

Submission relating to the New Zealand Productivity Commission Inquiry into Local Government Funding and Financing

Local government funding and financing – Draft Report – August 2019

D Hewison

Discussion

I have read through the draft report and I am left with a concern that not enough reflection has been made in building a solid foundation for the report based on the requirements of law – in particular the Local Government Act 2002 (LGA).

In this submission quotes from/references to the New Zealand Productivity Commission - Local government funding and financing Draft Report have been cited by using 'LGFFDR page#(section/figure/table#)' or (where there is no identifying reference other than a paragraph) by using 'LGFFDR page#(p#)' – e.g. "Local government matters a great deal to communities and the wellbeing of New Zealanders" on page 1, paragraph 2 is cited as "Local government matters a great deal to communities and the wellbeing of New Zealanders" (LGFFDR pg1(p2)).

I have also followed the research principle of interpreting sections of an Act (in particular the LGA) from the viewpoint of the purpose of the LGA. This is essential in establishing a true perspective of the sections/subsections of the LGA and the duties elected members must perform.

Elected members are required to make a declaration prior to acting as a member of a local authority (LGA schedule 7(s14)). This declaration can be simplified to identify an important point - "I, (name of elected member), declare that I will faithfully and impartially... execute and perform, the... duties... imposed upon me..." Once this declaration is made the elected member can act as part of and within the context of "the local authority". Therefore, any section of the LGA that includes the words "a local authority..." or "the local authority..." is a duty imposed on every elected member by virtue of the LGA.

Local Government New Zealand (in their document 'A candidate's guide to local authority elections') refer to this declaration as an oath (p8) – e.g. "As an elected member you swear an oath to act in the best interests of the district or region as a whole..." and "This is reinforced by the oath that you will have to agree to shortly after being elected".

Given that a dictionary meaning of 'oath' is 'a solemn promise', then individually and collectively a/the local authority (i.e. its members) do solemnly promise to perform the duties imposed on them by the LGA (and any other relevant act) in the best interests of its community. Another

question that should be asked is “to whom are they making this promise” – the answer has to be the community who elected them.

This then becomes a major standard against which the decision-making of a local authority must be measured. Given the data that I submitted in my original submission, approx. 60% of respondents to the Quality of Life Survey 2016 (and therefore their whole communities) do not believe that their elected members are keeping their solemn promise to perform the duties imposed on them by the LGA. If they are not performing their duties in accordance with the LGA, then what are they doing and what effect does this have on Local Government funding and financing costs?

Very often in the LGA the term ‘local authority must’ is followed by a reference to principles, each of which can often include the term ‘local authority should’. The word ‘should’ has a dictionary meaning inferring obligation. There is then an expectation that elected members must make an honest attempt to perform this duty. After all, they have made a solemn promise to do so to the best of their ability.

An example from the LGA is section 14:

“14 Principles relating to local authorities

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

(a) a local authority should—

(i) conduct its business in an open, transparent, and democratically accountable manner; and” ... (LGA s14(1)(a)(i))

Note here that that there are three requirements – ‘open’, ‘transparent’, and ‘democratically accountable’ – all of which must exist together.

The word ‘accountable’ is now introduced into this discussion. This is of course is in keeping with the purpose of the LGA:

“3 Purpose

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

(c) promotes the accountability of local authorities to their communities; and” (LGA s3(c))

Given my description of the research principle outlined in the introduction to this submission, the example above (LGA s14(1)(a)(i)) should be considered from the purpose (LGA s3(c)) – i.e. In order to promote accountability of local authorities to their communities, a local authority (i.e. the members) should conduct its business in a manner that is open, transparent, and democratically accountable to the community. This is what elected members give their solemn promise to do.

Another example of this reasoning is section 41 of the LGA - Governing bodies. It is clear here that a local authority must have a governing body of elected members who are responsible and democratically accountable for the decision-making of the local authority in order to promote the accountability of local authorities to their communities and promote the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach. (LGA s3). This is another part of that solemn promise that elected members declare to do.

