

**THE LOCAL GOVERNMENT ACT 2002:
AN OVERVIEW**



Local Government New Zealand
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New Zealand

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FOREWORD

Local Government KNOWHOW provides an opportunity for everyone to better understand the new Local Government Act and how it impacts on their council's roles and responsibilities.

We have prepared this Guide – an overview of the Local Government Act 2002 – for elected members and officials within local government, as well as interested stakeholders. It is intended to provide sufficient information to enable readers to understand the new provisions, what they mean and what is required to give them effect. It does not contain the detail necessary to ensure legal compliance. For this detail we refer readers to the KNOWHOW Guides: each chapter in this publication is cross-referenced to a particular KNOWHOW Guide to assist compliance.

Over the past four years or so central and local government have focused on modernising the legislative framework underpinning our system of local government with the Local Government Act 2002. This process is largely complete and we are excited about the opportunities that the new legislation provides for communities and councils.

At the heart of the new Local Government Act is a desire to strengthen the concept of local democracy and sustainable well-being of communities. The new Local Government Act, together with the Local Electoral Act 2001 and the Local Government (Rating) Act 2002, promotes a more responsive and flexible style of local government. Community discussions can now focus on what a local council *can* do for its community, not what legislation *allows* it to do.

Over the last decade local authorities have experimented with innovative ways to further their communities' well-being. We want to ensure that any lessons learnt, or indeed about to be learnt, are built on and shared among the sector.

We thank all of those who contributed to this Guide, but most especially the members of the KNOWHOW Steering Group:

- The Hon Margaret Shields, Vice-President, *Local Government New Zealand* and Chairperson, Greater Wellington (Chair)
- Christopher Blake, Secretary for Internal Affairs
- Warwick Bennett, Chief Executive, Waikato District Council and President, SOLGM
- Rod Titcombe, Chief Executive, Manawatu District Council and Vice-President, SOLGM
- Mike Richardson, Chief Executive, Christchurch City Council
- Peter Winder, Chief Executive, *Local Government New Zealand*
- Kerry Marshall, Member, Local Government Commission
- Rosalind Plimmer, Manager Local Government Policy, Department of Internal Affairs
- Judy Voullaire, former councillor, community board member and area health board member.

Local Government KNOWHOW shows that local government is committed to working in the interests of its communities, and in an accountable and responsible manner. It promotes good local government through promoting effective governance, good practice and innovation.

We commend the Local Government KNOWHOW programme to all elected members and officers in the sector as a positive step towards the future.

HON. CHRIS CARTER
MINISTER OF LOCAL GOVERNMENT

BASIL MORRISON
PRESIDENT *LOCAL GOVERNMENT NEW ZEALAND*

ROD TITCOMBE
PRESIDENT SOLGM

INTRODUCTION

Welcome to the sixth of seven KNOWHOW Guides. Each Guide deals with a different aspect of the new legislation. The full 'product range' includes KNOWHOW Guides to:

- Rating (released July 2002)
- Governance (released March 2003)
- Decision-making (released March 2003)
- Regulation and Enforcement under the Local Government Act (released July 2002)
- Assessments of Water and Sanitary Services (released August 2003)
- The Local Government Act 2002: An Overview (this Guide)
- Development Contributions under the Local Government Act (to be released in September 2003).

Unlike the other KNOWHOW Guides, this Guide does not deal with a specific aspect of the new legislation. Rather, it is an overview of the new Act, written especially for those who will not be working day-to-day with the Local Government Act 2002 (the Act).

Those wanting more detailed information about particular aspects of the Act, particularly guidance on good ways of preparing the kinds of policies and strategies required under the Act, will find references to our KNOWHOW products and other useful publications.

ACKNOWLEDGEMENTS

Guides like this do not just happen. This document is the product of many people over the last eight months. The three parent organisations (*Local Government New Zealand*, the Department of Internal Affairs and the Society of Local Government Managers (SOLGM)) gratefully acknowledge the contributions of the members of the seven KNOWHOW project teams towards this Guide.

We would also like to acknowledge the following people and organisations for their respective contributions to this Guide:

- Mike Reid, Raymond Horan and Deborah Nash, *Local Government New Zealand*
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DISCLAIMER

This Guide has been compiled to assist local authorities and other interested parties in understanding their obligations under the Local Government Act 2002.

It is not intended to be a substitute for the Act, or for the policy judgments of elected members backed by appropriate legal, policy and other advice from officers. In the final analysis it is the elected member who bears the ultimate accountability for their council's observance of the Act.

Every effort has been made to ensure that the information in the Guide is as accurate as possible. However, the courts remain the final arbiter of what the legislation actually means.

For this reason, neither *Local Government New Zealand* nor any other individual or organisation involved in the preparation of this Guide accepts any liability for loss or damage arising from the use of the material contained herein.

The examples presented in this Guide are representative examples of the ways powers in the Act might be used or how requirements of the Act might be met. They are presented for the purposes of illustration only and are in no way a statement of how local authorities must deal with a particular situation.

Your purchase of this Guide constitutes acceptance of the terms of this disclaimer.

FREQUENTLY USED TERMS

activity – a good or service provided by or on behalf of a local authority.

annual plan – a document adopted by a local authority which sets out the budget for the year, and the sources of funding for the year.

annual report – a document that a local authority prepares each year, which provides the public with information on the performance of the local authority during the year (both in financial and non-financial terms).

asset – a tangible or intangible resource controlled by a local authority. Generally accepted accounting practice defines assets as service potential or future economic benefits controlled by an entity as a result of past transactions or other past events.

community – a network of people and organisations linked together by common factors. This might refer to a network of people linked by place (that is, a geographic community), common interest or identity (for example, a hapu, a voluntary organisation or society), an administrative community (such as a district).

code of conduct – a document that sets out members' expectations as to their roles and conduct while acting as an elected member.

community outcomes – a set of desired states of affairs that the community identified through a process. These outcomes are meant to inform the development of local authority planning, and coordinate the activities and planning of all sectors of the community.

council organisation (CO) – any organisation in which one or more local authorities own or control any proportion of the voting rights or has the right to appoint one or more of the directors, trustees etc.

council-controlled organisation (CCO) – any organisation in which one or more local authorities own or control 50 per cent or more of the voting rights or have the right to appoint 50 per cent or more of the directors of the organisation. The following organisations are specifically excluded from being CCOs: *Local Government New Zealand*; Civic Assurance; Infrastructure Auckland; Watercare Services; and port, energy or electricity companies.

decision – a resolution or agreement to follow a particular course of action, including an agreement not to take any action in respect of a particular matter.

funding impact statement (FIS) – written information that sets out the funding mechanisms that a local authority will use, their level, and the reason for their selection in terms of the principles of financial management. Funding impact statements must be included in a long-term council community plan and in an annual plan.

generally accepted accounting practice (GAAP) – approved financial reporting standards (as defined by section 2(1) of the Financial Reporting Act 1993) insofar as they apply to local authorities or CCOs, or statements that are not approved but which are appropriate to the local authority or CCO and have the authoritative support of the accounting profession in New Zealand.

group of activities – two or more related activities.

long-term council community plan (LTCCP) – a plan, covering at least ten years, adopted under section 93 of the Local Government Act 2002, that describes the activities the local authority will engage in over the life of the plan, why the local authority plans to engage in those activities and how those activities will be funded.

local authority – a territorial authority or regional council as defined by the Local Government Act 2002.

local governance statement – a collection of information prepared under section 40 of the Local Government Act 2002 that includes information about the ways in which a local authority engages with its community and makes decisions and the ways in which citizens can influence those processes.

private public partnership (PPP) – any arrangement or agreement entered into between one or more local authorities and one or more other persons or organisations engaged in business, not including arrangements or agreements where all of the parties are local authorities or council organisations, or a contract for the supply of goods and services by or on behalf of a local authority.

service levels – the defined service parameters or requirements for a particular activity or service area against which service performance may be measured. Service levels usually relate to quality, quantity, reliability, responsiveness, environmental acceptability and cost.

significance – (in relation to any issue, proposal, decision or other matter that concerns or is before a local authority) means the degree of importance of the issue, proposal, decision or matter, as assessed by the authority, in terms of its likely impact on, and likely consequences for:

- the current and future well-being of the district or region
- any persons who are likely to be particularly affected by, or interested in, the issue, proposal, decision or matter
- the capacity of the local authority to perform its role, and the financial and other costs of doing so.

significant – (in relation to any issue, proposal, decision or other matter) means that the issue, proposal, decision or other matter has a high degree of significance.

significant decision – a decision which has a high degree of importance in terms of any of:

- the four aspects of well-being
- the people who are likely to be particularly affected by or interested in the decisions
- the capacity of the local authority to perform its role and the financial and other costs of doing so.

special consultative procedure (SCP) – a formal consultation process defined in the Local Government Act 2002 that sets out a series of steps that a local authority must follow when consulting on particular types of decisions. The requirement to follow the SCP does not remove the responsibility for determining what additional consultation may be desirable in terms of the principles set out in the Act.

statement of proposal (proposal) – a document that provides the basis for consultation with the community under the SCP, by setting out a local authority’s proposals with respect to a particular matter.

strategic asset – an asset or group of assets that the local authority needs to retain to maintain the local authority’s capacity to promote any outcome the local authority considers important to the current or future well-being of the community. The key is whether the assets are essential to the continued delivery of an ‘outcome’ the local authority considers important to the well-being of the community. Strategic assets must be listed in the local authority’s policy on significance.

statement of intent (SOI) – a document that sets out the objectives for a council-controlled organisation over the coming year, its expected activities, and forecasts of its performance.

sustainable development – taking into account the social, economical and cultural well-being of people and communities; maintaining and enhancing the environment and taking into account the reasonably foreseeable needs of future generations.

triennial agreement – an agreement entered into by all of the local authorities within a region that sets out the basis for communication and coordination between the authorities.

CHAPTER 1 INTRODUCING LOCAL GOVERNMENT

In this chapter we discuss the fundamental questions about the new system of local government – what local government is, what it does, and how a local community can influence the system of local government in its area.

1.1 WHAT IS LOCAL GOVERNMENT?

Local government is the means by which communities, defined by location, make decisions about the nature of their locality and the range of publicly provided and funded services that will be available. In New Zealand the powers of local government are set by parliament and are contained in the Local Government Act 2002 (the Act), and other specific statutes such as the Resource Management Act 1991.

The Act reflects a departure from the way in which powers and functions have traditionally been codified in legislation. Instead of trying to prescribe all the functions that local government should undertake, the new Act clearly states the purpose of local government and gives it the necessary powers to achieve that purpose, within the law. Section 10 provides:

The purpose of local government is:

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future.*

Key themes of this purpose are ‘democratic local decision-making’ and ‘in the present and for the future’. The first theme, which is recurrent within the legislation, emphasises community involvement throughout the decision-making process. The second focuses on sustainable development, the need to take into account the needs and expectations of future generations in the decision-making process.

As local authorities undertake the task of promoting sustainable development in their area, they need to consider the four aspects of well-being, namely:

- the **social** aspect: this encompasses factors that enable individuals, their families, hapu and communities to set goals and achieve them – these include factors such as education, health, the strength of community networks and associations, financial and personal security, rights and freedoms and levels of equity
- the **economic** aspect: this encompasses factors relating to the capacity of the economy to generate the employment and wealth necessary to provide many of the prerequisites for social well-being, such as health services
- the **environmental** aspect: this encompasses factors that relate ultimately to the capacity of the natural environment to support, in a sustainable way, the activities that constitute community life
- the **cultural** aspect: this encompasses the shared beliefs, values, customs, behaviours and identities reflected through language, stories, experiences, visual and performing arts, ceremonies and heritage.

Consideration of all four aspects of well-being is critical: sustainable development will not be achieved if a local authority deals with the only one or two of the four aspects. Sustainable development is therefore both an approach to decision-making and an ideal outcome.

The key implications of taking a sustainable development approach in local government are:

- Local authorities must take the future needs of local communities into account when making decisions. Many local authorities are a long way towards this already. The 1996 reforms hastened the development of strategic planning. Many local authorities not only had a 10-year financial strategy as required, but had either 20-year strategic plans or asset management plans for key infrastructure, or both. There is a strong element in this principle of local authorities listening to the voices that cannot speak for themselves (for example, future generations, the environment).
- Local authorities should integrate their planning and service delivery to ensure that each of their strategies and services enhances overall well-being. Most local authorities are already some way towards this aim through their strategic plans.

- Local authorities should form partnerships with key players in the community (including, but not limited to, central government, the community and voluntary sector, Maori, and business) to develop combined plans of action to promote community well-being.
- Local authorities are required to measure their communities' progress towards the achievement of well-being. Monitoring reports are to be published every three years to assist communities understand the degree to which community outcomes have been achieved and well-being promoted.
- The governance model under the Act is representative democracy. Communities elect individuals to the governing body of their local authority to make judgements on their behalf about what will promote community wellbeing. The three elements of the governance role for elected members are:
 - representing the community
 - setting policy
 - monitoring and review.

1.2 WHAT ARE LOCAL GOVERNMENT'S POWERS AND HOW ARE THEY USED?

The Act has provided local authorities with general empowerment. This is specified in section 12 of the Act, which provides:

Status and Powers

- (1) *A local authority is a body corporate with perpetual succession.*
- (2) *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 into any transaction; and*
 - (b) *for the purposes of paragraph (a), full rights, powers and privileges.*
- (3) *Subsection (2) is subject to this Act and any other enactment, and the general law.*

General empowerment also applies to regional councils; however, the Act sets out requirements that a regional council must meet before undertaking a significant new activity. Regional councils wishing to undertake 'significant' new activities that already are undertaken or formally proposed to be undertaken by one or more territorial authority in the region must consult with the territorial authorities within their regions and seek their agreement. Where agreement is not forthcoming, mediation may be sought. Where that fails the Minister of Local Government is able to make a ruling. All councils within each region are to negotiate triennial agreements that establish ongoing channels of communication and provide mechanisms for promoting collaboration.

The Act specifies high level principles that councils must follow when exercising their new powers (section 14). In summary, these principles require councils to:

- conduct their business in an open, transparent and democratically accountable manner
- give effect to identified priorities and desired outcomes in an efficient and effective manner
- be aware of and have regard to the views of its communities
- when making decisions, take into account community diversity, the interests of future generations and the impact on well-being
- provide opportunities for Maori to contribute to decision-making processes
- collaborate with other local authorities and bodies as appropriate
- undertake any commercial transactions in accordance with sound business practices
- ensure prudent stewardship and the efficient and effective use of its resources.

Where principles conflict, the Act requires that the conflict be resolved in accordance with the first principle (the requirement to conduct business in an open and transparent manner).

CHAPTER 2 HOW DO COUNCILS WORK?

In this chapter we look at rules and procedures governing the way councils organise themselves and what elected members actually do. This includes:

- who can be an elected member
- the requirements that the Act puts on the way elected members must act when going about their duties
- relationships between elected members and staff
- decision-making bodies within councils
- community boards
- organisations that are related to councils.

The Act provides several new measures designed to strengthen the governance framework within local authorities. Governance is the term used to describe the process by which communities make collective decisions about competing priorities and defining the public interest in their communities.

2.1 GOVERNANCE PRINCIPLES

Section 39 of the Act lists a set of governance principles. These clarify the roles of elected members and council staff, and guide local authorities on ways to structure themselves so as to keep conflict to a minimum. When exercising governance responsibilities local authorities must act in accordance with these principles:

- Clarity in governance roles.** The governance role and expected conduct of elected members should be clear and understood by elected members and the community.
- Effective, open, transparent processes.** Governance structures and processes should get the job done, be open to the public and be understandable.
- Separation of regulatory and non-regulatory responsibilities.** This principle promotes the idea that a local authority should not act as both ‘poacher and gamekeeper’ by undertaking an activity and regulating it within the same functional area.
- Good employer.** The local authority must be a good employer. This applies to the council’s employment of the Chief Executive, and the Chief Executive’s employment of staff on behalf of the council.
- Clarity in the relationship between elected members and management.** The relationship between elected members and council staff must be effective and understood by both, and by the community at large.

