

INTERNAL AFFAIRS



Development Contributions Review

Discussion Paper

Policy Group
Department of Internal Affairs

February 2013

MINISTER'S FOREWORD

New Zealanders rightly expect that good quality infrastructure such as sewerage, drainage, roading, and reserves will be available from the they move into their new house or business premises. I think that all of would agree that good quality infrastructure is critical to New Zealand's economic growth and to the health and wellbeing of both people and environment.



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There is also significant debate about the effect infrastructure costs be having on housing affordability. As our cities and districts grow is increased demand for new or expanded infrastructure. How and that infrastructure is provided can influence both the purchase price of housing and access to additional land for housing developments. We need to be sure that Kiwis are getting value for money and are being charged fairly for the costs of a new development.

a l l

Local authorities are the principal provider of the infrastructure that serves our communities. One way local authorities pay for infrastructure needed to meet the demands of growth is through development contributions. These usually take the form of a charge on developers to recoup some of the money needed to pay for local authority provided infrastructure. However, this adds to the cost of the development and this, in turn may then be passed on to the eventual buyer.

The current system of development contributions has been in place since 2002 and has not been comprehensively reviewed since.

In my view the current development contributions regime is complex, difficult to understand, and is being applied inconsistently. It is high time for a review.

The purpose of this review is to ensure that the way we finance infrastructure is appropriate to meet future demands and does not have undue impact on growth or housing affordability.

Undoubtedly there are pockets of excellence in the way infrastructure is financed across the local government sector. While gaining a better understanding of the current range of systems we also want to capture and benchmark excellent practices where there is no doubt that New Zealanders are getting value for money.

This discussion paper represents an important step in the Government review of development contributions. For the first time in a decade New Zealanders are invited to share their views on the current development contribution system and provide feedback on options to improve it.

I encourage you to make a submission on this discussion paper so that the Government can draw on the collective knowledge and wisdom of New Zealanders to create a better, fairer and more equitable way of paying for the infrastructure our communities need.

A handwritten signature in blue ink, appearing to read 'Chris Tremain', written over a horizontal line.

Hon. Chris Tremain

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GLOSSARY OF TERMS AND ABBREVIATIONS

Allocative efficiency	Employing the least-cost combination of inputs for a given level of output. Optimal allocative efficiency is sometimes referred to as the point where no one could benefit further without someone else being worse off.
Basic Infrastructure	Infrastructure within a subdivision or development which generally connects to (or services) each lot, including local roads, water, wastewater and drainage networks. In some instances the term also includes electricity, gas and telecommunication infrastructure within a subdivision or development (see <i>utility services</i> below).
Brownfields development	Development that takes place on a site where development has occurred previously (for example new apartments on former, cleared, industrial sites).
Catchment	In the context of development contributions means the area served by a particular infrastructure asset (or set of assets) or the geographic location of the community that will most likely use a particular item of community infrastructure or reserve.
Council	For the purposes of this document this term only relates to territorial authorities who are legally able to charge development contributions.
Council Controlled Organisation (CCO)	A council organisation that takes the form of a company in which 50 per cent or more of the voting rights of shareholders are held by one or more councils or where more than 50 per cent of the directors are appointed by councils.
Causal nexus approach	<p>The approach inherent in the Local Government Act 2002 that development contributions may only be charged where a development causes a need for additional investment by a territorial authority in public infrastructure.</p> <p>The approach is similar to other “nexus” approaches underpinning development contributions in overseas jurisdictions. The basic steps of a causal nexus approach were restated by the High Court of New Zealand in the case <i>Neil Construction v North Shore City Council</i> (2008).</p>
Financial contribution	Money or land (or a combination thereof) required from a person as a condition of a resource consent under the Resource Management Act 1991 for a purpose set out in a local authority’s regional plan or district plan (including to offset adverse environment effects from a development or activity).
Greenfields development	Development that occurs on land where there has been no previous development.
Growth	In the context of this paper refers to development that places additional demand on infrastructure. That development may take place in greenfield or brownfield areas, take the form of infill subdivision, or could be the expansion of an existing commercial or industrial business.
Headworks Infrastructure	Major infrastructure assets typically associated with the supply of water (water treatment plants, reservoirs and bores, and trunk mains for example) and wastewater (treatment plants and trunk mains). In this document it is also used in relation to facilities such as car parking buildings, major roads and large community facilities.

