

Submission

By



to the

Local Government and Environment Select Committee

on the

Local Government Act 2002 Amendment Bill (No 3)

February 2014

PO Box 1925
Wellington
Ph: 04 496 6555
Fax: 04 496 6550

LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO 3)
SUBMISSION BY BUSINESSNZ¹

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to make a submission on the Local Government Act 2002 Amendment Bill (No 3) (“the Bill”) and supports the Bill’s general intent.
- 1.2 This Bill, which implements the second tranche of the Government’s *“Better Local Government”* programme is a further step in ensuring a more focused and transparent local government sector. BusinessNZ submitted on background papers leading up to the Bill, including the very useful Discussion Paper on Development Contributions released by the Department of Internal Affairs in early 2013.
- 1.3 Amongst other things, the Bill will:
- Encourage councils to explore different ways of working together, to reduce the costs of managing and delivering services;
 - Change development contribution provisions to make them far more transparent and focused so that inappropriate costs are not burdened on developers (and ultimately building owners in respect to housing and other developments); and
 - Require greater transparency as to how councils are planning and managing local infrastructure over the long-term.
- 1.4 BusinessNZ supports the measures in the Bill to encourage and facilitate shared services, joint delivery, and other collaborative arrangements between councils. These may provide a more palatable options for some regions, rather than full amalgamation.
- 1.5 BusinessNZ also supports the Bill’s provision for asset management planning to be undertaken as part of a council’s prudent stewardship of resources. We endorse the fact that the Bill requires a new infrastructure strategy to be incorporated into the long-term plan (LTP), and the fact that the strategy covers a 30-year period. Such long term planning helps break the 10 year focus forced onto councils by the current LTP process.
- 1.6 These policies all contribute towards the Government’s, and indeed businesses’, focus on building a more competitive and productive economy. However, notwithstanding its general support for the Bill progressing, BusinessNZ does have some issues in respect to the development contributions regime and these are outlined below.

¹ Background information on BusinessNZ is attached as Appendix 1.

RECOMMENDATIONS

Overall Recommendation

BusinessNZ **recommends** that:

The Bill proceeds.

Notwithstanding BusinessNZ's overall recommendation:

BusinessNZ **recommends** that:

1. Where an objection has been made under Clause 45, new section 150A (Costs of development contribution objections), and the objector has been successful in having an objection upheld by the development contributions commissioner, the total cost of the development contribution objection should be rightly funded by the territorial authority, unless there are extraordinary circumstances which would make this unrealistic.
2. More rigorous analysis should be required before territorial authorities can decide not to enter into a development agreement with a developer. Simply informing the developer that the territorial authority has decided not to enter into a development agreement, with reasons why (under 207B), is likely to unnecessarily restrict contestability in the provision of infrastructure and other services.
3. Councils receive better guidance (via the Treasury or perhaps through the establishment of a technical advisory group (TAG)) on the use of available funding tools to ensure greater consistency across the country, underpinned by an economically principled approach to funding various Council activities, including the funding of services currently provided by Council Controlled Organisations (CCOs).
4. CCOs which charge infrastructure growth charges should have these charges subject to the same rules, notifications and appeal rights as development contributions, given that infrastructure growth charges are in effect *de facto development contributions* and therefore have a similar impact on property development costs.

2.0 **DISCUSSION**

Development Contributions

- 2.1 BusinessNZ welcomes the tighter focus on the use of development contributions as outlined in the Bill's Explanatory Note and in the Bill itself.
- 2.2 Development contributions appear to be an increasingly used tool, with property developers required to contribute either money or land for use as a reserve, or for network or community infrastructure.² While local authorities wishing to levy development contributions must adopt a contributions policy and incorporate it into their long term plans (LTPs), there is the potential for contributions to be used as another form of revenue-raising (although without strong justification).
- 2.3 The Department of Internal Affairs "*Development Contributions Review Discussion Paper*" (February 2013) stated that in 2011, local authorities had an operating income of approximately \$7.3 billion, \$142 million (approximately 2.0%) of which was received from development and financial contributions. Some have asserted that as development contributions make up only around 2.0% of Council income, then they cannot be considered a concern. However, this fails to recognise how development contributions impact on particular sectors of the economy, including housing affordability.
- 2.4 The Discussion Paper found that although contributions currently make up around 2.0% of all local authority operating income, contributions to individual councils can be much higher. For example in 2008, development contributions made up between 10% and 20% of income for at least 10 individual territorial authorities while in 2013, four territorial authorities were expected to get over 7% of their income from development and financial contributions.
- 2.5 Although BusinessNZ believes there is justification for development contributions, it is important that these are soundly based and not simply used as a revenue generating mechanism to fund general community developments, unrelated to direct development costs. Nor is it appropriate for development contributions to be used to influence urban design, the product of the whim or fancy of some urban planners. Much stricter criteria are required on the use of development contributions, including appeal rights for developers who consider that development contributions fall outside best practice.
- 2.6 BusinessNZ is therefore supportive of changes outlined in the Bill which will limit the charges councils can put on new housing developments to those which should rightly rest with a new development, as distinct from those of community benefit that should be paid by general ratepayers.

² For example, the average development contribution charge nationally has increased from \$3,000 per section to \$14,000 per section over the past decade, an increase of 360%.

