

# **Saving local democracy: An agenda for the new government**

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## About this report

This report is part of an ongoing series on contemporary policy issues in Aotearoa New Zealand. This series is action-oriented and solutions-focused, with an objective of bringing academic research to bear on the economic, social and environmental challenges facing us today.

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### **Abstract**

In this paper, local government expert Dr. Mike Reid argues for significant policy change that not only reverses the reforms of the past nine years (which reduced local democracy), but improves on the pre-2008 policy settings. He also argues for a cross-party consensus on the basic tenets of the local government system, and then entrenching these to reduce the likelihood of radical local government reform every time central government changes.

### **Disclaimer**

The views and options expressed in this paper are solely those of the author. Mike Reid is a principal advisor at Local Government New Zealand (LGNZ) which is the New Zealand association of local authorities. LGNZ is a membership body that advocates on behalf of all local authorities; promotes good practice; and undertakes policy development on national issues affecting local government. He has been involved in the field of local government policy development since the early 1990s and played an active role in inter-departmental teams that contributed to the design of the Local Government Act 2002.

## **Saving local democracy: An agenda for the new government**

*When it seemed to have flogged every floggable asset, breached every democratic principle, whittled every beloved park, disempowered every significant municipality and betrayed every promise of decency, implicit or explicit - it now wants to remove council planning power (Elizabeth Farrelly commenting on local government reform in Sydney).*

It is hard to think of an election as significant to the future of local government than the 2017 general election. At stake was not only local government's future role and structure but whether or not democratic local government as we have known it for more than 100 years would continue to exist. As it turned out the election of the Labour-New Zealand First coalition means that local government has dodged an existential bullet, one which, if not stopped, would have transformed councils into little more than toothless infrastructure funders.

Under the previous government, centralisation, particularly managerial and political centralisation, increased markedly. This occurred despite growing decentralisation elsewhere, and despite changes to the social and demographic fabric of New Zealand that call out for a stronger and more effective local government. Challenges, such as our growing ethnic and spatial diversity, urbanisation and the key role cities play in the global economy, let alone increased hazards and the impact of climate change, are beyond the capacity of the state as a single policy actor to address. A collaborative response is required involving all spheres of government and the active participation of citizens. The importance of participation and engagement is also being reinforced by the rise of populist parties in many parts of the world, a phenomenon partly explained by growing levels of political disengagement (see Bartlett 2017). Rather than concentrating more power in the hands of our political executive it is essential to ensure public authority is distributed and that we develop dispersed sites of policy-making to promote innovation. We cannot depend on policy bureaux in Wellington to possess all the answers and chart our future development. The risks are too great.

Achieving this requires recognising the importance of local government's democratic mandate and its role in allowing citizens to participate in the governance of their communities. By so doing we facilitate stronger and more active citizens or as political philosopher Michael Sandel described it, a formative process that "requires public spaces that gather citizens together, enable them to interpret their condition, and cultivate solidarity and civic engagement" (Sandel, 1996 p.349).

Increasing centralisation is not only bad for civic participation (why participate in a political arena which is largely marginalised?), it damages innovation and is bad for economic growth (Gemmell, Kneller & Sanz, 2009). Important issues are at stake. Are we to have a substantive system of local government, through which citizens

can shape local policies and programmes, or is it to be a system of locally elected officials with little more responsibility than playing ceremonial roles and acting as ATM machines for corporate-style service delivery bodies? And what happens to politics at the national level, should local government lose its role, however symbolic, as a check and balance on central government? Unusually, the Labour Party did not campaign with a stand-alone local government policy in 2017. The lack is notable as local government reform has often been a feature of Labour manifestos in the past and local government reform was a contentious issue for the previous government.<sup>1</sup> Reflecting its Fabian roots the Labour Party tends to see local government as a force for good rather than an obstacle to development, and building local government capacity has been a something of an historic project. The major local government reform events, such as the creation of the Local Government Commission in 1947, new legislation in 1974 and 2002, and the consolidation of local government in 1989, were all Labour initiatives. Consequently, Labour's view of local government and its response to the changes made by the previous administration, changes that threaten to marginalise councils, should be of interest to all New Zealanders who believe local democracy is important.

There are a number of clues indicating the new government's attitude, as local government is mentioned in other policy domains, for example:

- support for councils playing a more active role in social housing, a role also supported by its coalition partner New Zealand First and the Green Party. The previous government refused to countenance a role for local government in social housing, despite the homelessness crisis;
- support for New Zealand First's policy to undertake an inquiry into the cost pressures facing local government (such as future pressures like adapting to climate change and changing demographics), which is now part of the governing coalition agreement;<sup>2</sup>
- support to reinstate the promotion of 'well-being' as the purpose of local government. The references to well-being were removed from the Local Government Act 2002 by the previous government as part of its Better Local Government programme.

