

**Chairperson and Committee Members**

ENVIRONMENT AND COMMUNITY DEVELOPMENT COMMITTEE

13 FEBRUARY 2014

Meeting Status: **Public**

Purpose of Report: For Decision

**SUBMISSION ON LOCAL GOVERNMENT ACT 2002  
AMENDMENT BILL (NO 3)**

**PURPOSE OF REPORT**

- 1 This report seeks the Committee's approval of the attached submission (Appendix 1) on the Local Government Act 2002 Amendment Bill (No 3).

**SIGNIFICANCE OF DECISION**

- 2 This report does not trigger the Council's Significance Policy.

**BACKGROUND**

- 3 On 12 December 2013 a paper was presented to Council providing an update on the latest Amendment Bill to the Local Government Act 2002 (LGA) and the implications of the key provisions (SP-131061).
- 4 This submission has been drafted from the concerns raised and discussed in that paper.
- 5 Submissions close on 14 February 2014.

**CONSIDERATIONS**

**Issues**

- 6 Local Government New Zealand has released a draft submission on the Bill (see Appendix 2). The Development Contributions Working Group (DCWG) has written a submission (see Appendix 3) and Council recognises its expertise on development contributions. These submissions cover in depth issues which are of concern to this Council and therefore, it is suggested Council support them.
- 7 Note: The LGNZ submission is due to be approved by the LGNZ National Council on Friday 7 February. Officers may suggest slight amendments to the proposed Council submission at the Committee meeting.
- 8 The areas of concern highlighted in the Council submission cover:
  - The narrowing range of community infrastructure which can be funded through development contributions
  - The proposed new objection process
  - The impact of the effective time frames and dates.

## Financial Considerations

- 9 The financial considerations for Council were outlined in the paper in December SP-13-1061.

## Legal Considerations

- 10 There are no legal considerations at this stage of the process. It may be necessary to seek legal advice regarding refunding of Development Contributions already collected if the Bill becomes law with the current wording intact.

## Delegation

- 11 The Committee has the power to approve the recommendations under its general powers.

## Consultation

- 12 Consultation is not considered necessary on the largely technical matters.

## Tāngata Whenua Considerations

- 13 There are no specific issues for Tāngata Whenua.

## Publicity Considerations

- 14 A press release will be issued following the Committee meeting.

## RECOMMENDATIONS

- 15 That the Environment and Community Development Committee approves the attached submission (Appendix 1 to SP-14-1115) on the Local Government Act Amendment Bill (No 3) to be sent to the Local Government and Environment Select Committee subject to any amendments proposed.

**Report prepared by:**

**Approved for submission by:**

Alison Lash

Philippa Richardson

**Senior Advisor, Strategic Projects**

**Acting Group Manager Strategy and Partnerships**

## ATTACHMENTS:

Appendix 1: Submission to the Local Government and Environment Select Committee on the Local Government Act 2002 Amendment Bill (No 3)

Appendix 2: Draft submission by Local Government New Zealand

Appendix 3: Draft submission by the Development Contributions Working Group



## **SUBMISSION ON LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (No 3)**

**To the Local Government and Environment Select Committee**



**Officer for contact: Alison Lash**

*Phone 2964786*

*Email [alison.lash@kapiti.coast.govt.nz](mailto:alison.lash@kapiti.coast.govt.nz)*

Kāpiti Coast District Council, Private Bag 60601, Paraparaumu 5254

## 1. Introduction

Kāpiti Coast District Council welcomes the opportunity to comment on the Local Government Act 2002 Amendment Bill (No3). The Council wishes to speak to this submission before the Select Committee.

The Kāpiti Coast District Council was established during the reforms of 1989. The District has seen very significant growth in its permanent population since then, particularly in the decade from 1995 – 2005, when it was one of New Zealand's fastest growing population areas<sup>1</sup>, to reach a current population of 49,104. While much of the District's social and physical infrastructure is relatively new, the Council is still in catch-up mode trying to address the demands of rapid population growth.

