



26 July 2012

Committee Secretariat
Local Government and Environment Select Committee
Parliament Buildings
WELLINGTON 6011

Dear Sir/Madam,

SUBMISSION ON THE LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL 2012

1. Please find **attached** a submission from the Environmental Defence Society on the Local Government Act 2002 Amendment Bill 2012.
2. EDS wishes to be heard in relation to this submission.
3. If you have any questions please feel free to contact me.

Yours sincerely

A handwritten signature in blue ink that reads 'Nicola de Wit'. The signature is written in a cursive, flowing style.

Nicola de Wit

**Legal Advisor
Environmental Defence Society**

ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED

SUBMISSION ON THE LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL 2012

INTRODUCTION

1. The Environmental Defence Society (EDS) is a public interest environmental law group, formed in 1971. It has a membership that consists largely of resource management professionals. The focus of EDS's work is on achieving good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision-making process.
2. We welcome the opportunity to comment on the Local Government Act 2002 Amendment Bill 2012 ("the Bill").
3. We are concerned with the proposed amendment to the purpose of the Local Government Act 2002 ("the Act") and, in particular, how this may impact on local authorities' roles under the Resource Management Act 1991 ("the RMA").

PROPOSAL TO AMEND PURPOSE

4. We oppose the removal of the references to the "four well-beings" from the Act. The Act currently requires local government to "promote the social, economic, environmental and cultural well-being of communities". The Bill proposes replacing this with a requirement for local authorities 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."
5. The explanatory note suggests that the motivation for this amendment is that the current law does not focus councils on operating efficiently or delivering only those services councils can provide or performing only those roles that councils can perform.
6. The need for this amendment is questionable. The Regulatory Impact Statement ("RIS") states that there is no clear quantitative evidence to suggest that the Act has resulted in a proliferation of new activities, or that local government is undertaking a wider range of functions (paragraph 40). The RIS notes some extreme examples but does not consider how uncommon they are (paragraph 42). Furthermore the 2010 insertion of section 11A is likely to provide this focus. The RIS notes that it is too early to see the effects of this change, as they are not yet reflected in long-term plans.
7. The RIS states that the current purpose statement provides no direction as to what councils should be expected to do and is too broad to offer useful parameters within which local government activity can be planned (paragraph 21). The outcome of the

proposed change of purpose will be that councils should no longer fund activities based on one of the well-beings if it cannot be considered a “local public service”. The phrase “local public service” is broad enough to encompass activities that do not relate to infrastructure or regulatory functions but it is likely to cause some debate as to what it encompasses. This uncertainty is likely to increase litigation.

8. We are also concerned that this change in focus may result in some important services becoming neglected. Although it is appropriate for local government to focus predominantly on “core” services, providing other services specifically for local communities is an important role of local government. These services are an essential aspect of communities and central government is often too disconnected to adequately provide these services. If these services become neglected this will put greater demands on communities as not-for-profit and volunteer groups will be required to “pick up the slack”.
9. We are particularly concerned about the effect the proposed amendment may have on local authorities’ roles under the RMA. The existing purpose aligns with the sustainable management purpose of the RMA.
 - a. Although the proposed purpose provides for “performance of regulatory functions” this is limited by the phrase “in a way that is most cost-effective for households and businesses”. This is concerning as it changes the focus from achieving the best outcomes for the community to a preference for the lowest cost option. EDS submits that, if the amendment is to go ahead, the phrase “most cost-effective” should be replaced with the phrase “best value”. Alternatively, a definition of “cost-effective” should be inserted to ensure that it encompasses consideration of current and future needs and whether the infrastructure, service or regulatory function is fit for purpose, resilient, efficient and effective.
 - b. Although the proposed purpose provides for “performance of regulatory functions” the role of local government is not merely to create rules. The RMA itself, under section 32(3)(b), imposes an obligation on Councils to consider other methods, including non-regulatory methods, to achieve sustainable management outcomes. Incentives are an important tool for encouraging voluntary changes in behaviour and fostering positive relationships between local authorities and other sectors. Many policy statements and plans set out incentives as a method for achieving policies and objectives. The funding of incentives must be determined through the LGA processes. We are concerned that incentives, and similar functions, which are related to local authorities’ regulatory functions under the RMA but are not regulatory functions in themselves, may be limited by the proposed purpose.
10. Finally, we are concerned about the following comments in the RIS that indicate that the policy analysis on which the Bill is based is questionable. It is poor practice to create legislation without undertaking comprehensive policy analysis and it is likely to result in legislation that will have unforeseen and unintended outcomes.

“There is limited evidence to inform the development of these proposals, and the timeframe within which the proposals have been developed has restricted the ability to assess multiple options.” (Agency Disclosure Statement)

“There has been insufficient time to undertake a full assessment of the impact of the proposal. There may be unintended consequences because the concepts associated with the well-beings are (explicitly and implicitly) woven throughout the LGA02 and the local government framework.” (paragraph 57)

“The local government sector was not consulted about the policy proposals, principally due to a lack of time.” (paragraph 170).

“The Department has been unable to carry out detailed identification and analysis of unintended consequences for some aspects of the proposal.” (paragraph 177)

STREAMLINING LOCAL GOVERNMENT REORGANISATION

11. We support the intent of the proposal to streamline local government reorganisation. EDS would support a requirement for small local authorities to amalgamate. We have 78 local authorities in New Zealand and it is anomalous that one of these covers one third of the population while there are 77 to cover the remaining two thirds of the population. The amalgamation of local authorities has a number of benefits including; a more strategic focus and decision making, better resourcing, improved monitoring, and more coherent infrastructure provision.

REQUEST TO BE HEARD

12. EDS wishes to be heard in relation to this submission.