**APPENDIX 1**

**26 SEPTEMBER 2007**

# SUBMISSION ON THE REVIEW OF THE LOCAL GOVERNMENT ACT 2002 AND LOCAL ELECTORAL ACT 2001

# FROM WELLINGTON CITY COUNCIL

## Introduction

Wellington City Council welcomes the opportunity to make a submission on the Local Government Act 2002 (LGA) and the Local Electoral Act 2001(LEA) review. Naturally we desire continued involvement in the process and understand there will be further opportunities for input before the Commission's ultimate report is finalised.

Local Government New Zealand has made a submission on behalf of all local authorities and the Council supports that April 2007 document. The City Council's submission has focused on issues that are of particular relevance or concern to this Council.

It is in two parts:

- in Part One, three major issues are covered:
  - support for the overarching philosophy behind the LGA
  - the importance of robust and transparent assumptions and forecasting underpinning accountability documents
  - ensuring democratic accountability is balanced by requirements for effective and efficient decision-making.

- in Part Two, the focus is on some more technical issues with particular parts of the LGA and LEA, and other local government legislation (e.g. the Local Authorities (Members' Interests) Act 1968).

## Part One

### 1.1 Overarching Philosophy Behind the LGA

The Council notes that the LGC, in their report *Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001* (July 2005), stated:

> "A key policy intention behind the LGA was to move away from the prescriptive approach of the Local Government Act 1974. The LGA confers a power of general competency on local authorities, allowing them to take different approaches in recognising and meeting the needs of their communities. It allows local authorities greater flexibility in conducting their activities, but increases their responsibility in respect to engagement with their communities."

The Council would like to take the opportunity to reiterate its support for the general empowering direction of the LGA. We are supportive of a direction for local government that sees councils working "to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future" (s 10, LGA).

Today, there is on-going debate about the role of local government, fuelled to a large extent by concerns over the size of rates increases in various parts of the country. There has always been a view shared by some that local government should "stick to its knitting" – focus on things like roads, rubbish and water infrastructure. A focus on these, the argument goes, will see smaller rates increases, and less opportunity for elected members and officers to spend money unwisely on "pet projects".

The Council would note that, first, adequate investment in infrastructure and provision of other core council services is not necessarily a 'low-cost' local government model. For many councils the biggest cost in increases in rates has been from maintaining infrastructure in an effective condition.

Second, in today's globalised world, cities like Wellington face the challenge of ensuring a balance between essential day to day services and additional services that will ensure our people have a high quality of life. In order to do that, we have developed Council outcomes as part of the Long Term Council Community Plan (LTCCP) - our overall 10-year aspirations for the city. Of those outcomes, some (e.g., stronger sense of place, more liveable) can be characterised as seeking a high quality of life. The others (e.g., better connected, more sustainable) can be characterised as seeking solid city foundations. This strategic direction-setting has been guided by extensive discussions with Wellingtonians. It is the result of input by residents and organisations, and extensive deliberations by their representatives – the Mayor and Councillors.

The outcomes reflect the growing understanding internationally that cities need to focus on concepts such as "sense of place" and "cultural life", as well as physical things like roads and rubbish collection, if they wish to be successful. The "extras" are not "extras" any more; they are just as much a part of the core services of a council as its physical assets and works.

In Wellington we have taken on a leadership role, encouraged by the empowering provisions of the LGA. Whatever we do here in Wellington, we do with an eye to the future. We see a clear role for ourselves to work with others to create an internationally competitive city that is bright and prosperous, with a sound and sustainable economy. Our strategy is not just to have reliable water supply, and pot-hole free roads; it is about promoting the social, economic, environmental and cultural well-being of our community, in the present and for the future. By making our city vibrant, inviting and invigorating, we encourage

new residents, businesses and visitors and therefore encourage growth. That growth is not just good for the city and its residents; it is good for the country as a whole. Local government is a partner with all sectors of the community - private sector business, central government, voluntary and community groups, and individuals – and we can only play a real part in New Zealand's future if our legislative mandate empowers us to do that.

## 1.2 Importance of Robust and Transparent Assumptions and Forecasting

The Council acknowledges concerns expressed on the cost of fully auditing councils' recently completed Long Term Council Community Plans (LTCCPs). However, most commentators have failed to acknowledge the purpose and/or benefit of the audit process, concentrating instead on the audit as an additional "compliance cost".

In the Council's opinion the recent audit process has significantly improved the robustness of the long term financial plans, projections and the assumptions that underpin these. As a direct result communities can now have greater confidence in this information. Arguably, communities are able to see for the first time the real cost of local government operations into the future.

In general, Councils need to be able to demonstrate conclusively to their communities that they are, in the long-term, viable organisations which have effectively planned to deliver on community views and outcomes. In order to do this, they need to be able to demonstrate two things:

- that there are robust financial assumptions and forecasting underpinning their LTCCPs/Annual Plans, and in particular, Asset Management Plans
- that there is alignment between community views/outcomes, activity performance measures and targets, and the budgets (including forecast budgets) associated with those activities.

