



Submission on the Local Government Act 2002 Amendment Bill Department of Public Health, University of Otago, Wellington

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We are available to speak to our submission.

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Introduction

1. The Department of Public Health of Otago University works to improve, promote and protect health and to reduce health inequalities through research, teaching and community service.
2. The Local Government Act 2002 Amendment Bill (“this Bill”) seeks to amend the Local Government Amendment Act 2002 (LGA2002). This Bill has various implications that are ably discussed by other submitters. This submission focuses on the proposed change in the purpose of the LGA2002, and its public health implications.
3. This Bill proposes to remove the purpose of “promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach”, and replace it with “meeting 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.”
4. Local government, due to its proximity to its community, has an important role to play in promoting public health. This is recognised, and legislated for, in LGA2002. We therefore oppose the change of the Act’s purpose, and the corresponding removals of the concept of well-being and a sustainable approach in other parts of the Act.

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Local government and public health

5. Local government plays a vital role in public health.¹ This is evident in the wide range of Acts that pose health obligations on local government. The Health Act 1956 is clear that it is the “the duty of every local authority to improve, promote, and protect public health”.

This duty is not restricted to the traditional council services of ‘rates, roads, rubbish, and water’, which relate to physical wellbeing. Researchers have shown that socioeconomic factors (such as housing and income), which are affected by local government, significantly impact people’s health.²

Many other activities traditionally undertaken by local government contribute towards public health include injury prevention; road safety; bylaws for public health outcomes (eg, food hygiene, skin piercing); facilities and programmes; natural hazards management; pest control; and public health promotion (regarding drugs, alcohol, and gambling).³

Most of these functions are required under legislation other than the Local Government Act, such as the Resource Management Act, Health Act, and Waste Minimisation Act.

Local government’s function in administering libraries is also important to well-being. Free public libraries are important for social connection, free civic space and citizenship as well as being the source of free information and access to the world’s knowledge.

Local government also administers parks and open spaces which contribute to health through providing for recreation and active transport, provision of potable water, water purification and waste treatment, flood and erosion protection, and buffering against the effects of global environmental change.⁴ The health benefits of contact with green spaces are increasingly recognised⁵.

6. Local government is well-placed to promote health because its proximity to the community and knowledge of other agencies allows it to assess and predict community needs.⁶
7. The Local Government Amendment Act 2002 recognises the importance of local government to public health. According to researchers:

The “four wellbeings” in the Local Government Act 2002 (social, economic, environmental and cultural) are congruent with the wider determinants of health and are increasingly being recognised under

¹ In its discussion document on local government and public health, the Ministry of Health writes that local government has ‘significant involvement with a range of economic, social, cultural and physical environmental factors which influence public health...[LG] agencies are therefore considered to be key public health agencies’. Public Health Group (July 1996). *The Public Health Role of Local Government: A discussion document*. Wellington: Ministry of Health.

² P. Howden-Chapman and M. Tobias (September 2000). *Social Inequalities in Health: New Zealand 1999*. Wellington: Ministry of Health.

³ Local Government New Zealand. Submission to Public Health Advisory Committee on the ‘Emerging Issues for Public Health in New Zealand: Discussion Paper’: Local Government New Zealand, Wellington; December 2004.

⁴ R B Chapman RB et al (2012). *Evaluating the Model Communities Programme – literature, methodology and some preliminary results*. Paper for “2 Walk and Cycle” conference, Hastings, 22-24 February 2012.

Royal Society of New Zealand (2011). Ecosystem Services: emerging issues. RSNZ Emerging Issues Papers. http://www.royalsociety.org.nz/media/emerging_issues_paper_ecosystem_services.pdf.

⁵ C. Maller, Townsend, M., Leger, L. S., Henderson-Wilson, C., Pryor, A., Prosser, L., et al. (2008). *Healthy parks, healthy people: The health benefits of contact with nature in a park context*. Melbourne: Deakin University and Parks Victoria.

⁶ B. Hyslop (2008). *Interviews with key informants on local government, public health, and smokefree outdoor areas in New Zealand (Report)*. Department of Public Health. University of Otago, Wellington: Wellington.

