

Regulatory Impact Statement

Better Local Government

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (the Department). It provides an analysis of options for responding to the recommendations in Better Local Government.

There are opportunities to increase local government sector efficiency, and responsiveness to ratepayers, households and business. There is evidence of problems within the local government sector, including councils not making prudent decisions, and the sector not focusing on constraining spending, debt and costs (this can be seen, for example, in the way that rates have increased significantly since 2002).

The proposals target these problems, and are likely to have benefits. There are unlikely to be any significant costs or unexpected impacts. In this regard the Department supports local government reform of the nature that is proposed.

The primary risk is whether all the proposals will work (for example, support for increased and faster council reorganisation) and whether collectively the proposals go far enough to fully deliver on the reform objectives. Another key risk is that there will be significant sector reaction to some of the proposals, in particular, amending the purpose of local government and introducing fiscal responsibility requirements.

There is limited evidence to inform the development of these proposals, and the timeframe within which the proposals have been developed has restricted the ability to assess multiple options. As a result, the problem analysis and option assessments of specific proposals rely on assumptions that are not, or only partially, tested. The extent of the uncertainties and risks are identified and discussed for each proposal.

During the legislative process the Department expects feedback on the proposals, and possibly further development of the proposals. Regulatory impacts will continue to be assessed as well. The short timeframe available for formulating and drafting the legislation creates some risk that interventions could be incorrectly aligned, and/or require subsequent amendment to address unforeseen circumstances.

Paul James, Chair, Regulatory Impact Assessment Panel

16 March 2012

Status quo and problem definition

Key features of the current situation

1. The Government and some communities are increasingly concerned that not all councils are making good decisions – because of lack of skills, failures of governance frameworks or decision-making processes, or not having sufficient focus on, or incentives to, operate as efficiently as possible. Under the Local Government Act 2002 (LGA02), central government can intervene if a council fails or refuses to perform its statutory duties. The tests of whether these conditions have been met are very high and the options for intervention are restricted.¹ Intervention is difficult, time consuming and rare.²
2. Central government's primary mechanism for influencing and supporting good local government is the legal framework within which councils operate. If this mechanism is properly focused, savings and efficiencies can be achieved across councils. Achieving the necessary conditions to improve local government efficiency requires a coherent package of actions – no single action will change the culture and the settings in local government and improve efficiency.
3. While some councils and elected members seem to understand and manage complex financial matters prudently, this is not consistent across the sector. Recent worst case examples include the handling of the V8 supercars event in Hamilton, and the high cost of a wastewater treatment plant in Kaipara District.³
4. There is also evidence that local government as a whole is not doing enough to constrain spending, debt and costs. Some councils continue to spend heavily with subsequent impacts on ratepayers. Some councils have high levels of debt and rates increase per capita, and some are struggling to maintain capability and capacity to perform effectively.
5. Rates for the sector as a whole have not decreased during the last 17 years, while increasing by an average six per cent per annum over the same time period.⁴ This is greater than the annual three per cent increase in the consumer price index (CPI) over the same period. Since 2002, the rates component of the CPI has moved from average increases of 3.9 per cent between 1993 and 2001, to an average 6.8 per cent per annum between 2002 and 2011.

¹ Part 10, LGA02.

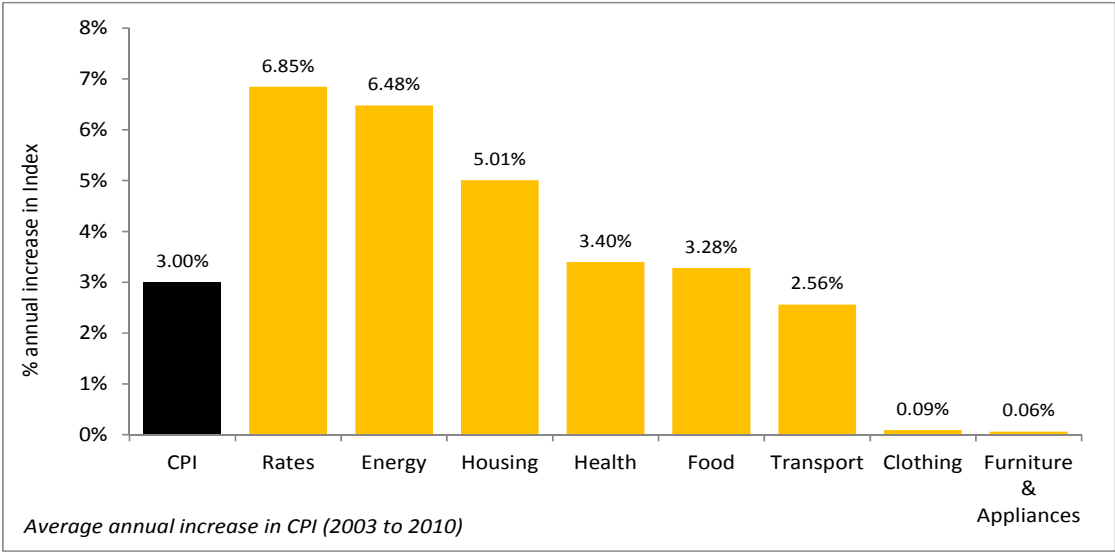
² After a review of Environment Canterbury in 2009, the Government appointed seven commissioners to replace the elected council. It was necessary to pass the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 as LGA02 provisions did not provide the necessary options to achieve robust resource management in the Canterbury region in a timely fashion. In January 2012, a Crown observer was put in place with agreement of Christchurch City Council. Other options to provide immediate assistance are not currently available.

³ In its 2011 report, *Review of the processes followed by Hamilton City Council in relation to the V8 Supercars Event*, Audit New Zealand noted that "making a commitment to a major event and significant expenditure without undertaking a full business case assessment was a serious oversight by Hamilton City Council". In 2011, Kaipara District Council was 'put on watch' by the former Minister of Local Government due to concerns over the strategy employed to fund the Mangawhai Wastewater Scheme. To date, no formal action to intervene in the Council has been taken under the LGA02.

⁴ Unless otherwise stated, data in this paper is derived from Local Authority Financial Statistics, Statistics New Zealand, and Department's analysis of 2009 Long-term Community Council Plans.

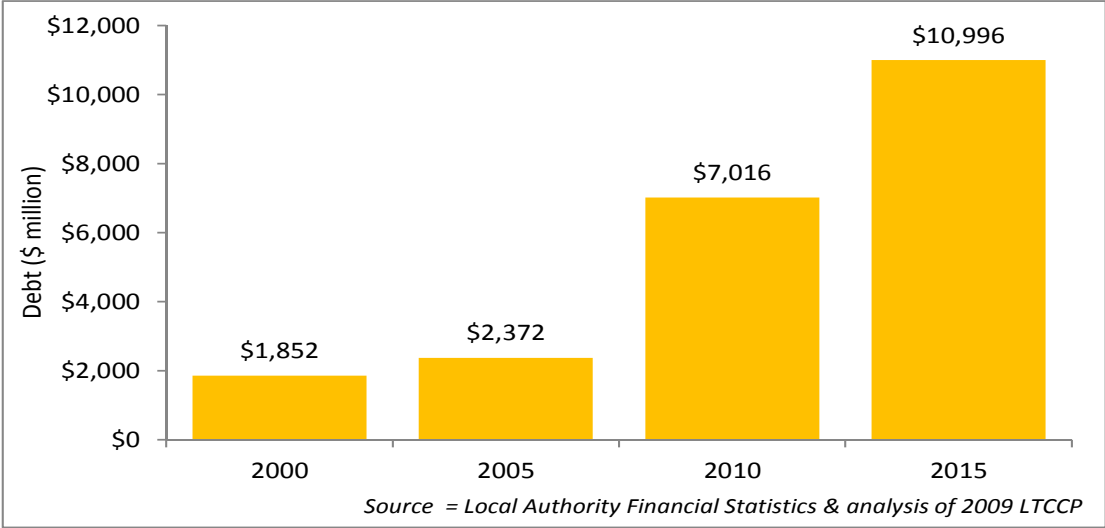
6. Of all the inputs into the CPI, rates have gone up by more than any other costs. Food price increases since 2002 have on average increased by 3.3 per cent, transport 2.6 per cent, clothing 0.1 per cent, and housing 5 per cent.

Figure 1: Percentage of annual increase in CPI



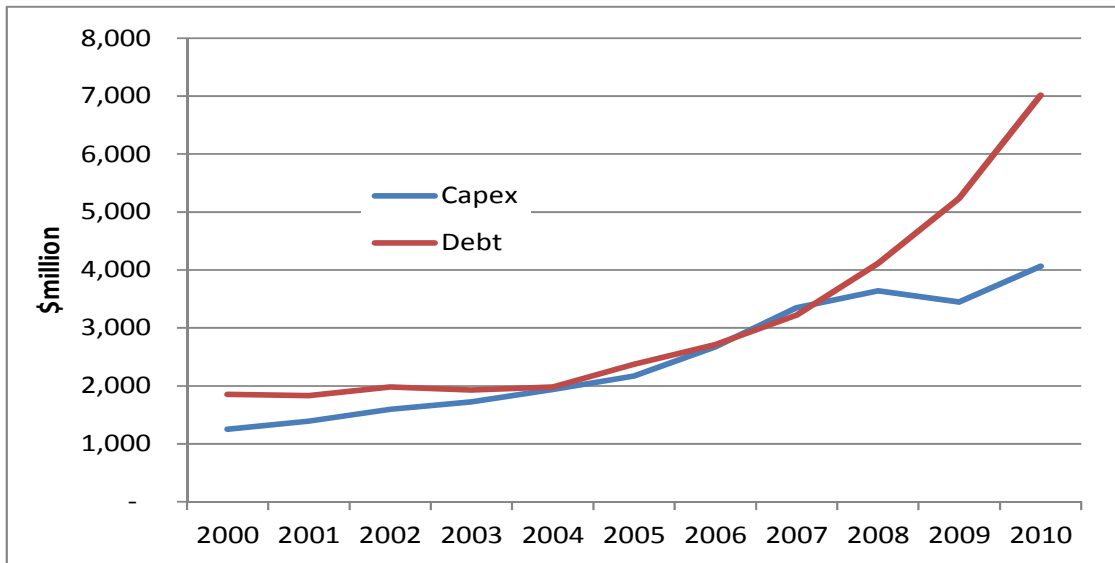
7. Also since 2002, council debt has risen to an unprecedented level, from \$2 billion to \$7 billion over the past decade. Local government’s main way of servicing this debt is by increasing rates.

Figure 2: Local government debt



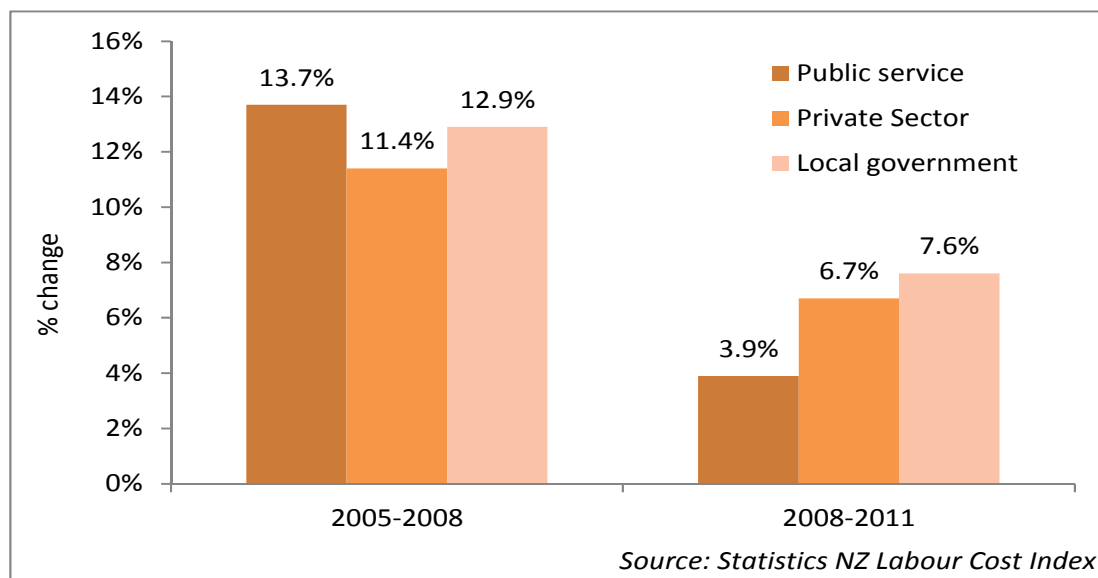
8. Debt is used by local government to fund capital expenditure: between 2002 and 2012, capital expenditure increased by 154 per cent from \$1.6 billion per annum to \$4.0 billion per annum. Major drivers of capital expenditure over the last decade included building new infrastructure (to meet population growth), renewing aging existing infrastructure (particularly reticulation and wastewater services), and building new facilities and amenities.