The latter point is critical if councils are to demonstrate they are responsive to the needs and wishes of local communities, and ensure there is clarity and transparency in planning. For example, there is no point in a council responding to a desired community outcome of a stormwater system reduces the risk of flooding from a 1 in 10 to a 1 in 100 year event, when the funding is only sufficient for routine maintenance.

A key means to providing communities with assurance, then, is through a rigorous audit process which addresses not just financial matters, but also the appropriateness of performance measures/targets and budgets when compared with community outcomes/views. As such, Wellington City Council supports the current legislative framework that incorporates the audit of a Council's LTCCP.

The Council believes that the scope of LTCCP audits can also include an assessment of appropriateness and reasonableness of planning assumptions. For example, if Council X plans its stormwater network maintenance to cope with a 1 in 50 year flood event, while Council Y plans for a 1 in 10 year flood event, that will have a significant impact of the nature and extent of operating and capital expenditure required. Councils could modify assumptions to

manage up or down the rates and borrowing funding requirements. While we acknowledge the reality of different considerations in different jurisdictions, the Council is concerned that adoption of inappropriate planning assumptions may have a detrimental impact on the quality of a community's asset infrastructure. As a result, the Council believes consideration should be given to extending the current audit mandate to ensure transparency and understanding of the implications of policy decisions. This is particularly important in highly specialised areas where it is unfair to assume the average ratepayer can make fully informed decisions on reasonableness and appropriateness of expenditure.

The Council would also like to raise the issue of the impact of central government policy and legislation on local government, and the implications for local government budgeting (and therefore rating) and planning.

The first issue is that every function or responsibility central government imposes on local government through statute is non-discretionary in nature; by law local government has to comply with and carry out its mandated duties. While there may be some flexibility in how those duties are carried out, there is no question of not doing it, planning to do that activity at a later date, or assigning it less priority than, say, one of a council's own initiatives. The implications of this are:

- One of the fundamental premises of the LGA – "to enable democratic local decision-making and action by, and on behalf of, communities" - is weakened; the broad agreement reached between a community and its council as set out in its LTCCP or Annual Plan can be cut across by an external party (central government), through adding duties that use resources that may have already been allocated to meet community desires.

- Councils lose the flexibility to prioritise expenditure and timing. For example, a council may have intended to allocate resources to serious urban design pressures, but instead has little choice but to divert those resources into fulfilling the requirements of, say, the earthquake provisions of the Building Act.

The argument has been made that councils should simply implement a cost-recovery regime for duties imposed by central government. However this is a complex issue, and raises issues of public policy (e.g. is it a public good activity and not able to be directly sheeted home to individuals or businesses?), and affordability.

We are aware that Cabinet has agreed all policy proposals that result in government bills or statutory regulations must include a Regulatory Impact Statement (RIS), unless an exemption applies. In addition, a Business Compliance Cost Statement (BCCS) should be incorporated into the RIS when appropriate.

These requirements are intended to improve the quality of regulation making and to ensure regulatory proposals are cost-effective and justified. As a matter of policy government has agreed that businesses and the economy should not incur more compliance costs than necessary. When new administrative

processes and measures are being designed, compliance costs should be given due weight with other costs and benefits. Government has identified the following principles to underpin the objective of reducing compliance costs:

- Compliance cost assessment should be an integral part of the policy development process.
- The reduction of compliance costs is a dynamic process which includes ongoing monitoring of existing legislation, regulation, and rules, as well as assessment of the impact of any substantive change to them.
- Recognition that compliance costs are a charge against the scarce resources of the private sector (and we would add the voluntary and community sectors).
- Compliance requirements need to be critically assessed in terms of their absolute necessity to achieve the objectives of the policy.
- Compliance cost assessment is recognised as a clear departmental responsibility and as such should be an integral part of departmental management accountability.

We are aware that LGNZ is working with the Department of Internal Affairs and the Ministry of Economic Development on regulatory frameworks and implications for local government. No doubt there will be a range of proposals arising from this work. One we consider worthy of further consideration is that, given the size and therefore impact that local government has on the New Zealand economy (not to mention society, culture and environment), consideration be given alongside a RIS to developing and implementing a specific Local Government Compliance Cost Statement (LGCCS). Such a Statement could include:

- the source of any compliance costs
- the parties likely to be affected, by sector and size of council (e.g., water or sewage treatment requirements may have a proportionately greater impact on smaller district councils than large metro councils)
- quantitative (if possible) or qualitative estimates of compliance costs, both in aggregate and upon individual councils (e.g., earthquake provisions in the Building Act will have greater implications for Wellington City Council than Christchurch City Council)
- the steps taken to ensure compliance costs were minimised.