Kāpiti has more than double the proportion of older people (aged 65 and over) than the national average (26% as opposed to 12%). Partly as a result of this, the district also has a higher proportion of residents on low fixed incomes than is usual in New Zealand. This, coupled with the issues of rising costs and the Council's need to catch up in the infrastructure area, leaves the Council in a position of quite limited resources and needing to find very fine balances between the affordability of rates increases and achieving the service levels the community requires.

Our submission supports the submissions made by Local Government New Zealand (LGNZ), and the Development Contributions Working Group. Our submission indicates three major issues it has with the Bill (No 3) and suggests some ways of addressing those we believe can be mitigated.

## 2. Executive Summary

We believe strongly that it is elected councils, working closely with their communities, who are best placed to decide the range and scope of services that they should deliver.

The annual and long term planning process provides an environment for open disclosure and discussion between elected members and the communities they represent. Local communities do not hesitate to provide very direct feedback to elected members and staff to ensure that prudent decisions are made and local authorities act within their mandate.

Kāpiti Coast District Council shares the Government's commitment to improving transparency and accountability. We also recognise the accountability mechanisms already in place for ratepayers. In a smaller community such as ours, even more than in the cities, the actions of the Council are one of the major focuses of attention for local media and groups such as the Chamber of Commerce, Grey Power, and groups focused on particular issues. We are constantly reminded of the ultimate sanction of the ballot box every three years by speakers at Council meetings, letters to the editors of our local newspapers and other direct contacts.

We are concerned about provisions within the Bill (No 3) relating to a new purpose for development contributions (DCs), the principles to direct and guide their use by councils, the narrowed range of community infrastructure that can be funded and the new DC objections process.

## 3. Specific comments

### 3.1 DEVELOPMENT CONTRIBUTIONS (DCs) AND COMMUNITY INFRASTRUCTURE

Some of the provisions relating to DCs are acceptable to the Council, such as the requirement to include a schedule of infrastructure projects for which DCs will be levied, and the requirement to consider requests for development agreements.

---

<sup>1</sup> *Statistics New Zealand population data.*

There are however significant concerns for our Council, arising from the provisions relating to Development Contributions contained in Sections 48-65 of the Bill. The government considers that excessive levying of DCs has negative consequences for housing affordability although economists indicate DCs contribute less than 5% of development costs<sup>2</sup>.

As with other fast growing districts and cities where a significant amount of new and expanded infrastructure is needed to service new growth, development contributions are an important funding mechanism for the Council.

The key issue for the Council in the Bill is the narrowing of the range of community infrastructure which can be funded through DCs. This change removes the ability to levy DCs for community facilities other than a narrow list of “community and neighbourhood halls, play equipment located on neighbourhood reserves, and public toilets.” Excluded are libraries, sports centres, aquatic centres, storage and archive facilities, civic administration buildings and arts centres, all of which this Council funds in part via development contributions. Narrowing the range of projects able to be levied for DCs will mean that the Council will no longer be able to continue to levy DCs for recently completed projects such as the Coastlands Aquatic Centre and the Paraparaumu Library. These are demand driven by development.

The proposals mean that DCs would no longer be able to be collected for these projects and therefore existing debt for these projects (and the costs of servicing this debt) would have to be transferred to rate funding (or other funding sources) immediately.

The Bill as drafted creates significant problems for a council which has completed or substantially completed an infrastructure project which was to have been funded fully or partly by development contributions, as is the case for this Council in relation to the Paraparaumu Library and the Coastlands Aquatic Centre, for example. In these cases DCs may no longer be collected *for that type of asset* – e.g., public libraries. The proposal is that “...contributions retained must be used for assets or groups of assets for the same or a similar function or purpose...”, but none of the new s197(2) definitions (halls, play equipment, public toilets) is for the same or similar purpose as a library or aquatic centre. Where DCs have already been collected for such purposes, the problem could be resolved by changing the final references in Cl 5 of Schedule 1AA from “assets” to “activities”. DCs collected for libraries could then be used for other community facilities.