House Unit Equivalent (HUE)	A composite unit of measurement based around the demand on services that a single household has been modelled to create. It may incorporate traffic, water, wastewater, and stormwater use and through the use of ratios. It is also sometimes used as a way of calculating development contributions for commercial developments.
Intergenerational Equity	In the context of this document means the balance between the relative contributions of current and future generations when paying for local government expenditure on infrastructure, their ability to pay, and the benefits they receive.
LGA02	Local Government Act 2002
LGA74	Local Government Act 1974
Local authority	A regional, district or city council. The term also incorporates council controlled organisations and council run businesses.
Major Infrastructure	Infrastructure that serves a number of subdivisions or developments. It typically includes head works and trunk infrastructure for water wastewater and drainage, major roads and public transport facilities.
NZTA	New Zealand Transport Agency
Private Good	Goods or services that the market provides as it is possible to make profit from them. The goods or services are generally characterised by an ability to exclude those who have not paid for them from using them and where each additional unit of consumption of the good or service reduces its availability to others.
Public Good	Products or services where the use or consumption of the product or service does not preclude others from using or consuming it and where it is difficult to exclude those who have not paid for the good or service from using it. Public goods are generally not provided by the market because it is difficult to make a profit from them.
Regional authority	A regional council as named in Schedule 2 of the LGA02. Regional authorities have responsibilities for matters such as managing the use and allocation of water, discharges to the environment, pest management, land drainage, and regional transport planning. Regional councils may own and operate infrastructure such as flood control or irrigation works.
RMA	Resource Management Act 1991
Territorial authority	A city council or district council. Amongst other functions, duties and responsibilities, territorial authorities carry the primary responsibility for managing subdivision, land use and for building permitting and inspection. Territorial authorities are also a principal owner and providing of the infrastructure that serves their communities.
Unitary authority	A territorial authority that has the additional duties, responsibilities and powers of a regional council.
Utility Services	For the purpose of this document means gas, electricity and telecommunication services provided to houses, commercial, industrial or other premises by companies or business that are not owned by the relevant local authority.

DOCUMENT PURPOSE

This document seeks feedback on a variety of issues that have been identified with the current development contributions system under the Local Government Act 2002 (LGA02) and a range of possible solutions address to those issues.

The feedback will be used to:

- test the validity and significance of the issues identified;
- identify issues and options not covered; and
- help test the workability and practicality of the possible solutions identified and their impact.

The feedback will inform the development of government policy on the future of the development contributions system.

Invitation to comment

The Government welcomes your feedback on both the issues identified in this document and the spectrum of possible options to address them. The questions at the back of this document may help you think about the issues and option and their impact.

The issued are derived from a variety of sources but there may be other issues that we haven't identified. You are welcome to suggest new issues and to provide any information you may have to support your view.

Similarly, there may be more solutions. Those we have presented are not government policy, nor are they a preferred package; they are listed encourage comment and feedback.

There is a submission form at the back of this document for your use. You may choose to use this form or prepare your own submission.

The closing date for submissions is **15 March 2013**.

Comments should be sent to:

Development Contributions Review
Local Government and Emergency Management Directorate
Department of Internal Affairs
PO Box 805
WELLINGTON 6140

If emailing, please email your comments to BLGDevCon.Review@dia.govt.nz

EXECUTIVE SUMMARY

New Zealanders expect that services such as water, wastewater, drainage, roading and access to reserves or other community facilities will be available when new housing is built or new businesses established. Increasingly, the new infrastructure has had to be of high quality to meet higher environmental and health standards. In recent decades these expectations have been met through installing infrastructure before houses are built or businesses established. For developers and territorial authorities alike, this has meant paying for new infrastructure before any return or revenue is received from the new development.

Approximately half of the \$3.6 billion of local authority capital expenditure that is expected to be spent in 2013 is likely to be on new infrastructure. This expenditure is financed through a mix of rates, grants, financial contributions under the RMA and development contributions under the LGA02.

Development contributions have the purpose of recouping some of the capital costs incurred by a territorial authority when building, or expanding the capacity of, infrastructure that is needed to serve a new development. Recouping of capital expenditure through development contributions can reduce the pressure on other territorial authority revenue sources (such as rates) to finance infrastructure but adds to the costs faced by those responsible for development. These costs are commonly passed onto the purchasers of new houses or commercial premises as part of the sale price.

Although development contributions or levies of various types have been in existence for several decades in New Zealand, the current system has been in existence since 2002. It has not been reviewed since it was introduced, until now. This paper seeks feedback on a variety of issues that have been identified with the current development contributions system and a range of possible solutions address to those issues.

The current situation

Part 2 of this paper provides a brief overview of the use of development contributions in New Zealand. Part 2 outlines what development contributions are used for and provides an indication of the scale of development contributions charged in New Zealand and how they compare with the United States and Australia.

