



Submission to the Local Government Act 2002 Amendment Bill (No. 3)

Prepared by: Ashburton District Council
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Submitted to: Local Government and
Environment Select Committee
WELLINGTON 6140

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General Submission

Ashburton District Council welcomes the opportunity to submit to the Local Government and Environment Select Committee on the on the *Local Government Act 2002 Amendment Bill (No 3)*. The Council supports the principles of efficient local government and providing cost effective services to our communities.

In preparing our submission we have collaborated with other councils in our region through the Canterbury Regional Policy and Strategy Forum, a group of local government officers in Canterbury who seek to collaborate on responding to significant legislative issues affecting the sector. The Forum reports to the Canterbury CEO's Forum and to the Canterbury Mayoral Forum. The views of all Councils in the Canterbury region are generally consistent on this matter with some minor variances to accommodate local preferences.

Our understanding is that the documents informing the preparation of this Bill have principally been those reports emanating from the Better Local Government Reforms, notably the:

- (a) Local Government Efficiency Taskforce Report (November 2012);
- (b) Development Contributions Review Discussion Paper (February 2013);
- (c) Local Government Infrastructure Efficiency Expert Advisory Group (March 2013); and
- (d) Report of the Productivity Commission Inquiry into Local Government Regulatory Performance (May 2013).

A central theme of (a) above was to reduce the level of prescription in the *Local Government Act 2002* and replace prescriptive rules with clear principles for councils to consider when making decisions (recommendations 3 and 18 of (a) above). However, in our opinion the Bill increases the level of prescription in relation to:

- Content of Triennial Agreements (new Section 15)
- Reviewing the cost-effectiveness of service delivery arrangements (Section 17A)
- Information requirements for general consultation (Section 82A)
- Content of consultation documents for Long Term and Annual Plans (Sections 93C- 93G and Section 95A)
- Contents of an Infrastructure Strategy (Section 101B)
- Rights to reconsideration of a requirement for development contributions ((Section 199A-199N)
- Requiring a schedule of infrastructure for which development contributions will be used (Section 201A)
- Responses to requests for, and content of, Developer Agreements (Section 207A - 207F)

The Council is of the view that the proposed prescriptive approach will not necessarily add value to current practice and could well have negative unintended consequences. In general, the Council believes that the better option is to collaboratively develop practice guidance and that LGNZ's Centre of Excellence in Local Government would be the appropriate mechanism through which to achieve this.

It is noted that of the four reports informing these proposed amendments, (a), (c), and (d) were prepared by groups and entities comprising a mix from private industry, iwi, local government elected representatives and officials, as well as the Productivity Commission (d) being an independent Crown entity. Very few of the 32 recommendations from (a), the 62 recommendations from (c) and the 29 recommendations from (d) have been taken up in the Amendment Bill.

This Council supports:

- The changes to principles (e and g) in Section 14
- Improving provisions relating to transfer of responsibilities between Councils and broadening the scope of the triennial agreement between councils within each region.
- Linking council approaches to significance directly with its community engagement through a Significance and Engagement Policy and including a new purpose and clearer intent of these policies
- Removing most requirements to use the special consultative procedure (SCP) when consulting under the LGA2002.
- Simplifying decision making requirements by reducing mandatory requirements for assessment of options to more straightforward cost - benefit analysis.
- New purposes and principles for development contributions
- The use of new technologies to enable remote participation in meetings

This Council does not support:

- The level of specificity required in a Triennial Agreement proposed in section 15 of the Act and particularly the proposed sub-section (2) and subsection (3(b)). These matters are best dealt with on a case by case and as required basis and should sit outside the Triennial Agreement document
- The prescribing of the frequency (every three years) and scope (all Council services at once) of a delivery and cost-effectiveness review of all Council services (Section 17A). This Council believes periodic reviews should be undertaken on a rolling basis and that each activity should be subject to review at least once every six years
- Increasing the level of prescription for general consultation (Section 82A)
- Introduction of a 30 year Infrastructure Strategy (Sections 101A-101B)
- The introduction of a consultation document for long term plans (of the type prescribed in the Bill)
- Narrowing the definition of community infrastructure for which development contributions can be charged (Sections 197(2), 198A and 201A),
- Introducing a development contributions independent objection process (Sections 199A-199N).

