

Submission to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Act 3 (2013)

Executive summary

Doubt is raised over the need for several amendments and the timing for the introduction to others. It is requested that further legislation changes be halted until the strong concerns raised by Local Government on the cost-implications, quality and workability of recent legislative changes has been investigated and the proper relationship between local and central government identified.

The Bill builds upon previous amendments to the Local Government Act (LGA 2002) which threatens the independence of Local Government and the ability to meet its costs. Evidence for the need for changes is lacking, with insufficient attention given to the costs imposed upon local government and how the provisions are to be implemented. This is not acceptable for an option identified in the Regulatory Impact Statement, as having potential costs in the hundreds of millions of dollars for changes to development contributions alone.

The three Regulatory Impact Statements acknowledge that changes to development contributions are unlikely to significantly improve housing affordability, the extent of problems are unknown and legislative changes would not have a substantial effect on the efficiency of Council processes. These acknowledgements bring into question the need for changes.

Concern is raised that 'enabling provisions' regarding Council collaboration and coordination and developer agreements are intended to do more than 'enable', but rather promote and set new expectations, and may subsequently be modified to compel.

It is recommended that several provisions be amended to retain the right of local government to choose how it can best satisfy the purpose of local government under the LGA 2002.

I wish to speak on my submission. My contact details are provided on the last page.

Summary of recommendations on the Bill:

Allow additional transition time before new requirements are mandatory, particularly for changes to Development Contribution Plans and proposed 30 year infrastructure plan.

Development contributions

- The proposed definition of community infrastructure in Section 197(2) of the Bill is unduly narrow and should be expanded.
- Provision made for the collection of development contributions for a wider range of community infrastructure/facilities, beyond the list of items referred to in the proposed definition for community infrastructure.
- Principles for development contributions rephrased into more positive and simple language.

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- Rewording of Section 197(A) (B) (a) to replace past tense 'cumulatively have created' with future tense 'will cumulatively create'.
- Guidance produced on the use of development contributions and development contribution plans.
- Guidance on the use of development agreements, which incorporates the principles recommended by OECD on Private Sector Participation in Infrastructure.
- Costs and benefits of options to be reassessed, following additional discussions with Local Government.
- Twelve month delay in the commencement of new requirements for development contributions.
- Explicit identification that Councils are not obliged:
 - to accept private agreements;
 - to accept private agreements as a means of resolving development contributions disputes heard by a Development Commissioner;
 - accept (or vest) infrastructure provided through development agreements; and
 - repair or maintain infrastructure provided through development agreements.

Local Boards

- Code of Practice created for Local Boards
- Monitoring the use, resourcing and performance of Local Boards.
- Providing direction in Section 42(2A) that in the event of any inconsistency between the responsibilities of the Chief Executive in carrying out the instructions of the governing body and one or more Local Boards, the instructions of the governing body take precedence.
- Simplify the principle for the allocation of decision making to local boards in Section 48L(2)
- Delete requirement for Local Board Plan to be prepared as soon as practicable after an election in Section 48(N)(1)(a).

Encouragement to Collaborate and Co-operate

- Amend Section 14(1)(e) to encourage the exploration of opportunities to improve effectiveness and efficiencies of services, rather than create a presumption that Local Councils should engage in joint activities with other Councils.
- Amend Section 17(A)(1) to allow Councils to choose when a review of the cost-effectiveness of existing arrangements will be reviewed, providing it occurs at least once every three years.

Remove most requirements to use the Special Consultation Procedure

- Amendment of Section 82(1)(f) to ensure that submitters also have access to supporting documents relied upon by decision-makers in making relevant decisions.
- Amendment of Section 93(f) to retain reference to public consultation as part of the purpose of the long term plan, with clarification given that public consultation is limited to the consultation and decision to adopt stage.

Asset Management planning and infrastructure plan

- Clarification is provided as to expectations and responsibilities of Local Councils to provide additional infrastructure in advance, to support future predicted urban growth and economic development.

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- Guidance is produced on the management of social and environmental effects of infrastructure provision and direction given that higher social and/or environmental costs/risks are not be traded for lower up-front economic costs.
- Guidance produced on the calculation of ‘whole-of-life’¹ and ‘whole system’² infrastructure costs.

Background to the Bill and General comments

In considering this Bill, it is necessary to look back at the 2010 and 2012 amendments to the Local Government Act 2002, and see the whole picture of the way in which the purpose and scope of local government – a legitimate sphere of government in its own right – is being undermined by central government through legislative change.

In the March 2012, the Better Local Government (BLG) paper created a picture of local government in crisis – and therefore in need of corrective action from central government. The BLG rationale for many of the 2012 amendments (narrowing the purpose of local government, imposing debt and rates caps, streamlining reorganisation) was largely an evidence-free zone, as noted by several submitters to the select committee at the time, such as LGNZ, SOLGM and PSA.

This Bill’s explanatory note states that this further set of amendments are aimed at:

- Building a more competitive and productive economy
- Improving the delivery of public services, and
- Improving housing affordability by supporting councils to operate more efficiently and effectively.

Whilst I support the basic intention to encourage more efficient management, accountability and transparency, and better services, I question whether the blunt instrument of legislative change is needed to achieve all these objectives.

As examples, the Regulatory Impact Statement on development contributions acknowledges that the changes are unlikely to significantly improve housing affordability³, which begs the question of why they are considered necessary, if they will not fix one of the main drivers of the Bill.

The Regulatory Impact Statement on asset planning confirms that problems in local government infrastructure delivery or the cost to Councils for meeting proposed legislative requirements could not be accurately identified.⁴

¹ Costs borne at each stage in the life cycle of infrastructure from planning, delivery, maintenance and renewal/replacement.

² Consideration of cost implications of changes to infrastructure on part of the network (eg. drainage network) on other parts of the network. For example, extension of drainage pipes to new areas, may lead to requirements to enlarge existing pipes elsewhere in the network or upgrade water treatment plants.

³ Regulatory Impact Statement – Development Contributions Review paras 159 – 161.

⁴ Regulatory Impact Statement - Agency Discloser Statement for Better Local Government, Improving Infrastructure Delivery and Asset Management, page 1

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The Regulatory Impact Statement on opportunities to improve efficiency acknowledges that the report received from the Efficiency Taskforce did not identify legislative changes that would have a substantial effect on the efficiency of council processes.⁵

I am concerned at the short timeframe for the commencement of proposed provisions. Many of the concerns the Bill seeks to address, appear to have arisen out of a lack of good guidance provided by central government and legislation that is difficult to interpret and understand. In the absence of a proper implementation strategy including quality guidance material available from the outset, there is a real likelihood that this situation will be repeated by the proposed amendments. Capacity and capability constraints in local government are identified in the Regulatory Impact Statements, so more time should be allowed for local government to respond to the new requirements in the most cost-effective manner if they become operative. Surely time should be taken to ensure the most efficient implementation of legislation changes, designed to improve efficiency.

However, there is a consistent theme in Government initiatives that they appear rushed, nor thoroughly investigated, and are inadequate in their implementation planning and analysis. This was a major criticism of the central government in the 2013 Productivity Commission Final Report on Towards Better Local Regulation.