The issues

Part 3 sets out the issues that have been identified with the current development contributions and provides commentary around the origin and nature of those issues. Ten issues are identified under five general themes. The themes and issues are:

The Impact on Housing Affordability:

- issue 1: high development contribution charges can raise the purchase price of land and housing;
- issue 2: the timing of development contribution payments can increase the price of sections and houses; and
- issue 3: lack of incentives within the current development contributions system for smaller or more affordable housing.

Variability and Inconsistency:

- issue 4: variability and inconsistency in the use of development contributions means charges are unpredictable and raises questions around fairness and transparency;
- issue 5: an unclear purpose, fragmented structure and unclear wording, combined with a lack of up to date guidance may be contributing to variable and inconsistent territorial authority use of development contributions; and
- issue 6: the ability to use development contributions to help recoup costs of meeting increased demands on infrastructure is not consistent across all providers of infrastructure.

Fairness and Equity:

- issue 7: the types of infrastructure for which development contributions are charged, and the way in which charges are apportioned can be unfair and create inequities through not properly recognising benefits to the wider community; and
- Issue 8: aggregation of developments of different sizes, characteristics and locations in development contribution policies does not reflect the actual demand on services and can result in inequities through under or over charging.

Complexity and Efficiency:

- issue 9: the amount of detail and effort put into development contribution policies can result in increased complexity and reduced transparency without a commensurate increase in accuracy and fairness of outcome.

Dispute Resolution:

- issue 10: current challenge and dispute resolution mechanisms are expensive and time consuming, or lack transparency.

The solutions

Part 4 of the discussion paper sets out 14 options and a number of sub-options to address the issues identified in Part 3.

The options and the issues that they are intended to address are set out in the table below.

Option	Issues the options may help address
1. Updated and improved guidance for territorial authorities	4, 5, 6, 7, 8, 9, 10
2. Consolidation and clarification of development contributions provisions (see Appendix C)	4, 5, 6, 9
3. Explicit discounts enabled for housing of a type and location that creates less demand for services	1, 2, 3, 4, 7, 8
4. New purpose and principles provisions for development contributions	4, 5, 7, 8, 9
5. Facilitating increased private provision of infrastructure through enhanced developer agreements	1, 2, 3, 7, 8, 9
6. Tightening the range of infrastructure that can be funded from development contributions	1, 2, 4, 7, 9
7. Changing the timing as to when development contributions can be charged	1, 2, 4
8. Capping of development contributions at a set dollar amount	1, 3, 4, 6, 7, 9

Option	Issues the options may help address
9. Independent dispute resolution hearings	1, 4, 7, 8, 10
10. Reinstatement of appeals to the Environment Court	1, 4, 7, 8, 10
11. Regulations to promote greater consistency in development contribution approaches	4, 5, 7, 8, 9
12. Percentage based infrastructure levy as a financing tool	1, 3, 4, 9
13. Abolition of development contributions as a financing tool	1, 2, 4, 5, 6, 7, 9, 10
14. Infrastructure bonds as an alternative financing mechanism	1, 2, 4, 5, 9, 10

PART 1: INTRODUCTION

The need for a review of development contributions

Under the LGA02 development contributions may be imposed by a territorial authority on people undertaking development work. Their purpose is to recoup some of the capital costs incurred by the territorial authority when building, or expanding the capacity of, infrastructure that is needed to serve a new development.

The current provisions have existed for a decade without being reviewed. Over that decade there have been various claims or concerns expressed about the use and costs of development contributions and about their impact on housing affordability and business growth.

On 19 March 2012, Cabinet agreed to a programme to improve the efficiency of local government that included a review of development contributions in light of the concerns raised about them¹.

Also in March 2012, the New Zealand Productivity Commission released its Housing Affordability Inquiry final report. That report made four recommendations regarding the use of development contributions in New Zealand. The recommendations were:

- 1.the development of Best Practice Guidelines to improve understanding of development contributions and how they should be used (including the incorporation of principles into the LGA02 itself);
- 2.the establishment of a training programme for local authorities to improve practice around development contributions;
- 3.the introduction of reporting requirements to demonstrate compliance with the guidelines; and
- 4.the introduction of a dispute resolution process similar to that in the Resource Management Act 1991 (RMA).

Since the release of the Government's response to the New Zealand Productivity Commission's report, the review of development contributions has been widened to include a look at the transparency of and accountabilities for local authority supplied residential infrastructure, including potential alternatives to the current system of development contributions.

The context for development contributions

Infrastructure expectations

New Zealanders, particularly those living in urban areas, expect to have a range of basic services when they buy a house or open a new business. These include sewage, drainage, water, electricity, sealed roads, and in many cases, access to public transport, parks and community facilities (such as halls or libraries).

