Local Government Amendment Bill (No. 3) 2014

Submission to the Local Government and Environment Select Committee

14 February 2014

For a better working life

New Zealand Public Service Association

Te Pūkenga Here Tikanga Mahi

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Executive Summary

Who we are

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the principal union representing workers in local government. Our members have a significant interest in the legislation that shapes their jobs and the services that they deliver to their communities. Additionally, PSA members who work in other sectors (the public service, state sector, district health boards and community public services) have an interest as residents and ratepayers in good outcomes for their local authorities and their communities.

The PSA has looked at the arguments and evidence cited in the papers and reports that have led to these proposed amendments to the Local Government Act 2002 (LGA 2002). We question the need for several amendments and the timing for others. We request that there is a halt to further legislative changes until the strong concerns raised by Local Government on the cost-implications, quality and workability of legislative changes have been investigated and the proper relationship between local and central government identified.

The Bill builds upon previous amendments to the LGA 2002 which have undermined and diminished the constitutionally separate role of local government. 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 significant improve housing affordability, the extent of problems are unknown and legislative changes would not have a substantial effect on the efficiency of Council processes. We urge the select committee to heed the free and frank advice from officials on this and other matters. We believe this advice calls 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 safeguard genuine community participation, allow a legitimate source of funding for a range of community infrastructure to ensure that the social and cultural needs of future communities are met, and retain the right of right of local government to choose how it can best satisfy the purpose of local government under the LGA 2002. Our wide experience of mergers and amalgamations in the public sector in the pursuit of economics of scales, is that that they are not an instant fix and all too often they over-promise and under-deliver.

Recommendations

We recommend

That the government call a halt to this and further legislative changes until the concerns of local government with the Better Local Government reform process have been investigated and the proper relationship between local and central government agreed.

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:

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

That the select committee consider redrafting the 'principles for development contributions' in more simple language.

That section 197AB (a) be amended to read 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.*

That guidance be produced on the use of development contributions and on development contribution plans

That the legislation confirm that councils are not obliged to accept (or vest) infrastructure provided through development agreements and to repair or maintain infrastructure provided through development agreements.

That there be a 12month delay in the commencement of new requirements for development contributions.

That the Bill be amended to reflect the provision applying to local boards in Auckland, namely that members of local boards must comply with the code of conduct adopted by the governing body.

That the proposed requirement to 'actively' co-operate and collaborate in section 14(1)(e) be deleted.

That any proposal to amalgamate or other forms of joint operation or transfer of responsibilities, should meet the following principles, and should safeguard and improve community interests:

1. Any reorganisation must preserve the terms and conditions for staff members.
2. The democratic process should be safeguarded, and community engagement strengthened.
3. There should be public and democratic ownership and control of public assets and public services.
4. Reorganisation must engage workers in developing the structures to deliver high quality, high performing services.

That the provision to hold triennial reviews of cost effectiveness be changed to a requirement to hold regular or periodic reviews at the council's discretion and that the requirement to consider the provision of services by "another person or agency" (in new 17A(2)(b)(iv)) not proceed.

That the special consultative procedure continue to apply when consulting on the creation of a CCO.

That the existing Section 82(1) (f), requiring that persons who present views to the local authority should be provided with the reasons for any decisions, as well as the decisions themselves, be allowed to stand.

That consideration be given amending the wording of Section 93 (6)(f) to make clear that opportunities for public participation on the content of a long term plan are limited to its preparation and adoption stage.

That the select committee remove the term 'prudent' before 'stewardship' in the new section 14(1)(g).

If the proposal for a 30 year infrastructure strategy goes ahead, we ask that guidance be provided on the need to manage the social and environmental effects of infrastructure provision and on the calculation of 'whole-of-life'[1] and 'whole system'[2] infrastructure costs.

[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.

Introduction

Who we are

The New Zealand Public Service Association: Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand, and the principal union in local government. We represent over 59,000 members who work in the public service, state sector, district health boards, community public services and local government. All our members have an interest, as ratepayers and residents of their communities, in local government and how it is organised and focussed to meet their community's needs and expectations.

