

Strengthening democratic practice in New Zealand's local government: new directions for the 21st century

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Christine Cheyne

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School of Sociology, Social Policy and Social Work
Massey University
Private Bag 11-222
Palmerston North
NEW ZEALAND

Telephone +64 6 350 5799 ext 2816
Fax +64 6 350-5681
E-mail: C.M.Cheyne@massey.ac.nz

Introduction

In November 1999, as a result of the general election in New Zealand, a new centre-left coalition government was formed between the Labour Party and another social democratic party, the Alliance. This represented a significant change of political direction across most areas of public policy, after nine years of conservative National-led governments. In contrast with the general weakening of local government in the 1990s, the Labour-Alliance Coalition has emphasised the importance of local government as a partner of central government and has sought to introduce various new elements of democratic practice in local government. The Labour-Alliance Coalition government has initiated a major review of the Local Government Act and reviews of a number of related statutes. At this stage the outcomes of the review are not known. However, some indication of possible outcomes is clear from both parties' election manifesto policies for local government. In addition, in November 2000, a *Statement of Policy Direction for Review of the Local Government Act 1974* was published. In that document the Government suggests that a new articulation of the over-riding purpose of local government could be along the lines of the following:

to enable local decision-making by and on behalf of citizens in their local communities to promote their social, economic and environmental wellbeing in the present and for the future (Department of Internal Affairs, 2000, 6), it relates to the role of strategic planning and a strategic plan. Strategic planning is a tool that is used to assist an organisation or community think about the future and how it is going to respond, grow and develop, co-ordinate with others and finally act. It also needs to be a flexible process enabling it to respond to changes in its operating environment.

Strategic planning takes time and should be reasonably fluid rather than set in stone. Sometimes it is used as a tool to solve issues that have. The focus in this section is the legislation passed in 1989 which put in place new opportunities for public participation in the annual planning cycle. The discussion then turns to the new initiatives of the Labour-Alliance Coalition Government both of which reflect that Government's emphasis on strengthening public participation in local authority decision-making. The paper concludes with some reflections on possible outcomes of the review process. The various possible outcomes are based on developments in other jurisdictions and also on approaches in other areas of public policy where there has been an emphasis on public participation.

Public participation in local authority decision-making in New Zealand in the 1990s: legislation and practice

As a result of the local government reforms in 1989 new mechanisms for public participation were introduced, partly to offset concerns about the effectiveness of representation with the much larger units of local government and partly to ensure greater accountability by local authorities to citizens. The new mechanisms included a statutory annual planning process and statutory special consultative procedure.

The annual planning cycle provided citizens with (1) the right to have information about their local authority's planned programmes, activities and

expenditure, and (2) the right to make submissions conveying their views about those proposed activities and spending. Section 716A of the Local Government Act stipulates that local authorities must use the Special Consultative Procedure to obtain submissions from citizens on “any proposal (being an intention to act or a draft plan or policy)”.

The local government annual planning and reporting cycle was largely modelled on that introduced into central government in 1988-89. However, unique to local government was the accompanying requirement that local authorities implement a statutory consultative procedure (set out in s716A of the Local Government Act 1974) when developing their annual plan. This means that they are required to publish a draft annual plan and to invite submissions from citizens. Councils are required to deliberate publicly on submissions and then to produce a new form of the annual plan, which must be adopted within three months of the commencement of the financial year (1 July).

Several years after the 1989 statutory amendments, further legislation in 1996 introduced stringent new financial management provisions, which included further opportunities for public participation. The Local Government Amendment Act (No. 3) 1996 requires local authorities to adopt a long-term financial strategy (covering a period of ten or more financial years), a funding policy for each financial year, a borrowing policy, and an investment policy. Each of these is to be prepared in accordance with the Special Consultative Procedure. At the same time as specifying the use of the Special Consultative Procedure, however, the Local Government Amendment Act (No. 3) 1996 prescribed a complex set of principles which needed to be incorporated into local authority financial decision-making (in particular, the funding policy as set out in section 122N). Experience to date, and assessment of this legislative provision, suggests that public participation in the form of submissions on local authority funding, borrowing and investment is minimal. Relatively few submissions are received on a local authority’s long-term financial strategy, or funding, borrowing and investment policies. Anecdotal evidence suggests that elected members find it difficult to understand and apply the set of principles that are required to be applied in financial decision-making.