Over recent decades, a better understanding of how various infrastructure issues impact on human health and safety, business efficiency and profitability, and the quality of the environment, has seen a general rising in the standard of infrastructure that communities expect, and that are required by legislation or regulations. For example, since 1990 the

¹ For example the Minister for the Environment's Urban Technical Advisory Group (2010), pg. 60, *Developers 'sick of footing big bills'* in the Southland Times, 18 May 2012, *Council levy change 'outrageous'* in the Nelson Mail, 30 June 2012, and *Council 'tax' to develop unfair*, in the Manawatu Evening Standard, 12 October 2012

standards and requirements that have necessitated higher quality and more timely provision of infrastructure include:

- water and wastewater standards required through national environmental standards and plans prepared under the RMA;
- various measures and techniques to prevent or mitigate adverse effects on the environment which are required by national policy standards, national environmental standards, and plans under the RMA; and
- new drinking water standards.

To meet these new requirements, the trend has been to install most of the infrastructure before houses have been built or businesses are established. For both developers and territorial authorities, this has meant incurring costs before income has been received. Often these costs are covered through borrowing.

Who supplies infrastructure

There will typically be several parties supplying infrastructure when land is developed (a general indication is shown in Table 1 below). Generally, developers and private utility companies provide basic services to each lot in a new subdivision. On completion all services except utility services are usually vested in the local territorial authority which takes over ownership and responsibility for the infrastructure. This includes ongoing liability for its safe operation, maintenance and renewal. The cost of providing this infrastructure is included in the section price.

Local authorities, primarily territorial authorities, generally supply major infrastructure services up to the boundary of the new subdivision or development. This infrastructure usually takes the form of trunk mains for water and sewage to carry water and wastewater from treatment plants (and may involve the building or expansion of the plants themselves), major roads and community reserves and facilities.

Table 1: Community and urban land development infrastructure providers

Infrastructure type	Developer	Local authority or council controlled organisation	Utility companies	Central government
Water treatment plants and storage facilities		●		
Sewage treat plants		●		
Drainage and flood protection works	●	●		
Trunk sewer and water mains, pumping stations etc.		●		
Public transport facilities		●		
Some local roads and main roads, footpaths, cycleways, traffic signals and lighting		●		
Local roads, footpaths, cycleways and lighting within new subdivisions or developments	●			
Sewer and water pipes within new subdivisions or developments	●			
Neighbourhood parks	●	●		
Sports grounds		●		
Community Halls		●		
Libraries		●		

Infrastructure type	Developer	Local authority or council controlled organisation	Utility companies	Central government
Recreation centres		●		
Electricity lines, transformers and substations			●	
Gas lines and infrastructure			●	
Telecommunication lines, cables, exchanges, towers, connections and transmitters			●	
State schools and tertiary institutions				●
Hospitals				●
State highways				●

The role of development contributions

Development contributions as a financing mechanism

New Zealand's local authority capital expenditure can be variable from year to year and is forecast to be \$3.589 billion dollars in 2013². This forecast reflects \$1.6 billion attributable to Auckland and \$1.99 billion to the rest of New Zealand. The capital expenditure is driven by the costs of building, renewing or replacing infrastructure. Of the proposed amount approximately half is expected to be spent on new capital (predominantly, network infrastructure, reserves and community infrastructure). In this context, income from development contributions funds approximately four percent of capital expenditure nationwide, but for some individual councils that can be between 20 per cent and 50 per cent.

An indication of the scale of expenditure on local authority principal activity types and how that expenditure increased in the five years between 2006 and 2011 is shown in following table³:

Table 2: Local authority infrastructure related purchasing and operating expenditure

Activity area	Purchasing and operating expenditure 2006	Purchasing and operating expenditure 2011
Roading	\$476,481,000	\$608,573,000
Transportation	\$185,724,000	\$214,457,000
Water supply	\$227,540,000	\$216,660,000
Waste water	\$253,047,000	\$307,235,000
Solid waste	\$208,728,000	\$262,770,000
Recreation and Sport	\$248,535,000	\$288,248,000
Property	\$57,810,000	\$158,288,000
Total	\$1,657,865,000	\$2,056,231,000

² Over a 10 year period it is forecasted that the average capital expenditure will be \$3.688 billion dollars with the expenditure for Auckland expected to increase within this total forecasted amount

³ Derived from Statistics New Zealand. Staffing, depreciation and grants are not included in these figures but this information is available from Statistics New Zealand

Development contributions are one of a number of ways for territorial authorities to fund the capital costs of infrastructure. Others include rates, financial contributions under the RMA, user charges (such as entry fees) or central government grants and funding assistance.