2.2 CODES OF CONDUCT

Effective governance requires elected members to develop relationships with each other built on mutual respect and trust. To help this process, every local authority has to adopt a code of conduct¹ setting out standards of behaviour that elected members expect from each other when in the course of their duties.

A code of conduct must cover:

- the behaviour that elected members are expected to show when dealing with each other, staff and the general public
- the disclosure of information received by elected members in the course of their duties
- a description of any Act that requires elected members to behave in certain ways.

The only other requirement regarding content is that each local authority must consider whether to require elected members who are (or who become) undischarged bankrupts to declare that fact.

¹ Community boards do not have to adopt a code of conduct. However, we strongly recommend that they adopt a code based on that adopted by their local authority.

Local authorities are not required to consult their community when preparing a code of conduct: they need only adopt their code by resolution. Once adopted, it takes a 75 per cent vote in a council meeting to amend a code.

2.2.1 What Happens When an Elected Member Breaches a Code of Conduct?

This will depend on whether the breach is also a breach of any legislation. If so, the responsibility for making sure that members comply would lie with an outside agency, such as the Auditor-General or the Police. That agency will decide the action to be taken, and may commence proceedings against a member.

Breaches that do not involve breaches of legislation – for example, an elected member uses derogatory or offensive language about other councillors in a council meeting – carry no legal penalty. In these cases the local authority may design its own processes and penalties. Penalties may include removing a member from a council committee, but not suspending or expelling members.

Further information on codes of conduct, including a sample code of conduct, can be found in the KNOWHOW Guide to Governance.

2.3 STANDING ORDERS

In addition to a code of conduct, every local authority must adopt standing orders. These are procedures for the conduct of meetings and debate for council or council committee meetings.

As with the code of conduct, the only procedural requirement is that the council adopt standing orders by resolution.

Unlike the code of conduct, a local authority can vote to suspend standing orders during a meeting. This requires a vote of 75 per cent of the council members at the meeting. When this occurs, the local authority must also state why it is suspending standing orders.

2.4 LOCAL GOVERNANCE STATEMENTS

A local governance statement provides information on processes for electing members and making decisions and how the public can influence those processes. The information in the statement allows the public to participate fully in local decision-making processes. All local authorities must adopt a governance statement no later than six months after each triennial election².

A governance statement must include information on and reference to the following matters:

- the functions, responsibilities and activities of the local authority
- any local legislation that confers powers or duties on the local authorities (some local authorities have one or more Acts that apply only to them, for instance, the Wellington Stadium legislation or Tauranga's Route K Toll legislation)
- the electoral system and opportunities to change that system
- representation arrangements and opportunities to change them
- members' roles and conduct (including both the legal requirements and information on the code of conduct)
- governance structures, membership and delegations
- meeting processes
- consultation policies (if the council has any)
- policies for liaising with Maori and any memoranda or agreements with Maori (if the council has any)
- management structures and the relationship between elected members and management

²

In addition, every local authority must adopt its first governance statement by 31 December 2003.

- equal employment opportunities policy
- key approved planning and policy documents
- systems for public access to the local authority and elected members (including processes for dealing with requests for official information).

Further information on local governance statements can be found in Chapter 3 of the KnowHow Guide to Governance.

2.5 BEING AN ELECTED MEMBER

2.5.1 Eligibility for Office

Any person who is on the electoral roll for parliamentary elections can be an elected member (or a member of a community board) as long as they are a New Zealand citizen. A person does not have to live within the local authority or community board area to be eligible for election.

The only other restriction is that no person may be both an elected member and an employee of the same local authority. An employee who is elected must resign their employment before they take office. This provision took effect on 1 July 2003. People who were already elected members at that time need not resign unless they are re-elected at the next triennial elections. Employees can be members of community boards.

2.5.2 Roles of Elected Members

There is no real job description in the Act for elected members beyond some specific requirements applying to the Mayor or Chairperson of a local authority and an obligation to elect a Deputy Mayor or Chairperson. There also some duties that are imposed on deputies, such as acting as the Mayor while the Mayor is absent.

Elected members hold office for a three-year term. They are elected representatives of the community and make decisions on behalf of the community as to what promotes community well-being.

Although local authorities are required to consult on particular issues and decisions, the feedback received during consultation is meant to inform decision-making, not be a substitute for it. In this way the Act continues to reinforce representative democracy. With certain exceptions (described in Chapter 3), the Act recognises that the main way for a community to express its displeasure with the actions of its elected members is through the ballot box.

The elected member therefore has a role in:

- representing the community (for example, acting as a conduit for information from the community to the council and vice-versa, advocating for the community with central government and other bodies)
- setting policy (but once these decisions are made the elected members then leave the implementation of those decisions to the council staff led by the Chief Executive)
- reviewing the performance of the council.

Councils are expected to define the relative roles of management and elected members within their governance statements. This is achieved partly through specifying delegations, as well as through the members' code of conduct.

2.5.3 Leaving Office

In addition to death or resignation, an elected member can leave office as a result of:

- mental disorder (as defined in the Mental Health (Compulsory Assessment and Treatment) Act 1993)
- disqualification from office (either through ceasing to be an elected member, or through a successful prosecution under the Local Government Members' Interests Act 1968, or by conviction of a criminal offence that is punishable by a term of imprisonment of two years or more)
- being absent without leave for more than four consecutive ordinary meetings of the council.

Please note: an undischarged bankrupt is eligible to be an elected member, and a person who becomes an undischarged bankrupt while in office need not resign.

2.5.4 Elected Members' Pay

The rates of pay for elected members (and community board members) are set by the Remuneration Authority (the same body that sets salaries for Members of Parliament and Judges). The Authority can set maximum and minimum annual salaries and meeting allowances. It may also set ranges of salaries and allowances, and it can make rules regarding the reimbursement of 'out of pocket' expenses (except for election expenses).

The Authority sets salaries, allowances and other rules in a document called a determination. Once the Authority makes a determination every member of the local authority must accept the pay. No member can refuse a salary or allowance (although what they do with it once they have it is their business).

2.5.5 Conduct of Elected Members

The following legislation deals with the way elected members behave during the course of their duties:

- The Local Authorities (Members' Interests) Act 1968, which this deals with situations where an elected member or their spouse has some pecuniary interest in a decision or matter that is before the local authority. By and large elected members are not able to participate in discuss or vote on such matters. This Act also disqualifies people from holding office if they are a director or trustee in an organisation that does business of more than \$25,000 a year with the council.
- The Secret Commissions Act 1910, which deals with the acceptance of gifts or rewards to act in a particular way.
- The Crimes Act 1961, which also deals with bribery, and with use of official information for personal advantage.
- The Securities Act 1978.

2.6 THE CHIEF EXECUTIVE

Elected members do not build public swimming pools or issue library books or parking tickets themselves. The local authority employs staff to do these things on its behalf. The Chief Executive (employed under section 42 of the Act) is responsible for the staff.

The Chief Executive is responsible for:

- implementing the decisions of the local authority
- advising the local authority and community boards
- ensuring that all powers and duties delegated by the council are properly performed
- managing the activities of the local authority effectively and efficiently
- providing leadership to the staff
- employing staff on behalf of the local authority.

The council employs the Chief Executive alone, and he or she employs staff on behalf of council. The Chief Executive is the only person who may lawfully hire, fire, sanction or instruct a staff member. (The Chief Executive may delegate responsibilities to other staff positions.)

The Chief Executive is employed by the council for a term of up to five years. Not less than six months before the end of the term the council must conduct a review of the Chief Executive's employment unless the Chief Executive declares he or she does not wish to be considered for a second term. This review has to assess:

- the Chief Executive's performance
- the Chief Executive's mix of skills and attributes and the fit between those and the skills and attributes the council thinks it will need in the future
- any other factor the council thinks is relevant.

On completion of the review the council may, at its discretion, extend the Chief Executive's term of employment by another two years or decide to re-advertise the position.

Further information on the hiring and performance management of Chief Executives can be found in Chapter 6 of the KNOWHow Guide to Governance.

2.7 COUNCIL COMMITTEES, SUBCOMMITTEES AND JOINT COMMITTEES

If they wish to do so, local authorities are empowered to set up subordinate bodies to make decisions. The two most common forms of these are a council committee and a joint committee (a committee with representatives from two or more local authorities).

These bodies are set up to assist the council to manage its workload, provide advice to the council, and build expertise among the members of council in particular issues. Councils may create as many or as few committees as they wish.

Committees and joint committees can be constituted, reconstituted or dissolved at any time. But these structures are always subordinate to the council and must follow any direction the council gives regarding their conduct or business.

When constituting a committee or joint committee the parent council(s) must appoint the members of the committee and give each committee terms of reference. The council(s) may also appoint the chairperson and deputy chairperson and delegate particular functions, powers or obligations to the committee.

Delegations must be legally correct as a committee cannot exercise a power that has been improperly delegated. **Certain decisions cannot ever be delegated**, including powers to:

- set and assess rates
- adopt a long-term council community plan, annual plan, annual report or any of the policies in a long-term council community plan or local governance statement
- purchase or dispose of assets outside a long-term council community plan
- borrow money
- appoint a Chief Executive
- warrant an enforcement officer (such as a parking warden or building inspector).

Committee members can be appointed or dismissed at any time (including any member of a joint committee nominated by the particular local authority).

Members of committees need not be elected members (for instance, many councils have iwi standing committees with members co-opted from outside). The only restrictions are that there must be at least one elected member on the committee, and that staff cannot be appointed to council committees or joint committees (although they may be appointed to a subcommittee).

2.8 COMMUNITY BOARDS

A community board is an elected body that represents a particular community. (The term 'community' in this situation means a community constituted under Schedule 6 of the Act.) A community board is neither a local authority nor a committee of the relevant territorial authority.

Members of a community board are elected by the community under the provisions of the Local Electoral Act 2001. In addition the territorial authority may appoint members of the authority (who live in the community) to the board.

The role of a community board is to:

- represent and act as an advocate for the interests of the community
- consider and report on any matters referred to it by the territorial authority and on any issues of interest to the community board
- make an annual submission to the territorial authority on expenditure within the community
- maintain an overview of services provided by the territorial authority within the community
- communicate with community organisations and special interest groups within the community
- undertake any other responsibilities delegated by the local authority.

A community board can only exercise powers delegated to it by the territorial authority or contained in the reorganisation scheme under which it was created.

Territorial authorities must review their community board structures at least once every six years as part of the review of membership and basis of election. The ability of community boards to ‘vote themselves out of existence’ has been removed. The establishment and disestablishment of boards must now be done in the context of a representation review, unless it is part of a re-organisation scheme or community request. Decisions on this are subject to review by the Local Government Commission.

A community board cannot buy, sell or lease property, nor can it hire or fire staff. The territorial authority must provide the necessary administrative and other facilities to the board. Likewise the territorial authority must pay the expenses of the board from the general revenue of the district, although the territorial authority can (and many do) fix a limit on such expenditure.

2.9 COUNCIL ORGANISATIONS

2.9.1 What is a Council Organisation?

A local authority may create an organisation to undertake a particular service on its behalf. It can also acquire voting interests in an outside organisation or appoint someone to be a director, trustee or governor of an outside organisation.

Part 5 of the Act provides for three types of council organisation:

- council organisation (CO)** – any organisation in which one or more local authorities control any proportion of voting rights or have the right to appoint one or more of the directors or trustees
- council-controlled organisation (CCO)** – any organisation in which one or more local authorities own or control at least 50 per cent of the voting rights or have the right to appoint 50 per cent or more of the directors or trustees
- council-controlled trading organisation (CCTO)** – any CCO that operates as a trading undertaking with the intent of making a profit.

Unlike the previous Local Government Act, which dealt only with trading enterprises, the definitions above cover most types of organisation that a council could set up. Certain organisations are exempted from the definition of a CCO (but remain COs). These include:

Local Government New Zealand

- Civic Assurance
- Port companies
- Airport companies
- Electricity companies
- Energy companies
- Infrastructure Auckland
- Watercare Services.

A local authority may, by resolution, exempt a small non-trading organisation from being a CCO after considering:

- the nature and scope of the activities provided by the organisation
- the costs and benefits of the exemption both to the local authority and the community.

The intent of this is to allow local authorities to exempt certain organisations from having to prepare a statement of intent where the costs of doing so clearly outweigh the benefits. An organisation exempted in this way remains a council organisation.

The Governor-General can also exempt organisations by Order in Council.

Example: CO or CCO?

Kiwi District Council has set up the Kiwi Recreation Trust to promote sporting and recreational programmes in its district. The Trust is responsible for managing the council's portfolio of sports grounds and swimming pools (which the council still owns). The council appoints one trustee, with the community electing the remaining four. The council also provides \$1.6 million in funds to the Trust each year.

Is this a CCO?

No. Kiwi District Council has the right to appoint fewer than half the trustees and controls less than half the voting rights. The ownership of the assets and the funding issues have no bearing on whether the organisation is a CCO or not. Although not a CCO, this Trust would still be a council organisation.

A CCO is set up to achieve a particular objective or objectives. By law, the principal objectives of a CCO are to:

- achieve the shareholders objectives, be they commercial or non-commercial, as set out in the statement of intent
- be a good employer
- exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

Further information on council organisations can be found in Chapter 7 of the KNOWHow Guide to Governance.

2.9.2 What Obligations Exist?

Table 1 shows the obligations that the Act imposes on council organisations. These are in addition to the requirements of the legislation that the organisation is established under, such as the Trustee Act 1956.

ESTABLISHMENT OF A CCO

When either establishing a new CCO or acquiring shares in an existing CCO, local authorities are required to consult using the special consultative procedure (see Chapter 3 of this Guide for further information).

TABLE 1: OBLIGATIONS OF COUNCIL ORGANISATIONS

	Council organisation	Council-controlled organisation
The organisation must:		<ul style="list-style-type: none"> • prepare a statement of intent • comply with Parts 1-6 of the Local Government Official Information and Meetings Act • prepare a half-yearly and annual report
The local authority must:	<ul style="list-style-type: none"> • have a policy on appointment and remuneration of directors • monitor the performance of COs 	<ul style="list-style-type: none"> • have a policy on appointment and remuneration of directors • monitor the performance of CCOs • disclose information in long-term council community plan, annual plan, and annual report

DIRECTORS

A local authority must appoint to the board of a council organisation people that it considers have the skills, knowledge and experience to guide the organisation and contribute to the organisation meeting its objectives. Beyond that there are no restrictions on membership other than in legislation such as the Companies Act.

Every local authority must adopt a policy on the appointment and remuneration of directors to council organisations. This policy must set out an objective and transparent process for appointing people to directorships and for identifying and considering the required skills. The policy must also deal with processes for setting remuneration for directors of council organisations.

STATEMENTS OF INTENT

A statement of intent is an agreement between a CCO and its owners on the objectives that the CCO will pursue over the coming year. All CCOs must have a statement of intent (unless listed on the Stock Exchange).

The statement of intent must contain information on the objectives of the CCO (and any subsidiaries), the activities the CCO expects to undertake, performance measures and forecast financial information. The information must be included for the year it relates to and for the following two years.

The first statements of intent for CCOs that were Local Authority Trading Enterprises under the Local Government Act 1974 are due on 1 July 2003; others are due on 1 July 2004.

The directors of a CCO must prepare a draft statement of intent and get it to all shareholders by 1 March preceding the financial year to which the statement relates. The shareholders have two months to comment.

A council that sets up a CCO has done so because it sees some advantage in running the activity at arms length. Elected members concerned about the direction of a CCO can influence the decisions of its board through modifications to its statement of intent.

PERFORMANCE MONITORING

A local authority must develop a regime for performance monitoring for all council organisations. This is likely to vary across the different types of organisation. For instance, a council organisation (by virtue of the fact that the local authority appoints a director) might be required to provide only an annual briefing from the director to the council. On the other hand, more rigorous and formal requirements may be appropriate for a CCO managing a major asset.

