

REPORT 5
(1215/52/IM)

NEW PURPOSE OF LOCAL GOVERNMENT AND REVIEW OF COUNCIL ACTIVITIES

1. Purpose of Report

In December 2012 the *Local Government Act 2002 Amendment Act 2012* (the amending Act) changed the purpose of local government. Advice subsequently provided by local government sector organisations indicated that councils should undertake a review of their activities to assess whether they are consistent with this new purpose.

This paper provides an introduction to the new purpose, outlines the review process that officers have undertaken and the results.

It is noted that this has been a desktop review based on information available within a short timeframe. Consequently, the paper identifies how officers intend to ensure compliance with the Act on a continuing basis.

2. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Note that, through the review process identified in this paper, no compliance issues have been identified in terms of Council's activities falling within the new 'purpose of local government' in the Local Government Act 2002.*
- 3. Note that officers will continue to monitor information and advice on the impact of the new purpose of local government and respond appropriately.*

3. Discussion

3.1 New Purpose of 'Local Government'

As Councillors will know, the amending Act changed section 10 (the 'purpose for local government') of the *Local Government Act 2002* (LGA) along with other

changes. The amendments came into effect in December 2012. There were no transitional provisions for the change in purpose.

As amended, section 10 of the LGA now provides:

- 10 (1) The purpose of local government is—
- (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.

Section 10(1)(a) is unchanged. Section 10(1)(b) is new and replaces the so-called “four well-being” purposes, which are repealed.

The Government has expressed the view that the purpose of the change is:

“...to provide better clarity about councils’ roles, stronger governance, improved efficiency and more responsible fiscal management.”

(Minister's Foreword to *Better Local Government*, DIA, March 2012)

As communicated in the annual plan workshop in February this year, officers have formed a view on the effects of the change in purpose, which has been primarily informed by:

- ‘Refocus the purpose of local government’, a *Better Local Government* Fact Sheet published by the Department of Internal Affairs (DIA) and available under ‘resources’ at <http://www.dia.govt.nz/Better-Local-Government#7>. The fact sheet was written for the general public and emphasises the need for local authorities to “ask communities for their views on what services and infrastructure matter – and how much they are willing to pay for them.”
- A Society of Local Government Managers *Frequently Asked Questions* paper on the amendments, which provides useful guidance on the processes councils might adopt to consider whether existing and new activities are consistent with the new purpose. The paper is informed by legal opinion from Simpson Grierson.
- A legal opinion from Simpson Grierson to Local Government New Zealand, which was subsequently provided to its members. The opinion also considers the process for reviewing council activities with a particular emphasis on the decision-making role of councillors.

Copies of the above papers are available on request. Information from local government entities, the legal profession and Government representatives is being received and reviewed by officers on a continuing basis.

3.2 The key considerations:

The above information points to a number of key issues arising from the change in purpose:

a. What the community 'wants':

Part (a) of the purpose emphasises the role of councils as an 'enabler' of decision-making and action by, or on behalf of, communities. This indicates that, if a community decides it 'wants' something done, the council has a role in enabling that to happen.

This interpretation is supported by the DIA fact sheet, which emphasises the need for councils to ask communities 'what they want' and 'what is important'. Furthermore, the opinion circulated by LGNZ expresses the view that 'matters expressly mandated in the 2012 Long-Term Plan (LTP) will be *intra vires* ...'. That is, activities consulted on and agreed to through the LTP consultation processes, can be said to be important to, and have the support of, communities.

Consequently, for the purposes of the review of our activities, if the community has said something is important to them, or supported it through a consultation process, then officers consider that it does fall within the new purpose of local government.

b. What the community 'needs':

Part (b), however, says the purpose of local government is to 'meet the current and future needs of communities ...' (emphasis added). Where possible, any Council review of an activity (current or proposed) should seek to demonstrate, not only that there is community support for that activity (they want it), but also that there is a 'need' within the community for that activity as well.

c. Fitting within the definitions:

Both the SOLGM and LGNZ papers refer to the absence of statutory definition of key terms within the new purpose clauses and to the opportunity this presents for Judicial Review of existing or proposed council activities. In particular:

- "Good quality" is defined and means "effective, efficient and appropriate for present and anticipated future circumstances", but these terms are not defined;
- "Local infrastructure", local public services and performance of regulatory functions" are not defined;
- "most cost effective" is not defined;

LGNZ expresses the opinion, widely shared, that 'the actual legal effect of the changes will depend on judicial interpretation'.

Given this context, all advice points to a need for Council to ‘apply its mind’ to these issues in making decisions. Doing nothing in response to the change in purpose is not an option. Officers believe that the Council must be able to evidence that it has responded to the change in purpose through a review of its activities.

d. Elected Member discretion:

Both SOLGM and LGNZ express the opinion that elected members retain a discretion as to whether any particular activity falls within the new purpose and that decisions in exercise of that discretion are properly ‘policy judgements for elected members to make’.

