

# Regulatory Impact Statement

## Better Local Government: Opportunities to improve efficiency

### Agency disclosure statement

A local government reform bill is included in this year's legislative programme to implement policy decisions arising from Phase Two of the Better Local Government (BLG) programme. The bill would amend the Local Government Act 2002.

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs to accompany the Cabinet paper that will seek decisions on most of the proposed components of the bill. (It excludes proposals relating to development contributions, local boards outside of Auckland, and minor technical revisions that do not require a RIS.)

This RIS focuses primarily on proposals to encourage more efficient and effective council processes – responding to issues and recommendations in the Local Government Efficiency Taskforce's report of December 2012. It also incorporates:

- o proposals to encourage more efficient local government delivery arrangements; and
- o proposals arising from other parts of BLG, relating to infrastructure and asset management planning, and information to support financial prudence regulations.

The proposals affect local authorities, but do not have a direct impact on individuals or businesses. The proposals in the Parts A and B do not involve significant change, and many of the proposed changes are 'enabling,' intended to have a positive impact, and/or would incur minimal compliance costs. Part D is also relatively minor in its impact

Given this, a formal regulatory impact analysis may not have been necessary for Parts A, B and D. However, we consider that undertaking this analysis is important for transparency, and to demonstrate the rigour of the process for preparing advice (particularly in terms of consideration of the Efficiency Taskforce's report). It also enables most of the proposed components of the bill to be assessed and presented as a package.

This RIS has been prepared from the perspective that clear legislative provisions are vital for efficient/effective performance and delivery of local government functions. Even moderate improvements to the legislative settings within which councils develop processes, make decisions, and undertake activities can be useful. Amendments can remove unwanted barriers, provide greater flexibility, clarify what is (or is not) permitted in the legislation, or avoid unintended consequences. In some cases, the fact of legislative change can itself prompt different ways of thinking and acting.

It is recognised, though, that non-regulatory approaches could also address many of the issues raised in this paper, at least in part, and need to complement the proposed legislative changes. Proposals for a non-legislative performance monitoring and improvement regime for local government are currently being developed as part of BLG.

*I have reviewed the RIS prepared by the Department of Internal Affairs and consider that the information and analysis summarised in the RIS meet the quality assurance criteria.*

..... Date: ..... /...../ 2013

Paul James, Chair, Regulatory Impact Analysis Panel, Department of Internal Affairs

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## Introduction: Better Local Government and the context of this RIS

1. In March 2012, Cabinet agreed to the Better Local Government (BLG) reform programme to improve efficiency in local government [CAB Min (12) 9/4 refers]. The programme was to be undertaken in two phases, both involving legislative amendments and some non-legislative elements. The first Bill was developed and enacted in 2012; the second is proposed for introduction in October 2013.
2. The BLG programme is part of the Government's broader agenda, and relates particularly to its strategic priorities of:
  - building a more productive and competitive economy; and
  - delivering better public services within tight financial constraints.
3. BLG seeks to contribute to the Government's strategic priorities, by improving the performance of the local government system in order to:
  - enhance its positive contribution and minimise its negative effects on economic growth; and
  - enable better delivery of local public services.
4. These objectives recognise that a critical part of strengthening the economy lies in ensuring local government institutions and processes are sound. Local authorities' decisions have important consequences for the national and local economies, in relation to core infrastructure, regulations, and public services. Negative effects can arise from matters such as:
  - inefficient or ineffective decisions, or poorly set and understood policies – resulting in the imposition of unjustified costs or restrictions; or
  - suboptimal governance or service delivery models – resulting in avoidable duplication, inefficiencies and diseconomies of scale.
5. This Regulatory Impact Statement (RIS) has been developed to take account of this broader context, and as part of the overall BLG programme. Other components of BLG are looking at matters like the fair and effective funding of infrastructure and growth, prudent financial management, and the development of a local government performance monitoring and improvement framework.

### Focus of this RIS

6. This RIS accompanies one of the three Cabinet papers that will seek policy decisions on the content of a local government reform bill that is proposed for introduction later in 2013. It covers all of the proposed components of the bill, except for options/proposals relating to:
  - improving development contributions;
  - making the local boards model available outside Auckland; and
  - minor technical revisions to correct errors and/or provide legislative clarity.

7. A separate RIS has been prepared to accompany the paper on development contributions, which includes complex and detailed analysis. The Department was advised that the proposals relating to local boards do not require a RIS. Technical revisions are also exempt from RIS requirements.
8. The majority of this RIS focuses on how councils consult, plan and make decisions under the Local Government Act 2002 (LGA02), with a view to improving the efficiency and effectiveness of related processes. These matters are covered in Part A. The rest of the RIS contains:
  - proposals that are designed to encourage more efficient local government delivery arrangements, including facilitating a better allocation of functions between territorial authorities and regional councils (Part B); and
  - matters arising from other parts of the BLG programme, which need to be realised through legislative change. Part C covers asset management planning, and Part D proposes new requirements for councils to publish information on rating units, which would support financial prudence regulations.

### **Relevant decisions already taken and links with the content of this RIS**

9. In 2012, the Local Government Act 2002 was amended to provide for a new purpose statement (emphasising the provision of local infrastructure and local public services), a more flexible assistance and intervention framework, the ability to develop financial prudence regulations, and new procedures for the community-initiated reorganisation of local government.
10. These reforms, which formed most of Phase One of BLG, were designed to improve the efficiency and effectiveness of local government and encourage more prudent financial management in the tight financial climate. The reforms were in response to concerns that the local government sector was not adapting to the global financial crisis and was out of step with central government drives for more efficient public service delivery.
11. While there are encouraging signs that local government is exploring more efficient ways of operating, there are opportunities for further improvements to be made. Some of these opportunities may be more easily realised if aspects of the legislative framework within which councils operate were improved – through enabling more flexible processes, providing greater clarity about legal requirements, and removing barriers, for example. Other opportunities lie in practice and performance improvements, which will be encouraged and fostered through non-regulatory initiatives as part of BLG Phase Two.
12. A Local Government Efficiency Taskforce (the Efficiency Taskforce), and a Local Government Infrastructure Expert Advisory Group were established early in the BLG programme.<sup>1</sup> The reports of both these groups are informing the development of regulatory and non-regulatory proposals during Phase Two of BLG. Appendix A to this RIS provides an overview of the links between the themes and recommendations in the Efficiency Taskforce's report and other pieces of work (including the proposals in this RIS).

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<sup>1</sup> The terms of reference for the Efficiency Taskforce and Infrastructure Expert Advisory Group can be found at: <http://www.dia.govt.nz/Better-Local-Government>.

13. According to its terms of reference, the Efficiency Taskforce was appointed to provide advice on “how to streamline local government consultation, planning and financial reporting requirements and practices under the LGA02 to be more efficient”. This included identifying potential amendments to decision-making and consultation processes, to make them more efficient, effective, and fit for purpose in today’s technical environment.<sup>2</sup>
14. The Efficiency Taskforce reported to the Minister of Local Government at the end of 2012. The report includes some potentially useful legislative improvements and non-legislative approaches (such as good practice guidance), and many of the issues and recommendations identified have informed the problem definition and options analysis in **Part A** of this RIS. However, it does not highlight any legislative provisions that, if removed or amended, are likely to result in dramatic improvements in the efficiency of council processes.
15. Amendments made in 2010 covered similar parts of the LGA02 to the Efficiency Taskforce’s terms of reference, from the perspective of improving transparency, accountability and financial management in local government (known as the TAFM amendments). While the focus was not on the consultation and decision-making provisions specifically, a few particularly ‘problematic’ requirements were removed.<sup>3</sup> Some mandatory contents of the long-term plan were also removed. This may have limited the Efficiency Taskforce’s scope to identify further significant legislative changes.
16. The Efficiency Taskforce was also asked to advise on other opportunities to build efficient local government, such as sharing innovation and encouraging collaboration between councils. The proposals in **Part B** of this RIS build on this advice.
17. Both the Efficiency Taskforce and the Infrastructure Expert Advisory Group commented on the potential for asset management planning to be made mandatory for local authorities. In this content, the Expert Advisory Group recommended production of infrastructure strategies to link asset management with long-term plan outcomes. **Part C** of this RIS covers these matters.
18. Finally, the 2012 amendments to the LGA02 introduced a regulation-making power relating to financial prudence. The regulations are to prescribe benchmarks or parameters for assessing the prudence of councils’ financial management. The absence of published comparators, such as the number of rating units<sup>4</sup> per council, has emerged as an issue when developing these regulations. Proposals described in **Part D** would help to address this issue.

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<sup>2</sup> Note that the Efficiency Taskforce considered ‘efficiency’ as per the common dictionary definition, not as an economic concept.

<sup>3</sup> For example, the repeal of section 78(2), which had required consideration of community views at four separate stages in the decision-making process and had been the subject of several court cases.

<sup>4</sup> Rating units largely equate to certificates of title.

## Part A: Decision making, consultation and long-term/annual planning in the Local Government Act 2002

### Status quo and problem definition

#### Key features of the current situation

19. This section outlines the main features of the decision-making, planning and accountability framework comprised in Part 6 of the LGA02. These provisions were the focus of the Efficiency Taskforce's report. They are the subject of the problem definition and analysis later in Part A, and there are more details therein.

#### Overview of decision-making and consultation requirements

20. The LGA02 includes a number of provisions relating to council consultation and decision making. The effect of these provisions is that (in summary) a council's decision-making processes must:
- promote consideration of all reasonably practical options (including their costs and benefits, the extent to which they achieve community outcomes in an integrated and efficient manner, and their impact on the capacity of the council to meet its statutory obligations);
  - promote consideration of the views and preferences of persons likely to be interested in, or affected by, the matter;
  - identify and explain any significant inconsistency between the decision and any plan or policy adopted by the council;
  - provide opportunities for Māori to contribute to the processes; and
  - promote compliance with the principles of consultation, including giving interested persons a reasonable opportunity to present their views.
21. The legislation requires councils to make judgements about how to comply with the decision-making requirements in any particular instance. This means that the nature, extent and degree of compliance necessary will vary from one from decision to another. The LGA02 also provides for a continuum ranging from minor to significant decisions, acknowledging that while councils make a lot of decisions, not all of them require full analytical and consultative processes.
22. Consultation is one input into the decision-making process, which helps elected representatives to make informed decisions on behalf of the people they represent and who receive council services. The LGA02 does not define consultation, but provides for principles of consultation. The consultation principles were informed by earlier court judgments about what consultation does and does not mean and what it involves. When consulting on any decision or other matter, councils must follow these principles.
23. The LGA02 also includes a special consultative procedure (in addition to the consultation principles). This sets out a series of procedural requirements, which are applied to specific decisions by reference elsewhere in the Act and in other legislation.

24. In summary, the special consultative procedure includes the following steps:
- the council prepares a statement of proposal, and a summary of the information contained in the statement of proposal;
  - the statement of proposal is made available for public inspection;
  - the council gives public notice of the proposal and consultation being undertaken (allowing at least one month for submissions to be made); and
  - the council ensures that any person who makes a submission:
    - is sent a written notice acknowledging receipt of the submission;
    - is given a reasonable opportunity to be heard by the council (if that person so requests); and
    - is advised of their opportunity to be heard, and how they may exercise that opportunity.
25. The LGA02 includes a number of provisions where the special consultative procedure must be used (as outlined in Appendix B), and it may be used in other circumstances. Several other pieces of legislation also require council consultation to be undertaken using the special consultative procedure (as outlined in Appendix C).

### ***Overview of long-term/annual planning requirements***

26. Councils are required to produce a long-term plan every three years, and it covers a period of 10 consecutive financial years. The first year of the long-term plan is also the annual plan, and in years two and three a separate annual plan must be produced (and adopted using the special consultative procedure). The long-term plan is important for internal planning and financial management, and public accountability purposes.
27. The LGA02 specifies the mandatory content of the long-term plan. These disclosures relate to a range of strategic, operational and financial matters, including: financial strategy; groups of activities; non-financial performance measures; funding impact statements; information on council-controlled organisations; and certain policies.
28. An overview of the long-term plan content requirements, including how these components flow through into the annual plan and annual report, is at Appendix D.
29. One of the main circumstances in which the special consultative procedure must be used is for the adoption of the long-term plan. Consultation on the draft plan is the primary means of engagement with communities about council activities and funding decisions. However, councils will not necessarily be seeking public views on much of the information contained in the draft long-term plan.
30. When using the special consultative procedure to adopt the long-term plan, councils are required to prepare a statement of proposal, which must include a draft of the whole long-term plan. A summary of the draft plan must also be distributed for public consultation. At the end of the decision-making process, a final version of the long-term plan is produced and adopted.



31. The long-term plan (draft and final versions) is audited. This means it must contain a report from the Auditor-General on:
- (a) the extent to which the local authority has complied with the requirements of the LGA02 in respect of the plan; and
  - (b) the quality of the information and assumptions underlying the forecast information provided in the plan.
32. The audit report is produced by audit service providers, most commonly Audit New Zealand, on behalf of the Auditor-General.

### **Costs and benefits of the status quo**

33. Information provided to and by the Efficiency Taskforce suggests that consultation and decision-making requirements in the LGA02 are interpreted as highly prescriptive and inflexible. This has led to:
- complex council processes, which do not always adapt well to a range of different situations and have time, cost, and resourcing implications; and
  - risk-averse behaviour in councils, arising from concerns that they will face legal challenges if procedures are not strictly followed.
34. The Efficiency Taskforce contended that unduly prescriptive and rule driven provisions slow down decision making and create scope for judicial review. Concerns about legal challenges and risk aversion are said to result in additional levels of consultation and/or a tendency to rely heavily on more traditional forms of consultation, especially the special consultative procedure. The prevalence of these issues across the local government sector, and associated costs, are not explored in its report.
35. It is difficult to ascertain the actual costs associated with consultation and decision making, particularly the costs of poor quality decision making, or unnecessary and/or excessive consultation. However, slow processes or inefficient/ineffective expenditure decisions can have negative effects on the local and national economy through, for example:
- the imposition of unjustified costs;
  - inefficient allocation of costs; and/or
  - the imposition of unjustified restrictions and compliance costs through poor quality regulation.
36. Councils have also indicated that the special consultative procedure can be a costly process.<sup>5</sup> It includes several specific process requirements, each of which incurs costs and may require considerable council resources. For example, there are costs and staff and/or elected members' time associated with:

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<sup>5</sup> Information on the special consultative procedure was provided in responses to a survey of council chief executives conducted by the Department of Internal Affairs on behalf of the Efficiency Taskforce (August/September 2012). This point has also been noted in discussions with the Department, and in the Productivity Commission's report *Towards better local regulation* (May 2013).



