

Regulatory Impact Summary: Local Government (Community Well-being) Amendment Bill

Agency disclosure statement

The Department of Internal Affairs (the Department) is solely responsible for the analysis and advice set out in this Regulatory Impact Summary (RIS), except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:

- key (or in-principle) policy decisions to be taken by Cabinet; and
- final decisions to proceed with a policy change to be taken by Cabinet.

Key limitations or constraints on analysis

The need for the proposed amendments has been identified as an urgent Ministerial priority. It will provide clarity to local authorities as to the Government's intended direction in relation to the local government portfolio. The provisions proposed in the Bill relate to the purpose of local government, core services and development contributions which are contained in the Local Government Act 2002 (LGA02). Legislative change is necessary to implement the policy objectives. Accordingly, non-legislative solutions have not been considered as part of this analysis.

Time constraints

The Minister instructed the Department on 26 February 2018 to develop a Bill to implement these changes. The Bill has a tight focus on four discrete components and largely proposes to reinstate wording previously in the LGA02. Given the tight focus of the Bill, and the previous traversal of the issues, the Department does not consider the short timeframe to raise any significant issues.

The Department has not consulted

Due to the time constraints outlined above, the Department has not undertaken consultation on the proposed amendments. The proposed amendments are consistent with previous representations made by Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM).

Taking into account the assumptions and effect of time constraints outlined, the Department considers that decision-makers can rely on the analysis in this RIS.

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Problem definition and objectives

Background

1. The framework of the Local Government Act 2002 (LGA02) is that local authorities are responsible to their communities for the services they provide and the activities they undertake under a framework of suitable accountability mechanisms. The LGA02 anticipates that central government will not direct local authorities as to what services to provide or activities to undertake, other than regulatory responsibilities that need statutory backing, but will set the legislative framework within which local authorities operate.

Purpose of local government and description of core services

2. The stated purpose of the LGA02 is to provide for “democratic and effective local government that recognises the diversity of New Zealand communities”¹, including stating the purpose of local government and providing a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them.
3. The purpose of local government is currently stated in section 10 of the LGA02 to be:
 - a. to enable democratic local decision-making and action by, and on behalf of, communities; and
 - b. to 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.
4. This section was amended in 2012 to insert s 10(1)(b) in place of the original provision that a purpose of local government is “to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future” (the four aspects of well-being).
5. Section 11A, which was inserted into the LGA02 in 2010, states that: “In performing its role, a local authority must have particular regard to the contribution that the following core services make to its communities.” The core services listed are: network infrastructure; public transport services; solid waste collection and disposal; the avoidance or mitigation of natural hazards; libraries, museums, reserves, and other recreational facilities and community amenities.

Use of development contributions for community infrastructure

6. Development contributions are charges local authorities may levy on developments to recover the costs of providing reserves, network infrastructure and community infrastructure necessary to service growth over the long term.

¹ Section 3, LGA02.

7. In 2014 the previous government made changes which restricted the power of local authorities to charge development contributions for community infrastructure and reserves. These are summarised in Table 1.

Table 1: Purposes for which development contributions could be charged

Original 2002 provisions	Current provisions
Network infrastructure – roads, transport, water, stormwater, and wastewater.	Unchanged.
Reserves	Development contributions for reserves may not be applied to any non-residential development or non-residential part of a development.
Community infrastructure was defined broadly as the provision of public amenities, so long as they were owned or controlled by the territorial authority.	Now limited to: <ul style="list-style-type: none"> • neighbourhood community centres or halls; • play equipment if located on a neighbourhood reserve; and • public toilets.

Housing Infrastructure Fund issue

8. The Housing Infrastructure Fund (HIF) is a \$1 billion fund created by the previous Government to lend money, interest free, to local authorities to accelerate the provision of infrastructure to enable new housing developments to occur. Local authorities have lodged expressions of interest and negotiations are underway to make the first approvals under the HIF.
9. Funding through the HIF will be available for three waters projects (water supply, wastewater and stormwater) and transport projects.