A further clue as to what might be intended is the decision to transfer local government legislation from the previous Local Government and Environment Select Committee to the re-named 'Governance and Administration' Select Committee, formerly 'Government and Administration'. While the change may simply be about workload it also brings local government in from the periphery, with local government

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<sup>1</sup> A member of the Labour Party suggested that the lack of a policy might simply reflect the state of the polls and belief that given the there was little likelihood it would matter.

<sup>2</sup> New Zealand Labour Party & New Zealand First. (24 October 2017). Coalition agreement between the New Zealand Labour Party and the New Zealand First Party. <http://img.scoop.co.nz/media/pdfs/1710/362429780LabourandNewZealandFirstCoalitionAgreement.pdf>

bills considered by the same committee that considers central government bills. We might even speculate about the use of 'Governance' in the title of the committee: does it signify recognition that local government is actually a sphere of government in its own right?

Despite the lack of details, the few clues we have suggests the new government wishes to see councils playing a more active role in local affairs, perhaps not as service providers but very likely as enablers, facilitators and advocates. Reinforcing this idea is the fact that the new Minister of Local Government, the Hon Nanaia Mahuta, was also the Minister of Local Government in 2008 when Labour lost power. She will be very aware that the National-led government (2008 - 2017) spent considerable effort to reverse the changes introduced by the government of which she was a member. It is not, therefore, inconceivable that the Minister and her colleagues would choose to reverse the damage done to our local government system. If that were to be the case, then what would be required? To answer these questions, we need to understand the nature of the changes the Fifth Labour Government (the Clark Labour Government that held office between 1999 and 2008) made to our local government system.

## **What was different about the Local Government Act 2002?**

The Local Government Act 2002 while building on the direction of reform set in 1988/89 and 1996, introduced a new paradigm of local government (McKinlay, 2004; Cheyne, 2008; Reid, 2016). Responding to what they saw as the previous National-led governments' privileging of efficiency over other values, such as democracy and equity, both Labour and its future coalition partner, the Alliance, went into the 1999 election with well-developed local government policies - policies best described as intending to put the community back into local government. The Local Government Act 2002, drafted in partnership with local government itself, 'repurposed' councils to be active players in the governance and leadership of their communities. The intent was signalled in the Government's initial discussion document when it stated:

The social, economic and environmental problems confronting New Zealand are not capable of being solved by central government alone. ... The legislation needs to give local government sufficient scope for it to be able to work in partnership with central government, and with community and business ... (Department of Internal Affairs, 2000, p. 3).

The reference to partnerships - a word that disappeared from the lexicon of official policy discourse after Labour left office in 2008 - suggested the concept of collaborative governance and a desire to reframe local government as a legitimate form of sub-national government instead of a service provider of last resort (see Officials Coordinating Committee 1988). The key elements that distinguished the new Local Government Act 2002 from its 1974 predecessor included:

- providing councils with a form of general competence (replacing the *ultra vires* approach on which the Local Government Act 1974 was based) that effectively gave councils the power of a natural person in order to achieve their purpose;
- introducing a new purpose for local government which emphasised democratic local decision-making and action by and on behalf of communities and the promotion of social, economic, environmental and cultural well-being;
- changing Long Term Financial Strategies into Long Term Council Community Plans (LTCCPs) by the addition of community-defined outcomes to create a form of 'community strategic planning'. The requirement that draft LTCCPs should be audited to test their assumptions was also significant;
- adding principles and duties on councils to ensure Māori were given opportunities to take part in decision-making processes;
- setting out a framework that put responsibility for determining outcomes with citizens in consultation with organisations able to affect those outcomes - a framework designed to address perceptions that councils were unrepresentative by increasing citizen 'voice' and ability to 'steer';
- requiring councils to report to citizens on the state of well-being in their districts, cities and regions and on whether or not identified outcomes were being achieved; and
- incorporating a number of broad-based principles, including consultation principles, to improve responsiveness, including with marginalised communities. This led to the often-expressed view that the Act reflected a shift from 'consultation to engagement'.

The philosophy underpinning the Local Government Act 2002 is generally described as one of 'community governance', for the emphasis it placed on taking a joined-up approach to the provision of public services and for the opportunities provided for community steering (McKinlay, 2004; Local Futures, 2006; Thomas & Memon, 2007). Community governance is the "articulation of community goals and objectives as outcomes that communities value to promote well-being" (Leonard & Memon, 2008 p.2). The overall purpose of the reforms was recently described by the then-Prime Minister, the Rt. Hon Helen Clark:

Where National-led governments have little regard for sustainable development, it's especially important that sub-national government steps up. ... So what will local government need in order to play its full role in the new global agenda? Let me offer a few thoughts:

I do think that empowerment of local government to act in accordance with the new global agenda and the wishes of its community is critical. In many

countries, local government continues to be kept on a very short leash – able to do only a narrow range of things set out in statute.