Courtney M. The future interface between public health and local government. Auckland: Waitakere City Council; 2004.. [http://www.phac.health.govt.nz/moh.nsf/pagescm/769/\\$File/PHandLocalGovt.pdf](http://www.phac.health.govt.nz/moh.nsf/pagescm/769/$File/PHandLocalGovt.pdf)

this label. Implicit in this legislation is the idea that health in its broadest sense is a local government responsibility.⁷

At present, legislation recognises that local government – as well as central government – has a role in promoting public health. It recognises the socio-economic factors that determine health. The proposed legislation, in removing the concept of ‘well-being’ from the legislation, would remove that recognition, and the responsibility that comes with it.

8. The previous discussion has covered issues common to the role of both Regional Councils and City/District Councils.

Regional /Unitary Councils have particular responsibilities under the resource Management Act 1991 to “achieve integrated management of the natural and physical resources”. The framework of the ‘four wellbeings with a sustainable development approach’ enables clear, explicit consideration of what elements need to be integrated in resource management

In particular, the resource planning roles of Regional and Unitary Councils are wider than local infrastructure, local public services, and performance of regulatory functions (in this Bill’s wording). Removing the four wellbeings from the LGA2002 is inconsistent with good decision making by Regional Councils on matters that affect environmental, social and cultural wellbeing.

The removal of the four well-beings as a purpose of local government

9. Local government’s role, under LGA2002, is to “promot[e] the social, economic, environmental, and cultural well-being of their communities”. This is an appropriate purpose for local government. It should not be removed, as is proposed in this bill.

10. According to the World Health Organisation

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.⁸

In line with this, the LGA2002 recognises the wider determinants of health. Local government, because of its closeness to the community, should play a role in promoting healthy communities, and economic, social, cultural and environmental factors all contribute to this.

11. The proposed legislation could potentially inhibit councils in engaging in important and useful public health activities. It may threaten the excellent work already carried out by local government, which supports government priorities.

For example, the government has adopted the goal of achieving smokefree New Zealand by 2025, and some councils have formed partnerships with District Health Boards, iwi, and other local groups, to help achieve the government’s goal.

⁷ Louise Signal, Barbara Langford, Rob Quigley, and Martin Ward (July 2006). “Strengthening Health, Well-being and Equity: Embedding Policy Level HIA in New Zealand”, Social Policy Journal. <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj29/strengthening-health-wellbeing-and-equity-29-pages17-31.html>

⁸ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948. <http://www.who.int/about/definition/en/print.html>

The policy adoption of smoke-free public spaces was also motivated by local needs: child-wellbeing, providing leadership and setting a positive example, and for safety and cleanliness.⁹ Yet under the proposed legislation, council may not support initiatives such as these as they may not be considered “local public services”.

12. The potential impact of changing LGA2002’s statutory purpose cannot be underestimated. As stated by lawyers DLA Phillips Fox:

*This statutory purpose is important, because the ‘role’ of a local authority (section 11) includes to give effect to the purpose; and a local authority is only empowered for the purposes of performing its role (section 12). In other words, if an activity falls outside the purpose of local government, then a local authority has no power to engage in that activity.*¹⁰

13. Removing wellbeing from the text is out of step with work that is currently underway within the New Zealand Treasury to make wellbeing (framed as 'living standards') 'the heart of policy advice'. Policy is assessed against key dimensions: economic growth, social infrastructure, sustainability, increasing equity, and reducing risks. Increased wellbeing – higher living standards – is conceived as not only financial and physical capital, but natural capital, social capital and human capital.¹¹

The purpose of local government according to LGA2002 - “promoting the social, economic, environmental, and cultural well-being of their communities” - clearly resonates with Treasury’s work. If wellbeing is at the heart of central government’s policy-making, it makes no sense for it to be removed from local government’s purpose.

14. Removing well-being as a purpose of local government is also completely out of step of the international movement to prioritise wellbeing measures. For example, the OECD has recently developed the Better Life Index, which measures well-being by a number of indicators such as health, security and environment, in order to support policy makers to improve the quality of life of their populations.¹²

15. According to the Department of Internal Affairs (in its Regulatory Impact statement):

*The change [in purpose] is likely to have a symbolic effect and should not affect council business as usual.*¹³

⁹ Brian Hyslop and George Thomson, “Smokefree outdoor areas without the smoke police: the New Zealand local authority experience”, New Zealand Medical Journal, 25 September 2009, p.71, <http://www.nzma.org.nz/journal/122-1303/3797>