Policy Problem

Purpose of local government

10. The policy for this Bill is to restore reference to promoting the four aspects of well-being to the purpose of local government. This reflects a broad empowering approach to local government and enables local authorities to shift their focus to “should we do this?” from “are we allowed to do this?”
11. Local authorities consider that the current purpose of local government lacks coherency, clarity and consistency. This can lead to uncertainty about what services local authorities can and should provide. The typical consequence is not that local authorities change the services they provide, but that a more complex compliance exercise is undertaken to identify how a particular service that is undertaken or proposed fits the legislative purpose.

12. One key example in which local authorities' activities have been constrained by the purpose statement in the LGA02 is the issue of the living wage. A number of local authorities that have considered paying their staff the living wage have faced challenges based on the purpose contained in s 10(1)(b). SOLGM note in its submission to the Minister of Local Government² that Wellington City Council withdrew a decision that its contractors should be required to pay a living wage in the face of legal action asserting that local authorities paying the living wage would contradict the 'most cost-effective' element of s 10(1)(b).
13. Another consequence could be that "buy local" policies whereby local authorities give some preference to local businesses could be challenged on similar grounds.

Description of core services

14. The policy of the Bill is to remove the description in s 11A of core services that must be considered by a local authority in performing its role.
15. Removal of the description of core services supports the broad empowering approach that underpins the LGA02. The description of core services implies that the role of a local authority is that of a service provider, and that it is the function of legislation to define what services local authorities should provide.
16. Local authorities have a broader role in fostering liveable communities, including place-making, planning, and regulatory services which the current provision does not take account of. These significant local authority activities (and other activities such as the management of natural resources) are not included in the description of core services. It is unnecessary for a legislative provision to detail a restricted list of services given that it is the role of a local authority to provide the services that meet the needs and aspirations of their communities.

Use of development contributions for community infrastructure

17. The restriction on development contributions for community infrastructure is especially important, as it removes a key source of funding for significant community facilities such as sportsgrounds, libraries and swimming pools, from local authorities.
18. The likely consequences are that either higher rates increases are necessary to fund community infrastructure, maintenance of existing facilities is deferred or the capacity demands on existing community infrastructure increases. Morrison Low's recent report found that "a number of councils have indicated that they are deferring investment in these assets due to affordability constraints. This has a negative impact on level of service received by existing and new ratepayers."³
19. LGNZ has made a submission to the Minister of Local Government on legislative change it supports, including the proposal to restore the full range of community infrastructure funding to development contributions.

² "Tuning up the engine – potential changes to local government law", SOLGM, December 2017.

³ Morrison Low, "Net Costs of Growth to New Zealand Local Authorities", June 2017 (para 59).

Technical issue with the Housing Infrastructure Fund

20. The HIF has two mechanisms for advancing funds. For three waters projects, a simple loan is proposed. For transport projects, the proposal is to advance financial assistance from the New Zealand Transport Agency (NZTA). This will be recovered by providing reduced rates of financial assistance for future projects or activities.
21. The advance financial assistance mechanism is a particularly helpful financing tool as it does not create a liability for local authorities. Although recovery by the NZTA is near certain (since local authorities will need to maintain transport infrastructure), no legal obligation is created for repayment. As there is no liability on local authority books it allows local authorities debt headroom to borrow for other needed infrastructure.
22. The LGA02 has a provision to prohibit local authorities from requiring development contributions for projects that are funded from other sources, to prevent 'double-dipping'. Local authorities have received advice that advanced financial assistance would trigger the double-dipping provisions in the LGA02. This would create a significant road block to the HIF funding proceeding.
23. Section 200(3) of the LGA02 provides that using income from various sources to meet a proportion of the capital cost of a project does not trigger the double-dipping provision. A technical amendment to s 200(3) is necessary to ensure that the advance financial assistance mechanism will not trigger the double-dipping provision.

Confidence in evidence and assumptions

24. Notwithstanding the constraints identified, officials consider that decision-makers can have confidence in the evidence and assumptions described in this document.

