
REPORT 3

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

1. Purpose of report

This report outlines a draft Wellington City Council submission on the Local Government Act 2002 Amendment Bill (no. 3) for the Committee's approval. A copy of the draft submission is attached as appendix 1 to this report.

2. Executive summary

The Local Government Act 2002 Amendment Bill (No 3) implements the Government's decisions regarding a second phase of legislative reform.

Unlike the first tranche of legislative changes in 2012 that refocused the purpose of local government, sought to constrain councils' activities, and to more closely monitor the sector's performance, the primary focus of the changes outlined in the current Bill are focused on putting in place tools for 'councils to operate more efficiently and effectively'.

The Bill introduces greater flexibility in regard to how consultation is carried out, simplifies key consultation documents so they are more accessible to the community, encourages more cooperation between local authorities, and introduces local boards as an option as part of any reorganisation process.

The additional requirements of putting in place a thirty year infrastructure strategy and reviewing how services are delivered triennially are common sense, were already being undertaken by many, and are not onerous.

In terms of changes to development contributions, most changes are supported and reservations around narrowing the definition of community infrastructure are recorded in the attached submission.

3. Recommendations

Officers recommend that the Governance, Finance and Planning Committee:

1. *Receive the information.*

2. *Agree the Wellington City Council submission on the Local Government Act Amendment Bill no. 3 to the Local Government and Environment Select Committee attached as appendix 1.*

3. Background

In March 2012, government agreed to the Better Local Government reform Programme.

The programme is part of the government's broader objective of:

- building a more productive and competitive economy; and
- delivering better public services within tight financial constraints.

Government recognised that local authorities play an important part in national economies through the provision of regulatory services, delivery of core infrastructure and public services, and sought to make a broad range of changes to achieve its objectives.

The programme has two phases. The first phase has been completed and resulted in legislative changes passed in December 2012 that:

- removed the broad focused “four well-beings” with principles
- refocused the purpose of local government
- introduced new financial prudence requirements
- strengthened mayoral powers
- streamlined council reorganisation processes.

The second phase of proposed changes outlined in the Bill is currently before select committee and amends the Local Government Act 2002 as follows:

- a) *Local boards* –local boards (similar to those in Auckland) are now allowed for new and existing unitary authorities with populations under 400,000.
- b) *Development contributions* –the range of community infrastructure that development contributions can be used for is narrowed, and a new independent third party objections process is introduced.
- c) *Service delivery options* – a new requirement to review service delivery options every triennium is introduced and wording changes are made to encourage more collaboration between local authorities in terms of service delivery models.
- d) *Consultation* – consultation requirements have become more flexible and greater focus is given to a new significance and engagement policy. Consultation plans are simplified to make them easier to understand by the community, and unnecessary duplication between annual plans and long-term plans is removed. A provision for elected members to use technology to participate in council meetings, rather than attending in person has also been made.

- e) *Infrastructure strategy* – new requirements for a 30 year infrastructure strategy is introduced as well as greater recognition of the importance of asset management planning.
- f) *Disclosure*– councils will need to disclose information about their rating bases in long-term plans, annual plans and annual reports; and disclose risk management and insurance arrangements for physical assets in annual reports.

The Local Government Act Bill No 3 was informed by the Local Government Efficiency Taskforce and the Infrastructure Expert Advisory Group. The local government sector had input into both the taskforce and advisory group.

Next steps

Submissions are required by 14 February. The Select Committee has been asked to report back in May 2014, so the Bill can be passed in June 2014.

4. Discussion

The next section provides a brief outline of each of the proposed changes outlined in the Bill.

4.1 Development contributions

The changes to development contributions provisions, and the way in which they are implemented, are intended to make them fairer, better focused, more transparent, and more workable. This will be achieved by:

- a new purpose for development contributions, and principles to direct and guide their use
- clarifying and narrowing the range of infrastructure that can be financed by development contributions¹
- improving the transparency of development contributions policies
- encouraging greater private provision of infrastructure through the use of development agreements
- introducing a development contributions objection process, with decisions made by independent commissioners; and
- clarifying legislative provisions to make them more workable and easier to understand.