Figure 3: Local government capital expenditure (annual) and debt (cumulative)



9. Many councils, particularly smaller rural councils, will continue to face challenges to fund renewals as their existing infrastructure nears the end of its life over the next decade. The ability of local government to minimise these effects is likely to be strengthened if councils have robust financial management policies and practices that drive efficiency, sustainability and flexibility.
10. Unless local government spending is constrained, debt and rates will continue to rise. Of particular concern is the rate of increase in local government labour costs which, over the last three years, increased by 7.6 per cent; this is nearly double the rate of the core state sector. All sectors of the economy have reduced labour costs. However, the effectiveness of central government action to reduce labour costs between 2008 and 2011 has not been matched by local government.

Figure 4: Percentage change in labour costs



Relevant decisions already taken

11. In 2010, LGA02 amendments introduced requirements for councils to pay particular regard to certain core services, and to develop a financial strategy against which to

consider proposals for funding and expenditure.⁵ These provisions may not be sufficient to foster prudent financial management and protect against demands to go beyond core areas of responsibility, as they do not address the purpose of local government, nor do they focus councils on undertaking activity in an efficient and cost effective manner.

12. As part of the implementation of the 2010 reforms, the Department (with the local government sector) is developing performance measures against which councils will have to report in their long-term plans, annual plans and annual reports (and, in the case of council-controlled organisations, in statements of intent and annual reports). Performance in five standard groups of activities - water supply, the treatment and disposal of sewage, stormwater drainage, flood protection and control works, and provision of roads and footpaths – must be reported. This is to ensure ratepayers and residents have sufficient information to influence councils' decisions. In developing the performance measures, one of the considerations is whether the measure contributes to the effective and efficient management of the group of activities. The performance measures are expected to be completed in mid 2013, in time for inclusion in councils' 2015-25 long-term plans.
13. Part of the preferred option set out in this paper includes progressing provisions currently in the Local Electoral Amendment Bill (to the Local Electoral Act 2001 and the Local Electoral Regulations 2001) through the first of the two proposed local government reform bills. The Bill contains a small package of amendments to improve the conduct of local elections and strengthen the integrity and efficiency of local electoral procedures.⁶ Cabinet approved the policy content of the Bill in August 2011 [CAB Min (11) 31/9 and associated RIS refers] and it was introduced to Parliament in October 2011. As such, further analysis of the proposals in the Bill is not included in this RIS.

Costs and benefits of status quo

14. Local government faces many legacy and current issues as well as future challenges. While managing large and complex operations, councils must grapple with economic and demographic shifts, changing community and iwi expectations, and pressures to keep both rates and debt as low as possible. Some challenges have direct impacts on basic local government functions, such as extreme weather events which put pressure on stormwater systems and local roads. Other challenges, such as shifting patterns of economic growth, stagnation, and decline, have impacts that are diffuse and harder to quantify, but are being experienced by many communities. There is a question about whether, and to what extent, local government is able to identify and deal with such challenges.
15. Income, expenditure and population factors may make it difficult for some councils to maintain current levels of service into the future. While smaller councils may face these difficulties, due to having fewer ratepayers to fund services, the services offered

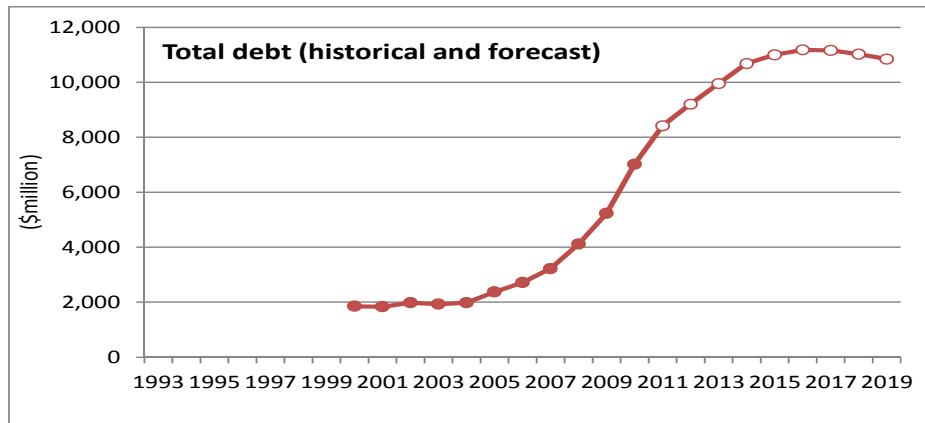
⁵ The Local Government Act 2002 Amendment Act 2010 added section 11A (core services to be considered in performing role). The core services that a local authority must have particular regard to are: (a) network infrastructure; (b) public transport services; (c) solid waste collection and disposal; (d) the avoidance or mitigation of natural hazards; (e) libraries, museums, reserves, recreational facilities, and other community infrastructure. The Local Government Act 2002 Amendment Act 2010 added section 101A (financial strategy), the purpose of which is to facilitate prudent financial management by providing a guide for councils to assess financial decisions and make those decisions more transparent.

⁶ The Bill provides: additional exceptions to the 'fair representation rule'; an additional week for the production of voting documents; improved information for electors; and for the adjournment of an election by Order in Council in the event of an emergency.

may not require the same level of funding as in larger districts. Of more significance than the size of a council in determining its effectiveness, are the decisions it makes about the appropriate level of services, and how they will be funded.

16. Since 2005, the use of debt by local government has increased markedly. Forecast debt is predicted to peak at \$11.7 billion in 2016 before dropping off by 2019 to reach \$10.7 billion.⁷

Figure 5: Total debt (historical and forecast)



17. As noted above, the main driver of local government debt is funding capital expenditure on infrastructure. The forecast decline in debt is based on a predicted level of infrastructure establishment and replacement. It is difficult to know how much councils have budgeted for the effects of major disasters for example, which may place unforeseen burdens on infrastructure programmes. As noted in the Department’s 2011 report on the use of debt by local government:

“Excessive levels of debt could be seen to place an undue burden on future generations and to potentially restrict future choices. It may also limit the ability of a council to borrow to meet (natural) emergencies or unforeseen circumstances. The follow-on impact of unforeseen events (such as the Canterbury earthquakes in 2010 and 2011) may also change future needs for capital and debt in local government.

This means that while some individual councils may be in a prudent position, others are likely to be taking on (or looking to take on) levels of debt that are unsustainable. This has implications for funding growth and asset development in the future. It may be timely for the sector to review how debt is used and what types of limits might be useful guides for future fiscal management.⁸

18. The amount of forecast debt in the 2012 long-term plans (LTP) will be an important indicator as to whether future debt levels will be an ongoing issue for the sector. However, rather than waiting to see how councils respond to these challenges (whether they are making the right decisions about the use of debt versus increasing rates income), it is proposed that central government provides more guidance, assistance and incentives, where necessary, to assist councils to make prudent fiscal decisions based on building efficiency and increasing value for money.

⁷ *Observations on the use of debt by local government in New Zealand*, Department of Internal Affairs, June 2011.

⁸ *Ibid*, p4.

19. One of the key drivers of the 2010 Auckland governance reforms was to reduce duplication and streamline services to ensure the most efficient use of ratepayers' money. The Auckland Council structure was projected to save \$95 million per annum – around \$75 million of which will be realised in 2011/12 with the full \$95 million being realised from 2012/13 onwards. These include staffing savings of \$91 million per annum and savings from removal of duplicated services of around \$4 million per annum. The potential for efficiency gains beyond those already initiated by the Auckland Transition Agency were estimated (in 2010) to be \$175 million to \$195 million per annum.⁹ In 2010, rates increases in Auckland were 3.7 per cent, around one third of the previously projected increase of 9.3 per cent.¹⁰ This demonstrates that council reorganisation, coupled with a focus on delivering services efficiently, can deliver savings to ratepayers.
20. The proposals in this paper are designed to enable other councils to identify and make savings by improving their governance structures and emphasising the need to operate as efficiently as possible.

The root cause of the problem

21. These proposals reflect a view that continuing inefficiency and lack of fiscal restraint in local government reflect deficiencies in local government-related legislation, and the LGA02 in particular, including:
 - the current purpose statement in the LGA02¹¹ provides no direction as to what councils should be expected to do, and is too broad to offer useful parameters within which local government activity can be planned;
 - the LGA02 provides no incentives or mechanisms to increase efficiency - while the 2010 amendments increased transparency and financial accountability, these do not go far enough to change the culture of local government and focus it squarely on building efficiency and reducing costs to ratepayers;
 - the LGA02 provides no powers to assist struggling councils, and Government action is restricted to serious intervention - even if such serious action is warranted under Part 10 of the LGA02, it is difficult and time consuming to initiate, and may come too late to prevent a crisis in a council;
 - under the LGA02, elected members and mayors have ill defined roles and powers - as a result, council decision making processes may be confused and unnecessarily diverted by questions of accountability and responsibility; and
 - the council reorganisation process as set out in Schedule 3 of the LGA02 is complex and time consuming - communities cannot easily alter their representation arrangements to meet changing circumstances and needs in a timely fashion.

⁹ *Securing Efficiencies from the Reorganisation of Local Governance in Auckland*, Taylor Duignan Barry Limited, October 2010.

¹⁰ <http://www.aucklandcouncil.govt.nz/EN/News/NewsArticles/Pages/Drivingefficienciescutsrateincrease.aspx>

¹¹ Section 10: 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.

22. The timeframe for development of these proposals has precluded any assessment of evidence or analysis to confirm the impact of these features of the legislation on the fiscal or governance performance of the local government sector.

The desired outcomes and objectives

23. The desired outcome is a local government that is properly focused, to enable significant savings and efficiencies to be achieved across the local government sector. The challenge is to achieve this in ways that recognise important principles of local democracy, accountability and choice. The primary mechanism central government has to influence and support good local government is the legal framework within which it operates.
24. The Government's proposal is to refocus the LGA02 to provide guidance and incentives to improve efficiency in local government, and specifically to:
- provide clarity about the role of local government, so that it prioritises the provision of good quality local infrastructure, public services and regulatory functions at the least possible cost to households and businesses;
 - enable central government to introduce fiscal responsibility requirements on councils that would be linked to the graduated assistance and intervention framework;
 - strengthen council governance by:
 - establish a simple and practical graduated mechanism, in part based on and expanding existing powers, so that central government can assist struggling councils before situations become critical;
 - making greater mayoral powers, as provided in Auckland, available to other communities so they can access the benefits of an empowered mayor and more definite roles for elected officials;
 - clarifying the role of elected councils in the employment of staff; and
 - encourage councils, communities, and other interested parties to think carefully about how existing local government structures might be improved, and make it easier for useful changes to be made.
25. Achieving the necessary conditions to improve efficiency will require a package of actions. The proposed package of actions is the best option to ensure that councils focus on delivering high quality services and have the tools they need to meet their responsibilities.
26. The proposals seek to empower, encourage and support good local governance and fiscal responsibility. The actual outcomes of decisions that are impacted by these changes will also reflect local circumstances and preferences. Assessment of the success or otherwise of the proposals, or of individual measures, will not be straightforward. While broad sector performance, in terms of measures like expenditure, rates and debt levels may provide some indication of impact, conclusive assessments are unlikely to be possible. Similar limitations will apply to the attribution of negative impacts to the package of proposals.

27. The proposed regulatory options described below are the initial part of an eight point programme of reforms to build efficient local government, and that the second part will include research and investigation into more fundamental options for building an efficient sector.¹²

Timing

28. The local body elections dictate the timing of the first of the proposed bills. The provisions to streamline council reorganisation procedures need to be in place as early as possible to allow the first wave of proposals to be considered before the local government elections in October 2013.

Regulatory impact analysis

29. Each of the following sections provides analysis of the constituent parts of the package. The proposals are of varying complexity which is reflected in the length and breadth of the analysis provided below. Cabinet approval will be sought to progress these proposals through a local government reform bill in 2012.
30. The following sections cover proposals to:
- refocus the purpose statement of local government;
 - introduce fiscal responsibility requirements;
 - strengthen council governance provisions; and
 - streamline council reorganisation procedures.
31. Overall the package of preferred options is designed to support and enhance local democratic processes, while assisting councils to operate more efficiently, and be more effective for residents, ratepayers and businesses.

Purpose statement of local government

Status quo and problem definition

32. The LGA02 was a fundamental change in approach to the empowerment of local government. The former prescriptive approach to specifying what councils could do and how they could do it (in the Local Government Act 1974) was replaced by broad powers enabling councils to reflect community preferences and interests. These powers are bound by detailed process requirements designed to promote transparency and accountability, and to enable effective informed public input into decision-making processes (with a limited number of explicit prohibitions and constraints).
33. The LGA02 also seeks to promote good governance and decision-making by enacting a hierarchy of principles, aspirational statements and criteria to be considered either generally or in relation to specific issues. Underlying this hierarchy is a statement of the purpose of local government (section 10 of the LGA02) which is:

¹² It is proposed that the eight-point reform programme be achieved through two local government reform bills, the first of which would be passed in 2012, and the second in 2013. The eight parts will: refocus the purpose of local government; introduce fiscal responsibility requirements; strengthen council governance provisions; streamline council reorganisation procedures; establish a local government efficiency taskforce; develop a framework for central/local government roles; investigate efficiency of local government infrastructure provision; and review the use of development contributions.