Specific Points of Submission

11 – Proposed LGA section 17A - Delivery of services

The new Section 17A requiring Councils to review the cost-effectiveness of service delivery arrangements is **not fully supported**.

Legislating for this to be done every three years is unnecessarily prescriptive and inefficient. Potential problems with the proposed approach include: a single mandatory review would place a significant resourcing burden on councils; a shortage of suitably qualified staff (and consultants) nationwide to simultaneously review all the operations of all of New Zealand's 78 councils; is likely to place service delivery personnel in an on-going state of uncertainty regarding organisational arrangements; the beginning of the triennium may see councils with relatively inexperienced elected members needing to make significant decisions across a complex range of issues.

This Council would support a requirement for periodic or rolling reviews of service delivery arrangements. This could be that all services are reviewed at least every 6 years. This would enable councils to schedule the review processes in a manageable way and to incrementally build staff and elected member capacity and capability.

Relief sought: amend S17A to provide for periodic reviews to be undertaken on a rolling basis and that each activity is subject to review at a lesser interval, i.e. at least once every six years.

15 – Proposed LGA section 48A-48R - Local Boards

There are no Unitary Authorities in Canterbury and no currently active processes in relation to local government reorganisation proposals in the region.

One point we note is that there appears to be no mechanism for community input into the allocation of decision-making responsibilities which is a fundamental part of local democracy. The proposed section 48L gives the responsibility for allocation solely to the governing body.

Relief sought: introduce a mechanism for the community to participate in decision-making around the allocation of responsibilities.

16 - Section 56 – Council controlled organisation

The amendment is supported.

18 - Section 76AA - Significance and engagement policy

The proposal to replace the Significance Policy with a Significance and Engagement Policy is supported.

The proposed policy will bring together a more complete decision making and engagement policy framework and enable Councils to make choices on how best to engage with their communities in different situations.

We would caution that this approach needs to be based on an engagement continuum rather a simple use of thresholds that trigger the use of a special consultative procedure. Audit NZ has in the past been a strong advocate of thresholds – we believe this is an approach that should be discouraged rather than encouraged.

22 - Section 82A - Information requirements for consultation

The introduction of this section is **not supported**.

The intent of this proposed requirement is, in the view of this Council, sufficiently covered by sections 82 and 83 and the proposed section 76AA. It is therefore considered superfluous.

Relief sought: Delete the proposed Section 82A.

23 - Section 83 - Special consultative procedure

The revised section 83 **is supported**.

The proposed changes will enable councils to better tailor consultation approaches to the community and the matter being consulted on. This will promote innovation in how councils engage with their communities and enable cost-effective use engagement techniques that are often not able to be considered under the current requirements.

26 - Section 86 – Use of special consultative procedure in relation to making, amending or revoking bylaws

The revised section 86 **is supported**.

The proposed changes will enable councils to better tailor consultation approaches to the community and the matter being consulted on.

29 - Section 93C – Content of consultation document for adoption of long-term plan

The proposal to require a consultation document is **not supported**.

The consultation document prescribed in this section, and as required under each council's significance and engagement policy, is likely to be much bigger and more detailed than the current summary document but contain little of the detail and contextual information currently included in a draft long term plan.

Design and print costs for a much larger consultation document (which most councils will want to deliver to all households) will negate any cost savings from not having to print a draft LTP.

While there is no requirement to have a draft LTP document available, most councils will consider it necessary to enable residents and stakeholders who want to see the information in more detail to be able to do so.

This Council supports the aims of this proposal but doubts it will deliver those aims and may even introduce a level of obfuscation to the long term plan process and community knowledge of it.

Relief sought: Retain the status quo requirements for the LTP and Summary documents. It's not perfect but the proposed changes do not appear to offer any improvement.