The results of the annual planning process are mixed. Some local authorities with large populations receive a very small number of submissions on their draft annual plans. Regional council draft annual plans generally elicit a very small number of submissions. Whether they receive a large number of submissions or a small number, local authorities invariably struggle to know how to interpret the response, particularly the unevenness in the size and ‘quality’ of submissions (Cheyne, 2000).

While Section 716A was intended to be a key mechanism for achieving the goal of public participation, in practice it provides for a very limited form of public participation, namely, making submissions. This is not particularly, if at all, interactive and, for many submission-makers, this form of participation does not produce a high level of satisfaction. It is widely recognised, in textbooks on consultation and participation, that there is a range of techniques that might be employed when engaging citizens. Similarly, it is also recognised that good practice also involves well-designed public participation so that public participation processes embarked upon in the public sector are characterised by a clear purpose, appropriate resources (including an adequate budget, skilled staff, and appropriate timeframe), and a commitment to evaluation. There is little guidance, let alone training, for officers or elected members in New Zealand local government about effective public participation.

An assessment of the experience of public participation in local authority in the 1990s

An official survey in 1995 acknowledged that the statutory requirements for consultation with the annual planning process, as set out in the reformed Local Government Act, constitute a minimalist approach to consultation (Department of Internal Affairs, 1995).

Citizens, elected representatives and managers are unclear about the appropriate scope and forms of public involvement. What kind of public involvement, the rationale, when and how much, are questions which generate much confusion.

In addition, legal challenges in response to statutory consultation resulted in reviews by the courts of the practices of public bodies and the articulation of the rights and responsibilities of consultors and consultees. It has been observed that a statutory 'duty to consult' (which is the requirement imposed on some decision-making bodies) is somewhat stronger than the level of Council initiative expected in relation to the statutory Special Consultative Procedure in section 716A of the Local Government Act (and found also in some other statutes) (*Auckland City Council v Auckland Electric Power Board*, High Court, Auckland CP 26/93, 16 August 1993, Williams J). In particular, the courts had noted that there is no right to consultation or statutory duty to consult in the Local Government Act. The term 'consultation' is not used in the 1989 statutory amendments (Salter, 1994; Cheyne, 1999).

By the end of the 1990s it was clear that there were significant shortcomings in the Special Consultative Procedure and, while there was nothing to prevent local authorities from engaging citizens in more innovative ways other than lack of knowledge of these, in practice, there was little innovation.

While the law can be regarded as a statutory minimum it has not encouraged or facilitated local authorities to design public participation opportunities which go beyond that minimum. In this sense, the goal of the architects of local government reform for enhanced public participation has not been achieved through the annual planning process and statutory consultative procedure.

Moreover, where there had been innovation in the early 1990s in an initial burst of enthusiasm for public participation, by the end of the decade there was much less enthusiasm for public participation. Diminishing enthusiasm on the part of many officers and elected members coincided, however, with evolving aspirations of citizens for more effective involvement. In addition, there were valid questions being asked about the cost-effectiveness of the Special Consultative Procedure and the return on the investment of time, money and other resources by elected members, officers and citizens. Already, the costs of consultation under the Resource Management Act were a cause for concern.

Despite the apparent weaknesses of the existing statutory framework, it is without doubt that the 1989 amendments encouraged an environment of responsiveness (Cheyne, 1997; Controller and Auditor-General, 1998). Citizens' familiarity with the planning cycle, the availability of information and transparency of decision-making, and the increased awareness by citizens of the diversity of activities of local government are recognised as positive outcomes of the 1989 amendments. Citizens' aspirations for involvement have increased. There are also some tensions which arise from public participation in the annual planning process, including:

- doubts about representativeness of participants
- concerns about 'apathy', fatigue and cynicism
- time (and other concerns about unmanageability)
- costs and other resource constraints (especially for sensitive issues)

- concern that public involvement can exacerbate tensions between different sections of the community
- divergent expectations (between officers and citizens)

While there is rhetorical support from local authority staff and elected members for the idea of public involvement, nevertheless many officers and elected members have reservations about the extent to which public involvement can and should be an integral feature of local authority decision-making (as opposed to being an optional extra or 'add-on' to the decision-making process).