This is not good for communities, and it's not good for countries as a whole. Excessive centralisation leads to a 'one size fits all' approach, and can lead to bottlenecks in policy-making and implementation – when empowered and capable local government could just get on and get things done (Clark, 2017).

In contrast to the thrust of local government policy over the last nine years and its concern with micro-managing our local polities, Clark positions councils as important players in a global environment which is facing issues like climate change, increasing populism and severe inequality. In her view, and the view of a great many others, addressing these issues requires the active involvement of all spheres of government and the active participation of citizens themselves. This requires empowered local governments with the capability to innovate and mobilise citizens in their jurisdictions in support of change.

The Local Government Act 2002's recognition of local government as a governance partner with central government represented a paradigm shift, a shift influenced by a growing international narrative that highlighted the importance of new localism and place-shaping (Filkin et al., 2000). Two significant features of the new paradigm were the emphasis it placed on collaborative governance and more joined-up approaches to public services, and the need to strengthen what we might call 'community steering', that is, giving citizens more tools through which to shape their council's priorities. Dr Graham Bush, writing immediately after the passage of the Act, noted that it was "a potentially historic leap forward for local government", although he did criticise the complexity of sections 75 – 81 (decision-making) which he referred to as a "wheezing contraption" (Bush, 2003, p. 20). A practical impact of the new Act was the emergence of innovative examples of central and local government collaboration at local and regional levels, most of which ended quickly after the change of government in 2008 (see Local Futures 2006 and 2011).

## **The nine years of reform - from local government to local agent**

The change of government in 2008 signalled a new approach to local government policy, one that, in retrospect, was distinctly 'Trumpist' (with an accompanying measure of fake news). The new government moved quickly to banish all traces of the Labour paradigm, especially any suggestion that local and central government are 'partners' and to keep local government, metaphorically, in its place. Dismantling Labour's reforms meant diminishing citizen input into local government, constraining councils' roles and providing ministers with unprecedented intervention powers. These were achieved through three substantial amendments to the Local Government Act 2002 and a fourth amendment, which is still before Parliament - reforms that ultimately privileged a narrowly-defined idea of efficiency at the expense of other values (see Reid, 2016).

The new Minister of Local Government following the 2008 election, the Hon Rodney Hide, was concerned that council spending was out of control. He described himself as the Minister for Ratepayers and set about looking for strategies to constrain expenditure, narrow the scope of local government's activities, and strengthen accountability. The evidence for the problems, let alone the solutions, were short on substance. Two pieces of evidence were apparently enough to convince Cabinet that radical change was needed. These were the Invercargill City Council's decision to place a Lotto shop in its Bluff service centre (along with a branch of Kiwibank), and Hamilton City Council's sponsorship of the Australian V8 car competition. Yet the case that councils had departed from core services, and that this was a problem, was hardly proven. Firstly, since Lotto is actually owned by central government its agents must have agreed to an outlet being located in the Bluff service centre and by so doing increased Lotto's income, which incidentally, is used by central government to fund many of our cultural institutions. Although unusual, Lotto is technically a type of public service and so one could argue that the arrangement was a public/public partnership. Secondly, the Minister could validly have criticised Hamilton City's competence in sponsoring the Australian V8 competition, but complaining that it came about as a result of the Local Government Act 2002 is simply foolish since Wellington City Council sponsored the V8s for a number of years in the early 1990s. Further undermining their criticism, the same Government, together with Auckland Council, contributed resources to enable the relocation of the V8 competition to Pukekohe (Cunningham, 2012).

The Minister's solution to such transgressions was a reform programme called Transparency, Accountability and Financial Management (TAFM), and the Local Government Amendment Act 2010. The Act defined councils' core services, removed measures introduced in the Local Government Act 2002 that enabled citizens to have influence on council priorities,<sup>3</sup> introduced national performance measures, and added new layers of unnecessary regulatory and administrative costs. And, prophetically, the word community was removed from the title of the Long Term Council Community Plan, reducing it to a Long Term Plan. Also notable was the speed by which the multiple central/local government collaboration initiatives established over the preceding five years or so were dismantled.

Yet within two years, the Government clearly decided that Minister Hide had not done a good enough job of curtailing councils and, following the 2011 general election, he was replaced as Minister of Local Government by the Hon Nick Smith. The new minister had his own recipe for fixing councils entitled Better Local Government which summarised the problems as follows:

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<sup>3</sup> The Local Government Act 2002 introduced a community-centred process for setting community outcomes designed to give greater weight to community priorities. (Community outcomes set the direction of councils' long term plans.) This was replaced by a process in which councils could choose to determine the outcomes on the basis that they were subject to consultation. To reinforce the symbolism, the Government removed the word 'community' from the Long Term Plan - it was now definitely the council's plan, not the community's.

