



< Local Councils play an active role in keeping our communities healthy. >

The Local Government (Community Well-being) Amendment Bill

Local Government New Zealand's submission to the Governance and Administration Committee

24 May 2018

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand, representing all 78 councils, which are members. As the national body we promote the national interests of councils, lead best practice in the local government sector and advocate for policy and legislative change. LGNZ also provides business support, advice and training to our members to assist them to build successful communities throughout New Zealand.

Our purpose is summed up in our Vision - “local democracy powering community and national success.”

Introduction

LGNZ is pleased to support this Bill. Not only does it recognise the essential role that local government plays in community life it puts in place a framework that will improve the ability of councils to take a holistic approach to governing their cities, districts and regions. Viewing local government through a well-being lens will not only improve the co-ordination of councils’ own services but facilitate more joined-up approaches to addressing local issues, including partnership with central government agencies and others.

In short, restoring the well-beings will strengthen place-based and integrated service delivery approaches.

The Local Government Act 2002 (LGA 2002) is local government’s pre-eminent statute. It established New Zealand’s system of local government, describes its purpose, its general powers and sets out the processes that ensure councils operate for the benefit of current and future citizens in an accountable way. It is also one of the statutes that make up New Zealand’s constitutional framework and it is important that it be treated as such by our Parliament.

Ongoing change to local government’s roles and powers, as has occurred over the last two decades, risks undermining confidence in our constitutional and democratic arrangements. It also makes it difficult for councils to plan and invest for the long term. In order to address this issue and provide citizens and councils with confidence in our system of local democracy LGNZ is committed to achieving multi-party agreement on the respective roles of local and central government and the statutory framework for implementing those roles.

LGNZ strongly argued for the re-instatement of the “four well-beings” in our pre-election manifesto for two key reasons.

- Because the wording of s.10, as it currently stands, fails to provide councils with the necessary certainty to allow them to confidently invest in activities intended to grow their local economies and build community cohesion, such as economic development initiatives to attract new investment. The ambiguity has led to risk aversion and unnecessary compliance costs;
- Because councils are not and have never been simply providers of local services. They are our most basic level of government and as such are intrinsic to the nature of our local democracy and the strength of our communities. Recognising this through the re-instatement of the previous purpose clause provides opportunities for more innovative and “joined-up” approaches to governing our communities.

LGNZ also supports the Bill’s intent to broaden the definition of community infrastructure. In the four years since that definition was narrowed many councils have been required to increase rates for existing residents to pay for services that they are unlikely to use or benefit from. In some councils, particularly those facing very fast population growth, the definitional narrowing has meant new neighbourhoods established without the local amenities, such as libraries and sports fields, that growing communities need.

We look forward to meeting with the Governance and Administration Committee to discuss this Bill in more detail and highlight the opportunities it opens up for not only better local government but also for improved central government performance at the local level.

Summary

Part 1

LGNZ supports the re-instatement of the “4 aspects of well-being” to the LGA 2002 for the following reasons:

- To reflect the critical role local government plays in our communities; a role broader than simply the provider of services and infrastructure;
- To highlight the importance of taking a holistic approach to the leadership and governance of our towns, cities and regions, a role that local government has historically played; and
- To remove ambiguity about the role and purpose of local government in order to encourage more people with vision and enthusiasm for making their communities a great place to live to stand for office.

Part 2

LGNZ supports the changes in Part 2 of the Bill and recommends the following additions:

- 1) That clause 11 of the Bill is amended to read:

Community infrastructure

- (c) Means land, or development assets on land, *which is either:*
 - III. *Owned or controlled by a territorial authority for the purpose of providing public amenities or*
 - IV. *Owned or controlled by another party in circumstances where a territorial authority has an agreement with that party to deliver a long term public amenity*
- (d) Includes land that the territorial authority or another party will acquire for that purpose.

- 2) That the Crown exemption from paying development contributions is removed

- 3) That clause 13, (5) sub-section 6, is amended to read:

(5) “**Subsection (6)** applies if a territorial authority or a *council-controlled organisation* has entered a funding agreement with the New Zealand Transport Agency under which ...”

The remainder of this submission explains, in more depth, the reasons behind LGNZ’s support for this Bill.

Part 1: Re-instatement of the four aspects of well-being

An empowered system of local government with a broad purpose, and operating within an accountable framework, is vital to the future of New Zealand. As a country we have become simply too diverse and complex for the “one size fits all” policies which tend to characterise the performance of central government agencies. As regions, cities and towns become more important to our economic performance it is crucial that we have local government able to harness the knowledge and entrepreneurial spirit of their communities and build partnerships with local organisations, whether Iwi/Māori, NGOs or businesses.