### 1.3 Balancing Democratic Accountability and Effective and Efficient Decision Making

Wellington City Council notes that the LGC, in their report *Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001* (July 2005), stated that:

> "the vast majority of submissions concerning decision-making, consultation, and accountability under Part 6 of the LGA were of a general nature, expressing the following key themes:
>
> - the decision-making provisions are too prescriptive, too onerous, and are counter to the tenet of general empowerment central to the LGA;
> - the drafting of the provisions dealing with consultation and decision-making could be improved by condensing the wording so that it flows, and obviates the need for constant cross-referencing;

- the existing flexibility under subpart 1 of Part 6 of the LGA creates the potential for increased disputes or arguments (and even litigation) about process, rather than substantive issues;
- legal advice is often required to clarify the decision-making and planning requirements of the LGA, and it appears this will continue to be necessary on an ongoing basis;
- the requirements for consultation do not relate to actual information requirements of the public;
- an increased number of submitters have unrealistic expectations of how their input should be reflected in decision-making, and sections 82 to 90 contribute largely to these unrealistic expectations;
- guidance on consultation would be better served through the development of industry best practice standards, grounded on case study, and developed on an ongoing basis; and
- it would be preferable for the LGA to give direction in relation to ongoing communication with the community, which if practised could overcome some of the unnecessary direction for persistent consultation.'

The Council suggests that these concerns remain, to differing degrees. We acknowledge that a central tenet of the LGA was the introduction of a power of general competence, and that the corollary of this is a comprehensive planning process that tightly links the desires of the community with the strategic direction, policies, and decisions of councils.

The very first step in this process, development of community outcomes, illustrates these issues. This is conducted at a high level with a community which is being asked exhaustively for its views on a myriad of topics. The weight given to this process needs to be considered alongside the ongoing dialogue, and engagement, that councils have with their communities. Community aspirations are equally evident in the specifics of the LTCCP process, consultations on major new initiatives, and the extensive research and monitoring programmes carried out by councils.

The LGA intends greater integration of planning processes, but the additional processes involved have the potential to increase costs without necessarily increasing the quality of decision making. This was our view in submitting on the Local Government Bill in 2002, and this has been borne out by our experience with the LGA. For example, as prudent managers of council resources, we have again and again found it necessary to seek legal advice to clarify the often ambiguous requirements of the Act in order to avoid potential trouble later. (An absence of case law also drives this; at the moment, without that we have one lawyer contesting another lawyer's advice). This has been a feature of major decisions made since the Act was introduced and it appears that it will be necessary on an ongoing basis.

In effect the prescription on activities has been replaced by prescription on process. The Council believes that neither are necessary to the extent they have been applied and this should be a focus of the wider review in 2007. We would emphasise that in today's fast-paced world, opportunities arise and have to be dealt with in much tighter time-frames, and with more flexibility, than in the past. If the ability to do this is hampered by a prescription on process, then the local authority – and potentially the country – may miss out on valuable opportunities. We are competing with places which do not necessarily have to go through similar processes. It is a question of balance, but we consider

further thought, and possible legislative amendment, needs to be given to how nimble decision making (including responsive changes between favoured options), and matters such as commercial sensitivity and responsibilities to staff under employment legislation, can be dealt with most effectively in the LGA context.

Further, as the examples below illustrate, the prescription in process adds to the cost of decision-making, with in some cases questionable benefits.

The Council considers that the following are worth investigating further:

a) There are a number of decisions that, if proposed at any time other than as part of the 3 year LTCCP process, require the LTCCP to be formally amended. Such decisions include a Regional Council undertaking a new activity under section 16, amending a funding and financial policy (such as the Developments Contributions Policy or the Revenue and Financing Policy) and dealing with endowment property under section 140. While the Council does not question the need to consult on such proposals, having undertaken two such amendments to its 2003/04 LTCCP and being party to the Greater Wellington Regional Council process to amend its 2006/07 LTCCP for the implementation of the Wellington Regional Strategy, it is clear that the requirement for a formal amendment to the LTCCP (and the statutory contents for the statement of proposal) adds a significant additional procedural element, time and cost. These steps need to be examined for their value in the decision-making process, and in particular their contribution to the goal of effectively engaging with the community on the proposal. It is this Council's experience that these steps encourage a 'compliance' (or tick the box) approach, which can detract from the objectives of the proposal and the consultation. It is suggested that the following is looked at further:
    - The utility of the requirement to show the consequential amendments to the LTCCP, which results in a very technical document, which is not user friendly and does little to explain the proposal.
    - The fact that the amendment process then imposes a 'practical' requirement to 'reprint' the LTCCP (as amended) after the decision is made so that the document can be read as one.
    - The requirement for an audit report. While this is supported in the LTCCP process (for the reasons given above) the reasons for the audit report is not as applicable for many LTCCP amendments.
    - Whether the regime applying to section 88 decisions could be applied as a model for such decisions, if they are not already included in the LTCCP. (That is, decisions to which section 88 applies can be either provided for in the LTCCP – or separately decided upon, after completion of the special consultative procedure)
    - Whether such decisions can be made as part of the Annual Plan process (dealt with in the next bullet point).

b) The intention of the LGA is for the Council (having undertaken a full community outcomes process) to agree (following consultation) its Long