The word accountable (or accountability, etc) occurs over 100 times in the draft report that is subject to this submission. However, I find no reasonable discussion of what this word means in the context of local government and their communities – specifically the purpose of the Act to promote the accountability of local authorities to their communities (LGA s3(c)). Nor do I find any reasonable discussion of how a community can seek this promised accountability and/or how it is failing the community.

Of particular importance to this submission is the first subsection under the first section under Sub Part 1 of the LGA – Governance and management.

“39 Governance principles

A local authority must act in accordance with the following principles in relation to its governance:

(a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;” (LGA s39(a))

While the conduct of elected members is clearly documented by the several councils I have researched (many with the exclusion of members of the public being able to make a complaint), any information that would make the meaning of and therefore the role of democratic governance clear and understood by elected members and a community is almost non-existent in NZ. So far, my efforts to find suitable documentation regarding democratic governance results in the following conclusions:

- The LGA does not provide a definitive meaning or role of democratic governance.
- A search of websites of many councils provides no documentation.
- A request from LGNZ provided no documentation.
- A request to the Office of the Auditor General has not yet provided any documentation.
- A substantial search of New Zealand websites provides no documentation.
- Conversations with a number of local elected members provided no information (e.g. knowledge) of democratic governance.
- An email from the local mayor provided information that is considered to be an incorrect interpretation.
- A conversation with the local governance officer provided an incomplete explanation.

The result of this research into the compliance of this statutory requirement raises a serious concern of non-compliance, which impacts directly into decision-making and accountability – both of which are linked directly into the foundational purpose of the LGA and to the problem of Local Government Funding and Finance. The conclusion is that this vital link between the purpose of the

LGA and the provision of local governance in accordance with the principles of the LGA, a requirement under the promise of elected members, is virtually non-existent throughout the whole of NZ. That would mean that all New Zealanders are being denied their statutory right.

Local government should not be just interested in providing good governance (e.g. “Figure 5.2 Framework for effective governance” (LGFFDR p95)), local governance must provide democratic governance “with the overall objective of enhancing community wellbeing.” (LGFFDR pg2(p2)).

What is missing from figure 5.2 (LGFFDR p95)), is ‘Accountability’. Accountability is one of the foundational pillars of the LGA and it means much more than not voting for someone in an election because they did a bad job. The document “Accountability in Public Administration: Definition, Nature and Forms” [<http://www.yourarticlelibrary.com/public-administration/accountability/accountability-in-public-administration-definition-nature-and-forms/63451>] (downloaded 3 July 2019)], provides a clear interpretation:

“Definition and Nature of Accountability:

The general sense of accountability is required or expected to justify actions or decisions. This is the dictionary meaning of accountability. But in governmental affairs particularly in public administration it has special implications and the concept is regarded as an important part. It implies that the representatives elected by the people must give explanations of the electorate for all these policies and actions. This is a very important part of democracy – particularly representative form of government. This is a very common cause that a person by whom he is elected is accountable to him or them. This is not only a common sense affair but the very foundation of democracy.”

“A quite reasonable definition of the term is: “The requirement for representatives to answer to the represented on the disposal of their powers and duties and act upon criticisms.””

There are resources available on the internet that are useful in understanding Democratic Governance. One particular resource is “Democratic Governance: The Key to Political and Economic Reform” [Center for International Private Enterprise (CIPE), Economic Reform Issue Paper, No. 0405 January 22, 2004’ <https://www.cipe.org/wp-content/uploads/2004/01/Democratic-Governance-The-Key-to-Political-and-Democratic-Reform.pdf>] (downloaded 10 August 2019)]

Although this document focuses mainly on central or national government, the principles outlined in this document apply equally to the Local Government system in NZ.