All CCOs are required to prepare half-yearly and annual reports on their activities. The annual report must set out:

- the information necessary to enable an informed assessment of the operations of the CCO including a comparison of the expected and actual performance of the CCO
- a statement on what dividend, if any, will be paid to shareholders (where relevant).

The council must disclose information on the name, objectives and policies with regard to ownership and control of each of its CCOs in the long-term council community plan and report on these in its annual report.

APPLICABILITY OF LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT

All CCOs are subject to the official information provisions of the above act. This does not mean that it is open slather on information held by CCOs – all of the grounds that a council has for refusing to release information also apply to CCOs. In particular, any information that would breach legal professional privilege, breach a commercial secret, or would prejudice negotiations may not have to be released.

All CCOs are subject to the Ombudsman Act 1975 with regard to official information. A CCO decision to refuse to release information or put conditions on the use of such information can be reviewed by the Ombudsman.

CHAPTER 3

HOW WILL COUNCILS MAKE DECISIONS?

This chapter deals with the heart of the Act – the requirements for decision-making, planning and reporting in Part 6 and Schedule 10. In particular, we look at:

- decision-making processes under the Act
- how the local authority (and others) will work together to promote community well-being (the community outcomes process)
- the long-term council community plan
- the annual plan
- the annual report
- requirements to consult
- local authorities' obligations to Maori under the Act.

3.1 ACCOUNTABILITY

The processes for accountability under the Act are shown in Figure 1. Some of the requirements are new, others are similar to requirements under the old legislation, although their role and content may change.

The documents and steps in the process are a means to an end, rather than an end in themselves. The planning and accountability processes are a step in promoting community well-being.

The process starts with the local authority facilitating a process where the community (probably including central government, the business sector, the community, Maori and the general public) identifies community outcomes. These are desired results or states of affairs and represent the community's judgment about what is important to its well-being.

These outcomes belong to the community, not to the local authority. Some communities may identify outcomes that relate to things that the local authority has little control or influence over, and the local authority will find it is one party working towards achieving community outcomes. Outcomes should inform and guide the local authority's planning, rather than act as a substitute for it.

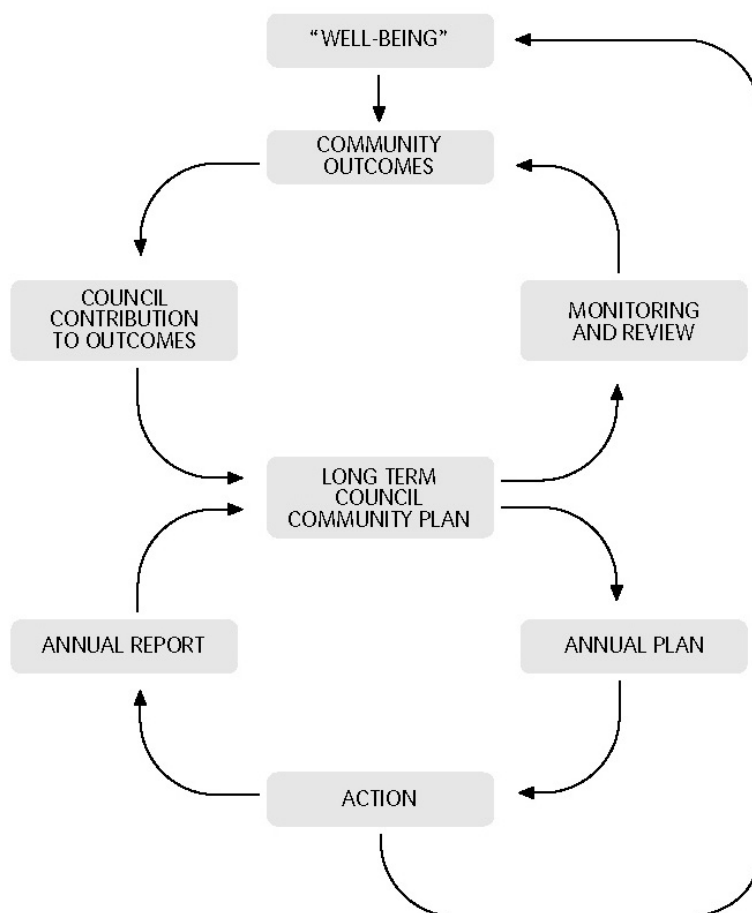
One of the key elements of the local authority's planning will be deciding what contribution, if any, it should make to the achievement of community outcomes. The local authority will record its proposed contribution, along with details of the other things it intends to do, in a long-term council community plan (LTCCP). The local authority must adopt a new LTCCP once every three years, setting out information on:

- what the local authority will be doing
- what assets will be needed
- how these will be funded.

The LTCCP is the heart of the new planning framework. It is a key mechanism for local authorities to work with communities. In future years it is possible that much of the other planning that the local authority does (for example, the district plan, community recreation strategies) will be coordinated by the LTCCP.

The LTCCP will drive the annual budgeting decisions, because each year the local authority will undertake works and services to meet the objectives set out in the LTCCP. As now, the local authority will produce an annual plan each year – but now this will be little more than a list of activities and a budget. (Once every three years the annual plan will be incorporated in the LTCCP.)

FIGURE 1: THE ACCOUNTABILITY PROCESS



Local authorities will continue to report every year against their objectives and budgets. Once every three years a report on the achievement of community outcomes is required.

3.2 DECISION-MAKING

For the purposes of the Act, a decision is best viewed as an ‘agreement or resolve to follow a particular course of action including doing nothing’. This could be as major as adopting an LTCCP or deciding to build a new sewage treatment plant, or as small as deciding to paint a swing set red instead of blue.

Further information on decision-making requirements, including a worked example can be found in Chapter 2 and Appendix Q of the KnowHow Guide to Decision-Making.

3.2.1 Decision-making Processes

The Act sets out requirements every local authority must follow when making decisions. In short, a local authority must:

- consider all reasonably practicable options including the costs and benefits of each of those options, the extent to which they achieve community outcomes, and their impact on the capacity of the local authority to meet its statutory responsibilities now and in the future

- consider the views and preferences of people likely to be affected by or have an interest in the particular decision
- identify and explain any significant inconsistency between the decision and any policy or plan adopted by the local authority
- provide opportunities for Maori to contribute to the decision-making process
- comply with the principles of consultation.

Local authorities make dozens of decisions every day; some decisions are ‘bigger’ than others. Local authorities will not be required to carry out full analytical and consultative processes for each decision. Two sections in the Act allow local authorities to tailor their decision-making procedures to the size and scale of a particular issue or decision.

Section 79, often referred to as the compliance provision, allows a local authority to make its own judgments about how best to comply with the above requirements, provided their compliance is proportional to the significance of the decision. This includes judgments about:

- the extent to which different options are considered
- the degree of benefit/cost analysis
- the extent of any written record of the decision (although some decisions such as setting rates have specific requirements).

When deciding how section 79 applies to any particular decision, a local authority must consider:

- how compliance is consistent with the principles of local government
- its resources (so smaller local authorities may tailor their processes to their community’s ability to afford them)
- the extent to which the nature of the decision and the circumstances in which it is taken allow the local authority the scope and opportunity to consider community views and preferences.

Example: Emergency repairs to an asset

It is July 2004. Eastland Regional Council has just experienced a hundred year flood on the Huia River. The flood breached the stopbanks in a dozen places.

The council is considering a proposal to replace the stopbanks. Flood and river control is defined as a significant activity in the LTCCP adopted a month ago.

How might the compliance provision apply in this instance?

This is a decision where a lower level of compliance would be consistent with the letter and spirit of the Act. Why?

First, the council has just adopted an LTCCP, after consultation. Second, the decision is about maintaining capacity to provide a significant activity (rather than stopping, starting or significantly altering the level of service of the asset). Third, if the council does not restore the asset quickly, there may be a significant impact on those living on the flood plain at the next major storm.

This is a reasonably clear-cut example of a decision where the circumstances likely do not allow the council the luxury of much time to consult and analyse options. The council will probably find that it can use much of the information gathered during consultation on the LTCCP when it considers community views on the stopbanks.

Had the council considered a proposal not to replace the stopbanks it would probably have had to go to higher standard of compliance because that would have involved, as a minimum, significantly altering service levels, and possibly stopping flood control as an activity altogether. The council had just decided to undertake flood control as part of its LTCCP.

There are no hard and fast rules about when the compliance provision will apply and what effect the provision might have in any particular circumstances. A local authority should document how it has considered the compliance provision will apply in a particular instance for all but the most trivial decisions (such as the swing set example).

3.2.2 Significance

Significance is one of the most important concepts in the Act. The terms ‘significance’ and ‘significant’ are intended to help councils direct the appropriate level of attention, consideration, consultation and disclosure to matters based on their relative importance to the community.

Significance is the degree of importance that the decision, issue or matter has in terms of its likely impact on or consequences for:

- the well-being of the district or region
- any people who are likely to be affected by, or interested in the matter
- the ability of the local authority to perform its role and the costs.

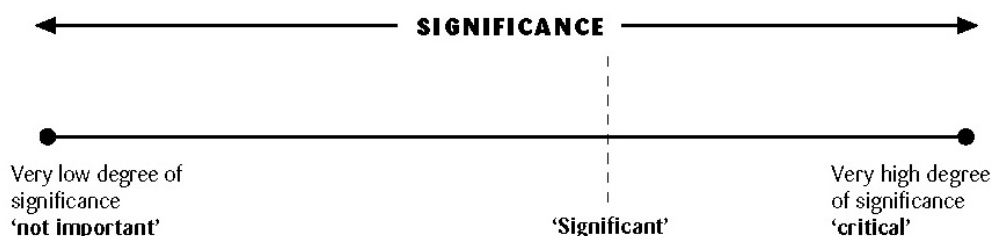
Significant means that having assessed the decision, issue or matter against the above criteria, the council considers the matter has a high degree of significance.

Significance is important for the following reasons:

- **Degree of compliance.** As a general rule the greater the degree of significance, the higher the standard of compliance required
- **Separate consultation.** Where there is a greater degree of significance, it is more likely that the local authority will have to undertake a round of special consultation (except those matters under section 97 that have to be consulted on as part of the LTCCP.)
- **Disclosure.** Where there is a greater level of significance, more information will need to be included in consultation documents.

The difference between ‘significance’ and ‘significant’ is shown in Figure 2. Significance is a continuum; significant is a point on the continuum beyond which a matter has a high degree of significance.

FIGURE 2: ‘SIGNIFICANCE’ AND ‘SIGNIFICANT’



The exact point at which an issue becomes significant is left to each local authorities to determine. Local authorities assess significance using processes that they will set out in a significance policy, which may also include particular criteria or thresholds. All local authority should have adopted a significance policy by 1 July 2003.

In addition to procedures, thresholds and criteria, a local authority must also list any assets it considers are ‘strategic assets’. A strategic asset is an asset or group of assets that the local authority believes it must retain to maintain its ability to promote any outcome it considers important to the current or future well-being of the community. The Act specifies that the following assets are strategic assets: port company shares, airport company shares and any land or buildings that the local authority needs to provide affordable housing as part of a social housing policy. A local authority may sell or dispose of strategic assets, but can only decide to do so as part of an LTCCP.

3.3 COMMUNITY OUTCOMES

An outcome is a desired result or state of affairs, that is things the community considers are important for its well-being.

Outcomes should not be confused with activities (the things the council does) or outputs (the good or service produced by the activity). Figure 3 shows the relationship between activities, outputs and outcomes. The community has an outcome, 'a safe healthy community'. In promoting that outcome (and others) the local authority undertakes activities that produce goods and services that contribute to the achievement of the outcome.

Outcomes are the community's judgments about what it needs to promote its well-being. Outcomes therefore belong to the community not the local authority. The local authority does not have to adopt the outcomes in the sense that it would adopt any other sort of plan or policy, and may not even agree with the outcomes.

What then is the role of the local authority in the outcomes process? In short, the local authority must:

- facilitate the process
- monitor progress towards the achievement of community outcomes in conjunction with other parties
- consider what it should do to promote the achievement of community outcomes as part of the preparation of its LTCCP. The local authority will be one of a range of agencies that is capable of promoting outcomes, and needs to consider its role along with such other agencies.

The process of identifying outcomes is an opportunity for the local authority, central government, the voluntary sector, the private sector and the rest of the community to get together, decide what is important to the community, and agree on a plan of action. The local authority will encourage these other agencies to take part in the process, but these agencies are under no requirement to take part, nor are they bound by the outcomes.

The purpose of the community outcomes process is to:

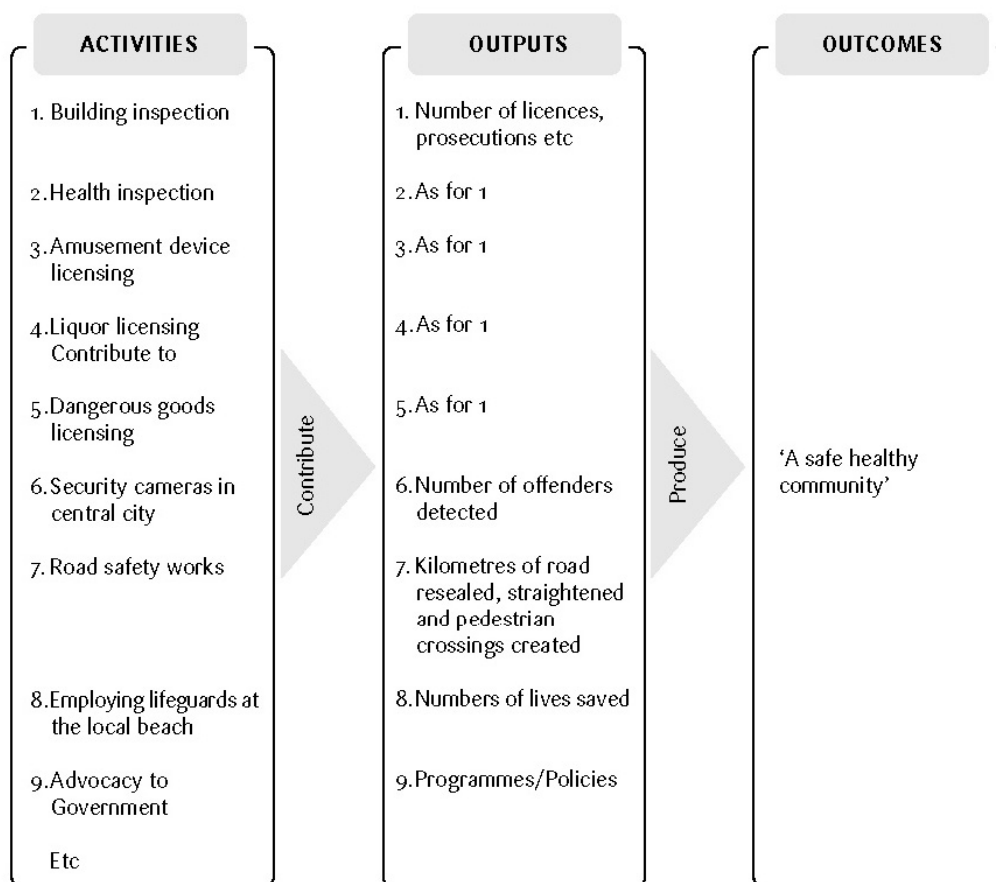
- stimulate debate about local needs and priorities
- inform and guide the planning of local authorities and other agencies
- get local authorities working with other agencies
- encourage people to take part in local affairs
- provide a basis for communities to measure their progress.

Local communities can design a process for identifying community outcomes that works best for them. For example, many local authorities recognise that some of these community outcomes may be best advanced by groups of local authorities working together to identify outcomes, and work with other agencies to achieve them³ but there is no requirement for local authorities to group together in this way. The only requirements are that local authorities must:

- identify other organisations and groups that can assist in identifying and promoting community outcomes
- attempt to get the agreement of these groups to the process for identifying outcomes and for the relationship between these and any existing plans
- develop a process that encourages the public to participate
- get agreement of the groups to processes for monitoring progress against community outcomes, if practicable.