Better Local Government starts from the assumption that local government is out of control, in trouble and needs to be firmly brought towards achieving central government's broader agenda. In effect, central government sees local government as its operational arm. This ignores the fact that local government is a sphere of government in its own right, possesses considerable expert knowledge and experience and has the legitimate right to question the policy outcomes sought by Central Government, which it is expected to deliver (typically without Central Government assistance).

Information provided by Central and Local Government indicate a wide divergence in views as what the Central government believes it is achieving and what Local Government considers to be the effect of legislative reforms imposed on them by Central Government.

For example, The Cabinet Paper on *'Better Local Government: Improving Infrastructure Delivery and Asset Management'* states: *"The current planning proposals are set in the context of local government reforms since 2010 that have cumulatively reduced the compliance burden for councils."*⁶ The Regulatory Impact Statement on improving infrastructure delivery and asset management points out that previous reforms have streamlined Council activities⁷.

However, Local Government not only disagrees with the assertion that legislative changes to the LGA 2002 and other legislation, have resulted in streamlined Council processes and reduced Council costs, they argue it has done the reverse by increased complexity and Council costs.

The report *'Impact of Government Policy and Regulations on the Cost of Local Government: A report on the extent of costs imposed by legislation and regulation from 2006 to 2021'*, identifies "government legislation

⁵ Regulatory Impact Statement – Opportunities to improve efficiency paragraph 14

⁶ Cabinet Economic Growth and Infrastructure Committee (2013) *'Cabinet Paper on Better Local Government: Improving Infrastructure Delivery'*, Paragraph 7

⁷ Regulatory Impact Statement – Improving infrastructure delivery and asset planning, paragraph 96

and regulation have created what can only be called a tsunami of costs that councils have no option than to meet.”⁸ A ‘tsunami of administrative and regulatory costs’ have been “justified on the basis that they are necessary to improve accountability or transparency.”⁹

The above report identifies a situation of ‘regulatory creep’ which refers to increasing the number of regulations councils must comply with, as well as the complexity of existing regulations. Legislation highlighted for exhibiting the most regulatory creep, was the LGA 2002 and the 2010 amendments to this Act.¹⁰ It states that Wellington City Council has estimated that its additional compliance cost from the 2010 amendments to the LGA 2002 were approximately \$360,000 per annum (or \$3.36 million over ten years).

The same situation is reflected in Council opinions on changes to the *Resource Management Act 1991* and National Policy Statements, as exemplified by various quotes from Councils reproduced in the report *‘Alternative Analysis of Local Government Submissions on the Resource Management Act Discussion Document 2013: Focusing on the Concerns raised by the Local Government Sector’¹¹*.

Local Government New Zealand stated in their April 2013 submission on the RMA Discussion Document titled *‘Improving Our Resource Management System’* that the casual approach of the central government to the generation of further costs for local government is ‘undesirable’. *“Rhetoric of this kind only lends itself to poor and uncertain law, as was the case with last year’s amendments to the Local Government Act.”*

Given strong concerns raised by Local Government on the cost-implications, quality and workability of recent legislation, there is a need to halt further changes until these concerns have been investigated and the proper relationship between local and central government identified. This investigation needs to include the cumulative impact of changes to a multiplicity of legislation, on Council costs and their ability to meet these costs. Local Government must have guaranteed access to adequate funding to cover the costs of its legitimate activities. Any assumption that Councils can fund legislative changes through efficiency savings alone is unrealistic.

⁸ Local Government New Zealand (2012) *‘Impact of Government Policy and Regulations on the Cost of Local Government: A report on the extent of costs imposed by legislation and regulation from 2006 to 2021’ Part One, Summary on page 8*

⁹ Ibid. page 21

¹⁰ Ibid. page 8

¹¹ A. Tindale (2013) *‘Alternative Analysis of Local Government Submissions on the Resource Management Act Discussion Document 2013: Focusing on the Concerns raised by the Local Government Sector.’* Chapter on Poor Relationship between Central and Local Government pages 33-40
http://www.planning.org.nz/Attachment?Action=View&Attachment_id=698

Development contributions

Definition of community infrastructure

I strongly object to the proposed definition for ‘community infrastructure’. Not only does this definition effectively limit the range of community infrastructure which councils could seek development contributions for (discussed further below), it is considered to:

1. Undervalue the diversity of facilities which can serve the social and cultural needs of a community;
2. Would create problems in identifying what type of facility/infrastructure are items which do not fall within the proposed definition (such as libraries and museums);
3. Lead to the conclusion that funds spent on facilities/infrastructure not covered by definitions in sections 5 and 197, do not form part of the purpose of local government as identified under new section 10
4. Create the impression that community services (e.g. museums/libraries) which do meet the definition for community infrastructure, should not be provided or funded by Local Government.

It is therefore recommended that the proposed definition of community infrastructure in section 197(2) be changed to the definition used in the Regulatory Impact Statement on improving development contributions of:

*‘Community infrastructure: facilities and land that serve the social and cultural needs of a community, such as halls, swimming pools and libraries’.*¹²

Examples provided of community infrastructure, could be expanded to refer to a greater diversity of facilities, such as those identified in the following table.

Table 1: Types of community infrastructure¹³

Local/Neighbourhood	Sub District	District/Regional
Parks and playgrounds	Childcare centres	Art galleries
Cycle paths and footpaths	Community halls	Museums
Boardwalks	Neighbourhood Centres	Libraries
Public toilets	Senior Citizen centres	Civic Centres
	Youth centres and facilities	Playhouse
	Community arts centres	Sporting facilities
	Bowling clubs	Swimming pools
	Club rooms/change rooms	Golf Courses
		Surf club facilities

¹² Regulatory Impact Statement – *Improving Development Contributions*, Paragraph 19

¹³ Syme Marmion & Co. (2008) *‘Final Draft Local Government Guidelines - Contributions Towards Community Infrastructure Funding’* Page 8

www.walga.asn.au/downloader.aspx?p=/Portals/0/Templates/docs/appendixb.pdf

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A new definition for community infrastructure is not needed to restrict the range of community infrastructure for which development contributions could be sought. Such a restriction could be imposed by other means, with lower risks of unintended effects.

Should the proposed definition for community infrastructure be retained, a definition for community centre should at least be provided, to minimise scope for dispute over the proposed definition and the facilities it covers.

Restrictions on Community Infrastructure/Facilities which can be funded by Development Contributions

I am concerned that the reduction in items for which development contributions could be sought, would lead to lack of provision of community services in growth areas and declining quality and levels of service for existing cultural, recreational and social services. This is identified as a low to moderate risk in the Regulatory Impact Statement¹⁴, although there is little evidence of research to justify this risk rating.

Community services and facilities contribute to the cultural and social wellbeing of communities and are particularly important for low income members of the community. Low income families also benefit from free or low cost provision of services, such as libraries, swimming pools and other sports facilities, art galleries and other cultural facilities. They are particularly important for the education, health and social well-being of children who parents may not otherwise be able to pay for access or transport to attend more distant facilities.