- preparing a statement of proposal and a summary of that statement (both of which are required, even for relatively minor or straightforward proposals);
  - printing documents – which in the case of the long-term plan, run to hundreds of pages each;
  - advertising public notices in newspapers and elsewhere;
  - recording and analysing submissions;
  - sending a written acknowledgement of submissions; and
  - holding public hearings, including arranging and following up on appointments with each individual who wants to attend. Hearings can run for several days or weeks.
37. Councils should also (under one of the principles of consultation) provide each person who ‘presents views’ with information concerning relevant decisions and the reasons for those decisions. The Department’s observation is that some councils interpret this as requiring a tailored or detailed response to each submitter, which takes time and thought to prepare.
38. In discussions with the Department, councils have indicated that there is a basic cost associated with each use of the special consultative procedure, including staff time and administration. These costs will vary considerably from one council to another (from tens to hundreds of thousands of dollars). Actual costs will also differ according to other factors, such as the population size of each council, and the level of interest in the topic of the consultation.
39. In circumstances where the special consultative procedure must be used to consult, councils are required to pay these costs and meet all of the legal requirements even if the subject of the consultation is relatively minor and/or unlikely to generate public interest. Councils also incur additional costs if they consider other, less traditional means of consultation are needed to reach people who are likely to be interested or affected.
40. In its recent report *Towards better local regulation*, the Productivity Commission commented on how the blanket provision requiring use of the special consultative procedure for bylaws overlooks the fact that councils can have little discretion in the making of some bylaws (for speed limits, for example). Councils participating in this inquiry also noted inefficiencies associated with the special consultative procedure, which is administratively costly and burdensome, and does not always elicit high quality feedback.
41. The special consultative procedure can put pressure on resources if a large number of submissions are received and/or a lot of people ask to be heard. While this can provide useful information on community views and is a valuable part of the decision-making process, recording, analysing, acknowledging and hearing submissions can involve a large time commitment. This can be a particularly problematic in small councils, with few staff, and in councils with a large population to consult and ‘hear’.<sup>6</sup>

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<sup>6</sup> The creation of the Auckland Council has highlighted the costs and challenges associated with the latter. For example, according to information on the Council’s website, it received more than 10,000 submissions on its draft 2012-22 long-term plan, which produced more than 53,000 submission points.

42. Councils have also noted that there are other costs and issues associated with requirements to consult (with or without the special consultative procedure). For example, this can make it difficult to make quick decisions – creating a perception that councils are slow moving and, potentially, resulting in situations where they miss out on business opportunities. It can also mean councils do not propose change because the benefits associated with that change are outweighed by the costs of consultation.<sup>7</sup>
43. Despite the costs and other concerns about the special consultative procedure, councils have indicated that they are generally positive about having a specific, transparent process to follow, which can help with the quality of consultation and provide accountability for decisions made. It can be particularly useful for significant matters that are likely to be of widespread public interest, such as the long-term plan.<sup>8</sup>
44. The benefits of the special consultative procedure, and consultation more generally, are difficult to quantify in financial terms, though. Benefits relate closely to the value placed on having sound democratic processes that maintain/promote public confidence by enabling public involvement in, and scrutiny of, council decision making. Expectations in relation to types and amounts of consultation and engagement, and views on their relative costs and benefits, vary in different councils and communities. Councils should be using their significance policy to guide this.
45. There are also benefits associated with getting community and stakeholder feedback as part of the decision-making process. For example, this can mean councils decide not to allocate resources to projects that do not have community backing, or make councils aware of other options.
46. Producing a long-term plan is a lengthy – and usually ongoing – process that requires a lot of council resources. Despite this, it is generally recognised that planning over the long-term is beneficial and part of good council governance.<sup>9</sup> For example, it supports and encourages the sustainable delivery of council services and infrastructure, and helps to minimise the risk of unexpected large rates increases or major changes to services.
47. The long-term plan is the public-facing document, which establishes what communities can expect, how much this will cost and how it will be paid for, as part of the overall strategic direction for the council. The draft plan provides an opportunity for the public to participate in decision making about council activities. Once adopted, the long-term plan provides a basis for accountability to the public.

## Problems

48. The Efficiency Taskforce's report, other related information, and discussions the Department has had with councils and sector bodies, suggest there are various problems relating to aspects of the decision-making, consultation and planning framework in the LGA02. These problems have been summarised into the three main themes set out below.

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<sup>7</sup> This was noted in some responses to the survey of council chief executives conducted by the Department on behalf of the Efficiency Taskforce (August/September 2012).

<sup>8</sup> *Ibid*

<sup>9</sup> For example, this was emphasised in the Society of Local Government Managers' submission to the Efficiency Taskforce: *Better local accountability* (September 2012), and reflected in the Taskforce's subsequent report.

***Theme 1: Some decision-making provisions are unclear, misunderstood, or not having the intended effect***

49. The decision-making provisions in the LGA02 are intended to boil down to a few 'musts' and a common sense approach – setting out some requirements, while explicitly allowing for councils to exercise discretion. To reflect that some decisions are bigger than others, there are provisions that allow councils to tailor their decision-making procedures to the size and scale of a particular issue/decision.
50. 'Significance' is an important concept here. Councils are required to have significance policies to set out their approach to determining significance, and any thresholds, criteria or procedures that are to be used in this respect. Significance generally operates (or is intended to operate) on a continuum, so the more significant a matter is, the more analysis and community engagement will generally be indicated.
51. Significance policies are intended to provide a transparent basis for how and when communities expect to be engaged in different matters. Consultation on these policies is supposed to result in an 'agreement' between councils and communities about what matters. Ideally, the significance of a particular matter will be considered early in the decision-making process, so it is clear how much or little public engagement is required and the form that it will take.
52. However, information provided to and by the Efficiency Taskforce suggests that the legislation may not be operating as intended. The purpose of significance policies, and how these should be used, seems to be poorly understood, and these are largely financial rather than community engagement documents. Fear of legal challenge is also having a negative impact on council practice.<sup>10</sup>
53. It appears that some councils think they have to follow all of the decision-making requirements in all cases, and do not have confidence to use their own judgements to exercise the discretion that the legislation enables. This can lead to overly elaborate and/or unnecessary processes – with a 'one size fits all' approach to decision making and consultation, rather than approaches that are proportionate to the nature and size of the decision at hand.
54. Some of these poor practices may stem from a lack of clarity in the legislation about what is intended, required, or enabled by certain provisions, combined with an absence of explanatory guidance material. They may also relate to a lack of understanding by decision makers (and those advising them) of the legislation, or the law more generally, though.
55. That people in some councils can understand and apply the provisions as intended suggests the latter may be a valid conclusion. However, there is insufficient information about individual or collective behaviour in councils to be more definitive about the root cause of the problem, or how extensive and costly it is.

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<sup>10</sup> This information came through in responses to questions about decision making and significance policies in the survey of council chief executives conducted for the Efficiency Taskforce (August/September 2012), and in corresponding sections of the Taskforce's final report. These points have also arisen during discussions between the Department and some councils. In addition, similar themes were noted in independent research into the engagement and decision-making provisions, undertaken in 2007 by MWF and JHI Consultancy for the Local Government Commission as part of its statutory review of the LGA02.

***Theme 2: Consultation requirements are inflexible, which is hindering councils' ability to operate efficiently and effectively***

56. The LGA02 includes a number of requirements to consult, most of which specify use of the special consultative procedure (see Appendix B). Councils can also choose to use this procedure to consult on other matters.
57. There appear to be two problems here – the first of which is a regulatory issue; the second relating more to council practice:
  - (i) in terms of mandatory use of the special consultative procedure, the legislation provides no scope for flexibility – this means:
    - as a minimum, councils have to follow all of the requirements in the special consultative procedure;
    - using this procedure may be out of proportion with some proposals and decisions, or be required even when councils have limited discretion over the detail of the proposal (as with some bylaws, for example);
    - councils are required to run a full special consultative procedure even when they know, from initial engagement exercises, that there is unlikely to be much public interest and few submissions;
    - councils cannot use other consultation or engagement techniques instead, or have to use them in addition to the special consultative procedure;
  - (ii) councils are choosing to use the special consultative procedure as a fall back position in other circumstances, due to public expectations, concerns about public criticism, or (real or perceived) risk of legal challenge.
58. While consultation can help to enable effective public participation in council decision making, the special consultative procedure might not be the most efficient or effective way of consulting or engaging with different communities or individuals. The Efficiency Taskforce highlighted concerns that this is a formal process based around traditional formats of written submissions and speaking in front of the council. As such, it may be off-putting to many people, including 'hard to reach' groups, meaning their perspectives are missing from the decision-making process. The legislation has also not kept pace with technological opportunities and changing community expectations about engagement with their councils.
59. A key part of the special consultative procedure is that every person who makes a submission is given "a reasonable opportunity to be heard by the local authority". It does not specify what this means in practice, though, leaving it to councils to determine. The typical format is a 10 minute slot per submitter, in which they can speak to their written submission. There appears to be a public expectation, though not an explicit right, to be heard in this way.
60. Fulfilling that expectation may be increasingly impracticable for some councils, particularly if any future local government reorganisations lead to bodies with large populations. In a 2012 report on the Auckland Council, the Office of the Auditor-General (OAG) noted that nearly 1700 submitters on the 2012-22 long-term plan asked to be heard.

61. That report goes on to comment that it *does not seem possible for the Council to conduct public consultation and “hear” submissions in the way many local authorities have done under the Local Government Act 2002*. The report suggests that *for the Council to build the new techniques of community input that Auckland City’s scale requires, a review of the consultation provisions of the Act might be needed*.<sup>11</sup>
62. This approach is also an inefficient way of gathering public feedback; for example, many people who attend hearings simply repeat their written submissions. Further, the wording in the legislation means the ability to be heard is only provided to those who have already made a submission.
63. The Auckland Council has been developing new techniques for consultation with its large and diverse communities, and the special consultative procedure tends to be the end of a longer process of community and stakeholder engagement. For its recent long-term and annual plans, hearings forums (combining groups of submitters) were run in addition to ‘traditional’ hearings (which were generally reserved for key stakeholders).
64. This approach helped the Council to manage a hearings process in which a large number of people wanted to participate. We understand there were some concerns about the use of non-traditional formats, though, and consider that it could be beneficial for the legislation to clarify that councils can determine how to ‘hear’ public views. It could also be clearer that various consultative techniques may be used, to encourage greater use of technology (as this becomes increasingly prevalent and acceptable).

***Theme 3: The long-term plan and annual plan are not a useful basis for consultation, and there is unnecessary duplication between the two documents***

65. Consultation during the development of the long-term plan is supposed to be the primary means of engagement with communities about council activities. However, long-term plans are hundreds of pages long and contain a lot of complex, highly technical details. This can make them difficult for most people to understand, identify key points of interest, and/or comment on during consultation. Moreover, it appears that long-term plan summaries are often not being used to communicate effectively, and are not improving the public accessibility of information in the long-term plan.
66. The OAG’s report on the 2012-22 long-term plans noted several concerns along these lines, including that:
  - the practice has emerged where the strategy and associated plans have become focused on detail, complexity and prescription;
  - long-term plans are documents that are largely meaningful only to well-informed and special interest groups, and are not focused on communicating clearly to ratepayers;
  - insufficient time is being spent on improving the long-term plan summary; and

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<sup>11</sup> Office of the Auditor-General: *Auckland Council: Transition and emerging challenges* (December 2012); p. 48.

- few councils took the opportunity that the TAFM reforms in 2010 offered to reduce the size and some complexity of their long-term plans.<sup>12</sup>
67. The report concluded with the view that the OAG *would like to see planning and accountability documents that focus on the important issues (including prospective financial information and level of service intentions), and provide access to supporting data and policies through each local authority's website.* Furthermore, *until the [LGA02's] disclosure requirements are based on principles and not prescription and until local authorities invest in preparing clearer and more informative LTPs, most communities will miss out on better informed and more effective consultation about their local authority's intentions.*<sup>13</sup>
68. Councils have indicated that the long-term plan appears to be of little interest to many people.<sup>14</sup> These views are supported by research into public perceptions about the accessibility of council documents, which was carried out in 2008.<sup>15</sup> This research noted that:
- few of the submitters on council documents who were surveyed had read or seen the long-term/annual plan, even at the conclusion of the submission process;
  - those who could comment on the documentation considered the language used by the council to be highly technical, legal, and very complex;
  - those who read and understood the documents tended to be well-educated professionals; and
  - submitters considered the challenge for councils was to present complex and strategic issues in a simple way during the consultation process.
69. Overall, this information suggests that, as currently presented, the long-term plan is not a very useful document for the public, particularly as a basis for consultation. Councils also seem to hold similar views on the annual plan, with the added problems that this duplicates some of the long-term plan, and opens up the entire draft annual plan to consultation – enabling the public to re-submit on matters that have previously been decided in relation to the long-term plan.
70. There appear to be various reasons for this, including: long-term/annual plan content requirements in the LGA02; other mandatory requirements relating to financial and non-financial reporting; council practices (such as expectations that this is a 'formal' document, and use of standard templates); and the pressure of putting together such a

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<sup>12</sup> Office of the Auditor-General: *Matters arising from the 2012-22 local authority long-term plans* (2012); p. 52. The 'TAFM' reforms refer to the 2010 amendments to the LGA02 to improve transparency, accountability and financial management in local government. As a result of these reforms, councils no longer have to include most funding and financial policies in their long-term plans.