Such community outcomes cannot be achieved solely by politicians or officials based in central government. It is time for a new governing model and one that more equally distributes public authority and decision-making between central and local government. Re-instating the well-being references in the LGA 2002 is a small, but necessary step in this direction. These sentiments were echoed by our former Prime Minister, the Rt. Hon Helen Clark, when she addressed the Commonwealth Local Government Forum’s biannual conference in Malta last year:

“I do think that empowerment of local government to act in accordance with the new global agenda and the wishes of its community is critical. In many countries, local government continues to be kept on a very short leash – able to do only a narrow range of things set out in statute.

This is not good for communities, and it’s not good for countries as a whole. Excessive centralisation leads to a ‘one size fits all’ approach, and can lead to bottlenecks in policy-making and implementation – when empowered and capable local government could just get on and get things done”
(Rt Hon Helen Clark, 2017).

By their nature democratic local governments have a broad responsibility to make their jurisdictions, whether towns, cities or regions, better places in which to live. This is why LGNZ supports the reinstatement of the “four well-beings” – not only will it remove ambiguity about the role of local government it provides a signal to citizens and their elected members about what is expected from them – that is, to leave their communities better than when they found them.

LGNZ also supports the re-instatement of the well-beings as it represents a small step towards reversing New Zealand’s high level of fiscal centralism. New Zealand is one of the three most centralised countries in the developed world, along with Greece and the Republic of Ireland, a status that sits uncomfortably with our desire to be seen as progressive and innovative. In contrast countries that rank above New Zealand in terms of economic and social well-being, such as Finland, Denmark and Switzerland, are highly decentralised. That is, they have strong and empowered local government systems.

Recognising local government’s contribution to well-being is a small first step to reversing this unhealthy concentration of public decision-making – an issue that LGNZ intends to raise with all political parties over the next two years. The thrust of our submission is designed to show that this bill deserves to have the support of all major parties within our parliament, given the importance of a strong system of local government (rather than local service delivery agencies) for a county’s social and economic performance.

What impact did the well-being purpose have on local government?

In this section we set out in more detail the reasons why we believe this Bill is important for communities and for New Zealand as a whole.

During the Bill's first reading a number of speakers argued that re-instating the well beings would result in irresponsible and exuberant spending by local authorities, suggesting perhaps that this was the situation that led to the passage of the LGA Amendment Act 2012, which amended the Act by removing any reference to well-being. This view raises a number of questions, for example:

- how strong is the evidence that spending was "out of control" between 2002 and 2012, and
- what part does the purpose statement play in encouraging efficiency and fiscal prudence.¹

The question whether the LGA 2002 expanded the role of local government in a noticeable way was addressed by three separate reviews between 2002 and 2008, all of which concluded that there was no evidence of councils expanding into new services due to the requirement to promote well-being. The authors argued that:

- *No evidence to date has been produced to suggest that local government as a whole is undertaking a wider group of functions than it had prior to 2003. In cases where councils have taken on additional responsibilities these have proved to be quite small in scale and operational in nature (Report of the Joint Officials Group on Local Government Funding, p. 18, 2006).*
- *The panel does not consider that this empowerment (the LGA 2002) has been a significant driver of increased expenditures. First, the previous legislation contained similar powers, such as the power to promote community welfare. And local government has long been involved in social activities such as public rental housing and construction of major cultural sporting facilities and in commercial operations such as parking buildings and other trading undertakings. There is little that local government is now doing that it has not previously been doing (The Inquiry into Local Government Rates, p.78, 2007).*
- *We conclude that the new Act, and particularly the conferring of full capacity, rights and powers on local authorities, has not led to a proliferation of new activities being undertaken by councils (Local Government Commission, p. 3, 2008).²*