These legislative changes will be supported by guidance that draws on good practice from within the local government and property development sectors.

Government introduced these changes because of concerns that development contributions were being used to “fund infrastructure types of questionable justification”, issues of transparency in terms of “apportionment of the costs and benefits of infrastructure” and because there were insufficient ways to

¹ The broad definition of “community infrastructure” has been replaced by short list of items – community centres/halls, public toilets, and play equipment – and libraries, pools, community sports facilities and sports grounds are removed. It is also no longer possible to charge for development contributions for reserves where a particular development does not involve the creation of additional housing.

resolve disputes over development charges. They also expressed concern that they could be contributing unnecessarily to rising housing costs.

4.2 Local Boards

The Government has decided to make local boards more widely available, with adaptations that make the model appropriate in different circumstances. The Bill will include provisions that enable the Local Government Commission to:

- consider the option of local boards during any proposed reorganisation, and establish them as part of new unitary authorities; and
- consider establishing local boards in existing unitary authorities, and deal with these proposals through a shorter reorganisation process.

The local boards' model in the Bill will have many of the same features as in Auckland, but with the flexibility to allow the Commission to tailor the details to suit each reorganisation.

4.3 Consultation, decision-making and long-term plans

The Government has decided to provide councils with more flexibility and clarity about how and when to consult. The aim is to enable councils to design decision-making and engagement processes that are efficient, effective, and appropriate to a range of different circumstances and community interests.

These decisions mean the Bill will:

- remove most requirements to use the special consultative procedure when consulting under the Local Government Act 2002; and
- amend the special consultative procedure, so it accommodates new ways for communicating and consulting with the public.

The Bill will also provide for a new, streamlined consultation document for long-term and annual plans. Councils would use these to consult instead of issuing detailed draft plans containing a lot of technical material.

The long-term plan consultation document would focus on major issues, choices, proposed changes to services, and financial implications.

Consultation on the annual plan would cover proposed differences from the long-term plan, including new spending proposals. The final annual plan would not need to duplicate information from the long-term plan for that year.

In addition, the Bill will include provisions that enable elected members to use technology to participate remotely in council meetings (e.g. through video conferencing). This would be subject to appropriate safeguards to preserve the integrity and transparency of democratic processes.

4.4 Efficient delivery and governance of local authority services

This amends the legislation to encourage and facilitate shared services, joint delivery and other collaborative arrangements between local authorities.

These decisions complement new proposals relating to local boards, and the reforms to the reorganisation process that were made in 2012. The aim is to provide local authorities with a range of practicable options through which they can achieve efficiencies in the scale at which services and facilities are managed and delivered.

The amendments in the Bill will:

- provide for greater encouragement to local authorities to collaborate and cooperate
- enable the Local Government Commission to create council-controlled organisations and joint committees as part of a reorganisation scheme
- provide for greater transparency, clarity and accountability in contracting for delivery of services by council-controlled organisations
- broaden the scope of the triennial agreement between councils within each region
- provide a clearer framework for joint committees; and
- clarify provisions relating to the transfer of responsibilities between local authorities.

5.5 Thirty year infrastructure strategy

This introduces new requirements for infrastructure strategies and asset management planning. While many councils are managing their assets well, changes are needed to ensure all councils are planning effectively for future infrastructure needs.

To address this, the Bill will include provisions that:

- reinforce the importance of asset management planning as part of a council's prudent stewardship of resources; and
- require local authorities to prepare an infrastructure strategy for at least a 30 year period, and to incorporate this into their long-term plans from 2015.

The purpose of the infrastructure strategy would be to identify significant infrastructure issues, options and implications that will be faced by the local authority over the 30 year period. This would address the lack of public information about investment needed beyond the current 10 year long-term planning horizon.

The infrastructure strategy would cover, as a minimum, those of the five core infrastructure categories (relating to water, wastewater, stormwater, flood protection, and roading) that the local authority provides. Certain information derived from asset management planning would be included in the strategy.