32 - Section 95A – Purpose and content of consultation document for annual plan

The proposed section **is supported**.

The proposed section is consistent with the current approach to a summary annual plan.

With the annual plan not containing much detailed information (this is in the LTP) it is likely the consultation document can stand alone without a draft annual plan available for those wanting more

detail.

34 - Section 101B - Infrastructure strategy

The proposed new mandatory requirement for an infrastructure strategy is **not supported**.

The information to be required in an infrastructure strategy is generally more suited to being in asset management plans (which could be made mandatory and required to be publically available) and in the statements of service included in each activity section of the long term plan (which are already required and presumably will continue to be). The proposal therefore introduces unnecessary duplication of information.

The timing of the preparation of the infrastructure strategy will coincide with the proposed review of service delivery and the preparation of the long term plan (as it is required to be included in full in the LTP consultation document). While much of the information will be included in each document this will put extreme pressure on staff and consultant resources around the country.

Extending the detailed planning horizon of the required groups of activities from 10 year to 30 year forecasts will add detail and complexity to the Long Term Plan, and runs counter to the objective of simplifying the long term planning and engagement process. Significant assumptions will be required for the 30 year infrastructure strategy to be meaningful, including the pattern of land use demand, the pace of growth over a 30 year period, and forecasting service demands without knowing what technologies are available that far out in the future.

The local government sector has long argued for fundamental reform of the three key planning statutes to achieve meaningful, integrated long term plans, and for Central Government to extend its planning horizons to ten years so that communities have greater clarity about Central Government intentions.

By choosing to extend the horizon for long term planning in this partial and incomplete way (30 years for infrastructure but not for non-infrastructure groups of activities), there are significant risks of an imbalanced and partial long-term view being taken of Council's activities, greater confusion, and serious loss of credibility in the long term planning process.

Furthermore, a 30 year period is unlikely to trigger a renewal cycle for any new, yet to be implemented long-life asset, so that the intent of the strategy (to focus on renewal and replacement of existing assets to provide assurance in the Long Term Plan that Councils have adequate plans and policies in place to achieve asset service performance) is unlikely to be realised.

There is no argument about the merits of appropriate asset management planning for long life assets. But distracting Long Term Plans into longer-term speculative debate about decisions needed much further into the future, without proper context, is counter-productive.

Relief sought: Delete the proposed Section 101B and commit to further consideration in the context of a review of the three principal planning statutes (*Local Government Act, Resource Management Act, and Land Transport Management Act*)

36 - Section 106 – Policy on development contributions or financial contributions

The proposed changes to this section **are supported**.

37 - 39 - Sections 108 – 110 – Various policies

The proposed changes to these sections **are supported**.

40 – 42 Sections 123, 125 and proposed 126 – Assessment of water and other sanitary services

The proposed changes to these sections **are supported**.

45 - Section 150A – F – Various

The proposed sections are **supported**.

46 - Section 156 – Consultation requirements when making, amending, or revoking bylaws

The proposed section **is supported**.

47 - Section 160 – Procedure for and nature of review

The proposed changes to this section **are supported**.

48 - Section 197AA/ AB – development contributions

The proposed section **are supported**.

49 - Section 197 – Interpretation (development contributions)

The proposed section **is not supported** in full.

The proposed changes to the definition of community infrastructure do not fairly reflect the range of community facilities provided by councils and therefore impose an unreasonable restraint on council's ability to fund the growth component of a range of these facilities.

This Council currently charges development contributions for a new art gallery and heritage centre (currently under construction), new aquatic and sports centre (currently under construction) and for planned additions to the Council's offices.

The planning for all three facilities has taken into account the need to cater for a growing community. All are being built to adequately cater for the future needs of the district (30 – 50 year growth projections) and all could have been either smaller or not required if the district population was either stagnant or declining. There are a range of other community facilities that are not included in the definition which equally will have a growth component to their design and construction and therefore a legitimate reason to be funded in part by development contributions.