SGS Economics and Planning carried out a study in 2011 to quantify the benefit provided by Queensland public libraries. It found that these libraries *“contribute significantly to community welfare. Indeed the benefits contributed by public libraries outweigh their provisioning costs by a factor of 2.4...Public libraries contribute approximately \$295 million to Queensland Gross State Product and support 3,135 full time equivalent jobs each year.”*¹⁵

The impact of reducing the ability to collect development contributions for community services, combined with other legislative changes, may lead to local authorities deciding that they cannot provide these public goods (particularly in areas where growth is occurring) or that they will have to impose prohibitively high charges which excludes low income families. New Zealand should take heed of the experience of South East Queensland, where *“communities are being built on the assumption that the social infrastructure will follow. Invariably it does not follow until much later, if at all.”*¹⁶

Several Councils experiencing urban growth (including Auckland, Wellington City and Kapiti District) raised concern over the restrictions on obtaining contributions for community facilities within their submissions on the Development Contributions Discussion Document.

¹⁴ Regulatory Impact Statement – *Improving Development Contributions*, Paragraph 85

¹⁵ SGS Economics and Planning Pty. Ltd. (2013) *‘Understanding the Value of Community Facilities’* page 9, Southeast Queensland Insights May 2013 edition, SGS Economics and Planning, Australia
http://www.sgsep.com.au/files/SEQ_Insights_Bulletin_web_final.pdf

¹⁶ SGS Economics and Planning Pty. Ltd. (2005) *‘Planning for Social Infrastructure’*, page 2 Special Edition December 2005 Urbecon Newsletter, SGS Economics and Planning Pty. Ltd., Australia
<http://www.sgsep.com.au/system/files/UrbeconDecember2005.pdf>

The issue of whether new development creates a need for community infrastructure/services, which it should contribute to the cost of, was considered in the 1990 landmark Victorian Administrative Appeals Tribunal decision on *Eddie Barron Constructions Pty Ltd v Shire of Pakenham & Anor* and more recently by the Standard Development Contributions Advisory Committee set up by the Victorian State Government.

The ‘Eddie Barron’ decision indicated that development contributions could be legitimately sought for community facilities, where new development cumulatively adds to the need for such facilities, particularly in the case of creating a new residential area. Relevant considerations for community facilities included:

- Will the community benefit collectively from the infrastructure?
- Will the community suffer costs if the infrastructure is not provided?
- To what extent will the capacity to use facilities throughout the community be reciprocal?¹⁷

The Standard Development Contributions Advisory Committee recommended that development contributions could be used to part fund the following community and recreational facilities in urban growth areas.

Table 1 Growth Areas Community and Recreation levy – Allowable Items¹⁸

Facility	Allowable items	Land in levy?	Construction in fixed levy?
COMMUNITY FACILITIES			
Level 1 multi-purpose community centre	Level 1 multi-purpose community centre: <ul style="list-style-type: none"> • Building • Multi-purpose community rooms • Kindergarten/pre-school/3 yr old group • Occasional childcare centre • Maternal & child health consulting room • Childcare Centre • Youth space/facility • Consulting Rooms • Adult Education Space • Community arts & cultural space • Kitchen • Ancillary space including storage, amenities, circulation space, foyer, office space etc • Playground, car parking, landscaping 	Yes	Yes

¹⁷ Standard Development Contributions Advisory Committee (2012) ‘*Setting the Framework*’ Victorian State Government, Australia page 15 <http://www.dpcd.vic.gov.au/planning/panelsandcommittees/current/standard-development-contributions-advisory-committee>

¹⁸ Standard Development Advisory Committee (2012) *Ibid.* pages 65-66

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Facility	Allowable items	Land in levy?	Construction in fixed levy?
Level 2	As above for level 1 plus:	Yes	Yes
Community centre	<ul style="list-style-type: none"> • Neighbourhood House • Space for adult day care/planned activity group • Space for community arts & cultural facility/performing arts • Space for business accelerator 		
Level 3	As above for level 1 and 2 plus:	Yes	No
Specialist community centre or stand alone facility	<ul style="list-style-type: none"> • Community learning centre/library • Youth centre • Performing arts centre • Delivered meals facility 		
OPEN SPACE			
Local and district sports facility	Local and district sports facilities including Football ovals, Soccer pitches, Cricket ovals, Rugby fields, Tennis courts, Basketball courts, Netball courts, Bowls lawns, Bocce lawns, Baseball diamonds, Softball diamonds, Hockey fields, and other local sports* ² facilities which may include: <ul style="list-style-type: none"> • Earthworks, levelling and preparation of playing surfaces • Turf and irrigation • Goal posts, score boards, fencing, lights • Coaches, interchange shelter/seating • Buildings for indoor sports • Pavilion, clubhouse, change rooms (player and umpire), toilets, seating, first aid, kiosk 	Yes	Yes
Park improvements (including drainage reserves.)	Playground, car parking, internal roads, bicycle, pedestrian paths, seating, landscaping, BBQ, picnic facilities	Yes	Yes
Regional sports facility	Including Aquatic Centres, Velodromes, Ice Staking Rinks	Yes	No* ³

Notes to Table 3:

1. Councils can direct funds collected via the fixed levy to construction and/or land for the items listed in the tables as indicated.
2. Other local sports may be appropriate, depending on local needs and the demographics of the area.
3. Construction of these higher order facilities may be allowable in some circumstances but only if it can be demonstrated that the proposed regional sports facility is clearly justified for funding within the fixed levy.

Draft Local Government Guidelines for the use of contributions to fund community infrastructure, was prepared by Syme Marmion and Co for the Western Australian Government in 2008. It provides guidance on how Councils can establish a nexus between new development and community infrastructure provision, through the use of a 'Community Infrastructure Plan'.

The guideline identifies standards for community facilities in Western Australia. These standards indicate that an increase in population between 10,000 to 15,000 persons could generate sufficient need for a new

local community centre; with areas experiencing growth above 20,000 persons able to generate sufficient need for a new District Community Centre.¹⁹

In contrast, the *Auckland Housing Accord* alone seeks to encourage the construction of 39,000 additional dwellings within three years, which if occupied at the average occupancy rate for dwellings in New Zealand (2.68²⁰), would increase the population by over 104,000 persons. This amount of growth could exceed the ability of existing community facilities, including libraries to provide for this additional population. Let alone the anticipated increase of 100,000 homes within the next ten years.²¹

Ensuring that only justifiable contributions to community infrastructure is sought via development contributions, does not require the range of community infrastructure to be limited to a short list. Especially in light of other proposed changes, such as the proposed principles for development contributions, content of development contribution plans and use of development contribution commissioners. Guidelines could also be produced, which address the concerns of the NZ Government about the possible (but largely unproven) abuse of development contribution provisions.

Principles of Development Contributions

I support the specification of principles for development contributions and note that principles for development contributions have already been formally or informally established in a number of jurisdictions, including New Zealand.

Nevertheless, it is considered that the suggested principles should be rephrased into more simple and positive language. An example of more positive and easier to understand principles for development contributions is contained in the '*Final Draft Local Government Guidelines - Contributions Towards Community Infrastructure Funding*' reproduced below:

"1. Need and the nexus

The need for the infrastructure included in the DCP must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).

2. Transparency

Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.

3. Equity

Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.

4. Certainty

All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.

¹⁹ Syme Marion and Co (2008) 'Final Draft Local Government Guidelines - Contributions Towards Community Infrastructure Funding'

www.walga.asn.au/downloader.aspx?p=/Portals/0/Templates/docs/appendixb.pdf

²⁰ Statistics New Zealand 'Occupancy rate tables' New Zealand average 2006

<http://www.stats.govt.nz/~media/Statistics/browse-categories/people-and-communities/housing/housing-indicators/occupancy-rate-tables.xls>

²¹ Auckland Council's submission on the Development Contributions Discussion Paper

5. Efficiency

Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.

