effective.

The LTCCP links in one planning document strategic direction and financial strategy. It costs, prioritises and funds for a 10-year period policies, programmes and projects (Section 93). It continues in force until the close of the third consecutive year when a major review may be undertaken (Section 93 (3)). The plan may be amended at any time but subject to a number of conditions (Section 93 (4) (9)).

The primary planning document in the Act is the LTCCP. It provides the basis for the Annual Plan and Asset Management Plans. The Annual Plan is the instrument that contains the proposed annual budget and funding impact statement for the year (Section 95 (5) (a)). Another of its purposes is to support the LTCCP in providing integrated decision-making and co-ordination of resources (Section 95 (5) (c)). In a real sense the Annual Plan is the unrolling year by year of the LTCCP.

The Act also provides for an independent review of the LTCCP. It requires a comprehensive report from the local authority's auditor, which may lead to the amendment of the plan. A significant exclusion relates to the merits of any policy comment. (Section 94 (3)).

The combination and cumulative impact of the four key features, the power of general competence, the strong local democratic framework, sustainable development and the four well-beings, and the LTCCP have significant potential for real changes in local government roles and practices. Council officers, elected representatives and political commentators are only starting to understand the implications of this relatively new piece of local government legislation.

### Implications of the Act

**First, the Local Government Act has created a new focus for local and regional governance.**

This is encapsulated in the following principles which have been developed as a guide to implementation (Hucker, 2005).

#### a) Principle 1

*The primary purpose of a local authority is to promote the well-being of its city or district in an inclusive way with a focus on sustainable development and its social, environmental, economic and cultural dimensions.*

The purpose of inclusivity is to ensure over time a comprehensive approach is adopted. Sectors, communities, wards, educational communities, Māori, ethnic communities, religious communities, the arts community, business, trade unions, people with disabilities, voluntary organisations, children and young persons, women, gay and lesbian communities, families, older persons, are all components of that inclusivity and even then the list can be extended significantly. As well

as stressing diversity the approach to well-being incorporates a sense of belonging and participation that contributes to human flourishing and social cohesion.

#### **b) Principle 2**

*A local authority cannot and should not do everything.*

This principle is in fact a corollary of the first. A local authority is not in a position to define arbitrarily what is in the well-being of the diverse individuals, groups and communities it serves. That understanding can develop only if a spirit of mutuality prevails where relationships are formed. And people and institutions need to talk with one another, because well-being includes wants and needs, what is desired as well as what is desirable.

There is also a financial constraint. A council does not have the financial capacity to do everything required for the well-being of the city or district. This leads immediately to the third principle.

#### **c) Principle 3**

*A local authority should work collaboratively, and build relationships that entail working with as well as for others.*

To achieve the goal of sustainable development through an integrated approach to the four well-beings, relationships and partnerships are the key. Local government needs to forge those relationships to help shape the future by working with others. The emphasis on communities with strong public participation indicates the potential for linking community development approaches with the broader and higher-level strategic policies signalled as pathways to sustainable development.

#### **d) Principle 4**

*A local authority should explore the literature of community development as a primary source of theoretical and practical wisdom for working with as well as for others.*

The advantage of the literature of community development and community work is that it links theory and practice. Programmes and projects are already on the ground. There is a history of implementation. Stories and examples abound. There have been successes and failures and reflection on why. The literature is also international in character.

**Secondly, the Local Government Act provides new possibilities for local and regional councils to work in partnerships with other institutions.**

These include central government, other councils, the private sector and communities and community organisations. In this way it allows for public-private partnerships, joint ventures, and links with community organisations that have a national, regional, city, district or even more local focus.

The 10-year budget particularly in innovative councils with imaginative LTCCPs strengthens their position in any partnerships they create. Their greater strength gives the freedom to develop diverse relationships, where by choice local and regional councils can participate in more equal ways with their partners. As Peter Harris and Chris Eichbaum argue in relation to central government, contracts with voluntary and community organisations can be on an equal footing even when harsh financial reality suggests that they don't need to be. Also they do not need to be risk averse but can take more risks than are normally considered comfortable (1999: p. 239).

**Thirdly the Local Government Act heralds a possible change in the division of labour between central and local government.**

In New Zealand political power has been highly centralised. There has been a tradition of strong central government and weaker local government. Local government is a creature of parliament.

Health, education and welfare have all been areas of responsibility exercised and largely funded by the State. Traditionally local government has been about the four Rs: rubbish, roads, rats and rates. Additional functions such as planning and community development have rested uneasily on this more restricted base (Hucker, 1997:56).

A sharp demarcation between central/local government functions has featured in many debates in local councils. While territorial local authorities have exercised some public health functions, have worked with educational institutions, and have employed community development approaches as a surrogate for social welfare, the boundaries where responsibility is exercised are often sharply contested.

Health, education and welfare are central government responsibilities, it is often argued. Why should local government with its weaker tax revenue base become involved in these areas when this would allow central government to escape from its obligations?

The provision of social housing by local authorities is one of the policy areas that has given rise to vigorous debate. A narrower view of the core business of councils and a belief that public housing is the sole responsibility of the state have led to the selling of people's homes with significant human costs.