- 10(a) - to enable democratic local decision-making and action by, and on behalf of, communities; and
 - 10(b) - to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.
34. Three core concepts underpin the local government system:
- effective local choices and participation in making them;
 - consideration of needs and impacts in the future as well as the present; and
 - consideration of all aspects / dimensions of community well-being in assessing the costs and benefits of proposals and options.
35. These concepts, and particularly the last one, are developed, refined and reflected throughout the LGA02 and are referred to in other legislation applying to local authorities.¹³ Community well-being (conceived broadly) is effectively the way the normative value underlying public institutional activity is described in the legislative framework.
36. Legislative changes in 2010 were designed to ensure better transparency, accountability and financial management of local government. Of particular relevance to the purpose of local government, was the inclusion of section 11A into the LGA02 which is designed to ensure that councils “have particular regard” to the core services of: network infrastructure, public transport services, solid waste collection and disposal, the avoidance or mitigation of natural hazards, and libraries, museums, reserves, recreational facilities, and other community infrastructure. It is too soon to see the effects of this change.
37. Local government services are critical to the economy. Other activities, such as entering into commercial competitive businesses, running Lotto shops, setting targets for NCEA pass rates, developing strategies for improving the well-being of families and the like, are examples of council activity better done by other organisations. These are not unworthy goals or programmes, but it is questionable whether councils should be doing them. It is important that within the overall system of government roles are clear. The current broad purpose statement contributes to these risks which arise from expanding council scope, or at least does not ameliorate them, because it can be used to justify any conceivable action.

Objective

38. The objective is to refocus the purpose of local government to provide for those services that are most appropriately undertaken by councils. This will provide a means by which local government’s core activities can be prioritised.

Proposal

39. The proposal is to amend the LGA02 by:

¹³ There are approximately 14 references to the social, economic, environmental and cultural wellbeing of communities and section 10 in the LGA02, six references in other legislation, one reference to be included in an amendment to land transport legislation and one in the Nga Wai o Maniapoto (Waipa River Bill). A full list is provided as Appendix A. The analysis in Appendix A does not include references to wellbeing in general terms, but only specific references to “social, economic, environmental, and cultural well-being”.

- changing the purpose statement of local government, as set out in the section 10(b) to provide for good quality local infrastructure, public services, and regulatory functions at the least possible cost to households and businesses;
- the terms “good quality” and “least possible cost” will be defined in the LGA02 to ensure it is clear that it is the most cost effective method of providing the proposed infrastructure, service or regulatory function now and for the future, that it is fit for purpose, resilient, efficient and effective;
- removing references to the four well-beings and replacing them, where appropriate, to align with the new purpose; and
- amending section 10 of the Local Government (Auckland Council) Act 2009¹⁴ to align with the new purpose.

The research / evidence

40. There is no clear quantitative evidence to suggest that the LGA02 has resulted in a proliferation of new activities, or that local government is undertaking a wider group of functions. The Local Authority Funding Issues: 2006 Report of the Joint Central Government/Local Authority Funding Project team found that:

*“no evidence to date has been produced to suggest that local government as a whole is undertaking a wider group of functions that it had prior to 2003. In cases where councils have taken on additional responsibilities these have proved to be quite small in scale and operational in nature”.*¹⁵

41. This view was also supported by the 2007 Report of Local Government Rates Inquiry¹⁶ where the panel noted that its assessment was that there is little that local government is now doing that it has not previously been doing.
42. As noted above, however, some councils are engaging in diverse activities, such as entering into commercial competitive businesses, running Lotto shops, focusing on NCEA pass rates, and developing strategies for improving the wellbeing of families.

Alternatives considered and comments

Option 1: Status quo

43. Section 11A of the LGA02 requires that in performing its role, a council must have particular regard to ‘core services’. The amendments have not been implemented for the new round of council long-term plans, any benefits from a general shift in focus to good quality local infrastructure and public services, and regulatory roles, are still to be realised.
44. Comment: Throughout the LGA02 there are many requirements for councils to consider the four well-beings in their decision-making processes. The broad purpose statement may result in confusion as to how councils balance the need to have regard to core services with other considerations. It is too early to quantify the effects of

¹⁴ No other consequential changes to other legislation are proposed at this stage.

¹⁵ Funding Project Team, 2006, page 18.

¹⁶ Page 78, [http://www.dia.govt.nz/Pubforms.nsf/URL/RatesInquiryFullReport.pdf/\\$file/RatesInquiryFullReport.pdf](http://www.dia.govt.nz/Pubforms.nsf/URL/RatesInquiryFullReport.pdf/$file/RatesInquiryFullReport.pdf)

including section 11A; however there are opportunities to improve its effectiveness by removing potentially conflicting messages in the legislation.

Option 2: Alternative legislative amendments to section 10 of the LGA02

45. Less wide ranging legislative amendments could address the perceived problem by only amending section 10. This could be achieved by deleting the references to well-being in section 10(b) and inserting additional wording to the effect that the purpose of local government is to *“provide for good quality local infrastructure, public services, and regulatory functions at the least possible cost to households and businesses”*.
46. Comment: This option would provide a clear direction that the purpose of a local authority is to provide for good quality local infrastructure, public services, and regulatory functions..
47. This option would only involve deleting the references to well-being in section 10, not all references. Therefore, it may mitigate the risk of criticism from the local government sector or members of the general public who regard consideration of the four well-beings as providing an important balance in local government planning and decision-making. However, the open-ended reference to all dimensions of well-being in the purpose statement may result in confusion as to how councils balance the need to have regard to achieving the purpose, considering core services, but still having references to well-beings in other sections of the legislation. There are opportunities to improve its effectiveness by removing any potential conflicting messages in the legislation.

Option 3: Alternative legislative amendments to section 11 of the LGA02

48. Less wide ranging legislative amendments could address the perceived problem by further enhancing the focus on core functions to qualify, but not replace, the current wording in section 10 and elsewhere. This could be achieved by inserting additional wording to the effect that the role of local authorities (section 11) is to give effect to the purpose of local government (section 10) *“through the provision of good quality local infrastructure, public services and appropriate regulatory activities”*.
49. Comment: This option would provide a clear direction that the role of a local authority is to give effect to the purpose through the provision of what are essentially core services. This option would not involve the deletion of any references to the promotion of social, economic, environmental and cultural well-being of communities in the LGA02, nor require consequential amendment of other legislation. There would be less legislative change while the change would complement section 11A of the LGA02 by further directing local authorities to prioritise activities accordingly.
50. In addition, this could mitigate the risks outlined above in paragraph 47. The option may provide a workable balance between more directive requirements to focus on core services alone, with the flexibility for local communities to decide how to give effect to those requirements.

Implementation

51. This will require amendments to the LGA02, notably sub-section 10(b) to remove reference to the purpose of local government as being “to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future”. There are approximately 14 direct references to the four well-beings or

section 10 in the LGA02,¹⁷ including the purpose of the LGA02 under section 3. There will need to be amendments to align these with the new purpose where appropriate.

52. The proposal also includes changing one reference to section 10 of the Local Government (Auckland Council) Act 2009. This section will need to be amended to align it to the new purpose statement.
53. References to “social, economic, environmental and cultural well-being” also appear in the Civil Defence and Emergency Management Act 2002, the Canterbury Earthquake Recovery Act 2011, the Waitakere Ranges Heritage Area Act 2008, the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, the Nga Wai o Maniapoto (Waipa River) Bill, and in approved amendments to the Land Transport Management Act 2003. At this stage, there is no intention to amend these provisions.¹⁸

Risks of preferred approach

54. There are limited risks, primarily that changing the purpose of local government may not achieve the stated objectives. There is limited evidence that the proposed approach will reduce local government spending or ensure resources are put into core local government services. While the current wording implies that positive impacts on community well-being are a necessary driver of local authority activities and expenditure, it is not the only criterion for making choices and assessing priorities.
55. There may be some risk that deleting all references to the four well-beings may result in some councils emphasising some objectives at the expense of others. If too narrowly focused, a new purpose statement could also be interpreted as a signal to withdraw from activities that currently have a positive effect on the economy. However, the intention is not to preclude council involvement in activity that will get New Zealand’s economy growing. The amended purpose statement will ensure councils can achieve a wide range of appropriate functions.
56. The change is likely to have a symbolic effect and should not affect council business as usual. The change should help the local government sector focus on those roles that only councils can deliver. Councils will continue to ensure they promote good governance and decision-making by considering the needs and impacts in the future as well as the present.
57. There has been insufficient time to undertake a full assessment of the impact of proposal. There may be unintended consequences because the concepts associated with the well-beings are (explicitly and implicitly) woven throughout the LGA02 and the local government framework.

¹⁷ Section 3 – the purpose of the legislation; three definitions in section 5; sections 11, 13 and 14 which relate to the role of local authorities; section 101 and section 277 which require funding and options respectively to be considered in terms of the well-beings; and schedule 10 requires long-term plans and annual reports note what effects activities have on the well-beings.

¹⁸ The Department continues to work through other legislation to consider any other impacts or unintended consequences. The analysis to date does not include references to wellbeing in general terms, but only specific references to “social, economic, environmental, and cultural well-being”.

Fiscal responsibility requirements

Status quo and problem definition

58. The present financial management framework is a principles based framework that emphasises the accountability of the council to its community for financial prudence in managing council affairs. The key elements of accountability are exercised through:

- the adoption of an audited long-term plan every three years, which contains forecast financial statements for the next ten years;
- the adoption of annual plans in the two successive years that a long-term plan is not prepared; and
- the adoption of audited annual reports.

In addition, amendments to the LGA02 made in 2010 require councils to produce pre-election reports just prior to local authority elections. The first of these reports will be produced for the 2013 local authority elections.

59. The LGA02 requires councils to manage their affairs in a financially prudent manner and to balance their budgets by setting operating revenues at a level sufficient to meet their operating expenses. In addition councils must adopt a financial strategy, a revenue and financing policy, a liability management policy and an investment policy.

60. Councils are audited by the Auditor-General, who is a Parliamentary officer operating under the mandate provided by the Public Audit Act 2001.

61. This model relies on:

- the capability of elected members to oversee the performance of the council's management;
- the interest of the public and agents such as the news media to review and debate the information in accountability documents; and
- the responsiveness of councils to such debates.

62. Evidence is that these elements can be weak and too late to respond to prevent problems occurring. In addition to the sector-wide data presented earlier, specific examples of financial management issues in local authorities include:

- significant financial difficulties at the Kaipara and Waitomo District Councils, resulting in very high debt levels that the councils are having difficulty controlling;
- problems with financial management and governance at the Hamilton City Council;
- a range of problems with production of accountability documents, including:
 - successive long-term plans not meeting statutory requirements (Timaru District Council);
 - failure to produce annual reports on time, the worst case being Invercargill City Council which was unable to produce an audited annual report for the 2004/05 financial year until over two years past the statutory deadline and was late in reporting the next two years annual reports as well; and

- long-term plans qualified as financially unsustainable and therefore imprudent (Queenstown-Lakes District Council).
63. Central government has few levers that it can use to encourage local authorities to adopt a responsible approach to financial management and to constrain the costs they impose on their communities. Limits on maximum rates were removed from rating legislation in 2002, central control of borrowing was repealed in 1996, and most government transfers to local government are tied to expenditure that contributes directly to government objectives (e.g. in transport, drinking water standards etc) although the rates rebate scheme is an exception to this.
64. Local councils are perceived to have insufficient incentives to reduce and constrain expenditure and keep rates and debt to minimum levels.

Objective

65. The purpose of the proposal is to encourage fiscal constraint and good financial management by councils by setting benchmark fiscal responsibility requirements in regulations. The requirements will relate to income, expenditure and prudent debt levels. Councils that fail to meet, or are close to failing, the benchmarks may be subject to the application of the proposed assistance and intervention framework.

Details of proposal

Mechanics

66. Benchmarks for income, expenditure and prudent debt levels will be set by regulation after consultation with Local Government New Zealand. The Minister could initiate an intervention under the assistance and intervention framework if a council failed to meet the fiscal responsibility requirements.

Alternatives considered and comments

67. Processes to encourage fiscal constraint by councils can be considered as a series of cascading options. The two major dimensions are: the type of intervention; and the test for that intervention.