In December 1998, nine years after the new procedures for consultation were introduced into local government, the Controller and Auditor-General reported on this aspect of local government performance, recommending that every local authority should:

- have appropriate policies and procedures in place to ensure compliance with any specific legislative requirements, or any general duty to consult, when designing and carrying out a public consultation exercise
- use the SCP in s716A as a framework for public consultation where an issue is controversial and likely to attract public interest
- view public consultation as more than simply notifying the public and receiving written submissions
- ensure that the public and the council are clear about how the consultation will influence making the final decision
- develop a consultation process that
 - is compelling
 - allows sufficient time
 - is clear
 - identifies all those with an interest
 - provides good feedback
 - recognise that public consultation is good management practice and a pragmatic way to assist with informed decision-making
 - ensure that sufficient appropriate skills and resources are available to develop and carry out public consultation exercises

The Controller and Auditor-General's report provided the first official analysis of the trends in local authority consultation. However, it did not go as far it might in providing the kind of guidance that had recently been made available to local authorities in the United Kingdom (see Department of Environment, Transport and the Regions, 1998).

Some guidelines about the appropriateness of different public participation techniques were developed for local authorities by academic researchers (Forgie, Cheyne and McDermott, 1999). These guidelines formed the annex to a study of the democratic health of local government in New Zealand. The work by Forgie *et al.* had been commenced prior to publication of the first official 'guidance' for published in the form of the report by the Controller and Auditor-General (1998). While the Controller and Auditor-General's report offered guidance, it did not provide specific details about specific techniques and their appropriate application.

While minimal guidance was provided to local authorities on how to incorporate public participation in the annual planning process, somewhat greater attention had been given to the issue how to foster effective public participation in resource management decision-making (see, for example, Parliamentary Commission for the Environment, 1995; Ministry for the Environment, 1999). In addition, there have been some publications which address the issue of consultation with tangata whenua (the indigenous people), and tangata whenua participation in resource management, which are required by the Resource Management Act 1991. What was becoming increasingly clear was that there is a lack of integration between consultation and public

participation under the Local Government Act with that under the Resource Management Act 1991. To a large extent this is a reflection of the fact that the two different statutes were reviewed under separate processes in the late 1990s and within different timeframes. However, the inconsistency in the two approaches to public participation can also be explained by the change of government that took place in 1990 when the resource management law reform was still unfinished. Strong arguments have been made in case law in relation to resource management decision-making, and through other processes, for the principles of the Treaty (such as partnership and participation) to be applied in that area of decision-making. However, the same arguments have not been applied to legislation governing other areas of local authority decision-making (specifically the Local Government Act).

By contrast, as noted above, in the United Kingdom, the Department of Environment, Transport and the Regions in 1998 published a document titled *Guidance on Enhancing Public Participation in Local Government*. More recently, in anticipation of the passage of the Local Government Bill 2000, and the mandatory preparation of Community Strategies by local authorities, the Local Government Association and the Department of Environment, Transport and the Regions published guidance on public participation in the development of a Community Strategy. No such guidance was produced for local authorities in New Zealand.

Environmental sustainability and public participation

While New Zealand's local - and central - government reforms were driven by local political imperatives New Zealand is also party to many of the same international multi-lateral environmental agreements and protocols which have stimulated democratisation initiatives in local government elsewhere in the world. Foremost among these are the 1992 Rio Declaration, which underscores the need for citizen participation and which has been translated into the goals and methods of Agenda 21. In addition to Agenda 21, there are other multi-lateral environmental agreements such as the December 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change. These international developments have underscored the importance of new participatory mechanisms and processes. As a result, in New Zealand (as elsewhere), innovative approaches to engaging citizens in resource management decision-making have emerged in many places in order to arrive at solutions to complex and pressing environmental problems and unsustainable resource use. The experience in this area of public policy (resource management) has underscored the value of public participation as a strategy for generating community ownership of new policy directions and for finding solutions to "wicked" or complex issues.

Urban sustainability is a key environmental goal for New Zealand despite its relatively small size and its seemingly rural character. However, sustainable urban development requires the interaction of several domains of public policy (and not just biophysical resource management policy) and as such will need to incorporate public participation.