Local government services are critical to the economy. Other activities, such as entering into commercial competitive businesses, running Lotto shops, setting targets for NCEA pass rates, developing strategies for improving the well-being of families and the like, are examples of council activity better done by other organisations. These are not unworthy goals or programmes, but it is questionable whether councils should be doing them. It is important that within the overall system of government roles are clear. The current broad purpose statement contributes to these risks which arise from expanding council scope, or at least does not ameliorate them, because it can be used to justify any conceivable action (Department of Internal Affairs, 2012 p. 10).<sup>4</sup>

The need to reprise the Lotto shop example, less than two years after it appeared to justify the TAFM reforms, suggested that examples of 'bad' spending had proven hard to find. Smith's other criticisms were no more substantive. For example, with regard to:

- councils being concerned about the well-being of families: under a previous National Government mayors were actively encouraged to take part in the Strengthening Families programme, a successful initiative led by Dame Margaret Bazley when she was CEO of the Department of Social Welfare;
- the reference in Auckland Council's new spatial plan to NCEA results; the irony is hard to avoid given that the spatial plan requirement was a National Government initiative and it encourages Auckland Council to take a whole of government perspective;<sup>5</sup>
- councils running commercial enterprises in competition with the private sector; there is agreement that this is generally not a good thing. However, Hamilton City's decision to partner with Tainui (a post-settlement iwi) in order to establish that city's first significant hotel in order to attract tourists to the city is pretty mainstream and not inconsistent with central government practice, such as funding the America's Cup.

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<sup>4</sup> A view not well grounded on evidence, see Local Government Commission 2008 and the Local Government Rates Inquiry Panel report, 2007.

<sup>5</sup> In contrast to the previous Government's view, cities have a vital interest in the performance of their education institutions as their success in attracting investment is partly dependent on the capability of the local workforce. However, the Government's concerns appear to have run deeper than just education. As the Better Local Government programme was being developed, the author received a call from a senior government official seeking advice on options by which central government could stop mayors from criticising its policies – needless to say little help was forthcoming.

As was the case with his predecessor, Minister Smith's evidence was more rhetoric than fact, such as claims made that rising council debt was a macro-economic risk to New Zealand's economy or that the number of council staff was out of control.<sup>6</sup> It was reassuring that the Department of Internal Affairs tried valiantly to inject some sanity into the debate. Its Regulatory Impact Statement on Better Local Government was a notable example of a department prepared to speak 'truth to power' in its attempt to show that the evidence presented to justify the reforms was far from conclusive. Better Local Government, which was given effect through local government amendment bills in 2012 and 2014, effectively 'hunted and destroyed' the remaining vestiges of the Fifth Labour Government's local government model, such as:

- removing every reference to 'well-being' in the Local Government Act 2002;
- constraining the purpose of local government;
- curtailing requirements on councils to consult and engage with citizens;
- adding more accountability and reporting requirements;
- giving the Minister of Local Government extensive powers to intervene in council affairs;
- providing the Local Government Commission with more powers and a more straightforward process to facilitate reorganisation.<sup>7</sup>

Yet the reforms did not go to plan, with increases in council expenditure not slowing significantly (see Milne 2017). In addition, reminding us of the risks of unforeseen consequences, the soft caps on council debt contributed to housing shortages with growth councils, like Auckland Council, prevented from borrowing enough to build the necessary infrastructure to cater for more housing. Finally, the Government's desire to rationalise the number of councils and simplify governance, that is more unitary and fewer regional councils, was rejected by voters wherever it was applied.<sup>8</sup>

Clearly, councils and their citizens were not on board and a new approach was needed, a challenge that fell to the Hon Paula Bennett who took over as Minister

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<sup>6</sup> The Hon Nick Smith and the Prime Minister the Rt Hon John Key announced the need to cap local government debt on breakfast television (a form of soft cap) – ironically this was two years after the Prime Minister had chided councils for having 'lazy balance sheets' at the National Government's Job Summit. There had not been a significant increase. Neither did they appear to know that the Local Government Act 2002 includes a statement (s.121 Local Government Act 2002) making it clear that the Crown has no responsibility for council debt – a statement that local government creditors are well familiar with. A recent OECD/UCLG report comparing local government systems throughout the world makes special note of the small proportion of expenditure the NZ local government system spends on staff – we are an extreme outlier.

<sup>7</sup> These included new criteria favouring large unitary councils and the creation of a higher threshold that must be met by communities wanting to overturn a reorganisation scheme.