However the injunction to play a broad role in promoting the social, economic, environmental and cultural well-being of their communities

taking a sustainable development approach extends local authorities' functions significantly. Health, education and welfare are now integral to the achievement of genuine sustainable development and the community well-beings.

While this does not entail local government being the primary political institution responsible for these policy areas, nor indeed the major or even a substantial funder, it does suggest some reworking of the division of labour with central government. At the very least it sanctions local authority involvement as a legitimate expression of its role in its communities.

It also allows for complementary approaches to be adopted in partnership with central government. Local authorities may still be subordinate partners but the state may choose to invest in joint approaches on a more equal basis provided that they result in better achievement of the four well-beings and development that is more sustainable.

The existence of 10-year budgets and funding through councils' LTCCPs also strengthens the ability of local authorities to participate in more significant ways in these partnerships. More local investment in sustainable development has the potential to attract more central government investment that can benefit regions, cities and districts.

This will require more effective communication between the different levels of government. Mutual respect will also have to increase. The building of better relationships and of the capacity to work together on a no-surprises basis will also have to become the order of the day. There are already examples of this in transport and roading and other areas in which revenue sharing takes place. In a small country of just four million people this should not be beyond our capacity.

**Fourthly the Local Government Act, particularly through its LTCCP provisions, generates integrated and layered policy systems for local and regional councils that present both opportunities and constraints.**

A typical policy system has a number of components or layers. It may start with a higher-level mission statement, followed by a broad policy framework. Policies, programmes and projects cascade out of this more general framework. The next layer is about how to pay for them and the sources of that finance. Links may also be established with the government's rates-rebate scheme, which has implications for the affordability of progress for those on lower incomes.

The LTCCP combines in one document strategic directions and funding policies. It allows a council to plan for the medium to long term, to promote sustainable development and the four well-beings and to exercise inter-generational responsibilities. One of its primary functions is to build a better and more sustainable region, city or district for successive generations of children and grandchildren and to approve the funding to achieve this.

If change occurs over the 10-year period in the LTCCP it will also have effects on the policy system it has generated. This is because the policy system is both layered and integrated.

If the change can be confined to a single layer without spilling over into other layers the integration of the system can be maintained. A local authority, for example, may continue with its existing level of capital expenditure and reduce the level of funding from rates if other sources of funding are increased. It may decide to extend its loan terms from 30 to 50 years. This would allow for an adjustment within the policy system itself.

Another council may, however, agree to cut one or more sources of funding radically, without being able to make adequate adjustments within the layer. If significantly less revenue is generated, a major reduction in activity will be needed. If significantly less funding is provided, significantly less will be able to be done.

In other words decisions about funding spill over into layers of the policy system and alter its content. This can affect a higher-level mission statement, a general policy framework and the policies, programmes and projects that spring out of it.

When major retrenchment occurs and planned rates increases are not implemented, the balance between capital and operating expenditure becomes crucial. This is because there is a direct one-to-one correlation between rates and operating expenditure. In relation to capital works, however, it is the servicing costs of borrowing and depreciation that fall on the rates directly.

The implications of the Local Government Act involve major changes in local and regional governance. They include a new focus for activity, new possibilities to work in partnership with other institutions, a change in the division of labour with central government and the creation of layered and integrated policy systems that provide opportunities and constraints for regions, cities and districts.

The challenge for local and regional government is how to deal with these implications in practical ways. What do they entail for the political culture of local and regional councils? How do they encourage a greater degree of democratic accountability?

### Further questions and assessment criteria

There are also additional challenges that stem from this legislation. Is it possible to develop a policy system that is pro-environment, pro-people and community, and pro-business at the same time?

There are other questions or assessment criteria that can be utilised both to critique the 10-year plans and to improve them in the future.

These include the following:

- how well integrated is the quadruple bottom line so that sustainable development is more likely to be achieved? What trade-offs have occurred? How coherent are the connections between social, economic, environmental and cultural well-beings? To what extent has account been taken of the fundamental character and priority of the natural and physical environment in this calculus?
- what is the actual relationship between the higher and more general levels of the policy system generated by the LTCCP and the more specific policies, programmes and projects? Given that visions and general policy prescriptions can be implemented in a number of different ways are the options adopted the best and most cost-effective ways of proceeding? Conversely to what extent do the more specific levels and approaches in the policy system assist in the achievement of the higher-level vision and more general strategic goals?
- what is the quality of the partnerships formed? What is the balance of power within them? Who provides the resources to fund them? How are they shared? How effective are they in dealing with strategic issues?
- how effective are public consultation and public participation in influencing strategic directions? How can this be assessed? What contribution do they make to the encouragement of an informed citizenry and a flourishing local democracy?
- how effectively are the political processes, hopes and outcomes communicated so that people and communities can understand and critically evaluate what is happening, in terms of who benefits, at whose expense and what interests are served?
- how strong is the assessment of risks, the willingness to deal with unintended consequences, and respond to new social patterns that form that maybe unjust?
- what are the ethics of retrenchment? What special considerations are needed for the ethical assessment of a policy system and changes to it? How do they impinge on a more or less sustainable future and on the balance between the needs of present and future generations?