<sup>13</sup> *Ibid*

<sup>14</sup> This came through in responses to questions about long-term plans in the survey of council chief executives conducted for the Efficiency Taskforce (in August/September 2012), as well as in research in 2007 by MWF and JHI Consultancy as part of the Local Government Commission's statutory review of the LGA02. Similar messages were noted during discussions between the Department and elected members and/or officials from some councils in May 2013.

<sup>15</sup> Colmar Brunton: *The submitter experience, report no. 1 – understanding experiences of interacting with local government* (February 2008). This was one of the research reports prepared for the Local Government Commission as part of its statutory review of the LGA02.



complex and multi-faceted document. The long-term plan is intended to serve many, varied purposes and, therefore, does not achieve any or all of these very well.

71. Several councils have also told the Department that, in their experience, presentation problems can arise due to the long-term plan being designed to meet the requirements of auditors rather than the needs of communities. They have expressed the view that auditing practice does not necessarily correspond with messages conveyed by the OAG in reports about long-term plans.
72. Research would be needed to identify the reasons for, and extent of, any audit-related issues, as well as establishing the broader context for council comments (including recognising the perspectives of auditors and the requirements they work within). As it appears that any actual problems are likely to be due to variations in auditing and/or council practices, rather than requirements in the LGA02, significant legislative amendments are not being considered at this time.

## **The desired outcomes and objectives**

### **Outcomes sought**

73. At a high level, the desired outcome is a modern, flexible and well performing local government sector that is able to meet the needs of its communities, provides efficient and effective services, and contributes positively to the local and national economies. Meeting the needs of communities includes understanding and acting on their priorities in a financially prudent manner.
74. More specifically, the desired outcome is a legislative framework, and/or non-regulatory tools, which encourage and enable councils to perform well. This means having a framework that:
  - balances efficient and effective local government operations, with transparency, accountability and assurance to communities and stakeholders; and
  - provides for council planning, consultation and decision-making processes and practices that support and enable the efficient allocation of community resources.

### **Objectives**

75. The objectives for the legislative changes and/or non-regulatory approaches considered below are that they:
  - encourage and enable flexible, efficient and effective council processes;
  - are likely to be effective in changing/improving council practices, including being straightforward to implement; and
  - improve clarity and aid transparency, comprehension and accessibility.
76. In addition, it is important to recognise that councils operate within a model of representative democracy. This means, for example:
  - while public engagement and feedback are important, councillors are elected to promote the interests of both current and future communities, rather than to accommodate each person's submission or reflect the majority view;



- many people have little interest in routine council matters, and have elected other people to make informed decisions on their behalf; and
- elected members are accountable to electors and communities for the outcomes of their actions and decisions, and there is a need for transparent processes and frameworks within which this accountability can occur.

77. Any legislative changes designed to improve the efficiency of council operations need to be considered in this context, and should be balanced with assurances to communities that transparency and accountability will be maintained.

## Regulatory impact analysis

### High level options

78. At a high level, we consider there are three broad approaches that could help to address the problems identified above: regulatory; non-regulatory; or a combination of these two approaches.

- Regulatory approach: This involves making changes to the decision-making, consultation and/or planning provisions in the LGA02, through the local government reform bill that is proposed for introduction later in 2013.

The package of proposed changes is set out in Tables One to Four below, grouped according to the themes used in the problem definition. These specific proposals have been developed to provide a legislative solution to the problems described earlier, and each one is designed to meet the outcomes and objectives sought (as outlined in paragraphs 73 to 77).

This approach has the benefits of providing clarity, encouraging and enabling more flexibility, and future-proofing the legislation. The proposed changes are aimed at specific provisions in the legislation that appear to be causing difficulties for councils. However, legislative change is a blunt tool to deal with practice issues, and may have unintended consequences.

- Non-regulatory approach: This could be undertaken as part of the broader programme of performance monitoring and improvement for local government, which is currently being developed by the Department as part of Phase Two of BLG.

In terms of the topics covered here, this approach could involve the preparation and circulation of good practice and/or other guidance to aid interpretation and implementation of the legislation (including the good practice guidance recommended by the Efficiency Taskforce). It could also involve training for council elected members and officers, building on the programmes already provided by Local Government New Zealand and the Society of Local Government Managers, for example.

This approach is a potentially effective means of improving council practice, which could be targeted at particular issues and/or undertaken as part of a comprehensive performance improvement package. However, it is a longer-term and voluntary approach, which relies on the capability and/or willingness of each council to participate and make use of the tools available.

## Preferred approach

79. Any of the approaches, if designed and implemented correctly, has the potential to deliver the outcomes and objectives sought. However, a combination of both legislative change and non-regulatory approaches is likely to be most effective in addressing the issues raised and achieving the desired change – particularly across a local government sector that comprises 78 diverse councils.
80. These are complementary approaches, which together could encourage and enable effective council practices (individually and sector-wide) by removing difficulties within the legislation and improving comprehension and application of that legislation. An important part of the non-regulatory approach would be to support and explain the legislative changes, helping to facilitate a smooth implementation.
81. The analysis below focuses on the different components of the regulatory approach, outlining what the Department considers to be the changes to the LGA02 that align best with the objectives sought. Some of the changes are designed to address particular problems; others are more enabling, in terms of this being an opportunity to make improvements to the legislation and to encourage councils to do things in a different way.
82. Details of the non-regulatory approach are not provided in this RIS as they are still being developed, and do not have a regulatory impact. The aim is to create a culture of continuous improvement in local government, including identifying and sharing good practice, and developing and delivering performance-related tools.

## Analysis of regulatory approach – package of proposed changes to the LGA02

### *Overview of approach to analysis*

83. The changes proposed below have been designed to meet the outcomes and objectives set out in paragraphs 73 to 77, and to address the matters that are covered in more detail in the problem definition section above. We consider these particular changes to the LGA02 are likely to be more effective than other potential changes, for the reasons outlined in the tables.
84. The regulatory impact of the proposals, and the other options noted, is difficult to determine, particularly in financial terms and/or across 78 different local authorities (all with their own processes and ways of operating). However, the proposals have minimal direct impact (financial or otherwise) on individuals, households and businesses, and what impact there may be is intended to be positive.
85. A point to note is that any considerations of, or references to, ‘efficiency’ are in a general sense, rather than as an economic concept.

### **Table One: Changes to decision-making provisions**

<b>Some decision-making provisions are unclear, misunderstood, or not having the intended effect (theme 1)</b>
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<b>Status quo</b>
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The LGA02 includes a number of provisions relating to council consultation and decision making. The effect is that, in general, every council must ensure its decision-making processes promote compliance with these provisions.
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**Some decision-making provisions are unclear, misunderstood, or not having the intended effect (theme 1)**

The decision-making provisions are intended to boil down to a few ‘musts’ and a common sense approach – setting out some requirements and principles, while explicitly allowing for councils to exercise discretion. To reflect that some decisions are bigger than others, there are provisions that allow councils to tailor their decision-making procedures to the size and scale of a particular issue/decision (including making use of significance policies).

**Problem/opportunity**

The legislation may not be operating as intended. It appears that some councils think they have to follow all of the decision-making requirements in all cases, and are not exercising the discretion that the legislation enables. This can lead to overly elaborate, costly, and/or unnecessary processes. The purpose of significance policies, and how these can and should be used, seems to be poorly understood.

**Proposed changes to the LGA02**

- Simplify some of the decision-making requirements, so there is less prescription; e.g. remove the detailed provisions relating to the assessment of options under section 77.
- Clarify the meaning and intent of some provisions so they are easier to follow – in particular, provide greater clarity about the purpose and intent of significance policies, and place less emphasis on there being “thresholds” in these policies.

**Rationale for proposed changes**

- These changes would be designed to address indications that some provisions are poorly understood or not being interpreted as intended by some councils, leading to overly elaborate and/or unnecessary processes/procedures.
- In particular, the legislation would make it clear that the purpose of significance policies is to provide an explicit guide for how and when communities expect to be engaged in different matters, (including when formal consultation would occur), and the level of analysis required. Having such a policy should help to tailor decision-making and consultation processes so they are appropriate to the circumstances.

**Regulatory impact**

The proposed changes are intended to have a positive impact on local government – by encouraging/enabling local authorities to operate more efficiently and effectively in terms of procedures followed, and potentially enabling a reduction in compliance and transaction costs.

There would not be a direct impact on individuals, households and/or businesses.

**Other changes considered and reasons they were discounted**

Two other approaches were considered: removing decision-making requirements from the legislation; and replacing the current requirements with decision-making ‘principles’.

These were discounted for the following reasons:

- it is unclear that ‘principles’ would achieve the objectives sought, or markedly improve the current situation (e.g. that they would be easier to interpret than the existing requirements, or result in changes in behaviour in councils);
- neither approach appears likely to reduce the risk of legal challenge, and significant changes of any kind might actually increase concerns about (real or perceived) risk – thus perpetuating risk averse behaviour in councils; and
- removing decision-making requirements entirely would mean there is no minimum statutory assurance to communities about how councils make decisions.

**Table Two: Changes to consultation requirements**

<p><b>Consultation requirements are inflexible, which is hindering councils' ability to operate efficiently and effectively (theme 2)</b></p>
<p><b>Status quo</b></p> <p>The LGA02 provides for principles of consultation, which must be followed whenever consultation occurs, and a special consultative procedure (SCP). The SCP is a set process involving a number of prescribed steps, each of which must be followed (as a minimum).</p> <p>The LGA02 requires councils to consult on certain matters using the SCP (including long-term plans, annual plans, bylaws, and most funding and financial policies). Councils can also choose to use the SCP to consult on other matters.</p>
<p><b>Problem/opportunity</b></p> <p>There appear to be two problems here – the first of which is a regulatory issue; the second relating more to council practice:</p> <ul style="list-style-type: none"> <li>• in terms of mandatory use of the SCP, the legislation provides no scope for flexibility – this means: <ul style="list-style-type: none"> <li>▪ as a minimum, councils have to follow all of the requirements in the SCP (as well as the principles of consultation);</li> <li>▪ using this procedure may be out of proportion with some proposals and decisions, or be required even when councils have limited discretion over the detail of the proposal; and</li> <li>▪ councils cannot use other consultation or engagement techniques instead, or have to use them in addition to the SCP;</li> </ul> </li> <li>• councils are choosing to use the SCP as a fall back position in other circumstances, due to public expectations, concerns about public criticism, or (real or perceived) risk of legal challenge.</li> </ul>
<p><b>Proposed changes to the LGA02</b></p> <ul style="list-style-type: none"> <li>• Provide for flexibility about when the SCP must be used to consult under the LGA02, so that it: <ul style="list-style-type: none"> <li>▪ continues to be required in relation to adoption and amendment of the long-term plan, and to bylaws under some circumstances (such as the creation of new bylaws and changes to existing bylaws where there is a significant public interest and/or impact); but</li> <li>▪ becomes an option that may be used in any other circumstances where consultation is needed under the LGA02.</li> </ul> </li> <li>• Provide clarity and flexibility about the SCP-related procedures, so that: <ul style="list-style-type: none"> <li>▪ the SCP can accommodate new techniques and technology for communicating and consulting with the public; and</li> <li>▪ it is clear that each council determines how to 'hear' submissions, and this may include (but is not limited to) hearing submitters individually and/or in groups, using hearings forums, and using technology.</li> </ul> </li> <li>• Clarify the intent of the principle of consultation that refers to persons who present their views to the local authority being provided with "information concerning both the relevant decisions and the reasons for those decisions" (section 82(1)(f)). This should be about ensuring there is access to information on decisions, not providing a bespoke letter to each person giving detailed explanations.</li> </ul>
<p><b>Rationale for proposed changes</b></p> <ul style="list-style-type: none"> <li>• In most circumstances, councils would be able to decide how to consult, instead of having to use the SCP. This would enable the use of consultation approaches that are proportionate to the matter being consulted on, instead of a 'one size fits all' approach. Significance policies could be used to set out when the SCP would be used.</li> </ul>

## **Consultation requirements are inflexible, which is hindering councils' ability to operate efficiently and effectively (theme 2)**

- Changes to parts of the SCP would signal where flexible approaches can be applied, helping to change expectations about more 'traditional' and resource-intensive forms of consultation (such as hearing from each submitter individually, for a certain length of time and in front of the full council). Technology and community expectations are changing – the legislation needs to enable these changes to be accommodated, while not being too specific about particular forms of technology so it does not become outdated quickly.
- Councils know their communities and need the flexibility to tailor their consultative and engagement processes to meet the needs and (changing) expectations of those communities. This reflects that each council is different – in terms of the diversity of local populations, and the nature and scale of the issues and opportunities they are facing, for example.

### **Regulatory impact**

- The proposed changes are intended to be enabling provisions that provide councils with the opportunity to operate in a different way when it comes to consultation. They do not require councils to make any changes, or to invest in or use new technology.
- These changes could have a direct impact on the individuals and businesses who participate in council consultation. From a public perspective, though, the proposals neither impose additional consultation requirements nor remove the right to be consulted. The aim is to provide councils with more flexibility about how they consult, with a view to broadening the techniques used and the individuals and groups reached.
- There are costs associated with the SCP that are incurred every time it is used, and costs that are dependent on the matter being consulted on and the level of public interest (e.g. processing a large number of submissions). There is potential for savings to be made if councils can undertake consultation that is proportionate to the matter at hand, but it appears likely that in many cases the money usually used for the SCP will be spent on alternative consultation/engagement mechanisms.

### **Other changes considered and reasons they were discounted**

Three alternative approaches were considered:

(1) Removing the special consultative procedure from the LGA02. This was discounted because:

- several other pieces of legislation refer to, and rely on, the SCP as a means of consultation (a list is provided at Appendix C); and
- feedback from councils is generally positive, both in terms of the availability of the SCP as an option, and the procedures it encompasses.