<sup>8</sup> The Better Local Government reforms removed the mandatory poll on proposed reorganisations and changed the threshold from having to have the support of each affected local authority to a majority of voters in all affected authorities combined, effectively preventing citizens in small authorities 'holding out'. One reorganisation proposal, for a combined Hawkes Bay unitary council, went to poll where it was conclusively defeated by voters. A proposal involving Wellington region did not go to poll after submissions indicated significant opposition. Eventually, a reorganisation proposal for a combined Wairarapa District Council was developed but was also rejected by voters in December 2017.

in late 2014. The new approach, Better Local Services, was originally conceived as a way of reconfiguring local government without raising the ire of local citizens concerned at their possible loss of representation. In an unusual speech to the 2015 local government conference<sup>9</sup> the Minister chastised councils for not supporting reorganisation and signalled her plan to merge council services, rather than councils. It was expected that the resulting Local Government Act Amendment Bill 2016 would have become law by the end of that year but lobbying from councils and the withdrawal of support from the Government's political allies resulted in a significantly amended Bill that only received its second reading in late 2017 and continues to sit on Parliament's order paper. We wait to see whether the new government will continue with it, presumably in an amended form, or start again. As it stands, the Bill modernises the structure of the Local Government Commission and replaces the reorganisation provisions adopted in 2012.<sup>10</sup> Three provisions are directly relevant to the focus of this paper:

1. allowing the Local Government Commission to effectively review the way councils services are structured and implement its recommendations, if affected councils agree, but excludes local citizens from the process;
2. giving the Minister of Local Government an ability to direct the Local Government Commission through an annual statement of expectations further reinforces the partisan nature of the reorganisation process;
3. providing the Minister of Local Government with the ability to set performance measures for any local government service, whether used or not, signals a shift in accountability from citizens to the centre.

When analysing local government reform one of the challenges is to determine whether proposals reflect strongly held views of a particular minister or have the broad support of Cabinet and reflect an extensive and well informed policy discussion. Anecdotal evidence suggests that local government matters often received relatively cursory attention by portfolio ministers not directly affected by local government. Certainly, the quality of departmental comments suggests a high degree of disinterest. It is a question that Simon Parker (2015) recently reflected on in relation to the United Kingdom, concluding that local government reform in that country is best explained as the result of ministerial hubris. The same can be said about some of the seven ministers of local government who held office between 2008 and 2017.

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<sup>9</sup> Paula Bennett. (21 July 2015). Speech to LGNZ Annual Conference. <https://www.beehive.govt.nz/speech/speech-lgnz-annual-conference>

<sup>10</sup> A curious provision in the Amendment Bill before Parliament requires any councils seeking to develop shared services concerned with water, waste-water or roads to apply to the Local Government Commission before proceeding. If enacted it would not only disincentivise councils it also reflects the paternalistic attitude that colours much of central government's policy-making towards councils. For a full analysis of the Bill see <http://www.lgnz.co.nz/our-work/submissions/lgnz-draft-submission-lga-2002-amendment-bill-no2/>

Sue Kedgley, commenting on the first tranches of the National Government's local government reforms in 2013, argued that:

All of these changes take away decision-making power from councils, and give ministers unprecedented powers to tell them what they can do and cannot do. In so doing, they are quietly changing the constitutional relationship between central and local government (Kedgley, 2013).

Kedgley's prediction that there would be more and more such interventions has come true to the point where it is logical to ask if we still have a system of democratic local government at all. So just what has been the overall effect of the last nine years of reform on our local government system? In 2008 New Zealand was regarded as the most fiscally centralised country in the OECD (Reid, 2015). Nine years on our level of fiscal centralisation has not changed (although the Republic of Ireland has now achieved the dubious honour of passing us as the most fiscally centralised country) but councils' high levels of managerial and political decentralisation have declined (see Reid, 2016). This is important as it is the level of decentralisation that distinguishes systems of local *government* that enable citizens to exercise a level of self-government, from systems of local *administration* that focus on delivering services on behalf of higher order governments. The key changes between 2008 and 2017 that nullified the Labour paradigm, and also critical aspects of the New Zealand model established in 1989, include:

- the introduction of centrally-defined core services (as opposed to requiring them to be determined by local citizens, who after all are the funders);
- the narrowing of the purpose of local government to the provision of services rather than the 'good government' of, or 'well-being' of, a district;
- the limitations placed on 'citizen steering';
- the diminution of elected members' discretion;
- the provision of unprecedented powers to ministers to intervene in local affairs;
- the willingness to remove the elected representatives on councils regarded as obstacles to ministerial expectations, such as the removal of Environment Canterbury's elected representatives;<sup>11</sup> and
- the proposal (currently before Parliament) to give the Local Government Commission the ability to transfer council services into multiply-owned council controlled organisations as long as affected councils agree.