6. Consistency

Development contributions should be applied uniformly across a Development Contribution Area and the methodology for applying contributions should be consistent.

7. Right of consultation and review

Developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the contributions are not reasonable.

8. Accountable

There must be accountability in the manner in which development contributions are determined and expended.”²²

Concern is also raised regarding the use of past tense ‘*cumulatively have created*’ in section 197AB(a). This wording is considered to encourage the following:

- Existing infrastructure capacity to be absorbed by developments on a ‘first come, first serve’ basis;
- Inconsistent treatment between developments of similar nature, leading to a higher likelihood of complaints;
- Increasing the cost of later developments, who have to fund a higher proportion of new infrastructure needed to address infrastructure shortages; and
- Creating a financial incentive for Councils not to fund improvements in existing infrastructure until an imminent need for such infrastructure can be proven, which would allow full or part funding through development contributions.

A more progressive approach has been recommended by the Standard Development Contributions Advisory Committee that requires there to be a reasonable nexus between development and infrastructure funded through development contributions. This allows for the use of development contributions where development does not individually cause the need for infrastructure, “*but that it forms part of wider planning unit that **will need** the social and physical infrastructure...[emphasis added]*”.²³

The importance of allowing Councils to collect development contributions towards infrastructure put in advance of urban growth expectations (that is, prior to formal applications to the Council) is identified in the ‘*Development Contributions Review – Discussion Document*’:

*“local authority infrastructure often needs to be put in **advance** of land being developed to ensure health, environmental together with customer standards and expectations are met and avoid potentially higher costs associated with retrofitting land with the required infrastructure at a later date. Providing infrastructure in advance of development can also be important in providing certainty for developers that a development is able to proceed within a desired timeframe” [emphasis added].²⁴*

²² Syme Marmion & Co. Ibid. page 2

²³ Standard Development Contributions Advisory Committee Ibid. page 37

²⁴ Department of Internal Affairs, Policy Group ‘*Development Contributions Review: Discussion Paper*’ page 22

The Cabinet Paper on Better Local Government itself identifies that a critical issue facing councils is “*how to manage the timing of investment for growth, to avoid constraints on growth from limited infrastructure capacity...*”²⁵

If Council’s are obligated to service ten years supply of residential land with infrastructure²⁶, prior to its development, the ability to recover full or partial infrastructure costs, will be essential to avoid high growth Councils experiencing financial difficulties.

It is recommended that section 197AB (a) be amended as follows:

“Development contributions can be required if developments create or will cumulatively create a requirement for the territorial authority to provide new or additional assets or assets of increased capacity.”

Absence of Evidence that Benefits of Changes exceed Costs

Scant evidence has been provided that the benefits of the proposed changes exceed the costs of their execution. In particular

- Investigations have revealed significant benefits provided by the use of development contributions and the continuation of the use of development contributions was supported by the Local Government Infrastructure Efficiency Advisory Group and New Zealand Productivity Commission;
- **Huge scale of potential costs (in the hundreds of millions per year for lost revenue alone), with much lower anticipated benefits²⁷;**
- Income distribution effects between beneficiaries (developers) and losers (territorial authorities, ratepayers and businesses);²⁸
- The scale of lost revenue could have similar effects as that identified for Option 5 (removal of development contributions) of territorial authorities becoming reluctant to provide supporting infrastructure needed for growth;²⁹
- Uncertainty over the outcomes for pursuing preferred option³⁰;
- *“The fundamental theoretical underpinnings of the development contribution system are generally sound.”*³¹
- The ‘*Development Contributions Review – Discussion Paper*’ identified several restrictions on the use of development contributions under existing provisions, including the principle that

²⁵ Cabinet Economic Growth and Infrastructure Committee (2013) *Cabinet Paper on Better Local Government, Improving Infrastructure Delivery and Asset Management*, paragraph 38

²⁶ A residential land supply of 10 years is anticipated to be included as a function of territorial authorities under the *Resource Management Act 1991* via a new Bill introduced later this year.

²⁷ Regulatory Impact Statement – Improving Development contributions, Costs and Benefits associated with Option 2a, pages 21 and 22

²⁸ Ibid. Costs and benefits associated with Option 2a. pages 21-22

²⁹ Ibid. paragraphs 134 and 160.

³⁰ Regulatory Impact Statement – Improving Development contributions, Agency disclosure statement page 1

³¹ *Regulatory Impact Statement – Improving Development contributions*, paragraph 27

*“development contributions can only be charged to fund the portion of new infrastructure that is related to growth.”*³²

- Acknowledgment that *“changes to the development contributions are unlikely to significantly improve housing affordability”*;³³
- Possibility raised that territorial authorities may already be compliant with the proposed changes³⁴;
- Majority of development contributions under existing provisions are expected to be used for hard infrastructure (roading, water and waste)³⁵;
- The size and variability of development contribution charges for residential developments in New Zealand are broadly comparable with those of New South Wales and Queensland in 2010, municipal infrastructure charges in Canada in 2009 and some states in the United States of America in 2012.³⁶
- Typical development contribution charges represent only a small proportion (3%) of national median house price in New Zealand³⁷, and presumably a smaller proportion again of the cost of new houses³⁸;
- The average proportion of development contributions to house prices has increased slightly since 2008³⁹;
- Covec identified that areas with higher development contribution charges may simply reflect those Councils with higher costs of providing infrastructure to dispersed or remote communities, or the need for significant new investment to increase capacity⁴⁰.
- Possibility that greater investigation of effects would alter the assessment of options considered, and reveal greater benefits from a non-regulatory approach (Option 1), as well as significantly lower financial costs;
- Capacity constraints and lack of time for implementation could create the same risk as that identified for Option 3 (Development contributions regulations) that smaller local authorities could occur greater costs in preparing and administering development contribution plans than they collect or abandon development contributions as a source of revenue for new infrastructure.⁴¹ The Regulatory Impact Statement indicates that smaller councils may be spending as low as \$43,000⁴² on development contribution plans preparation and administration, far lower than the estimated cost of around half a million for the preparation of a development contribution plan under the proposed system⁴³.

³² Department of Internal Affairs, Policy Group (2013) *‘Development Contributions Review: Discussion Paper’* page 18

³³ *Regulatory Impact Statement – Improving Development contributions*, paragraph 158-159

³⁴ *Ibid.* paragraph 92

³⁵ *Ibid.* paragraph 25

³⁶ Department of Internal Affairs, Policy Group (2013) *Ibid.* Page 19

³⁷ *Regulatory Impact Statement – Improving Development contributions* *Ibid.* paragraph 33

³⁸ The average size of new houses is significantly above the average size of existing houses and combined with more expensive building materials is expected to be reflected in house price. This point is also raised in the *‘Development Contributions Review’*, Footnote 19 page 20.