(2) Removing all mandatory requirements to consult (effectively leaving it to councils to decide whether or not to consult and how to do this on a case by case basis). This was discounted because:

- there needs to be an assurance to communities and stakeholders that at least a minimum level of consultation will be undertaken on certain matters; and
- removing these requirements is likely to create uncertainty in councils, and increase the real or perceived risk of legal challenge.

(3) Removing the requirement to consult on the annual plan, accompanied by turning this into an annual budget. This was discounted because:

- there were mixed views in the councils we talked to about this option – the general feeling was that councils would continue to consult on the annual plan even if it was not mandatory, thus making it largely ineffective as an approach; and
- there were concerns that this would remove an important opportunity for the public and stakeholders to engage with their council on an annual basis about financial/rating matters and to propose new ideas for funding.

**Table Three: Changes affecting consultation on long-term and annual plans**

<p><b>The long-term and annual plan are not a useful basis for consultation, and there are elements of unnecessary duplication between the two documents (theme 3)</b></p>
<p><b>Status quo</b></p> <p>Councils are required to produce a long-term plan (LTP) every three years. The first year of the LTP is also the annual plan, and in years two and three a separate annual plan must be prepared. The special consultative procedure (SCP) must be used when adopting the LTP and annual plan. Using the SCP means the statement of proposal must include a draft of the whole plan, and a summary of the plan must also be distributed for consultation.</p> <p>The LGA02 specifies the mandatory content of the LTP, which includes a range of strategic, operational and financial matters, and non-financial performance measures. However, councils will not necessarily be seeking public views on much of the information contained in the draft LTP.</p>
<p><b>Problem/opportunity</b></p> <p>Consultation on the LTP is supposed to be the primary means of engagement with communities about council activities. However, LTPs are hundreds of pages long and contain a lot of complex, highly technical details. This can make them difficult for most people to understand, identify key points of interest, and/or comment on during consultation.</p> <p>There are elements of duplication and inefficiency in relation to the annual plan. For example, some councils re-visit portions of their LTP each year, and there is duplication in the consultation process due to opening up the entire draft annual plan to consultation. This enables re-submission on matters that have previously been decided in relation to the LTP.</p>
<p><b>Proposed changes to the LGA02</b></p> <p>Changes to the statutory purpose and presentation of draft and final versions of the long-term plan/annual plan, so that:</p> <ul style="list-style-type: none"> <li>• councils are to consult on a new consultation document instead of both a draft plan and a summary of that plan;</li> <li>• the focus of the new LTP consultation document would be on explaining major issues, choices, changes to services, and financial implications – as determined by each council, in accordance to what is important to their communities. The aim would be to provide a plain language explanation of complicated information (such as financial changes described in funding impact statements) in a manner that can be comprehended by non-experts;</li> <li>• the focus of the new annual plan consultation document would be on proposed differences from the LTP for that year;</li> <li>• draft plans would become internal working documents for councils, though information that substantiates components of the consultation document should be made available to the public if requested;</li> <li>• final plans would be the public accountability documents and be published in whatever format(s) the council thinks necessary to ensure widespread public access;</li> <li>• the draft LTP would continue to be audited, but how its contents are presented should be less relevant as the public would not be the primary audience.</li> </ul>
<p><b>Rationale for proposed changes</b></p> <ul style="list-style-type: none"> <li>• Councils make important funding and service delivery decisions in relation to components of the long-term plan/annual plan, and the final documents are a means of public accountability. Having a focused consultation document should help to improve the efficiency/effectiveness of decision-making and consultation processes associated with these plans. For example:             <ul style="list-style-type: none"> <li>▪ consultation documents would focus on issues of community interest and where input into decision-making would be valuable, rather than describing matters where no changes are</li> </ul> </li> </ul>



**The long-term and annual plan are not a useful basis for consultation, and there are elements of unnecessary duplication between the two documents (theme 3)**

proposed; and

- consultation documents would tell a 'story' and not include complex technical detail – this should make them more accessible to, and understandable by, a broader range of people, and increase the quality of submissions.
- Councils would produce one consultation document instead of printing both the draft of the full planning document and a summary of that document (totalling hundreds or thousands of pages).
- The annual plan consultation document would focus on proposed differences from the long-term plan – meaning less duplication between the two documents, and less 're-consultation' on matters that have already been decided in the LTP.
- Transparency/accountability to the public would be maintained through the publication of the final versions of the plans, in full.
- The proposed changes would not specify how the LTP and other council documents should be made available, or require that they be online only. While it is anticipated that council websites will increasingly become the primary way of communicating with and informing communities, discussions with councils have revealed concerns that many people do not have internet access or still have dial-up connections – making it difficult to download large documents. This anecdotal information is supported by statistics on internet use, which show that while four out of five New Zealand homes had access to the internet in 2012, one third of rural households did not have a broadband connection.<sup>16</sup> The speed and cost of broadband connections, and data caps, can also affect the accessibility of council documents. In addition, access to the internet is not equal across population groups.

**Regulatory impact**

- The proposed changes do not place additional requirements on councils, or require them to change the processes that underlie long-term/annual planning. Rather, the new consultation document would be produced instead of the current summary document, and councils would no longer have to publish the draft plan in full.
- These changes would have an impact on the individuals and businesses who participate in council consultation on the LTP / annual plan, and particularly those who are interested in reading the technical details in the draft plans. However, the intention is to make these plans easier for more people to understand, and more clearly focused on the issues on which public feedback is being sought. The relatively few people who wish to access the underlying information (i.e. parts of, or the entire, draft plan) would be able to request this from their council.
- The Department understands (from the local government sector) that the majority of the cost of long-term and annual planning lies in the development and maintenance of the systems and information base needed to support an effective planning process, rather than in producing the documents. Therefore, the proposed changes do not enable significant reductions in cost. This is not the intent, though.
- In relation to the annual plan, reducing duplication could be beneficial to councils. For example, the proposed changes enable councils to remove some material from that plan if it duplicates existing content in the LTP. This could reduce some of the 'bulk' of the annual plan. They also enable councils to minimise 're-consultation' on matters that have already been decided as part of the LTP (if no further changes are proposed).

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<sup>16</sup> Statistics New Zealand: *Household use of information and communication technology: 2012*.



**The long-term and annual plan are not a useful basis for consultation, and there are elements of unnecessary duplication between the two documents (theme 3)**

**Other changes considered and reasons they were discounted**

The alternative approach considered involved changing the purpose of the LTP so it must be a 'strategic' document, and removing the 'operational' content of the LTP and requiring this be put on council websites instead. (This was the focus of the Efficiency Taskforce's recommendations.) These changes were discounted because:

- it would be difficult to define and clearly distinguish between 'strategic' and 'operational' content in the legislation;
- for some people, 'operational' matters (like library opening hours) are important and they want to be consulted on them;
- requiring some LTP-related information be disclosed *only* on the internet could exclude a proportion of the public from accessing this information; and
- this approach might not be effective in changing council practice, in terms of improving the presentation/accessibility of these documents. For example, in the 2012-22 LTPs, many councils did not remove content that no longer needed to be included in those plans. While in some cases this may have been because they were consulting on that content, it also appears that this was due to other reasons (such as use of a standard template or expectations that certain content will be included).

**Table Four: Other proposals to enable efficiency gains through use of technology**

**Enabling participation in council meetings through electronic means**

**Status quo**

Under the provisions of the LGA02, a meeting of a local authority must be conducted in accordance with Schedule 7 of that Act, Part 7 of the Local Government Official Information and Meetings Act 1987 (LGOIMA) and the standing orders of the local authority.

This legislation is silent on the issue of whether or not an elected member must be physically present at a meeting to be considered a participant and/or to be able to vote in relation to decisions. There is not an explicit prohibition on the use of video or telephone conferencing (or other electronic devices) to enable remote participation.

In general, though, it appears that councils (and the public) expect elected members to attend meetings in person. We are not aware of other arrangements occurring.

**Problem/opportunity**

It appears to be problematic that there is no specific legislative provision for remote participation and/or use of technology in meetings, including appropriate safeguards to protect against misuse. This means there is a lack of clarity and certainty for councils about what is and is not possible. (For example, there are various references in the legislation that suggest a physical meeting is to be held – such as use of the word 'place'. It is also unclear what being 'present' at a meeting means in practice.)

The Efficiency Taskforce suggested exploring legislative amendments to provide for elected members to use technology to participate remotely in council meetings or other decision-making, engagement and consultation processes. The Taskforce considered this could be more efficient, particularly for councils that cover a large area and require elected members to travel a long distance to attend meetings. Some local authorities have also sought provision for these arrangements to be included in the legislation.

The Taskforce noted, though, that there are risks associated with allowing elected members to participate remotely, including risks of 'outside influence' and using technology as a way to avoid

## Enabling participation in council meetings through electronic means

physically attending public meetings. There are also concerns about security of confidential discussions, and meeting public expectations in terms of the access to, and transparency of, democratic decision making. These risks and concerns have been raised in the Department's discussions with some councils.

### Proposed changes to the LGA02

- It is proposed to amend the legislation (LGA02 and, potentially, LGOIMA) to provide for situations where councils want to use technology to enable elected members to participate in meetings.
- These would be enabling provisions, which would not require councils to operate such a system. However, any councils that choose to do so (for any or all meetings) would need to act in accordance with some specified principles, and make provision for these arrangements in their standing orders. The principles would relate to ensuring transparency and integrity of council decision making.

### Rationale for proposed changes

- Adding provisions that explicitly provide for remote participation and use of technology would help to provide clarity and certainty to councils that wish to make use of such arrangements. They would then be able to decide how to apply the arrangements locally, and include this in their standing orders – again providing for transparency and certainty. In cases where this is considered to be desirable locally, elected members may be able to save the time and costs associated with travelling for several hours.
- The inclusion of safeguards – in the form of principles – is necessary to provide reassurance to the public that the integrity of council decision making will be maintained. These constraints on councils are justified by the need to ensure there is transparency and confidence in decisions and the behaviour of elected members.

## Perverse consequences, risks and mitigation

86. The main risk associated with all of the proposed changes identified in the tables above is that they do not achieve the desired objectives and, in particular, do not encourage a positive change in council practice. For example, councils may choose to continue to use the special consultative procedure, even though this is not a mandatory requirement and may not be the most appropriate consultative technique in the specific circumstances.
87. As many of the changes are 'enabling' provisions, councils can decide for themselves if and how to adapt their practices/processes. Council and individual officer/elected member behaviour are hard to predict. It will be important to clearly convey information about the new provisions and what they enable, so each council can understand this.
88. There is a risk of unintended consequences associated with any legislative change, including risks that new provisions are difficult to interpret and/or not applied as intended (which appears to be a problem with some of the existing provisions). These risks will be mitigated by (with Cabinet's agreement) the Department consulting council practitioners during the drafting process, and preparing guidance material to explain the legislative changes and support effective implementation.

## Implementation

89. The proposed amendments are to provisions in the LGA02 and, once enacted, will be implemented by local authorities – either as required in the legislation or, in terms of 'enabling' provisions, at their discretion.

90. The provision of support and guidance to local authorities will be an important factor when it comes to implementing the new provisions and achieving the outcomes and objectives sought. It is anticipated that initial guidance would be prepared and circulated by the Department, in consultation with the local government sector, following enactment of the amended legislation.
91. It is also anticipated that any guidance and assistance package would form part of a broader, longer-term approach to enhancing local government performance and capability. Potential options are currently being explored and developed through the Better Local Government programme.

## **Part B: Efficient delivery and governance of services**

<b>Status quo and problem definition</b>
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### **Key features of the current situation**

92. There is pressure for local authorities to improve the quality of the services and facilities they provide while at the same time reducing costs. The proposals in Part A, above, are aimed at improving the efficiency of local authority decision making and operations. However there are also opportunities to achieve efficiencies by changing the scale at which services and facilities are planned, funded and/or delivered.
93. One option for achieving this is through the reorganisation of local authorities to create bigger units. These can achieve economies of scale, ensure critical mass to engage professional expertise, and minimise administrative duplication in the provision of goods and services across a wider area.
94. Full reorganisation of local authorities may not always be possible, and in other cases may not be justified. Although the reorganisation provisions in the LGA02 have recently been improved and streamlined, a considerable amount of time and effort still needs to be invested before major reorganisation is achieved and 'bedded in'. This process can involve significant costs, disruption to business as usual, and uncertainty that may not be justified in particular cases (such as where the potential benefits are limited to the governance and/or delivery of a small number of services). In other cases, reorganisation initiatives may be unable to achieve the level of community support that Government policy and legislation has deemed necessary.
95. In these circumstances, alternative ways for local authorities to achieve the benefits of larger scale operations/jurisdictions without full reorganisation are desirable to avoid an 'all or nothing' approach to achieving such benefits. There is a need for a 'menu' of practicable options that can meet the needs of different areas and circumstances.
96. The LGA02 currently provides for two types of local authority of different scales: regional councils (which typically have jurisdictions defined by one or more major river catchment) and territorial authorities (whose districts typically reflect historical communities of interest). The scale and nature of local authority jurisdictions provided for the Act are the outcome of compromises between different criteria and objectives. These relate to both governance generally, and the effective and efficient delivery of specific responsibilities (or sets of responsibilities) and functions.
97. Within existing institutional frameworks, larger scale governance and delivery can be achieved in two ways:
  - (i) by transferring responsibility from territorial authorities to regional councils;

- (ii) by collaboration by territorial authorities in joint arrangements for the exercise of responsibilities or delivery of services.