Additionally, the 6000 PSA members who work in local government have a strong stakeholder interest as the people who deliver local government services. PSA members include: librarians, library assistants, call centre workers, administrators, recreation services workers, planners, engineers, policy analysts, parking wardens, dog control officers, parks workers, managers, team leaders, community workers, gallery and museum workers, building inspectors, civil defence and emergency workers – the full range of occupations in local government. They know how local government works, how it is responsive to its communities, and how it can be more effective at what it does. Around 55% of the local government membership (3260 members) is in Auckland Council and its council controlled organisations.

In developing this submission we sought the views of local government members

This submission is based on PSA policy which has been developed through our representative structures, and on feedback from our members and delegates in local government.

The PSA is affiliated to the Council of Trade Unions Te Kauae Kaimahi (CTU) and has worked with CTU and with other unions with local government membership to share our thinking and develop a collective union position on the issues. WE endorse the submission of the CTU.

The focus of the submission

The submission begins with general comment on the Bill's intentions and on the role of local government and local democracy in New Zealand's system of government. It goes on to give substantive comments and recommendations on the main intentions of the Bill, under the following headings:

- Development contributions
- Options of local boards
- Encouragement to collaborate and co-operate, and transfer of responsibilities to regional councils
- Remove most requirements to use the special consultative procedure, and rename the significance policies
- Asset management planning, and an infrastructure plan covering at least 30 years

General comments about the Bill

Context

We have considered this Bill in the context of the 2010 and 2012 amendments to the Local Government Act 2002. In our submissions on these amendments, we outline our view that the purpose, scope and independence of local government has been undermined by central government though legislative change. In 2010, the amendments to the Act were to:

- narrow the definition of 'community outcomes'
- define core services
- enable Councils to enter into long term contracts for private sector provision of water services, and
- facilitate private sector delivery of local authority services.

In the March 2012 Better Local Government (BLG) paper, a picture of local government in crisis was built up in order to justify 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 unsupported by evidence – as we noted in our submission to select committee at the time.

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.

We question whether the Bill is necessary

We can support the basic intention to encourage more efficient management, accountability and transparency, and better services but we question whether legislative change is required or whether the proposals in the Bill will achieve these objectives. For example:

- The Regulatory Impact Statement on development contributions acknowledges that the changes are unlikely to significantly improve housing affordability[3].
- 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]
- The Regulatory Impact Statement on opportunities to improve efficiency acknowledges that the report received from the Efficiency Taskforce did

[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

not identify legislative changes that would have a substantial effect on the efficiency of council processes.[5]

Transition timeframes are tight

We are also concerned at the short timeframe for 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. Time should be taken to ensure the most efficient implementation of legislation changes designed to improve efficiency.

The relationship between central and local government

Independence of local government under threat

The reforms promoted by the Government start 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 and that it should be a balanced relationship of equals, each operating in its own sphere. The tensions are clear and central government is using its powers to amend the statute setting out the role and functions of local government to limit its scope and role.

Three recent major reports have identified this tension:

The Productivity Commission[6]:

> *The uneasy interaction between central and local government is having a detrimental effect on New Zealand's regulatory system. Indeed, the weaknesses identified in this report often have their origins in, and are perpetuated by, the strained relationship between central and local government. This poor relationship is rooted in divergent views and understandings of the nature of the respective roles, obligations and accountabilities of the two spheres of government. A more productive relationship and interface between central and local government is required.*

The Constitution Review Panel received submissions on the status of local government, and has recommended that the role and functions of local

[5] Regulatory Impact Statement – Opportunities to improve efficiency paragraph 14

[6] http://productivity.govt.nz/inquiry-report/towards-better-local-regulation-final-report p 18

government and its relationship with central government should be part of any further consideration of constitutional issues[7].

Transparency International identifies the integrity issue[8]:

> *... the apparent absence of clear and agreed principles to govern relationships between the two spheres of government in terms of the legitimacy and sustainability of local democracy. The principle in action seems to be that local government is free to take decisions – as long as central government does not disagree. This is a shaky foundation for the future ...*

These authoritative reports suggest that, in the absence of further consideration of the appropriate relationship between central and local government, more legislative amendments will in fact make the situation for local government worse.