Term Council Community Plan (LTCCP) for a 3 year period - and not add any significant projects etc. The Annual Plan in years 2 and 3 is intended to simply update financial and funding arrangements for the year within the context and direction set by the LTCCP. The reality for this Council (and no doubt other councils, particularly the major city councils) is that issues for the city are changing at such a rate that major changes or amendments are necessary. It would assist if the Annual Plan provisions in the LGA specifically provided that:

- such decisions can be provided for in the Annual Plan (specific mention would need to be made in Schedule 10 (Clause 12-14))
- other than specific exemptions there is no need to amend the LTCCP for any decision not in the LTCCP

c) The scope of section 97(1) (i.e., decisions that can only be taken if provided for in the LTCCP) and the flexibility of the procedural requirements in section 97(2) are two further matters that Council believes should be investigated:
   - In respect of section 97(1), at a policy level Council believes that section 97 should be cast so as to apply only to decisions that profoundly affect Council's activities (as described in the LTCCP). Council's experience is that it is difficult to apply section 97(1), in particular sections 97(1)(a) and (d) which relate to activities. Section 97(1)(d) in particular has potentially very broad application. Section 97(1)(c) likewise is difficult to apply, given the objective definition of 'strategic asset' in the Act.
   - In respect of section 97(2), greater flexibility is required around the process to be followed and the degree of latitude Councils have when implementing a proposal. The current drafting again drives a 'compliance approach' and detracts from the substance of the process followed and the decision made.
   - As a recent example, this Council included in its draft 2006/07 LTCCP a proposal to construct a new strategic asset. At the time of making the decision on the final LTCCP, a question was raised whether the strategic asset decision could be deferred (for some months) until after the LTCCP was adopted to enable further work to be done. Advice was received that in order to meet the requirements of section 97(2) the Council had to make the decision on the statement of proposal included in the draft LTCCP at that time. That is, once the LTCCP was adopted (without the strategic asset proposal) then the only way to provide for it was through an amendment to the LTCCP (for which the statement of proposal had to be provided for as a amendment to the LTCCP – and the statement of proposal that had already been included in the draft LTCCP would not meet that statutory requirement). This would have meant re-starting the process, including fresh notification and calling for submissions again.

d) The ability to include summaries of Section 102 policies in Long Term Council Community Plans rather than the current requirement in clause 6 of Schedule 10 that the full policies must be included. Clause 7 of Schedule 10 provides that the LTCCP must include a summary of the

Council's Significance Policy, rather than the document in full. The text of these policies adds significantly to the length of the Plan (some are many pages). They can be easily accessed on request by members of the community with a specific interest. A summary can convey the salient points in the policy, and signal the role of the full policy for those parties.

e) Include a specific provision that there is no need to amend the LTCCP if the Council's Significance Policy is amended. Currently, the LGA 2002 is silent as to whether it is necessary to also amend the LTCCP when the Significance Policy is amended in order to update and reflect the summary of the Significance Policy in the LTCCP. Unlike the funding and financial policies under section 102 (which can only be amended by amending the LTCCP), the LGA 2002 specifically provides that the Significance Policy can only be amended under section 90. Clarification would be desirable. In addition to providing clarity, the rationale for this is as in the point above (i.e. the Significance Policy will be available to those with a specific interest, without it having to be updated in the LTCCP).

f) Section 78 requires local authorities to give consideration to the views and preferences of persons likely to be affected by or have an interest in a decision. It is implicit in the section that a local authority will be alert to views and preferences on issues already made known to it – and that it is those views that it will take into consideration. Section 78 could be usefully clarified so that it is clear that while section 78 does not create an obligation to consult using a consultative process or procedure (section 78(3)), local authorities have an obligation (subject to the discretionary factors in section 79) to find out the views of those affected or interested using whatever means it determines appropriate.

# Part Two

### 2.1 Potential overlap between the LGA and other legislation (e.g. transport legislation and Resource Management Act)

There are overlapping requirements to consult on major issues in the LGA and particularly transport legislation and RMA. The issue of consultation requirements was looked at in some detail during the process for the Wellington Regional Land Transport Strategy Western Corridor Plan. It would be useful if some case studies of the consultation undertaken on major proposals was carried out, including an evaluation of the degree of duplication. The most effective process would be one where exemptions can be granted under one statute if the consultation undertaken under another achieves substantially the same purpose.

We also question whether the amendment in 2004 achieved any clarity around the issues of the overlap between RMA and LGA decision making (see section 79(3) and (4)). Council believes that this issue should be dealt with in section 76, where the scope of the decision-making obligations are defined, rather than leaving it as a discretionary matter under section 79.

## 2.2 Council Controlled organisations - requirement to undertake Special Consultative Procedure to establish

The LGA requires that a Special Consultative Procedure (as defined in the Act) be undertaken to establish a Council-Controlled Organisation (Section 56). In our view this is not required. In circumstances where the Council-Controlled Organisation is being established to undertake a significant Council function or own a significant asset, Section 88 and/or Section 97 will require a Special Consultative Procedure in these situations. We propose that the requirement under Section 56 be removed as it adds additional process that is not necessary.

