



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **A Threshold Framework for considering Crown Intervention in Local Government**

Date: 13 August 2018

Key issues	
<p>You have asked for additional information on how the threshold is determined for considering Crown intervention in the affairs of a local authority under Part 10 of the Local Government Act 2002.</p> <p>This briefing provides a threshold framework, alongside the Gazetted guiding principles, for considering assistance and intervention in the local government sector.</p>	
Action sought	Timeframe
Discuss this briefing, and the next steps, with your officials at your next meeting	5 September 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Richard Hardie	Manager Operations and Implementation Services			✓
Karen Hope-Cross	Director Operational Services			

Return to	Dave Spence, Level 9, 45 Pipitea Street Wellington
Cohesion reference	Threshold framework for local government intervention
Ministerial database reference	LG201801009

Purpose

1. This briefing outlines the threshold framework that supports decision-making for local government assistance and intervention using Part 10 of the Local Government Act 2002 (the Act).

Background

2. The Department of Internal Affairs (the Department) monitors and assesses issues that impact upon the performance of local authorities. It also supports you with advice around appropriate actions that might be considered to help address serious problems as they arise.
3. Recently, there have been a number of calls through the media for Crown intervention in to a range of local government issues. These local authorities include Tauranga City Council, Buller District Council, Horowhenua District Council, Westland District Council and the Hawkes Bay Regional Council.

You have statutory powers to intervene in the affairs of local government

4. The Act confers powers on you to intervene in the affairs of local authorities when there is a serious problem.
5. A range of options are available for Crown intervention and the Department has established a process for advising on and enacting Part 10 interventions. You have previously received briefings on:
 - a) the powers, and process, for assistance and intervention under Part 10 of the Local Government Act 2002 [LG201700636 refers]; and
 - b) the principles for intervention [LG201800264 refers].

Intervention is guided by a published set of guiding principles

6. A notice in the New Zealand Gazette outlines guiding principles for Crown assistance and intervention in local government (**Appendix A**). You confirmed these guiding principles on 4 April 2018.
7. The Act recognises that Crown interventions can be disruptive and costly, can restrict local democracy, and may remove some local powers. In this respect, the gains of Crown intervention need to outweigh the costs of the intervention. Crown intervention in the affairs of local government therefore should be considered as a last resort.

The threshold for Crown intervention is high

8. The central premise of local democracy is that local authorities must have the ability to:
 - a) enable democratic local decision-making and action by, and on behalf of, communities; and

- b) meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
9. Because of this, the threshold for Crown intervention in local authority affairs is necessarily high. Key factors in determining whether a local authority meets the threshold for intervention include:
- a) whether a problem is significant or has the potential to become significant;¹
 - b) the costs and benefits of the intervention; and
 - c) whether or not the problem can be resolved without intervention.
10. As the Minister for Local Government, you must also take into account the following principles:
- a) local authorities are responsible for avoiding, mitigating and resolving their own problems;
 - b) interventions should be proportionate and only for as long as necessary; and
 - c) community engagement in problem solving should be encouraged.

Comment

The Department has a graduated process to assess the threshold for considering intervention

11. Any decision to initiate a Crown intervention process is serious as it not only adds an additional cost factor upon existing proceedings but it intercedes in the direct accountability of territorial authorities to residents and ratepayers. Before taking such a step, the Department has a process in place to ensure that robust evidence is gathered in order to fully understand the extent of the problem. The local authority is also given every opportunity to address the problem.
12. A key aspect to the process is determining the threshold for intervention. To assist in this, the Department has developed a threshold framework that provides a graduated, matrix approach to assessing the seriousness of a problem. The matrix is provided in **Appendix B**.
13. The matrix presents two axes through which the severity of a problem is assessed: Governance (mayor and councillor) performance; and Management (CEO and the council's employees) performance. A graduated scale on each axis assists in assessing the severity of a problem, using a risk level scale of 1-5 (where 1 represents no problem and 5 represents a serious problem).

¹ A problem has been defined in the Local Government Act 2002 as management or governance failure(s) that detract from an ability to give effect to the purpose of local government; significant or persistent statutory non-compliance; or a civil defence emergency.

14. The combined total (out of a maximum 10) determines the course of action that should be considered as outlined in Table 1 below:

Table 1: Threshold Framework for Crown Intervention in Local Government

Total Score	Indicator	Department's Response
2-3	The council is deemed to be functioning as normal, with no problems apparent.	No action is required.
4-5	An issue is present, but the council is addressing the situation.	The Department has a monitoring and support role to the council.
6	An issue is present, but the Department has concerns about the council's ability to address the situation.	This is the point at which we alert you, as the Minister, to the situation.
7-8	A serious problem is emerging.	The Department now engages with other agencies and sector stakeholders as appropriate (e.g. the Office of the Auditor-General, the Ombudsman's Office, Local Government New Zealand (LGNZ), Society of Local Government Managers (SoLGM), and the Ministry for the Environment) to understand the scale of the problem and options that are available to support the council.
9-10	A serious problem exists. The Department has engaged with other agencies and the council, and is not satisfied that the council is capable of resolving the situation.	Intervention is now advisable.

15. The scoring above represents the basis of a graduated response to assistance and intervention in the sector. This assessment process entails the collection of information, engagement with the council in question, consultation with sector stakeholders or other public service agencies, and provision of advice to you.

The threshold framework has been applied recently



Recommendation

17. We recommend that you:

- a) **discuss** this briefing, and the next steps, with your officials at your next meeting

Yes No

Copy to Associate Minister

18. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government.