³⁹ Department of Internal Affairs, Policy Group (2013) *Ibid.* Footnote 19 page 20

⁴⁰ *Ibid.* page 21

⁴¹ *Regulatory Impact Statement – Improving Development contributions.* paragraph 106

⁴² *Ibid.* paragraph 36

⁴³ *Ibid.* Footnote 44 page 21

Lack of Transition Time

There is little investigation of the ability of Local Government to be able to comply with suggested changes with almost no 'lead-in' time or guidance to accompany such changes, and the consequences for Councils which are unable to comply before the provisions take effect. The lack of transition time appears particularly irresponsible in light of:

- Identified capacity constraints in Councils;⁴⁴
- Provisions in the Bill are inconsistent with commentary in the Regulatory Impact Statement regarding the need for transition provisions and availability of guidance to accompany legislation to reduce transition costs and risks.⁴⁵
- Advice from the Standard Development Contributions Advisory Committee that existing development contributions plans administered by Councils in Victoria *"are complex and require significant resources allocated to their preparation and can take up to two years to prepare."*⁴⁶
- Estimated time period of 6 months to a year within the Regulatory Impact Statement for Councils to change development contribution policies to reflect legislation change.⁴⁷

A longer implementation period would give greater scope for Councils to share knowledge of how best to minimise the costs of producing higher quality development contribution plans. Information sharing as a means of raising the capability of some councils is of especial value, in the absence of detailed guidance being prepared.

Private Developer Agreements

I am of the view that proposed provisions regarding development agreements are not needed, as Councils already have the ability to enter into such agreements. Although it is noted that the proposed provisions do not require Councils to accept such agreements, they are anticipated to create additional pressure on Councils to accept agreements, which may place additional financial risks on Councils and consequentially ratepayers. Concern is raised over the possibility of future amendments (as has been the case with triennial agreements between Councils) that progressively impel Councils to enter into agreements, which may be detrimental to the long-term financial position and asset base of Councils.

It is unclear if scope exists for Development Contribution Commissions to require Councils to accept developer agreements, as a method of resolving disputes between Councils and developers regarding development contribution payments.

Concern is particularly raised over the statement in the *'Development Contributions Discussion Document'* that ***"developers would not need to match the standard of infrastructure that would have been provided by the territorial authority [emphasis added]"***.⁴⁸ Privately provided infrastructure of inferior quality to

⁴⁴ Ibid. paragraph 54

⁴⁵ Ibid. paragraph 164

⁴⁶ Standard Development Contributions Advisory Committee Ibid. page 30

⁴⁷ *Regulatory Impact Statement – Improving Development Contributions*, Costs and benefits associated with Option 2a pages 21 and 22

⁴⁸ Department of Internal Affairs, Policy Group *'Development Contributions Review – Discussion Paper'* Page 36

that typically demanded by Councils represents a financial risk to Councils, which should not be lightly entered into. This viewpoint is emphasised by SOGLM (Society of Local Government Managers) and Parmerston North Council in their submissions on the Development Contributions Discussion Paper.

“SOLGM is unconvinced that this option would allow for sustainable asset management and associated financial disciplines. In the medium to long term, this is likely to manifest itself in greater risk of asset failure, where pressure will be put on councils to rectify problems...Other submitters have raised examples where private provision has created risks. We submit that this option needs further consideration, particularly as to the practicalities and risks before it can be pursued further.”⁴⁹

“...Territorial authorities would be under no legal obligation to accept, or take over responsibility of the private infrastructure if the developer/body corporate failed. However, territorial authorities have statutory responsibilities relating to public health and safety that would eventually compel a territorial authority to take over responsibility for the infrastructure. Ultimately ratepayers may ‘foot-the-bill’ for upgrading infrastructure not designed to Council engineering standards, or potentially infrastructure that has not been subject to appropriate ongoing maintenance, repair or renewal. A territorial authority that permits developers to build and operate core infrastructure runs the very real risk of inheriting problems that require resolution at a later stage, the cost of which will fall on ratepayers...”⁵⁰

As a minimum, guidelines should be prepared for the use of development agreements, which incorporates principles recommended by OECD in 2007 on ‘Private Sector Participation in Infrastructure.’⁵¹ These guidelines should suggest the use of measures to reduce Council’s exposure to financial risk (such as the use of performance bonds).

Given the strong concerns raised by SOLGM and Local Councils regarding the use of privately provided infrastructure in submissions on the Development Contributions Discussion Document, little uptake of such agreements is anticipated. No attempt should be made to force Councils to enter into such agreements, especially in the absence of evidence that shows the concerns of Councils can be satisfactorily ameliorated.

Risks identified with the use of privately provided infrastructure are identified below:

- Quality of infrastructure may be below Council standards;
- Infrastructure provided may not at accepted safety, affordability to users and sustainable standards demanded by community;
- Privately provided infrastructure may not be suitably maintained or repaired.
- Difficulties in ensuring that privately provided infrastructure is maintained in good condition, especially when ownership and responsibility is split between multiple parties. Collective responsibility can lead to collective neglect, particularly if parties cannot agree amongst themselves or can not be held personally liable.
- Private developers may not be willing to build or operate infrastructure to the same standard as that provided by Councils.

⁴⁹ SOLGM submission on the Development Contributions Discussion Paper

⁵⁰ Parmerston North Council’s Submission on the Development Contributions Discussion Paper

⁵¹ <http://www.oecd.org/daf/inv/investment-policy/38309896.pdf>

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- Developers have a financial incentive to supply infrastructure which as lower upfront costs, but potentially higher long-run operating costs.
- Developers providing infrastructure may cease trading by the time that problems with privately provided infrastructure is detected, so that the Council '*is the last man standing*'.
- Privately provided infrastructure could alter the economies of scale enjoyed by Councils in the supply of infrastructure, and hence increase the cost of Council supplied infrastructure.
- Issues of equity and fairness if one group of residents have lower standards of infrastructure than other groups.
- Possibility that home owners with responsibility for maintaining private infrastructure will demand lower Council rates.

The World Bank Group reveals that 30% (or \$US20,632 million) of private investment in infrastructure around the world between 1990 and 2012, comprise projects which have been cancelled or under distress.⁵²

Research by OECD reveals risks if the public sector becomes dependent on private sector investment in infrastructure.

*"But experience shows that financing urban infrastructure through PPI [private provision in infrastructure] has not proven to be "low hanging fruit". Indeed it appears to be a fairly unpredictable source of finance, given the number of problems encountered with even the relatively limited number of transactions completed. Those local governments strapped for funding and keen to expand their investments would be wise to recognize these limitations. Federal governments encouraging local governments to use PPI to support their investment programs need to recognize that PPI entails important fiscal risks as well. Because the future fiscal obligations taken on by local governments in PPI don't show up in traditional accounting frameworks, federal governments would be well advised to put in place safeguards to ensure that those local governments with fragile finances don't take on more risk than they can bear in the interest of mobilizing funding through PPI in the short run..."*⁵³

"However, a number of experiences involving the private sector since the 1990s have fallen short of expectations for all parties involved and led in some cases to highly politicised debates and international arbitration. In particular, the expected surge in the flows of private investment did not materialise. The causes were often a poor understanding of the opportunities and risks involved by private sector participation in a complex sector, as well as inadequate framework conditions. This contributed to catalysing public attention on the role for private sector participation in developing and managing water systems, as well as more

⁵² The World Bank Group, Private Participation in Infrastructure Database
http://ppi.worldbank.org/explore/ppi_exploreSector.aspx?sectorID=4

⁵³ P. C. Annez (2006) 'Urban Infrastructure Finance from Private Operators: What we learned from Recent Experience?' page 22 World Bank Policy Research Working Paper 4045 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/10/25/000016406_20061025122215/Rendered/PDF/wps4045.pdf

generally on the conditions under which water services can be provided safely, affordably and sustainably...⁵⁴

It is noted that there have been several failed public-private partnerships in New South Wales, which include the Sydney 'Cross-City' Tunnel, Lane-Cove Tunnel (Sydney), 'AirLink' (Sydney Airport Railway Link) and 'Reliance' Rail.