Affected parties

Purpose of local government and description of core services

25. The changes primarily affect local authorities. In principle, all people in New Zealand are affected by the changes given that all people in New Zealand interact with local authorities. However, there are no specific direct impacts that are capable of identification. The nature and extent of the impact of the changes depends on the way that local authorities interpret and apply the provisions. In practice, based on past experience, we do not anticipate significant direct effects to result from the change.
26. The changes are likely to have a positive impact in reducing the compliance burden on local authorities when deciding to undertake services that meet the requirements of the LGA02. The current lack of clarity about the role of local government and the perceived increased risk of legal challenge based on the purpose statement will be removed.

Use of development contributions for community infrastructure

27. Developers will potentially be affected by the additional availability to local authorities of the option of using development contributions to contribute towards funding community infrastructure. However, this power can only be used subsequent to a consulted change in each local authority's development contributions policy, and is limited to expenditure on community infrastructure necessitated by growth.
28. Any effect on purchasers in terms of the extra amount of development contributions being passed on through house prices is likely to be minimal. The cost of buying a house, and whether or not this is affordable, is a feature of market supply and demand and the impact of an increase in development contributions on house purchasers is likely to be relatively insignificant.
29. Conversely, restoring the ability to fund the full range of community infrastructure through development contributions is likely to remove a barrier to growth, help councils to support growth and may ultimately contribute to increasing housing supply and thereby help to alleviate affordability issues.
30. There is a significant work programme underway across Government seeking to address the issue of housing affordability (including KiwiBuild, the proposed Urban Development Authority and the Urban Growth Agenda). Ensuring an appropriate allocation of the costs of growth to development contributions complements the broader work programme.

Technical fix to Housing Infrastructure Fund

31. The technical amendment to s 200(3) of the LGA02 will affect local authorities' opportunity to access HIF funding. The ability to access HIF funding to provide the infrastructure necessary to support housing growth will benefit communities more broadly and may well contribute to an increase in housing supply.

Constraints on the scope for decision making

32. The Minister of Local Government has instructed the Department to progress the changes proposed in the Bill to restore the promotion of the four aspects of well-being to the purpose of local government, repeal the description of core services in s 11A and restore the full range of funding of community infrastructure through development contributions. Accordingly, alternative approaches to these issues have not been considered in the course of this analysis. The technical fix to remove the barrier to local authorities accessing the HIF has been identified by officials.
33. Officials note that alternative approaches to the purpose of local government typically focus on outputs, not outcomes. It is not suggested that promoting the four aspects of well-being are inappropriate outcomes. Instead, the argument is about whether central government should specify the outputs that local government should produce, rather than the outcomes it tries to achieve.

34. The principle underlying the LGA02 is that outputs should be determined by local authorities to meet the needs and aspirations of their communities. In practice, evidence shows that the scope of activities and services provided by local government has not been significantly impacted by changes to the legislative purpose of local government. For example, the Local Government Rates Inquiry 2007 found that the broad empowerment to promote well-being had not been a significant driver of increased local authority expenditure⁴. However, the narrow wording of the current purpose statement has generated confusion and concerns about the mandate of local authorities to factor social, cultural, environmental and economic outcomes into their decision-making.

⁴ “Funding Local Government: Report of the Local Government Rates Inquiry” 2007, full report, p78.

Options identification

Option one: changes proposed by the Bill

Purpose of local government

35. The proposal is to restore reference to the promotion of the four aspects of well-being to the purpose of local government in s 11 of the LGA02.
36. Our analysis is that the actual impact of change to the purpose of local government on local government decision-making, services and activities is likely to be low, based on past evidence. There is likely to be some beneficial reduction in the compliance burden on local authorities.
37. Evidence does not suggest that local government increased its range of activities following enactment of the LGA02. The Local Authority Funding Issues: 2006 Report of the Joint Central Government/Local Authority Funding Project team found that:

“no evidence to date has been produced to suggest that local government as a whole is undertaking a wider group of functions that 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.”⁵
38. Local authorities face cost pressures due to the need to maintain financially prudent borrowing, the need to keep rates increases to an acceptable level, and other demands on local authority funds. These mechanisms are as effective in ensuring local authorities provide cost-effective services as the legislative purpose statement.
39. However, the purpose statement originally in the LGA02 enabled local authorities to be innovative in different ways to meet the needs of their communities. For example, Hurunui District Council levies a rate for the provision of medical services to ensure that rural communities have access to appropriate health care. The Department notes that Hurunui District Council continues to support rural health services despite the constraints of the legislative purpose of local government. Nevertheless, there is a risk that the narrowly focused purpose section of the LGA02 may restrict local authorities from providing new, innovative services that meet the needs of their communities.
40. Changing the purpose of local government to restore the four aspects of well-being is supported by LGNZ and SOLGM and consistent with their submissions to the Minister of Local Government.
41. Changing the purpose of local government in the LGA02 is therefore not anticipated to have a negative impact. While in practice, any change in the activities of local government may be minor, the change would improve the coherence of the legislation, achieve some reduction in the compliance burden on local authorities, and help to define the future direction of the relationship between central and local government.

⁵ “Local Government Funding Issues: An Update” Second Report of the Local Authority Funding Project Team, p19.

Core services to be considered by local authority in performing role

42. The Bill proposes removing the description of core services that must be considered by a local authority in performing its role set out in s 11A of the LGA02.
43. It is not necessary to repeal s 11A alongside changes to the purpose of local government in s 10 of the LGA02. However, it would be desirable to do so to maintain the coherence of the legislation. Section 11A provides a further outputs-based constraint on the activities and services of local government.
44. The restrictive list of core services does not take account of the broader role of local authorities, or the full range of services provided by local authorities.

Use of development contributions for community infrastructure

45. Changes are proposed to restore development contribution powers to the full range of community facilities. These changes would assist high growth local authorities to fund growth.
46. A recent report from Morrison Low found that while in theory growth will pay for itself over a period of time, in practice this proposition comes with a significant amount of risk for local authorities and the financial gain rarely eventuates. The report notes, “When costs that are not able to be recovered through development contributions are also incorporated into the model, it is unlikely growth will ever pay for itself.”⁶ The report identifies the cost of developing community facilities as one of those costs.
47. There is some evidence to show the impact the restriction introduced in 2014 had on local authority budgets, shown below in Table 2. The figures represent the difference in anticipated income from development contributions for community facilities between the 2012 long-term plans, when the full range of community infrastructure could be included, and the 2015 long-term plans, which were prepared following the legislative restriction. Because long-term plans cover a period of ten years, and are made every three years, there is a comparable period of seven years.

Table 2: Budgeted reductions in income from development contributions for community facilities and reserves between the 2012 and 2015 long-term plans (selected local authorities)

\$000's	FY16	FY17	FY18	FY19	FY20	FY21	FY22	Total
Auckland	21,876	22,664	21,831	15,071	6,603	4,811	1,074	93,930
Tauranga	422	605	564	472	595	311	509	3,478
Kāpiti Coast	131	172	469	819	1,218	1,283	1,280	5,372
Queenstown-Lakes	1,170	1,411	1,531	54	77	164	452	4,859

Source: Department of Internal Affairs

⁶ Morrison Low, “Net Costs of Growth to New Zealand Local Authorities”, June 2017 (para 11).

48. The scale of the financial impact on local authority income will not be large in an overall sense. However, it could have one of two effects (or a combination thereof). It could reduce the use of other local authority funds (mainly borrowing) for these facilities, thereby providing a small amount of capital for other network infrastructure investment. Alternatively, it could enable local authorities to reinstate reserve and community infrastructure projects that had been scaled back or removed from budgets because of funding constraints.
49. Developers would be likely to face higher development contributions for any particular proposed development. This may affect the viability of certain developments. Conversely, restoring the use of development contributions for community infrastructure may remove a barrier that currently inhibits local authorities' support for developments. Under the status quo, a local authority faces an unfunded burden of providing the necessary community infrastructure to support any development.
50. Specific additional costs for developers would be dependent on local authorities' decisions as to how to use the restored power. Some local authorities may decide to 'under-charge' development contributions in an effort to encourage development.