However, it will be important that, in exercising this discretion, members are provided with information that enables them to consider whether an existing or proposed activity is consistent with the new purpose. This is best done by ensuring relevant papers that come before Council contain adequate information for Councillors to make that assessment. Consequently, officers are currently reviewing Council’s report templates to ensure that such information is provided in report where appropriate.

3.3 Wellington City Council review process

Given the above assessment of the new purpose, officers believe that a review of Council’s activities should consider the following questions:

- is the activity is ‘local infrastructure’, a ‘local public service’ or a ‘regulatory function’?, if not
- is the activity is meeting a community ‘want’ and / or ‘need’; and
- in either case, is the activity is being delivered in the most cost effective way for households and businesses?

Officers have undertaken such a review, the results of which are reported on in this paper.

Considerations in conducting the review

a. Determining whether it is ‘local infrastructure’, a ‘local public service’ or a ‘regulatory function’

It is straight-forward for a council to demonstrate that it is performing a regulatory function.

While the terms ‘local infrastructure’ and a ‘local public service’ are not defined, the Act does include a list of ‘core services’ in section 11A. These are:

“network infrastructure, public transport services, solid waste collection and disposal, the avoidance or mitigation of natural hazards, libraries, museums, reserves, recreational facilities, and other community infrastructure.”

For the purposes of this review, infrastructure or services that fit within this definition are considered to be consistent with the new purpose.

Where there is not a clear fit within the definition of 'core services', it was identified as an 'other service' and subject to further steps in the review.

A key consideration is whether an activity should or could be delivered by others, including central government, the private or third sectors. Our review considered such options and sought to identify credible reasons for decisions where Council was determined to be the most appropriate provider.

b. Determining whether an activity is meeting a community 'want'

In making this assessment officers looked at strategy, policy and planning documents that have been subject to public consultation. Activities included in such documents, which subsequently received public support, can be said to be responding to a community 'want'.

c. Determining whether an activity is meeting a community 'need'

In making this assessment officers looked at *existing* evidence that the activity is meeting a community 'need'. Examples of such evidence could be existing levels of demand for / use of a service, the original business case behind the service, subsequent reviews etc.

d. Determining the most cost effective option for households and businesses

While it could be argued that previous council planning and decision-making processes have mandated the delivery of existing activities, the advice from LGNZ and SOLGM points to 'determining the most cost effective option' as an additional requirement and all activities should be reviewed through this lens.

'Most cost effective' is not defined in the LGA and its meaning is open to interpretation. The consensus of opinion is that cost-effectiveness is not a matter of 'the least cost option'. Accordingly an assessment of 'most cost effective' should consider a range of factors including the future costs and benefits of a service, as well as the environmental, social, cultural and economic impacts of the different options. It is important to reemphasise here the view that elected members retain the discretion to decide what the most cost-effective option may be in any particular case.

Considering the notion of cost-effective, officers arrived at the following position.

- 'Effective' is understood to be related to how well something achieves its purpose. In the context of Council's activities, the most effective option will be that which best achieves the outcomes of a strategy, objectives of a policy or purposes of a service. It is the view of officers that this should be the first consideration when choosing an option for the delivery of a service.

- The 'cost' of each option must also be considered. However, officers do not believe that the Act intends the Council to take the 'least cost' option in every case. Rather the relationship between cost and effectiveness needs to be examined with recommendations and decisions made on that basis. Where the effectiveness of differing options is similar then the least-cost option would be chosen. In another case, a less-effective option might be chosen if the cost is significantly lower than the most effective option. Officers believe that in this situation, elected members would make a policy judgement based on information presented to them by officers.

In conducting the review, officers looked for a decision making process around the delivery of each activity that contained the following elements:

- a clear set of outcomes, objectives or a clear purpose to be achieved from the activity
- the generation and consideration of options to achieve the above
- a process whereby the options are assessed and the most effective option identified

3.4 Approach to the review

In conducting this review, officers have focussed on 'activities' identified in the Council's 2012-22 Long-Term Plan. The review did not extend to how the Council delivers its corporate functions such as human resources, financial services etc.