Mismatch between central government intent and local government experience

Furthermore, there is a serious mismatch between what 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."[9] The regulatory impact statement on improving infrastructure delivery and asset management argues that previous reforms have streamlined council activities[10].

Costs have increased

However, local government not only disagrees with the assertion that legislative changes to the LGA 2002 *Local Government Act 2002* and other legislation have resulted in streamlined council processes and reduced council costs, but argues it has done the reverse by increasing complexity and council costs.

The LGNZ 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,* states "government legislation and regulation have created what can only be called a tsunami of costs that councils have no option than to meet."[11] A 'tsunami of administrative and regulatory costs' have been "justified on the basis that they are necessary to improve accountability or transparency."[12]

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[7] http://www.ourconstitution.org.nz/store/doc/FR_Other_Issues.pdf

[8] http://www.transparency.org.nz/docs/2013/Integrity-Plus-2013-New-Zealand-National-Integrity-System-Assessment.pdf p144

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

[10] Regulatory Impact Statement – Improving infrastructure delivery and asset planning, paragraph 96

[11] 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*

[12] Ibid. page 21

We need to halt the legislative programme

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. Any assumption that Councils can fund legislative changes through efficiency savings alone is unrealistic.

Development contributions

What the Bill says

The Bill contains a number of provisions that place greater constraints on councils when requiring development contributions on new developments to fund community infrastructure:

- New section 197AA sets out the purpose of development contributions, which is to enable territorial authorities to recover from developers a 'fair, equitable, and proportionate portion of the costs of capital expenditure necessary to service growth'.
- New section 197AB contains a set of development contributions principles, which include: that development contributions should only be charged if developments 'create or cumulatively have created' a requirement to provide new or additional assets or assets of increased capacity; and development contributions should be determined in a manner that is consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over recovery of costs allocated to development contribution funding
- Clause 49 amends section 197(2) to replace the definition of 'community infrastructure' with a definition that lists assets based on the types of infrastructure that service local neighbourhood needs
- Clause 53 inserts new sections 199A to 199N, which relate to the reconsideration of requirements for development contributions
- Clause 57 inserts a new section 202A, which would require that a development contributions reconsideration process be included in a local authority's development contributions policy
- Clause 60 inserts new sections 207A to 207F, which relate to development agreements between councils and developers for the latter to provide community facilities

Definition of community infrastructure

We oppose the definition of 'community infrastructure'

The PSA strongly objects to the proposed definition for 'community infrastructure' in proposed s. 197(2). This definition effectively limits the range of community infrastructure for which councils could seek development contributions. The emphasis is on purely local community infrastructure and even within that constraint it is a very specific and narrow definition, limited by having a closed list

of approved infrastructure items. Some developments are of sufficient magnitude to have an impact on sub-district and district/regional facilities.

Lack of community services likely

PSA members are very 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 Statement[13], although there is little evidence of research to justify this risk rating.

Draft Local Government Guidelines for the use of contributions to fund community infrastructure, were prepared by Syme Marmion and Co for the Western Australian Government in 2008. They provide 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.[14]

Low income earners likely to be worst affected

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 whose parents may not otherwise be able to pay for access or transport to attend more distant facilities.

The benefits of libraries

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]

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[13] Regulatory Impact Statement – *Improving Development Contributions*, Paragraph 85

[14] 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

[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

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 (2.68[16]), 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. The anticipated increase of an additional 100,000 homes within the next ten years will further exacerbate the situation.[17]

Other impacts

However, not only will the proposed definition limit the range of community infrastructure, it is also likely to:

1. Undervalue the diversity of facilities which can serve the social and cultural needs of a community;
2. Create problems in identifying what type of facility/infrastructure are covered (such as libraries and museums);
3. Call into question the role of local government in providing community services such as museums and libraries, if these are facilities that they cannot include in development contributions, given that development is the main source of urban growth.

Our recommended definition

We recommend 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:

> *Community infrastructure: facilities and land that serve the social and cultural needs of a community, such as halls, swimming pools and libraries.[18]*

Principles of Development Contributions

We support having principles of development contributions but suggest another model

The PSA supports the specification of principles for development contributions and notes that principles for development contributions have already been formally or informally established in a number of jurisdictions, including New Zealand. However we are not convinced that the suggested wording is simple and positive enough and we draw the attention of the select committee to the principles expounded in the Syme and Marmion report referred to above and which we have appended as schedule A to this submission as a possible model.