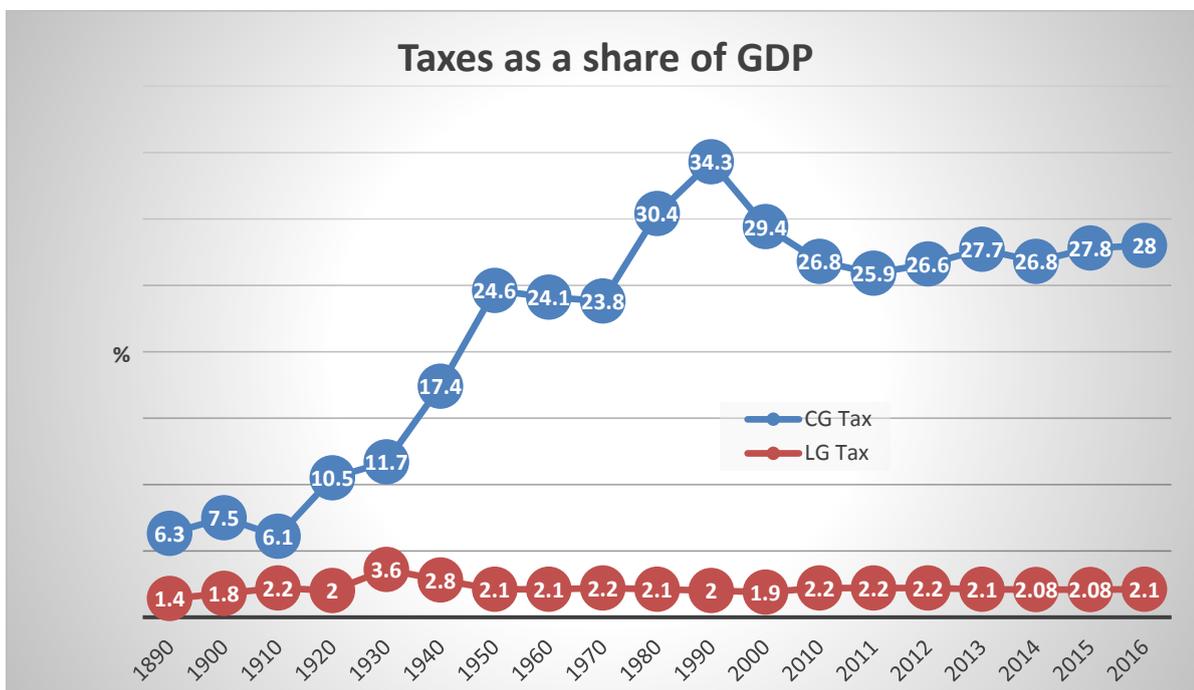
In addition, elected members are required to submit their performance to the electorate every three years, just as members of parliament do. Councils that act in a manner that is out of line with the expectations of their citizens are held to account at the triennial local elections, which has been an effective accountability mechanism since the establishment of local government more than 150 years ago.

¹ For the Committee's interest one of the arguments used to justify the change of purpose in 2012 was an apparent surge in the number of council employees. In contrast a recent OECD/UCLG report makes special mention of NZ for its unusually small number of staff (Organisation of Economic Development and Cooperation (OECD) and the United Cities and Local Governments (UCLG) (2016) OECD/UCLG (2016), Subnational Governments around the world: Structure and finance.)

² Quoted from the LGNZ/SOLGM joint submission on the Local Government Amendment Bill 2012.

More recent analysis of changes in the level of property taxes tends to reinforce the accuracy of these observations. Figure 1 looks at the rate of local and central government taxes as a share of gross domestic product (GDP) since the beginning of the 20th Century. In relation to GDP property tax has averaged approximately 2.1 per cent (except during times of recession), which is what we would expect given that infrastructure provision is where councils spend a large proportion of their operational expenditure and almost all their capital expenditure, and infrastructure is driven by the overall level of economic activity within our economy.

Figure 1 Taxes and gross domestic product



Source: Statistics NZ.

In speaking against the Bill during its first reading, a number of speakers argued, in contrast to the view that it would lead to irresponsible spending, that since there had been little or no change after the 2012 amendment, the Bill is unnecessary. A comment was also made that the Bill is essentially symbolic.

LGNZ agrees that little changed following the removal of the well-being clause. However, it is important to note the cost, in terms of expenditure on legal advice and investments not made, that the LGA Amendment Act 2012 created. Concerns about decisions being *ultra vires* resulted in a risk-averse culture in many councils and a distraction that consumed time and resources.

In addition symbols are important, particularly to the successful operation of our democracy. Citizens need to know that local government is about the government of their locality not simply a convenient way of delivering infrastructure or services. Local government, after all is how communities make decisions about local matters that affect their collective quality of life and well-being - the quality of our democratic life requires it.

What should a purpose clause contain?

A further reason why we support the Bill is that current purpose of local government (s.10) does not actually set out the purpose for why councils deliver their services. The importance of the purpose clause is not to tell local authorities “what to do” or “how to do it”, as both questions for elected members, in consultation with their communities, to make. Instead, the purpose clause should answer the “why” question; which is one of the reasons LGNZ disagreed with the previous government’s decision to replace the well-being clause with an alternative which simply described the roles councils should play.