Possible types of Intervention

68. There are four types of intervention possible. These are:
- enhanced transparency to improve council accountability to ratepayers;
 - moral pressure – the Government could monitor the performance of individual councils and provide comparative reporting on the degree of fiscal constraint being shown by councils;
 - financial incentive – the Government could withhold Crown funding from councils it considered were not exercising sufficient fiscal restraint; and
 - direct intervention – the Government could directly intervene in the affairs of particular councils and place regulatory constraint on their fiscal decisions.
69. The first option has been addressed in part through reforms introduced in 2010. Councils will shortly adopt their 2012 long-term plans, which are required to include financial strategies with target limits on rates increases and debt. Some aspects of

council financial reporting will be standardised from 2012 so that ratepayers may more readily compare the financial performance of their council with that of other councils.

70. The second option - moral pressure - is likely to be a weak tool for achieving greater fiscal restraint by councils. It relies on financial reporting which involves lags of up to two years between spending decisions and their effects becoming evident.
71. The third option is difficult to apply for a number of reasons. The only Crown funding provided to local government that is not tied to infrastructure investment is the refund of rates rebates that councils are required to make to low income households. These refunds are made only to territorial authorities, and the significance of the refund received varies greatly between different authorities. The impact of withholding refunds would likely vary between councils and potentially be uneven. Systems for withholding refunds carry a number of risks and may incentivise behaviour that games the system rather than encouraging better financial management.
72. The proposal is therefore to utilise the fourth option, by setting a fiscal responsibility requirement for local government. The requirement will set benchmarks for local authority performance in respect of income, expenditure and prudent debt levels. Failure to meet the fiscal responsibility requirements may result in the Minister initiating one of the interventions possible under the assistance and intervention framework.

Perverse consequences, risks and mitigation

73. The main risk with this intervention is that the Minister will be accused of interfering in the legitimate decisions of elected councillors. This is because there are no absolute guidelines as to when income, expenditure or debt levels are too high and some element of subjective judgement is inevitable in initiating a review based on those factors.
74. A related risk is that ratepayers may begin to perceive their primary recourse to concerns about council financial management to be an appeal to the Minister to intervene, rather than to directly hold the council accountable to its citizens.
75. Another risk is that because of the varied size and economic and demographic circumstances of each district a single set of benchmarks may not adequately reflect what is financially prudent for a particular district.
76. These risks can be mitigated by the Minister exercising discretion in initiating an intervention and by providing clear reasons for the commencement of an intervention.

Strengthen council governance provisions

77. Strengthening council governance provisions involves three separate proposals:
 - redefining mayoral powers;
 - enabling councils to set employment policies; and
 - establishing an effective statutory assistance and intervention framework.

Mayoral powers

Status quo and problem definition

78. New Zealand has historically adopted a non-executive mayor model in its towns and cities,¹⁹ reflecting the roots of local government in adaptations of 19th century English arrangements. The mayor has a ceremonial figurehead role and is the presiding member at council meetings, but has little other formal power or authority beyond that of ordinary councillors.
79. The Royal Commission on Auckland Governance identified weak and fragmented regional governance as a major problem with Auckland's previous local governance arrangements. To address this, the Government agreed to strengthen regional leadership through a mayor with some governance powers that are not available to mayors elsewhere while substantive decision making remained with the full council.
80. This approach was agreed by Cabinet and is included in section 9 of the Local Government (Auckland Council) Act 2009 (LGACA). Accordingly section 9 provides that the role of the mayor of Auckland is to:
- articulate and promote a vision for Auckland;
 - provide leadership for the purpose of achieving objectives that will contribute to that vision and, in particular, to:
 - lead the development of Council plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the governing body; and
 - ensure there is effective engagement between the Auckland Council and the people of Auckland, including those too young to vote.
81. The powers conferred on the mayor are:
- to establish processes and mechanisms for the Council to engage with the people of Auckland, whether generally or particularly;
 - to appoint the deputy mayor;
 - to establish committees of the governing body;
 - to appoint the chairperson of each committee of the governing body; and
 - to establish and maintain an appropriately staffed office of the mayor.
82. For councils outside Auckland, the status quo perpetuates a discrepancy between the levels of democratic mandate and public recognition usually afforded to mayors and legislative recognition and support for their leadership role. There is clear evidence of greater elector participation in mayoral elections and better public knowledge and recognition of mayoral candidates and mayors than of council members. Legislative recognition of the leadership mandate this implies, and the provision of powers to

¹⁹ Historically, rural local authorities in New Zealand (for whom the ceremonial aspects were much less important) did not have a mayor at all but relied on a chairperson elected by councillors from amongst themselves. Since 1989, however, all territorial authorities have had directly elected mayors, although regional councils have retained internally elected chairpersons.

support that role, is expected to both enhance local democracy and encourage stronger candidates to seek the leadership role.

83. The status quo mostly works well, but it does not encourage strong leadership or provide mayors with tools to build a supportive team if this does not naturally occur within the council. This can lead to poor decision-making, stagnation through indecision, or missed opportunities where councillors cannot work together to support their mayor in the development and implementation of a common vision or direction.

Proposal

84. It is proposed to amend the LGA02 to provide some of these discretionary powers to the mayors of all other territorial authorities. The new provisions will apply to mayors elected or re-elected at the October 2013 local authority elections.
85. It is not proposed to replicate the Auckland legislation requirement that the council must provide for an office of the mayor with a budget of at least 0.2 per cent of the council's annual operating expenditure. The mayoral role and powers relating to community engagement will also not be extended to other councils at this time.

Evidence

86. The Auckland mayoral powers were proposed and enacted in the context of a widely recognised history of weak and fragmented regional governance in Auckland, and a clear and urgent need for strong regional strategic leadership of both the council and the wider community. These drivers do not exist to any comparable degree in other places.
87. There is no clear evidence that these issues are either widespread amongst territorial authorities or persistent in any particular council or group of councils. While entrenched divisions within councils or between councillors and their mayors are problematic from time to time, these are usually resolved with the same electoral term or corrected by voters at the next election.
88. There is, however, clear evidence of greater elector participation in mayoral elections and better public knowledge and recognition of mayoral candidates and mayors than of council members.

Consideration of Alternatives

Option 1: Executive mayors

89. International experience provides models where the mayor has executive powers and is not dependent on other elected members for some or all decisions. In some models the mayor makes all decisions but major decisions can be vetoed following scrutiny by the elected council. In others the mayor makes decisions within an overall strategy and budget which must be approved by the elected council, and is accountable to that council for performance.
90. Comment: This approach would be a significant departure from practice in New Zealand. A full executive mayor model would be unlikely to be understood or accepted by the public, especially if introduced without opportunity for public debate or consultation.
91. Implementing this approach would be likely to have significant consequences for internal council arrangements, the role and status of subsidiary decision-making

structures, and accountability for the management of activities and assets. Implementation would require a much more extensive reconsideration and adjustment of the existing local government legislative framework than could be enacted and implemented in time for the 2013 elections.

Option 2: Variations on Auckland approach

92. The Auckland mayoral powers represented a compromise between New Zealand's traditional concept of the role of the mayor and "strong" or executive models that exist elsewhere in the world. Under this compromise the mayor has the sole right to decide some governance arrangements that have historically been decided by full council (e.g. appointment of deputy mayor and committee chairs), and shares other powers (e.g. to establish committees) that continue to be available to the full council. The Auckland model could be modified to provide statutory guidance or safeguards about how such powers can be exercised by other mayors, to avoid the duplicate allocation of specific powers, and/or to provide specific mechanisms for resolving deadlocks and stand-offs that might arise.
93. Comment: The compromises inherent in the Auckland mayoral powers do not represent a good fit with other aspects of the internal governance framework for local government. The absence of statutory guidance and creation of duplicate committee powers are unlikely to generate problems in the context of the public and media scrutiny that attaches to Auckland Council. The same factors may be less effective if the same mayoral powers are extended to the 67 other territorial authorities, only three of which are greater than one tenth of the population of Auckland.

Risks

94. The extension of the Auckland mayoral powers to all territorial authorities, with little or no modification or augmentation, may increase the risks of creating greater divisions and disputes within councils, as well as deliberate sabotage of the underlying intent by disillusioned councillors. There is also a risk of actual or perceived abuse of the powers by mayors themselves. Such problems would not only detract from good governance in those districts, but may reflect badly on public perceptions of both the Government's efficiency reforms and the local government sector generally.
95. It is expected that public scrutiny and electoral accountability will go some way to mitigate these risks. The clearer distinction between the roles of the mayor and the councillors may provide a clearer focus on accountability and scrutiny.

Employment policy

Status quo and problem definition

96. Sections 41 and 42 of the LGA02 provide for the governing body of a local authority (the elected members) and the chief executive. No specific rights, duties or responsibilities are assigned to the governing body, but section 42 specifies eight specific responsibilities of the chief executive, three of which relate to employment. These make the chief executive "responsible to his or her local authority" for:
- providing leadership for the staff of the local authority;
 - employing, on behalf of the local authority, the staff of the local authority; and
 - negotiating the terms of employment of the staff of the local authority.

97. The local authority as a whole is required to be a good employer (section 39(d) of the LGA02) and elements of that responsibility are specified in clause 36 of Schedule 7.
98. The chief executive is constrained by overall budget limitations determined by the governing body, but is free within those limitations to determine the mix of employees and work externally contracted, the approach to rewarding performance, and the approach to collective bargaining where that occurs (union coverage of local government employees is quite variable).
99. A consequence of this legislative framework is that, while it is clear that it is the local authority itself that employs staff, few councils set overall policies on staffing levels or remuneration and oversight of the good employer responsibilities is frequently left to the chief executive to manage. This detracts from the council's ability to influence what has become a key driver of local authority cost increases.

Proposal

100. The proposal is to amend the LGA02 to specifically enable the governing body to adopt a policy on the numbers of staff employed and their remuneration. The governing body would be required to review any policy at intervals (for example, of not less than every three years). The chief executive would exercise his or her responsibilities within the policy determined by the governing body.
101. To provide transparency, a council would be required to include in its annual report information on the number of staff employed by salary bands. Currently, this information is available only after an official information request.
102. While this change may have marginal direct impact, it is intended to send a signal to both governing bodies and chief executives that the council is ultimately accountable for managing costs and costs increases generated by employment arrangements, just as it is for managing other cost drivers.

Alternatives

Option 1: status quo

103. The LGA02 provides little guidance on the role and responsibilities of the governing body. Rather than legislate, the Crown could encourage Local Government New Zealand to incorporate guidance into its wider professional development package for elected members.²⁰
104. Comment: The legislative approach is likely to influence local authority behaviour more quickly, especially if it is linked to a reporting requirement that will help the public hold councillors accountable for the consequences of the policy they choose.

Risks

105. Too rigid application of policies could result in excessive use of contractors when employment of staff would be cheaper. It may also constrain employment where there are skill shortages in particular professions or trades that are essential to local government functions. A long-run risk is that too restrictive policies gradually lead to a lower quality workforce in local government as more talented workers move to other

²⁰ The Government provided seed funding of \$700,000 for the professional development programme, which Local Government New Zealand now runs on a self-sustaining basis.

industries. Whether this risk eventuates depends upon many factors, including the quality of advice chief executives provide to their local authorities.

Implementation

106. The primary requirement enabling a council to adopt a policy has no implementation risks.
107. A requirement to include information in an annual report needs to consider which would be the first annual report for which the information is included. Annual reports are required to be adopted by 31 October each year. Such a reporting requirement could apply for the financial year ending 30 June 2012, or could first apply for the financial year ending 30 June 2013. The former option may add a small compliance cost and is dependent upon quick passage of the Bill.

Assistance and intervention framework

Status quo and problem definition

108. Part 10 of the LGA02 gives the Minister five powers “to act in relation to local authorities”. They enable the Minister to review the performance of councils, or intervene in the affairs of councils in several ways, if councils “cannot perform, or are not performing, their functions, duties, and responsibilities.”²¹
109. The five powers are:
- call a general election of a local authority;
 - appoint a review authority to “review, consider, and report on the performance of a local authority” (either generally or on a specific matter);
 - appoint a commissioner to “perform and exercise a local authority’s responsibilities, duties and powers” (either generally or specifically);
 - appoint a person to act on behalf of a local authority (to perform and exercise its responsibilities, duties and powers), or to review, consider and report on a local authority’s performance; and
 - appoint a commissioner and deputy commissioners for disaster recovery for the district or region of a local authority.
110. The LGA02 specifies threshold tests for each power. It details processes, timeframes, and administrative arrangements when using the powers. In certain situations, one power can trigger another. For example, if a council does not implement the recommendations of a review authority, the Minister may appoint a person to assist the council to do so. If this measure fails, the Person to Act may recommend to the Minister that he/she appoints a Commissioner to run the local authority, and the Minister may decide to do so.
111. The provisions in the LGA02 were carried forward from earlier local government legislation and have remained substantively unchanged for many years. They appear

²¹ In general, Part 10 seems to apply to the powers, responsibilities and duties of a council as a whole, and to broad concepts such as governance, management, financial situation, and public health and safety, rather than to specific aspects of a council’s operations.

to reflect the historical situation of local authorities undertaking roles specifically empowered in statute and with a wider range of central government subsidies. Formal intervention powers were necessary only in extreme cases where things had gone very wrong.