The report '*Better Local Government? An analysis of the government's proposals for local body reform*' adds that "*Privatising the operation of local services, or building infrastructure using private/public partnerships simply shift where costs fall: they seldom reduce the costs of maintaining a robust asset base.*"⁵⁵

The use of private agreements needs to be monitor to examine both their uptake, the quality of infrastructure provided and whether there is any increase in financial cost or risk absorbed by participating Councils.

Use of Development Commissioners

I support the principle of allowing for the independent review of disputes over development contribution charges between Councils and developers. It is noted that the scope of this review does not extend to challenging the content of a development contribution plan, but rather applies to the application of a development contribution plan to a specific application.

Notwithstanding, it should be made clear that Development Commissioners do not have the ability to require Councils to enter into development agreements as a means of resolving development contribution disputes.

To maximise the independence of Development Contributions, it is preferable if accreditation of development contribution commissioners was undertaken by a professional body such as the New Zealand Planning Institute (NZPI), Local Government New Zealand (LGNZ) or Society of Local Government Managers (SOLGM). Development commissioners should be randomly assigned, to avoid any party engaging or lobbying for a particular commissioner, which is most likely to favour their viewpoint. The decisions of Development Commissioners need to be monitored to ensure consistency and fairness in decision making.

Effects on Capability of Councils

The following changes to the development contributions system is considered to have an adverse effect on the capability of Councils.

- Loss of Council revenue from development contributions (with potential losses identified in the Regulatory Impact Statement – Development Contributions Review in the hundreds of millions);
- Need for Councils to quickly amend and update development contribution plans, in the absence of up-to-date guidance;

⁵⁴ OECD (2009) '*Private Sector Participation in Water Infrastructure: OECD Checklist for Public Action*' Introduction page 9

⁵⁵ P. Harris (2012) '*Better Local Government? An analysis of the government's proposals for local body reform*' Report commissioned by PSA page 15

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- Likely need for some Councils to carry out additional investigations, as part of the review and updating of development contribution plans;
- Likely need for legal advice and legal debate over the proposed legislative provisions, including the definition of community infrastructure and the terminology of the proposed principles for development contributions;
- Need for Council's to decide how applications for development agreements are to be assessed;
- Increased ability for developers to challenge development contributions sought;
- Increased financial risk from the use of developer agreements;
- Increased administrative costs of developer agreements; and
- Increased reporting, compliance and monitoring costs.

It is disappointing that a lower priority is given in the Cabinet papers and Regulatory Impact Statements to costs borne by Local Government, compared to that for businesses and private property owners. In addition to the failure to identify the likely flow on effects from a reduction in Council revenue, other than how this may affect private development (i.e. a possible reluctance to provide supporting infrastructure needed for growth).

A drastic reduction in Council funding through reduced development contributions, in addition to higher compliance costs, are anticipated to have the following effects:

- Upward pressure on Council rates;
- Upward pressure on Council borrowing;
- Upward pressure on Council payments to service debt;
- Upward pressure on user charges for access to Council services/facilities;
- Upward pressure for 'full cost recovery' on all Council services/facilities;
- Pressure to reduce staff;
- Increased staff workloads and stress;
- Pressure to reduce level of service in areas seen as 'less essential' such as community, social, recreational and environmental facilities/programs;
- Reduced access to Council services/facilities;
- Reduction in social and cultural wellbeing of communities;
- Reduction in grant money available to charitable groups; and
- Increased social inequality and disadvantage.

RECOMMENDATIONS:

Definition of community infrastructure in Section 197(2) amended to:

“facilities and land that serve the social and cultural needs of the community, such as halls, swimming pools and libraries.”

Provision made for the collecting of development contributions for community infrastructure, including types of community infrastructure not specified in the proposed definition for ‘community infrastructure’.

Guidelines produced on the use of development contributions, which could incorporate relevant features of guidance produced by the Victorian, New South Wales and Western Australian State Governments in Australia.

Section 197AB (a) be amended as follows:

“Development contributions can be required if developments create or will cumulatively create a requirement for the territorial authority to provide new or additional assets or assets of increased capacity.”

Alternative wording is considered for the suggested development contributions principles in section 197AB which is easier to understand.

Costs and Benefits of Options to be reconsidered following further investigation and greater discussion between Local and Central Government.

Twelve month delay in the commencement of new provisions for development contributions, to assist the ability of Council’s to comply with the new provisions prior to them taking effect.

Guidelines prepared for the use of development agreements, which incorporates principles recommended by OECD in 2007 on ‘Private Sector Participation in Infrastructure.’⁵⁶

Explicit identification that Councils are not obliged:

- a) to accept private agreements;
- b) to accept private agreements as a means of resolving development contributions disputes heard by a Development Commissioner;
- c) accept (or vest) infrastructure provided through development agreements; and
- d) repair or maintain infrastructure provided through development agreements.

⁵⁶ <http://www.oecd.org/daf/inv/investment-policy/38309896.pdf>

Options of local boards

I have no in-principle objection to the use of local boards, which provide additional opportunities for democratic decision making than a single tier unitary council model. It remains to be seen what level of effective decision making is allocated to local boards, their ability to influence the decision making of the overall governing body and whether they provide cost-effective governance at a community level.

To secure the maximum benefit from Local Boards, care needs to be taken to ensure that they are adequately resourced. This includes access to expert knowledge held by Council staff and education on relevant legislation, policies and working practices within Councils. Codes of Practices are likely to be required to minimise any conflicts with both the governing body and Council staff.

There is a need to monitor the functions allocated to Local Boards, their access and use of resources and their performance. Care is also needed to ensure a level of consistency in decision making between multiple Local Boards and with strategic decisions made by the governing body (such as unitary plans, long-term plan, annual plan, asset management plan/infrastructure plan and urban growth strategy). This in itself is considered to limit the ability of local boards to represent and promote the interests of local residents and ratepayers.

It is also considered that additional direction should be provided in the Act as the responsibilities of chief executives, where decisions/actions sought by a local board are inconsistent with decisions/actions made by the governing body. This would clearly establish that in the event of any inconsistency, decisions by the governing body take precedence.

It is recommended that this direction be provided by adding the following provision at the bottom of proposed Section 42(2A) (a to d):

“Providing there is no inconsistency with the responsibilities of the Chief Executive set out in Section 42 (2) (a to h) above”.

Concern is raised as the level of prescription regarding the allocation of decision making authority to local boards and the complex language used in proposed section 48L. The terminology is considered to create considerable scope for argument. The direction that non-regulatory actions are to be allocated to Local Boards, unless certain conditions apply, also appears inconsistent with Government initiatives to encourage greater economies in scale, reduce duplication of effort, achieve more consistent decision making and regular review options for increasing the efficiency/effectiveness of service delivery.

It is recommended that the principle regarding the allocation of decision making be simplified to the following:

“The principle is that the benefits of decision making by local boards (such as reflecting the needs and preferences of local communities), does not outweigh costs (such as a loss in consistency in decision making or the less efficient use of resources).”