*If the proposed definition of community infrastructure in the Bill remains unchanged, then the following additional transitional provision would resolve some of the problems identified in the preceding paragraph:*

[Territorial authorities may continue to require development contributions for projects completed, or substantially completed, before the enactment of the Local Government Act 2002 Amendment Act \(No 3\) 2013 until such time as the growth related capital expenditure for those projects that were being already being funded by development contributions has been fully recovered.](#)

The proposed new provisions as they stand will result in cost-shifting from the development community to ratepayers, with developers paying a significantly reduced share of the costs of infrastructure. The ‘exacerbator-pays’ principle underlying development contributions as levied in Kāpiti and by many other councils is considered fair and efficient.

A risk of any cost-shifting from the development community is that ratepayers may refuse to invest in more infrastructure than they feel they can afford *and which is not triggered by their needs*. This would result in constrained development or development exceeding infrastructure capacity. Either of those outcomes would negatively affect the Council’s ability to provide good quality local infrastructure and local public services for the current and future needs of our communities. For example, if insufficient ratepayer funding constrains the availability of serviced land, a perverse outcome might be that housing

---

<sup>2</sup> NZIER – Report to LGNZ on Development Contributions (March 2013)

actually becomes less affordable. This would be counter to the Government's stated aim of increasing housing affordability. In any case, this approach shifts costs from up front capital costs of section purchase and house construction to ongoing costs (of rates) and thus results in existing ratepayers cross-subsidising new development with intergenerational benefits.

The new provisions imply that the current "averaging" of costs over all development will no longer be possible with new developments only triggering DCs to cover the growth costs of the particular development (new S 197 AB (d)). Using marginal costs will unfairly charge some developments for the full cost of any major upgrades they trigger (e.g. a new wastewater treatment plant), even if they only require a small amount of the additional capacity. It does not recognise the fact that infrastructure projects contribute to a wider network, and that every development benefits to some degree from an improvement to the wider network. There are sound reasons for averaging development costs across new developments.

### 3.2 PROPOSED NEW OBJECTIONS PROCESS IN THE BILL

A further concern is the new objections process proposed in the Bill. The Council currently allows appeals to an Appeals Committee consisting of Councillors. After that, the only course of appeal is to the High Court on a point of law. The proposed change provides a two step process:

- an informal request to the Council for reconsideration (which would be accommodated under the Council's current practice)
- a formal objection process which allows a developer to appeal to an independent development contributions commissioner, or panel of commissioners, taken from a register of approved development contributions commissioners established by the Minister.

An objection must be based on grounds that the council has:

"(a) failed to properly take into account features of the objector's development that significantly increase or decrease the requirement for community facilities, activities, or groups of activities in the territorial authority's district or parts of that district; or

(b) required a development contribution for community facilities, activities, or groups of activities not required by, or related to, the objector's development; or

(c) incorrectly applied its development contributions policy to the objector's development."

In practice, this could mean that a council's DC Policy could be partially overturned by a commissioner. Any decision of the commissioner is only appealable through judicial review. The grounds for objections are common for remission requests at present. It is likely that these expanded appeal rights will increase appeals, reduce the certainty of development contributions and have the effect of delaying payments.

The first and second grounds for objections again imply that "averaging" of costs over all developments is, if not unacceptable, at least challengeable. Developers could mount an argument, based on this Section, for a marginal rather than average cost approach in setting DCs.

The second point of appeal above suggests that the Council's district wide approach to DCs rather than a catchment-based approach may need to be amended. Prior to the 2012 DC Policy, Council used a catchment-based approach so that development was only charged for the systems that it was part of. That approach may need to be reinstated if the current district wide system is successfully challenged through appeals. DCs could still be levied under a catchment approach but would need to be reallocated.

### 3.3 TRANSITION ISSUES AND EFFECTIVE DATES

Different parts of the Bill will have different effective dates for becoming law. The DC purpose and reconsideration provisions would become effective the day after the royal assent is received while the DC principles, definition of community infrastructure and other DC provisions would become effective one month later. The objection process provisions would not become effective for up to 12 months, presumably to allow the Minister time to set up the register of approved commissioners.

The impacts of these effective dates should not be underestimated. The new provisions will require considerable adjustment to the DC Policy with flow-on effects on the 2015 – 35 Long Term Plan and the implications for rates contained in this process. A more workable timeframe would be 1 July 2015 for all provisions.