### ***Transfer of responsibilities to regional councils***

98. The LGA02 provides two means by which functions can be transferred from territorial authorities to regional councils. The first is section 17 of the Act, which enables the transfer of responsibilities from a territorial authority to a regional council (or vice versa). A transfer under this section may be either a delegation or a substantive transfer, and both parties must have included the proposal in their annual or long-term plan, or used the special consultative procedure. The Minister of Local Government must be given prior notice of the transfer. Either council may initiate changes or reversal of the transfer.
99. The LGA02 also allows the transfer of a statutory obligation from one local authority to another through the reorganisation process. Such a transfer could be the only or principal focus of a reorganisation proposal, or it could be a component of a reorganisation that also involves amalgamation or other changes to local authorities themselves. While the full reorganisation process under Schedule 3 would apply to an application involving a transfer in either case, a final proposal that dealt only with a transfer would not be subject to the possibility of a poll.

### ***Collaborative arrangements***

100. Collaborative arrangements between councils are also recognised and provided for in the LGA02:
- section 12(6) explicitly authorises joint activities and undertakings even if where these are directly in the interests of the local authority's district;
  - section 14 includes the principle that "a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources";
  - section 15 requires all local authorities within each region to enter into a triennial agreement containing protocols for communication and coordination over the period until the next triennial general election of members;
  - section 137 makes special provision for joint arrangements for water services; and
  - clauses 30 and 32 of Schedule 7 authorise joint committees with other local authorities and delegations to those committees.

## **Problems**

### ***Transfer of responsibilities to regional councils***

101. The provisions allowing the transfer of functions to regional councils are very rarely used. This is likely to be due to one or more of three factors. One is that the existence of the opportunities afforded by the provisions is not well known within the sector or amongst interested stakeholders. A second factor is that the provisions are unclear in their operation and scope. For example, there is a lack of clarity about what denotes a 'responsibility' that can be transferred under section 17, and how this compares with a 'statutory obligation'. It is also unclear what the scope is of the

provision in section 17 that the powers of the 'receiving' local authority are extended to enable it to undertake the transferred function

102. The third, and possibly most important, factor is that regional councils are poorly understood and to some extent distrusted. They have a low public profile and for historical reasons are widely regarded as only regulatory bodies without any mandate to be involved in service delivery, capital investment, infrastructure, etc. In comparison, territorial authorities are widely perceived as the 'main' local authority, with a greater profile, focus for community identity, and a figurehead in the form of a directly-elected mayor.

### ***Collaborative arrangements***

103. There are a number of examples of successful joint and collaborative arrangements, but these are largely in 'back-office' services, and fall far short of the potential for such arrangements to improve the efficiency and cost effectiveness of core service delivery. Contracting of service delivery is widespread only in a limited number of functions (notably road maintenance, where a competitive tendering process is a condition of Government subsidies).
104. Many councils use council-controlled organisations (CCOs). However, the use of the statement of intent model to specify service delivery requirements as well as 'ownership' interests tends to mean that these provide services to a single local authority owner and that opportunities for efficiencies of scale are not sought or realised.
105. A number of factors appear to contribute to this situation, including:
- a regulatory framework that emphasises transparency and processes to promote accountability in the short term at individual council level, but is silent on how these requirements should be observed in the context of potential benefits from joint decision making and long-term commitments;
  - many core council services require major long-term infrastructure investment, which is generally the reason for public provision of those services. This makes it difficult to separate ownership and investment issues from decisions about service delivery in the accountability relationship with a CCO;
  - the nature of many public services creates difficulties in developing effective contract/agreement specification, monitoring and enforcement;
  - joint arrangements and/or contracted provision of services invariably involve a degree of loss of control without any corresponding loss of accountability and liability (including political liability). While this is inevitable to some extent, best practice governance arrangements that could minimise this aspect are beyond the capability and expertise of some councils; and
  - effective joint arrangements and contracts often require longer-term commitments that are difficult to achieve and maintain in the context of a triennial electoral cycle.
106. The report of the Infrastructure Expert Advisory Group, in its chapter on "Size and Scale," includes a useful discussion of the potential benefits of shared services and similar arrangements. Much of the discussion, and two recommendations, encourage local authorities to identify, and collaborate to achieve, efficient service delivery arrangements. The report also recommends that the LGA02 *should be amended* so

*that it cannot be used to obstruct or prevent collaboration between councils or with other partners.*

107. The Productivity Commission's report *Towards Better Local Regulation* also notes the potential benefits of better cooperation and collaboration between local authorities in delivering regulatory activities. The Commission has collated information into a published online resource to assist councils to identify potential advantages and risks through joint initiatives.<sup>17</sup>

## **Regulatory impact analysis**

### **Objectives**

108. The overall objective is to ensure local authorities have a range of practicable and attractive options through which they can achieve efficiencies in the scale at which services and facilities are managed and delivered.
109. The legislative contribution to this objective is to ensure that the regulatory framework supports and facilitates such arrangements while maintaining effective and appropriate accountability to communities.

### **Preferred approach**

110. The preferred approach is to make a number of modest amendments to the regulatory framework, to provide clearer and more complete opportunities for more efficient service delivery arrangements, and to supplement this with information, good practice advice and capability support.
111. The regulatory component would involve amendments to the following provisions of the LGA02:
- sections 17 and 24, to clarify the scope and process for the transfer of responsibilities from territorial authorities to regional councils;
  - section 15, to broaden the potential scope of the triennial agreement provisions to:
    - include effective processes and protocols for identifying, delivering and funding facilities and services of regional significance;
    - expressly provide for the constitution of joint governance entities to achieve these objectives; and
    - facilitate effective and enduring agreements and delegations between councils;
  - section 14, to strengthen the principle that encourages cooperation and collaboration between local authorities;
  - Part 5, in order to promote greater transparency, clarity and accountability in contracting for delivery of services by CCOs, with the possibility of achieving this by

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<sup>17</sup> New Zealand Productivity Commission: *Towards Better Local Regulation*, 2013 (page 151, and online Appendix G *Primer on local government coordination*).



provisions of wider scope that would apply to contracting for service provision with any separate provider;

- Schedule 3, to provide clear authority for the Local Government Commission, in the context of reorganisation schemes, to:
  - include CCOs, including joint CCOs, joint committees and other collaborative arrangements in reorganisation schemes;
  - allocate ‘territorial authority’ statutory functions (including those conferred under other Acts) to regional councils; and
- Schedule 7, to provide a clearer mandate for joint committees and related governance arrangements, and greater specificity about related processes, reporting, delegations, etc.

112. All of the proposed amendments are enabling; that is they are designed to enable or better enable governance and service delivery arrangements that will meet the particular needs of councils and communities in more efficient and effective ways.

113. It is recognised, however, that legislative change needs to be accompanied by information and other support to inform councils about the options available to them, and to assist and encourage councils to utilise the range of options presented in ways that best meet their needs and circumstances.

#### **Alternatives approaches considered and reasons they were discounted**

114. Two alternatives to this approach have been considered and discounted.

- Non-legislative action alone. This approach has the potential to improve utilisation of legislation that has already been shown to be useable in some situations. However, this approach is not favoured because:
  - non-legislative efforts will achieve greater benefits if the legislation supports and enables options that have the greatest potential benefits in terms of effectiveness and efficiency, and the lowest costs and risks. Taking the opportunity of a bill that is already on the legislative programme to improve the existing legislative framework will thus provide significant gains at little regulatory or resource cost; and
  - legislative change has significant symbolic and publicity advantages, and will draw the attention of councils and their communities to the objective of improving the efficiency of service and facility provision and to the options that are available to achieve this.
- Directive legislation is nominally another potential approach. However, this has been discounted because of:
  - the difficulty of identifying and describing in legislation the range of circumstances and criteria that may bear on which option will provide the best outcomes in any particular circumstances; and
  - the likelihood that ownership and commitment to the identification and implementation of such arrangements will be a critical factor to the successful utilisation of any option for shared or joint governance and/or delivery.



## **Perverse consequences, risks and mitigation**

115. No significant perverse consequences have been identified as likely to result from these modest proposals for legislative amendments.
116. Consideration has been given to the possibility that the limited and specific benefits that can be achieved through these new options may detract from incentives for local government reorganisation in areas where greater benefit could be achieved by that means.
117. The availability of these new options will not detract from the opportunities for communities or councils to initiate reorganisation processes, nor will it detract from the responsibility of the Local Government Commission to identify and promote the best option when that occurs. These new options will, however, both add to the potential arrangements that can be put in place through reorganisation and allow faster, less costly and less disruptive initiatives to be tried instead of, or in advance of, reorganisation itself.
118. It is acknowledged that any move of governance and/or service delivery responsibility away from individual democratic bodies carries risks of actual and perceived loss of accountability and control. To some extent, this is a necessary cost of the benefits of such arrangements. There are, however, design elements and safeguards that can minimise and mitigate such consequences and these will both be factored in to the design of the amending legislation and be given prominence in associated non-legislative guidance material.

## **Implementation**

119. The proposed amendments will all relate to enabling provisions in the LGA02 and, once enacted, will be available to local authorities and, in some cases, the Local Government Commission to implement.
120. As noted in the above discussion, a key factor in the attainment of the objectives of these changes will be the provision of capability support and guidance to local authorities in the consideration and adoption of these options. Other initiatives in the Better Local Government programme are exploring potential options for the establishment of programmes and processes to improve the capability and performance of local authorities across a number of dimensions. This is seen as a key element of such initiatives.

## **Part C: Infrastructure and asset management planning**

*Note: aspects of this part of the RIS are referred to in Part E, as well as Part C, of the corresponding Cabinet paper. This has been done to separate the proposed components of the local government reform bill from the proposed amendments to the Local Government (Financial Reporting) Regulations 2011.*

<b>Status quo and problem definition</b>
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### **Key features of the current situation**

121. Local authorities are asset-intensive organisations. At 30 June 2011, local authorities had fixed assets valued at \$93.7 billion. In the financial year ended 30 June 2011 they

had total income of \$12.5 billion, giving a ratio of assets to income of 7.5 to 1. By comparison, the Crown had fixed assets valued at \$114.8 billion and total income of \$81.5 billion, giving a ratio of assets to income of 1.4 to 1.<sup>18</sup>

122. Asset management planning has been recognised as good practice in local government for many years. For example, as long ago as 2002 the Auditor-General commented that “for more than a decade” he had been promoting asset management plans for local government.<sup>19</sup> An industry group – National Asset Management Support (NAMS) – was established to provide authoritative good practice guidance, and in conjunction with international partners this has been produced and is readily available to local authorities.<sup>20</sup>
123. However, in 2009 the Auditor-General commented that *a significant number of local authorities’ asset management plans were not complete, did not reflect other available information or management practice, and did not support the information included in long-term plans.*<sup>21</sup> This suggests that there is considerable room for improvement in local authority asset management practice. The continued or greater importance of asset management planning in a context of economic constraint was emphasised in the Auditor-General’s report on the 2012-22 long term plans.
124. There is a misconception that asset management planning is mandatory for local authorities. This is not the case. Its statutory foundation (in the LGA02) lies indirectly in the requirement for the auditor to express an opinion on the “quality of information and assumptions” underlying a long-term plan. Good asset management plans provide auditors with a suitable basis for forming that opinion in relation to long-term plans. However, if the auditor encounters a situation where a particular council’s asset management plans are out of date or incomplete, the auditor may not be able to issue a satisfactory opinion based on the information the council holds about its assets.
125. NAMS’ International Infrastructure Management Manual defines the goal of asset management as “to meet a required level of service, in the most cost effective manner, through the management of assets for present and future customers”. Critically, this means that debates about levels of service, while informed by asset management plans, will not be resolved within those plans.

## Problems

126. The current situation appears to suffer from a number of problems. These are:
  - risks associated with no statutory mandate;
  - planning time horizons that are not long enough;

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<sup>18</sup> Statistics New Zealand, Local authority financial statistics year ended June 2011; Treasury, Financial Statements of the Government of New Zealand 2011.

<sup>19</sup> Officer of the Auditor-General: *Local government: Results of the 2002-03 audits* (June 2004).

<sup>20</sup> New Zealand National Asset Management Steering Group and Institute of Public Works Engineering Australia: *International Infrastructure Management Manual*, fourth edition, 2011 (previous editions were published in 2000, 2002 and 2006).

<sup>21</sup> Officer of the Auditor-General: *Matters arising from the 2009-19 long-term council community plans* (August 2010).

- a lack of transparency for ratepayers; and
- a lack of transparency for central government and national stakeholders.

### ***Risks associated with no statutory mandate***

127. While there is universal acknowledgement of the merits of formal asset management planning, the only statutory support for the practice rests on the Auditor-General's mandate to audit long-term plans. This continues to be contentious with many councils because of perceived issues of cost and benefit. Any weakening of that audit mandate could reduce the incentives for quality asset management practices. This could result in a reduction in the quality of local government asset management practice as councils re-prioritise their resources to other activities.

### ***Planning time horizons that are not long enough***

128. Most local authority assets have lives measured in decades. Current statutory (long-term) planning mechanisms provide financial forecasts for a minimum of 10 years. This may be an insufficient planning period to identify the financial implications of good asset management. For example, it has been hypothesised that some communities may need to permanently increase their reticulation renewal expenditure as reticulation built to meet post-war urban expansion reaches the end of its useful life.<sup>22</sup>
129. Formal asset management planning over a longer time horizon than current long-term plans could ensure that this situation is properly considered and planned for.

### ***Lack of transparency for ratepayers***

130. Asset management planning generates information that needs to be considered by councils and their ratepayers in assessing the long-term consequences of decisions about service levels and associated trade-offs. Currently, there is variable practice in publishing asset management information in a form accessible to ratepayers.
131. Similarly, local authorities have considerable discretion about how to present the information in their long-term plan financial strategies. This means that strategic infrastructure issues may not be given prominence in financial strategies or may be mixed with other service delivery issues.