The overall effect has been to undermine the democratic nature of local government by diminishing the salience of councils. Local government continues to spend a very

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<sup>11</sup> See Kerry' Burke's blog at <http://www.rebuildchristchurch.co.nz/blog/2013/2/why-canterbury-s-democracy-was-destroyed>

small proportion of public expenditure and has diminishing influence over issues that affect people's lives. Accountability to citizens is also less, given that ministers and officials in Wellington are making more decisions. The extreme case is the 2017 changes to the Resource Management Act 1991, which allow the Minister for the Environment to amend district plans after adoption. One effect of the reforms has been to limit gradually the ability of citizens to engage with their councils, despite rhetoric to the opposite. The reduction in formal opportunities through which citizens exercise voice, such as the removal of mandatory consultation on annual plans, risks a technocratic and managerial dystopia in which there is little room for citizens' voice and participation. In this view of the future, having signed off the Long Term Plan, citizens become passive consumers until the next three-year review comes around. The role of elected members in this vision is equally passive.

### Putting citizens back in charge

So what would need to change if the new Government sought to replicate the approach taken by its predecessor in 2002? A simple approach would be to reinstate those parts of the Local Government Act 2002 that have been lost and remove recent provisions designed to diminish local government's role and status. Yet there is also an opportunity to enhance the 2002 approach.

### What's to be undone?

As discussed above, the National-led government of 2008-2017 sought to remove those features of Local Government Act 2002 that gave councils a broad focus on the well-being of their areas and opportunities for citizens to shape the direction and goals of their councils. To restore New Zealand's model of local government to that established in 2002 the provisions in Table 1 (below) would need to be restored.

Table 1: Restoring the Local Government Act 2002

Reference	Description
The purpose of local government Sections 3 & 10	Restore the reference to 'promoting social, cultural, economic and environmental well-being' that was removed in 2012. The current purpose of local government diminishes local government's role to that of a service provider, rather than government of the locality or region.
Core services s.11A	Remove the Core services section altogether. Its meaning is confusing and, while not mandatory, has resulted in unnecessary cost due to the confusion. Better to give citizens a greater say on setting priorities.

Re-organisation of councils s.24 - 37	Rewrite and replace. The re-organisation provisions were introduced in 2012 and have been a complete failure, causing considerable cost to councils and communities to no avail.
Community outcomes s.90	Review and restore. Introduced in 2002, the process for setting community outcomes was designed to ensure citizens and their communities could express their views on desired outcomes without being 'captured' by staff or elected members. A critical tool for engagement and collaboration.
Report on community outcomes s.91	Restore. Designed to strengthen accountability, the reports describe the degree to which community defined outcomes are achieved, or not. They can be a tool to assess the effectiveness of councils, not just efficiency.
Part 6 Decision-making	Requiring consultation on annual plans and budgets only when there is a significant change from a council's Long Term Plan has resulted in an increasing number of councils consulting only once every three years, effectively removing an important opportunity for citizens to raise matters of concern in a formal setting.
Power of Minister s.253 - 258ZA	Introduced in 2012 this section of the Act gives the Minister of Local Government extensive powers of intervention if she/he determines a council is experiencing a problem - not only is the threshold for intervention too low, it is paternalistic and has the potential for misuse.

Restoring the underlying philosophy of the Local Government Act 2002 should only be the starting point; the statute itself was far from perfect. Despite introducing a type of general empowerment it was still too prescriptive in many areas. For example the Act was designed on the basis that every part of New Zealand should have the same type of local and regional governance (a model rightly broken with the establishment of Auckland Council); it made decision-making too complex; it disincentivised councils from pursuing economic development opportunities due to councils' narrow funding base; and it was too long.<sup>12</sup>

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<sup>12</sup> The Local Government Act 2002, which ran to approximately 374 pages, replaced the Local Government Act 1974, which weighed in at more than 750 pages. Local government ministers under the last three National-led governments, in their objective to increase accountability and reduce compliance costs, added another 200 pages approximately.

## Strengthening local democracy

Ensuring local government can meet the needs and preferences of citizens in the future will mean more than simply restoring those sections of the Local Government Act 2002 removed by the previous government. While enhancing citizen engagement and legitimising councils' role in place-shaping would be a good start more is needed to prepare local government to address the challenging issues communities, and New Zealand as a whole, are likely to face:

There is a growing feeling among economists, political scientists and even national governments that the nation state is not necessarily the best scale on which to run our affairs. We must manage vital matters like food supply and climate on a global scale. ... At a smaller scale, city and regional administrations serve people better than national governments (MacKenzie, 2014, p. 31).