S197AB(a) needs rewording

We are also concerned about the use of the past tense 'cumulatively have created' in section 197AB(a). This wording is likely to:

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[16] 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

[17] Auckland Council's submission on the Development Contributions Discussion Paper

[18] Regulatory Impact Statement – *Improving Development Contributions*, Paragraph 19

- Lead to inconsistent treatment between developments of similar nature, leading to a higher likelihood of complaints;
- Increase the cost of later developments, who have to fund a higher proportion of new infrastructure needed to address infrastructure shortages; and
- Create 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.

Councils must be allowed to collect development contributions in advance

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].*[19]

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…"[20]

If councils are obligated to service ten years supply of residential land with infrastructure[21], prior to its development, the ability to recover full or partial infrastructure costs will be essential to avoid high growth Councils experiencing financial difficulties.

We recommend the future tense be used

It is recommended that section 197AB (a) be amended to read 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.*

[19] Department of Internal Affairs, Policy Group '*Development Contributions Review: Discussion Paper*' page 22

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

[21] 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 to be introduced later this year.

It is also recommended that guidance be produced on the use of development contributions and on development contribution plans.

Reconsideration of development contributions

Development contribution commissioners are unnecessary

The PSA understands that developers should have the right to object to the development contributions required of them and there is a clear need to ensure fair process and natural justice. However, we think that current processes are adequate. The process proposed in the Bill is complex and disproportionate and could encourage more challenges to council decisions on development contributions. We are not convinced that a need exists for such measures.

It is noted that the scope of any reconsideration of a development contribution does not extend to challenging the content of a development contribution plan, but is limited to the application of a development contribution plan to a specific application. It is important that this limitation be retained.

Development contribution commissioners must not be able to require councils to enter into development agreements

We also have concerns about the use of development agreements, which we address below. If the proposal for development contribution commissioners goes ahead it will be important that they do not have the ability to require Councils to enter into development agreements as a means of resolving development contribution disputes.

Development Agreements

Development agreements are not needed

The PSA is 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, we anticipate that they will create additional pressure on councils to accept agreements. This in turn may place additional financial risks on councils and consequentially ratepayers.

These provisions could well increase the use of development agreements and our 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."[22]

Privately provided infrastructure of inferior quality to that typically demanded by councils represents a financial risk to councils and it should not lightly be entered into. This viewpoint was emphasised by the Society of Local Government Managers (SOLGM) in their submission 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*

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

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.[23]

Risks of privately provided infrastructure

Other risks associated with the use of privately provided infrastructure include:

- 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;
- Developers have a financial incentive to supply infrastructure which has 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.

The Act should confirm that councils do not have to accept private infrastructure through development agreements

We recommend that the legislation confirm that councils are not obliged to accept (or vest) infrastructure provided through development agreements and to be obliged to repair or maintain infrastructure provided through development agreements.

Costs and benefits of proposed changes to development contributions

The evidence favours the current approach to development contributions

The PSA is concerned that little evidence has been provided to demonstrate that the benefits of the proposed changes to development contributions outweigh the costs. On the contrary, there is significant evidence in favour of the current approach, for example:

- The continuation of the use of development contributions was supported by the Local Government Infrastructure Efficiency Advisory Group and New Zealand Productivity Commission;
- The likely loss of revenue (in the hundreds of millions of dollars per year), with much lower anticipated benefits[24];

[23] SOLGM submission on the Development Contributions Discussion Paper

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

- Income distribution effects between beneficiaries (developers) and losers (territorial authorities, ratepayers and businesses);[25]
- The regulatory impact statement's conclusion that the "fundamental theoretical underpinnings of the development contribution system are generally sound."[26]
- Acknowledgment in the regulatory impact statement that "changes to the development contributions are unlikely to significantly improve housing affordability";[27]
- Majority of development contributions under existing provisions are expected to be used for 'hard' infrastructure (roading, water and waste)[28];
- 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.[29]
- Typical development contribution charges represent only a small proportion (3%) of national median house price in New Zealand[30], and presumably a smaller proportion again of the cost of new houses[31];
- There is a risk that smaller local authorities could occur greater costs in preparing and administering development contribution plans than they collect or they could abandon development contributions as a source of revenue for new infrastructure.[32] The Regulatory Impact Statement indicates that smaller councils may be spending as low as $43,000[33] 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 system[34].