### ***Lack of transparency for national stakeholders***

132. The management of several local authority services also has national implications. Roads form part of a national transport network. Flood protection works protect the national interest in agricultural production. Water and sewerage services have significant national public health and environmental interests. Stormwater drainage protects national investments in cities and towns. The Government through civil defence funding arrangements is committed to financially assisting communities with restoring these services after natural disasters.
133. However, currently the Government is unable to obtain a clear picture of the level of local authority investment in these services, the investment needed to maintain the

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<sup>22</sup> For example, this is commented on in *Infrastructure 2012*, the National Infrastructure Unit's National State of Infrastructure Report (page 33).

services over longer time periods than 10 years, or information about the age and condition of the infrastructure.

134. This information would be valuable to both central government and to national bodies with an interest in the performance of these assets.

## **Regulatory impact analysis**

### **Objectives**

135. The objectives are to:

- encourage good asset management practice in local government; and
- provide greater transparency for stakeholders about asset management issues for core local authority infrastructure.

### **Preferred approach**

136. The preferred approach is to require each local authority to prepare an infrastructure strategy and incorporate this into their long-term plans. Key issues would be extracted from this strategy and explained in the proposed new long-term plan consultation document, where relevant.

137. The purpose of the infrastructure strategy would be to set out the significant infrastructure issues, options and implications for the council and its district. This would include:

- planning for maintenance, growth, and possible increases or decreases in levels of service;
- managing, mitigating or improving environmental and public health outcomes; and
- managing the financial and non-financial risks to, and resilience of, infrastructure assets from natural disasters.

138. In addition, each local authority will be required to show in the infrastructure strategy, key asset management information for any of the five core infrastructure services it provides: water supplies, sewerage and the treatment and disposal of sewage, stormwater drainage, flood protection and control works, and roads and footpaths. This information would cover a 30 year period, as a minimum, and include projected capital and operating expenditure forecasts, and associated assumptions.

139. Finally, the Local Government (Financial Reporting) Regulations 2011 would be amended to require each local authority to publish standard balance sheet information for the same five services in a common format. This would allow a national balance sheet for these assets to be readily constructed and would help assess the degree to which assets in different local authorities might be in need of renewal.

140. Overall, these proposals will provide an enhanced focus on local authority asset management that is consistent with the revised purpose statement for local

government included in the LGA02 in 2012.<sup>23</sup> Compliance costs will be low and the additional information made available will be useful to a range of stakeholders at both local and national level.

### **Alternatives considered and reasons they were discounted**

141. The primary alternatives to the proposed regulatory approach are:

- a more prescriptive regulatory approach requiring publication of asset management plans themselves. This would have few, if any, advantages over the preferred approach, and would involve risks of both perverse consequences and additional compliance costs;
- the status quo; that is, sector and public encouragement of good asset management practice. This approach has achieved considerable progress over the last 20 years, but as noted earlier, successive Auditor-General reports and other evidence suggests that shortcomings remain in some cases, in circumstances where effective and accurate asset management planning has become critical. A different approach to achieve this is required; and
- more active non-regulatory measures in terms of support, guidance and capability assistance. While this may have some potential benefits to address capability limitations in some local authorities, it is unlikely to be widely effective unless the critical importance of good asset management planning is also given greater statutory recognition.

### **Perverse consequences, risks and mitigation**

142. The requirement to include an infrastructure strategy in a long-term plan is unlikely to have perverse consequences. It provides a focus on a particular aspect of local authority services, but that focus is appropriate given the financial significance to local authorities of those services, the national interest in those services, and the revised purpose statement for local government included in the LGA02 in 2012.
143. Similarly, the requirement to provide asset management information for the five core infrastructure activities should not of itself have perverse consequences. Those councils that currently have inadequate asset management practices or incomplete plans will have to prioritise resources to addressing these issues.
144. A particular issue with asset management planning is how prescriptive the legislation should be about the required content of any plans. Prescribing too much content may result in overly costly plan preparation when the council concerned is small, the asset base is uncomplicated, and the issues associated with the asset are minor. Prescribing too little content may provide statutory endorsement of a quality of asset management plan that is, in many cases, inadequate.
145. The proposal is that, except for requiring information over a 30 year time horizon, neither the existence of plans per se, nor their content, will be prescribed. This will leave it to each council to determine the approach it will take to asset management planning. Over time, the ability of stakeholders to compare the quality and

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<sup>23</sup> This includes specific references to the provision of good-quality infrastructure, in a way that is most cost-effective for households and businesses.

comprehensiveness of information generated will allow a more informed assessment of the adequacy of asset management practice in each council.

146. The proposal to require standard disclosure of asset information in financial reports has little risk of perverse consequences. The information proposed to be disclosed is information councils already hold, so compliance costs will be small.
147. The main risk is of incomplete compliance undermining the purpose of the proposal. Central prescription of accounting disclosure outside accounting standards is relatively new. The first such requirements were introduced through the Local Government (Financial Reporting) Regulations 2011 (the Regulations). Implementation of those Regulations will not be complete until the local authority annual reports for 2012/13 are published. Some aspects of the Regulations were not fully complied with in the 2012-22 long-term plans.<sup>24</sup>
148. Achieving complete compliance with new disclosure regulations will probably be unrealistic the first time they are applied. Local authorities are diverse and issues of interpretation and application will almost always arise. The risk can be mitigated by engaging relevant stakeholders in the technical design of the Regulations, and by ensuring there is adequate time between their promulgation and application to fully inform local authority staff and auditors about the amendments.

## **Implementation**

149. Implementation would be in two stages to fit with local authority planning and reporting cycles.
150. Compliance with the amended Financial Reporting Regulations would occur with the 2013/14 annual reports, which must be adopted no later than 31 October 2014. As the Regulations can be amended independently from the local government reform bill, it is intended that this work be undertaken by the end of 2013. This will allow sufficient time after the promulgation of the Regulations for smooth implementation by councils.
151. The requirement to prepare an infrastructure strategy is consistent with a long-standing theme that long-term plans should articulate clearly the strategic issues a community faces. The main implementation issue is to make it clear that local authorities do not have to rush to prepare costly amendments to their current long-term plans. This can be done by specifying that the new requirement applies first to the 2015-25 long-term plans.

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<sup>24</sup> According to Department of Internal Affairs' analysis of the 2012-22 long-term plans.

## Part D: Rating base information to support financial prudence regulations

### Status quo and problem definition

#### Key features of the current situation

152. Many people wish to compare one local authority with others. Making such comparisons is difficult for a variety of reasons. These include:
- geographic factors, such as terrain and population density, which can make providing services in one district more expensive than another;
  - demographic factors, such as the proportion of holiday homes in a district or the proportion of retired people on fixed incomes; and
  - economic factors, such as the presence of particular industries with a high capital value. Examples include the Marsden Point oil refinery in the Whangarei District and the Tiwai Point aluminium smelter in Invercargill.
153. When comparisons are made, it is almost always necessary to find some way to allow comparisons between local authorities of different sizes. The most common approach to this is to make comparisons per resident – for example to compare each local authority's debt as debt per capita. In addition to census data, Statistics New Zealand publishes annual estimates of the usually resident population of each local authority. This data allows regular comparisons on a per resident basis. However, as illustrated in Table Five below, this method discriminates against districts with significant numbers of holiday homes.

#### Problems

154. The absence of published comparators other than usually resident population is a problem in developing the financial prudence regulations permitted by the Local Government Act 2002 Amendment Act 2012. The regulations are to prescribe benchmarks or parameters for assessing the prudence of local authorities' financial management.
155. Using the estimated residential population discriminates against some types of district, which undermines the value of those benchmarks. The magnitude of the problem is illustrated in Table Five, below. This shows that the choice of comparator makes a substantial difference to how different local authorities compare.



**Table Five: Rates comparisons for 2011/12<sup>25</sup>**

Council	Rates 2011/12		
	\$ per resident	\$ per rating unit	\$ per \$m capital value
Dunedin	836	1,946	5,162
Palmerston North	839	2,260	5,828
Tauranga	857	1,966	3,694
Matamata-Piako	869	1,945	2,751
Kaikoura	1,210	1,339	3,088
Taupo	1,365	2,029	3,384

## Regulatory impact analysis

### Objective

156. The objective is to make readily available information that would permit alternative ways of comparing local authorities of different size.

### Preferred approach

157. The preferred approach is to require each local authority to publish in its:

- long-term plan, the projected number of rating units in its district that it has assumed in its projections;
- annual plan, the projected number of rating units in its district as at the end of the previous financial year and the estimated total capital value and land value of all rating units entered on the district valuation roll at the same date;
- annual report, the actual number of rating units in its district as at the end of the previous financial year and the actual total capital value and land value of all rating units entered on the district valuation roll at the same date.

158. This information will allow a broader range of comparisons to be made, including comparisons per rating unit and in proportion to capital and land values.

159. The proposal is to publish this data according to all entries in the valuation roll rather than to distinguish only rateable properties. This is simpler and more easily audited. The district valuation roll is prepared by an independent valuer and revaluations of the

<sup>25</sup> Department of Internal Affairs' analysis of data supplied by the named councils.

roll are audited by the Valuer-General. Whether or not particular properties are rateable or non-rateable is a separate issue that is solely administered by the council, without independent review.

160. The definition of rating unit is contained in the Rating Valuations Rules set by the Valuer-General. Councils have some discretion over billing practices, including delivering more than one rates assessment for some rating units if that is necessitated by the circumstances of the unit. Again it is simpler and easier to audit the number of rating units on the district valuation roll than the number of rating units actually being billed for rates.
161. Overall, this proposal:
- has low compliance costs;
  - will facilitate consideration of a wider range of financial prudence benchmarks for local government;
  - will enable a broader range of comparisons to be made between different local authorities; and
  - will place in the public arena useful information about property values and investment at a sub-national level.
162. In addition, the Government adopted the Declaration on Open and Transparent Government on 8 August 2011, in which it committed to actively releasing high value public data. Local authorities were invited to participate in this initiative.
163. Information on the numbers and values of properties provides an indicator of sub-national investment and property value movement that may have use for a range of sub-national economic analysis. Given the low cost of publishing this information, it would support the Declaration if this information were published.

#### **Alternatives considered and reasons discounted**

164. Non-regulatory approaches are unlikely to be effective in achieving consistent disclosure of this information. There are other potential approaches to comparing the size of local authorities. One is to use land area, but this would discriminate in favour of districts with large unserviced land areas in the conservation estate. A second would be to compare based upon the GDP of the district concerned, but we do not currently measure GDP at a sub-national level.

#### **Perverse consequences, risks and mitigation**

165. Release of the information alone is unlikely to have perverse consequences. As with any information, how it is interpreted may influence subsequent perceptions and decision making by interested parties. That influence could be both positive or negative depending upon the parties' perceptions and interpretation of the information.
166. A risk is that the disclosure requirement may be misinterpreted by local authorities. Local authorities tend to focus on the number and value of rateable properties in their decision making rather than the number and value of all properties on their district valuation roll.

167. This risk can be mitigated by supporting good industry guidance and education on what the new disclosure requirement is. If the first disclosure is through an annual report or long-term plan, the first disclosure will be independently audited, which would also help reduce the risk of misinterpretation of the requirements.

## Implementation

168. The information required for annual plans and annual reports is information that local authorities already have as part of their normal rating processes. Publication is therefore straightforward with minimal compliance cost.
169. Local authorities may not formally estimate projected numbers of rating units for long-term planning purposes. Most will prepare population forecasts, and high growth councils will forecast where subdivision and development will take place. This is necessary to allow for the costs of network and community infrastructure investment they must provide to service that development. It will be a relatively small step to extend that work to make a reasonable estimate of the number of new rating units that will be created.
170. Because regional councils are not large infrastructure providers they have less need to consider the projected number of rating units in their district in developing their long-term plans. The most effective way for regional councils to prepare this information may be to collaborate with and adopt the estimates of the territorial authorities within their regions.

## Consultation

171. The following government agencies were provided with a copy of this RIS during consultation on the draft Cabinet paper it accompanies: Ministry of Transport, Ministry of Business, Innovation and Employment, Ministry of Health, Ministry for the Environment, Canterbury Earthquake Recovery Authority, Te Puni Kōkiri, Ministry for Primary Industries, New Zealand Transport Agency, Land Information New Zealand, Ministry of Justice, and Treasury. The Department of the Prime Minister and Cabinet was informed.
172. There has been targeted consultation in relation to a number of the proposals in this paper with: Local Government New Zealand, the Society of Local Government Managers, and elected members and/or officials from around 15 local authorities (including representatives on the Central Government Local Government Chief Executives' Forum, and the Auckland Council).
173. In addition, many of the proposals have been informed by the reports and recommendations of the Local Government Efficiency Taskforce and the Infrastructure Expert Advisory Group. Both groups consulted with local government and other stakeholders. This included undertaking surveys of local authority chief executives and (in the case of the Infrastructure group) infrastructure industry organisations that have dealings with local government. Local Government New Zealand and the Society of Local Government Managers made submissions to the groups, and the Office of the Auditor-General provided input.
174. Finally, Part A of this paper was informed by research that was undertaken as part of the Local Government Commission's 2008 statutory review of the operation of the LGA02. This work included independent qualitative and quantitative research, such as studies of public experiences when interacting with local government, interviews with councils, and a review of the LGA02 engagement and decision-making provisions.

## Monitoring, evaluation and review

175. Several of the proposed changes to the LGA02 provided for in this RIS relate to council long-term plans. It is current practice for the Department to undertake analysis of these plans in order to identify themes and trends. In future, this work could include consideration of the proposed new long-term plan consultation documents, infrastructure strategies, and financial disclosure requirements. It is also possible that the Auditor-General will comment on the effectiveness of these new provisions, if her Office continues to publish a report on matters arising from the long-term plans.
176. Most of the other proposals are designed to enable and encourage councils to make changes, rather than requiring this to happen. The Department will monitor the uptake of new arrangements, such as collaboration and/or transfers of responsibilities between councils.

