

R E P O R T	<b>TO</b>	MAYOR AND COUNCILLORS
	<b>FROM</b>	MARK BUTTIMORE STRATEGIC PLANNING PROJECTS MANAGER
	<b>FILE REF</b>	REF: 427443
	<b>DATE</b>	17 AUGUST 2008
	<b>SUBJECT</b>	<b>LOCAL GOVERNMENT COMMISSION - REVIEW OF THE: LOCAL GOVERNMENT ACT 2002, LOCAL ELECTORAL ACT 2001.</b>

**RECOMMENDATION**

THAT the report be received.

**Introduction**

In August and September 2006 Council drafted a submission to the Local Government Commissions Review document on the Local Government Act and the Local Electoral Act.

The submission was presented to the Review Taskforce at Rotorua on 2 October, 2006 by the Mayor.

A copy of this submission is attached as Appendix 1. I have included some commentary in the appendix on any specific response from the Commission to the matters raised by Council in blue.

Commissions Recommendations:

The Local Government Commission has finished its report go Central Government on the Reviews.

Enclosed with the agenda is a copy of the summary report prepared by the Local Government Commission. The key chapter in this document is chapter 5 – Recommendations. The full report is available for Councillors to view on the Local Government Commissions website, [www.lgc.govt.nz](http://www.lgc.govt.nz).

The Commission was charged with answering the following two (2) questions in its review of the Acts.

- Are any provisions of any of the two (2) Acts a barrier to achieving the Policy intent? If they are, is legislative amendment appropriate?
- Are any of the ways Councils are operating and/or interpreting the Acts a barrier to achieving the Policy intent? If they are, is the development and dissemination of further good practice guidance appropriate?

### Commentary – Local Government Act

While Council submission is the focus of this report, the Local Government Commission has made a number of observations and recommendations that are of general interest to the Council and outside its submission.

These can all be found in the recommendations – Chapter 5.

#### 1. Power of General Competence

The Commission concludes that the new Act, and particularly the conferring of full capacity, rights, powers and privileges on Local Authorities, has not led to a proliferation of new activities being undertaken by Councils. There also appears to be no appetite within the Local Government sector for major change to the empowering provisions of the Act.

#### 2. Consultation

The Commission has stated there is a clear need for Councils to have processes in place to enable them to identify to what extent Community views are already known and therefore the need, or otherwise, for other consultation. The absence of such processes can lead to perceptions of ‘over consultation’ and consequences of, for example, low response rates.

#### 3. Areas Requiring Specific Focus

The Commission has made specific recommendations to Government on:

- Monitoring of Central Government Agency’s involvement in the Community Outcomes process.
- A Controller and Auditor General’s audit of the effectiveness of Local Authority engagement with Maori.
- A comprehensive review of all statutory provisions authorising Local Authorities to make Bylaws.
- A review of the remaining provisions of the Local Government Act, 1974 with a view to complete repeal of this Act (presumably by incorporating any remaining provisions into the new act).
- A review of the Local Authorities (Members Interests) Act, 1968.

#### 4. The Meaning of “Significance”

The Commission acknowledges that one source of confusion for Councils (and the public?) maybe the multiple meanings and varying use of the word “significance”, “significant” and “significantly” within the Act and it recommends a review of (the use of) these words.

#### 5. Consultation

Two aspects of consultation on which Councils could do better stand out from the Commissions research:-

- Keeping people better informed about when a decision will be made
- Councils explaining the reasons for their decision, once made, in a way that residents can understand.

## 6. Elected Members Issues

The Commission is recommending an amendment to clarify that, in the event of a conflict, the Territorial Authority declaration signed by Councillors shall take precedence over a declaration in respect of a Councillors membership of a Community Board.

## Commentary - Local Electoral Act

The Commission has found the Local Electoral Act is generally achieving its statutory purpose and achieving an appropriate balance on a continuum between “diversity through decision-making” at one end and “comprehensive uniform requirements and implementation” at the other.