The largest source of central government funding assistance for local government infrastructure is through the New Zealand Transport Agency (NZTA), which has budgeted approximately \$230 million per year over the period 2012-2015 to assist local government with roading projects⁴.

Development levies and contributions of various types have been in existence for several decades (see Appendix A), with the current system being introduced in 2002. Provisions relating to development contributions are currently contained in sections 101, 102, 103, 106, and 197 to 211 and schedule 13 of the LGA02.

Section 199 of the LGA02 sets out the following as infrastructure on which development contributions can be charged:

- (a) reserves;
- (b) network infrastructure (water, wastewater, stormwater, roads and other transport); and
- (c) community infrastructure (land or assets on land to provide public amenities⁵).

Development contributions, allocative efficiency and the use of land

In principle, well functioning markets provide “signals” to motivate and reward the best or most sustainable use of capital. Funding is allocated to those investments that offer the highest rates of return, which should result in the more efficient use of the money and resources that are available.

A number of commentators (including the New Zealand Productivity Commission) have noted that properly structured development contribution approaches can promote more efficient use of infrastructure and land by better reflecting the true costs of providing infrastructure to a particular area or type of development. In theory, developers who have a choice of where they can build and will have strong incentive to focus upon developing areas with lower costs⁶. General financing mechanisms such as rating, may distort the true cost of locational choices as they tend to aggregate areas that may have quite different servicing costs because of their geographical characteristics.

Development contributions can also discourage inefficient or poor integration and coordination between land use and infrastructure by reflecting the true cost of extending infrastructure to developments that have leapfrogged over as yet undeveloped (but serviced) land. Leapfrogging of this nature can impose additional or unexpected costs as it creates infrastructure demands that are out of sequence (in terms of location or timing) with previously agreed infrastructure provision priorities and funding.

In theory, development contributions can also be used to encourage redevelopment, more efficient or more intense use of brownfields and inner city land. The amount charged can either act as an incentive to build on brownfields or inner city land (such as when the amount charged is less than for greenfield areas), or encourage more intensive use of that land by encouraging developers to spread potentially high infrastructure retrofitting costs over more units of development (to lower the cost per unit).

⁴ Approximately \$700 million over three years, of which \$515 million is for new or improved roading projects, \$115 million is for public transport improvements, and \$53 million for walking and cycling improvements

⁵ No definition is provided in the LGA02 as to exactly what these are but they could conceivably include halls, libraries and recreation centres, for example

⁶ Allen Consulting Group cited in Australian Government Productivity Commission (2009), pg.133

However development contributions under the LGA02 were not originally intended to be used as an economic tool to direct urban form or achieve particular environmental outcomes⁷. Development contributions are primarily an infrastructure financing mechanism. Nevertheless, development contributions have the potential to influence urban form through the price signals they can send the costs of building in certain locations and the impact those signals.

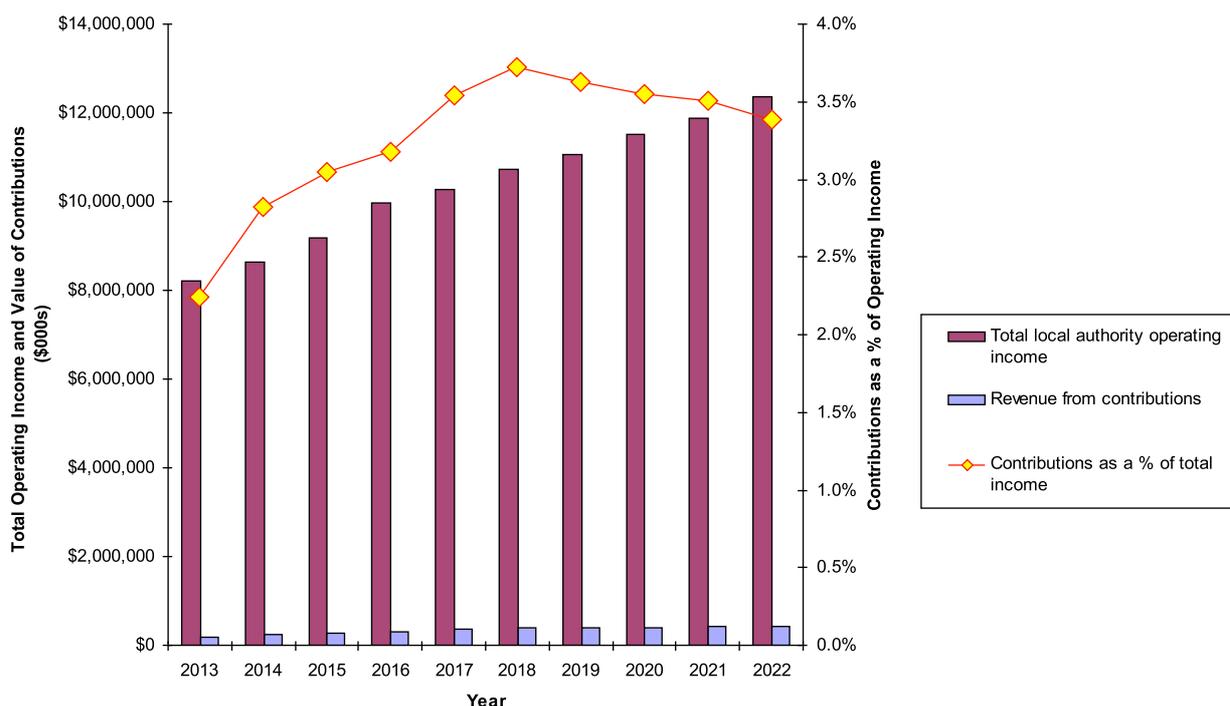
⁷ In respect to the latter it could be argued that there is stronger case for such outcomes to be pursued through financial contributions under the RMA which are related to environmental impacts of development