In the case of small entities (where the purpose for the CCO will not result in either section 88 or 97 being triggered), it is noted that the LGA has an exemption regime in place for small entities (once established). Council suggests this could be extended to exempt small entities from the requirements of section 56. In addition, the broad definition of 'entity' also means that joint ventures and partnerships (or even joint working groups) can be considered as CCOs and are therefore required to meet the requirements of section 56.

Finally Council asks that the prohibition in section 43(3) on indemnifying directors and trustees from any liability is reviewed. It is important that Council is able to appoint external representatives to these positions, to provide expertise not held by officers or members. Frequently such roles are filled, for the benefit of the community, for no or very little remuneration. The potential for such persons to be exposed to personal liability can be an issue in filling the positions.

## 2.3 Development Contributions

Council welcomed the introduction of development contributions as a funding tool. It adopted and implemented a Development Contributions Policy in July 2005, and then reviewed that Policy again as part of the 2006/07 LTCCP. The Council would welcome the opportunity to be involved in future discussions on policy development an implementation issues it has experienced in that time. In the meantime the following points are raised:

Application of the Development Contribution regime to the Crown; WCC supports the removal of the Crown exemption from development contributions.

Section 198 of the LGA was amended through the Local Government Law Reform Bill 2006. The Council supported the amendment insofar as it removed the requirement that development contributions be imposed before the grant of a resource consent, building consent, or service connection. However, the Council does not believe that section 198 yet provides enough clarification of the Council's ability to impose development contributions, and has left open the option that the Council's decision to impose development contributions to be subject to procedural review, on the basis of timing.

Councils regularly make planning decisions for infrastructure that might not be constructed within the 10-year term of LTCCPs, for example major roading/tunnels or extensions to sewage treatment facilities. It would be useful

if those decisions could be noted in LTCCPs, without the need to extend the whole of the LTCCP period to include these impacts (which could be 20 years hence). They should also be included as a factor that could be taken into account when determining development contributions. This would ensure that, where appropriate, the long term impacts of development, and the need to fund these through development contributions, was recognised.

Clarity would be desirable around setting and recovering development contributions for capital expenditure already undertaken - but that can be clearly demonstrated was spent in anticipation of growth. Section 199(2) of the LGA provides for this issue, however as it is a requirement of any development contribution policy that the capital expenditure sought to be recovered is in the LTCCP, there is a potential area for argument that where there is no capital expenditure in the LTCCP for such projects, that such expenditure can not be recovered.

The Council proposes that these issues be clarified and amended if necessary.

### 2.4 Miscellaneous

A number of issues have arisen with the operation of various provisions in the LGA. Council encourages issues such as these to be included in the review as while they individually may seem minor, any issue that leads to questions about interpretation introduces risk and adds compliance costs to the operation under the LGA.

Some examples are:

- Sections 171 and 181 (power of entry and power of entry to do work); there is a gap in the powers available to Council for when the Council needs to be on a third party's land, yet is not actually working on that land
- Schedule 7 , cl 32(1)(c); the ambit of the term ' asset '
- Schedule 7, cl 32 and 32B ; delegations, and in the particular the apparent removal of the power to sub-delegate.

## Other Local Government Legislation

### 2.5 Local Electoral Act 2001

The following sets out the Council's proposals in relation to a number of LEA provisions:

#### *2.5.1 Communities of Interest and +/-10%*

Although local authorities are only required to review their representation arrangements every six years, the Wellington City Council decided to undertake a Representation Review in time for the 2004 elections. The main reason for making this decision was due to the fact that a poll of electors in November 2002 had determined that the STV voting system would be used for the 2004 and 2007 local authority elections in Wellington city.

When preparing its initial proposal, the Council had to divide a recognised Wellington community of interest (a designated suburb) between two wards in order to comply with the +/-10% population formula outlined in Section 19V of the LEA.

The Council accepts that the +/- 10% is an important objective and should generally be required to be adhered to. Exceptions should however be allowed for island or isolated communities (as currently provided for) and, provided they have exhausted all avenues to ensure that the formula is met, councils that would otherwise have to split recognised communities of interest (e.g. suburbs) to achieve the +/- 10% objective.

**Submission:**
That the exceptions given under 19V(3) of the LEA are expanded to include community and Council identified communities of interest (i.e. recognised suburbs) as well as "island" or "isolated" communities.

### *2.5.2 Ordering of Names on Ballot Papers*

The 2004 election results for the Capital and Coast District Health Board (CCDHB) prompted suggestions that there is a correlation between the alphabetical ordering of candidates and the likelihood of them being elected.

Forty candidates stood for the CCDHB in 2004, which translated into two full columns of names on the voting document. Six of the seven candidates elected had surnames between A-G of the alphabet, with five of those candidates being listed in the first column. The candidate at the top of the first column was also not only the first person elected but was elected at the first iteration. The next successful candidate was not elected until the 35th iteration.