For local governments to play their role in addressing issues like changing climate, community resilience, community cohesion, inequality and demographic change, we need to address the problem of centralisation, for economic as well as democratic reasons. As economist Wallace E. Oates observed "decentralised provision increases economic welfare above that which results from more uniform levels of such services likely under national provision" (Oates, 1999, p. 1122). This means rebalancing the roles of local and central government by:

- providing councils with additional taxing powers. Local government spends approximately ten per cent of all public expenditure, but they only receive approximately seven per cent of public taxes creating an issue of vertical equity. Access to buoyant forms of tax, that is taxes which increase as the economy grows, would increase incentives to invest;
- abandoning the obsession of policy makers with scaling-up local governments and their services. While some services, in some contexts, can be delivered more efficiently and effectively at scale a more nuanced policy approach is needed; one that places accountability with councils and their communities. The Local Government Act 2002 currently makes this process complex and difficult - changes are required;<sup>13</sup>
- formalising the relationship between central and local government so that councils can plan for the future with an understanding of Government expectations and certainty about the rules governing what they do and how they do it. Agreements are common internationally as a way of preventing

<sup>13</sup> A curious and unhelpful provision in the Local Government Act 2002 Amendment Bill before Parliament requires any councils seeking to develop shared services concerned with water, waste water or roads to apply to the Local Government Commission before proceeding. Not only would it disincentivise councils, if enacted, it reinforces the paternalist attitude that central government policy makers have a tendency to fall into.

misunderstandings, negotiating shared priorities and ensuring the development of new legislation and regulations concerning local government are informed by the active participation of councils and their officials (see Productivity Commission 2013);

- enhancing the salience of local government by strengthening its ability to set and influence policies and programmes at the local level. While this will involve giving councils additional responsibilities (and the requisite funding tools) it is more important that they can help 'shape' government priorities in their localities to ensure programmes address local priorities and are provided in an integrated and responsive way;
- reversing the accountability drift away from citizens to ministers. Ministers seem to have forgotten that elected members are ultimately accountable to electors. There should be a preference for democratic rather than paternalistic accountability instruments, such as recall elections, referenda, online elections, increasing the number of elected members, and requirements to promote community and neighbourhood governance approaches.

Also important is how to strengthen the profile and status of local government policy within the machinery of government. The Department of Internal Affairs, which has historically had responsibility for local government, is not a policy ministry and has multiple operational responsibilities. Neither is it well placed to influence the full range of departments, ministries and Crown Agencies that interact with councils. A properly staffed Ministry of Local Government supporting the Minister and/or shifting the local government policy function to the a mainstream policy agency, such as Justice or the Department of Prime Minister and Cabinet, may be the answer.

In short, further work is required if councils are to fulfil their role as distinct spheres of government with the powers and capability to successfully address local and regional matters.

### **Sorting out local government's place in our constitution**

Perhaps the critical issue highlighted by the tendency for ministers to shape local government in accordance with their own preferences is the lack of any constitutional protection for New Zealand's system of local government. After all, the existence of local government involves more than simply the grace and favour or convenience of the Minister of Local Government. Addressing this question, the first colonists who arrived in Port Nicholson (now Wellington) saw the establishment of councils as a right guaranteed by the Magna Carta. In their submission to the Legislative Council in 1842, they argued that the incorporation of town councils was in:

strict conformity with the recognised principles of the British constitution  
(and) consistent with the immemorial usage of giving to every body of men

[sic] collected together within the limits of a town, or forming a settlement, a complete local organisation adequate to all emergencies and adapted to meet the ever varying wants of the community (Carman, 1970, p. 25).

Yet under New Zealand's existing constitutional arrangements local government can be abolished by a vote in Parliament with the support of only 51% of MPs. This is a risk not only to local government's role, status and powers but also the ability of our local democracies to be a counterweight to the central government. In ensuring councils have the certainty needed to make long-term decisions about the well-being of their communities and play their role within New Zealand's constitutional apparatus, some form of constitutional protection is required. For example:

1. entrench or super entrench the Local Government Act 2002 so that any changes to the Act will require the support of 75% of MPs;
2. amend the New Zealand Constitution Act to include reference to the existence of local government;
3. establish a Parliamentary Commissioner of Local Government - a non-political office to give effect to Parliament's rather than central government's interest in New Zealand having an effective system of local government.

The gold standard, however, would be the adoption of a written constitution that clearly sets out the status and role of local government, such as the draft Constitution for Aotearoa New Zealand written by Andrew Butler and Sir Geoffrey Palmer. The local government section of their draft reads:

1. The State must have a democratic, transparent and accountable system of local government based on the following principles:
  - a. the principle of subsidiarity, meaning that the provision of services and the solution of problems should take place as close to the citizens as practicable as the nature of the relevant process allows subject to allocative efficiency;
  - b. the power of units of local government to manage their own affairs independently within subject-matters established in Acts of Parliament;
  - c. fostering within each unit of local government the concept of community;
  - d. local government representatives must be democratically elected by secret ballot;
  - e. local government must be open and transparent in its decision-making and accountable to its citizens:

- f. the financing of local government by the imposition of rates on land and property provided for by Act of Parliament must be accompanied by a revenue sharing programme with central government negotiated between central and local government:
  - g. Parliament may provide special procedures for central government to ensure compliance with the law and the execution of delegated responsibilities, including the appointment of independent commissioners in accordance with law.
2. When any new responsibility is placed on local government by or under Act of Parliament, that must be preceded by adequate consultation and estimates of the financial and administrative costs of that new responsibility (Palmer & Butler, 2017, p. 73).