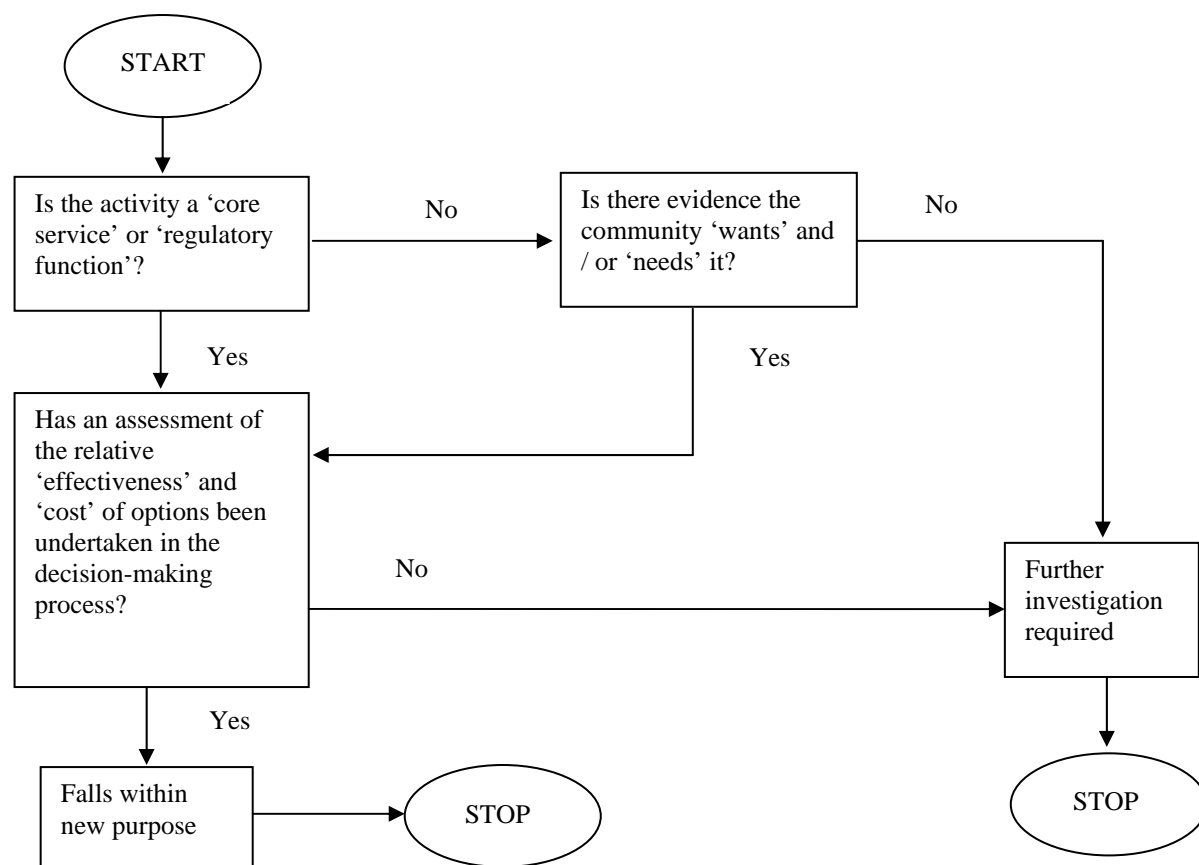
The review took the form of a 'desk-top' review by officers of existing documentation and processes. It was undertaken within a short timeframe and without external oversight. This approach was taken for several reasons.

- No transitional provisions were included in the amendment with respect to the change in 'purpose'. This indicates that Parliament did not believe that the change would have a significant immediate impact on councils. The documents from local government entities, referenced above, reinforce this view
- It is assumed that, in highlighting the need for councils to focus on efficiency and cost-effectiveness, Parliament would not have intended the change to precipitate a process that would be time-consuming and expensive.
- In considering the review process, officers believed that a large proportion of Council's activities would come within the scope of the new 'purpose', and that Council does have in place processes to ensure cost-effective delivery of services. These processes usually involve external review by suitably qualified individuals or entities.
- Council would retain the ability to undertake a more fulsome review of some activities, if it felt this was necessary, following the desk-top review.

A template was developed to guide officers in an evidence-based review of activities to establish compliance with the section 10 of the LGA. A copy of the template is attached as Appendix 1.

The current review was undertaken in parallel with the current annual planning process. New activities proposed during this will be reviewed in the same way as existing activities.

The template operates on the basis of a step by step review based on the logic in the diagram below.



3.5 Summary of findings:

As anticipated, most activities were assessed as falling within the parameters of the new purpose.

The review found that Council does undertake some activities that do not fall within the definition of a 'core service' or a 'regulatory function'. However in all cases, officers were able to demonstrate that the activity was wanted or needed by the community.

An example was Council's economic development activity. Evidence of community support for this activity was demonstrated when looking at the Council's 2012-22 Long-Term Planning process. During consultation on the draft plan, Council clearly highlighted proposed activities in this area and received a high level of support for undertaking those initiatives. Many of

those initiatives came out of the Council's Economic Development Strategy, which itself was subject to stakeholder input and public consultation. Furthermore, a vibrant, resilient and growing economy is clearly a critical need for a successful city now and in the future.