Section 31(2) of the LER provides a local authority with the ability to determine the order in which candidates' names are to be arranged on the voting documents – in alphabetical order of surname, pseudo-random or random.

"Pseudo-random" ordering, although resolving the perceived issue of advantaging candidates with surnames at the beginning of the alphabet, still gives an unfair advantage to those candidates who are randomly selected to be at the top of the list. Full "random" ordering of candidates' names overcomes this advantage by ensuring that the top positions are allocated on a fully random basis (i.e. the order of the candidates' name is randomly generated by computer and will be different for each individual voting document).

**Submission:**
That Section 31 of the LER is amended so that all other options are removed and candidates' names are required to be listed on the voting document in random order.

### *2.5.3 Length of Voting Period*

Anecdotal evidence suggests that the three week voting period is too long and that people receive the paper, put it to one side and forget about it. This is

exacerbated by the voting documents currently being sent out in September during a scheduled school holiday. It has been suggested that a two week voting period would not only encourage more people to cast their vote earlier (i.e. as soon as they receive their paper) but would also be generally well received by the majority of candidates. If it was agreed that the voting period be reduced to two weeks, care would have to be given to ensure that the two weeks did not clash with the school holidays.

The disadvantages of a two week voting period are:

- increased pressure on Electoral Officers (EOs) to obtain a result as soon as practicable after the close of voting (i.e. the same number of votes will have to be processed in a shorter time frame). Based on the 2004 experience, those councils using the STV voting system will require significantly more resources to achieve the count within the two week period.
- reduced opportunities for overseas electors, who would otherwise have no provision to vote, to cast valid votes. At the 2004 elections, the Council posted approximately 4,200 voting documents to electors currently living overseas (347 completed papers were returned in time to be included in the count). A further 50-60 were directed overseas to electors temporarily out of New Zealand for the three weeks leading up to and including election day. The EO received positive feedback about the provision of this service. Some criticism could be expected from these electors if the two week voting period was re-introduced. Some thought should therefore be given to increasing the opportunity for overseas voters to cast a valid vote if the voting period is reduced to two weeks.

There are strong arguments both for and against a 2 week versus 3 week voting period although no hard data exists, as far as the Council is aware, of what the electors' preference might be. The Council believes that research needs to be undertaken to determine electors' views on the optimum voting period length.

**Submission:**
That research is undertaken on the effect of voter behaviour of moving from a three to a two week voting period.

### *2.5.4 Address of Candidates*

Given the "community of interest" features of the Act the Council supports the view that candidates standing for the Wellington City Council should reside within the city's boundaries and that candidates standing for community boards should reside within the board areas. It does not, however, have a problem with the current rules which allow a candidate to stand for more than one position within that area (for Mayor, Council, community board, DHB etc).

The situation which exists now where a single candidate can stand for numerous community boards and be elected to more than one certainly seems to contradict the "community of interest" feature of the LEA. If residency within a board area was a prerequisite to candidacy this situation would not occur.

**Submission:**
That the LEA be amended to ensure that candidates live within the city or community board area that they wish to stand for but that there not be any limitation on the number of positions they can be nominated for, apart from the restrictions that currently apply.

### *2.5.5 Effects and Levels of Campaign Spending Limits*

The Council believes that the provisions around the declaration of electoral donations need to be tightened. In order to promote transparency and allay any suggestions of possible conflicts of interest, candidates should be required to declare all donations they receive above the value of $200 (currently $1,000) as well as the full name and address of the person or organisation making the donation. The concern the Council has is particularly in regard to the receipt of anonymous donations by candidates and any tightening of the rules around this is supported.

Section 108 of the LEA requires candidates to provide receipts and invoices for all electoral expenses over $200. This requirement, however, is proving to be somewhat onerous on candidates as they are not always provided with receipts.

**Submission:**

(1) That Section 109 of the LEA is amended so that candidates are required to declare all electoral donations made to them in excess of $200, and the full name and address of any person or organisation that made a donation.

(2) That Section 108 of the LEA is amended so that candidates are only required to submit invoices as evidence of an electoral expense over $200.

### *2.5.6 Ratepayer Roll*

The Ratepayer Roll is very time intensive to administer and, for many councils, is for the sake of very few votes (177 votes were cast from the 225 electors enrolled on Wellington City's ratepayer roll in 2004). If the ratepayer entitlement is to remain in place, the Council requests that the enrolment process should at least be streamlined by:

- enabling the Electoral Officer to confirm a ratepayer elector's ongoing eligibility by checking that an individual still owns the property rather than by requiring each ratepayer elector to confirm their enrolment
- simplifying the ratepayer elector enrolment confirmation form provided in the LER. From experience, and through feedback received, the form is regularly misunderstood by new and re-enrolling ratepayer electors.

**Submission:**

(1) That Section 16(1)(b) of the LER is amended so that electors currently on the ratepayer roll are not required to confirm their re-enrolment if council records show they still own the property.