Loss of revenue will impact on capacity

The loss of revenue in particular could have a negative impact on councils' capacity, but the policies are also likely to generate greater costs for councils and pressure on staff. We anticipate that there will be greater pressure to reduce staff and increased workloads and stress among our members. There is also likely to be greater pressure to either increase rates or user charges.

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[25] Ibid. Costs and benefits associated with Option 2a. pages 21-22
[26] *Regulatory Impact Statement – Improving Development contributions*, paragraph 27
[27] *Regulatory Impact Statement – Improving Development contributions*, paragraph 158-159
[28] Ibid. paragraph 25
[29] Department of Internal Affairs, Policy Group (2013) Ibid. Page 19
[30] *Regulatory Impact Statement – Improving Development contributions* Ibid. paragraph 33
[31] 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.
[32] *Regulatory Impact Statement – Improving Development contributions*. paragraph 106
[33] Ibid. paragraph 36
[34] Ibid. Footnote 44 page 21

Lack of Transition Time

We recommended a 12 month delay on implementation

The changes to the definition of development contributions and community infrastructure, if adopted, will require more time to implement than is provided for in the Bill. It cannot sensibly be reflected in the annual plans for 2014/15 and there will not be any guidance to accompany the changes. We would recommend a 12 month delay.

We note that the transition provisions in the Bill are inconsistent with the 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. [35]

A longer implementation period would also 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.

Local Boards

What the Bill says

The Bill contains a number of provisions that allow for the establishment of local boards as part of a local government reorganisation

Clause 12 amends section 23 by specifying how local boards must be named.

Clause 13 amends section 24 by adding new matters that may be dealt with in an application to reorganise local boards.

Clause 14 amends section 42 to insert a new subsection (2A) that specifies certain extra responsibilities of a chief executive of a unitary authority if the district of that unitary authority includes local board areas, including providing administrative support to local boards.

Subpart 1A adapts the local board provisions from the Local Government (Auckland Council) Act 2009, with some amendments, and allows the Local Government Commission to establish local boards as part of a re-organisation process involving the establishment of a unitary authority.

Clause 48E (c)(ii) This clause varies the Auckland local board model by allowing the Local Government Commission (LGC) to provide, though

[35] Ibid. paragraph 164

order in council, that the chair of a local board should be directly elected.

Clause 48P (2) - The Bill exempts local boards from the duty to adopt a Code of Conduct under clause 15 of Schedule 7 (LGA 2002).

Clause 48Q - This clause details the process for dealing with disputes that might arise between a local board and its governing body, allowing a board to appeal to the Local Government Commission for a binding determination where it is dissatisfied with a decision of the governing body.

We support local boards

In our submissions on the Local Government (Auckland Council) Bill the PSA argued that decisions should be made at the lowest appropriate level and we saw empowered local boards as an important means of doing that within the new council. Accordingly we are not opposed to the inclusion of local boards as an option for local government reorganisation. However, we have now had several years of local boards at Auckland Council and it would have been preferable if that experience had been properly evaluated before proceeding with this measure.

But they need to be evaluated

There are some sensible provisions in the Bill, for example around providing administrative support for local boards, but others give cause for concern:

A code is needed

- The exemption from a code of conduct without ensuring that board members are subject to the code of the governing body is a gap. For example a code will usually address relationships with council staff, which can sometimes be difficult when elected representatives confuse their governance responsibilities with operational matters;

Direction for council CEs

- Additional direction should be provided in the Act as to the responsibilities of chief executives, where decisions or actions taken by a local board are inconsistent with those taken by the governing body. This would clearly establish that the CE should encourage agreement but where agreement cannot be reached the decisions of the governing body will take precedence.