In addition, the Bill will require councils to disclose risk management arrangements, such as insurance, for physical assets in their annual reports.

5. Overview of Council submission

Overall, officers support the intent of the Bill – to encourage and enable local authorities to improve the efficiency and effectiveness of their operations and processes.

The proposals to enable councils to design decision-making and engagement processes that are appropriate to different circumstances, as well as providing for concise and tightly focused consultation documents relating to long-term and annual plans is supported. Officers consider this will result in more meaningful consultation.

The introduction of 30 year infrastructure strategies is welcomed. These are important for planning and budgetary context and reflect the work that is already underway.

In terms of local boards, officers are supportive of choice, although local boards are not the most efficient or effective tool for local democracy. They are necessary for Auckland due to its breadth and scale but they are cumbersome and bureaucratic with limited functions and the majority of those requiring negotiation with the governing council.

The new provisions that provide the Local Government Commission with the powers to establish Council Controlled organisations as part of a reorganisation scheme are strongly opposed. The ability to establish such entities is a democratic function and should reside with elected councils (not appointed officials). These go beyond governance arrangements and include service delivery arrangements.

The changes to Development Contributions aim to improve the transparency of the process and its application. Officers are broadly supportive of that aim but see the narrower definition of community facilities as limiting. Officers believe that the definition of community infrastructure for which development contributions apply should rest with each individual council, not defined in legislation. Councils are best placed to assess the development opportunities and costs in their areas. Centralised and uniform prescription (such as defining what is excluded from a policy) reduces choices available for councils to stimulate growth.

The concept of a robust and fair objection process with the use of independent third parties is broadly supported as well as the provision that allows for costs relating to objections to be recovered by councils². It is however noted that an

² Note that a working party was established by the local government sector to respond to development contributions changes in detail. Wellington City Council officers participated in the working party and endorse the final submission by the Development Contributions Working Party. A copy is available on request.

appeals process runs somewhat counter to the objective of a simplified and clearer system.

Officers support the additional provision in the Bill for all local authorities to review service delivery, funding and governance options as soon as practicable after each election. Regularly reviewing how local infrastructure, regulatory and other public services can best be delivered is a core part of the governance function.

6. Conclusion

Overall, Wellington City Council supports the intent of the Bill and the majority of changes that are proposed. This report outlines a draft Wellington City Council submission on the Local Government Act 2002 Amendment Bill (no. 3) for the Committee's approval.

Contact Officer: *Baz Kaufman – Strategy*

Supporting Information

1) Strategic Fit / Strategic Outcome

NA.

2) LTCCP/Annual Plan reference and long term financial impact

There is no annual plan reference. Changes to Development Contributions will have a financial impact.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications.

4) Decision-Making

This is not a significant decision.

5) Consultation

No consultation is required

6) Legal Implications

There are no legal implications arising from this paper.

7) Consistency with existing policy

This report is consistent with existing policy.



Submission to: Local Government and Environment Select Committee

Bill: Local Government Act 2002 Amendment Bill (No.3)

From: Wellington City Council

Date: 13 February 2014

Introduction

1. Wellington City Council (WCC) welcomes the opportunity to comment on the Local Government Act 2002 Amendment Bill (No.3).
2. We do not wish to be heard in support of this written submission.

Executive summary

3. Overall, we support the intent of the Bill – to encourage and enable local authorities to improve the efficiency and effectiveness of their operations and processes.
4. We acknowledge the Bill introduces six areas of change¹. We provide further discussion on two areas – development contributions and local boards. We are supportive of the other changes and note that in brief in the submission below.

Development contributions

5. The purpose of the changes to development contributions is to make them fairer and more transparent, and to ensure they do not contribute unnecessarily to rising housing costs. Some of the changes also relate to improving the transparency of the process and its application.
6. We believe development contribution revenue (cost recovery) remains an important and equitable funding tool to local authorities across the country, based on the demand new infrastructure developments create.
7. At the same time it is important to ensure the process for collecting development levies is open, transparent and done in a manner that does not 'get in the way' of growth and development.