Democratic legitimacy and public participation

In addition to the requirements of sustainable development, there is awareness of the need for elected local government to find new ways of securing legitimacy in the 21st century. While New Zealand's voter turnout rates are sometimes viewed with admiration by some other local government jurisdictions, it is important to note that voter turnout in local government elections is considerably lower than that for central government elections. The following table shows the different turnout rates.

Table 1: Voter Turnout in Local and National Elections

	Local Election %	National Elections %
1962-63	44	90
1965-66	44	86
1968-69	46	89
1971-72	50	89
1974-75	50	83
1977-78	48	69
1980-81	47	91
1983-84	46	94
1986-87	55	89
1989-90	58	85
1992-93	52	85
1995-96	51	88.28
1998-99	54	(84.77)

Source: Forgie *et al.*, 1999; Electoral Commission, 2000)

This relatively low turnout has focused attention on alternative approaches to decision-making and strategies for enhancing the legitimacy of democratic governance and fostering public accountability. Specifically, during the 1990s there had been a growing interest in new and more meaningful forms of citizen involvement. More interactive and deliberative forms of public involvement (such as citizens' juries, focus groups, and deliberative opinion polling) have increasingly been advocated as an indispensable element in securing legitimacy for the system of representative democracy in the 21st century (Cheyne, 1999; Bostwick, 1999, MacLennan, 2000).

Coalition Government – new policies for strengthening local government

This growing recognition of the need for alternative forms of public involvement to the conventional 'consultation' (which, as observed earlier, is often little more than an invitation to make submissions on a proposal) was reflected in the 1999 election manifesto policy of the New Zealand Labour Party.

Labour's 1999 local government policy included a commitment to local government law reform. The goal of law reform included the following:

- to enact a power of general competence for local authorities;
- to ensure that local government's financial practices are transparent and accountable; and
- to empower and encourage local government where, after consultation with its communities, it decides to take an active, co-ordinating, advocacy and/or supportive role in areas such as employment generation, local economic development, community safety and security, and sustainable environmental development.

There was a commitment to fostering local democracy and public involvement and a recognition that "some local authorities are not sufficiently 'user-friendly' in their consultation processes" (New Zealand Labour Party, 1999). It was suggested by Labour that this arises in part from the way in which the form of plans, documents and notices is prescribed by statute. The Labour Party notes:

Active participation by citizens is only achieved when other, more popular ways of communicating are used. Encouraging adoption of best practice is as important as changes to the law (New Zealand Labour Party, 1999: 5).

As a result, its policy is to:

- review the consultation processes under the Local Government Act and the Resource Management Act to ensure that effective participation is encouraged
- develop a strategy for fostering citizen participation, including:
 - Guidelines for local authorities to enhance public participation, including establishing what kind of public involvement citizens should have, in what circumstances and to what extent
 - Encouraging Local Government New Zealand to facilitate the adoption of best practice for consultation techniques and participation processes for a wide range of situations or issues.
 - Working with communities to develop models for devolving local decisions to local communities.
 - Exploration of innovative techniques for increasing public involvement in community decisions. These techniques may include advisory boards, citizens' juries, panels and commissions, focus groups, interactive websites, and deliberative opinion polling and decision-making (involving intensive, face-to-face debate).
 - introduce a process of awards to recognise local authorities for high quality annual plans and consultative processes.

Clearly there is a commitment to more than just consultation and certain to more than the statutory Special Consultative Procedure. There is an emphasis on more interactive and more deliberative processes. Indeed, it is recognised that these are required to achieve the social, economic and environmental outcomes that are desired:

Building strong communities requires both active local democracy and leadership. This is not just a matter of local government and their communities having a say in the policies of government. Rather, it is about local communities mobilising to resolve issues they are concerned about (New Zealand Labour Party, 1999: 6).

Possible outcomes of the current statutory review

Innovation and experimentation by local government are likely to be encouraged by a new statutory approach that favours a principles-based approach over prescription. However, this raises questions about the capacity of elected local government, the resources available for citizens, and informed understandings and appropriate skills for officers and managers. The need for clear guidance in the wake of new statutory provisions – whether these follow a principles-based approach or the prescriptive approach – is indisputable.