112. Since the LGA02 came into force in 2002, the intervention powers have been tested on several occasions but not used. The Government has intervened once in a council, in 2010, when it replaced Environment Canterbury with commissioners. To do this, the Government passed special legislation to appoint the commissioners, rather than use the LGA02 powers, because Ministers considered that the existing powers did not allow the Government to take timely and decisive action. That the LGA02 powers have not been used likely reflects at least four factors:
- most councils run their affairs satisfactorily, and generally there is little or no need for the Government to step in;
 - other statutory frameworks, such as those in the Resource Management Act 1991 and the Building Act 2004, give the Government other options to intervene in specific areas, such as resource and building consents;
 - the Government has worked by agreement with certain councils to assist them to deal with problems;²² and
 - certain features of the LGA02 framework mean that the powers can only be used in exceptional circumstances, that they cannot be used quickly, and that there are no graduated options.
113. The existing framework assumes that councils are autonomous, can generally handle all of their responsibilities, duties and powers, and that government intervention in councils may be required only in exceptional circumstances. Accordingly, the framework restricts the ability of a Minister to intervene, through high threshold tests, to those situations involving serious failure, mismanagement or mis-governance. The measures that a Minister can take are limited. The Minister must follow complex processes when seeking to use, and using, a power.
114. The emphasis on constraining power works against other considerations, such as flexibility and real world usefulness. In practice, the powers can only be used if a crisis has occurred, or is about to occur. Even in a crisis situation, the Minister's ability to act quickly would be restricted. There is no ability to scale Ministerial action to the nature and extent of a problem and no 'middle ground' options, e.g., allowing the Government to assist a struggling council to deal with a problem before it gets out of hand, or taking pre-emptive action, for instance acting early to help a council avoid a financial crisis.²³

²² For example, in 2012 the Government appointed a Crown Observer to assist the Christchurch City Council deal with governance issues. In 2006/07, the Government provided the Waitomo District Council with a panel of experts to advise it on how to improve its financial and infrastructure management performance.

²³ This is different to broadly comparable statutory frameworks, such as those for schools and tertiary institutions in the Education Act 1989 (part 7A, and sections 195A-F respectively), and district health boards in the New Zealand Public Health and Disability Act 2000 (section 30). These frameworks provide responsible Ministers with options for assistance and monitoring, as well as intervention.

Proposal

115. The proposal is to recast Part 10 of the LGA02 to provide a graduated spectrum of practical options for assisting councils and intervening when necessary. This would involve the following:

- recognising that councils are generally capable of handling their own affairs, but sometimes require assistance ('helping councils to help themselves');
- acknowledging that there may be times when the Government may need to intervene in a council's affairs, but that this should be the exception not the rule;
- shifting from a reactive and largely intervention-based approach, to a proactive and largely assistance-based approach;
- giving the Minister practical options that can be applied in the real world and in real time; and
- simplifying and streamlining powers, thresholds and procedures.

New powers and thresholds

116. The new framework would have six Ministerial powers: three 'powers to assist' and three 'powers to intervene'. The powers form a spectrum, ranging from minimal intrusion at one end to maximum intervention at the other. This allows Ministerial action to be scaled to the nature and extent of problems. It provides a clear intervention pathway, with less intrusive measures providing a basis for further, more intrusive measures, if necessary. It should be noted that the maximum intervention powers do not go further than those under the existing legislation, although the tests that apply to their use have been simplified.

117. The powers – from least intrusive to most intrusive – are as follows:

Powers to assist a council

- Minister to require a council to provide information;
- Minister to appoint a Crown Reviewer or Crown Review Team to a council; and
- Minister to appoint a Crown Observer to a council.

Powers to intervene in the affairs of a council

- Minister to appoint a Crown Manager to a council;
- Minister to appoint a Commissioner or a Commissioner and Deputy Commissioners for Disaster Recovery to a council; and
- Minister to call a general election of a council.

118. Threshold tests apply to each power. There are three main reasons for applying thresholds:

- ensures that due process is followed when making decisions;
- places limits on the Government's power to arbitrarily or unduly involve itself in council affairs; and

- limits the Government's exposure to unreasonable requests for assistance and intervention, from local authorities, interest groups, or members of the public.
119. Like the powers, the thresholds are graduated and interlinked. The thresholds are based on two ideas:
- that assistance may be warranted when there is a problem, or potential problem, that a council is struggling to recognise and resolve; and
 - that intervention may be warranted when a council has failed to resolve a problem, or is unable or unwilling to perform and exercise its responsibilities, duties and powers.
120. Assistance powers will have lower thresholds, while intervention powers will have higher thresholds. For all powers, the thresholds could be circumvented if a local authority requested Government assistance or intervention, but in such situations decisions to assist or intervene would be at the Minister's discretion.

Potential use of the powers

121. The existing (review and intervention) powers are designed to be used in exceptional circumstances. This is likely to remain the case for the new powers to intervene; the thresholds remain high, and, as noted above, most councils run their affairs satisfactorily, and generally there is little or no need for the Government to step in.
122. It is likely that the powers to assist will be used more often if the Government is concerned about problems in specific councils, especially those that could entail financial risks for the Crown or where fiscal responsibility requirements are not met. Since 2002, there have been several occasions when the Government, by agreement with individual councils, has provided them with the kind of assistance that would be covered by the Crown Observer role.²⁴ It is likely that assistance would continue at roughly the same level, but the Government could respond more quickly and effectively.

Mechanisms needed to achieve the changes

123. The proposal can be achieved by amending the provisions in Part 10 and Schedule 15 of the LGA02. The degree of change is significant, therefore Part 10 and Schedule 15 would have to be redrafted from scratch.

Implementation

124. The proposal involves amending the LGA02. There are no immediate requirements for councils to take any action. The Department will need to develop further policy in two areas:
- procedures for the use of the powers (to be set out in Schedule 15) – these procedures should be simple and streamlined; and
 - criteria for assessing requests for assistance and intervention – this operational policy which would sit beneath the thresholds (but probably do not need to be set

²⁴ For example, in 2006/07, the Government provided the Waitomo District Council with an independent panel of experts, to advise the council on financial and asset management. In 2010, the Government brokered an agreement between the Waitomo District Council and local interest groups, enabling the parties to work together to plan the district's future. In 2012, the Government provided a Crown Observer to the Christchurch City Council to help it resolve governance issues.

out in the legislation), enabling the Department to assess cases for assistance or intervention and advise the Minister.

Comparison between the existing frameworks and the proposal

125. The proposal involves a recasting of the existing framework, not a complete replacement. Key changes to the existing framework are:

- three powers are retained: Commissioner; Commissioner for disaster recovery; and call a general election;
- the Minister would have the ability to directly appoint a Commissioner, provided that the threshold test was met;²⁵
- for clarity, the Commissioner for Disaster Recovery power is included in an overall Commissioner power;
- there are three new powers: Require Information, Crown Observer, and Crown Manager;
- the existing Person to Act power is subsumed into the Commissioner, Crown Manager and Crown Observer powers;²⁶
- the power to appoint a review authority is replaced by the more flexible Crown Reviewer / Review Team²⁷ and
- threshold tests are streamlined and interlinked, with the Powers to Assist and the Crown Manager power based on the notion that there is a significant problem, or potential problem, that a council is struggling to recognise and resolve.

Alternative approaches

Option 1: Enhance the existing framework

126. The Government could enhance the existing framework by adding the Crown Observer power to the existing powers. The role could be given extra teeth by giving the Crown Observer the ability to investigate a problem or potential problem, and make recommendations to the council and the Minister about how to address it (this would combine the Crown Observer and Crown Reviewer role).

127. This would provide the Government with a useful tool for helping councils to help themselves. It would go some way to making the framework more practical and flexible, while requiring limited legislative amendments. The downside is that it would

²⁵ At present, the Minister can appoint a commissioner if: (1) a local authority cannot function because of lack of a quorum; (2) a local authority requests that the Minister appoint a Commissioner; (3) a review authority recommends that the Minister appoint a Commissioner; and (4) a person appointed to assist a local authority to implement a review authority's recommendations recommends that the Minister appoint a Commissioner.

²⁶ The principal threshold test for a Person to Act is so high as to make it highly unlikely that the power could ever be exercised. The test is that the local authority is wilfully refusing or substantially refusing to perform and exercise its duties and powers under this Act or any other enactment; and the refusal is impairing, or likely to impair, the good local government of the local authority's district or region; or endangering, or likely to endanger, the public health or safety of the local authority's district or region. The power does not seem to add anything – under the LGA02 a Person to Act has either the status of a Commissioner or a review authority.

²⁷ This is for practical reasons. A review authority is a statutory inquiry and a Commission of Inquiry – it would be a lengthy and costly exercise, and constitutes an impractical and disproportionate response to the type of problems that local authorities are likely to need assistance for. Its replacement, a Crown Reviewer / Review Team, could be put in place and report quickly, and would be much less costly to administer.

not address the significant deficiencies in the framework as a whole, as identified above.

Risks

128. The principal risk is that making it easier for the Government to get involved in council affairs will lead to the Government getting more involved. This could threaten democratic control of councils, and undermine important principles of government, such as local autonomy and local choice, diffusion of power, and the sharing of the administrative load between tiers. The main mitigation is that threshold tests, especially for intervention powers, will remain high, and these will provide a strong check on a government's capacity to unduly intervene.
129. If there are more powers, more people may be encouraged to seek Ministerial intervention in councils. Under the existing framework, the Minister routinely turns down requests from the public to intervene because of the failure of requests to meet threshold tests. It is not clear that the new framework would necessarily lead to a surge in requests. Requests would still need to meet high threshold tests, and the Minister would retain the discretion on whether to intervene.
130. Struggling councils might try to persuade the Government to solve problems for them, rather than help themselves. For example, a council with financial difficulties might attempt to game the powers to get a Government bailout. But there is nothing to stop councils doing this under the existing framework. The risk would be mitigated by the need to pass threshold tests, by the Government retaining the ability to develop the terms of reference for any assistance, and by the Minister retaining the discretion to decide whether to assist or intervene.

Streamline the council reorganisation process

Status quo and problem definition

131. Communities, and communities of interest, continue to evolve, yet, outside Auckland, the last significant reorganisation of local government was in 1989. Council reorganisation, in various forms, could deliver adaptation to local economic, and demographic challenges and to provide a more efficient and effective way of operating. However, it is not easy for communities or their councils to make these changes happen.
132. The procedures and requirements for the reorganisation of local authorities are set out in Schedule 3 of the LGA02. There are different processes for:
 - proposals for boundary alterations and the transfer of responsibilities – which can be dealt with by affected councils or the Local Government Commission (the Commission); and
 - proposals for the union, constitution, and abolition of districts and regions, and the creation of unitary authorities – which are dealt with by the Commission and, if they proceed to a reorganisation scheme, require approval in a poll of affected electors.
133. There are restrictions on who can make a reorganisation proposal. In summary, this can be generated by: the affected council(s), the Minister of Local Government, or a

petition signed by at least 10 per cent of electors in each of the affected districts or regions.²⁸

134. The process makes it difficult for communities and other local government stakeholders to seek alternative arrangements. They need to secure the support of their council, as well as all the other affected councils, or have the time and resources necessary to generate a petition that meets statutory requirements.
135. Those proposals that are accepted then face a relatively long and complex process, and have no guarantee of success. Flowcharts showing the different steps involved in dealing with reorganisation proposals are attached at B.
136. Since 1999, reorganisation processes have generally taken a year or more to complete, and complex proposals for the abolition or union of councils generally take much longer (18 months to three years). Most of these proposals did not then result in change. Of the 17 proposals listed in Appendix C, for example, 11 did not proceed, and 3 proceeded to a final scheme, but were defeated in a poll. Overall, only one boundary change and one abolition proposal were successful to date.
137. There are few statutory timeframes in Schedule 3, either for completing the whole process or for carrying out each procedure. This means there is uncertainty for affected councils and communities about how long the process will take, and the Commission has few deadlines to work within.²⁹
138. The timeframes that are included may be longer than necessary. For example, the procedures for the abolition, creation or union of councils include:
 - 60 days to make submissions on reorganisation proposals;
 - 20 working days for a proposer to withdraw the proposal, once submissions have been received; and
 - two months to make submissions on draft reorganisation schemes.
139. Procedures for the altering boundaries and transferring responsibilities to other councils include 20 working days for withdrawing proposals and two months for making submissions. In addition, councils can choose – within 60 days – whether to consider these proposals themselves or through a joint committee, or refer them to the Commission. Council decisions can be appealed to the Commission. Appeals occur in most cases, increasing the time and resources needed.
140. The test at the end of the process is set at a high level. Reorganisation schemes for the union, abolition and constitution of districts and regions, and the creation of unitary authorities, only proceed if approved, in a poll, by more than 50 per cent of the votes cast in each affected districts or regions.
141. This level of support can make it particularly challenging for districts with small populations to achieve changes that involve unions with larger councils. For example, the proposed union between Banks Peninsula and Christchurch City in 1999 was

²⁸ Clause 1 of Schedule 3 sets out the specific requirements for each scenario.