PART 2: THE CURRENT SITUATION

Development contributions as a local government finance source

In 2011 local authorities had an operating income of approximately \$7.3 billion, \$142 million⁸ (approximately 2.0 per cent) of which was received from development contributions and financial contributions. If economic activity increases over the next decade, income from development contributions and financial contributions could rise to over \$418 million by 2022 (equating to approximately 3.4 per cent of total projected total local authority operating income⁹).

Figure 1: Projected contributions revenue relative to local authority operating income



Although contributions currently make up around 2 per cent of all local authorities' operating income the contribution to individual councils can be much higher. For example in 2008 development contributions made up between 10 and 20 per cent¹⁰ of income for at least 10 individual territorial authorities', while in 2013 it is expected four territorial authorities will get over 7 per cent of their income from development contributions and financial contributions¹¹.

Current projections suggest that if individual territorial authority financial and development contribution revenue projections are aggregated, these will contribute \$3.4 billion to the funding of new or expanded local infrastructure over the next decade.

Current use of development contributions

Development contributions may either take the form of money, land (for reserves) or both. Māori land under the Te Ture Whenua Māori Act 1993 cannot be taken unless that Act specifically provides otherwise.

⁸ Statistics New Zealand, *Local authority financial statistics: Year ended June 2011*

⁹ Department of Internal Affairs analysis of 2012 long-term plans

¹⁰ SPM Consultants (2008), pg. 25

¹¹ Western Bay of Plenty District, Waimakariri District, Waikato District and Selwyn District. Auckland anticipates contributions income equating to 2.9% of its operating income

Development contributions can only be charged to fund the portion of new infrastructure that is related to growth. They cannot be used to fund:

- non-growth related level of service or infrastructure quality upgrades;
- maintenance;
- renewal of infrastructure; or
- infrastructure operating and operational costs such as salaries and overheads¹².

Development contributions can also not be spent to achieve a purpose for which they were not collected.

Development contributions cannot be charged if, and to the extent that, infrastructure is provided by the developer, funded by a third party is or is being funded through RMA financial contributions¹ (even though 58 per cent of local authorities use both development contributions and financial contributions).

Development contributions are currently being used by 45 territorial authorities in New Zealand. Eighteen territorial authorities do not charge development contributions (but most of these use RMA financial contributions). Regional authorities cannot charge development contributions but can charge financial contributions under the RMA.

Of the 45 territorial authorities that use development contributions, not all charge for every type of infrastructure. The reasons for this are varied, but can include that some local authorities:

- use financial contributions under the RMA to help fund parks and reserves; and
- want to encourage (or not discourage) development in their areas by charging development contributions in full or on part on every type of asset (this being a policy decision rather than a legal matter).

As well as variation between territorial authorities' use of development contributions there is also significant variance in the amounts charged (see table 3 below).

Table 3: Use of development contributions in New Zealand

Service	Number of territorial authorities who charge	Number of catchments	Lowest charge per HUE	Highest charge per HUE	Median Charge per HUE	Average charge per HUE
Community Infrastructure	29	102	\$35	\$10,459	\$1,850	\$2,526
Reserves	25	111	\$28	\$14,897	\$1,550	\$3,759
Roading	41	157	\$94	\$32,297	\$1,000	\$2,622
Stormwater	36	128	\$4	\$12,914	\$1,000	1,919
Wastewater	43	216	\$15	\$23,143	\$3,500	\$4,923
Water	43	262	\$58	\$52,608	\$2,400	\$3,661
<i>TOTAL / Average Total</i>	45	163	\$249	\$64,489	\$11,916	\$14,133

Derived from Covec (2012).