It is important to minimise the risk of any wastage of resources due to potential conflicts between governing bodies and one and more Local Boards, as well as Local Boards and Council staff. This is

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particularly important, in the current tight fiscal environment. My experience of working in Local Government in multiple countries, is that functions carried out by political appointments (such as Elected Members and Community Boards) can sometimes be more efficiently carried out by professional Council staff and political oversight by Elected members may have little or no marginal benefit.

Consideration should be given to amending the timeframes for the adoption of a local board plan specified in Section 48N (1), or alternatively amending this provision to require the preparation and consultation of a local board plan as soon as practicable after an election. This is because an expectation that a local board plan will be agreed shortly after an election, could hinder the ability of a new local board to be fully aware of local communities needs and preferences at the time of plan adoption or to have sufficient knowledge of changes in existing provisions and practices that would be of most benefit to the community they serve. A more in-depth knowledge of community preferences is particularly important where Councils need to take difficult and politically unpopular decisions.

RECOMMENDATION

Code of Practice is created for the use of Local Boards

Monitoring of the use, resourcing and performance of Local Boards

Add the following provision at the bottom of proposed Section 42(2A) (a to d):

“Providing there is no inconsistency with the responsibilities of the Chief Executive set out in Section 42 (2) (a to h) above”.

Amend Section 48L (2) to read

“The principle is that the benefits of decision making by local boards (such as reflecting the needs and preferences of local communities), does not outweigh costs (such as a loss in consistency in decision making or the less efficient use of resources).”

Delete Section 48N (1) (a) or alternatively specify that a local board must prepare and consult on a local board plan (rather than adopt a local board plan) as soon as practicable after an election.

Encouragement to Collaborate and Co-operate, and Transfer of Responsibilities to regional councils

“Encouragement” to Collaborate and Co-operate

Concern is raised over the suggested wording of Section 14(1)(e), that the proposed changes are not necessary and may have unintentional consequences.

Local Councils are already considered to have strong incentives to cooperate in a financially tight environment, especially where the threat of forced Council amalgamation exists. Existing provisions in the LGA 2002 do not act as barrier towards co-operation and collaboration. The Productivity Commission Report on ‘Towards Better Local Regulation’ stated that:

“89% of councils responded that they coordinate/collaborate with other councils on regulatory functions in some way....there is a significant amount of formal and informal cooperation, coordination and sharing of resources occurring amongst local authorities, which is generally seen as successful.”

“The survey evidence that councils are already coordinating in a range of areas suggests that the LGA is not significantly constraining coordination. It is also unclear that strengthening section 14(1) (e) and developing further council policies would significantly increase coordination between councils.”⁵⁷

Evidence of collaboration and cooperation is also provided by:

- Acknowledgement within the Cabinet Paper on ‘Consultation, Decision Making and Council Plans’ that *“I am aware of many positive examples of councils sharing services and expertise to deliver better results”⁵⁸*;
- ‘Future Prosperity of the Hawkes Bay Region’ which recognises there are a number of collaborative frameworks already within the Hawkes Bay region, including the Regional Land Transport Committee, the ‘regional council’s new Joint Committee’ and the ‘collaborative development of the Heretaunga Plains Urban Development Strategy’⁵⁹.
- Future Proof [Regional] Growth Strategy and Future Proof implementation committee with representatives of Waikato Regional Council and Hamilton City, Waipa and Waikato District Councils.
- Waikato Local Authority Shared Services Ltd. (Waikato LASS) and Bay of Plenty Local Authority Shared Services Ltd. (BOPLASS) (This company now provides services to councils outside the Bay of Plenty region)⁶⁰
- Shared ownership of Council Controlled Organisation ‘Capacity’ by Hutt City and Wellington City Councils, and contracting of ‘Capacity’ services by Upper Hutt and Porirua Councils.
- Shared landfill facility by Hutt City and Upper Hutt City Councils.

⁵⁷ Productivity Commission (2013) ‘Towards Better Local Regulation’ Final Report pages 151 and 152

⁵⁸ Cabinet Paper (2013) ‘Consultation, Decision Making and Council Plans’ Paragraph 25

⁵⁹ B. Dollery and M. Kortt Ibid. page 36

⁶⁰ C. Aulich, M. Gibbs, A. Gooding, P. McKinlay, S. Pillots and G. Sansom (2011) ‘Consolidation in Local Government: A Fresh Look’ Volume 1 Report, Australian Centre for Excellence in Local Government (ACELG) page 42

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Concern is raised that the suggested wording of Section 14(1)(e) goes beyond 'enabling', to create a presumption that Councils should undertake joint action in all cases. This could potentially force Councils to spend more money and time on justifying why a decision not to collaborate or cooperate was taken, then the current situation. It should be recognised that there are legitimate circumstances where collaboration may not be an appropriate response, such as District Plans and other strategic documents being at different stages, Councils experiencing different pressures and priorities, differences in resource capability and inability to reach agreement.

If Councils feel compelled to co-operate, the proposed provision could represent an administrative burden and add to, rather than decrease, operating costs.

The proposed provision assumes that operating costs are lowered when economies of scale increase. However, investigations of government performance in New Zealand and Australia have revealed no compelling evidence of such a link. In contrast, TBD Advisory states that the analysis of expenditure of approximately 70 territorial authorities in New Zealand over the last five years indicates that a substantial proportion of Council expenditure (and approximately 66% of local government expenditure in the Wellington and Wairarapa regions) do not show signs of economies of scale. Furthermore, Council amalgamation (or the amalgamation of service provision through shared services) could have potential disbenefits including increased bureaucracy and expenditure, and service level creep⁶¹.

Likewise econometric analysis of Council expenditure and population in the Hawkes Bay Region found "*no statistically significant relationship between council population size and per capital expenditure*"⁶².

I am of the view that cost savings and efficiencies are more likely to be achieved by good management practices and staff working relationships than Council form and structure.

It is recommended that Section 14(1)(e) be modified to encourage the exploration of opportunities to improve the efficiency and effectiveness of service provision (of which collaboration/cooperation is but one option). This is considered to better achieve the purpose of the provision, whilst still providing flexibility to Councils to choose where collaboration/cooperation should or should not occur.

Regular reviews of Cost Effectiveness

I am supportive of the principle of reviewing the cost-effectiveness of service provision on a triennial basis, which is already likely to occur. Nevertheless concern is raised as to the timing of these reviews in proposed section 17 (A)(1). A requirement that such a review occurs shortly after an election is considered to have the possible following unintended consequences:

- Greater disruption to existing work streams;
- Allows less time for elected members to understand existing arrangements;
- May encourage elected members to 'rush in' to fix perceived problems, which may benefit from a more considered response (i.e. may encourage 'false' economies); and

⁶¹ TBD Advisory Ibid. pages 2 and 3

⁶² B. Dollery & M Kortt. Ibid. page x

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- Could encourage electioneering of members on the grounds of reducing Council costs, without a detailed understanding of implications of cost-cutting on service levels, financial commitments and cost to access services.

It is suggested that the timing of the review be changed to at least once every three years, with Council's given the discretion to choose when this review occurs within the election cycle.

Transfer of Responsibilities

I have no objection to the use of provision which allows for the voluntary transfer of responsibilities from territorial to regional Councils. However, I object to any forced transfer of responsibilities, such as that arising from Council amalgamation.