¹⁰ DLA Philips Fox, “Local Government Act 2002 Amendment Bill: Confusion or Clarity”, July 2012 http://www.dlapf.com/sites/default/files/pubs_newsletters/Government%20Update%20July%202012.pdf

¹¹ Treasury (May 2011). *Working Towards Higher Living Standards for New Zealanders*. Wellington. <http://www.treasury.govt.nz/publications/research-policy/tp/higherlivingstandards/tp-hls-may11.pdf>
A summary of the work, plus the phrase “heart of our policy advice”, is found in Girol Karagaoglu’s (Chief Economist at the Treasury) presentation: <http://www.treasury.govt.nz/publications/media-speeches/speeches/livingstandards/sp-livingstandards-advice.pdf>

¹² “The OECD Better Life Initiative allows a better understanding of what drives the well-being of people and nations and what needs to be done to achieve greater progress for all. Drawing upon the recommendations of the Commission on the Measurement of Economic Performance and Social Progress (to which the OECD has been an important contributor), the OECD has identified 11 dimensions as being essential to well-being, from health and education to local environment, personal security and overall satisfaction with life, as well as more traditional measures such as income.” (OECD, Better Life Index: Executive Summary, July 2012: <http://www.oecdbetterlifeindex.org/#/111111111111>)

¹³ Department of Internal Affairs (May 2012), *Regulatory Impact Statement: Better Local Government*. p.13 <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dia-blg-may12.pdf>

This, it is argued, is because the addition of the concept of well-being to the legislation on local government in 2002 did not result in council funding a proliferation of new activities. This begs the question of why the change is being made, given that the reforms are intended to curb local government spending.

We also note that this conflicts with the opinion of DLA Philips Fox, as set out in point 12. Though the Regulatory Impact statement predicts it will not change the activities of local government at present, this does not necessarily bear on how legislation will be interpreted in the future.

16. In addition, we would argue that the symbolic effect is the effect that matters. When local government has wellbeing as a core purpose, citizens are able to act democratically to persuade local government that supporting initiatives that support public health is a priority.¹⁴

Such a purpose recognises that local government affects the lives of their communities in key ways (and usually in different ways from those available to central government) and is in a unique and ideal place to promote health.

The removal of a “sustainable development approach” in local government’s work

17. In LGA2002, local government is instructed to provide for the four well-beings pertinent to their communities with a sustainable development. This bill provides for a new purpose for local government, and the sustainable development approach has been removed. Instead, they are to ensure that they are “meeting the current and future needs of communities”.

A sustainable development approach is appropriate for local government. It should not be removed, as is proposed in this bill. A sustainable development approach is in line with central government policy, international trends, and practicality.

18. Sustainable development is a useful and practical approach to policy, including that of local government. This is acknowledged internationally. In 2009, Statistics New Zealand designed a framework for measuring indicators for sustainable development¹⁶, following the recommendation of the joint OECD/United Nations Economic Commission for Europe and Eurostat Working Group on Statistics for Sustainable Development (WGSSD, 2008).¹⁷ A set of indicators measures the “environmental, economic and social progress”.¹⁸

According to Statistics NZ, in a definition based on that of the United Nations’ Brundtland Report (1987):

¹⁴ For example, council staff cited the existence of the four well-beings in the legislation as a reason for undertaking Health Impact Assessments. HIAs recognize that the determinants of population health are social and economic, and health cannot be promoted from just within the health sector. It therefore predicts the impact of policies on health, so that policies can be adapted to reduce the negative health impacts. (Louise Signal, Barbara Langford, Rob Quigley, and Martin Ward (July 2006). “Strengthening Health, Well-being and Equity: Embedding Policy Level HIA in New Zealand”, *Social Policy Journal*. <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj29/strengthening-health-wellbeing-and-equity-29-pages17-31.html>)

¹⁶ Statistics New Zealand (2009). *Statistics New Zealand’s Framework for measuring sustainable development*. Wellington: Statistics New Zealand.

¹⁷ WGSSD, Joint UNECE/OECD/Eurostat Working Group on Statistics for Sustainable Development (2008). *Statistics for sustainable development: Commonalities between current practice and theory*. Paris: United Nations.