Without understanding the reasons why public agencies provide the services that they do there is no basis on which to determine which services to provide and to what extent. In fact the current wording in s.10(b), which informs councils that their purpose is to provide local infrastructure, local public services and regulatory functions and how these are to be provided, is problematic for a number of reasons, for example:

- There is no requirement that these services should contribute to better community or regional outcomes ie are they improving quality of life and the well-being of citizens?
- The specification of the roles of local government works against innovation and discourages councils from looking at alternative ways of delivering services. It makes the fatal mistake of focussing on outputs rather than outcomes.
- There are problems with the definition of phrases like efficient and cost-effective that have resulted in some councils taking a “least cost” approach to their procurement strategies which has disadvantaged local suppliers and undermined local economic development strategies.

Despite concerns in 2002 that the introduction of the “four well beings” represented a paradigmatic shift in the role of local government it is important to realise that the promotion of well-being is a very common way of framing the purpose of sub-national governments around the world, for example:

New South Wales

The Taskforce established to redesign the Local Government Act in NSW has considered what the purpose of local government should be and recently recommended that the Act describe this as being to:

- *Provide local democracy, strategic civic leadership, stewardship and sound governance to achieve sustainable social, economic, environmental, health and well-being and civic engagement ...*

Victoria

The exposure draft of the new Local Government Act proposed by the state of Victoria and published early this year, states that:

- *The role of a Council is to provide good governance in its municipal district for the benefit and well-being of the municipal community.*

England

The English Local Government Act 2000 states that every local authority has: *the power to do anything which they consider is likely to achieve any one or more of the following objects:*

- *The promotion or improvement of the economic well-being of their area;*
- *The promotion or improvement of the social well-being of their area; and*

- *The promotion or improvement of the environmental well-being of their area.*

Well-being is also the stated purpose of local government systems in many other countries, including Germany. Generally a purpose clause is used to set out the “why” statement while more specific duties, accountabilities and roles are detailed in the body of a local government act, including a principles section. This is particularly true in the case of New Zealand’s LGA 2002.

Does removing “good quality” and “cost effective” from the purpose matter?

At the First Reading of the of the Local Government (Community Well-being) Bill a number of speakers expressed concern at the loss of the phrases “good quality” and “cost effective” and commented on what this might mean for council practice. They appeared to suggest that that without cost effective and good quality being specifically referenced in the in s.10 councils would lose sight of the need to provide quality services in an efficient way.

Putting aside the fact that local government politicians are likely to have the motivations and incentives as politicians elected to central government, the requirements that councils consider the quality of their services and the efficiency and effectiveness with which they are delivered are placed throughout the LGA 2002, something that may not be widely known. For example:

- s.3 reinforces the importance of effectiveness: *“The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities: ... ”*
- s.14 reinforces both efficiency and effectiveness with councils required to act in accordance with such principles as:
 - s14(1)(a)(i) - a local authority should give effect to its identified priorities and desired outcomes in an efficient and effective manner;
 - s14(1)(e) – a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes;
 - s14(1)(f) - a local authority should undertake any commercial transactions in accordance with sound business practices;
 - s14(1)(g) - a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets.

In addition to s.3 and the principles of s.14, effectiveness and efficiency are also the predominant concern of s.17A, which requires local authorities to periodically assess the cost-effectiveness of their methods of delivery for their good quality local infrastructure, local public services and local regulation. Further emphasising the importance the LGA 2002 places on providing communities with value for money is s.42, which sets out the job description for a Chief Executive and requires that they ensure “the effective and efficient management of the activities of the local authority”.

It is important for members of the committee to note that the Bill does not amend or affect any of these provisions. There is simply no additional value created by also replicating these provisions on the LGA 2002’s purpose clause.

The reference to well-being in other parts of the LGA 2002

The Bill not only re-instates the “four well-beings” to the purpose sections of the LGA 2002 (sections 3 and 10), it also reinstated the “four well-beings’ to the following processes:

- The definition of community outcomes;
- The definition of significance;
- The Principles related to local authorities;
- The Financial management provisions; and
- The scope of negative effects.

These references are important as they influence the way in which councils make decisions and operate on a daily basis. We understand that the intent of the changes is to encourage councils to look looking at the impact of their policies, plans and decisions on the well-being of their citizens and communities.

LGNZ Comment

LGNZ supports the changes proposed in Part 1 of the Bill.

Part 2: Other amendments

LGNZ supports the proposed changes to the definition of community infrastructure and the removal of limitations on reserve contributions. In addition, we recommend an addition to the Bill in order to reflect new approaches in the way community infrastructure is sometimes provided.