## Appendix A: Links between the Local Government Efficiency Taskforce report and proposals in the Regulatory Impact Statement

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<b>Consultation and decision making</b>	
<p>2. Review the decision-making and consultation provisions of the Act (particularly Part 6) to provide councils with a clear and flexible mandate to determine whether or not to engage with the community and the most appropriate way to do so</p>	<p>A review of the consultation and decision-making provisions was carried out. The results formed the basis of proposals in Tables One and Two of the RIS.</p> <p>The analysis in this part of the RIS was informed by the issues discussed by the Efficiency Taskforce in its report (including some of the information that the Taskforce received, particularly submissions by sector groups and a council survey).</p>
<p>3. Repeal the prescriptive rules related to decision making in section 77 to 79 of the Act and replace the rules with a clear set of relevant principles for councils to consider when making decisions</p> <p>4. The relevant decision-making principles could include that a council should:</p> <ul style="list-style-type: none"> <li>• make decisions in a timely and effective manner;</li> <li>• make decisions in a manner appropriate to the significance of the decision and the circumstances in which the decision is taken;</li> <li>• identify reasonably practicable options;</li> <li>• analyse options in terms of their costs and benefits;</li> <li>• assess options in terms of their present and future impact on the community and on the council;</li> <li>• consider community views when making decisions (this in itself not being a requirement to consult);</li> </ul>	<p>This was one of the options considered as part of the review of the consultation and decision-making provisions, and is discussed in Table One of the RIS.</p> <p>It was not a preferred option because it was unclear that replacing the current decision-making provisions with principles would achieve the objectives sought or markedly improve the current situation (including the issues raised by the Efficiency Taskforce). Most of the suggested principles form the basis of the existing provisions.</p> <p>It is not clear that principles would be easier to interpret and or result in beneficial changes to council processes. Discussions with the local government sector suggested that significant changes of any kind might undermine certainty about this aspect of the legislation, and actually increase, rather than reduce, concerns about risk of legal challenge – thus perpetuating risk averse behaviour.</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<ul style="list-style-type: none"> <li>take reasonable steps to gather a representative view from the community on significant issues (including through the use of surveys, polling, focus groups and other research tools to gather more representative data on community views) (this in itself not being a requirement to consult); and</li> <li>make an appropriate record of its decisions and the reasons for those.</li> </ul>	<p>The proposed changes outlined in Table One seek to address some of the Efficiency Taskforce’s concerns, by removing some prescription and improving drafting clarity.</p>
<p>5. Retain section 81 and 77(1)(c) of the Act on Māori decision making and consider incorporating section 77(1)(c) into section 81 or re-writing both sections into a new provision on Māori decision making</p>	<p>These provisions would not be affected by the proposals in the RIS.</p>
<p>6. Ensure that (any) new decision-making and consultation provisions amending Part 6 of the Act define the decision-making discretion of councils in a manner that seeks to limit or confine potential scope for justiciable issues, or grounds for judicial review.</p>	<p>The legislation already contains provisions that seek to do this, by enabling councils to make judgements and exercise discretion. For example, section 79 (one of the decision-making provisions reviewed) and section 82 (principles of consultation).</p>
<p>7. Ensure that relevant provisions of Act requiring consideration of community views do not create a legal duty to consult</p>	<p>Section 78 – ‘Community views in relation to decisions’ – already contains a provision specifying that “a local authority is not required by this section along to undertake any consultation process or procedure” (section 78(3)). Parliamentary Counsel will be asked whether further drafting clarity is required.</p>
<p>8. Retain mandatory use of the special consultative procedure for the adoption and amendment of council long-term plans</p>	<p>This is part of the proposal in Table Two.</p>
<p>9. Repeal the provisions of the Act which make use of the special consultative procedure mandatory for council consultation and give flexibility and discretion to councils as to when and how a council consults with the community</p>	<p>This is part of the proposal in Table Two.</p>



Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<p>13. Review and amend the Act (particularly the special consultative procedure and section 82) to ensure there are no barriers to the innovative use of technology in council decision-making, engagement and consultation processes</p>	<p>This is part of the proposal in Table Two.</p>
<p>14. Develop guidance on good practice to encourage the use of technology in council decision-making, engagement and consultation and on how different types of input into the decision-making process should be weighted</p>	<p>This could be part of the non-legislative approaches outlined in the RIS, which are being developed as part of Better Local Government (e.g. through a broader programme of performance monitoring and improvement for local government).</p>
<p><b>Significance and engagement</b></p>	
<p>10. Amend the Act to require councils to include an engagement and significance policy in the long-term plan</p> <p>In relation to this recommendation:</p> <ul style="list-style-type: none"> <li>• Require the engagement and significance policy to be included in the long-term plan and to clearly state the approach of a council to: <ul style="list-style-type: none"> <li>• determining the significance of decisions and the way in which the nature or extent of significance is to be assessed or determined;</li> <li>• how and when the council will engage or consult with the community including on matters of significance;</li> <li>• when the option of using the special consultation procedure will be applied; and</li> <li>• how the council will avoid duplication in relation to engagement and consultation. (Rec. 11)</li> </ul> </li> <li>• Require the long-term plan to include the engagement and significance policy to be consistent with the above recommendations. (Rec. 21)</li> </ul>	<p>The proposals in Table One include changes relating to significance policies. The policy is already intended to be about when and how community engagement will occur. The legislative changes would clarify the purpose and intent of these policies, and rename them 'engagement and significance policies' to help reinforce that purpose.</p> <p>The final long-term plan would continue to contain a summary of this policy for information (as currently required for significance policies). However, it is not proposed to link the timing for amending that policy to the long-term plan cycle. To do so would mean there would be quite a long delay before the policy would come into effect after a new council is elected (if that council wanted to review/amend the policy).</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<p>12. Prepare good practice guidance to assist councils in the development of the engagement and significance policy and on the assessment of significance in general</p>	<p>This could be part of the non-legislative approaches outlined in the RIS, which are being developed as part of Better Local Government (e.g. through a broader programme of performance monitoring and improvement for local government).</p>
<p><b>Using technology to participate in meetings</b></p>	
<p>15. Investigate amending the Act to provide for elected council members to use technology to participate remotely in council meetings or other decision-making, engagement and consultation processes</p>	<p>This is proposed in Table Four of the RIS.</p> <p>As noted by the Efficiency Taskforce, it will be important to ensure that that the transparency of decision making and public confidence in elected members are maintained. Appropriate safeguards would be provided for. Councils would also be able to decide whether or not to apply any new arrangements locally, and address this in their standing orders.</p>
<p><b>Long-term plans</b></p>	
<p>17. Amend the statutory purpose of council long-term plans to make the plans a strategic document that provides, through its development, the key options and choices for the community. Long-term plans should focus primarily on:</p> <ul style="list-style-type: none"> <li>• outlining the long term vision, strategies, priorities and the actions required to support these;</li> <li>• a high level statement of a financial strategy;</li> <li>• clear communication to the community of strategic priorities, policies and proposed actions; and</li> <li>• providing a clear basis for accountability of a council to the community.</li> </ul>	<p>The issues that informed these recommendations form the basis of the proposals in Table Three.</p> <p>The proposed approach includes a new long-term plan consultation document, which would focus on many of the aspects suggested by the Efficiency Taskforce and would not include a lot of complex technical detail. However, it would not contain only ‘strategic’ matters – largely because there are many other matters that communities will expect to be consulted on. (It would also be difficult to clearly define what ‘strategic’ means.)</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<p>Related recommendations:</p> <ul style="list-style-type: none"> <li>• Review the provisions of the Act (particularly Part 6 and Schedule 10) relevant to the content of long-term plans to reflect the new purpose to significantly reduce detail, complexity, prescription and detailed management or operational issues. (Rec. 18)</li> <li>• Review the mandatory disclosures in the long-term plan required by the Act (particularly Schedule 10) with a view to ensuring the revised statutory purpose is achieved and that disclosure of non-financial performance information is confined to matters of a strategic nature. (Rec. 19)</li> <li>• Make provision for a specified range of financial disclosures and other accountability information not included in a long-term plan to be made publicly available on the council website and created as a new category in Schedule 10. (Rec. 20)</li> <li>• Revise the Act to ensure that the scope of the audit of council long-term plans aligns and is consistent with the revised purpose and content of such plans. (Rec. 25)</li> <li>• Retain the long-term plan summary as part of the special consultative procedure and audit this for consistency with the long-term plan and make this a requirement of Schedule 10. (Rec. 22)</li> </ul>	<p>The final long-term plan would continue to provide a clear basis for accountability to the community. For this reason, and to ensure transparency is maintained, it is not proposed to remove any of the current mandatory disclosures from the final plan, or to specify that some content be available on council websites <i>only</i>.</p>
<b>Annual plans</b>	
<p>26. Remove the statutory requirement for councils to produce an annual plan (section 95) and replace this obligation with a requirement to produce an annual budget with the same purpose (as defined in section 95(5)(a) and (b))</p> <p>The annual budget would not be consulted on (paragraph 260).</p>	<p>This was one of the options considered in Tables Two and Three.</p> <p>Removing requirements to produce and/or consult on an annual plan is not a preferred option. This would reduce transparency, and remove an important opportunity for the public/stakeholders to engage with their council on financial matters.</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
	<p>The approach proposed in Table Three seeks to address the concerns raised by the Efficiency Taskforce about duplication and inefficiency in the annual plan process, including repeat consultation. Councils would consult on a new consultation document, rather than the full draft annual plan. This would focus on differences from the long-term plan.</p> <p>Under the proposals in Table Two, councils would still be required to consult on the annual plan (using the new consultation document), but use of the special consultative procedure would not be mandatory.</p>
<b>Reporting</b>	
<p>27. Retain the current structure for the annual report and pre-election report within the legislation as is</p>	<p>The annual report and pre-election report provisions would not be affected by the proposals in the RIS, unless any consequential amendments are required due to changes to long-term / annual plans (which flow through to the contents of annual reports).</p> <p>We would like to see the first round of pre-election reports (in the lead up to the October 2013 local elections) before considering whether any changes would be desirable.</p>
<b>Other ways to improve efficiency – sharing good practice and reducing the costs of procurement</b>	
<p>31. Develop additional ways in which dissemination of good practice guidelines to assist councils can be better coordinated between central and local government, including through the establishment of a central database where guidance can be located</p>	<p>This could be part of the non-legislative approaches outlined in the RIS, which are being developed as part of Better Local Government (e.g. through a broader programme of performance monitoring and improvement for local government).</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part A</u> of the RIS
<p>32. Explore whether reducing the costs of procurement could be achieved through a requirement for councils to develop procurement policies and methods in relation to core services consistent with the Government's procurement reform programme</p>	<p>Opportunities to reduce the costs of procurement, including joint arrangements, are currently being explored by Local Government New Zealand.</p> <p>At this time, it does not seem desirable to add new legislative requirements for councils to develop procurement policies, which may just be a compliance exercise.</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part B</u> of the RIS
<p><b>Other ways to improve efficiency – sharing innovation and collaboration</b></p>	
<p>29. Amend the Act to establish a clear mandate and incentives for councils to share innovation and collaborate to improve efficiency and performance</p>	<p>This is achieved through proposals in Part B of this RIS.</p>
<p>30. Explore ways to change council practice to encourage the sharing of innovation and collaboration</p>	<p>This relates to proposals in Part B of this RIS, and also to non-legislative approaches that are currently being developed in other parts of the Better Local Government programme.</p>

Themes / recommendations in Efficiency Taskforce report	Links with options / proposals in <u>Part C</u> of the RIS
<b>Asset management plans</b>	
23. Make the preparation of asset management plans mandatory, subject to the engagement and significance policy, and made available on the councils' websites	This relates to proposals in Part C of this RIS.

***Recommendations that are not part of the Regulatory Impact Statement***

Themes / recommendations in Efficiency Taskforce report	Comment
1. Amend relevant provisions of the Act (in particular section 10(1)(a)) to reaffirm that a representative model of local government is the intention of the Act	This is not part of the options / proposals discussed in this RIS.  It is not clear that this issue is causing problems or is something that needs to be addressed – particularly in terms of achieving efficiency improvements. Proceeding with this recommendation would also mean making further changes to the purpose of local government (following changes to section 10(1)(b) in 2012), which seems unnecessary and undesirable.
16. Do not progress the proposal for Mayors to have an explicit role of ensuring effective community engagement	This is not part of the options / proposals discussed in this RIS, as per the Efficiency Taskforce's recommendation.