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 (see Appendix B) in 2012. However caution needs to be exercised in making direct

¹² LGA02 section 204 specifically prohibits this

¹³ LGA02 section 200

comparisons with other jurisdictions as, in some states, a portion of local infrastructure is funded through stamp duties or other state and provincial taxes in a manner that is quite different to New Zealand.

The largest charges and greatest variability appears to be for development contributions charges associated with water and wastewater (when combined they make up 61 per cent of the average total development contribution across New Zealand). Charges for community infrastructure are the third highest charge (18 per cent of the average total development contribution charge across New Zealand).

Developer agreements

Following similar practice overseas, New Zealand territorial authorities may enter into agreements with developers over the provision of infrastructure. These so-called “developer agreements” or “development agreements” are not referenced explicitly within the LGA02, but are loosely based around provisions that are contained within section 200 of the Act.

Section 200 states that development contributions cannot be taken if a developer is funding or otherwise providing for the same reserve or infrastructure, and that there is no restriction in the LGA02 on a territorial authority from accepting additional contributions for reserves or infrastructure from a person if that person has agreed to it.

The 167 hectare Hobsonville Point development in Auckland represents one form of developer agreement. Hobsonville Land Company (HLC) has a working relationship with the Auckland Council that has seen HLC provide reserves and stormwater infrastructure for Hobsonville Point in return for not being charged development contributions for those assets. The location, amount and performance specifications for the infrastructure are set through infrastructure funding agreements between Auckland Council and HLC.

Outside Auckland the use of developer agreements is comparative limited in New Zealand, although it is not uncommon for developers and territorial authorities to negotiate over specific infrastructure design, performance and provision details for infrastructure within a subdivision. Hamilton City Council has reportedly entered into five legal contracts with developers that broadly fit into the category of development agreements, although those agreements did not involve unique or additional funding arrangements for infrastructure¹⁴.

¹⁴ SPM Consultants (2012)

PART 3: THE ISSUES

Impact on housing affordability

Issue 1: High development contribution charges can reduce housing affordability by raising the purchase price of new vacant serviced land and new housing.

The New Zealand Productivity Commission noted in 2012 that although development contributions did not cause the boom in house prices, charges of \$20,000 per section are not uncommon and will often have increased land prices. Other reports such as that by the Local Government Forum and the Property Council note that development contributions are a large impost on some developments, and that charges of more than \$30,000 for each residential lot are common in certain districts¹⁵.

Development contributions are one of a range of infrastructure related costs that can contribute to the cost of developing sections and building houses. Other infrastructure costs can include:

- charges or fees from council controlled organisations (for example WaterCare in Auckland);
- charges and fees from private network utility companies (for example, those providing electricity, gas and communications services);
- council service connection charges; and
- local infrastructure built by the developer themselves (roads, piping, and lighting within a subdivision for example).

Usually these costs are passed onto the buyer in the land or house price. However it is also possible that in some cases the cost of development contributions may be passed backwards from a developer to the original landowner in the form of a lower selling price for un-serviced land. In these instances development contributions may have little impact on house prices¹⁶.

Analysis of draft development contribution policies by Covec (2012) suggests that the average development contribution charge across New Zealand is \$14,133 (or 3.34 per cent of the national average house price in July 2012)¹⁷. The median development contribution charge is \$11,916.

Auckland Council generally charges development contributions around \$16,000¹⁸ per household unit equivalent, but this does not include infrastructure growth charges and connection fees of WaterCare Ltd which may add thousands of dollars to a new house¹⁹. Without adding Watercare charges, the average development contributions charged by the Auckland Council under the LGA02 makes up around three to four percent of the average Auckland house price (depending on location).

An indication of the relative contribution development contributions make to the final house purchase price in Auckland can be seen in graph below (adapted from BRANZ house price modelling in 2008²⁰, development contributions have been separated out from the cost of land in

¹⁵ Local Government Forum and Property Council New Zealand (2010). Note this report drew on data that pre-dated the Auckland Council review of its development contributions policy

¹⁶ Abelson (1999)

¹⁷ However the average house price also reflects sales of existing, older housing stock. Where new houses are sold for higher prices than existing houses the proportion impact of development contributions may be less than 3.34%. The average proportion of development contributions to house prices appears to have increased a little since 2008, but there is great variability from district to district with some recording large increases while others recorded decreases.