While debates about whether specific functions should sit with central or local government, or how national values and standards should be reflected at the sub-national level, are the core stuff of public policy debate, matters that affect citizens' democratic rights require a much higher threshold. Accepting the view of the Port Nicholson settlers that decisions about local self-government involve well established 'rights', then decisions affecting those rights should as far as practical be outside partisan politics. They are a very different order of question to those concerned, for example, with how decisions on Easter Sunday trading are made.

Achieving cross-party support on basic tenets of the local government system will diminish the risk we return to the political and constitutional adventurism that characterised local government policy in the last nine years. After all, our system of local government is the creation of Parliament, not central government. We need Parliament to step up and ensure that local government is able to play its critical part in the quality of our democracy and in meeting the differing preferences of our communities.

### **What to do about the Local Government Commission**

The status and role of the Local Government Commission will be a challenging issue for the new Government. Set up in 1947, the purpose of the Local Government Commission was to address the 'problem' of local body fragmentation, a task finally achieved in 1989 when more than 850 elected local bodies were reduced to 87. The Local Government Commission, a quango of three members appointed by the Minister of Local Government has, since 1992, played the role of an independent arbiter in response to reorganisation requests from citizens and councils. Since then the only successful re-organisation undertaken was the merger of Banks Peninsula and Christchurch City (originally rejected by Christchurch citizens but achieved when a loophole was found in the legislation), a situation that led the previous government to seek to strengthen its powers.

The role of the Local Government Commission changed in 2012 from being a reactive independent arbiter to more of a proactive agency. In its new role the Commission actively advises councils on how they can work more effectively across jurisdictions (a type of publicly funded consultancy) while also playing a quasi-judicial role on whether or not those same councils should be reorganised. The Local Government Act 2002 Amendment Bill 2016, as discussed above, effectively puts this process on steroids. What happens to this Bill is one of the first questions the new Minister of Local Government will need to decide.

The Local Government Commission plays two roles that are vital for the ongoing performance of our local democracy. The first is its role to ensure local representation arrangements are fair and not subject to gerrymandering, or redistricting. This role is the Local Government Commission's bread and butter and it has excelled, providing a model that might be replicated elsewhere. The other major role is reorganisation, which is equally important but must be citizen or council led.

In 'repurposing' the Local Government Commission the previous government has turned it from an independent quasi-judicial body to one that has a strongly partisan role which allows ministers the luxury of reshaping local government without the political inconvenience of having to take any of the political flak. Along with the other local government reforms, the proposed changes to the Local Government Commission highlight the gradual concentration of power and authority in New Zealand's public executive.<sup>14</sup>

## Conclusion

The challenge facing the new Minister of Local Government is significant. The overall effect of nine years of incremental reform has left councils confused about their purpose, the role of locally elected representatives constrained, citizen voice diminished, and the powers of ministers and central government officials to intervene in local affairs excessively high.

The importance of the Local Government Act 2002 was the way in which it recognised councils' existing broad mandate to improve the quality of life in their districts, cities and regions and make their areas attractive for investment. By providing opportunities for increased engagement, it recognised the importance of active citizenship not only for building trust in our public institutions at the sub-national level but also for New Zealand as a whole. It was a small step in the broader project of distributing power and strengthening the ability of citizens to build sustainable and resilient place-based communities in contrast to what is a prevailing narrative of scale and 'one size fits all' approaches to policies imposed from the centre.

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<sup>14</sup> A concern at giving such discretion to Ministers is the degree to which ministers in New Zealand are susceptible to interest group influence - the abolition of the elected leadership of Environment Canterbury being perhaps a case in point.

The challenge is not to simply restore the Local Government Act 2002 to its original form. The legislation was far from perfect. For a start, it was too long; it was too prescriptive, particularly in the decision-making provisions, and its approach to strategic planning stifled innovation. Neither did it result in fiscal decentralisation, although arguably it strengthened both managerial and administrative decentralisation.

If councils are to attract talented and enthusiastic local leaders then we need to be able to offer them something substantial to do, that is, the opportunity to make a real difference in their communities. This is the salience question. The new government has a unique opportunity to create a local government system that is strongly 'localist' and brings citizens back into the public realm in a meaningful way - our civic culture demands it. For the long run, however, it is important that any attempt to restore the Local Government Act 2002 and strengthen the role of local government must be a non-partisan one in order to avoid a future in which our local government system continues to be subject to major reform according to the whims of the incumbent Minister of Local Government.

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The views expressed in this paper are those of the author and not Local Government New Zealand.

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