³ Page 42 of the KnowHow *Guide to Decision-Making* has an example of a region-wide outcomes process.

FIGURE 3: THE RELATIONSHIP BETWEEN ACTIVITIES, OUTPUTS AND OUTCOMES



The outcomes process has a very high level of community engagement. Local communities need only identify community outcomes once every six years. All local communities must have identified a first set of outcomes in time to inform and guide the development of the 2006 LTCCP. (That means those outcomes should probably be determined by mid-2005.)

More information on the community outcomes process, including a possible process for identifying outcomes, and suggestions for monitoring progress can be found in Chapter 3 of the KNOWHow Guide to Decision-Making.

3.4 THE LONG-TERM COUNCIL COMMUNITY PLAN

An LTCCP sets out the local authority's priorities over the medium to longer term. It outlines how the local authority intends to contribute to community well-being over the life of the plan. The LTCCP must be produced once every three years and must cover a period of at least ten years.

The LTCCP will:

- set out the community outcomes and the local authority's intended contribution to those outcomes
- set out the things the local authority will be doing over the life of the plan
- coordinate the activities of the local authority
- provide a long-term focus for the local authority

- provide a means for communities to hold the local authority accountable
- provide an opportunity (the main opportunity in fact) for the public to participate in local decision-making.

The LTCCP is the main planning document that the local authority will produce. As such, this is the main opportunity for the public to have a say in the activities of the local authority. Many decisions and actions can be undertaken only if they done in conjunction with an LTCCP. The annual plan has now become little more than an annual budget and a link to the rate-setting process – in fact in the first year of an LTCCP, the financial and service level information in the LTCCP is, by law, the annual plan.

In due course this will mean that local authorities will be undertaking major consultative processes one year in three, and in the second and third years will focus their consultation on amendments to the LTCCP and on the annual plan (these should be much smaller consultative exercises). Ultimately, this should reduce compliance costs. However, initially, some members of the public who are used to commenting on everything will not realise that the scope of things that can be changed in the annual plan is much smaller.

Further information on the LTCCP can be found in Chapter 7 of the KNOWHOW Guide to Decision-Making.

3.4.1 LTCCP Process

The only way a local authority may adopt or amend an LTCCP is through the special consultative procedure.

From 1 July 2006, all local authorities will be on the same common cycle for preparing LTCCPs (so all councils will be adopting an LTCCP in 2009, 2012 and so on).

Once adopted, an LTCCP has a life of three years. It can be amended but cannot be revoked. Even if a new council were elected in 2007 and wished to entirely replace an existing LTCCP, it could only do this as an amendment to the existing LTCCP, and would still have to do another one in 2009.

The following decisions may only be taken as part of an LTCCP (either as the ‘full’ LTCCP or as an amendment):

- altering significantly the service levels of a significant activity
- transferring ownership or control of a strategic asset to or from the local authority
- construction, replacement or abandonment of a strategic asset
- decisions that affect the cost of any activity identified in the LTCCP or the capacity of the local authority to deliver on that activity.

3.4.2 LTCCP Content

The LTCCP is the heart of the new planning requirements, and the Act sets out a detailed list of contents that must go into such a plan.

COMMUNITY OUTCOMES

The LTCCP has to state the outcomes identified by the community and how the outcomes were identified. The local authority does *not* have to *adopt* the outcomes, or justify them.

The local authority does have to explain what it will be doing to further the outcomes, and how it will be working with other agencies to achieve them. This statement is a key part of the local authority’s decision-making process because it will tell the community what the local authority intends to do and why, and how its plans relate to the things the community has said are important. It will also provide a mechanism for communities to hold other agencies to account for delivery or non-delivery of things they have agreed to do.

The LTCCP must also record how the local authority intends to monitor the progress the community is making towards achieving community outcomes.

GROUPS OF ACTIVITIES

This is where most of the material in an LTCCP will be generated. In preparing this part of the LTCCP, local authorities can group related activities⁴ together to keep the size of the LTCCP manageable. For each group of activities in the LTCCP, the local authority must:

- list the activities in each group (for example, a wastewater group might include stormwater collection and disposal, sewage reticulation, sewage treatment and disposal)
- explain why the local authority is undertaking the group of activities (for example, it may be required to by law, or because the activities promote a community outcome – in which case the council should spell out how and why)
- describe any significant negative effects caused by the activities, for example, below quality wastewater disposal while developing new treatment plants
- specify the levels of service, that is, the standards for delivery of each of the activities
- state what major assets or groups of assets⁵ are needed to deliver the group of activities, including information on the implications of changes of demand or service levels, programmes of additional capacity, maintenance, renewals and replacement
- give the estimated costs (including depreciation, capital expenditure and debt servicing) of delivering the group of activities, and how these costs will be met.

Local authorities should carefully consider what other information should be added to this list to ensure their communities are as informed as possible.

WATER AND SANITARY ASSESSMENTS

The LTCCP must include either a summary of the last assessment of water and sanitary services (see Chapter 6 of this Guide) or the full assessment, and either a summary of the waste management plan or the full plan. If the LTCCP proposes changes to those plans (for example, if a service level is being altered) then it must explain what the change is and why it is being made.

COUNCIL-CONTROLLED ORGANISATIONS

The LTCCP must include the following information for each CCO (see Chapter 3 of this Guide):

- the name of the CCO
- any subsidiaries of the CCO
- any significant policies of the local authority regarding ownership and control of the CCO
- key performance targets and other measures.

FUNDING AND FINANCIAL POLICIES

The full set of funding and financial management policies must be included in the LTCCP (including the funding impact statement). Each policy must be included in full. (See Chapter 4 of this Guide for more information on these policies.)

FINANCIAL STATEMENTS

The financial statements for the ten-year period of the plan must be included. These statements must include information for the local authority itself, and may include information for any CCO and any other organisation under the control of the local authority.

These statements must be prepared in accordance with generally accepted accounting practice, as must financial information in the annual plan, annual report and summary annual report.

⁴ The Act defines an activity as a good or service provided by, or on behalf of a local authority.

⁵ Councils may group related assets together in a similar way to grouping activities.

AUDITOR'S REPORT

An LTCCP must contain a report from the auditor. This report is intended to provide assurance to the public about the robustness of the information in the plan by enhancing the quality of the forecasting and asset management planning underlying the LTCCP.

The audit report is an assurance that the local authority has met all of the content and procedural requirements of the Act, that the plan has been based on sound forecasting information, and that the performance measures in the plan provide an appropriate basis for assessing performance.

The auditors are prohibited from commenting on the policy content of the plan. For example, an auditor's report will not say that a decision to sell a stadium was 'wrong' or a 'poor decision' but might say the decision was based on an unreasonable assumption. In other words the assurance is really that the plan is lawful and robust, not that it is the 'best' plan for the district or even the 'right' one.

Local authorities need to build sufficient time into their processes to allow auditors to perform their role in a timely fashion, and to work with the auditors while plans are being prepared.

OTHER CONTENT

The LTCCP must also include either a summary of the significance policy (or the full policy) and outline any steps that the council intends to take to foster the capacity of Maori to participate in local decision-making.

3.4.3 Transitional Arrangements

All local authorities must adopt a 'first LTCCP' under section 279 of the Act. Local authorities have the choice of adopting this first LTCCP by either 1 July 2003 or 1 July 2004. That first LTCCP need not provide:

- information relating to community outcomes, unless the council has the information and chooses to use it
- a report from the auditor
- summaries of the waste management plan and last assessment of water and sanitary services if these have not yet been adopted.

A local authority that decides to do its first LTCCP for 1 July 2004 must have adopted an annual plan for 2003/04 under section 281 of the Act. That includes all of the funding and financial management policies, plus a funding impact statement, and a policy on significance.

In addition, every local authority must prepare a second LTCCP to take effect on 1 July 2006. That LTCCP must meet all of the requirements of the Act (including those relating to community outcomes).

3.5 THE ANNUAL PLAN

All local authorities must still prepare an annual plan, although the main planning document is now the LTCCP. The annual plan will link the LTCCP to the annual budgeting process (including the setting of rates). A good analogy is that the LTCCP is a loaf of bread and each year the annual plan takes another slice of the loaf until the end of the loaf is reached in year three of the LTCCP.

The annual plan must include:

- a proposed annual budget including estimated costs and revenues
- a funding impact statement for the year
- forecast financial statements for the year
- statements setting out service levels and performance measures
- details of any changes from the information in the LTCCP (including the reasons for change).

One important change in this Act is that local authorities cannot make significant changes through the annual plan; they can only do so through the LTCCP. This applies to proposals that would significantly alter service levels, the costs of an activity, or the capacity of a local authority to deliver that activity.

An important implication concerns issues that arise during submissions on an annual plan. It might not be lawfully possible to deal with such issues until an amendment can be made to the LTCCP, even though an amendment to an LTCCP and an annual plan can be adopted concurrently.

The change in emphasis from short term planning and consultation to the medium term is further emphasised by the fact that in the years when an LTCCP is adopted (such as 2006) the budget and service level information for the year is the annual plan for that year.

Annual plans must be adopted before the financial year to which they relate. This means that all plans must be adopted by 30 June.

3.6 THE ANNUAL REPORT

The last link in the cycle is the annual report.

This is a very different document from that required under the Local Government Act 1974. There is much less emphasis on reporting financial results (although these are still an important part of the LTCCP), and more emphasis on reporting the progress of the community against the community outcomes.

In short, the an annual report must include:

- the results of any monitoring of community outcomes done during the year (the legal minimum is that results must be monitored and reported on once every three years, but the results of all monitoring must go in the annual report)
- any identified effects of any activity
- details of the financial and non-financial performance of the local authority (which must be audited)
- reports on any significant acquisitions, replacements or disposal of assets
- reports on the performance of CCOs
- a report on the steps that the council has taken to build Maori capacity
- details of remuneration payable to each elected member and to the Chief Executive (certain other payments made to other employees must also be disclosed).

Annual reports must be adopted by the end of 31 October each year.

3.7 CONSULTATION

3.7.1 What is Consultation?

The primary purpose of consultation is to enable the local authority and its community to exchange information on decisions and issues of concern. Consultation involves seeking counsel or advice: it is a two way process of exchanging information.

However, the results of a consultation process do not bind a local authority. The results are a source of information to be taken into account during decision-making and are not a surrogate for it. Consultation is not a negotiation, nor does it require agreement. Local authorities need not consider themselves bound by the numbers of submissions for or against a particular issue.

Two court cases – *Wellington International Airport v Air New Zealand (1993)* and *South Taranaki Energy Users Association v South Taranaki District Council (1997)* – highlight that consultation is a genuine process of seeking views and considering those views with an open mind. In the South Taranaki case the council went ahead with a decision to sell power company shares even though 95 per cent of the submissions on the issue opposed the sale, and the court found this to be a reasonable decision.

3.7.2 Consultation Principles

Section 82 of the Act sets out principles on consultation. A local authority must follow these principles when consulting (subject to certain provisos). The principles are:

Provision of information. A local authority should provide those who will or may be affected by or interested in a decision with information to help them present their views to the local authority, and

do so in a manner that is appropriate to their needs. For example, this might involve providing information in more than one language or in more than one format.

Encourage parties to present views. Local authorities should seek out and welcome the views of those who will or may be interested in a particular decision.

Explain the scope of consultation. Potential submitters should be told the purpose and focus of the consultation.

Give reasonable opportunities to present. Anyone who wishes to put views before the local authority should be given a reasonable opportunity to present those views to the local authority in a way that is appropriate to the needs of the submitter.

Keep an open mind. Although local authorities may have working plans in mind, they must be prepared to listen to and consider all submissions with an open mind.

Give reasons for decisions. Local authorities should provide information to submitters on the decision it has made, and the reasons for the decision.

In addition to these six principles, every local authority must have specific policies in place to consult with Maori.

Section 82 gives local authorities some scope to apply these principles in a reasonable way. Local authorities may decide how to apply these provisions having had regard to:

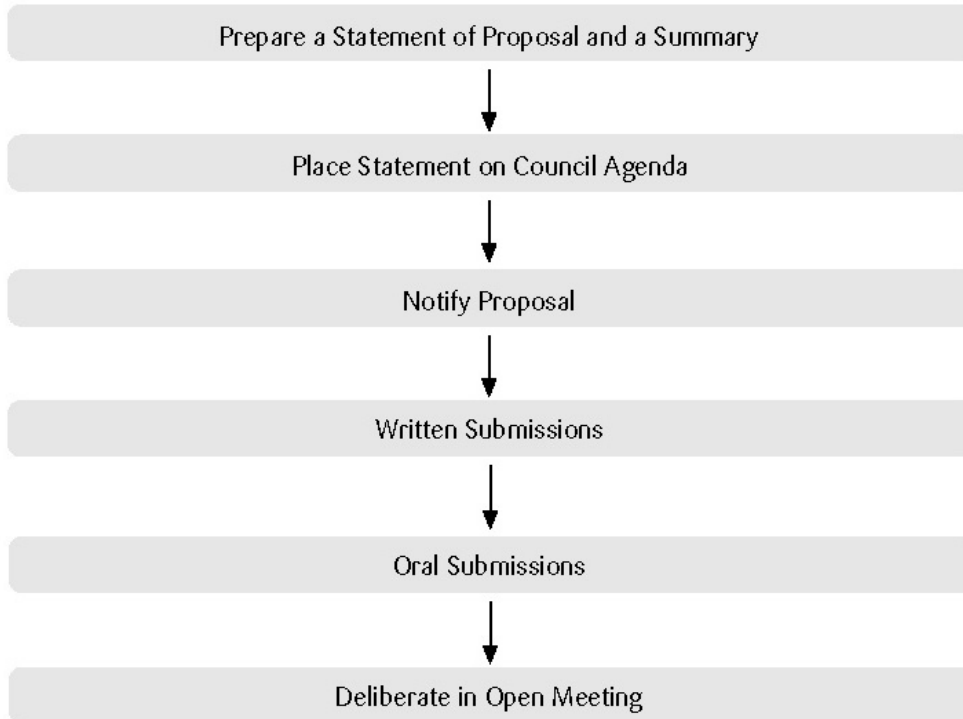
- the requirement to consider community views
- the extent to which the local authority is already aware of community views
- the significance of the decision *from the point of view of those who will or may be affected by or interested in a decision*
- the costs and benefits of undertaking consultation on a particular decision.

3.7.3 The Special Consultative Procedure

The special consultative procedure is set out in section 83 and is a statutory minimum that local authorities must follow when making particular decisions. A local authority may take other steps if it wishes, but whatever steps it takes must include the steps in section 83.

The steps in the special consultative procedure are summarised in Figure 4.

FIGURE 4: THE SPECIAL CONSULTATIVE PROCEDURE



A statement of proposal sets out the issue or decision at hand, and the local authority's proposed action. The exact contents of the statement will depend on the particular issue or decision that is being consulted on.

In addition to the statement, the local authority must prepare a summary of that statement. There are no specific requirements as to the form or content of the statement, except that the summary must provide information on getting a copy of the full statement and when submissions close. The only other requirement is that the summary must be distributed as widely as practicable (having had regard to the principles described above).

The public notice must give details about getting copies of the statement and summary, and of the submission period. Public notice for the purposes of the Act is a notice published in one or more daily newspapers in circulation throughout the district/region, or in some other paper that has a circulation at least equal to a daily.

The local authority must allow at least one month from the date of the notice for written submissions. All submissions must be acknowledged in writing. Anyone who asks for a hearing must be given one (although the local authority may specify the time and place of the hearings). Once the decision has been taken the local authority must notify submitters of its decisions and the reasons for those decisions.