²⁹ For example, if a proposal is generated by a petition, the Commission has to spend an unspecified amount of time consulting with electors just to determine who will represent them.

defeated: Banks Peninsula voted 2523 for and 2252 against, whereas Christchurch voted 34,089 for and 59,954 against.

142. There are issues around what the Commission can and cannot do as part of a reorganisation process. For example, it can only make minor modifications to an original reorganisation proposal. It lacks the flexibility to make amendments to proposals that may make them more acceptable and effective. The Commission also lacks sufficient powers to deal with transition processes for new council structure.
143. Conversely, in other respects the legislation is quite broad and provides the Commission with the ability to extend timeframes, abandon proposals, undertake inquiries, and consider wider issues 'as appropriate'. This may mean that the Commission does more than the minimum required to develop draft proposals or reorganisation schemes.
144. The detailed problems outlined above contribute to an imbalance between status quo council structures (largely unchanged outside Auckland since 1989) and proposals for change. The 1989 reforms that greatly reduced the number of council were led by a strong Commission and not subject to local polls. Since then, the reorganisation process has hobbled proposals for change by requiring that they have very strong democratic mandates.

Objectives for a new system for local government reorganisation

145. To address problems with the status quo, a new system should seek to:
 - confirm significant community support for change in each affected territorial authority;
 - place a greater emphasis on realising opportunities to simplify planning processes and achieve efficiencies and cost savings through new local government arrangements; and
 - enable the Commission to have appropriate flexibility and powers to develop and implement the reorganisation schemes that provide the best means of achieving improved local government across affected districts and regions.

Proposal

146. This option would amend the current legislative requirements for dealing with reorganisation proposals (in Schedule 3) to provide a new legislative process that is more streamlined and flexible. There are several, related elements to this proposal:
 - changing the process for dealing with and approving proposals, including providing for a poll of affected electors;
 - removing the restrictions on who may make a reorganisation proposal;
 - introducing new criteria for assessing proposals; and
 - providing for greater flexibility in the development and implementation of proposals.

Changing the process for dealing with and approving reorganisation proposals, including providing for a poll of affected electors

147. The proposed new process would give the Commission a central role. The process would be:

- community or council prepares initiative and submits to Local Government Commission (the Commission);
- Commission assesses initiative against statutory criteria and
 - rejects; or
 - refers back for further work; or
 - proceeds to develop initiative into proposal;
- Commission approves draft proposal;
- Commission hears submissions on draft proposal from affected communities and prepares a final proposal;
- a poll on whether the final proposal should proceed, if requested by a petition of at least 10 per cent of affected electors; and
- Commission prepares a final reorganisation scheme for implementation.

148. In relation to polling affected electors, several alternatives were considered:

- poll after initial assessment of an initiative, before the proposal is developed;
- poll after the final proposal has been prepared – either
 - in all cases (except in relation to boundary changes or transfer of responsibility between councils³⁰); or
 - only in cases where the original initiative has been changed and new communities are affected; or
 - only if triggered by a petition of affected electors;
- poll after the reorganisation scheme has been prepared (status quo); or
- no poll.

Removing the restrictions on who may make a reorganisation proposal, and introducing new criteria for assessing proposals

149. As part of these changes, any person or body will be able to generate and submit an initiative for change, providing they can demonstrate there is significant community support for their idea. Assessing significance would be at the Commission's discretion, but it might be demonstrated through a petition or other evidence, such as letters from local organisations, businesses, and community groups.

³⁰ The LGA02 currently provides for separate procedures for these proposals, which do not involve a poll. There is no clear rationale for requiring changing this and requiring a poll in these circumstances.

150. Initiatives will also need to meet other criteria before being turned into a proposal. Schedule 3 already contains criteria that must be considered by the Commission, which focus on matters such as promoting good local government (including enabling efficient and effective performance of a council's role, and containing sufficiently distinct communities of interest in the district or region), appropriate boundaries, and fair and effective representation. New criteria would be added to provide a greater focus on simplifying planning processes and on achieving productivity improvements, both within councils and for the businesses and households that interact with them, efficiencies and cost savings; and significant community support.
151. If there is a good initial response to the new provisions, the current resources available to the Commission are likely to be insufficient. The proposers of initiatives will also need to devote considerable resources to ensure the completeness of the initiatives.

Providing for greater flexibility in the development and implementation of proposals

152. The new procedures would include greater flexibility for the Commission to explore other options that go beyond the scope of the original initiative(s), in order to provide for the most efficient organisation possible, and for more effective representation arrangements. This would be particularly useful if there is more than one initiative relating to the same council(s), or if changes might affect other councils or communities of interest (e.g. where a proposed unitary council would undermine the viability of the remainder of a region).
153. However, we consider that with this increased flexibility there should be some checks – which could include:
- placing maximum limits on the time that can be taken to complete key stages of the process (to provide councils and communities with greater certainty about when decisions will be made);
 - specifying the information that would need to be provided in a final proposal for it to be approved, and in the reorganisation scheme (so time and resources are not used working out non-essential details);
 - ensuring that final proposals going beyond the scope of original initiatives and/or draft proposals have the support of affected communities, or there is some other form of scrutiny before they are approved; and / or
 - other measures that set expectations on the Commission relating to timeliness, performance, and prioritisation.
154. There would also be the remit to deal with transition issues relating to reorganisation schemes, particularly when these schemes involve the abolition of councils and creation of new entities. The Commission's recent consideration of the proposed union of Nelson City and Tasman District Councils highlighted a number of difficulties in this respect, and these could be considered as part of other legislative changes.
155. Finally, it is proposed to remove the option for councils to deal with proposals for boundary changes and the transfer of statutory responsibilities. This would help to reduce the time and resources involved and would remove the potential for a proposal to be dealt with twice (by a council and then the Commission on appeal).

Alternative options

156. An alternative was considered, to make the existing reorganisation process less time consuming, by changing the statutory timeframes for dealing with procedural matters. This would involve reducing the time available for submitting on and withdrawing proposals, and for councils to decide whether to refer boundary alteration proposals to the Commission.
157. However, while there is potential to reduce these timeframes, pursuing these changes, in isolation, is not a preferred option. This would help to shorten the reorganisation process, but it would not improve flexibility in terms of who can make a proposal the ability of the Commission to amend proposals to make them more efficient and effective solutions.

Risks

158. We consider there could be risks if all affected communities were not provided with an opportunity to express support (or disapproval) for proposals relating to the union or abolition of councils or the creation of unitary authorities.
159. There may be situations where it is desirable to significantly change an original initiative or draft proposal in order to provide for improved and more efficient local government arrangements, but it is unclear that this proposal has significant community support from the affected areas. A poll would be a means of demonstrating community views. Requiring a petition to trigger a poll may override the legitimate views of low population areas. However, the Commission's consideration of the community of interest criterion provides some safeguard against this, as does the requirement for initiatives to have community support.
160. There are costs to the effectiveness and efficiency of local authorities (focus, accountability, ability to retain staff etc) whenever major reorganisation affecting them becomes a significant possibility. Any move to make such proposals easier to initiate may increase those costs, and this must be balanced against the potential long-term benefits of facilitated reorganisation. If local authority reorganisation proposals become too commonplace, there is a risk of destabilising the whole sector with significant damage to both the effectiveness and the efficiency of local governance. To date there has been insufficient time and information to properly evaluate this risk.
161. Risks could also arise if proposals need to be processed and implemented quickly, either to meet new deadlines or to enable them to be completed in time for the local elections in October 2013. Options to address resourcing issues include:
- using temporary Commissioners and/or committees;
 - increasing the staffing available to the Commission;
 - using alternatives to the Commission to undertake pieces of work and/or make decisions; and / or
 - setting out clear expectations for the Commission.
162. In addition, risks could be mitigated by enabling the elections to go ahead as scheduled in affected districts/regions, but providing for transitional arrangements and enabling the new council structure to take effect from a later date (such as 1 July 2014).

Consultation

163. During 2011, the Department conducted a series of roundtable discussions to canvass the views and perspectives of informed individuals on the challenges facing local government. The roundtable discussions were primarily designed to inform the review of local government agreed by Cabinet in 2011.³¹ Participants included academics and experts in the fields of local government, public policy, business and economics, including current and former elected local government members, public commentators and other interested parties. Specific roundtable discussions were held to consider local government issues with iwi / Māori.
164. The roundtable process indicated that there is considerable confusion about the purpose of local government, what functions it should be responsible for, and the most cost effective way to deliver those functions. Additionally, participants considered that there are limited incentives for local government to operate efficiently, and that the current approach to structure may be a barrier to efficient and effective local government.
165. During the early development of the policy proposals set out in this paper, several agencies were consulted. Te Puni Kōkiri was concerned that the proposed process does not provide for consultation with wider public (including iwi / Māori), and therefore recommended the inclusion of a public consultation process (including iwi / Māori) and the identification of the issues around which consultation will be sought.
166. The Department provided drafts of the RIS to a wide range of government agencies. Agencies did not comment on the RIS, but instead commented on the policy proposals set out in the Cabinet paper. Several agencies considered that the Cabinet paper lacked sufficient evidence to support a case for some of the specific reforms proposed, and that further work was required. The Ministry of Economic Development considered that the paper defines efficiency too narrowly and insufficiently identifies the drivers of rates increases, and that some proposals could incentivise underinvestment in infrastructure or anti-business regulatory decisions.
167. Agencies also raised concerns about the proposal to remove the four well-beings from the local government purpose statement in the LGA02. For example, Te Puni Kōkiri considered that this would have a significant impact on the Crown - Maori relationship and on existing iwi / Māori statutory arrangements, such as the Waikato River co-management arrangements. The New Zealand Transport Agency noted that the proposed amendment to the purpose statement to emphasise "least possible cost" is at odds with the Land Transport Management Act 2003 which requires projects to demonstrate "value for money". It considered that the proposal has potential to create uncertainty and inconsistency around transport and infrastructure projects. The Ministry of Transport suggested that the reference to "good quality infrastructure" should be replaced with "efficient and effective". Treasury considered that the proposed purpose regarding infrastructure needs to be better specified, needs to provide for that infrastructure being resilient to disasters and robust over time, and be backed up by appropriate reporting and external assurance arrangements. These concerns can be addressed during drafting of the amendments by including definitions of "good quality infrastructure" and "least possible cost".

³¹ The work to improve efficiency in local government supersedes the review agreed to in 2011.

168. The Minister of Local Government has consulted with relevant Ministerial colleagues on alternative options for the purpose statement of local government.
169. Te Puni Kōkiri also note that proposals may impact on issues of local government representation and democracy for iwi/Māori and recommend the reform process includes wider public consultation (including with iwi/Māori and the Iwi Leaders' Forum).
170. The local government sector was not consulted about the policy proposals, principally due to a lack of time.

Conclusions and recommendations

Outcome of the options analysis

171. The proposals seek to address some aspects of the existing local government legislative framework that are representing or imposing impediments to the efficient operation of local government. This is the first of two legislative packages which will at early stage:
- signal the government's efficiency objectives to the sector and where they believe improvements can be made; or
 - achieve early gains or the early initiation of what are inherently protracted processes.
172. The second package will consist of initiatives arising from further investigation and analysis of opportunities to reduce costs and improve efficiency within the sector.
173. The term efficiency, as it is used in this paper, means making decisions to maximise benefits at the least possible cost, and balancing short term cost savings (e.g. keeping rates down) with longer term objectives (e.g. investing in and maintaining quality infrastructure). To operate efficiently, or increase efficiency, requires good decision making which in turn requires good governance. Good governance requires suitably skilled people working in a well functioning governance setting with the tools and level of empowerment to make the right decisions.
174. There are four aspects to good governance and good decision making against which the proposals have been assessed:
- Skills – The mayoral powers proposal is likely to encourage better candidates, and streamlining the reorganisation process may assist communities to get the right mix of representatives with the skills to make the right decisions in a timely manner. In addition, amending the assistance and intervention framework, including the introduction of a financial management review, will enable central government to assist local government to use the skills available, or augment those where necessary, to meet challenges before they become intractable.
 - Systems – Strengthening council governance will ensure councils and mayors have clearly defined decision making responsibilities, that the system of governance works as efficiently as possible, and ensure councils can set policies to get the right number of skilled people at the right level. A more streamlined reorganisation process will also enable communities to get the type of representation and governance systems that best suits their needs, in a timely fashion.