LGNZ’s support for “community” infrastructure to be eligible for development contribution funding is long standing and we argued against the changes to the definition of community infrastructure in our submission on the LGA 2002 Amendment Bill 2014. Our view at the time, and which is still supported, stated:

“LGNZ opposes the change to Sub clause (2) which replaces the current definition of community infrastructure. Previously this included a wider range of public amenities, such as libraries, swimming pools and recreational facilities. These should not be excluded because they are causally related to development in the same way as elements of network infrastructure.

*We note that the Government of the United Kingdom recently legislated to give councils the right to levy development contributions for community infrastructure, including libraries and swimming pools, arguing that such services **are essential for the well-being of communities.***

This proposed amendment shifts the cost of meeting new residents’ need for community infrastructure to existing rate payers. Apart from undermining the principle of exacerbator pays, which councils consider when developing their funding policies, it also has a direct budgetary impact on a number of local authorities. For example, Tauranga City Council note that the change in definition would transfer \$9.3 m of existing debt from future development contribution funding to rates funding as well as a future interest cost of \$8.1 m, bringing the full cost to be met by existing ratepayers to \$17.4 m. The council also notes that the impact on housing affordability would be a reduction of only \$750.00 for a new three or four bedroom house. (LGNZ submission on the LGA Amendment Bill 2014)”.

By re-instating the original meaning of community infrastructure the Bill addresses the inequities created by the 2014 changes, which required existing residents, many of whom are on fixed incomes, to pay the full cost of providing community amenities for residents who are new.

Successful communities are more than simply houses and hard infrastructure. To provide an attractive quality of life and prosper they need parks and open spaces; recreation and community centres; and libraries and swimming pools. This soft infrastructure is vital for people's well-being and for the growth of social capital, which is critical to our economic performance as a nation. As noted it is not equitable or fair for such amenities to be paid for by existing residents. The provision of good community infrastructure is essential to ensure that the residents of new communities are able to participate in community life and develop supportive networks.

Development contributions and accountability

LGNZ wishes to emphasise that widening the definition of community infrastructure does not in any way diminish the accountability of the development contributions' framework. LGNZ supported a number of the changes made in the 2014 LGA Amendment Bill that were designed to strengthen the accountability of the process for setting development contributions, such as changes to improve transparency and ensure contributions are used for the purpose intended.

We also support the changes proposed to the development contribution regime to ensure that councils which have received financial assistance advances from the New Zealand Transport Agency are not disadvantaged. We understand that officials from the Society of Local Government Managers are working with government officials on the necessary detail of these provisions.

Additional changes

LGNZ suggests three additional changes to the Bill.

Partnership approaches

Since 2002 there has been a growth in the use of public/public and public/private partnerships to provide local services. To reflect new ways of delivering community infrastructure we recommend that the Bill should allow councils to levy development contributions for projects where the council is not the owner of the asset, such as a multi-use facility is developed in partnerships with a local school and is located on school grounds.

The same principle applies where a local facility is developed by a public private partnership. Allowing development contributions to be levied to fund public/public or public/private partnerships will encourage innovation and ensure that the provision of growth infrastructure is not inhibited due to the nature of the funding arrangements used.

Development contributions and the Crown

A matter that has been raised with previous governments is the fact that central government is not obliged to pay development contributions, that is, the Crown has made itself exempt. While we acknowledge that some departments pay development contributions voluntarily, where is not the case the local community is required to pay the cost of meeting increased demand for community infrastructure.

Addressing an anomaly

Clause 13 of the Bill does not appear to recognise the unique situation of Auckland Council and the major role played by its Council Controlled Organisations, particularly transport. Auckland Transport has the autonomy to enable it to directly enter into funding agreements with the New Zealand Transport Authority (NZTA) – a feature not recognised in the Bill. To acknowledge the direct relationship Auckland Transport has with NZTA in entering into funding agreements, we propose a minor amendment to section 200, subsection (5) to include the phrase “council-controlled organisation”.

LGNZ Comment

LGNZ supports the changes in Part 2 of the Bill and recommends the following additions:

- 4) That clause 11 of the Bill is amended to read:

Community infrastructure

- (c) Means land, or development assets on land, *which is either:*

V. *Owned or controlled by a territorial authority for the purpose of providing public amenities or*

VI. *Owned or controlled by another party in circumstances where a territorial authority has an agreement with that party to deliver a long term public amenity*

- (d) Includes land that the territorial authority or another party will acquire for that purpose.

- 5) That the Crown exemption from paying development contributions is removed

- 6) That clause 13, (5) sub-section 6, is amended to read:

(5) “**Subsection (6)** applies if a territorial authority or a *council-controlled organisation* has entered a funding agreement with the New Zealand Transport Agency under which ...”