The following decisions or actions **must** be consulted on under the special consultative procedure:

- adoption of a long-term council community plan (section 84)
- adoption of an annual plan (section 85)
- adoption of a bylaw (section 86)

- a change in the mode of delivery for a significant activity, for example, changing from the activity being delivered by the council to a CCO, or to a private sector firm, or from a CCO to the private sector (section 88)
- a decision to establish a CCO or acquire shares in a CCO (section 56)
- a decision to significantly alter the level of service of a significant activity, including starting or stopping a significant activity (section 97)
- a transfer of ownership or control of a strategic asset to or from a local authority (section 97)
- a decision to build, replace or abandon a strategic asset (section 97)
- a decision that will significantly affect the capacity of, or cost to, the local authority in relation to any activity (section 97).

A local authority may use the procedure in other instances where it wishes to do so. In these cases it will be subject to section 87 of the Act.

Each of these decisions or actions has its own specific requirements for the content of a statement of proposal. See Chapter 5 of the KNOWHOW Guide to Decision-Making for further information on the use of the special consultative procedure.

3.8 OBLIGATIONS TO MAORI

This section deals with the obligations that the Act places on local authorities with respect to Maori. Other legislation (such as the Resource Management Act 1991, the Biosecurity Act 1993) may impose different obligations and should be followed when the local authority is performing a task or exercising some power conferred on them by that legislation.

The key provision, one that caused much comment as the Bill passed through parliament was section 4, the so-called 'Treaty clause'. This reads:

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi, and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local government decision-making processes.

This provision makes it clear that the Treaty obligations under the Act are the Crown's, not local government's.

In fulfilling its obligation to Maori, the Crown requires local government to give special attention to its relationships with Maori (councils also develop similar relationships with other groups). It wants to encourage Maori to participate more in local government. These objectives are reflected in the Act.

The sections that confer specific obligations on local authorities are:

- Section 14(d) which sets out the principle that local authorities should provide Maori with opportunities to contribute to decision-making processes. This principle is reinforced in section 82, which requires all local authorities to have processes in place for consulting with Maori.
- Section 77(1)(c) which requires local authorities, when making a significant decision with respect to land and bodies of water, to take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna and other taonga. The requirement is only to take account – it does not give these factors weighting over any other than is relevant to the decision.
- Section 81 which requires local authorities to establish and maintain processes for Maori to contribute to local decision-making, and to consider ways of fostering Maori capacity to contribute to local decision-making.

These provisions do not confer special rights and privileges on Maori that are not accorded to other citizens. Taken as a whole, they are an obligation to consider what steps the local authority can reasonably take to encourage and assist Maori to participate in local affairs.

'Capacity' for the purposes of the Act is the ability of a person (or group) to participate knowledgeably in the local decision-making process. Local authorities will need to assess whether Maori can contribute given the level of resources Maori have to participate in the process, and the skills, tools, and systems.

Capacity building might involve some of the following: training workshops on local government processes, internships, provision of technical expertise, access to local authority resources. Capacity building does not imply paying Maori for submissions.

See Chapter 6 of the KNOWHOW Guide to Decision-Making for further information on meeting obligations to Maori.

CHAPTER 4 HOW WILL COUNCILS MANAGE THEIR MONEY?

This chapter deals with two issues:

- how a local authority makes funding decisions and manages its finances
- the rating tools it has available.

More details on this can be found in Chapter 8 of the KnowHow Guide to Decision-Making and in the KnowHow Guide to Rating.

It is important to recognise that the law about funding tools and the law about selecting the processes are in two separate Acts. The former, funding tools, can be found in the Local Government (Rating) Act 2002. The latter, processes, can be found in the Local Government Act 2002.

4.1 FINANCIAL MANAGEMENT

Part 5 of the Local Government Act sets out the financial management obligations of local authorities. These include:

- balancing the budget (section 100)
- observing financial management requirements (section 101)
- preparing funding and financial policies (section 102).

4.1.1 The Balanced Budget Requirement

As with the previous Local Government Act, local authorities must balance their budgets (that is, set each year's revenues at a level sufficient to meet expected expenditure). However, the Local Government Act 2002 recognises that there are circumstances where it may be financially prudent for a council to run a deficit.

A local authority is therefore allowed to run a deficit if it is satisfied it is financially prudent to do so. It must explain publicly why it has made that decision and outline the financial and non-financial implications of the decision.

In reaching a decision on balancing the books, a local authority must consider:

- the expenses of achieving the service levels set out in the LTCCP
- the projected revenue available to meet those expenses
- the equitable allocation of responsibility for funding assets over their useful life
- other policies of the local authority (for example borrowing limits).

Example

The Kakapo City Council is faced with a 5 per cent rates increase to fund depreciation on its aging water and sewage infrastructure.

At its last annual plan meeting for the 2003/04 year, the council resolved not to fund depreciation on these assets. It consulted with the community on the annual plan and found the residents did not want a 5 per cent rates increase, although there were no suggestions that the council should not fund depreciation. The council has not consulted in any way on the service levels for water and sewage assets since the adoption of a first LTCCP the previous year.

Would a decision not to fund depreciation on water and sewage assets represent prudent financial management?

Probably not. The decision will undermine levels of service for the water and sewage assets, and the council has not consulted on these. The decision might also be seen as politically motivated. The likely consequence of this is a tagged audit report for breach of section 100 (and probably section 97 as well), and higher borrowing costs.

4.1.2 Financial Management Obligations

In addition to the balanced budget requirement, local authorities must:

- manage all financial dealings prudently
- make adequate and effective provision for expenditure needs that have been identified in the LTCCP and annual plan
- meet expenditure needs by using revenue sources that the local authority deems appropriate having considered the list of matters in section 101(3) of the Act.

4.1.3 Making Funding Decisions

The new financial management provisions are similar to those in place before the new Act. The significant difference relates to process and the fact that local authorities now have greater discretion.

Figure 5 shows the new process for making funding policy. The first two of these three steps take place at the level of individual activities (not groups of activities), the results of which are then considered in the third step.

STEP ONE: IDENTIFY ACTIVITIES

The first step is to identify activities. The council will probably have already done this as part of the process of preparing its LTCCP.

STEP TWO: ANALYSE ACTIVITIES

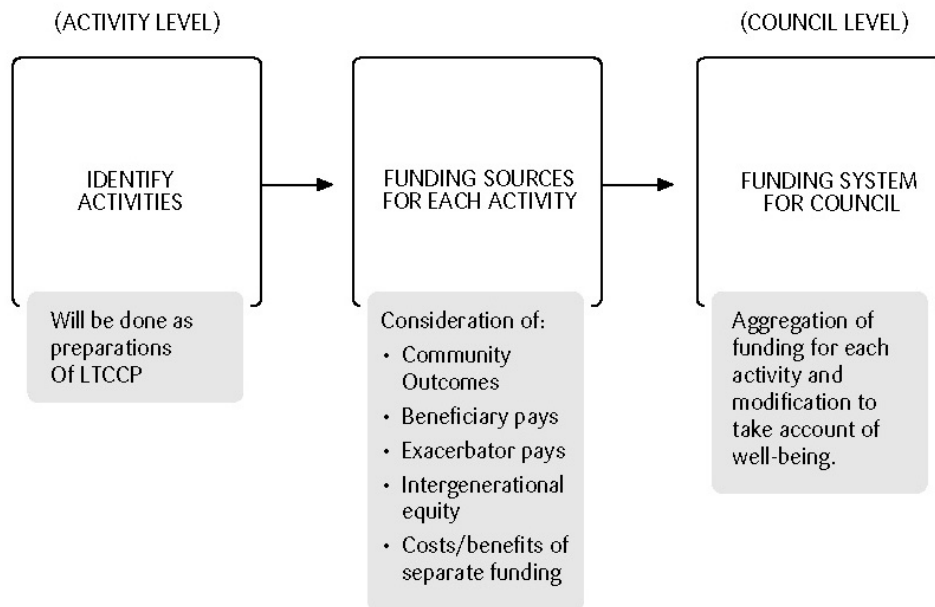
For each activity local authorities must consider the following matters:

- The community outcomes to which the activity contributes.** In other words why the council is doing a particular activity and how funding decisions might contribute to, or work against that. For example, a local authority that wishes to promote the outcome ‘a safe, healthy community’ might then reach a judgment that funding swimming pools 100 per cent from the entry fee might discourage use and decide some funding from rates is justified.
- Who benefits.** This is the public good/private benefit discussion that local authorities have been having since the financial management reforms of 1996. Services where benefits accrue mostly to individuals may be seen as more of a candidate for funding through user charges or targeted rates than those where benefits accrue to the community as a whole. However, nothing in the Act requires a local authority to adopt a particular funding tool, and judgments about who benefits and to what extent have been recognised by the courts as matters for elected representatives to make judgments on⁶.
- When benefits accrue.** Most local authority services have long lives, so more than the current generation of ratepayers benefit. Therefore, the local authority should be looking to ensure the future ratepayers meet some of the cost. The most common way to do this is to borrow and rate each year for the cost of servicing the debt – in a similar manner to the way in which most people buy a house.
- Action/inaction of particular residents.** Sometimes the acts (or failure to act) of some people can impose costs on others. Local authorities must consider the degree to which this occurs and whether the people whose actions affect others should bear the cost. This will be most commonly used in environmental management, for example, rating people on uplands for flood and river control, not because they benefit, but because water run-off from their properties may cause flooding downstream⁷.

⁶ For example, the judgments of the Court of Appeal in *Woolworths and Others v Wellington City Council (1996)* and *Lovelock and Others v Waitakere City Council (1997)*, the judgment of Justice Fisher in *Telecom v Auckland City Council (1998)* and Justice Robertson in *Visser and Others v Whangarei District Council (1997)* all recognise that courts should only intervene where councils have failed to take relevant matters into account (or have taken irrelevant matters into account), or where the final decision is so unreasonable that no reasonable local authority would have made it (the courts use wording like ‘perverse’, ‘irrational’, or ‘outrageous in its defiance of logic’).

⁷ This has been upheld by the decision of Justice Morris in *Luxton and Others v Waikato Regional Council (2001)*.

FIGURE 5: THE FUNDING POLICY PROCESS



▣ **Costs and benefits of separate funding.** Running a local authority funding system has costs involved with assessment and collection of revenue. In making funding decisions local authorities must consider whether particular activities should be funded from a separate source (most commonly a user charge or a targeted rate). The Act specifically mentions cost efficiency and transparency (in other words whether or not people will be able to relate the charge to the activity that it is funding).

STEP THREE: CONSIDER IMPACT ON WELL-BEING

At the end of the second step the local authority will have a list of funding sources for each activity. In the third step, the local authority will add up these results and then consider the impact that the overall list would have on community well-being, and modify the list if desired. This recognizes that funding decisions are not made in a vacuum, and that funding decisions impact on well-being.

DOCUMENTING THE FUNDING PROCESS - THE REVENUE AND FINANCING POLICY

Local authorities will document the results of this process in two places – in the material on groups of activities in the LTCCP and in a *revenue and financing policy*.

4.2 RATING

The bulk of the Local Government (Rating) Act 2003 (the Rating Act) took effect on 1 July 2003 (except the provisions that were necessary to enable local authorities to prepare databases of rating information in advance of 1 July 2003).

The important areas in the Rating Act are:

- rating units and liability for rates
- non-rateable land

- rating tools
- rating information
- remissions and postponements
- rating processes.

4.2.1 Rating Units and Liability for Rates

A rating unit is a piece of property that attracts liability for rates. The term ‘rating unit’ is defined in the Rating Valuations Act 1998 and responsibility for ensuring that councils adhere to this when preparing rating information rests with the Valuer-General.

In determining whether a particular piece of property is a rating unit, the main criterion is the existence of a separate certificate of title (or some other instrument of equivalent status under land law such as a unit title).

Property that does not have a separate certificate of title may be a rating unit if it has one or more of the following characteristics:

- the land has a finite beginning and end
- the land can be sold or transferred
- there is no larger or prior interest in the land (that is, it is not already part of another rating unit).

Under the Rating Act, the owner is usually liable for the rates of the property. There are exceptions to this general rule for Maori freehold land (reflecting the multiple ownership of this land) and where there are contracts in place that do not allow for the renegotiation of rents.

Further guidance on the definitions of rating unit and the exceptions to the rule of owner liability can be found in Chapter 2 of the KNOWHOW Guide to Rating.

4.2.2 Non-rateable Land

The Rating Act rolls over most of the categories of non-rateable land that were in the old Rating Powers Act. These include the following types of property.

- **conservation land** (such as National Parks, wildlife refuges, the bed of the territorial sea and any navigable lake or river where the land is vested in the Crown), but only those parts of a property not used for private or commercial purposes under a lease, licence or other agreement
- **heritage land** (land owned and used by any of the Historic Places Trust, the QE2 Trust, Te Papa, health camps and the Foundation for the Blind)
- **local authority land** used as a public garden, reserve, playground, hall, library, athenaeum, museum, art gallery, pool, toilet, or for soil conservation or river control, games and sports (local authority owned utilities are not exempt)
- **education land** (including schools of whatever type and ownership, early childhood centres, polytechnics, universities, teachers colleges, and wananga)
- **DHB land** used to provide health or health related services (including living accommodation such as a nursing hostel)
- **institutions used as a place of religious worship**
- **cemeteries and crematoria**
- **Maori customary land**
- **roads** (owned by the Crown or by a local authority)
- **railways** (regardless of ownership)
- **airports** (if owned by an airport authority or the Crown and only those parts used for the loading and unloading of goods and passengers)
- **wharves** (also only those parts of the property that are used for loading and unloading of goods and passengers)
- **machinery**

- **charitable institutions.**

This list is greatly simplified. Non-rateable land is liable for any targeted rates for sewage disposal, water supply and waste management if the property receives those services.

The Rating Act also creates a special category of rating units that are 50 per cent non-rateable. These properties are liable for the full amount of water, sewage and waste management rates and pay 50 per cent of rates set for other purposes. These properties include:

- land used for games or sports by a society or association
- land used for any branch of the arts by a society or association
- land used as a showgrounds by any society incorporated under the Agricultural and Pastoral Societies Act 1908.

See Chapter 3 of the KNOWHow Guide to Rating for expanded lists and some worked examples.

4.2.3 Rating Tools

Local authorities have two types of rating tools:

- general rates** – where the local authority decides that all or part of the cost of a particular function should be met by the community as a whole
- targeted rates** – where the council decides that all or part of the cost of a particular service or group of services should be funded by its own rate, or that this should be targeted to particular types of property.

Local authorities may use either or both of these tools.

GENERAL RATES

Local authorities have two types of general rating power:

- the general rate** – a rate in the dollar of property value (calculated on the value of land alone, or the value of the land and improvements, or the rental value of the property)
- a uniform annual general charge** – a flat dollar amount per property or per separately used or inhabited part of a property, irrespective of property value.

Local authorities may use either of these powers (most local authorities typically use a combination).

The general rate can also be set at different rates for different categories of property. However, only the following matters can be used for this purpose:

- property value
- location (for example, property in one part of the district pays a different rate from other parts)
- land area
- land use (for example, commercial property might pay a higher rate in the dollar than a residential property)
- the provision or availability of a service by or on behalf of the council
- activities that are permitted, controlled or discretionary under an operative district plan.

TARGETED RATES

A targeted rate is set to fund a specific work or service, and cannot be used for another purpose. Targeted rates can be set on all property across the district, or particular categories of property can be excluded. When excluding properties, local authorities are limited to the categories for differentiating a general rate (listed above).

Local authorities are not limited to property value as the basis for a rate. The full list of factors that can be used includes a charge:

- per dollar of property value
- per hectare/metre of land area (either total land area, or the area that is protected by an amenity or facility provided by the council, or the land area that is sealed or paved)

- per separately used or inhabited portion of a property
- per water closet and urinal
- per connection to any reticulation system
- per unit of service (where the extent of the provision or use of the service can be independently verified).

These rates can also be made differentially. There are special targeted rating provisions that allow for the metering of water.

The Rating Act retains the limit on fixed charges so that a local authority cannot collect more than 30 per cent of its rates revenue from the uniform annual general charge and targeted rates that are made as a fixed amount per property. Targeted rates for water supply and sewage disposal are not counted for this purpose.