- Criteria – Refocusing the purpose statement of local government will provide clear criteria against which to test spending and decision making. Empowering councils to make policies for, and control the staffing and remunerations of, their organisations will emphasise the responsibility elected members have to ensure all aspects of the organisation, including employment, are operating as efficiently as possible.
- Incentives – Introducing fiscal responsibility requirements for councils will ensure councils are focused on making sound financial decisions, and have standards for what is expected of them and increased incentives to achieve this. Central government intervention in local government affairs will always be a last resort, knowing it will be a more feasible option will hopefully provide additional incentive to councils to manage their affairs to avoid the necessity of such action.

175. Building efficient local government will reduce costs imposed on businesses and households in terms of rates and compliance costs.

Risks of preferred package of proposals

176. There are varying degrees of risk associated with some of the constituent elements of the package. In terms of the overall package of proposed reforms, the greatest risk is that the costs inherent in changes to the legislative framework under which local government operates exceed the benefits generated by those changes.

177. The Department has been unable to carry out detailed identification and analysis of unintended consequences for some aspects of the proposal. There has been limited engagement with other government agencies to identify what impact there may be in other portfolios beyond those identified above. There has also been no engagement with the local government sector or representative bodies to gauge their concerns. As such, ways to mitigate those concerns have not been possible to address in this RIS.

178. It is proposed that these reforms are given effect in a local government reform bill to be introduced and passed in 2012. Although the time available to develop and pass the bill is tight (see discussion of timing above) an abbreviated select committee consideration is possible. This will allow the local government sector and the general public time to engage with and make submissions on the proposals set out in this paper. In addition, the Department has identified where these proposals have links with other portfolios, and continue to work with the relevant agencies during the development of the bill to ensure any unintended consequences are mitigated.

Implementation

179. The preferred package entails legislative amendments to the LGA02. Changes to the Local Electoral Act 2001 and the Local Electoral Regulations 2001, which are also part of the preferred package, have already been agreed by Cabinet [CAB Min (11) 31/9 refers], and as such have not been reconsidered as part of this RIS.

180. The speed at which the legislation will be developed entails some risks in terms of implementation. These are discussed in the *Risks* and *Timing* sections. If the Bill is passed by the end of 2012, there is sufficient time before the start of the build up to the 2013 local body elections for the proposals to be implemented. In addition, if the Bill is passed by the end of 2012, the proposals will be in place in time to be taken into account in the development of the 2012/13 annual plans (most council's draft annual

plans are developed in the second half of 2012 and released for consultation in early 2013).

181. Any drafting errors or gaps in policy in the Bill can be identified and rectified during select committee consideration. Likewise, the select committee process will enable the local government sector and the general public to consider the proposed amendments, make submissions, and in the case of local government, start to consider how to alter behaviour to align with the new requirements.
182. One of the purposes of these reforms is to reduce compliance costs for local government. Phase two will include work to streamline planning and other regulatory requirements (including consultation requirements) imposed on local government across a number of central government portfolios (transport and resource management, building and housing in particular). The Department will work with other relevant central government agencies (the Ministry for the Environment, the Department of Building and Housing, the Ministry of Transport and the New Zealand Transport Agency in particular) to ensure the appropriate connections are made and work is coordinated wherever possible.

Monitoring, evaluation and review

183. The proposed assistance and intervention framework, including the introduction of fiscal responsibility requirements, along with the continued statistical data analysis of council rates increases, debt and expenditure by Statistics New Zealand and the Department will capture any improvements in the fiscal performance of both individual councils and across the local government system. However as noted earlier in this document, the impact of the implemented proposals may be difficult to clearly distinguish from other factors influencing council and sector results. Equally it may be difficult to distinguish negative impacts on fiscal performance from circumstances where the implemented proposals have mitigated the impacts of other drivers of cost increases.
184. The Department intends to develop a monitoring plan with the aim of developing measures and analysis frameworks that avoid or reduce difficulties. It is likely that that plan will include reliance on new information sources related to the proposals:
 - The proposed assistance and intervention provisions are based on a cascading set of powers, beginning with a requirement for a council to provide the Minister of Local Government with information about a problem, or potential problem faced by the council and which may include where fiscal responsibility requirements are not met. This process will enable close monitoring and evaluation of council actions to address the problem where it is deemed necessary.
 - As noted above, in 2013, the implementation of the 2010 reforms performance indicators are due to come on line. However, these will provide only a limited snapshot of council activity in term of efficiency.
185. Ultimately, councils are accountable to the people who elect them and whom they represent. It will be up to communities to decide whether their council is efficient. Councils that are considered not to be making sufficient progress, and are not focused on providing the services their communities need and want at the best cost, will face the consequences at the ballot box.

References to well-being in LGA02 and other legislation

References in LGA02 to: “social, economic, environmental and cultural well-being of communities” or section 10 generally

S3d – Purpose of legislation

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act

(d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach

S5 – Interpretation – definitions of:

- *community outcomes – means the outcomes that a local authority aims to achieve in order to promote the social, economic, environmental, and cultural well-being of its district or region, in the present and for the future*
- *significance – in relation to any issues, proposal, decisions or other matter than concerns or is before a local authority, means the degree of importance of the issue, proposal, decision, or matter, as assessed by the local authority, in terms of its likely impact on, and likely consequences for the current and future social, economic, environmental, or cultural well-being of the district or region*
- *strategic asset – in relation to assets held by a local authority, means an asset or group of assets that the local authority needs to retain if the local authority is to maintain the local authority’s capacity to achieve or promote any outcome that the local authority determines to be important to the current or future well-being of the community ...*

S10 – Purpose of local government

The purpose of local government is ... to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future

S11 – Role of local authority

The role of a local authority is to ... give effect, in relation to its district or region, to the purpose of local government as stated in section 10...

S13– Performance of functions under other enactments

Sections 10 ... apply to a local authority performing a function under another enactment to the extent that the application of those provisions is not inconsistent with the other enactment

S14(c)(iii) – Principles relating to local authorities

In performing its role, a local authority must act in accordance with the following principles ... local authority must take account of the likely impact of any decision on each aspect of well-being referred to in section 10

S14(h)(i) – Principles relating to local authorities

in taking a sustainable development approach, a local authority should take into account ... the social, economic, and cultural well-being of people and communities

S14(2) – Principles relating to local authorities

If any of these principles [sic in section 14] any aspects of well-being referred to in section 10 are in conflict in any particular case, the local authority should resolve the conflict in accordance with [sic the principle of conducting business in open, transparent and democratically accountable manner]

S77(1)(b)(i) – Requirements in relation to decisions

A local authority must, in the course of the decision-making process... assess those options by considering ... the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region

S101(3)(b) – Financial management

The funding needs of a local authority must be met from sources that the local authority determines to be appropriate, following consideration of ... the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community

Schedule 10 Part 1 – clause 2(1)(d)

A long-term plan must, in relation to each group of activities of the local authority ... outline any significance negative effects that any activity within the group of activities may have on the social, economic, environmental, or cultural well-being of the local community

Schedule 10 Part 3 – clause 23(d)

An annual report must, in relation to each group of activities of the local authority ... describe any identified effects that any activity within the group of activities has had on the social, economic, environmental, or cultural well-being of the community

Other sections of relevance in the LGA02

Section 14 – Principles relating to local authorities

14(1) In performing its role, a local authority must act in accordance with the following principles:

- (a) a local authority should make itself aware of, and should have regard to, the views of all its communities;*
- (b) when making a decision, a local authority should take account of –*
 - i. the diversity of the community, and the community's interests, within its district or region; and*
 - ii. the interests of future as well as current communities; and*
 - iii. the likely impact of any decision on each aspect of the well-being referred to in section 10.*

Key unintended consequences – impact on reference to ‘community outcomes’

S5 – Interpretation

Definition of community outcomes (as noted above)

S55 - Transitional provision for identification and reporting of community outcomes

A local authority is not required to comply with, or complete the compliance with, an obligation under section 91 or 92 of the principal Act that existed before the repeal of those provisions by section 13 of this Act

S77(1)(b)(ii) – Requirements in relation to decisions

Options need to be assessed considering ... the extent to which community outcomes would be promoted or achieved

S93(6)(b) – Long term plan

The purpose of the long-term plan is to ... describe the community outcomes of the local authority’s district or region

S101(3)(a)(i) – Financial management

The funding needs of a local authority must be met from sources that the local authority determines to be appropriate, following consideration of ... in relation to each activity to be funded ... the community outcomes to which the primary activity contributes

Schedule 10 – Long term plans (LTP), annual plans and annual reports

Part 1(1) - LTP must to the extent determined appropriate by the local authority, describe the community outcomes for the local authority’s district or region

Part 1(2)(1)(b) – LTP must in relation to each group of activities of the local authority identify the rationale for delivery of the group of activities (including the community outcomes to which the group of activities primarily contributes)

Part 2(23) – Annual report must, in relation to each group of activities of the local authority...identify the community outcomes to which the group of activities primarily contributes

Other Acts that reference: “social, economic, environmental and cultural well-being of communities”

Local Government (Auckland Council) Act 2009

S10 - Local boards

A local board must be established for each local board area for the purposes of:

- (a) enabling democratic decision making by, and on behalf of, communities within the local board area; and*
- (b) better enabling the promotion of the social, economic, environmental, and cultural well-being of communities within the local board area, in the present and for the future*

S39 - Purpose of Auckland Transport

- *The purpose of Auckland Transport is to contribute to an effective and efficient land transport system to support Auckland's social, economic, environmental, and cultural well-being*

S79 - Spatial plan for Auckland

- (2) *The purpose of the spatial plan is to contribute to Auckland's social, economic, environmental, and cultural well-being through a comprehensive and effective long-term (20 to 30 year) strategy for Auckland's growth and development*
- (3) *For the purposes of subsection (2), the spatial plan will—*
 - (a) *set a strategic direction for Auckland and its communities that integrates social, economic, environmental, and cultural objectives*

Civil Defence Emergency Management Act 2002

S3 - Purpose of this Act

repeals and replaces the Civil Defence Act 1983, is to— (a) improve and promote the sustainable management of hazards (as that term is defined in this Act) in a way that contributes to the social, economic, cultural, and environmental well-being and safety of the public and also to the protection of property

Canterbury Earthquake Recovery Act 2011

S3 - The purposes of this Act

- (g) *to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities*

Waitakere Ranges Heritage Area Act 2008

S8 - Heritage area objectives

The objectives of establishing and maintaining the heritage area are—

- (i) *to recognise that people live and work in the area in distinct communities, and to enable those people to provide for their social, economic, environmental, and cultural well-being*

Schedule 4 of Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

Schedule 2 of Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

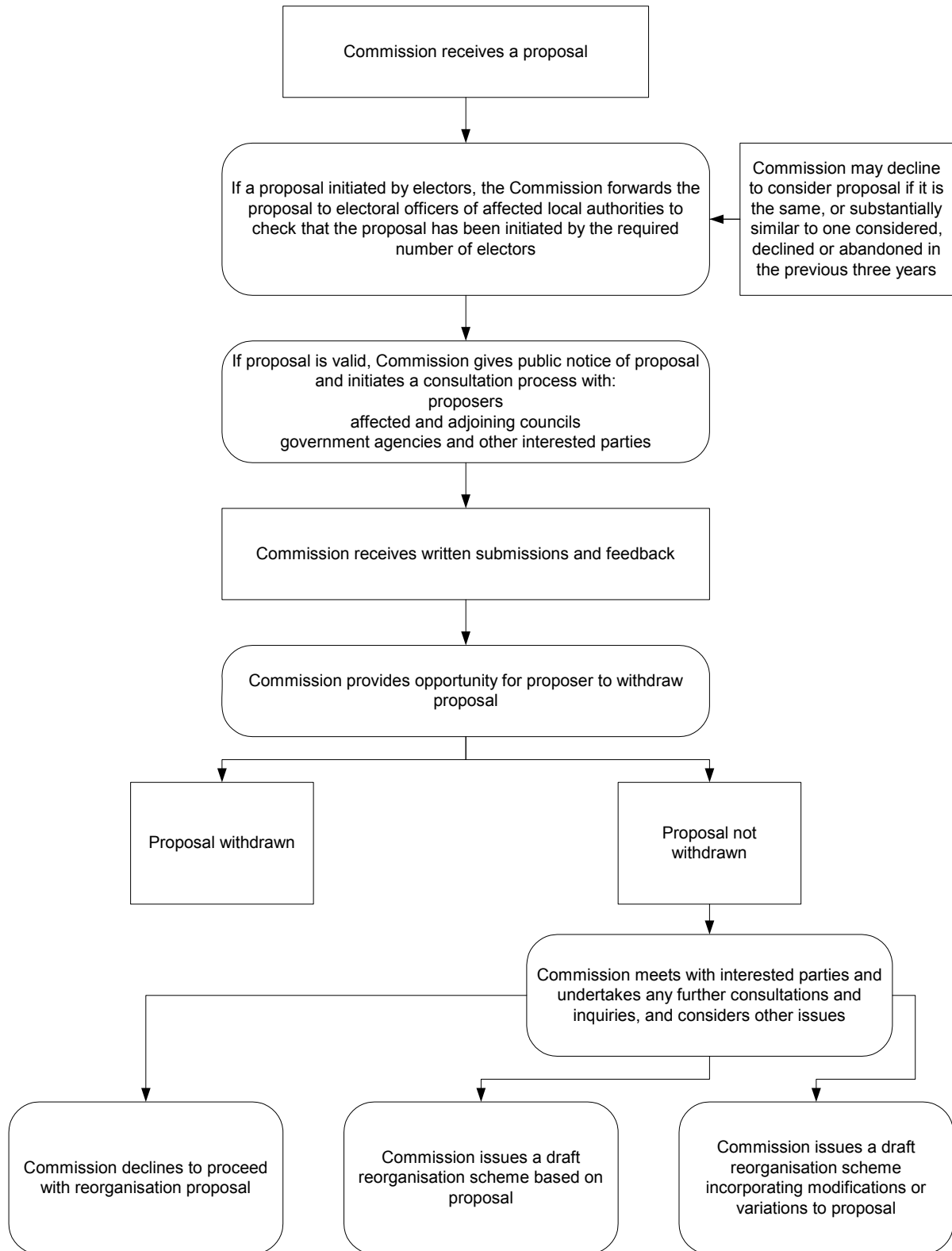
Section 8(6) of Nga Wai o Maniapoto (Waipa River) Bill