Concern is raised that any forced transfer of responsibility may not adequately consider the experience and expertise of a regional council to carry out additional responsibilities, effects on the financial situation of territorial authorities (such as a loss of revenue) and effects on Council staff (such as their ability to work in an alternative location). At present, the functions performed by territorial and regional councils is highly segregated (particularly within the Wellington region), with land use activities predominantly managed by territorial councils and water, air quality, soil erosion and pest animals predominantly managed by regional councils. This existing segregation of activities means that regional councils often do not have the relevant range of experience to take over functions carried out by territorial authorities.

Clarification should be given that there will be no forced transfer of responsibilities from territorial to regional Councils.

Effects on Council staff and Capability

The proposed provisions are considered to add to the existing pressures on Councils to lower costs (particularly in terms of staff costs) and increase scale of activities, in the belief that this will automatically lead to efficiency savings.

However, at least three reports have been released between 2011 and 2013, which refer to the tendency of those promoting mergers of public sector services in both Australia and New Zealand to overstate the financial benefits. These reports are:

1. C. Aulich, M. Gibbs, A. Gooding, P. McKinlay, S. Pillots and G. Sansom (2011) *'Consolidation in Local Government: A Fresh Look'* Volume 1: Report and Volume 2: Background Papers, Australian Centre of Excellence for Local Government (ACELG).
2. TBD Advisory (2013) *'Governance Options for the Wellington and Wairarapa Regions: An Economic and Financial Assessment'* Report commissioned by Hutt City Council.
3. B. Dollery & M. Kortt (2013) *'Bigger is Not Always Better: An Evaluation of "Future Prosperity of the Hawkes Bay region" and "Potential Costs and Savings of Local Government Reform in Hawkes Bay"'*. Commissioned by Napier City Council.

The first report also examined forms of local government consolidation other than amalgamation, such as shared services. The authors noted that change is a feature of local government, that consolidation generally does not deliver economies of scale, but can deliver economies of scope. And efficiency gains and savings do not result in lower rates of expenditure because of other demands.⁶³

RECOMMENDATION

Amend Section 14(1)(e) to read:

“a local authority should explore opportunities for improving the effectiveness and efficiency of services and achieving identified priorities, including opportunities for collaboration and cooperation with other local authorities and bodies”.

Amend 17(A)(1) to read:

“A local authority must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good quality local infrastructure, local public services and performance of regulatory services every three years.”

Confirm there will be no forced transfers of responsibilities.

Remove most Requirements to use the Special Consultative Procedure

I have no in-principle objection to changes regarding the special consultation procedure. Notwithstanding, I am not convinced that the provisions will have their intended effect of reducing compliance costs and increasing Council flexibility in consultation. In the absence of clear guidance, as to expectations on Councils in relation to consultation, in addition to pressure from more-informed segments of the population to retain existing levels of consultation, it is considered likely that Council’s consultation activities would exceed minimum requirements.

It is understood that the special consultation procedure would still be used for the long term plan and that other forms of public consultation would occur for other strategic Council documents such as the annual plan, transfer of responsibilities, establishment of Council controlled organisations, Urban Growth Strategy and development contributions plan.

It is anticipated that the proposed changes would have little impact on Council workloads, as the most resource-intensive component of preparing strategic documents is the collection of research/information which justifies the preferred option to be pursued, rather than consultation on such documents. Council’s will continue to need to provide good quality information which proves that options have been well-considered and represent the best use of finite resources.

⁶³ C. Aulich et al. (2011) Volume 1 Report page 7

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Changes to the mandatory contents of documents for public consultation (including the long term plan) are considered unlikely to significantly increase community feedback, involvement or understanding of decision making.

Concern is raised as to the proposed amendments to Section 82(1)(f) in relation to information which should be available to submitters. It is considered that submitters should have access to more than just a record of relevant decisions and that this should extend to supporting documents, considered by decision makers when making relevant decisions.

Concern is also raised regarding the deletion of the reference to public participation as part of the purpose of the long term plan. It is considered that the wording of Section 93(f) could be amended to make clear that opportunities for public participation on the content of a long term plan, are limited to its preparation and adoption stage.

RECOMMENDATION

Section 82(1) (f) be amended to read:

“that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority, reasons for making these decisions and any supporting documents taken into account by decision-makers.”

Section 93(f) is amended to read:

“provide an opportunity for participation by the public in decision-making processes on activities to be undertaken by the local authority, at the consultation and decision to adopt stage.”

Asset management Planning and an Infrastructure Plan covering at least 30 years

I am supportive of proposals which seek to ensure the prudent stewardship of resources. Notwithstanding it is considered that the provisions of the Bill would be enhanced through the provision of guidance to Councils and allowing for additional time to transition to the new requirements.

The provisions are considered to be unclear as to expectations on Councils to provide additional infrastructure to support future population and urban growth, opposed to meeting the needs of the existing population. In the absence of funding through development contributions or assistance/grants by Central Government, financial burdens on Council's to put in 'lead' infrastructure in anticipation of growth, may become excessive.

It is expected that it would be difficult to accurately estimate anticipated costs and revenue from infrastructure management and that the proposed 30 year infrastructure plans would inevitably involve an element of guesswork or 'crystal ball gazing'. Information which demonstrates the difficulty that could be experienced in the preparation of such plans is identified below:

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- Comment by Infrastructure Canada that *“The analysis of infrastructure needs is less an exact science than a complex art”*⁶⁴;
- Revenue to Councils from financial and development contributions in 2011 was appropriately half of that projected⁶⁵;
- Inability to quantify the magnitude of problems arising in local government infrastructure delivery, nor the costs to councils of meeting proposed legislative requirements⁶⁶; and
- Recognition in the Regulatory Impact Statement for the need for non-regulatory approaches to complement the legislative changes⁶⁷.

Concern is raised that increased financial pressures on Councils and reduced emphasis on the need for infrastructure to meet ‘environmental standards’ (or achieve environmental wellbeing/sustainable development) will over time, create pressures on Councils to provide infrastructure with the lowest establishment cost, rather than the lowest economic, social and environmental costs over the medium to long-term.

RECOMMENDATION

Clarification be provided as to expectations and responsibilities on Local Councils to provide for additional infrastructure to meet the infrastructure needs for future urban growth and increases in population.

Guidance provided on the management of social and environmental effects arising from infrastructure provision and direction given that economic costs should not be minimised by practices which have higher social and environmental risks/costs.

Guidance on the calculation of ‘whole-of-life’⁶⁸ and ‘whole system’⁶⁹ infrastructure costs.

⁶⁴ Infrastructure Canada Research Note 2003

⁶⁵ Regulatory Impact Statement (2013) *‘Improving Development Contributions’* Footnote 7 page 7

⁶⁶ Regulatory Impact Statement (2013) *‘Improving infrastructure delivery and asset management’* Agency Disclosure Statement Page 1

⁶⁷ Ibid.

⁶⁸ Costs borne at each stage in the life cycle of infrastructure from planning, delivery, maintenance and renewal/replacement.

⁶⁹ Consideration of cost implications of changes to infrastructure on part of the network (eg. drainage network) on other parts of the network. For example, extension of drainage pipes to new areas, may lead to requirements to enlarge existing pipes elsewhere in the network or upgrade water treatment plants.

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