Ahead of the review, some councils were questioning whether the funding of community organisations through contestable grants processes fell within the new purpose (see Nelson Mail, 23 February 2013).

This review found that, as long as the criteria on which a grant is made is clearly linked to Council's strategic or policy objectives, funding community organisations to undertake activities can be a cost-effective way to respond to community wants and needs. Funding community organisations can be a more cost-effective option for councils to achieve a strategic outcome because such organisations often have lower 'overheads' (due in part to the contribution of volunteers) and usually attract complementary funding from other sources to deliver their services.

Some concern was expressed about whether a service was 'local' if Council was delivering a service in another local authority area or in partnership with other councils. Officers believe that this is not an issue of concern due to section 12 of the LGA which reads:

- (4) A territorial authority must exercise its powers under this section wholly or principally for the benefit of its district.
- (5) A regional council must exercise its powers under this section wholly or principally for the benefit of all or a significant part of its region, and not for the benefit of a single district.
- (6) Subsections (4) and (5) do not—
 - (a) prevent 2 or more local authorities engaging in a joint undertaking, a joint activity, or a co-operative activity; or
 - (b) prevent a transfer of responsibility from one local authority to another in accordance with this Act; or
 - (c) restrict the activities of a council-controlled organisation; or
 - (d) prevent a local authority from making a donation (whether of money, resources, or otherwise) to another local authority or to a person or organisation outside its district or region or outside New Zealand—
 - (i) if the local authority considers, on reasonable grounds, that the donation will benefit its district or region, or the communities within its district or region; or
 - (ii) if the local authority considers, on reasonable grounds, that a benefit will be conferred on the local government sector as a whole; or
 - (iii) for emergency relief; or

(e) prevent a local authority from making a donation (whether of money, resources, or otherwise) to a local government body outside New Zealand to enable it to share its experience and expertise with that body.

Some concern was also expressed around whether activities that Council undertakes in partnership with central government agencies can be challenged as being properly the role of central government rather than local government. That is, they are not 'local' in terms of the new purpose. The review found that in such cases the activities deliver to both central and local government priorities. As such it is appropriate that both government sectors are involved in their delivery. Ideally, the relative involvement or contribution to the costs of the activity should be in proportion to impact of the priorities of each.

4. Conclusion

Officers have undertaken an initial review of all Council's activities based on current information on the intention and impact of the new 'purpose of local government' contained in the recently amended Local Government Act 2002.

The review process considered key aspects of the new purpose and sought evidence of compliance in existing Council documents and processes.

The review did not identify any issues of compliance with the way this Council undertakes its activities. Officers will continue to assess information on the impact the new purpose as it comes to our attention and review our advice and assessment of Council's position as necessary.

Contact officer: *Martin Rodgers, Manager Research, Consultation and Planning*

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

This report provides an introduction to the new purpose of the LGA 2002, outlines the review process that officers have undertaken and the results.

2) LTP/Annual Plan reference and long term financial impact

Development of draft annual plans sits within the following project: C530 Annual Planning and Reporting.

3) Treaty of Waitangi considerations

Early engagement around the change of purpose has taken place with our mana whenua partners.

4) Decision-making

This is not a significant decision.

5) Consultation

No public consultation is necessary at this stage.

6) Legal implications

The report meets all statutory requirements of the LGA 2002.

7) Consistency with existing policy

This report is consistent with Council policy.

APPENDIX 1

Review of activities: <i>Purpose of Local Government: section 10(1) Local Government Act 2002</i>	
1. ACTIVITY GROUP:	
2. SERVICE OR ACTIVITY:	<i>[Please identify by name and number. Only provide commentary on projects that are highly visible and / or involve high expenditure]</i>
	Please indicate whether service or activity is: <input type="checkbox"/> Core Service (see footer) <input type="checkbox"/> Regulatory Function <input type="checkbox"/> Other Service or Function
3. CONTACT OFFICER:	
4. Please provide evidence of “cost-effectiveness” (including references to relevant documents)	
Options for provision	
Rationale for current option	
Descriptions of contracting / funding processes	
Any supporting research	
Financial Analysis	
Other	
4. If “Other Service or Function”, please provide evidence of community “want” (including references to relevant documents)	
Research:	
Consultation & Engagement:	
Other:	
5. If “Other Service or Function” please provide evidence of community “need” (including references to relevant documents)	
Research:	
Business Case	
Other	

APPENDIX 1

core services: “network infrastructure, public transport services, solid waste collection and disposal, the avoidance or mitigation of natural hazards, libraries, museums, reserves, recreational facilities, and other community infrastructure.”(Section 11A Local Government Act 2002).