Clause 45 New sections 150A Costs of development contribution objections

- 2.7 BusinessNZ notes that under new section 150A(2), a territorial authority may recover costs incurred from development contribution objections (although it has the absolute discretion to waive or remit the whole or any part of any costs if it so chooses under 150A(3)).
- 2.8 While there should be no incentive to make frivolous development contributions objections, where an objection has been successful and has been upheld by the development contributions commissioner, the total cost involved should rightly be funded by the territorial authority, unless there are extraordinary circumstances which would make this unreasonable. However, if the objection is not upheld, then the territorial authority should have the right to waive or remit the whole or any part of any costs otherwise payable, as currently outlined in section 150A(2).

BusinessNZ **recommends** that:

Where an objection has been made under Clause 45 new section 150A (Costs of development contribution objections) and the objector has been successful in having the objection upheld by the development contributions commissioner, the total cost of the development contribution objection should be rightly funded by the territorial authority, unless there are extraordinary circumstances which would make this unrealistic.

Clause 54 Section 200 amended (Limitations applying to requirements for development contribution)

- 2.9 *New subsection (4)* provides that a territorial authority may require another development contribution to be made for the same purpose if the further development contribution is needed to reflect an increase in the scale or intensity of the development since the original contribution was made.
- 2.10 BusinessNZ has some concerns with this provision. While it is possible to accept in principle the idea behind the provision, it has the potential to open up the way for territorial authorities to “double dip” on development contributions.
- 2.11 It will be important for a territorial authority to provide the developer with written notice clearly outlining the rationale for any further development contribution and for the developer to have the right to lodge a development contribution objection with a development contribution commissioner.

Clause 60 New sections 207A to 207F (Development agreements)

- 2.12 Conceptually, the ability for territorial authorities to enter into agreements with private developers to build and operate infrastructure (without imposing development contributions) is desirable and is supported by BusinessNZ.
- 2.13 This would likely give developers greater flexibility with infrastructure provision, assuming the infrastructure provided met legal environmental and health standards.
- 2.14 Given that territorial authorities and Council Controlled Organisations (CCOs) are effectively local monopolies, contestability in the provision of infrastructure and services is important to ensure efficient pricing.
- 2.15 A provision in the Bill, namely Section 207A, provides for a local authority to enter into a development agreement if certain conditions have been established, including that the developer has requested in writing that the territorial authority should do so. The territorial authority does not have to enter into a development agreement but must at least provide the developer with written notice of the decision and its reasons for making it.
- 2.16 Though the above provision may, superficially, seem reasonable, a territorial authority should be required to have a policy on when development agreements will, or will not, be considered, based on rigorous analysis and reflecting feedback from a public consultation process. Simply informing the developer that it has decided not to enter into a development agreement and the reasons why is likely to reduce contestability in the provision of infrastructure and other services. Effectively, territorial authorities would be acting as referee and player in the same market, particularly if they generally utilised their own Council Controlled Organisation (CCOs) to provide services.

BusinessNZ **recommends** that:

More rigorous analysis should be required before territorial authorities can decide not to enter into a development agreement with a developer. Simply informing the developer that the territorial authority has decided not to enter into a development agreement, with reasons why (under 207B), is likely to unnecessarily restrict contestability in the provision of infrastructure and other services.

Council Controlled Organisations (CCOs)

- 2.17 While supportive of the Bill's proposals to tighten the criteria relating to the use of development contributions (and the reintroduction of limited appeal rights), BusinessNZ is concerned that greater transparency is also required in respect to the charging regimes of Council Controlled Organisations (CCOs). In reality, CCOs often operate for all intents and purposes as monopolies and there is a concern that charges imposed on businesses and households may not necessarily be subject to the same degree of scrutiny as other Council

charges (and indeed as development contributions which will now be subject to much stronger scrutiny (including limited appeal rights)).

- 2.18 While BusinessNZ accepts that CCOs should operate in a business-like manner and seek a reasonable return on capital, it is important that any charging regimes associated with CCO provided services, fairly reflect the services provided to businesses and householders and that there is not the potential for such charges to be used simply to inflate CCO coffers or for other unrelated services.
- 2.19 Arguably where CCOs charge infrastructure growth charges these should be subject to the same rules, notifications and appeal rights as development contributions. Infrastructure growth charges are in effect *de facto development contributions* and therefore have the same impact on property development costs. At present, the Bill appears to be silent on this matter.

BusinessNZ **recommends** that:

Councils receive better guidance (via the Treasury or perhaps through the establishment of a technical advisory group (TAG)) on the use of available funding tools to ensure greater consistency across the country, underpinned by an economically principled approach to funding various Council activities, including the funding of services currently provided by Council Controlled Organisations (CCOs).

BusinessNZ **recommends** that:

CCOs which charge infrastructure growth charges should have these charges subject to the same rules, notifications and appeal rights as development contributions given that infrastructure growth charges are in effect *de facto development contributions* and therefore have a similar impact on property development costs.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESSNZ

BusinessNZ is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, Business Central, Canterbury Employers' Chamber of Commerce (CECC), and the Otago-Southland Employers' Association (OSEA) – and 73 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development.