Further examples of how these powers can be used can be found in Chapter 4 of the KNOWHOW Guide to Rating.

4.2.4 Rating Processes

Local authorities will consult on their proposed rating systems as part of the LTCCP.

Having consulted via the annual plan, the actual setting and assessment of rates can only be done by resolution of the local authority. The resolution must specify the year for which the rates are collected, the due date (or dates), and details of each of the rates.

All ratepayers will receive two documents. The first, *a rates assessment*, is a notice to the ratepayer that they are liable for rates on a particular property and includes the information that is necessary to calculate rates, and information on payment options, remissions, and objection procedures. The second, *the rates invoice*, is more or less a bill for rates.

CHAPTER 5 WHAT OTHER RESPONSIBILITIES DO COUNCILS HAVE?

This chapter covers a number of new and amended responsibilities that are prescribed in the Act. Key ones include:

- extended and modernised bylaw making powers
- the requirement to undertake assessments of water, wastewater and sanitary services
- the power to levy development contributions.

5-1 NEW BYLAW AND REGULATION MAKING PROVISIONS

The Act provides local authorities with modern bylaw making powers. While these powers continue to be prescriptive for regional councils, they are permissive for territorial authorities. Section 145 of the Act sets out the general purposes for which territorial authorities can make bylaws, namely:

- protecting the public from nuisance
- protecting, promoting and maintaining public health and safety
- minimising the potential of offensive behaviour in public places.

In addition, the Act specifies purposes such as regulating waste matters, managing council infrastructure and the control of liquor in public places (sections 146 and 147).

Regional councils may make bylaws only in relation to:

- parks, reserves, recreation grounds, or other land that the regional council owns or controls
- forests that the regional council owns or controls (whether or not they are in the region of the regional council)
- flood protection and flood control works undertaken by or on behalf of the regional council
- water supply works undertaken by, or on behalf of the regional council (section 149).

Bylaw making powers can be transferred between regional and territorial authorities.

The key changes in the Act for regulatory and enforcement matters are:

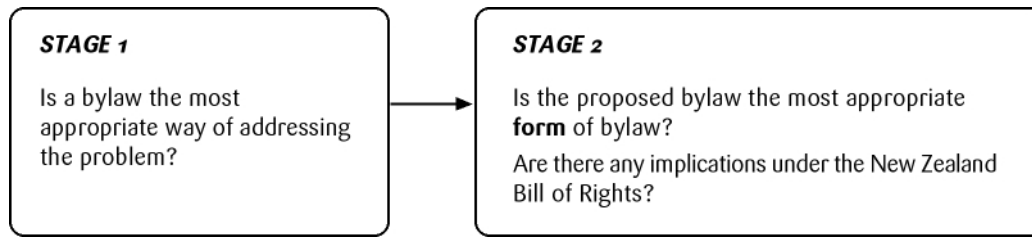
- Territorial authorities are able to make bylaws prohibiting the consumption and possession of liquor in public places throughout the whole of its district.
- The Crown is bound by some local authority bylaws.
- Before making a bylaw, local authorities must decide whether a bylaw is the most appropriate way of addressing a perceived problem.
- The special consultative procedure must be used to make new bylaws.
- New bylaws made under the Act must be reviewed within five years after the date on which they were made. The next review must be within 10 years from the first review.
- Local authorities have new powers to seize and impound property.
- The power to warrant enforcement officers cannot be delegated. This requires all such warrants to be confirmed by full council. Note that this requirement also applies to the warranting of enforcement officers under other Acts unless delegation is specifically provided.

Some breaches of bylaws may be infringement offences for which infringement notices may be issued.

5.1.1 Deciding Whether a Bylaw Is Appropriate

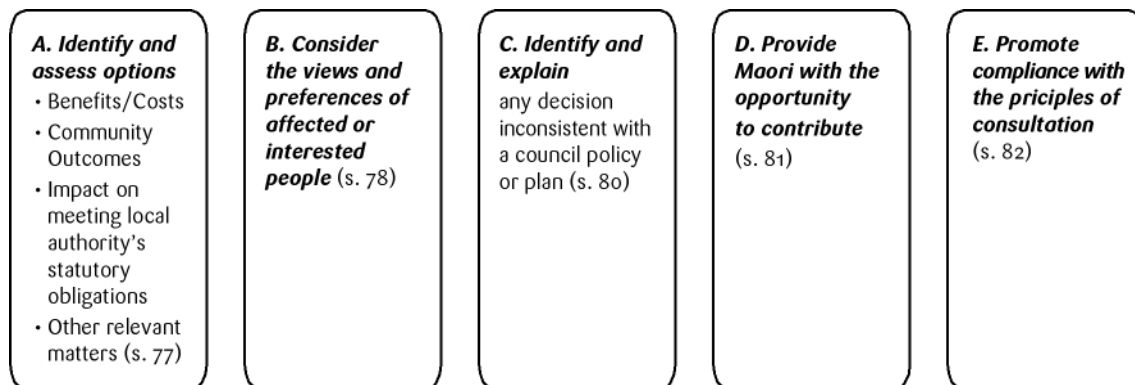
The Act introduces a two-stage process that local authorities must follow before adopting bylaws. The first stage requires a local authority to determine whether a bylaw is the most appropriate way of addressing the perceived problem.

If the local authority considers it is, then the second stage is determining whether the proposed bylaw is the most appropriate form of bylaw, and whether there are any implications under the New Zealand Bill of Rights Act 1990.



The Act sets out decision-making requirements in Part 6 (sections 76 to 82). Local authorities must use these provisions when making a ‘decision in the exercise of any power, authority, or jurisdiction given to it by this Act or any other enactment or by any bylaws’ (section 76(5)). In deciding whether to adopt a bylaw, councils must comply with Part 6 (particularly sections 77, 78, 80, 81 and 82) during the two-stage process prior to making a bylaw. This will ensure a robust and fully informed process is used to determine whether a bylaw is appropriate.

The five requirements prior to adopting a bylaw are:



A more detailed discussion of decision-making can be found in the KNOWHow Guide to Decision-Making.

5.1.2 Adopting and Reviewing Bylaws

If a local authority decides to use a bylaw to resolve a community problem, it must then use the special consultative procedure to adopt the bylaw. The special consultative procedure is described more fully in the KNOWHow Guide to Decision-Making (and in Chapter 3.7.3 of this Guide). In short, the special consultative procedure requires that the local authority:

- notifies the public of the proposed bylaw
- provides the public with an opportunity to inspect the proposed bylaw
- allows the public to make submissions on the bylaw
- hears submissions in a public forum (section 83).

The Act places strong emphasis on community involvement in the bylaw making process, but local authorities are able to make minor amendments, such as those of a technical nature, by council resolution.

Bylaws made under the Act must be reviewed within five years from the date that they are made. Once reviewed, however, a bylaw need not be reviewed for another ten years. A bylaw that has not been reviewed will cease to have effect two years after the date by which the review should have taken place. Bylaws currently in place under the Local Government Act 1974 must be reviewed by July 2008.

The process for reviewing a bylaw is similar to that used for adopting one. The review must reconsider the matters taken into account when the bylaw was adopted (section 155) and be undertaken in accordance with the special consultative procedure (section 83).

5.2 WATER AND WASTEWATER ASSESSMENTS

The Act prescribes a new responsibility for territorial local authorities. They must assess, from time to time, the water and other sanitary services available to communities in their districts. The first assessment must be completed by 30 June 2005. Assessments are not required at an individual property level.

Assessments are required for:

- reticulated drinking water supply
- sewage treatment and disposal
- stormwater drainage
- defined sanitary services (these include cemeteries, public toilets etc).

Assessments will require:

- a description of existing services
- an assessment of any risks posed to communities by the absence of services
- the quality and quantity of drinking water and wastewater discharges
- an estimate of current and future demand
- an assessment of any health risks associated with sewage discharge
- a statement of the territorial authority's intended role in meeting demand and any proposals that might be developed to fulfil that role.

In making assessments territorial authorities are required to consult with the relevant Medical Officer of Health. Assessments must be adopted using the special consultative procedure or may be included in an LTCCP. Territorial authorities have been given reasonable discretion to determine for themselves the appropriate level of information required (section 129). In exercising this discretion territorial authorities must take into account:

- the significance of the information
- the costs of obtaining it
- the extent of the territorial authorities resources
- the possibility that the territorial authority may be directed to provide the services under the Health Act 1956.

The information required for assessing sanitary services is separately described (section 127). Detailed guidance for carrying out assessments is provided in the KNOWHOW Guide to Assessments of Water and Sanitary Services.

5.3 DEVELOPMENT CONTRIBUTIONS

The Act provides territorial authorities with the power to require a development contribution where the effect of a development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for:

- reserves
- network infrastructure
- community infrastructure. (section 199(1))

Development contributions can be required only if a territorial authority has adopted a development contributions policy under section 201. All territorial authorities are required to have adopted a policy regardless of whether they intend to require a development contribution. In addition to reserves, contributions can now be required for 'network' and 'community' infrastructure.

Network infrastructure means 'the provision of roads and other transport, water, wastewater and stormwater collection and management'.

Community infrastructure means:

- land, or development assets on land, owned or controlled by the territorial authority to provide public amenities; and
- includes land that the territorial authority will acquire for that purpose (section 197).

While 'development assets on land' is not defined in the Act, the Commentary on the Bill refers to these as including libraries, community centres, recreation centres and public toilets.

Development contributions can be required when granting a resource consent under the Resource Management Act 1991, a building consent under the Building Act 1991 and an authorisation for a service connection. Contributions required must be consistent with the council's policy. The development contributions policy (section 201) should include:

- a summary of the council's expected capital expenditure to meet the demand for community facilities resulting from growth
- a description of how the capital expenditure will be funded, why each mechanism has been chosen and how it will be allocated to specific activities or groups of activities
- an explanation of how, in making these decisions, consideration was given to achieving the community outcomes described in the LTCCP, how benefits are distributed, the costs and benefits of the funding choices and impact on well-being
- information on how members of the public can review the methodology used to calculate the contribution
- the assumptions underlying the calculation of the schedule of development contributions.

Development contributions must be used towards the capital expenditure of the reserve, community or network infrastructure. They may not be used for maintenance (section 204(1)(b)). Detailed information on development contributions can be found in the KNOWHOW Guide to Development Contributions.

CHAPTER 6 OTHER SIGNIFICANT CHANGES

This chapter discusses changes in regard to the ownership and management of water services and the review of representation arrangements.

6.1 WATER SERVICES - OBLIGATIONS AND RESTRICTIONS

The Act sets out in detail a local authority's responsibilities with regard to the water services provided either directly, or indirectly through a CCO, to its district or city. Local authorities must continue to provide, and maintain their capacity to provide, those water services (defined as water supply and wastewater services (section 124)) that were provided at the commencement of the Act.

The specific provisions prevent the local authority from:

- using its water services assets for security for any purpose
- divesting ownership or other interest in a water service except to another local government organisation
- losing control of, selling, or otherwise disposing of, the significant infrastructure necessary for providing water services in its region or district, unless in doing so it retains its capacity to meet its obligations (section 130).

6.1.1 Limitations on Contracting Out

The Act also imposes new limitations on local authorities' ability to contract out aspects of their water services. These include:

- Any contract for all or part of a water service cannot be for a term longer than 15 years (unless the arrangement is a joint venture or partnership when the term may be longer) (section 137).
- Where a contract is entered into, the local government organisation must keep control of the pricing of water services, the management of water services and the development of policy related to water services (section 136).

6.1.2 Closure or Transfer of Small Water Schemes

In certain cases councils are able to close down a water service or transfer that service to an entity representative of the community that receives the water service. In each case several conditions must be met, namely that:

- the water service is delivered to 200 or fewer persons
- consultation has occurred with the Medical Officer of Health
- assessment information carried out under section 134 or a management plan is made publicly available
- the proposal is supported by a binding referendum. At least 75 per cent of votes are required to close down a service, 50 per cent or more to transfer a service.

Specific conditions also apply where the council is considering closure of a scheme. In these cases it must have reviewed the effect on public health in the affected community, the environmental effect and assessed the likely costs and the quality of alternative arrangements for affected households.

6.2 REPRESENTATION REVIEWS

The Act made a number of changes to the Local Electoral Act 2001, particularly with regard to representation arrangements. Some of the key changes were:

- The triennial review has been replaced with a representation review that must be undertaken at least once every six years.
- Members of a territorial authority may be elected partly by the district as a whole and partly by the electors of wards.

- As part of its representation review, all territorial authorities must consider whether or not the district/city should have communities and community boards, and if so the nature and structure of those boards.
- The number of appointed members to a community board must be less than half the total number of members of that community board (total number equals elected and appointed members).
- Communities can be subdivided for electoral purposes.
- Maori wards and Maori constituencies may be established. Communities may also require a binding referendum on the subject.
- The consultation processes for community input into the representation reviews has been clarified.
- Population formulae have been introduced to determine fair representation with and without Maori wards.

In addition, councils continue to have the option of changing their voting system from 'First Past the Post' to the 'Single Transferable Vote' system. This may be triggered by a council resolution or by a binding referendum.

APPENDIX A WHERE DO I FIND IT? - A QUICK REFERENCE GUIDE TO THE ACT

BYLAWS

s 86.....	Use of the special consultative procedure for bylaws
s 144.....	Bylaws Act 1910
s 145.....	General power for territorial authorities
s 146.....	Specific powers of territorial authorities
s 148.....	Trade wastes
s 149.....	Regional council bylaws
s 150.....	Fees
s 151.....	General provisions
s 152.....	Relationship with Building Act 1991
s 153.....	Binding the Crown
s 154.....	Minister may exempt Crown from any bylaw
s 155.....	Appropriateness of bylaw
s 156.....	Minor alterations to bylaws without consultation
s 157.....	Public notice and availability
s 158.....	Review of bylaws
s 159.....	Procedure for reviews
s 160.....	Expiry 2 years after date bylaw was to be reviewed
s 161.....	Territorial authority may transfer bylaw power to another territorial authority or regional council
s 162.....	Breaches
s 163.....	Removal of works in breach of bylaws and recovery of costs
s 172.....	Power of entry to determine breach of bylaw
s 176.....	Recovery of costs from convicted person
s 180.....	Regional Council enforcement
s 195.....	Discharge of sewage and trade wastes not in breach
s 238(3)(a).....	Failing to comply with bylaw is an offence liable for summary conviction or penalty
s 242.....	Penalty for offences against bylaw is liable to a fine not exceeding \$20,000
s 293.....	Transitional provisions
s 310.....	Savings with respect of bylaws of Transit NZ
s 311.....	Savings with respect of bylaws relating to Government roads
Sch 7 cl 32.....	Councils cannot delegate power to make bylaws
Refer:	Chief Executive, Consultation, Decisions, Enforcement, Liquor Bans, Regional Councils, Special Consultative Procedure

CHIEF EXECUTIVE

- s 42..... Chief Executive's responsibilities
- s 118..... Certificate of Compliance for protected transactions too detailed
- s 183..... Chief Executive may request removal of fire hazard
- s 249(2)(b) Power to appoint representative in proceedings
- s 251(b)..... Signing of affidavits in legal proceedings
- s 296..... Transitional provisions
- Sch 6 cl 4(4)(a) Check signatories to proposals to constitute a community qualify as electors too detailed
- Sch 7 cl 21(1)–(5) Must call first meeting after election, give notice of meeting to members, chair meeting until Mayor or chairperson is sworn in, give or arrange a general explanation of various acts
- Sch 7 cl 33 Requirements for appointment
- Sch 7 cl 34 Terms of employment
- Sch 7 cl 35 Performance review
- Refer:**..... Bylaws, Employment Issues, Mayor

CODE OF CONDUCT

- s 40(1)(e) Reference to conduct of members in local governance statement
- Sch 7 cl 15 Requirement for and contents of code of conduct
- Refer:**..... Committees, Community Boards

