

Assessing the opportunities for local government in the Future for Local Government Panel's interim report: *Ārewa ake te Kaupapa*

Draft policy analysis prepared by Dr Mike Reid on 6 October 2021

Background

Three months after its establishment, the Future for Local Government (FFLG) Panel has released its interim report, *Ārewa ake te Kaupapa*. This report sets out the range of matters that will be addressed in its final report and recommendations on the future for local government. LGNZ has prepared this paper to help councils engage with the review and, in particular, highlight pathways and opportunities to ensure the review addresses the issues of most concern and results in a transformative future for local government in Aotearoa New Zealand.

The interim report is essentially a scoping report, setting out the Panel's view of the major issues that it needs to address for its substantive report and recommendations. As required by the terms of reference, the interim report was presented to the Minister of Local Government for her views and approval ahead of its public release.

The report consists of two main sections. The first, "Context for change" introduces a comprehensive list of factors that, taken together, in the Panel's view justifies the case for change to what local government does and how it works. The second, "Where to from here?", sketches some very broad (and a few very specific) options for what that local government future might look like. Amongst the more specific options is a section on "early opportunities". These highlight current developments, such as the health reforms, that might offer opportunities for greater local government involvement.

The opportunity

In relation to local government, reviews tend to be very specific, frequently examining narrow matters such as funding or financial adequacy or efficiency. The FFLG review is not confined by a narrow problem definition. It is much more open-ended than previous reviews and has the potential to cover a much broader canvas, providing local government with a real opportunity to identify the most important issues and how they should be resolved. The Panel itself has acknowledged this broad scope, as the following statement highlights:

(The review) is an opportunity to look beyond fixed structures and roles, to design a system of local governance that is built on relationships; is agile, flexible and sustainable enough to meet future challenges, even those that are large and unpredictable; has the right mix of scale and community voice; harnesses the collective strength of government, iwi, business, communities and others; maximises common benefit and wellbeing; and creates the conditions in which communities can thrive into future generations.

Given prominence in the quote as well as in the substance of the report, is the concept of local "governance" rather than local "government" *per se*. In fact, more attention is given in the paper to the processes of local governance and how it might be strengthened than to the institution of local government itself. The discussion on local governance is important to the achievement of community outcomes and wellbeing and takes us back to the original Local Government Act 2002 (LGA) that required councils to facilitate local governance processes. Before it was changed in 2010, the LGA 2002 legitimised councils' central role in local governance.

This shifting focus, away from local governance and wellbeing to more efficient services, reflects the degree to which local government is essentially a "taker" of the policies and programmes that central governments decide to impose. In other words, the major challenges that councils face are less to do with the capability and capacity of local government and more to do with deficiencies in

the legislative framework that gives them powers. We look forward to seeing these issues examined in depth in the Panel's final report.

Not just another stakeholder

While *Ārewa ake te kaupapa* acknowledges the importance of local governance, it tends to see councils as just one amongst a range of local organisations, such as not-for-profit groups and Iwi/Māori.

More attention could be given to the authorising environment. Authorising environment refers to the body or organisation which has the mandate to give effect to the people's will and which gives legitimacy to the subsequent governing processes. To avoid local governance becoming a competition for public funding, the local authority, with its democratic mandate, that needs to step up as the mediating organisation.

The role of councils is not just to promote wellbeing, but to act as critical (and democratically guided) mediators for communities as they debate and decide what is important for them, within the bounds of a national direction framework. Councils are able to do this because they are an established tier of government in their own right, but are limited in how far they can act by the authorising environment.

LGNZ will do more work on the role councils and other organisations play in local governance to contribute to the Panel's final report and assist councils in their submissions.

Context for change

The Panel argues that change is needed in order to create thriving communities, protect the delicate balance of natural ecosystems, build towns and cities that people love, support social cohesion, reflect identity, create belonging, provide leadership and coordination, and effectively manage community assets into the future. It then reinforces the case for change by highlighting the following, that:

- councils lack the levers to fulfil their "wellbeing" purpose;
- the framework fails to encourage collaboration or innovation;
- the institution of local government fails to embody Te Tiriti o Waitangi;
- some local authorities are facing significant financial and capacity challenges;

All are broad claims and many in local government will agree with some, if not all (although the conclusion that councils fail to innovate appears unjustified and unwarranted). However, these are not necessarily issues that can be resolved by change at the local level alone. Almost all of them reflect failures by successive governments at the national level, which have not given councils the necessary regulatory tools, necessary funding sources, legislative framework nor a sufficiently empowering authorising environment that encourages responsiveness.