¹ Development contributions, Local Boards outside Auckland, Efficient delivery and governance of local authority services, Consultation, decision making and long term /annual plan, Infrastructure delivery and asset management

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8. In terms of the Bill, we are broadly supportive of the proposed changes but see the narrower definition of community infrastructure as limiting. We believe this decision should rest with each individual council, not defined in legislation. This would then be tested with their respective communities as part of preparing their development contributions policies. There are growth components to libraries, pools, community sports facilities and sports grounds, and removing them from the definition simply transfers the costs of growth and distributes it amongst existing ratepayers. This is a decision for each local authority to make in discussion with their communities. Councils are best placed to assess the development opportunities and costs in their areas. Centralised and uniform prescription (such as defining what is excluded from a policy) reduces choices available for council's to stimulate growth. It is also noted that an appeals process runs counter to the objective of a simplified and clearer system.
9. While narrowing the definition of community infrastructure reduces development contribution levies, it is important to realise that there are also a range of tools available to support and encourage development. In Wellington we are currently consulting the development sector on taking the following steps:
 - Streamlining the development contribution application, development, assessment, and planning processes
 - Changing the development contributions invoicing date to when a building is occupied or sold to better align with developer cash flows
 - Introducing a development contributions remission for 'green buildings' (50%)
 - Remitting 100% of sector targeted rates for buildings under construction.
10. We support in principle the concept of a robust and fair objection process² with the use of independent third parties. We note that the objections process outlined in the Bill – while robust – seems resource intensive and therefore support the provision that local authorities can recover “actual and reasonable costs” in respect of any objection³.
11. We do have reservations that the grounds for objections are focused on the individual characteristics of a specific development. Buildings/developments change over time and consequently territorial authorities commonly group individual developments together into different categories or types of land uses and different geographic parts of a district (catchments) that are logical, appropriate and manageable from a practical and administrative viewpoint, for the purpose of calculating and charging development contributions. This ‘averaging’ is fundamental to the operation of development contributions as use of buildings will change over time – with each use having a different impact on local infrastructure networks.
12. The Bill introduces a requirement for local authorities to publish detailed schedule of infrastructure for which development contributions will be used as part of their policy. A highly prescriptive and detailed asset register is envisaged in the Bill. The precision in the design of new developments out to the future will not always be available or justifiable at the initial stage when the need for development contributions funded infrastructure is identified. This in turn is likely to result in frequent updates to the schedule and may provide increased opportunity to challenge how the policy is implemented and result in more litigation.

³ Costs that can be recovered relate to commissioners, secretarial and administrative support and costs associated with holding hearings.

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13. We support the provision that allows developers and territorial authorities to enter into Development Agreements.
14. We also consider the transitional arrangements for development contribution policy to be very tight (1 July 2014) and argue these should be aligned with the timeframe for the 30 year infrastructure plan (2015).
15. In terms of housing affordability, we contest whether changing the development contributions categories will have any long term impact on housing affordability. In the short term, house acquisition prices may decrease. But, new homeowners could face increased rates, which will have had to go up to match the shortfall in development contributions. The cost of home ownership is merely shifted to after purchase.
16. We note that the local government sector Development Contributions Working Group has prepared a more detailed submission on the proposed changes included in the Bill as they relate to development contributions, and Wellington City Council endorses their submission.

Local Boards

17. The purpose of the changes to local boards is to make the local boards' governance model available to local authorities with populations under 400,000.
18. We appreciate that these changes are not mandatory and we support the fact that the option of local boards is now open to all areas. However, there are some practical issues that may arise with any unitary authority going down the local board route that we consider run counter to the assumption that local boards are an efficient model.
19. The Auckland model has shown that having a second layer of representation can complicate planning and budgeting processes, slow down decision-making because of the additional consultation and negotiations between the separate tiers of governance, obfuscate accountability, and ultimately it is administratively more burdensome and costly to the ratepayer because of the above factors.
20. We note the Bill goes some way to address some of these concerns and has sought to clarify that the model is one of 'shared decision-making and governance'.
21. We note that the Bill has sought to achieve that by strengthening the local boards position through:
 - the introduction of guidance/principles for when decision-making should be delegated by the governing body
 - a local board plan for the community
 - a local board funding policy to reflect what is delegated and included in the local plan
 - a local board agreement with the governing body to bind it all in place, and
 - a disputes process should there be any disagreement.
22. However, the fact remains that decision-making and funding is ultimately *allocated* by the parent body. And the Auckland model has shown that local boards are collectively only in control of between 3 to 5 percent of the total budget yet have a disproportionate level of responsibility and accountability for services delivered in their areas and decision made for their communities.