Yes No

Karen Hope-Cross

Karen Hope-Cross
Director Operational Services

RELEASED BY THE MINISTER OF LOCAL GOVERNMENT

Nanaia Mahuta

Hon Nanaia Mahuta
Minister of Local Government

05 / 09 / 2018

Appendix A: Guiding Principles for Intervention in Local Government

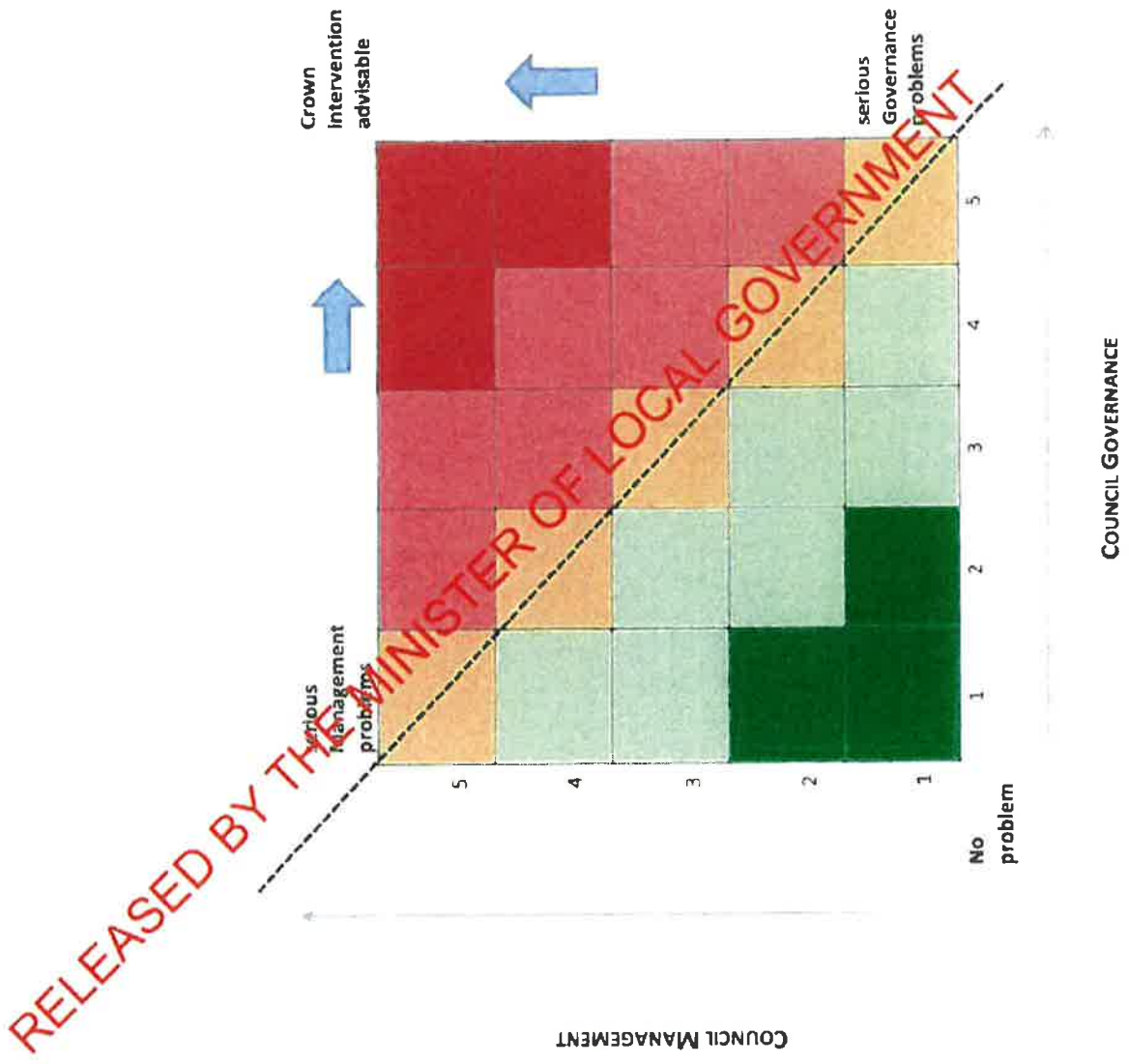
The following guiding principles are published in the New Zealand Gazette:²

In making decisions under Part 10 of the Act and determining what action, if any, to take under Subpart 1 of Part 10 of the Act, the Minister is likely to adopt the following guiding principles:

- Ministerial action should be informed by the purpose of local government and the role of, and principles relating to, local authorities, as set out in Subparts 1 and 2 of Part 2 of the Act;
- local authorities' accountabilities is to their ratepayers and residents;
- elections are the primary mechanism for communities to express satisfaction or dissatisfaction with elected representatives;
- Ministerial assistance or intervention should have regard to:
 - what the local authority has done, is doing, or plans to do about the problem; and
 - the costs and benefits of assistance or intervention;
- Ministerial assistance or intervention should be proportionate to:
 - the nature and magnitude of the problem
 - its potential consequences; and
 - its duration to date and its likely duration if not addressed;
- Ministerial assistance or intervention should endure for only as long as necessary to resolve the problem and provide for a transition back to normal democratic processes; and
- Ministerial decisions regarding assistance or intervention should be transparent.

² <https://gazette.govt.nz/notice/id/2018-go1558>

Appendix B: Threshold Framework for Crown Intervention in Local Government



RELEASED BY THE MINISTER OF LOCAL GOVERNMENT