It would be helpful if submissions on this section provided examples of the way in which successive government policies have impacted negatively on communities (creating unfair expectations on councils) and the way in which the existing statutory framework constrains councils' ability to respond. It will also be helpful to the Panel to identify governing approaches that take a "bottom-up" and "place-based" approach to identifying and meeting local needs – approaches able to provide the information needed for more effective health, social and education services.

Trends in wellbeing

The sub-section on trends and local wellbeing concludes with a series of observations about what this might mean for local governance. The trends highlighted include climate change and its impact

on communities; susceptibility to natural hazards and other shocks the impact of demographic change, and the impacts of science and technology. It is not at all clear, other than climate change, that these trends reflect anything other than business as usual, being just as relevant on multiple occasions over the 180 years of our local government history. The final report would benefit by a richer and more bespoke description of the trends likely to affect wellbeing in the future, such as affordable housing, demography and inequality.

The Panel's proposed solution for addressing these trends involves a local government that practises coordinated, agile, sustainable and anticipatory governance. This, however, could be undermined by the proposed changes to the RMA. These are likely to reduce many, if not most, of the decision-making powers that city and district councils require if they are to exercise anticipatory governance. The removal of the communities' powers to create sustainable and local carbon futures for their towns and cities needs a more comprehensive examination and must be considered in depth in the final report. It is an area that councils may want to address in their responses.

Similarly, the sub-section on "the main pressures on local government" relies too much on anecdote and would benefit from more thoughtful council feedback. For example, the suggestion that small councils lack capability, and that such a lack can only be addressed through amalgamation, needs to be closely examined and is an issue that councils might like to address in their submissions. International evidence among OECD countries shows extensive evidence of where councils have innovated around the challenge of scale without having to resort to amalgamation. These include shared services, outsourcing, and franchising etc., and many of these arrangements are employed by councils in New Zealand today.

Place of Te Tiriti

The Minister of Local Government has asked the Panel to consider the place of local government in the context of Te Tiriti o Waitangi as well as relationships with local Iwi/Māori organisations. The Panel is aspirational in its view that:

In a fully functioning Treaty relationship, local government and iwi are natural partners: both are intimately concerned with wellbeing of people and places, and both have intergenerational responsibilities. With new approaches, they can become powerful allies in creating conditions for mutual benefit and shared prosperity that endure into the future.

The discussion highlights both the RMA and three waters as critical areas for Iwi/Māori interest in local government. However, the significance of their potential removal from direct democratic influence is not developed; something that could be helpfully addressed through council submissions. Without a direct involvement in the management of three waters and the environment, the level of interest by Iwi/Māori in forming relationships with local government is likely to vary considerably.

The report makes it clear that local government is not the Treaty partner and reinforces the understanding, also held by LGNZ, that the Crown's Te Tiriti obligations flow down to councils and any other institutions that act on its behalf. We would note, however, that outside regulatory roles, there are very few delegated or devolved functions that councils actually undertake. The fact that many in the community, including Māori citizens, confuse local government with the Crown reflects on the poor state of civics education in our schools – an issue for the Panel's final report. Lack of understanding about the nature of local government, and especially its constitutional role, is not just limited to individuals. Crown agencies can also get it wrong; for example, the Waitangi Tribunal's suggestion that functions be concentrated in fewer councils to reduce the consultation burden on

Iwi overlooks the democratic rationale for local government. However, its suggestion that funding be made available to build Māori/Iwi capacity should be supported.

The discussion is not helped by the failure of the interim report to fully describe the nature of local government as a legitimate form of government. Much of the discussion sees councils only in expedient terms, as convenient providers of services, yet councils are critical to the fulfilment of Article 3 of Te Tiriti o Waitangi. They are critical mechanism for the exercise of Māori citizenship rights. Amongst its functions, local government gives effect to the rights that Māori hold as citizens and provides a forum through which matters that Māori citizens have in common with other citizens can be addressed – working with other local citizens to make decisions about the wellbeing of the collective. This point underscores a fact that is often overlooked in this area, namely that Māori citizens are also part of the community, rather than being wholly distinct from it.

Māori interests that are not shared by other citizens should be addressed through “by Māori and for Māori” mechanisms – and councils have very broad powers to delegate and devolve responsibilities, as well as enter into agreements and contracts, to facilitate such processes. The review would benefit from council feedback highlighting such examples.

Where to from here?

Interestingly, having spent more than half the report (30 pages) making the case for change, the section of the paper dealing with the question, “where to from here?” runs to a mere four and half. Yet it is a section of the paper that, more than any other, is likely, and deserves, to attract interest from local authorities.