23. The introduction of the provision for local boards to be considered as part of any reorganisation process, and the detailed specifics of how they must operate in relation to the parent body could give a sense that the two tiered model is the recommended governance structure should region's wish to change.
24. It will be important to clarify in legislation that the additional provisions relating to local boards is to make the structure easier for authorities to understand, consider, and implement if applicable, but that a full range of governance arrangements are possible under legislation and that the Commission is required to work with local communities to identify, and develop the option that "best promotes good local government" for that area.

Consultation

25. We support the changes to how consultation is undertaken, and the proposals to enable councils to design decision-making and engagement processes that are appropriate to different circumstances, as well as providing for concise and more tightly focused consultation documents relating to long-term and annual plans. We consider this will result in more meaningful consultation.
26. We support the provision that places greater emphasis on the principles of consultation rather than the prescriptive special consultative procedure. This will result in better tailored engagement practices in the sector. To support this change we would advocate for good practice guidance and templates to be prepared by appropriate parties (DIA, OAG, SOLGM, LGNZ).
27. We support the provision that requires local authorities to prepare a significance and engagement policy. This policy will allow councils to work with their respective communities to determine the degree of significance that should be attached to particular issues, assets or other matters – and in relation to those – provide clarity about how the community will be consulted if decisions are made regarding those issues or assets.
28. We support the provision that has been added that allows for elected members to use technology to participate in council meetings, rather than attending in person. This will be particularly advantageous in some rural areas of New Zealand as well as allow elected representatives away on Council business to participate remotely in important decisions.

Thirty year infrastructure strategy

29. We welcome the introduction of 30 year infrastructure strategy. These strategies will be useful tools in identifying significant infrastructure requirements such as treatment plants, bridges and the like past the ten year horizon of the long-term plan and identify possible options for managing those issues. This coupled with robust asset management plans will help the sector obtain a better picture of major future funding decisions.
30. We recommend that guidance and templates are developed jointly with DIA, OAG and other professional bodies to ensure the infrastructure strategy provides a meaningful and useful strategy for councils and their communities.

Service delivery options

31. We support the additional provision in the Bill for all local authorities to review service delivery, funding and governance options as soon as practicable after each election.
32. Regularly reviewing how local infrastructure, regulatory and other public services can best be delivered is a core part of the governance function.
33. Compliance with these provisions need not be onerous and could contribute to ensuring that the 'right debate' happens in a structured and constructive manner and that more useful joint undertakings occur. Councils have a successful track record in joint management and joint planning.
34. We already have a successful shared service model for our water services in the region, and are proactively working with other local authorities on how shared service models – particularly for 'back of house' functions can be set in place to release capital and deliver better and more consistent services for our communities.
35. While the wording "as soon as practicable" provides plenty of flexibility, a comprehensive review of activities can best take place in the context of developing a long-term plan when long-term strategic issues, levels of service, and service delivery platforms are considered.
36. The new provisions that provide the Local Government Commission with the powers to establish Council Controlled organisations as part of a reorganisation scheme are however strongly opposed. The ability to establish such entities is a democratic function and should reside with elected councils (not appointed officials). These go beyond governance arrangements and include service delivery arrangements.

Additional disclosures

37. We support the new requirement to disclose information relating to our rating base in the long-term plan, annual plans and annual reports – as well as disclose risk management and insurance arrangements for physical assets in annual reports.

Conclusion

38. We support any legislative reforms which achieve simplification and streamlining of processes. To this end we support the reforms outlined in this amendment Bill.

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