COMMITTEES

- Sch 3..... Reorganisation joint committees
- Sch 4 cl 21, 24..... Commission may delegate to committee
- Sch 7 cl 30 Power of local authority to appoint committees, subcommittees, other subordinate decision-making bodies and joint committees and decision-making
- Sch 7 cl 31 Membership of committees and subcommittees
- Sch 7 cl 32 Delegations to committees and subcommittees
- Refer:**..... Code of Conduct, Community Boards, Governance, Meetings and Procedures

COMMUNITY BOARDS

- s 42(2)(6) Provision of advice by Chief Executive
- s 49..... Establishment in accordance with Schedule 6
- s 50..... Membership consists of members elected under the Local Electoral Act 2001 and appointed by territorial authority
- s 51..... Community board not an unincorporated body, local authority or committee of territorial authority
- s 52..... Role of community boards
- s 53..... Powers of community boards
- Sch 7..... Provisions relating to members, remuneration, conduct and meetings
- Refer:**..... Code of Conduct, Committees, Elected Members, Meetings and Procedures

COMMUNITY OUTCOMES

- s 77(1)(b) Requirements in relation to decisions
- s 91 Process for identifying community outcomes
- s 92 Obligation to report against community outcomes
- s 93(6) Long-term council community plans and community outcomes
- s 107((1)(b)(vi) Policy on partnerships with private sector
- s 279 Transitional provisions LTCCP
- Sch 10 cl 1, cl 2 & cl 15... Community outcomes in LTCCP and annual plan
- Refer:** Consultation, Plans, Partnerships with Private Sector

CONSULTATION

- s 14(1)(b) Local authority to have regard to views of communities
- s 15(2) Triennial agreements to have consultation statement on proposals for new regional council activities
- s 40(1)(h) Local governance statements to have consultation policies
- s 56 Consultation required before council controlled organisation established
- s 78 Council to have regard to community views
- s 82 Principles of consultation
- s 83 Special consultative procedure
- s 84 Basis for consultation on long-term council community plan
- s 85 Basis for consultation on annual plan
- s 86 Basis for consultation on bylaws
- s 87 Basis for consultation on other matters
- s 88 Consultation on changes to significant activity
- s 138 Requirement to consult before disposing of park
- s 148 Special consultation requirements for trade waste bylaws
- Sch 3 cl 37 Consultation on reorganisation proposals by Commission
- Refer:** Community Outcomes, Council Controlled Organisations, Council Organisations, Liquor Bans, Maori, Meetings and Procedures, Plans, Public Notice, Special Consultative Procedure

COUNCIL-CONTROLLED ORGANISATIONS AND COUNCIL-CONTROLLED TRADING ORGANISATIONS

- s 6 Definition and entities that are not council-controlled organisations
- s 7 Exemptions from definition of a council-controlled organisation
- s 16 Regional-council controlled organisations and significant new activities
- s 43(3) Local authority may not indemnify a director for any liability arising from act or omission
- s 56 Consultation required before establishment
- s 57 Policy on appointment and remuneration of directors
- s 58 Role of directors
- s 59 Principal objectives
- s 60 Decisions to be made under authority of board

s 61.....	Goods and services supplied to local authority under purchase contracts
s 62.....	Local authority may not give guarantee in respect of council-controlled trading organisation
s 63.....	Local authority may not lend on favourable terms to councilcontrolled trading organisation
s 64.....	Statement of intent
s 65.....	Local authority to agree to monitor statement of intent
s 66.....	Half-yearly reports
s 67.....	Annual reports
s 68.....	Contents of annual report
s 69.....	Financial statements prepared in accordance with generally accepted accounting practice
s 70.....	Auditor-General is auditor
s 71.....	Protection from disclosure of sensitive information
s 74.....	Application of official information provisions in LGOIMA
ss 124, 130	Obligation on council-controlled organisation that provides water service to continue to provide water services
ss276-7	Transitional provisions
s 298(3)	Use of funds from sale of shares in port company
Sch 8.....	Process for developing and contents of statement of intent
Sch 9.....	Transfer of undertakings
Sch 10(4)	Long-term council community plans
Sch 10(16)	Report on council-controlled organisations in local authority annual report
Refer:	Consultation, Council Organisations, Joint Action/Activities, Special Consultative Procedure

COUNCIL ORGANISATIONS

s 6	Definition and entities that are not council-controlled organisations
s 57.....	Policy on appointment and remuneration of directors
s 65.....	Performance monitoring
Refer:	Consultation, CouncilControlled Organisations, Joint Action/Activities, Partnerships with Private Sector

DECISIONS

s 37.....	Appeals against decisions of Commission
s 60.....	Decisions relating to operation of council-controlled organisations in accordance with statement of intent and its constitution
s 77.....	Requirements in relation to decisions by local authorities
s 78.....	Local authority must give consideration to community views in relation to decisions
s 79.....	Local authority compliance with procedures in relation to decisions
s 80.....	Decisions inconsistent with plans or policies
s 81.....	Decision- making processes and Maori
s 82.....	Consultation and decision-making

s 90.....	Significance policy and decision-making
s 93(6)(d)	Focus for decisions and LTCCP
s 96.....	Effect of resolution adopting LTCCP or annual plan
s 97.....	Decisions taken if provided for in LTCCP
Sch 3(18).....	Decisions in relation to draft reorganisation schemes
Sch 3(28).....	Hearing and determination of appeal on reorganisation schemes
Sch 3(39).....	Decisions on proposals of draft reorganisation schemes
Sch 5	Appeals against decisions of Local Government Commission
Sch 7 cl 24 & cl 25.....	Voting
Sch 7 cl 32.....	Delegations
Refer:	Plans, Policies, Public Notice

DEVELOPMENT CONTRIBUTIONS

s 102(4)(d)	Local authority must adopt a policy on development contributions
s 106.....	Policy
s 198.....	Power to require contributions for developments
s 199.....	Basis on which contribution may be required
s 200.....	Limitations
ss 201-202.....	Policy
s 204.....	Use of contributions
s 205.....	Use for contributions for reserves
s 206.....	Alternative uses
s 207.....	Power to use money collected and held under Local Government Act 1974 or Resource Management Act 1991
s 208.....	Unpaid contributions
s 209.....	Refund of money and return of land if development does not proceed
s 210.....	Refund of money or return of land if not applied to specified reserve purposes
s 211.....	Relationship with Building Act 1991 and the Resource Management Act 1991
s 290.....	Transitional provisions
Sch 13	Methodology for calculating development contributions
Refer:	Financial Policy Issues

ELECTED MEMBERS

s 43.....	Certain members indemnified
s 46.....	Liability for loss
s 47.....	Members may be required to pay costs
Sch 7 cl 1.....	Disqualification of members
Sch 7 cl 2.....	Ouster of office of member
Sch 7 cl 4.....	Member's right to resign
Sch 7 cl 5.....	Extraordinary vacancies
Sch 7 cl 14.....	Declaration by member

Sch 7 cl 16 Members to abide by standing orders

Refer:..... Remuneration

EMPLOYMENT ISSUES

s 42(2)(g) Employment of staff by Chief Executive

s 42(2)(h) Negotiation of employment terms

Sch 7 cl 36 Local authority required to be a good employer and ensure proper standards

Sch 7 cl 36(2)(a) Working conditions

Sch 7 cl 36(2)(b) Equal employment opportunities

Sch 7 cl 36(2)(c) Impartial selection

Sch 7 cl 36(2)(d) Recognition of Maori

Sch 7 cl 36(2)(e) Opportunities for enhancement

Sch 7 cl 36(2)(f) Recognition of ethnic and minority groups

Sch 7 cl 36(2)(g) Recognition of women

Sch 7 cl 36(2)(h) Recognition of disabled persons

Sch 7 cl 36(3) Preference to person best suited

Refer:..... Chief Executive

EMPOWERMENT

s 3 Purpose of Act

s 10..... Purpose of local government

s 11..... Role of local authority

s 12..... Status and Powers

s 14..... Principles relating to local authorities

ENFORCEMENT

s 162..... Injunctions and breach of bylaws

s 163..... Removal of works in breach of bylaws

ss 164-168 Seizure of property

ss 171-173 Powers of entry

s 174..... Authority for an officer to act

s 175..... Power to recover for damage by wilful or negligent behaviour

s 176..... Costs of remedying damage arising from breach of bylaw

s 177..... Appointment of enforcement officer

s 178..... Enforcement officers may require certain information

s 179..... Contracting out administration of enforcement

s 180..... Enforcement and administration of regional council bylaws

Refer:..... Bylaws, Liquor Bans, Regional Councils

FINANCIAL POLICY ISSUES

s 102(4) Funding and financial policies

- s 103(2) Sources for funding
- s 104..... Liability management policy
- s 105..... Investment Policy
- Refer:**..... Development Contributions, Maori, Rates, Special Consultative Procedure

GOVERNANCE

- s 39..... Governance principles
- s 40..... Local governance statements, requirement and contents
- s 41..... Governing bodies of local authorities, membership and role
- s 274..... First local governance statement
- Sch 7 cl 32..... Delegations to committees, subordinate decision-making bodies, community boards, members and officers
- Refer:**..... Local Electoral Act 2001 for size and election of governing body

JOINT ACTION/ACTIVITIES

- s 6(2) Council-controlled organisations and council organisations
- s 12(6) Joint activities between councils
- s 137..... Partnerships and joint ventures
- Sch 3 Joint committees and reorganisations
- Sch 7 cl 30..... Powers to appoint joint committees
- Refer:**..... Consultation, Council-Controlled Organisations, Council Organisations, Water

LIQUOR BANS

- s 147..... Bylaws for liquor
- s 169..... Powers of arrest, search, and seizure in relation to liquor
- s 170..... Conditions relating to power to search
- s 176..... Costs of remedying damage arising from breach of bylaw
- s 177..... Appointment of enforcement officer
- s 314..... Transitional provisions
- Refer:**..... Bylaws, Consultation, Enforcement

LOCAL GOVERNMENT COMMISSION

- s 16(7) Minister to seek and consider Commission’s advice on significant new activities proposed by regional council
- s 25(2) Secretary to consult Commission on Reorganisation Scheme
- s 26..... Power to amend reorganisation schemes
- s 27..... Application to be called city council or district council
- s 30..... Functions and powers
- s 31..... Commission reports to Minister on local government matters
- s 32..... Commission to review Local Government Act 2002 and Local Electoral Act 2001 in 2007
- s 33..... Membership

s 34.....	Commission is a Commission of Inquiry
s 35.....	Evidence
s 291(2)	Appeals on reorganisation proposals commenced under S37ZP of Local Government Act 1974
s 307.....	(Transitional)Existing proceedings with Commissions
Sch 3	Reorganisation of Local Authorities
Sch 4	Provisions relating to Local Government Commission and its proceedings
Sch 5	Appeals against decisions of Local Government Commission
Sch 6	Constitution of communities

MAORI

s 4	Treaty of Waitangi
s 14(1)(d)	Opportunities for Maori to contribute
s 33.....	Local Government Commission to have one member with knowledge of tikanga Maori and appointed after consultation with the Minister of Maori Affairs
s 40(1)(d)(i)	Local governance statements and Maori
s 77(1)(c)	Maori and decision-making
s 81.....	Contributions to decision-making processes
s 108.....	Remission and postponement of rates on freehold land
Sch 10(1)(e)(ii)	Maori and community outcomes
Sch 10(5)	Development of Maori capacity
Sch 11	Matters relating to rates relief on Maori freehold land
Refer:	Consultation, Plans, Decisions (also refer to Local Electoral Act for provisions for establishment of Maori wards and constituencies)

MAYOR

s 41(4)	Mayor is Justice of the Peace during term of office
s 165(4)(b)	Mayor is not a judicial officer for purposes of issuing a warrant authorising an enforcement officer to enter private property
s 249(2)(b)	Mayor may appoint an officer to represent the local authority in legal proceedings
s 250.....	Mayor may be served documents in legal proceedings that must be served on local authority
Sch 7 cl 14(2)(b)	Mayor may witness declaration of member
Sch 7 cl 22(1)(b)(i), 22(2)(b).....	Mayor may call an extraordinary meeting
Sch 7 cl 24(1)(b)	Mayor has a deliberative vote but not casting vote
Sch 7 cl 26(1)	Mayor presides over local authority meetings
Sch 15 cl 26	Mayor may not exercise power whilst a Commissioner is in office
Refer:	Chief Executive, Meetings and Procedures

MEETINGS AND PROCEDURES

s 83(1)(j)	Meetings are to be held in public to deliberate on proposals prepared under the special consultative procedure unless exempted by Part VII of LGOIMA
Sch 7 cl 17	Election of deputy mayor or deputy chairperson

Sch 7 cl 18..... Power to remove chairperson, deputy chairperson or deputy mayor

Sch 7 cl 19, 20.....	General provisions for meetings including members' right to attend, notification of meetings, held and conducted in accordance with LGOIMA
Sch 7 cl 21	First meeting after election including calling and notice of meeting, chairing, business to be conducted
Sch 7 cl 22	Extraordinary meetings including how meeting may be called and notice requirements
Sch 7 cl 23	Quorums for local authority and committee meetings
Sch 7 cl 24	Voting at meetings
Sch 7 cl 26	Chairperson of meetings
Sch 7 cl 27	Standing orders for meetings
s 294.....	Standing orders transitional arrangements
Refer:	Code of Conduct, Committees, Consultation, Decisions, Governance, Mayor (see also Part VII of LGOIMA)

MINISTER'S POWERS AND REVIEWS

s 16.....	Minister to make binding decision on regional council entering into new activity
s 18.....	Minister to exercise specific responsibilities, powers and duties
s 22.....	Minister is territorial authority in certain cases
s 31.....	Minister may request Local Government Commission to review any matter
s 254.....	Minister may appoint review authority
s 255.....	Minister may appoint Commissioner or call an election
s 256.....	Minister may appoint person to act on behalf of local authority or initiate a review
Sch 1	Acts Minister is responsible for
Sch 15.....	Powers of Minister
Refer:	Local Government Commission

OFFICIAL INFORMATION

s 40(1)(n).....	Processes for requests for official information included in local governance statements
s 71.....	Protection from disclosure of sensitive information by council-controlled organisation
s 74(1)	Parts I-VI Local Government Official Information and Meetings Act 1987 apply to council-controlled organisations
s 74(2)	Ombudsmen Act 1975 applies to council-controlled organisations
s 82(4)(d)	Principles of consultation and LGOIMA provisions relating to official information
Sch 7 cl 15(2)(b)(i)	General explanation of LGOIMA must be included in code of conduct

OTHER ACTS

s 32.....	Local Electoral Act 2001
s 74(1), Sch s 7, 15.....	Local Government Official Information and Meetings Act 1987
s 74(2)	Ombudsmen Act 1975
ss 103, 106, 148(6), 195, 197, 198, 200, 202, 206, 207, 208, 209, 211, 212, 222, 225, Sch s 3, 14	Resource Management Act 1991

s 114.....	Receiverships Act 1993
s 115(5)	Rating Powers Act 1988
ss 121(2), 180(2)(b)	Public Finance Act 1989
s 122.....	Securities Act 1978
ss 128(1), 148(6)	Health Act 1956
ss 131, 132, 133.....	Local Electoral Act 2001
ss 138, 139, 205.....	Reserves Act 1977
s 144.....	Bylaws Act 1910
ss 146(c), 183.....	Forest and Rural Fires Act 1977
ss 147, 169	Sale of Liquor Act 1989
ss 152, 195, 198, 200, 209, 211, 220, 222, 225	Sch 14 Building Act 1991
s 155.....	NZ Bill of Rights Act 1990
ss 181, 186, 189, 190, Sch 9	Public Works Act 1981
ss 197, 205	Te Ture Whenua Maori Act 1993
ss 208, 220	Statutory Land Charges Registration Act 1928
s 212.....	Misuse of Drugs Act 1975
s 212, Sch 7.....	Crimes Act 1961
s 212.....	Arms Act 1983
ss 213, 214, 219.....	District Court Rules Act 1992
ss 213, 219	District Courts act 1947
ss 222, 223	Fencing Act 1978
s 229.....	Fire Service Act 1975
s 241, 244, 245	Summary Proceedings Act 1957
ss 249, 251, Sch s 3, 10 ...	Local Government (Rating) Act 2002
s 257, Sch 15.....	Local Electoral Act 2001
s 258, Sch 3.....	Civil Defence Emergency Management Act 2002
s 264.....	Personal Property Securities Act 1999
s 265.....	Receiverships Act 1993
ss 268, 309	Interpretations Act 1999
s 271.....	Harbours Act 1950
ss 281, 283	Chatham Islands Council Act 1995
s 299, 306.....	Local Authorities Loans Act 1956
s 303.....	Public Bodies Leases Act 1969
s 305.....	Local Authorities (Employment Protection) Act 1963
s 310.....	Transit New Zealand Act 1989
s 312.....	Local Government (Elected Member Remuneration and Trading Enterprises) Amendment Act 2001
s 312.....	Greytown District Trust Lands Act 1979
s 312, Sch 15.....	Fees and Travelling Allowances act 1951