Ashburton District Council has capped its community infrastructure development contributions charges at \$1,500 per development. The cap is an effort to balance the need for new developments to pay a fair share and the cost of providing growth capacity in Council infrastructure while not being an inhibitor to development. Development contributions for community infrastructure are budgeted to provide revenue of \$280,000 in the current financial year. If this funding were stopped this amount would need to be funded from rates or from increased borrowing. This funding figure should be considered in the context of Ashburton District where we have high population growth (and therefore development activity) and that the annual revenue represents approximately 1% of current rates.

The proposed purpose of development contributions is "... to enable territorial authorities to recover

from those persons undertaking development a fair, equitable, and proportionate portion of the costs of capital expenditure necessary to service growth.”

Why then is it proposed that some of the capital expenditure required to cater for growth must be funded entirely from rates in a way that is not fair, equitable or proportionate while a fairly arbitrary list of others can be funded in this way?

This Council does not agree with the view that it is more appropriate to pay for the growth requirements of community infrastructure from rates or other broad-based revenue sources, rather than from development contributions. The Bill, as written, has Central Government deciding what funding sources are appropriate for particular activities, rather than Territorial Authorities deciding this through engagement with their communities.

Relief sought: Retain existing section 197.

51 - Section 198A - Restrictions on the power to require contributions for reserves

The proposed section is **not supported**.

Commercial and industrial development generates demand for community infrastructure through increased daytime populations both from the workforce and the customers utilising commercial and industrial areas. A consequence of this is cost shifting to rates funding (and in particular residential rates) and a misalignment between the exacerbator of the demand and the existing community.

Relief sought: Delete section.

53 -Section 199A and B – Right to reconsideration of requirement for development contribution

The proposed new sections **are supported**.

While most councils will have similar clauses in their development contributions a legislative approach to the process to be used for a reconsideration of development contributions will promote consistency and transparency.

53 - Section 199C, D and E– Right to object to requirement for development contribution

The proposed new sections are **not supported**.

The issues covered by the right to object have a significant body of case law precedence now standing behind them and there appears to be little evidence there is a problem with how current development contributions requirements are imposed and how objections are dealt with (other than that developers don't like paying them). It is this Council's view that the current approach is fair to all parties and generally works well.

Subsection 199D (b) is particularly problematic. This appears to require a council to have prior knowledge of a particular future development and its impact on the growth requirements of Council infrastructure before the development occurs in order to change a development contribution. This seems to rest on the concept of causal nexus which, while sounding fair, is a difficult concept to base charges on. A Council will generally allow for a growth component in new infrastructure without necessarily knowing exactly where the future development will be and what demand it may place on its overall network infrastructure. This clause appears to enable developers to object to a development contribution if it can't be proven that the growth component of the infrastructure services specifically

that development. This would render the planning of the type of network infrastructure Councils operate somewhat meaningless from a development contributions perspective.

Relief sought: Delete proposed sections.

53 - Sections 199F – K – Appointment and register of development contributions commissioners

The proposed sections are **supported in part**.

The introduction of commissioners (or an ombudsman) to consider matters associated with the charging of development contributions may be useful.

Relief sought: Government undertakes further work on the value of introducing commissioners or ombudsmen.

55 - Section 201A – Schedule of infrastructure for which development contributions will be used

The proposed section is **supported**

The proposed section clarifies the current requirements.

57 - Section 202A – Reconsideration process to be in development contributions policy

The proposed section is **supported**

60 - Sections 207A-207F - Developer Agreements

Councils and private parties enter into agreements to provide community facilities regularly, and are typically situation specific. Imposing statutory compliance requirements is likely to limit innovation rather than embrace it. At best this provision only codifies existing practice and could, if anything, due to the limits imposed, inhibit the use of such agreements. This could be better handled through good practice guidance rather than legislation.

Relief sought: delete Sections 207A-207F

Hearings

This Council wishes to be heard at any hearings conducted by the Select Committee.

A DALZIEL
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