Process to review vision and strategy

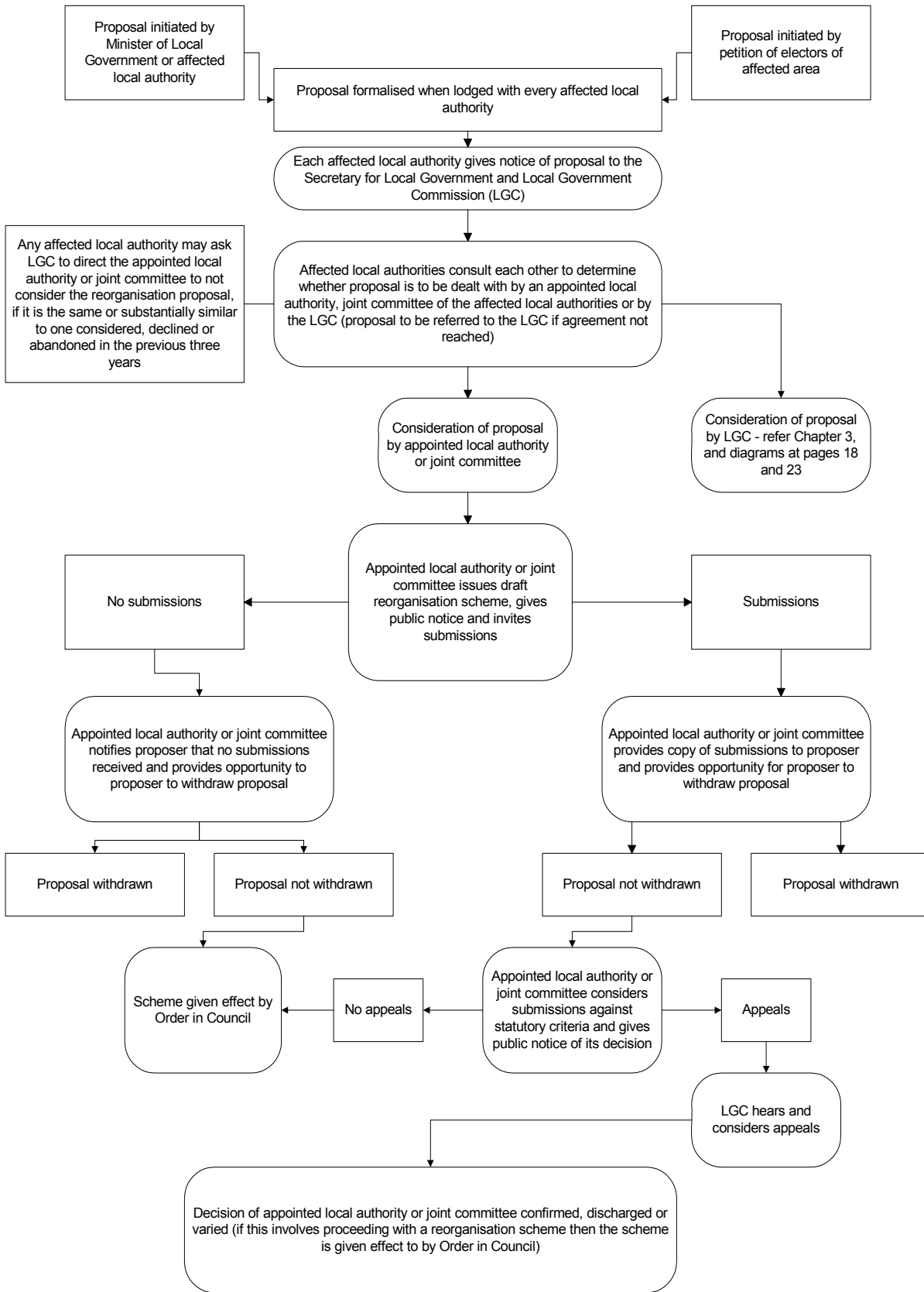
- (3) *In making a decision under subclause (2), the Authority—*
 - (a) *must seek to identify all reasonably practicable options for the achievement of the overarching purpose of the settlement*
 - (b) *must assess the options by considering—*
 - (i) *the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural wellbeing of the*

communities associated with the Waikato River, including if practicable a quantification of the benefits and costs of each option

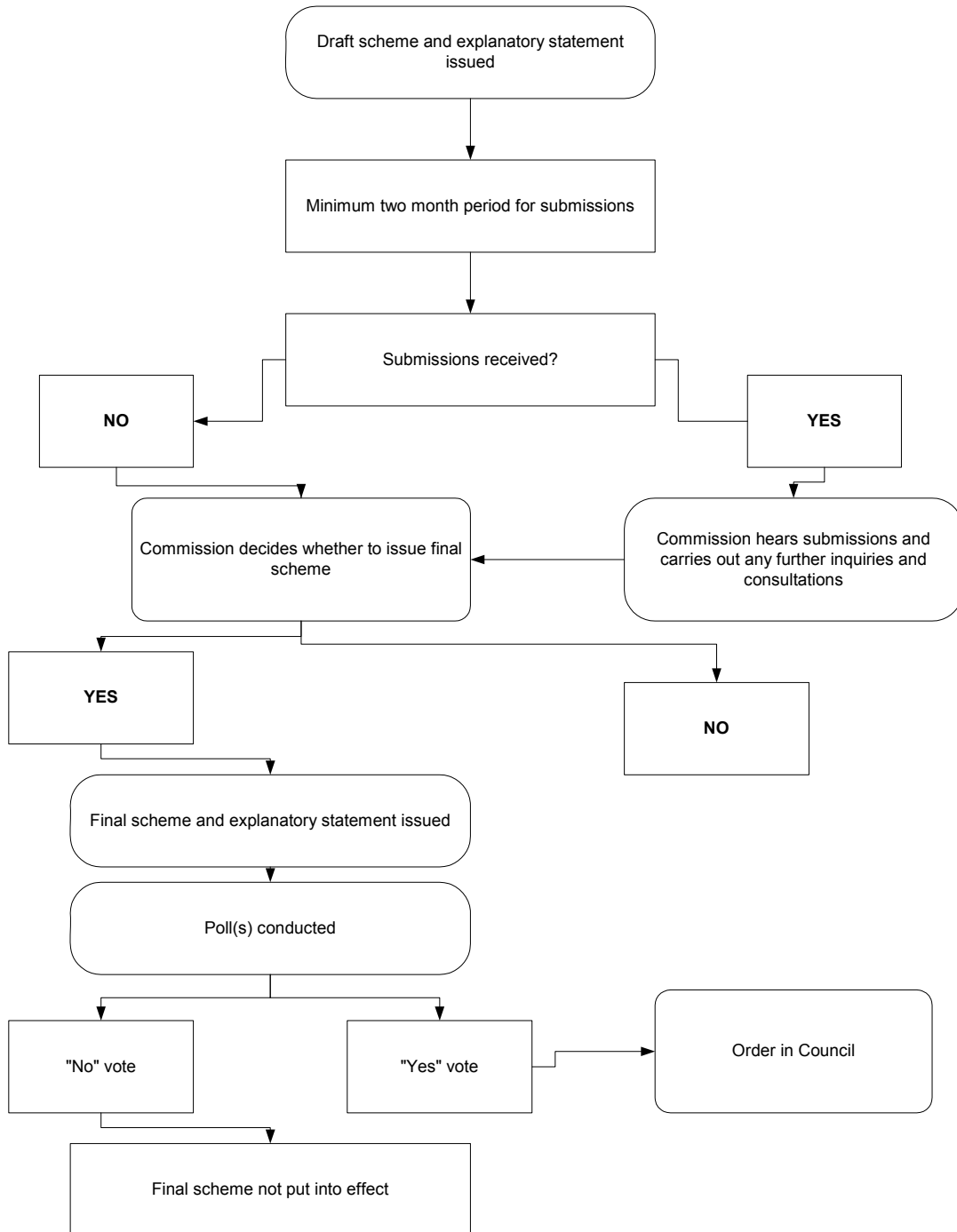
INITIAL CONSIDERATION OF PROPOSALS



Summary of Procedures for Considering Reorganisation Proposals dealing with Boundary Alterations and Transfers of Responsibility



Reorganisation Schemes



Reorganisation proposals 1999 – 2012

	Proposal	Type	Initiator	Timing	Outcome	Submissions	Poll	
1999	Rangitikei District & Manawatu District	Union	Petition	Feb 1997 – Jan 1999	Not to proceed	13 submissions	NA	1995 Reorganisation Procedures
1999	Wairoa District & Hastings District	Boundary	Petition	July 1998 – July 1999	Not to proceed	12 submissions 1 appeal	NA	
1999	Canterbury Region and Otago Region	Boundary		Sept 1996 – August 1999	Not to proceed	?? submissions 6 appeals	NA	
1999	Hastings District and Napier City	Union	Councils (5 proposals)	Sept 1997 – August 1999	Final Scheme	47 submissions 80 submissions	Defeated ³²	
1999	Banks Peninsula and Christchurch City	Union	Petition	June 1997 – Dec 1999	Final scheme	48 submissions 240 submissions	Defeated ³³	
2002	Wairoa District & Hastings District	Boundary	Petition	Jan 2001 – June 2002	Not to proceed	11 submissions 2 appeals	NA	

³² Hastings voted for and Napier voted against.

³³ Banks Peninsula – **For 2523** Against 2252, Christchurch For 34089, **Against 59954**.

2004	Opotiki District and Whakatane District	Boundary	Petition	June 2003 – December 2004	Final scheme	55 submissions 39 appeals	NA	2002 Reorganisation provisions
2004	Rodney District and Kaipara District	Boundary	Petition	Aug 2003 – Oct 2004	Not to proceed	3 submissions 5 submissions	NA	
2004	Waitomo District and Otorohanga	Abolition	Council	August 2001 – January 2004	Final scheme	88 submissions 31 submissions	Defeated ³⁴	
2005	Banks Peninsula and Christchurch City	Abolition	Petition	November 2003 – August 2005	Final Scheme	142 submissions 71 submissions	Successful ³⁵	
2006	Rodney District and North Shore City	Boundary	Petition	October 2005 – June 2006	Not to proceed	40 submissions	NA	
2008	Clutha District and Dunedin City	Boundary	Petition	October 2007 – October 2008	Not to proceed	41 submissions	NA	
2009	Kaikoura District and Hurunui District	Abolition	Petition	January 2008 – May 2009	Not to proceed	157 submissions	NA	
2009	Auckland City and Thames-Coromandel District	Boundary	Petition	September 2008 – August 2009	Not to proceed	396 submissions	NA	
2011	WBOP District and Hauraki District	Boundary	Petition	December 2009 – December 2010	Not to proceed	130 submissions	NA	

³⁴ Waitomo – **For 1710**, Against 1426, Otorohanga – For 455, **Against 3122**.

³⁵ Banks Peninsula – **For 3341**, Against 2779.

2004	Opotiki District and Whakatane District	Boundary	Petition	June 2003 – December 2004	Final scheme	55 submissions 39 appeals	NA	2002 Reorganisati
2011	Whakatane District and Kawerau District	Boundary	Petition	July 2010 – May 2011	Not to proceed	613 submissions	NA	
2012	Nelson City and Tasman District	Union	Petition	July 2010 – January 2102	Final scheme	451 submissions 402 submissions		