The need for democratic governance:

“The “Governance and Democracy Survey” conducted by Gallup International in 1999 revealed that over 60% of the people worldwide believe that their countries are not governed by the will of people, even though a majority of them agreed that elections in their country are free and fair. Thus, simply holding democratic elections is not enough – governments in many countries are not held accountable, and their exercise of

discretionary powers often hampers the development efforts.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p1)

Holding government and government officials accountable:

“Hence, the key to a successful and sustainable transition to a democratic, market-based system hinges on effective democratic governance, i.e., on key institutions of accountability. By relying on those institutions, democratic governance holds government and government officials accountable on a daily basis. These institutions oblige leaders to consult citizens and take their interests into account so that public resources are used to uphold basic political, civil, and economic liberties and to provide the public goods necessary for growth (as opposed to being used to enrich the ruler and his/her cronies).” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p1)

The need for the role of democratic governance to be made clear and understood:

“Despite an increased interest in the benefits of democracy, transparency, accountability, and market mechanisms, distilling concrete policies and regulations that uphold those values in practice requires more than good will. Understanding the fundamentals necessary for true implementation of promises of democratic governance is what marks success or failure in economic and political transition. The difficulty in obtaining this crucial understanding is what dooms many reform efforts, even the most well intentioned.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p1)

Using Democratic Governance to overcome funding and financing problems:

“Democracies cannot be built by simply organizing political parties and holding free and fair elections — if citizens have little opportunity to communicate their preferences to their representatives between elections and to hold their representatives accountable for their decisions, they are, in fact, handing these representatives a blank check for the entire term. Rather, the key to a successful building of democracies and economic reforms is democratic governance, which comprises the traditions, institutions, and processes that determine how government decisions are made on a daily basis”. (CIPE, Democratic Governance: The Key to Political and Economic Reform, p4)

The requirement for true accountability:

“Democratic governance requires vehicles through which citizens can routinely participate in policymaking. Governments often fear that this will make the policymaking process slower, yet, the more inclusive the process, the more responsive the resulting policies, laws, and procedures will be. Democratic governance also requires institutions of accountability to prevent the abuse of power.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p4)

While the advantages of good democratic governance seem focussed on getting the community involved in decision-making and holding government accountable, the effects of governance without accountability is much more serious. Some selections from the same document highlight the issues of bad governance.

“Overlooking democratic governance is an omission with potentially serious individual, national, regional, and international consequences. Many emerging democracies and

market-based economies fail to uphold basic liberties and suffer from widespread corruption, poor infrastructure, low economic growth, disease, and, at times, violence because they lack institutions of accountability.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p4)

“Poor democratic governance leads to corruption, and there are a number of studies that have confirmed that poor rule of law and accountability (key governance institutions) are correlated with higher levels of corruption.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p5)

“It has been shown that countries with inferior mechanisms of voice and accountability – key pillars of democratic governance – have lower national incomes, higher infant mortality rates, and higher illiteracy rates. In particular, in one of his studies Daniel Kaufmann found that weak rule of law is directly tied to low incomes and high infant mortality and illiteracy levels. Similarly, other studies found that poor mechanisms of voice and accountability can be responsible for suppressing current national income levels by a factor of 2.5, and that poor democratic development and a lack of free speech can exacerbate famine.” (CIPE, Democratic Governance: The Key to Political and Economic Reform, p6)

Poor governance without well-established accountability allows elected members (and especially mayors) to think they have a blank cheque for the whole term. This problem is not only creating massive problems with councils wanting more and more money, but those who do so are creating communities with many social problems.