### 1. Fair and Effective Representative

The Commissioners identified a need for more flexibility around the fair representation requirements relating to the ratio of population to elected members (the +/- 10% rule). We certainly emphasised this in our submission on the EW representation review.

### 2. Single Transferable Vote

While the Commission notes that the STV has the potential to enhance representation engagement, it does not believe it has wide enough public support at this stage for it to be made mandatory.

This is interesting as it implies the current policy thinking is towards a mandatory STV approach.

### 3. Candidate Profiles

The Local Government Commission has endorsed the recommendations made by the Justice and Electoral Committee to enhance candidate profile statements by:

- Profile statements being published as soon as possible after the closing of nominations,
- Candidates being required to include their principle place of residence on the profile statements,
- Candidates being required to identify any dual candidacies in profile statements,
- Submission of nomination forms, profile statements and deposits at the same time.

### 4. Candidate Order

The Commission noted that the order of candidates on voting papers does make a statistical difference to the chances of being elected (by up to 4%). This effect did not disappear when candidate names were placed in random order. It has not recommended any change but seeks further research.

### 5. Officers.

The Commission has recommended:

- That Chief Executive Officers be prohibited from being the Electoral Officer
- Facilitation of shared electoral services
- Naming of Electoral Officer in the Annual Report

## 6. Councillors

The commission has recommended:

- All elected Members come into office at the same time (whether unopposed or not)
- Stopping the right for “voluntary retirements” by candidates after the close of nominations.
- Candidates must be qualified parliamentary electors and hold New Zealand citizenship.
- An end to the right for Council to determine if early processing and counting will occur – it is recommending this be a discretionary power for the Electoral Officer

## 7. Other

The Commission has also recommended

- The retention of the Ratepayer franchise
- An additional week in the timetable between the close of nominations and the mailing of voting papers.

Mark Buttimore  
Strategic Planning Projects Manager.

# APPENDIX 1



**SUBMISSION BY**  
**HAURAKI DISTRICT COUNCIL**  
**ON THE**  
**LOCAL GOVERNMENT ACT 2002**  
**AND**  
**THE LOCAL ELECTORAL ACT 2001**

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## **DETAIL OF SUBMISSION - LOCAL GOVERNMENT ACT, 2002**

### **POSITIVE ASPECTS OF LOCAL GOVERNMENT ACT, 2002**

#### ***Principles of Act***

The principles of the Local Government Act, 2002 are perceived by Council to be positive and it is accepted that Section 14 requirements, will continue to have a positive influence on the operations of Local Authorities.

#### [Commission generally agree](#)

#### ***Long Term Council Community Plan***

Hauraki District Council generally supports the principles surrounding the Long Term Council Community Plan. The discipline of the process is positive and the opportunity to engage with the community has been useful. The Community Outcome process was a particularly good opportunity to further community engagement.

Hauraki District Council supports the requirements of the Audit process. The Audit process has provided Hauraki District Council with useful guidance.

#### [Commission agree](#)

### ***Special Consultative Procedure***

Generally Hauraki District Council agrees with the Special Consultative Procedure requirements. The encouraged opportunity to engage the community more on issues is beneficial as is the assistance to elected members in terms of providing the elected decision-makers with more informed guidance on the preferences of the community.

Hauraki District Council does feel that there is danger of too much consultation though, if there is any more consultation required of Local Government.

The Commission support the continuation of the Special Consultative Procedure as outlined in the Act. The Commission does however suggest Councils need to consider other forms of consultation.

It also states that some Council's may be attaching the emphasis on "significance" and needs to consider more whether they are already aware of the public viewpoints when considering whether to consult or not.

### **SUGGESTED AREAS FOR IMPROVEMENT WITH LOCAL GOVERNMENT ACT, 2002**

#### ***Community well-being***

Hauraki District Council suggests there is a need to have a clearer definition of the expectation of Local Authorities on how they work to achieve community well-being. There is a need to lessen the community perception that Councils are required to promote every aspect of social, economic, environmental and cultural wellbeing. Current wording creates an expectation Local Government will assist in the promotion of numerous avenues and this has created a considerable increase in those seeking ratepayer funding contribution, particularly to social service agencies. This is not a core focus of Local Authorities, and although Hauraki District Council supports the promotion of social well-being, the expectations of the Council are increasing considerably and this is not something elected members see as a primary role of Councils.