We question the role of the Local Government Commission

- We question whether giving the Local Government Commission the power to issue a binding determination in a dispute between a local board and its governing body undermines local democracy by giving the power to an unelected official, when this should be a matter for voters or the courts.

The PSA recommends that the Bill be amended to reflect the provision applying to local boards in Auckland, for members of local boards to comply with the code of conduct adopted by the governing body.

The PSA recommends that additional direction should be provided in the Act as to the responsibilities of chief executives, where decisions or actions taken by a local board are inconsistent with those taken by the governing body.

Collaboration and co-operation and reviews of cost effectiveness

What the Bill says

The Bill makes some changes to promote co-operation and collaboration and require cost effectiveness reviews.

- Clause 7 amends Section 14(1)(e) to require local authorities to 'actively' seek to collaborate and co-operate
- Clause 11 inserts new section 17A, which requires local authorities to review the cost-effectiveness of service delivery arrangements after each triennial election, and provides an accountability framework for the performance of local authority services and functions by council-controlled organisations, other local authorities, or other persons or agencies.

"Encouragement" to Collaborate and Co-operate

The PSA is concerned over the suggested wording of Section 14(1) (e) and argues that the proposed changes are not necessary and may have unintentional consequences.

Incentives for co-operation already exist

Local Councils are already considered to have strong incentives to cooperate in a financially tight environment. Existing provisions in the Local Government Act 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.*[36]

[36] Productivity Commission (2013) *'Towards Better Local Regulation'* Final Report pages 151 and 152

It could create an administrative burden and increase costs

Concern is raised that the suggested wording of Section 14(1) (e) goes beyond 'enabling', to create a default presumption that Councils should undertake joint action. This could potentially force Councils to spend more money and time on justifying why a decision not to collaborate or cooperate was taken. 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.

Economies of scale do not always lower 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 costs including increased bureaucracy and expenditure, and service level creep[37].

We recommend deleting 'actively'

The PSA recommends that the requirement to 'actively' co-operate and collaborate in section 14(1)(e) be deleted.

The PSA is 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. We also believe that any proposal to amalgamate or other forms of joint operation or transfer of responsibilities, should meet the following principles, and should safeguard and improve community interests:

Principles for amalgamation, joint operations or transfers of responsibility

1. Any reorganisation must preserve the terms and conditions for staff members.
2. The democratic process should be safeguarded, and community engagement strengthened.
3. There should be public and democratic ownership and control of public assets and public services.
4. Reorganisation must engage workers in developing the structures to deliver high quality, high performing services.

[37] TBD Advisory Ibid. pages 2 and 3

Regular reviews of cost effectiveness

A mandatory triennial review of cost effectiveness is unnecessary

PSA is supportive of the principle of reviewing the cost-effectiveness of service provision on a regular basis, and is of the view that existing cost pressures facing Councils means that this is already likely to be occurring. However, a mandatory provision to do this every three years after an election for all activities is unnecessarily prescriptive and inefficient, and may have unintended consequences:

- Greater disruption to existing work streams placing service delivery personnel in an ongoing state of uncertainty regarding organisational arrangement;
- Allows less time for elected members to understanding 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
- 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.

Periodic reviews are all that is required

It is suggested that the provision be changed to a requirement to hold regular or periodic reviews at the council's discretion.

Pressure to privatise

The requirement to hold a triennial review of cost effectiveness includes the obligation (in new 17A(2)(b)(iv)) to consider the provision of services by "another person or agency". We are concerned that this amounts to legislative pressure to privatise services. We have referred to some of the problems associated with the private provision of local government services when discussing development agreements in this submission, and we recommend that this provision not proceed.

Special consultative procedure

What the Bill says

The Bill reduces the number of situations in which a special consultative procedure has to be used and also makes changes to the procedures themselves.