A further proof that communities have the right to have good local governance with the availability of holding councils accountable is the existence of the Local Government Official Information and Meetings Act 1987 (LGOIMA)

“The purposes of this Act are—

(a) to increase progressively the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order—

(i) to enable more effective participation by the public in the actions and decisions of local authorities; and

(ii) to promote the accountability of local authority members and officials,— and thereby to enhance respect for the law and to promote good local government in New Zealand:”

(LGOIMA s4)

My experience with using the LGOIMA to promote accountability is that council ignored my request for 25 working days and then after several emails to and from council, 61 working days after the request was lodged with council, the information I received didn't answer my request. The problem with the LGOIMA is that requests can be conveniently forgotten, and/or the mayor (and elected members) can pass the request to the CE and so on 'down the ladder' to someone who cannot be held accountable. This is not accountability. Elected members can easily wriggle

out of their responsibilities under the LGOIMA s4(a)(ii). Without effective and true accountability, respect for the law is not enhanced and good local government is not promoted.

Code of Conduct Policy

Much of what has been written and continues to be written as comments in this submission points to elected members not performing the duties imposed on them by the LGA (etc.). These are duties to which they declare/promise they will perform to the best of their ability.

Each council has to compile a 'Code of Conduct for Elected Members'. Although the code I refer to here is the one for my local council, a read through other council's code of conduct policy indicates that they are mostly similar.

Some extracts from this policy are:

- "This Code of Conduct ("the Code") represents a commitment from all Elected Members to maintain high standards of behaviour,"
- "the Code is of value to the Council as a resource and information guide for existing Elected Members and an aid to the public—enabling the public to evaluate behaviour."
- "The Code applies to Elected Members at all times. The LGA requires Elected Members to comply with the provisions of this Code. Members are also bound by the LGA,"
- "The CE will ensure that an explanation of these Acts is provided at the first meeting after each triennial election"
- "Elected Members will: • comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public to be responsible for their decisions and actions, and be prepared to justify these."
- "Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the city. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Council."
- "Elected Members are also responsible for representing the interests of the residents and ratepayers of the city."
- "Elected Members should: • take responsibility for ensuring that they understand their roles and responsibilities and the Code;"
- "5.3 Relationships with the public" – "Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Elected Members will: • interact with members of the public in a fair, respectful, equitable and honest manner; • be available to listen and respond openly and honestly to community concerns; • consider all points of view or interests when participating in debate and making decisions; • treat members of the public in a courteous manner;"
- "In deciding on a governance structure, section 39 is also helpful to consider as it defines the following governance principles: • a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; "

Of particular interest:

- the supposed commitment by elected members,
- the words "enabling the public to evaluate behaviour"
- "The Code applies to Elected Members at all times"

- “Members are also bound by the LGA”
- “The CE will ensure that an explanation of these Acts is provided at the first meeting”
- “Elected Members will: • comply with all legislative requirements applying to their role”
- “In deciding on a governance structure, section 39 is also helpful to consider as it defines the following governance principles: • a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; “

Notice also that the CE will ensure that an explanation of these Acts is provided at the first meeting after each triennial election, yet the Elected Members should take responsibility for ensuring that they understand their roles and responsibilities and the Code. If the CE doesn't explain the need for accountability (for example), then elected members have to work their way through the LGA by themselves in order to understand their duties, because they are bound by the LGA.

Yet even in this policy, council recognises the LGA's requirement for the “role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;“

Despite much research and an official information request, I have not found/received any information that would suggest that council has in fact complied with this statutory requirement.

Is this then a breach of the Code of Conduct Policy? I would suggest it is, and shouldn't I be able to make a complaint against the elected members? Well, the answer is NO!!

Under the complaints process, the public/community cannot hold elected members accountable for their conduct (conduct associated with doing or not doing something).

“6.2 Complaints Process

Only an Elected Member, external appointee to a Council Committee or the Chief Executive (either for him/herself or on behalf of an employee), who believes that the Code has been breached by the behaviour or action of a member, may make a complaint to that effect.”

On the one hand elected members promise/are bound to uphold the principles of democratic governance, and on the other hand they deny the community their right to make a complaint/hold them accountable.

One of the ways the Productivity Commission can work on the behalf of NZ communities and deal with the overburdening increases in rates is to recognise the importance of upholding the legislative right of all people in NZ to live under democratic governance – both for the financial issues and the moral issue of promoting the social, economic, environmental, and cultural well-being of their communities.