¹⁸ Statistics NZ website. http://www.stats.govt.nz/browse_for_stats/environment/sustainable_development/key-findings-2010.aspx

*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development means ensuring that well-being is at least maintained over time. The principle of fairness within and between present and future generations should be taken into account in the use of environmental, economic, and social resources. Putting these needs into practice requires living within the limits of the natural environment.*¹⁹

The concept of sustainable development is clearly wider and more nuanced than “meeting the present and future needs of communities”, accounting as it does for fairness and regard for environmental limits. Sustainable development is the only logical approach for the work of local government.

19. Removing the sustainability approach is also out of step with central government. The ‘heart’ of policy making – the Living Standards work of Treasury (as discussed in point 13):

*The sustainability of living standards for both present and future generations is a key part of the Framework. This acknowledges Treasury’s stewardship role of endowing the next generation with “whatever it takes to achieve a standard of living at least as good as our own and to look after their next generation similarly” (Solow, 1992, p.15).*²⁰

If a sustainability approach is at the heart of central government’s policy-making, it makes no sense for it to be removed from local government’s approach to its policy work.

Consultation process and assessment of impact

20. The time-frame for consultation on this Bill is too short. The bill was introduced on the 30th of May and its first reading was on 12th June. Submissions to the select committee are due on 26 July. This contrasts with the six-month consultation period allowed for the LGA2002, and the year it took for it to pass into law.²¹ This Bill makes fundamental changes to the purpose of the LGA2002, and may have significant effects on public health and on communities. A deeper and longer consultation process would be more appropriate to amend such an important Act.

The Regulatory Impact Statement highlights the undue speed of this legislation.

*The short timeframe for formatting and drafting the legislation creates some risk that interventions could be incorrectly aligned, and/or require subsequent amendment to address unforeseen circumstances.*²²

¹⁹ Statistics New Zealand (2011). *Key findings on New Zealand’s progress using a sustainable development approach: 2010*. Wellington: Statistics New Zealand. p.3
<http://www.stats.govt.nz/~media/Statistics/browse-categories/environment/sustainable-development/key-findings/key-findings-sustainable-development-2010.pdf>

²⁰ Treasury (May 2011). *Working Towards Higher Living Standards for New Zealanders*. Wellington. p.2.
<http://www.treasury.govt.nz/publications/research-policy/tp/higherlivingstandards/tp-hls-may11.pdf>

²¹ Anderson Lloyd Lawyers (2012), “Local Government Reform in 2012”
http://www.andersonlloyd.co.nz/uploads/files/Local_Government_Reforms_in_2012.pdf

²² Department of Internal Affairs (May 2011), “Regulatory Impact Statement: Better Local Government”, p.2
<http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dia-blg-may12.pdf>

The highly constrained consultation period is not only undemocratic, but may also have legislative consequences.

21. We note that due to the tight timeframe, the impact of the deletion of well-being from the Act has not been fully assessed by the Department of Internal Affairs:

There has been insufficient time to undertake a full assessment of the impact of proposal. There may be unintended consequences because the concepts associated with the well-beings are (explicitly and implicitly) woven throughout the LGA2002 and the local government framework.²³

The four aspects of well-being are a core purpose of local government at present. This Bill seeks to change this. It is unacceptable to pass legislation with potentially major implications without a proper assessment of its impact.

Specific recommendations

22. **Section 3:** We oppose the removal of the reference to the four well-beings and the sustainable development approach. We recommend that Section 3 (d) of the LGA2002 is retained to provide ‘for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach’.
23. **Sections 5(1) and 10 (b):** We oppose the proposed replacement definitions of ‘community outcomes’ and ‘significance (a)’ or the replacement wording for section 10(b). We recommend the references to the four well-beings be retained.
24. **Section 14(1)(h)(i):** We oppose the replacement of the term ‘well-being’ with ‘interests’.
25. **Section 14(2):** We oppose the removal of the reference to the four well-beings of a community.
26. **Section 77(1)(b)(i):** We oppose the removal of the obligation to consider the four well-beings in relation to the decision-making processes.
27. **Section 101(3)(b):** We oppose the removal of the four well-beings in relation to the overall impact of allocation of liability for revenue needs.

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²³ Department of Internal Affairs (May 2012). *Regulatory Impact Statement: Better Local Government*. p.13
<http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dia-blg-may12.pdf>