- Clause 16 amends section 56 by substituting sub clause (1) to no longer require the use of the special consultative procedure when consulting on the creation of a council-controlled organisation. Instead, consultation in accordance with section 82 is required.
- Clause 21 amends section 82(1)(f) by only requiring that persons who present views to a local authority should be provided with a record of decisions, rather than the reason for them

- Clause 23 replaces section 83, which relates to the special consultative procedure, and also inserts a new section 83A. Section 83 is revised to allow for increased use of modern methods of obtaining the views of the community. It includes provision for the presentation of views by way of audio link or audiovisual link.
- Clause 24 repeals section 84, which relates to the use of the special consultative procedure in relation to a long-term plan. This is now dealt with by new sections 93A to 93G.
- Clause 25 repeals section 85, which relates to the use of the special consultative procedure in relation to an annual plan. The special consultative procedure is no longer required.
- Clause 28 deletes the provision of an opportunity for the public to participate from the purpose of a long term plan.

Special consultative procedure

Establishment of CCOs should be subject to special consultation procedures

PSA is concerned that the move to no longer require the use of the special consultative procedure when consulting on the creation of a council-controlled organisation sends a signal that the establishment of CCOs is not as important as has been considered to be up until now. The establishment of CCOs requires full public scrutiny through a formal process, particularly when they prove controversial, as was the case during the Auckland amalgamation. We recommend that the special consultative procedure continue to apply when consulting on the creation of a CCO.

Compliance costs will not be reduced

With regard to the change to section 85, the PSA is 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 about the 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 a council's consultation activities would exceed minimum requirements.

Workloads will not change

It is anticipated that the proposed change would have little impact on council workloads, as the most resource-intensive component of preparing strategic documents is the collection of research and information to identify the preferred option to be pursued, rather than consultation on such documents. Councils 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.

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 the reasons for decisions

submitters should have access to more than just a record of relevant decisions and that this should extend to supporting documents, made available to decision makers when making relevant decisions. The PSA recommends that the existing Section 82(1) (f) be allowed to stand

Public participation in long term planning

Concern is also raised regarding the deletion of the reference to public participation as part of the purpose of the long term plan by deleting 93(6)(f) in clause 28. Public participation should be central to planning processes. If this provision within the purpose is considered too broad it may be that the wording of Section 93 (6)(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.

Asset management planning and infrastructure strategy

What the Bill says

The Bill makes some changes intended to improve the management of assets and planning for infrastructure.

- Clause 7 replaces section 14(1) (g) to provide that a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets.
- Clause 34 inserts into the principal Act new section 101B, which requires local authorities to prepare and adopt, as part of their LTP, an infrastructure strategy for a period of at least 30 consecutive financial years.

Asset management planning

We support 'stewardship', which is inherently 'prudent'

The PSA supports inserting the concept of stewardship into the Act, which is consistent with a similar amendment to the State Sector Act. However we are not sure about the value of adding the work 'prudent'. This word is not used in the State Sector Act and seems a superfluous addition given that the term 'stewardship' (as defined in the State Sector Act) already means "stewardship means active planning and management of medium- and long-term interests, along with associated advice" which must entail careful and responsible management. We have a concern that the addition could encourage frivolous challenges to valid council expenditure and recommend the committee delete the word.

30 year infrastructure strategy

Do we need a 30 year infrastructure strategy?

The PSA questions the proposal to require councils to develop a 30 year infrastructure strategy as part of their long term planning. 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'. It adds a layer of complexity to the LTP process which councils have been working to simplify and streamline over recent years.

We are also not sure what value will be added given the uncertainties of predicting requirements 30 years out. We note that Infrastructure Canada has concluded that the "analysis of infrastructure needs is less an exact science than a complex art"[38] and that the Regulatory Impact Statement also commented on the inability to quantify the magnitude of problems arising in local government infrastructure delivery, nor the costs to councils of meeting proposed legislative requirements[39].

Guidance will be needed

If this proposal goes ahead we ask that guidance be provided on the need to manage the social and environmental effects of infrastructure provision and on the calculation of 'whole-of-life'[40] and 'whole system'[41] infrastructure costs.

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[38] Infrastructure Canada Research Note 2003

[39] Regulatory Impact Statement (2013*) 'Improving infrastructure delivery and asset management'* Agency Disclosure Statement Page 1

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

[41] 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.

Schedule A

Principles for development contributions from Syme Marion and Co (2008), *Final Draft Local Government Guidelines - Contributions Towards Community Infrastructure Funding*

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.

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."