Comments on extracts from the Draft Report

(LGFFDR pg1(p4))

“This requires that local government has the necessary autonomy, responsibility and accountability in delivering these services.”

The LGA is very clear on what councils are required to do in delivering their services – yet where is the ‘day to day’ accountability that democratic governance demands.

LGFFDR (pg2(p3))

“But with such autonomy come strong accountabilities to their own communities, through consultation and transparency requirements.”

Our council is good with making information regularly available, but accountability – what accountability?

LGFFDR pg15(p3))

“The funding and financing framework for local government must therefore incentivise good performance and enable local government to deliver quality services when and where needed in line with the preferences and aspirations of the local community. This requires that local government have the necessary autonomy, responsibility and accountability in delivering these services. In turn, this requires that local-government services are largely paid for by local ratepayers, and that the services are effective, efficient and affordable.”

This appears to be a dream vision (although maybe a reality for some councils). Wouldn't it be an interesting experience to live in a community that has such an example of local government.

(LGFFDR pg 38(p1))

“Key points

- Over the longer term and recently, neither local government operating revenue nor rates revenue has been rising as a proportion of gross national income or household incomes.”

and

(LGFFDR pg55 (section 3.6))

“3.6 Conclusion

One motivation for this inquiry was a concern that rising local government revenues and especially rates are outstripping the ability of local communities to pay. Yet, over a long period the ratios of revenue (and rates) to national and household income have remained in relatively narrow bands. These ratios show no evidence of any recent upward trend. This suggests that local democratic decision making and the discipline provided by statutory accountabilities, have constrained expenditure growth to match the growth in incomes. Chapter 7 looks further at the effects of rising rates (among other housing costs) on low-income households.”

Unfortunately, statistics can be used to disguise the truth. My rates have increased by 126% over the past 13 years and projected to 2027 to increase by 205% over the 21 year

period. At the same time my income (pension and a small private super) has increased 33% over the same 13 years and projected to increase by 54% over the same 21 year period. This is an approx. consistent increase in rates 4 times my increase in income. This is totally unsustainable. This is probably true for anyone living on a pension. What then is left to sustain living? No wonder the move away from true democratic governance leads to increases in poverty.

(LGFFDR pg88 (p7))

“Local authorities are primarily accountable to their local communities. The effectiveness of decision making by local government therefore largely depends on the public understanding, and taking part in, local democratic processes – both of which are notoriously low. Council decision making and broader performance need to be more visible to stakeholders, including voters.”

Yes I agree. The reason why public understanding (which is so notoriously low it is almost non-existent) is simply because research suggests that elected members are not keeping the promise to ensure that they and the public have the opportunity for the role of democratic governance to be made clear and understood by them. In fact, it is the mayor who is not keeping their promise because they have promised to provide good leadership to both elected members and the public.

(LGFFDR pg89(p5))

“And as a democratically elected body, a council is governed by elected members (rather than a professional board of directors), accountable to its wider community (rather than shareholders) and subject to a triennial electoral cycle. Community preferences are diverse and the interests of different parts of the community may conflict. The need to make trade-offs across these preferences, as well as the election cycle, add a layer of complexity to councils’ decision making. Having robust processes around these decisions then becomes particularly important, as does transparently demonstrating to the community how and why councils have made these decisions.”

As this is an issue with funding and financing (why else would this be in the draft report if it wasn't) then most of this (if not all) would be resolved if the requirement re democratic governance was carried out as required by law. This further supports the argument that a major problem with funding council activities lies with poor decision-making (e.g. the Shand Report).

(LGFFDR pg94(p3))

“Elected members are “responsible and democratically accountable for the decision making of the local authority” (s 41(3) of the LGA).”

Accountable to whom? If it is the public, then how many members of a community know their rights relating to accountability?