Other statutory approaches – UK and Australia

As well as looking at other statutory approaches found in New Zealand it is also relevant to consider contemporary public policy in other countries. Both Australia and the United Kingdom provide important insights into how to design legislation that requires local government to promote public participation and to seek a mandate from 'the community' for its activities.

In England and Wales the Local Government Act 2000 placed a duty on local authorities to prepare 'community strategies', for promoting or improving the economic, social and environmental well-being of their areas, and contributing to the achievement of sustainable development in the UK.

In the guidance papers to the new Act the Department of the Environment, Transport and the Regions stated that a community strategy will have to meet four objectives. It must:

Community strategies are to reflect local circumstances and needs. However, the following guiding principles are to underpin all community strategies. They will:

- engage and involve local communities;
- involve active participation of councillors within and outside the executive;
- be prepared and implemented by a broad 'local strategic partnership' through which the local authority can work with other local bodies;
- be based on a proper assessment of needs and the availability of resources.

The guidelines state that only by promoting and improving the economic, social and environmental well-being of their communities will community strategies contribute to the achievement of sustainable development in the United Kingdom. It is clearly expected that a community strategy will cover all three in an integrated way. Additionally, in developing their strategies, local authorities and their partners should have regard to the Government's sustainable development strategy - which provides a national framework for integrating economic, social and environmental concerns - and work on regional sustainable development frameworks. They should also take account of the ways in which national and global concerns - such as the mitigation of climate change and the protection of biodiversity - can be addressed through local action.

Devising and implementing the community strategies is to be done through partnerships. It is hoped that the partnerships will provide a means of joining up services and tackling cross-cutting issues in a coherent and integrated way. There is further guidance available about the establishment and modus operandi of such partnerships.

At the same time it is recognised that some local authorities will already have established partnerships and relevant processes for citizen engagement. In particular, it is acknowledged that those local authorities that have developed Local Agenda 21 strategies in line with the Government's guidance should have gone a long way towards developing effective partnership working, a long-term vision for the area and the necessary implementation mechanisms.

In recognition of the different stages that councils have reached, and the challenging goal that fully-developed community strategies represents, the guidance does not prescribe a date for their completion. The Government does, however, expect councils and their partners to assess their progress against the requirements set out in the guidance, and to set realistic and publicly-agreed targets for putting in place their first community strategies.

All of this amounts to what might, in reality, be a highly prescriptive approach. In recent statutory reform processes in New Zealand, on the other hand, there has been a strong preference for a more 'principles-based' approach, rather than a prescriptive approach. In particular, a concern in the review of the current Local Government Act is to produce a more streamlined statute rather than the current one, which has nearly 800 clauses and many schedules. The provisions of the current Act are viewed by the reformers (as well as by many practitioners in local government, and by citizens) as inflexible, confusing and cumbersome. There has also been a resistance by central government to issuing policy guidance in part because to do so might interfere with the principles of an independent local government sector. At this point, constitutional and other differences between different local government jurisdictions begin to undermine the transferability of some policy approaches. In New Zealand, the fiscal independence of the local government sector is high. There is very little 'revenue-sharing' whereby local government receives funding from central government. As a result, it is difficult (and, arguably, pointless) for central government to impose any guidance because it has no fiscal levers to bring about compliance. Furthermore, local government is unwilling to tolerate policy initiatives which prescribe specific processes and actions because such initiatives impose

costs on local government which have to be met through local government's own revenue base (mostly rates).

New Zealand's closest neighbour, Australia, is sometimes an influence on public policy design in New Zealand. Australia in fact has seven local government jurisdictions as each state government has its own local government statutes. In the 1990s, as in many countries, Australian local government was the focus of extensive reform (Marshall and Dollery, 1997; Aulich, 1999). As discussed by Aulich (1999: 13), consultation and reporting were mandated as part of the strategic management process introduced into local government in the early 1990s in all states:

provisions were enacted for councils to develop strategic or management plans (especially to be more responsive to community wishes) and stricter reporting regimes both to the community and to the state government, making key documentation transparent, completing some of the electoral reforms begun in the 1960s and extending Freedom of Information coverage to local government. These were all designed to strengthen accountability both to the local community and to the state government, improve management capacity and make local government more democratic.