Technical fix to the Housing Infrastructure Fund issue

51. The intention of the HIF is to make available to local authorities funding for infrastructure that would otherwise not be available, to facilitate growth.
52. The LGA02 has a provision to prohibit local authorities from requiring development contributions for projects that are funded from other sources, to prevent 'double-dipping'. Local authorities have received advice that advanced financial assistance would trigger the double-dipping provisions in the LGA02.
53. Section 200(3) of the LGA02 provides that using income from various sources to meet a proportion of the capital cost of a project does not trigger the double-dipping provision. One of those sources is borrowing. Advance financial assistance has characteristics similar to borrowing. We consider this issue would be resolved by amending s 200(3) to add advances of financial assistance from the NZTA that are to be recovered in future years as another source of income that does not trigger the double-dipping provisions.

Option two: maintain the status quo

Purpose of local government

54. If no change is made to the purpose statement, the perception of inconsistency and incoherence about the role of local authorities and the framework of the LGA02 is likely to persist.
55. The status quo places a constraint on local authorities due to the perception of an increased risk of judicial review. Although this is unlikely to inhibit local authorities from continuing to provide existing services, it may place a constraint on local authorities in developing new services or in the manner in which they provide existing services.

Description of core services

56. Making no change to the description of core services in s 11A is unlikely to have significant consequences. It would have a minor impact on the coherence of the LGA02 given that the restrictive list of core services would sit uneasily with the broadly empowering scheme of the Act.

Restoring the use of development contributions for the full range of community infrastructure

57. The status quo in relation to the wider planning and land use system is not providing the level of development required at the necessary pace in those areas of New Zealand experiencing high growth. The development contributions scheme is one element of the wider system that is not responding to the needs of New Zealanders. Morrison Low's recent report found that "if the cost of growth infrastructure that is unable to be collected from development contributions is included...then growth will rarely pay for itself over any period of time."⁷
58. There are likely to be flow-on consequences of not implementing the change to development contributions. These include continued pressure on rates to fund the increased community infrastructure required, pressure on the capacity of existing community infrastructure and unintended adverse effects (for example increased traffic, if households in a new development are obliged to travel further to access community facilities).

Facilitating use of the Housing Infrastructure Fund

59. Local authorities will be constrained in making use of the HIF for the intended purposes if the proposed amendment to s 200(3) of the LGA02 is not made. The effect of this would be to miss opportunities to fund infrastructure necessary to support growth.

Proposed approach

60. Based on the analysis above, the Department recommends option one.
61. No areas of incompatibility between the proposed approach and the Government's "Expectations for the design of regulatory systems" have been identified.

Purpose of local government

62. The Department recommends that the proposed change to the legislative purpose of local government be made. Making this change will enhance the coherence of the legislation and help to define the future direction of the relationship between central and local government. The change is not anticipated to have any negative impact and any change in the activities of local government is likely to be minor.

⁷ Morrison Low, "Net Cost of Growth to New Zealand Local Authorities", June 2017 (para 111).

63. If no change is made to the legislative purpose, the current uncertainty about the role of local government will continue. This includes the inhibiting factor of the perceived greater risk of challenge by judicial review based on the narrowly defined purpose.

Core services

64. It is desirable to repeal the description of core services in s 11A in addition to changing the purpose of local government. The description of core services is restrictive. It sends a message that local authorities' role should only be to provide services. The provision does not take account of local authorities' broader role including regulatory services and plan-making.
65. The Department does not foresee any negative impact of repealing s 11A. Local authorities will continue to provide the core services that communities need.