(LGFFDR pg97(p11))

“Improving governance and financial capability

It is essential that councillors receive appropriate induction, as well as ongoing training and support. External expertise is also likely to be required. The Commission has considered two main ways to improve councils’ financial governance and decision making. These are:

- strengthening councils’ understanding and use of assurance and risk management, through the use of Audit and Risk Committees and co-opting of relevant experts; and
- building the governance and financial skills of elected members.”

Given the legal requirement of elected members having the role of democratic governance to be made clear and understood by them (and the public), then why isn’t this requirement in this list (making it three main ways)? My understanding is that induction/training is carried out by the CE and/or by LGNZ. Neither has given any indication that they understand the role of democratic governance. I note that LGNZ does have material available for elected members – but either it is not available to the public or it is very expensive.

Given that everyone has the right to understand the role of democratic governance, material (paper and on the internet) must be made nationally available at zero cost to all elected members, people who are considering standing for election, and the public in general. A central organisation who are accountable to the public should be charged with the production of suitably accredited material for all parties to use. Rather than having candidates for election trying to get elected on an ‘election platform’ (which suggests a closed mind), wouldn’t it be good if we could elect members who would simply keep their promise/their declaration of office.

(LGFFDR pg101(p8))

“5.4 Incentives and accountability

Accountability mechanisms

Accountability describes the complementary checks and balances that exist in a system to incentivise the making and implementation of good decisions and to highlight weaknesses or failure.”

Unfortunately, this means little to most people. Accountability is an essential (i.e. legally required) but neglected factor of democratic governance, that must exist in the process of creating good governance.

(LGFFDR pg102(p2&3))

“The LTP and annual plan consultation processes are the main mechanisms for ratepayers to express their views on council proposals for expenditure, and the associated funding and financing, including the implications for rates. Ultimately, councillors are held to account through the local election process.

Underpinning the effectiveness of these formal accountability mechanisms are transparency (including reporting) and effective participation in democratic processes.”

The first part, “The LTP and annual plan consultation processes” may be a main mechanism for ratepayers (**but not just ratepayers but the community**) to express ... is not actually a mechanism. It is better described as an opportunity with little likelihood of elected members listening with an open mind (which they have promised to do). My experience is that the dominant elected members will just ignore what has been said and do what they want to do with no accountability. Just recently I received an email from a mayor stating “Each elected member should listen to the expert reports and the community on each issue, and as they have been voted in on their election platform will then choose to vote how they see fit, issue by issue.” Elected members are required to make decisions by and on behalf of the community – not vote in accordance with their election platform. In other words, this mayor is pushing the role of democratic governance as far away as possible.

The next part “Ultimately, councillors are held to account...” needs revision. If this is all the community can do, then the elected members are given an open cheque and have three years to spend what they want on what they want. Elections should not be seen as accountability – a last resort maybe, but not accountability. True democratic governance would ensure that the community’s expressions are discussed seriously and even after decisions have been made, elected members must be able to give their reasons why they made those decisions.

The third part “Underpinning the effectiveness of these formal accountability mechanisms...” needs revising as it excludes the major accountability mechanism of daily accountability.

(LGFFDR pg105(p9))

“the Commission favours a transparency-based approach to improving the accountability of council decision making.

Why?? The LGA provides the legal requirement for not only improving accountability but actually establishing accountability. Improving transparency doesn’t help the community to know that they have the legal right to make accountability work on a day to day basis – and for elected members to know that the community has this right. Transparency is often seen as nothing more than putting information on the internet – making agendas, council meeting records, videos of council meetings, etc. that do little more than overload the public. What’s more, the Quality of Life survey statistics present the picture that approx. 66% of the public do not believe that they can influence decision-making.

(LGFFDR p106(section 5.5))

[NOTE that this section of the draft report has been split apart for individual comments]

“5.5 Transparency of decision making

The importance of transparency in local government

Transparency is the means by which decision makers can be held to account.”

I disagree. Our local council puts large amounts of material on the internet, making decision-making transparent. Transparency must be coupled with the known rights and

processes to enable the community to question a decision and know that they will receive a prompt, true and honest response.