The Act could be modified to make it clearer that Council's sustainability responsibilities require a balancing of the 4 well-beings as very few decisions provide fully positive outcomes for the four well-beings.

No particular guidance, comment or recommendations in this area.

#### ***Community Outcomes***

Hauraki District Council suggests there is a strong need to include legislative requirements in the accountabilities relating to progression and reporting of Community Outcomes to Central Government agencies legislation. The intent is apparent in the Local Government Act that other agencies will contribute but there are no supporting requirements in central government accountability documentation or legislation. Although government policy encourages central government to develop partnerships with local government to achieve community outcomes, the accountability requirements are not present. Some central government agencies wish to participate in the progression of Community Outcomes but it seems that many of these departments are not resourced to or are unwilling to do so.

Our experience to date is that only a few Departments can focus on a District basis and that only a few are interested in taking part at all – whether at a District or Regional level. We have a region wide central government/local government forum where the participating

government agencies (only a handful) have clearly stated they cannot work at a District level unless it is bigger centre such as Hamilton. Also very few government agencies have any presence in smaller rural/urban Districts

Hauraki District Council would like to see a clearer definition of what is required with monitoring of Community Outcomes for Government agencies.

The Commission recommends that central government agencies involvement be monitored and reported on by the Department of Internal Affairs in its 10 yearly review of legislation and also that priority is given to disseminating local level statistics to assist Council's report on the progress of Outcomes.

### ***Land Transport Management Plan***

Hauraki District Council suggests there is a need to more clearly define the requirements of notifying the Land Transport Plan in the Long Term Council Community Plan. This currently seems an area open for negotiation and as such the requirements of what Councils should include in terms of consultation are confusing and each office of the LTNZ seem to have differing requirements.

Not addressed

### ***Chief Executive Appointment***

Hauraki District Council disagrees with the requirement of re-advertising the Chief Executives position every five years. If Council is satisfied with the performance of the Chief Executive then Chief Executive should be able to continue in their role without this interruption.

The Commission is not recommending any changes to this part of the Act.

### ***Council Organisations***

Hauraki District Council would be interested in seeking further clarity on Council obligations in regards to Council Organisations in particular the monitoring requirements. Under the current legislation Council has no say on the establishment of a Council Organisation as any company or entity can constitute itself and include in its constitution that the Council have the right to appoint a trustee, director or manager.

No changes recommended.

### ***Sub-ordinate decision making body***

Hauraki District Council would like to seek clarity on what is considered a sub-ordinate decision making body and what the parameters are around this body. The Hauraki District Council has very effectively used drainage committee's since 1989 as advisory committee's to Council on its land drainage activities. It is our view that these "committee's" do not need to be standing committees or subcommittees of Council but that they do benefit from the formal committee requirements under the LGA and the LGOIMA. If they were a sub-ordinate decision making body the quorum requirements are less stringent with respect to having to have a Councillor present at each meeting.

Not addressed.

## **DETAIL OF SUBMISSION - LOCAL ELECTORAL ACT, 2001**

## **POSITIVE ASPECTS OF LOCAL ELECTORAL ACT, 2001**

Hauraki District Council is generally in support of the Local Electoral Act, 2001.

## **SUGGESTED AREAS FOR IMPROVEMENT WITH LOCAL ELECTORAL ACT, 2001**

### ***District Health Board***

Hauraki District Council considers that the combination of the Local Authority and the District Health Board elections have a bearing on the Local Authority election voter turnout. Hauraki District Council feels that the last election was a prime example, where there were so many candidates campaigning for the District Health Board seats, that people became overwhelmed with the amount of information and as such many chose not to vote.

The issue is discussed by the Commission but no significant changes are recommended. The Commission is of the opinion that best practice improvements and better information can address the issue.