Sch 1	Bylaws Act 1910, Land Drainage Act 1908, Litter Act 1979, Local Electoral Act 2001, Local Government Act 1974, Public Bodies Leases Act 1969, Rangitaiki Land Drainage Act 1956, Rates Rebate Act 1973, River Boards Act 1908
Sch s 3, 9.....	Land Transfer Act 1952
Sch s 3, 9.....	Goods and Services Tax Act 1995
Sch 3.....	Injury Prevention, Rehabilitation and Compensation Act 2001
Sch s 3, 9.....	Income Tax Act 1994
Sch 7.....	Electoral Act 1993
Sch 7.....	Mental Health (Compulsory Assessment and Treatment) Act 1992
Sch 7.....	Remuneration Authority Act 1977
Sch 7.....	Regulations (Disallowance) Act 1989
Sch 7.....	Privacy Act 1993
Sch 7.....	Local Authorities (Members' Interests) Act 1968
Sch 7.....	Secret Commissions Act 1910
Sch 7.....	Securities Act 1978
Sch 15.....	Commissions of Inquiry Act 1908
Sch 15.....	State Sector Act 1988
Sch 15.....	Government Superannuation Fund Act 1956

PARTNERSHIPS WITH PRIVATE SECTOR

s 102(4)(e)	Adoption of policy on partnerships with private sector
s 107.....	Content of policy on partnerships with private sector
s 137.....	Partnerships for provision of water services
s 281(2)(d) 2003/4.....	Annual plan to include partnership policy
Refer:	Community Outcomes, Council Controlled Organisations, Council Organisations, Joint Action/Activities, Water

PLANS

s 6	Definitions of annual plan and long-term council community plan
s 16.....	Significant activities proposed by regional council
s 17(4).....	Transfer of responsibilities included in annual plans or draft LTCCP
s 56.....	Consultation on establishment of council-controlled organisation in context of long-term council community plan
s 80.....	Decisions inconsistent with plans
s 84.....	Special consultative procedure in relation to LTCCP
s 85.....	Special consultative procedure in relation to annual plans
s 87.....	Special consultative procedure in relation to other plans
s 93.....	Long-term council community plans
s 94.....	Audit of LTCCP
s 95.....	Annual plan
s 96.....	Effect of resolution adopting LTCCP or annual plan
s 97.....	Certain decisions to be taken only if provided for in LTCCP

s 100(2)	Balanced budgets and LTCCP
s 101	Financial management and LTCCP
s 102(3)	Funding and financial policies may be adopted in LTCCP
s 102(6)	Amendments to funding and financial policies in LTCCP only
s 111	Information included in any plan must be in accordance with GAAP
s 125	Water and sanitary assessments may be included in LTCCP
s 128	Relationship of sanitary services assessments to Waste Management Plan under Part XXXI Local Government Act 1974
s 141(1)(b)	Endowment property and draft LTCCP
s 279-280	Transitional provisions for LTCCP
s 281	Transitional provisions for annual plans
s 282	Transitional provisions for certain decisions in annual plan
s 284	First annual plan
s 286	Transitional Provisions for waste management plan under Part XXXI Local Government Act 1974
Sch 10	Contents of long-term council community plans, annual plans and reports
Refer:	Community Outcomes, Consultation, Decisions, Maori, Policies, Public Notice, Special Consultative Procedure

POLICIES

s 5	Definition of development contributions policy
s 40(1)(k)	Equal employment opportunities
s 57	Policy on appointment of directors
s 80	Decisions inconsistent with plans or policies
s 90	Significance policy
s 102	Funding and financial policies
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s 105	Investment policy
s 106	Development or financial contributions
s 107	Policy on Partnerships with Private Sector
s 108	Policy on remission and postponement of rates on Maori freehold land
s 109	Rates remission policy
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s 201	Contents of development contributions policy
s 202	Contents of schedule to development contributions policy
s 275	First policy on appointment of directors
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s 281	Annual plan and policies
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- s 5 Definition
- s 83(1)(e-j) (2) Special consultative procedure
- s 148(2)(3)(5)..... Trade waste bylaws
- s 157..... Public notice of bylaws
- s 170..... Conditions relating to power of search for liquor
- Sch 3 cl 12(3)(a) Public notice of draft reorganisation scheme
- Sch 3 cl 18(2)(b) Decision in relation to draft reorganisation scheme
- Sch 3 cl 30 Commission’s decision on appeal for reorganisation
- Sch 3 cl 37(1)(b) Consultation on proposal by commission for reorganisation
- Sch 3 cl 39 Notification of decision not to proceed with reorganisation scheme
- Sch 3 cl 43 Notification of draft reorganisation scheme inviting submissions
- Sch 3 cl 46 Notification of approved reorganisation scheme
- Sch 3 cl 47 Notification of reorganisation poll
- Sch 3 cl 52 Notice of result of poll on reorganisation
- Sch 6 cl 3 Public notice of meeting re proposal for constitution of community
- Sch 6 cl 5 Notices and constitution of communities
- Sch 15 cl 17 & cl 25 Application of public notice requirements where commission appointed by Minister
- Refer:**..... Consultation, Decisions, Plans, Policies, Representation Reviews, Special Consultative Procedure

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- s 101..... Financial management
- s 102..... Funding and financial policies
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- s 108..... Policy on remuneration and postponement of rates on Maori freehold land
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- Sch 10 cl 2(2), 10, 13
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- s 5 Definition
- s 16..... Proposed significant new activities
- s 17..... Transfer of responsibilities
- s 23..... Description of local government
- s 24..... Power of regional councils assumed by territorial authorities under a reorganisation proposal
- s 41(1)(a) Members elected in accordance with Local Electoral Act 2001
- s 41(1)(b) Chairperson elected in accordance with Sch 7 cl 25

- s 41(4) Chairperson is Justice of the Peace during term of office
- s 149..... Power to make bylaws
- s 161(1)(a)..... Transfer of bylaw making powers
- s 180..... Enforcement and administration of bylaws
- s 303(1) Regional council ceases to be leasing authority under the Public Bodies Leases Act 1969
- Sch 7 cl 14(2)(b) Chairperson may witness declaration of member
- Sch 7 cl 17(2) Election of deputy chairperson
- Sch 7 cl 18..... Power to remove chairperson and deputy chairperson
- Refer:** Bylaws, Empowerment, Enforcement, Plans, Policies, Reorganisation, (Schedule 2 List of regional councils/boundaries)

REMUNERATION

- s 57(1)(c)..... Remuneration of directors to council organisations
- s 312..... Savings and validation in respect of remuneration, allowances, and expenses of elected members
- Sch 4 cl 7..... Commission members remuneration
- Sch 7 cl 6-13 Remuneration payable to mayors, deputy mayors, chairpersons and deputy chairpersons and members of local authorities and community boards
- Sch 10 cl 18..... Annual report must include remuneration information
- Sch 15. cl 6..... Remuneration for review authority
- Sch 15 cl 18(3) Remuneration for commission to oversee local authority
- Sch 15 cl 29..... Commissioner or Deputy Commissioner remuneration and expenses
- s 312..... Savings and validation in respect of remuneration, allowances and expenses of elected members
- Refer:** Chief Executive, Committees, Reports

REORGANISATION

- s 24(1)(d) Reorganisation order for boundaries of region or district
- Sch 2 Part 3 (1) Regions
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- Sch 2 Part 3 (5) Adjustments
- Sch 3 cl 2(2) Reorganisation proposals for boundary changes must have plans
- Sch 3 cl (2) Appropriateness of boundaries
- Refer:** Consultation, Representation Reviews

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- s 31..... Report to Minister on matters relating to local government
- s 32..... Report on review of operation of Act and Local Electoral Act 2001
- s 44..... Report by Auditor-General on loss incurred by local authority
- s 45(1) Local authority to respond to Auditor-General on report
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s 52(b).....	Community boards to consider and report on matters referred by local authority
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Sch 10(15)	Local authority’s annual report information
Sch 10(16)	Council-controlled organisation’s annual report
Sch 10(17)	Financial statements annual report
Sch 10(18)	Remuneration issues
Sch 10(19)	Severance payments
Sch 10(20)	Statement of compliance
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s 40(1)	Information on representation arrangements including option for Maori wards and constituencies to be included in local governance statement
s 49(1)(c)	Resolution on representation review may provide for establishment of community board(s)
Sch 6(9)	Resolution on representation review may include union, alteration or abolition of communities
Refer:	Local Electoral Act 2001 for detailed provisions on representation reviews

ROADS

s 147(1)(b)(i)	Road is a public place for liquor control purposes
s 183(5)	Removal of fire hazard on land if danger to road
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s 5	Definition of special consultative procedure
s 17(4)(a)	Use for transfer of responsibilities between councils

s 56.....	Use for establishment of council-controlled organisation
s 83.....	What is a special consultative procedure
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ss 85, 95	SCP use in Annual plan
ss 86, 159	SCP use in bylaws
s 87.....	Other uses of SCP
s 88.....	SCP and significant activities
s 90(4)	Significance policy
s 102.....	Funding and financial policies
s 125(3)	Assessments of water and sanitary services
s 150(3)	Fees or charges
s 156.....	Use of SCP for making bylaws
s 159.....	Use of SCP for review of bylaws
s 282.....	Transitional provisions for annual plan
s 287.....	Transitional provisions for plans or proposals started under the Local Government Act 1974
Sch 15 cl 17(3)	Commission's powers
Refer:	Bylaws, Consultation, Council Controlled Organisations, Financial Policy Issues, Plans, Policies, Public Notice, Water

TRANSITIONAL ISSUES

s 273.....	First triennial agreement
s 274.....	First local governance statement
s 275.....	First policy on appointment of directors
s 276.....	First statement of intent, report and accounts of existing LATES
s 277.....	First statement of intent of other council-controlled organisations
s 278.....	First policy on significance
s 279.....	Long-term council community plan
s 280.....	LTCCP for period beginning on 1 July 2006
s 281.....	Annual plan
s 283.....	Annual reports
s 284.....	First annual plan
s 285.....	First water and sanitary services assessments
s 286.....	Waste management plan
s 287.....	Special consultative procedure
s 289.....	Special Orders
s 290.....	Development contributions
s 291.....	Reorganisation proposals
s 292.....	Existing security interests
s 293.....	Bylaws
s 294.....	Standing orders

s 295..... Communities and community boards
s 296..... Chief Executive
s 297..... Members of Local Government Commission
s 298..... Community Trusts

WATER

s 124..... Definitions
s 125..... Requirement to assess water and other sanitary services
s 126..... Information for water services assessment
s 127..... Information for assessment of sanitary services
s 128..... Process for making assessments
s 129..... Extent of information to be included in assessments
s 130..... Obligation to continue to provide water services
s 131..... Closing down or transferring small water services
s 134..... Criteria for closure of water services
s 135..... Criteria for transfer of water services
s 136..... Restrictions on contracts for operation of water services
s 137..... Restrictions on partnerships involving the private sector
s 181..... Construction of works on private land
s 182..... Power of entry to check water services
s 192..... Water not be wasted
s 193..... Power to restrict supply of water
s 194..... Power to stop supply of water
ss 224-225 Offences
s 227..... Offences relating to water metres
s 228..... Offences relating to water races
s 263..... Amendments relating to Watercare Services Ltd’s functions
s 285..... First water assessment by 30 June 2005
Sch 10(3) Summaries of water assessments in LTCCP
Refer:..... Enforcement, Joint Action/Activities, Partnerships with Private Sector,
Special Consultative Procedure

APPENDIX B OTHER RESOURCES

Reflecting the scale of the changes made to local government's legislative framework, a range of resources has already been prepared to assist councils with implementation and best practice.

Local Government KnowHow Publications⁸

- Rating
- Governance
- Decision-making
- The Local Government Act 2002: An Overview
- Regulation and Enforcement under the Local Government Act
- Assessments of Water and Sanitary Services
- Development Contributions under the Local Government Act (to be released in September 2003).

Guidelines to Assist Local Authorities in Undertaking Representation Reviews, (2003) Local Government Commission, Wellington.

Representation Arrangements Under the Local Electoral Act 2001, Good Practice for local authorities. Published by the SOLGM Electoral Working Party, SOLGM, Box 5538, Wellington.

In addition to the resources listed below we recommend that you monitor the *Local Government New Zealand*, DIA and SOLGM websites for information on new resources that each agency might have commissioned and published. The websites are specified below:

<i>Local Government New Zealand</i>	www.lgnz.co.nz
Dept of Internal Affairs	www.dia.govt.nz
SOLGM	www.solgm.org.nz
Local Government online	www.localgovt.co.nz
OAG	www.oag.govt.nz

⁸ Local Government KnowHow Guides can be purchased from *Local Government New Zealand*, PO Box 1214, Wellington.

APPENDIX C STATUTORY DEADLINES AND TRANSITION PROVISIONS

DEADLINES

By 1 July 2003

Significance Policy

Policy on the Appointment and Remuneration of Directors to Council Organisations

Statements of Intent for any CCO that was a LATE under the Local Government Act 1974

A 'first' long-term council community plan (if the local authority decides to prepare this in preference to an annual plan under section 281)

As Soon as Practicable After 1 July 2003

A Code of Conduct

By 30 September 2003

If the local authority decides not to prepare a 'first' long-term council community plan then it must prepare an annual plan that contains:

- a policy on significance
- a liability management policy
- an investment policy
- a policy for rates relief on Maori freehold land
- a revenue and financing policy
- a funding impact statement
- policies on financial contributions and development contributions
- a policy on partnerships with the private sector
- a summary of the current long-term financial strategy or an updated long-term financial strategy (if this would be the fourth year of operation of an long-term financial strategy).

By 31 December 2003

A local governance statement

A first triennial agreement, negotiated in conjunction with all of the local authorities in the region.

By 1 July 2004

Statements of intent for any CCO that was not a LATE under the Local Government Act 1974.

Either a 'first' long-term council community plan (for those councils that elected to prepare a section 281 annual plan in 2003) or an annual plan under section 95 (for those councils that decided to prepare a 'first' long-term council community plan in 2003).

By 1 July 2005

Assessments of Water and Sanitary Services

Waste Management Plan (if one has not already been adopted)

By 1 July 2006

A long-term council community plan (including information on community outcomes)

By 1 July 2008

All bylaws in existence on 1 July 2003 must have been reviewed by this date

TRANSITION

The following parts of the Act took effect the day after royal assent (i.e. 25 December 2002):

- the requirements of Part 6 relating to planning, decision-making, reporting and financial management (this allows local authorities the opportunity to start the work necessary produce long-term council community plans and the like). Schedules 10 and 11 relating to the contents of the various plans and reports, and the provisions regarding Maori freehold land also took effect at this time
- the obligations on local authorities in subpart 2 of Part 7 of the Act as they relate to obligations to maintain water services, and to disposal of parks
- the repeal of the 2001 law on liquor bans in public places
- the transitional provisions relating to the 'first' long-term council community plan and the annual plan.