“In the local government context, transparency includes information made available to the community about how council rates and charges are set, revenues spent, spending decisions made (including trade-offs), and value and outcomes delivered.

Public accountability enables citizens to see how their taxes and rates have been used. It should also provide an insight into what has been achieved by the public sector. Those responsible for governance need to be accountable for the decisions they make and the basis on which they are made. Their decision-making processes need to be legitimate and be seen to be so. (Office of the Auditor-General, 2016, p. 6)”

This supports my argument set out in the previous paragraph – i.e. transparency is information, accountability is seeing that decision-making processes are legitimate.

“Transparency is particularly important for enabling effective participatory democratic processes, and ensuring local authorities are held accountable for their use of devolved powers, by their communities.”

My argument supports this – transparency is not is “the means by which decision makers can be held to account” (as stated in the draft report), it is the process of making information openly available so that the community (if they know the how and why) can hold decision-makers accountable.

“To meet its accountability purpose, information on options for council activities needs to be readily available and easily understood. The importance of transparency in local government is amplified because some of the key accountability mechanisms are weakened by lack of public understanding and participation.”

Isn't this the purpose of section 39(a) of the LGA? Why then is there little if any information on the role of democratic governance available and why isn't this section of the LGA being complied with. I have been trying to find this information for years and it is not surprising that no one is accountable for the lack of a definitive answer.

“• More generally, the public lacks an understanding of local government roles and decision-making processes, and participation in local government consultation processes is low. This is discussed further below.”

Yes I agree. The real question is ‘why does the public lack an understanding of local government roles and decision-making processes’ when the answer is a statutory requirement that elected members promise to uphold and perform? Obviously the draft report confirms my argument. Why then can I not find any reasonable attempt to highlight this problem in the draft report?

I also agree that “participation in local government consultation processes is low.” What else can be expected when councils treat the community the way they do.

“• Councils are ultimately held to account via the election process. However, as discussed later in this chapter, public participation in local government elections is much lower than for general elections. Participation is also non-representative of the wider community.”

“Councils are ultimately held to account via the election process” – Maybe! But what about the three years of non-compliance with the requirement for daily accountability? Why then does this problem of “public participation in local government elections is much lower” exist? Is it because people don’t care or is it because after many years of councils not listening with an open mind and not allowing the community to influence the decision-making process, the community is ‘turned off’.

(LGFFDR pg107(table 5.1))

“Community outcomes The outcomes the council wants to achieve”

One would think that because of the legal requirements under section 10 (LGA) (i.e. to enable democratic local decision-making and action by, and on behalf of, communities; and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future), that the community outcomes that council wants to achieve would promote these two requirements of the LGA. Unfortunately, some years ago the LGA was amended to remove the making of community outcomes out of the hands of the community and put it into the hands of the elected members. So, every time there is a change in leadership it is likely that the community outcomes are changed to what the dominant players want. Then they proceed to spend on those projects.

The decision on Community Outcomes must be put back into the hands of the community to ensure that the purpose of local government is met. i.e. “to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.” (LGA s10(1)(b))

(LGFFDR pg109(p1))

“Problems with the existing performance reporting framework

A number of submitters were of the view that the current accountability framework should be further strengthened, with some calling for greater monitoring and oversight of local authorities. The current mix of rating and voting systems creates strong incentives for councils to push costs onto sectors that are poorly represented at the ballot box.... Central government has adopted institutions and frameworks which provide appropriate checks and balances against the powers vested in Government.... Local Government has none of these checks and balances. Some ongoing independent monitoring of the sector would provide impetus for performance improvement and enhance local government accountability. (Foodstuffs NZ, sub. 23, p. 4)”

In other words, we have the LGA, but who is going to police the statutory requirements of that law. No-one is above the law.