(2) That the Schedule attached to the LER, "Enrolment form for ratepayer electors", is simplified so that it is easier for electors to understand and complete.

### *2.5.7 Nominations*

Two interrelated issues have arisen with the receipt of nominations:

- The four-week nomination period is currently not being fully utilised. For the 2004 elections, the Council only received one nomination in the first week of the period, with the majority being submitted in the last 2-3 days.
- With the legislation being changed for 2004 to allow candidates to submit their candidate profile statements and photos independently of their nomination form and fee, the nominations that were submitted earlier were often not complete until towards the end of the nomination period.

Both of these issues caused administrative problems for electoral staff, as the majority of information then had to be collated into the voting document and candidate profile booklet in the two days following the close of nominations.

One of the main reasons candidates delay submitting all or some of their information seems to be because of the public status of that information. Once submitted, a candidate's nomination becomes public knowledge and their information is freely accessible. Candidates may be encouraged to lodge their documents earlier if candidate names and/or some or all of their information could be excluded from the public arena until the end of the nomination period.

From an administrative perspective, the influx of information at the end of the nomination period would be of less concern if there was more time between the close of nominations and opening of voting. Currently only a three week window is available to EOs and the mailhouses to prepare, print and pack the voting documents and candidate profile booklets. To meet the timeframe, EOs have been required to collate, proof-read and sign-off their information within 48 hours of the close of nominations. This pressure, and the high potential for making mistakes, could be relieved by lengthening the time available for processing nominations information and subsequent printing requirements. This could be lengthened by:

(a) decreasing the nomination period by one week, to make it a three week period
(b) starting the election process one week earlier by calling for nominations 57 days before election day (rather than 50 days)
(c) changing the date of the elections to the third Saturday in October from the second.

**Submission:**

(1) That Section 61 of the LEA is amended to require candidates to submit their candidate profile statement and photo at the same time as their nomination form and deposit.

(2) That the legislation is amended to enable nominations to be submitted in confidence (if the candidate so chooses) and released as public information only after the close of the nomination period.

(3) That Section 5 of the LEA is amended so that the interpretation of "nomination day" is the "57th day before polling day" rather than the 50th day.

### *2.5.8 Resolution for Early Processing*

Late in the 2004 elections process it was determined that the legislation required every local authority holding an election to consider whether or not it would allow progressive processing and if so, to pass the necessary resolution. Although all of the agencies holding elections in Wellington fortunately confirmed the decision made by the Wellington City Council to undertake progressive processing, had they not, it would have caused considerable logistical problems for the EO. To prevent a situation that would make it very difficult for an EO to carry out their responsibilities, the decision on whether or not progressive processing is to be used should be solely the decision of the EO's territorial authority.

**Submission:**
That Section 79 of the LEA is amended so that only the territorial authority responsible for running the election is required to make a resolution as to whether or not progressive processing will take place.

### *2.5.9 Requirements for By-elections*

Local authorities (including community boards and licensing trusts but excluding DHBs) are currently required to run by-elections to fill vacancies even when a position becomes vacant within weeks after a triennial election. In 2005 Wellington City Council had to run a by-election for a vacancy on the Tawa Community Board, caused by the resignation of one of its recently elected members due to ill health. Even though this vacancy arose within six weeks of the triennial election, the Council was still required to run a full by-election to fill the vacancy rather than utilise the next highest polling candidate (and only other candidate in this case) from the election.

The need to run a by-election so soon after a triennial election, particularly if other candidates who stood for election are still interested in serving on the authority, is an unnecessary waste of resources and resulted, in this particular case, in the Tawa Community Board being operated for almost five months with only five elected members.

**Submission:**
That Section 117(1) of the LEA be amended, to provide local authorities with the option of appointing the highest polling unsuccessful candidate to the local authority, community board or licensing trust when an elected member resign or dies within three months of a triennial election.

### *2.5.10 Candidate Profile Statements*

The wording of section 29(2) of the LER appears to limit the EOs ability to publish or display candidate profile statements prior to the commencement of the voting period (i.e. before they are sent out with the voting documents).

Every election the Council puts a lot of effort into making people aware of who the candidates are, by providing candidate information through a special elections edition of the Council's newspaper (which is delivered to every household in Wellington) and on the Council's website, as well as through the candidate profile booklet.

Local Government New Zealand (LGNZ) has undertaken a post-election voter participation survey which shows that the main reason that people do not vote is because they do not know enough about the candidates. If EOs were permitted to release candidate information immediately after the close of nominations, it may help increase voter turnout.

**Submission:**
That Section 29(2) of the LER is amended so that EOs are specifically enabled to release candidate profile information to the public immediately after the close of nominations.

### *2.5.11 Differing Electoral Systems and Implications for Ballot Papers*

In 2004, having two electoral systems on the one voting document did create confusion for some Wellington electors. Wellington City Council's voting documents were all STV, apart from the election for the regional council. A number of electors completed the FPP election on their voting documents according to STV rules (using numbers rather than ticks). In a significant number of cases, however, this did not result in an "informal"/spoilt vote as those electors also only numbered up to the number of vacancies available. A legal opinion obtained prior to the election confirmed that, where an FPP election was completed according to STV rules and an elector had not numbered beside more candidates than the number of vacancies available, the EO could accept the numbers as a valid indication of the elector's vote.