Since 1989, each state has re-drafted its local government legislation but there is a common acknowledgement of the need for community participation in the local government system (Kiss, 2000). All states except Tasmania have a section of the local government statute that sets out the purposes or objects of the statute and it is among these purposes (or objects) that there is reference to role of local government being to respond to the needs of the local community. It is expected that local government will receive a mandate from citizens for the particular activities in which it is engaged. The South Australia Local Government Act 1999 includes among its objects the intention to:

Encourage the participation of local communities in the affairs of local government and to provide local communities, through their councils, with sufficient autonomy to manage the local affairs of their area; and ... to ensure the accountability of councils to the community; and ... to encourage local government to provide appropriate services and facilities to meet the present and future needs of local communities...

The Act contains a large number of sections addressing public participation. Some of its provisions are considerably more refined than what is currently found in New Zealand's Local Government Act.

It is clear that within Australia, and also across a range of different local government jurisdictions in the western world, there has been a strong pre-occupation with obtaining a community mandate for what local government undertakes and also with strengthening accountability through other mechanisms while also recognising the need for (or desirability of providing) a broader set of powers to be exercised by local government in order to respond to community aspirations.

In the 1990s in many countries there has been convergence around these themes in local government statutory frameworks. When consideration is given to why this convergence and these themes have been a feature of the recent past and contemporary public policy, it is widely acknowledged that there is a strong link between such themes and the strategic management that has been introduced into the public sector at the national level. Accordingly, different countries' experiences in relation to strategic management at the national level may be salient to statutory reforms seeking to promote strategic management, sustainable development and community planning in local government.

At the same time, questions should be asked about the expectation that local government implement the same kind of strategic management frame-

work that central governments have adopted for themselves. While the answer might be 'yes', the question still needs to be posed. The answer might also be 'no' given the differences between local and central government. Based on their study of strategic planning in local government in Australia Marshall and Dollery (1997: 8-9) observe that there are important differences between local and other tiers of government (in Australia, federal and state) and that some of the new strategic management processes that might be incorporated into central government might not be wholly relevant or transferable to local government:

Much has been written about the style and substance of the public sector reforms adopted by state and federal governments... It remains unclear, however, as to how effectively similar practices can be applied to the local government arena. There are clearly significant differences in the composition and structure of local government bodies compared with their state and Commonwealth counterparts. The more intimate relationship of councils to their communities, the membership of councils, the nature of political partisanship, the unique range of intergovernmental pressures, and the organisational format and scale of services all set local government apart from government in other spheres. It is questionable whether managerial practices employed at state and federal levels can simply be transplanted to a diverse range of urban and regional bodies.

Conclusion

The new requirements for the development of annual plans with public input heralded a new era of openness, transparency and responsiveness on the part of local government. The efforts of a decade ago to democratise local government were not sustained. Many important insights were gained as local authorities implemented the statutory consultative procedure and sought to respond to public aspirations for greater influence over local authority decision-making. However, research and analysis indicates the need for further innovation to overcome existing shortcomings (Controller and Auditor-General, 1998; Cheyne, 1999; Forgie *et al.*, 1999). It is to be hoped that the current statutory review in New Zealand will foster innovation and itself be innovative. Recent developments in local government in other jurisdictions may offer some insights into how to proceed. However, caution and a critical assessment are undoubtedly needed in cross-national policy analysis. It is clear from reviewing just a couple of examples of recent policy developments in other local government jurisdictions that there is much potential for cross national policy transfer, and for sharing the results of policy research and evaluation. The extent of policy guidance produced in the United Kingdom throws into sharp relief the relative dearth of such guidance in New Zealand. At the same time, the expansion of 'e-government' and increasing familiarity with the availability of policy guidance on United Kingdom Government websites is likely to be of assistance for, and have an influence on, key policy actors in New Zealand local government, including those steering the reform process, and fill some of the vacuum of policy guidance in New Zealand.

However, there are more profound constitutional differences that are likely to mitigate the influence of other local government jurisdictions. New Zealand local government has virtually no constitutional protection and the current statutory review has precluded any consideration of constitutional questions. As a result, local government remains very much a creature of statute and a junior partner in a partnership that has been much touted by central government.

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