(LGFFDR pg111-112(section 5.6))

“5.6 Ascertaining and balancing community preferences

Consultation requirements

Both the RMA and LGA place a heavy weight on public consultation (NZPC, 2015). J. Krupp (2016) underscored the importance of transparency and good quality information in local government consultation processes.

If the level of local government accountability is to be meaningfully improved, communities need to know what options are available to them, the trade-offs associated with each, and the consequences of their choices. (J. Krupp, 2016, p. 45)

The LGA imposes general obligations on councils to consider the views of all their communities, reflecting the RMA’s goal of promoting “the accountability of local authorities to their communities” (s 3(c)). Section 78 of the LGA requires councils to consider the views and preferences of people likely to be affected by, or to have an interest in, the decisions being made. Guidance published by the DIA explains that full consultative and analytical processes are only expected for significant decisions. These decisions are defined as being highly important to community wellbeing, or to the people likely to be affected by a decision; or that affect the ability of the council to perform its role and the costs of doing so (Department of Internal Affairs, 2011). As described in Chapter 2, each council must develop their own significance and engagement policy. That policy sets out the council’s approach to determining significance and includes a list of assets that it considers is of strategic importance. The purpose of that policy is to provide the community with clarity about when and how they can expect to be engaged in decisions on particular matters. Councils are required to consult on certain matters regardless of their significance policy. These include the LTP and the annual plan, and adopting or amending funding and financial policies.

Consultation on decisions must follow statutory principles (s 82), provide opportunities for Māori to contribute to decision-making processes (s 14) and establish and maintain processes for Māori to contribute to decision making (s 81(1)(a)).”

The need for each council to develop their own significance and engagement policy should be of major concern, as there is every indication that these policies vary to a large extent. Even the ‘better’ policies are very easily ‘got around’ allowing for councils to make decisions without consultation. Then there is no accountability.

Note that even when consultation processes are carried out, the LGA requires elected members to listen with an open mind – i.e. there is no room for pre-determined thoughts, let alone pre-determined outcomes. Then what about those elected members who put up a platform at election time – they have ‘pre-determined thoughts’ which many voters would expect them to keep. How can they have an open mind?

(LGFFDR pg131(section 5.7))

“5.7 Participation in local democratic processes

Local authorities are independent statutory bodies governed by directly elected members. As such, they are primarily accountable to the electorate through the democratic process. (Office of the Auditor-General, 2013a, p. 219)

One main way that residential ratepayers can hold councils to account for the expenditure and funding decisions is through local body elections. However, voter turnout in local body elections is notoriously low, and has been steadily declining since the late 1980s.”

These two paragraphs are at odds with each other. The first (from the AOG) speaks to primary accountability through the democratic process (e.g. democratic governance – as previously explained). The second paragraph (from the Productivity Commission) speaks to the main way of accountability through elections. The LGA speaks to accountability on a day to day basis, and specifically to the requirement re decision-making processes, democratic governance and the rights of the community.

(LGFFDR pg135(p2))

“This chapter makes a number of recommendations for improving the disciplines and incentives on councils to make effective decisions. The combined benefits of these initiatives would be:

- lower compliance costs for councils, through reducing the level of prescription, and potentially also the frequency, of LTPs;
- lowering the risk and costs of poor decisions, by improving the decision-making capability of elected members and strengthening the monitoring and management of costs and emergent risks through new requirements for Audit and Risk Committees;
- encouraging better community participation and engagement in local democratic processes;
- more effective community engagement and consultation by councils, leading to better understanding of community preferences;

Wouldn't it be a good start to ensure compliance with section 39(a) of the LGA re democratic governance? If elected members knew the duties they must perform, they could hold each other accountable, and if the community knew their rights, they would hold the elected members accountable.

(LGFFDR pg145(p2))

“Even so, local autonomy and accountability are important benefits of New Zealand's current system of funding local government.”

Unfortunately, autonomy and accountability may be important principles (not benefits). They can only be considered as benefits when the communities know and see these principles occurring.