Extended use of development contributions for community infrastructure

66. Changes to restore development contribution powers to the full range of community facilities are likely to contribute to facilitating growth. The status quo is not providing the level of development necessary to meet the current and future needs of New Zealand communities.
67. The likelihood is that the enhanced availability for local authorities to use development contributions to fund community infrastructure will lead to an increased amount of development contributions payable for any particular development. However, the Department considers that any negative impact on the viability of any particular development proposal will be sufficiently offset by the benefits of the change. The issue of how to fund the necessary community infrastructure can be an inhibiting factor to local authorities' support for development proposals. The inability of local authorities to recover the costs of developing new community facilities from development contributions can lead to deferred investment and a consequent reduction in the level of service for ratepayers.⁸

Facilitating use of the Housing Infrastructure Fund

68. The proposed change to facilitate local authorities' use of the HIF is technical. This change is necessary to support the use of the HIF for its intended purpose. Should the status quo persist, this will limit the effectiveness of the HIF because HIF funding for transport projects will substitute for development contributions funding rather than providing local authorities with an additional source of funding for transport infrastructure as intended.

⁸ "Net Cost of Growth to New Zealand Local Authorities", Morrison Low, June 2017 (para 59).

Impact Analysis

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action		
Regulated parties	Likely increase in the amount of development contributions required in most cases (subject to local authorities' development contributions policies)	Medium
Regulators	None	None
Wider government	None	None
Other parties	None	None
Total monetised cost	None	None
Non-monetised costs	Increase in amount of development contributions	Medium
Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Removal of a barrier to local authorities' supporting and facilitating growth through extending use of development contributions. Facilitating access to HIF funding for network infrastructure necessary to support growth.	Medium
Regulators	Potential reduction in compliance burden resulting from improved legislative clarity	Low
Wider government	None	None
Other parties	None	None
Total monetised benefit	None	None
Non-monetised benefits	Removal of a barrier to growth and reduction in compliance burden	Medium

Other potential impacts

Potential risks

69. There is a potential risk that local authorities may use the enhanced option of contributing to the funding of community infrastructure through development contributions inappropriately. The risk is that development contributions funding may be used beyond the intended scope of funding community infrastructure that is required as a consequence of the development.
70. A local authority must have a development contributions policy. It must consult on the draft policy, and any amendments, in accordance with the principles of consultation in s 82 of the LGA02. This gives the community, including the development community, the opportunity to submit on any change to a local authority's development contributions policy, such as in relation to enhanced funding for community infrastructure.
71. Existing legislative provisions that require local authorities to provide a detailed explanation of what will be funded by development contributions (e.g. the schedule of assets required by s 201A LGA02) help to protect against the risk of inappropriate use of development contributions and will not be changed by this Bill.
72. Additionally, the Department will work with SOLGM on preparing practice guides and promoting good practice to mitigate this risk.

Stakeholder views

73. The Department has not undertaken consultation on this proposal, other than brief initial discussions with LGNZ and SOLGM to the extent that timing limitations have allowed. Nevertheless, the proposed changes were requested by LGNZ and SOLGM and we anticipate they will be supported by the wider local government sector. There will be ongoing consultation with LGNZ and SOLGM as the legislative proposal develops. There has been no consultation with the development community.

Implementation and operation

74. The preferred policy option will require legislative amendment to the LGA02. Once the legislation is amended, the provisions in the Bill will be implemented by local authorities. This will be effected principally through planning and decision-making mechanisms such as the annual plans and long-term plans. Local authorities are currently finalising long-term plans for the years 2018-2028 for adoption by 30 June 2018. Implementation of the provisions in the Bill will be likely undertaken through annual plans in the coming years as appropriate, and through the next cycle of long-term plans due for adoption by 30 June 2021.

Monitoring, evaluation, and review

75. No formal monitoring or review programme is proposed for the specific changes in the Bill.
76. Reviewing annual plans and long-term plans will be undertaken as business as usual by the Department.
77. The Auditor-General has a statutory responsibility to review long-term plans and issue opinions, including sharing and promoting best practice among local authorities.