

Your comprehensive draft report covers most of the problems with the management and governance of local bodies in New Zealand. However it fails to address the most important problem - the absence of any authority that can enforce adherence to the regulations in the LGA and the LGRA. Your comprehensive draft report mentions the regulations in the LGA and the LGRA multiple times, and the importance of these statutes.

Kaipara District Council (KDC)'s management of the Mangawhai wastewater scheme is often cited as an example of the costs of poor decision making and the importance of good governance. However it was also an example of the absence of any authority to enforce adherence to the regulations of the LGA and the LGRA.

There are plenty of authorities offering advice to local government - the Minister of Local Government, DIA, LGNZ, SOLGM, OAG and Institute of Directors to name a few. Each of these authorities confirm that the elected members are responsible for compliance with the law and democratically accountable for the decision making of the local authority" (s 41(3) of the LGA) and the remedy for ratepayers comes at the ballot box. Unfortunately even if the Mayor and all 12 Councillors are voted out at the up-coming elections any bad, illegal or undemocratic decisions that they have made will remain in effect.

The Local Government Act 2002 defines the purpose of local government as to "enable democratic local decision-making and action by, and on behalf of, communities".

Yet it is repeatedly stated in the Productivity Commission's draft report that there is a lack of assurance that governance will be robust, and a number of indications show that governance is not consistently at the appropriate level. More concerning is the statement that there is a lack of personal awareness of the need for capability development. This is obvious in the statements from some of the current candidates for council elections.

We sincerely hope that recommendation 5.2 is enforced for all elected members, and that members will have to show that they have attended training courses.

Recommendation 5.2 Local Government New Zealand should work to achieve greater participation in ongoing professional development by elected members, including new and existing members, to ensure skills and knowledge are built and periodically refreshed.

The inquiry into the Mangawhai wastewater scheme reported that one of the key lessons was the importance of governance, including the need for members of a governing body "to have the courage to keep asking questions until they understand what they are deciding" (Office of the Auditor-General, 2013a, p. 13).

This advice is unlikely to be acted on as the members could be accused of being disruptive under Standing Orders or Code of Conduct rulings. The advice from the council governance manager to Hamilton City Council councillors not to make submissions against the LTP was to "prevent the perception that they have predetermined the outcome".

The LGA provides the power to object to the assessed amount of a development contribution (s 199C), which must be reviewed by independent commissioners. Under the Rating Valuations Act 1998, ratepayers may object to the assessment of rateable value. Otherwise, apart from the RMA (which has relatively broad decision review and appeal rights), the options to review council planning and funding decisions are mostly limited to judicial review.

It is unclear as to who a ratepayer would actually take court action against. The advice from both the Office of the Auditor General and the Minister for Local Government is that it is the elected Councillors who are “responsible for what a local authority does and how it does it”: for setting the “direction and policy” of Council and overseeing “compliance with the law”. A snip from “Local government: Results of the 2012/13 audits” from the OAG (see box **setting rates**) mentions compliance failure at most local authorities and potentially serious legislative breaches. But where is the authority to take action against such breaches?

<https://www.oag.govt.nz/2014/local-govt/docs/local-govt.pdf>

The Mangawhai ratepayers proceeded with court action, however a win for their case in the High Court and an apology from the Auditor General was no compensation for Mangawhai ratepayers who were still held liable for paying the debt.

The scope for judicial review is limited to matters such as failure to follow statutory procedures and processes, and the reasonableness of decisions – with a very high threshold for what can constitute “unreasonable”. Since the ratepayers most likely to object are those on low incomes judicial action is not a viable option.

Setting rates

During the year, it became apparent that there were several widespread problems with rating practices. Our audit work on rates revenue found that most local authorities had some level of compliance failure. Problems ranged from potentially serious legislative breaches, which created a significant financial risk to the local authority’s revenue, through to low-risk legal breaches.

The problems we saw were related to all aspects of the rating legislation. Many of the problems seem to have arisen because of insufficient attention to legal requirements. The power to rate comes with obligations that need to be given the appropriate level of attention. It is important that local authorities use their legal powers to impose rates on their communities properly.

Local authorities need to lift their game and improve their processes and practices for setting rates.

I am encouraged by the positive response to the issues we have raised. Most local authorities sought legal advice and either took corrective action to rectify the errors or drew the errors to the attention of their communities. Local Government New Zealand and the Society of Local Government Managers have undertaken to work with local authorities to provide training and support to ensure that rating practices improve.

Question 5.1 The Commission is seeking more information on the advantages and disadvantages of reducing the frequency of Long-Term Plan (LTP) reviews, while retaining the requirement for annual plans. What would be the benefits, costs and risks of reducing the frequency of LTPs, from every three years to every five? What if five years were a minimum, and local authorities were free to prepare LTPs more frequently if they wished?

A 5 year frequency for the LTP would uncouple the process from the triennial election cycle. In some election cycles the Mayor and councillors would have no input into the LTP. I think it is preferable to have a simplified and more standardised LTP format for all councils retained every 3 years.

Recommendation 5.3 The Local Government Act 2002 should be amended to require all local authorities to have an Audit and Risk Committee

I think that the number of elected members should be reduced if there is to be an Audit and Risk Committee, or some of the elected members would be required to have qualifications that were suitable for membership of the Audit and Risk Committee.

Councils' decisions about the level of service they provide, and about capital investments, can also have an important bearing on managing cost pressures. Decisions to invest in large new capital assets (eg, transport infrastructure or sports stadia) have the potential to add significant costs that ultimately must be recovered – largely from local residents and businesses.

I think that sports stadia which are very expensive to build and to maintain should be funded some other way than through ratepayers. These venues are used for a small number of days of the year by well-paid sportsmen and women, and make large amounts of money for Sport TV channels.

Finding 5.1 The elected member governance model does not consistently deliver a mix of councillors that collectively possesses the full range of skills required for effective governance, and evidence shows that many councils lack the necessary expertise for effective decision making. A lack of skilled councillors can be ameliorated by having a well-qualified and suitably experienced Chief Executive.

The Chief Executive and other Council staff are paid from public money but do not have any executive oversight. The Chief Executives of the larger councils in New Zealand are paid nearly as much as the Prime minister and half as much again as the Minister of Finance. (Christchurch City Council CEO \$495,000, Dunedin City Council CEO \$44,000). The Hamilton City Council CEO (Richard Briggs) was given a salary increase of \$60,000 by the newly elected Mayor and Councillors, bringing his salary to \$440,000. This for a small city of 165,000 residents, 58,000 ratepayers and total revenue of less than \$300 million, in which a considerable number of ratepayers earn less than \$60,000 per annum, and very few \$440,000 per annum.

I am of the opinion that because Local Body staff members are paid from public money the salary of Senior Staff for every Local Body should be included in the Local Government Members (2019/20) Determination 2019. Chief Executives should be employed by the State Services Commission.