The answer to the question “Where to from here?” is framed as “rethinking local governance”. This is extremely important to councils as their ability to promote wellbeing and influence community outcomes depends not only on themselves but other organisations in our towns and cities, as well as on citizens themselves. This case is well made by the Panel. What is not addressed with the same level of detail, however, are the contributions of central government agencies and departments, and citizens themselves. (In fact citizens are largely invisible throughout the 60 pages leading to the impression that governance is very much a technocratic exercise.)

Noting the Panel’s statement *“It is an opportunity to look beyond local government and consider local governance, encompassing all organisations with rights and responsibilities to guide their communities”*, when making submissions councils might like to reflect on the way in which they work alongside the other organisations that also contribute to wellbeing and local governance processes, including the impact of their democratic mandate. The Panel will benefit from actual examples of co-governance and co-production at the local level, including collaborative approaches with Iwi/Māori.

To give added value to the final report it is important that councils address the role of and value of citizen engagement, and the way in which local government’s purpose to enable citizen participation is given effect to. Similarly, they could examine the extremely influential role (given New Zealand’s high level of fiscal centralisation) that government agencies have on local outcomes. The FFLG review will benefit from suggested mechanisms for aligning central government expenditure in localities with the visions and priorities agreed through the process of local governance.

Priority questions

The interim report begins with a series of priority questions which underpin the discussions in both the context and opportunity sections. It is important to note that the Panel explicitly frames its task as “designing the most effective system of local governance for New Zealand’s future”, not the most

effective system of local government. These are not mutually exclusive and it will be up to councils and their representative bodies to ensure that the Panel addresses both in its considerations. They questions are:

1. How should the system of local governance be reshaped so it can adapt to future challenges and enable communities to thrive?
This question is concerned less with local government than with the way in which local governance operates and what is required to both enhance its effectiveness and how the processes will embody the Treaty partnership – not something that is easily understood given that governance by definition lives outside both the public and private sectors. Nor is it entirely clear, yet, how central government can hope to influence the nature of governance in the myriad of communities that make up Aotearoa New Zealand.
2. What are the future functions, roles and essential features of New Zealand’s system of local government?
This is the question that most councils, in the first instance, will focus on. The Panel’s statement “This will require determination of which current functions should be retained and which should not; what new functions and roles local government should take on (for example, in housing, health or other social service provision) will be welcome. It is important that the Panel hears from councils on this question.
3. How might a system of local governance embody authentic partnership under Te Tiriti o Waitangi, creating conditions for shared prosperity and wellbeing?
The Panel notes that it sees local government and iwi as having the potential to operate as natural partners given that they are both intimately concerned with places and communities. It is explicit in its desire to know more and to engage with Iwi/Māori and local governments on how partnerships and co-governance arrangements can be developed in order to meet shared objectives for prosperity and wellbeing.
4. What needs to change so local government and its leaders can best reflect and respond to the communities they serve?
The scope of work envisaged to answer this query, namely better community involvement, inclusiveness and stronger leadership, is ultimately totally inadequate to the task. The real questions to be asked in relation to this priority should deal with the way in which the existing system of local government supports its elected representatives, the potential barriers to entry and whether or not the existing framework enables elected members to be “good local politicians”. Contributions from councils would be welcome on these topics.
5. What should change in local governance funding and financing to ensure viability and sustainability, fairness and equity, and maximum wellbeing?
The Panel’s aspirations are excellent, in particular their commitment, following recommendations on functions and roles, to consider whether or not councils have the right mix of funding and financing tools available to meet their responsibilities in the long term. It is also pleasing that they intend to examine the principled basis on which funding decisions are made, such as the balance of the beneficiary and exacerbator pays principles alongside others, for example the impacts on local autonomy.

Process from here

During the development of their final report and recommendations the Panel intends to offer online and in-person workshops and wānanga, webinars, online surveys and crowd sourcing opportunities,

stakeholder conversations, and local government meetings, so that we encourage widespread participation.

Key Panel period of engagement are:

- September 2021 to April 2022 - broad exploratory kōrero about the priorities.
- Early 2022 - release of an online tool to help people share ideas and views.
- March/April 2022 - connect with local authorities to share our thoughts and get feedback on key ideas and opportunities.
- April to August 2022 – focus on testing and refining key ideas the future for local governance and democracy.

In addition, LGNZ will also encourage and support councils to take part in the Panel's discussions and a strategy to do this is under development.

DRAFT