The table below provides a comparison of the "informal" votes made between 2001 and 2004 for the Wellington City Council and the CCDHB elections, which shows that the introduction of STV did not result in an increase of informal votes in Wellington's case. (Note: that the definition of an informal vote changed between 2004 and 2001. EOs were required to distinguish between "spoilt" informal votes and "no vote" informal votes in 2004, whereas both categories were collected as one statistic in 2001).

# APPENDIX 1

| | 2001 Informals Votes | | 2004 Informal Votes | | | |
|---|---|---|---|---|---|---|
| **Election** | **Total** | **%** | **Invalid** | **No votes** | **Total** | **%** |
| Council (Mayoral issue) | 874 | 1.49% | 268 | 1066 | 1334 | 2.49% |
| Council | 3026 | 5.16% | 563 | 1347 | 1910 | 3.57% |
| Wellington Regional Council (Wellington constituency) | 5073 | 8.67% | 715 | 3110 | 3825 | 7.17% |
| Capital and Coast District Health Board | 9756 | 11.13% | 2245 | 5712 | 7957 | 9.82% |

If the main concern relating to the impact on having two electoral systems on one paper is whether or not more votes were spoilt as a result, this does not appear to be the case for Wellington City.

However, if the main concern around having the two systems on one paper is whether or not it meant that people did not vote because it was too confusing, anecdotal information suggests that this may have been the case. To rectify this, consideration needs to be given to finding a solution to address the complexity of voting. Three possible options for doing this are:

- ensuring the same voting system is used for all elections in any one area
- providing separate voting documents for the two different voting systems
- holding the DHB and local authority elections at separate times.

Having only one electoral system for all elections being held in any one area would be the best way of making voting easier for electors and vote processing easier for administrators.

However, if two electoral systems are to be retained, providing separate voting documents for each electoral system would be the next best way of reducing the complexity of the elections. This option, however, would still not free electors from having to deal with two electoral systems and would also considerably increase the cost of running the election, doubling some of the costs incurred (e.g. postage and the cost of the scrutiny process). From an administrative perspective, two different voting documents would provide additional complications – particularly around the return and receipt of voting papers through the scrutiny process.

As a last option, the complexity of the elections could also be reduced by holding the DHB elections separately from the local authority ones. This would reduce the number of candidates on a voting document (although this could also be achieved through reintroducing constituencies). In such a situation, DHB elections could be held in the year where no election is currently held. It would, however, close to double the cost of running the elections (a cost which the Ministry of Health and district health boards would have to bear).

**Submission:**
That research be carried out on the impact that different voting systems on the one ballot paper could have on voter behaviour

### 2.6 Local Authorities (Members' Interests) Act 1968

In June 2005 the Office of the Controller and Auditor-General issued a report **The Local Authorities (Members' Interests) Act 1968: Issues and Options for Reform**. The Controller and Auditor-General intended to highlight what he saw as difficulties with the current Act, and to suggest some options about how the Act might be improved.

The Council agrees that the Local Authorities (Members' Interests) Act needs to be reviewed, with the aim of having a clear and consistent legislative and policy framework in this area that facilitates transparency and accountability in members' participation in local authority decision-making, and in which the public can have confidence.

### 2.7 Local Government Act 1974 and other legislation affecting local authorities

The final issue is the need for the remaining parts of 1974 Act to be reviewed, along with other legislation affecting local government, such as the Public Works Act 1981, and the Reserves Act 1977.

The 1974 Act is archaic and unconnected. This leads to compliance costs, and as the example shows below has diminished the Council's powers

The continued operation of the remaining parts of the 1974 Act and new 2002 Act provisions cause some difficulty (in the infrastructure area in particular) as the two do not fit together well. An example is as follows:

- the power to require owners to fix private drains remains in the 1974 Act. This includes a power for Council to do the work itself, and recover the costs (Section 459)
- the ability to recover the cost as a charge on the land was repealed by the LGA 2002 (see former Section 465).

The replacement provision in the LGA 2002 does not 'fill the gap' left by the repeal, and as a consequence Councils are faced with the land owners owing debts in their private capacity.

Other parts of the 1974 Act are simply procedurally onerous and unresponsive - for example the road closure provisions for film-making and events. This has necessitated WCC setting up a separate Temporary Road Closures Subcommittee to enable processes to happen outside of the regular Council meeting cycle, and adds process and cost for no apparent benefit.

Other parts have been amended in the 2004 Act to change the 'process' from the special order procedure under the 1974 Act - and have become more complex (without justification) e.g. road naming.

# APPENDIX 1

The Council requests that urgent attention be given to reviewing and resolving these issues, which create significant operational difficulties for this and undoubtedly other councils.

**Wellington City Council**
**September 2007**