Themes / recommendations in Efficiency Taskforce report	Comment
<p>24. Amend the Act to require a long-term plan to be adopted on 30 June (nearly nine months) after the election of a new council</p>	<p>This recommendation has not been considered as part of the options in the RIS, primarily because it does not (obviously) relate to improving the efficiency / effectiveness of council processes.</p> <p>We consider there are many risks and difficulties associated with this recommendation, which go far beyond the very limited discussion and considerations in the Efficiency Taskforce’s report. It would mark a significant change for councils, which is likely to incur compliance costs and other implementation challenges, and for no clear gains in efficiency. Informal discussions with the local government sector have suggested that proceeding with this would raise significant concerns.</p> <p>Other issues include:</p> <ul style="list-style-type: none"> <li>○ the timeframe – which in reality would be much shorter than the nine months stated by the Taskforce (given the time it takes to establish new committees after elections and to train new members, and the Christmas holiday period), and may mean reduced time for meaningful engagement with communities;</li> <li>○ the additional pressure that is likely to be put on council resources, elected members and officers;</li> <li>○ the potential to weaken the position of newly-elected members, relative to other members and officers; and</li> <li>○ whether this approach can accommodate the needs of all councils at all times (which is important because the legislation needs to be appropriate for all councils).</li> </ul>

Themes / recommendations in Efficiency Taskforce report	Comment
<p>28. As part of the current Government reviews of local government and resource management legislation give priority to ways in which:</p> <ul style="list-style-type: none"> <li>• the planning functions and associated consultation requirements of councils pursuant to local government, resource management, transport and other legislation can be better integrated;</li> <li>• the overall number of local government, resource management and other relevant plans can be reduced and prepared in more streamlined, consistent and readily understandable formats; and</li> <li>• spatial planning could be used as a way to better integrate plans across different statutory regimes</li> </ul>	<p>This would require a broader, longer term, multi-agency approach that is beyond the scope of the RIS (and the legislative amendments to which it primarily relates).</p> <p>The Infrastructure Expert Advisory Group report includes a number of similar themes and suggestions, and this recommendation would be considered in that context.</p>

## **Appendix B: Circumstances in the Local Government Act 2002 where the special consultative procedure must be used for consultation**

- Significant new activities proposed by regional council (s. 16)
- Transfer of responsibilities between councils (s. 17)
- Before a council-controlled organisation can be established (s. 56)
- Adoption and amendment of policy on significance (s. 90)
- Adoption and amendment of long-term plan (s. 93)
- Adoption of annual plan (s. 95)
- Certain decisions can only be taken if provided for in (and consulted on as part of) the long-term plan (s. 97) – these are decisions to:
  - alter significantly the intended level of service provision for any significant activity
  - transfer the ownership or control of a strategic asset
- Adoption of financial strategy – as part of long-term plan (s. 101A)
- Adoption and amendment of revenue and financing policy (s. 103)
- Adoption, amendment, and periodic review of policy on:
  - development contributions (s. 106)
  - remission and postponement of rates on Māori freehold land (s. 108)
  - rates remission (s. 109)
  - rates postponement (s. 110)
- Adoption of assessments on water and other sanitary services (if not included as part of long-term plan) (s. 125)
- As part of the process for determining whether or not to dispose of a regional park (s. 139)
- Prescription of certain fees and charges (s. 150)
- Making, amending or revoking bylaws made under this Act (s. 156)

## Appendix C: References to the special consultative procedure in other legislation

Legislation	Provisions requiring use of special consultative procedure
Biosecurity Act 1993	<ul style="list-style-type: none"> <li>○ Transfer of powers, etc, from one local authority to another (Section 15)</li> </ul>
Building Act 2004	<ul style="list-style-type: none"> <li>○ Adoption and review of territorial authority policy on dangerous, earthquake-prone, and insanitary buildings (section 132)</li> <li>○ Adoption and review of regional authority policy on dangerous dams, earthquake-prone dams, and flood-prone dams (section 162)</li> <li>○ As part of procedure for a territorial authority to transfer any of its functions, duties, or powers (section 234)</li> <li>○ As part of procedure for a regional authority to transfer any of its functions, duties, or powers (section 245)</li> </ul>
Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011	<ul style="list-style-type: none"> <li>○ As part of decisions to modify section 97 of the Local Government Act 2002 (section 10)</li> </ul>
Canterbury Earthquake (Local Government Act 2002—Christchurch City 3-Year Plan) Order 2013	<ul style="list-style-type: none"> <li>○ The council must use the special consultative procedure in adopting and amending the 3-Year Plan (section 5)</li> <li>○ As part of decisions to modify section 97 of the Local Government Act 2002</li> </ul>
Dog Control Act 1996	<ul style="list-style-type: none"> <li>○ Adoption and amendment of policy in respect of dogs in the district of the territorial authority (section 10)</li> <li>○ If, after a review of a policy, the territorial authority considers that the bylaw should continue without amendment, it must use the special consultative procedure (section 10AA)</li> </ul>
Energy Companies Act 1992	<ul style="list-style-type: none"> <li>○ As part of public consultation on joint establishment plan, a Board shall be deemed to be a local authority (section 24)</li> <li>○ Requirement in relation to the Waikato Electricity Authority, which shall not forward a share allocation plan to the Minister unless it has used the special consultative procedure in relation to that plan (section 71)</li> </ul>

Legislation	Provisions requiring use of special consultative procedure
	<ul style="list-style-type: none"> <li>○ As part of dealing with a proposal involving the relinquishment by a local authority of a controlling interest in energy company (section 88)</li> </ul>
Food Act 1981	<ul style="list-style-type: none"> <li>○ Requirement in relation to a transfer of functions, powers, and duties by a territorial authority (section 8ZA)</li> </ul>
Freedom Camping Act 2011	<ul style="list-style-type: none"> <li>○ Making, amending or revoking a freedom camping bylaw (section 11)</li> <li>○ If, after a review, the local authority considers that the bylaw should continue without amendment, it must use the special consultative procedure (section 13)</li> </ul>
Gambling Act 2003	<ul style="list-style-type: none"> <li>○ As part of adoption or amendment of a policy on class 4 venues (section 102)</li> </ul>
Land Transport Act 1998	<ul style="list-style-type: none"> <li>○ A road controlling authority that is a local authority may not make a bylaw under section 22AB unless it has used the special consultative procedure (section 22AD)</li> </ul>
Land Transport Management Act 2003	<ul style="list-style-type: none"> <li>○ As part of consultation by a regional transport committee or Auckland Transport under sections 18, 65H, and/or 78</li> </ul>
Local Government (Auckland Council) Act 2009	<ul style="list-style-type: none"> <li>○ As part of the process for adopting a local board plan (section 20)</li> <li>○ Local board must confirm the proposed bylaw using the special consultative procedure within the local board area (section 25)</li> <li>○ Auckland water organisation must confirm the proposed bylaw using the special consultative procedure (section 62)</li> <li>○ The Auckland Council must adopt the spatial plan in accordance with the special consultative procedure (section 80)</li> <li>○ The Council must adopt (using the special consultative procedure) a policy on the accountability of its substantive council-controlled organisations (section 90).</li> </ul>
Local Government (Auckland Transitional Provisions) Act 2010	<ul style="list-style-type: none"> <li>○ The Auckland Council must use the special consultative procedure before confirming, amending, or revoking a bylaw about solid waste under section 62(3)(a), (b), or (c)</li> <li>○ The Auckland Council must use the special consultative procedure before confirming, amending, or revoking a bylaw under section 63(3)(a), (b), or (c)</li> </ul>

Legislation	Provisions requiring use of special consultative procedure
Local Government (Rating) Act 2002	<ul style="list-style-type: none"> <li>○ As part of the process for adopting a policy for early payment of rates in current financial year (section 55)</li> <li>○ Replacement rates must be set by the adoption of a rates replacement proposal prepared in accordance with the special consultative procedure (section 123)</li> </ul>
Local Government Act 1974	<ul style="list-style-type: none"> <li>○ A council may, by using the special consultative procedure, declare a specified road or part of a specified road to be a pedestrian mall (section 336)</li> <li>○ The Minister may (by notice in the Gazette) authorise a council to establish, by using the special consultative procedure, toll gates and collect tolls at any bridge, tunnel, or ferry within the district or under the control of the council (section 361)</li> </ul>
Public Transport Management Act 2008	<ul style="list-style-type: none"> <li>○ In relation to consultation on regional public transport plans (section 20)</li> </ul>
Racing Act 2003	<ul style="list-style-type: none"> <li>○ In relation to adoption and review of a Board venue policy (section 65E)</li> </ul>
Resource Management Act 1991	<ul style="list-style-type: none"> <li>○ A prerequisite as part of the procedure for the transfer of a local authority's functions, powers, or duties under this section (section 33)</li> <li>○ Administrative charges may be fixed under section 36(1) only after using the special consultative procedure</li> <li>○ As part of adoption of a local authority's policy on discounting administrative charges (section 36AA)</li> </ul>
Sale and Supply of Alcohol Act 2012	<ul style="list-style-type: none"> <li>○ Territorial authority must produce provisional policy by consulting on draft policy using special consultative procedure (section 79)</li> <li>○ A person or agency that made submissions as part of the special consultative procedure on a draft local alcohol policy may appeal to the licensing authority against any element of the resulting provisional local alcohol policy (section 81)</li> <li>○ A territorial authority may, by using the special consultative procedure, revoke its local alcohol policy, and either adopt another in its place or not adopt another in its place (section 96)</li> <li>○ A territorial authority that has a local alcohol policy must review it every six years, using the special consultative procedure (section 97)</li> </ul>



Legislation	Provisions requiring use of special consultative procedure
Waitakere Ranges Heritage Area Act 2008	<ul style="list-style-type: none"> <li>○ Before adopting or amending the management plan for Waitakere Ranges Regional Park, the Council must use the special consultative procedure (section 19)</li> </ul>
Wanganui District Council (Prohibition of Gang Insignia) Act 2009	<ul style="list-style-type: none"> <li>○ In making a bylaw designating specified places or gangs, the Council must use the special consultative procedure (section 5)</li> <li>○ If, after the review, the Council considers that the bylaw should continue without amendment, it must use the special consultative procedure (section 10)</li> </ul>
Waste Minimisation Act 2008	<ul style="list-style-type: none"> <li>○ In preparing, amending, or revoking a waste management and minimisation plan, a territorial authority must use the special consultative procedure (section 44)</li> <li>○ If, after the review of the waste management and minimisation plan, the territorial authority considers that the plan should continue without amendment, it must use the special consultative procedure</li> </ul>

## Appendix D: Links between the contents of council accountability documents

Long-term plan	Annual plan	Annual report	Pre-election report
<b>Community outcomes</b>			
1 Community outcomes - describe the community outcomes for the district			
<b>Financial statements</b>			
12 Forecast financial statements - include forecast financial statements for the years covered by the plan	18 Forecast financial statements - include forecast financial statements for the year covered by the plan	29(1)(a) Financial statements - must include audited financial statements for the year	36(1)(a)(ii) A summary balance sheet for the previous three years
13 Financial statements for previous year - must include prior year's comparatives	19 Financial statements for previous year - must include prior year's comparatives	29(1)(d) Financial statements - must include prior year's comparatives	36(1)(b)(ii) A summary balance sheet for the next three years
		29(1)(b) Financial statements - must include audited consolidated statements	
		29(1)(c) Other information - the annual report must include such other information as is necessary to enable an informed assessment of the operations of each entity reported on	
16 Reserve funds - a statement of each reserve fund, its purpose, the activities to which it relates, its balance and budgeted movements	21 Reserve funds - a statement of each reserve fund, its purpose, the activities to which it relates, its balance and budgeted movements	31 Reserve funds - a statement of each reserve fund, its purpose, the activities to which it relates, its actual balance and actual movements	
17 Significant forecasting assumptions - the significant forecasting assumptions and risks underlying the financial statements			
<b>Group of Activities</b>			
2 Rationale & outcomes - for each group, the activities in the group; the rationale for delivery and the community outcomes to which they primarily contribute; any significant effects any activities may have		23 Rationale & outcomes - for each group, the activities in the group; the community outcomes to which they primarily contribute; the results of any measurement of progress to achieving the outcomes, describe any identified effects any activities have had on the community.	36(c) The major projects planned for the 3 financial years following the election
3 Capital expenditure - a statement of budgeted capital expenditure to meet additional demand, improve the level of service and replace existing assets	s85(2) Capital expenditure - a statement of budgeted capital expenditure to meet additional demand, improve the level of service and replace existing assets	24 Capital expenditure - a statement of actual v budgeted capital expenditure to meet additional demand, improve the level of service and replace existing assets.	

Long-term plan	Annual plan	Annual report	Pre-election report
4 Statement of service performance - for each group a statement of service provision specifying performance measures, targets, intended changes to the level of service and reasons for any material change in the cost of the service	s85(2) Statement of service performance - for each group a statement of service provision specifying performance measures, targets, intended changes to the level of service and reasons for any material change in the cost of the service	25 Statement of service provision - for each group a statement of service provision specifying actual v intended performance, whether intended changes to the level of service were achieved, and reasons for any significant variation from the intended level of service	
5 Funding impact statement - a prescribed statement showing the sources of funding to be used and how they will be applied	s85(2) Funding impact statement - a prescribed statement showing the sources of funding to be used and how they will be applied	26 Funding impact statement - a prescribed statement showing the actual v budgeted sources and applications of funds  27 Internal borrowing - a statement of the amount of internal borrowing, amounts borrowed and repaid and interest paid	
<b>Financial management</b>			
9 Financial strategy - including factors affecting demand for services and targets for rates, debt and investment returns			36(a)(iii) A statement comparing actual rates increases, borrowing and investment returns with the targets in the financial strategy
14 Balanced budget statement - the reasons for and implications of an unbalanced budget in any year			
10 Revenue and financing policy – a policy on how the council's activities are to be funded			
15 Funding impact statement - in two parts (a) a statement of the budgeted sources and application of funds for the whole council and (b) a detailed description of the council's rating system	20 Funding impact statement - in two parts (a) a statement of the budgeted sources and application of funds for the whole council and (b) a detailed description of the council's rating system	30 Funding impact statement - a statement of the actual sources and application of funds for the whole council for the year	36(a)(i); 36(b)(i) Funding impact statement - sources and application of funds for the three years preceding and following election year
<b>Other</b>			
7 Council-controlled organisations - list all and explain the councils significant policies and objectives for the CCO, the nature and scope of activities each CCO will provide and the key performance targets and other measures by which performance will be measured		28 Council-controlled organisations - for each CCO a report on the extent to which the council's policies and objectives for the CCO have been achieved; a comparison between actual and intended nature and scope of activities; and a comparison between actual and intended key performance targets	

**Long-term plan****Annual plan****Annual report****Pre-election report**

- 6 Identify and explain any significant variation between the proposals outlined in the LTP and (a) the assessment of water and other sanitary services and (b) its waste management and minimisation plan
- 8 Development of Māori capacity to contribute to decision-making - set out steps the council intends to take to foster development of Māori capacity to contribute to the decision-making processes of the council
- 11 Significance - a summary of the council's significance policy

- 35 Report on the activities that the council has undertaken to establish and maintain processes to provide opportunities for Māori to contribute to decision-making
- 32 Remuneration - report on the remuneration received by each elected member and the CE of the local authority
- 32A Remuneration - report on the staffing levels and remuneration of all staff
- 33 Severance payments - severance payments to CE and the number and amount of severance payments made to other staff
- 34 Compliance statement - a statement by the chair of the local authority and CE that statutory requirements in relation to the annual report have been complied with