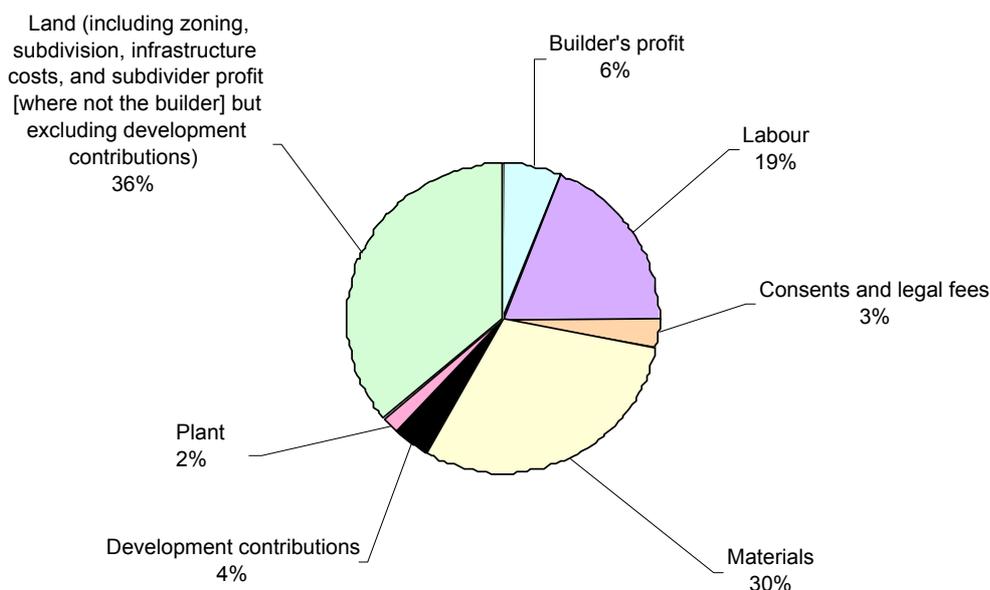
¹⁸ This appears to be a flat level charge that is now applied irrespective of former local authority jurisdictions that applied prior to amalgamation

¹⁹ Infrastructure growth charges of WaterCare range from \$7935 to \$27,830 currently, WaterCare (2012)

²⁰ BRANZ (2008). The development contribution figure is derived from Covec (2012) and Quotable Value average house sales price data for July 2012

this derivation). The relative contributions of costs of building a larger house in Auckland are thought to be similar, although with variances of around one or two percent in the cost of materials, labour and builder's profits²¹.

Figure 2: Modelled costs of building a 145 square metre house in Auckland



Although development contributions make up a comparatively small proportion of housing costs in most territorial authority areas there are districts or sub-districts where the average development contribution charges are 50 per cent to 100 per cent higher than the national average²².

Covec (2012) reports that up to ten territorial authorities have average total development contribution charges over \$20,000 per new HUE. Some development contributions at a sub-district level are also reported as being between \$30,000 and \$65,000 per HUE. These high charges may reflect higher costs of providing infrastructure to dispersed or remote communities, or the need for significant new investment to increase capacity in areas with little previous settlement. In these instances development contributions have the potential to make up between 10 per cent and 17 per cent of the average house price in that local authority (based on Quotable Value average sales prices for July 2012).

Once interest payments on loans that may have been taken out to pay development contributions and Goods and Services Tax are added, the true cost of development contributions to the developer can be higher than the amount of the basic development contribution charge²³.

²¹ Ibid

²² Rotorua and parts of Thames Coromandel District for example

²³ Submission of Brady Nixon to the Productivity Housing Affordability Inquiry, for example

Options to help address issue 1 include: 3, 5, 6, 7, 8, 9, 10, 12, 13 and 14

Issue 2: Early payment due dates for development contributions may negatively impact on the purchase price of sections and houses

Development contributions can be charged when:

- a resource consent is granted under the RMA;
- a building consent is granted under the Buildings Act 2004; or
- an authorisation for a service connection is granted.

For residential developments, the first resource consents are usually those for subdivision of land which takes place before section titles are issued and houses are built and sold. This means that development contributions may be charged before a developer has received income from the sale of sections or houses. It can also mean that development contributions are charged before there is an actual demand on infrastructure (they are charged in anticipation of the demand).

Months or even years can pass between subdivision consents being granted (and development contributions charged) and the developer receiving income. During this time the developer may be faced with paying interest on loans taken out to cover development contributions or opportunity costs associated with not being able to put that money to other uses. The scale of these costs is relative to the size of the development contribution and the length of time to pay off the loan. Depending on the individual circumstances of the development and the developer concerned, the interest or holding costs may be passed on to land or house purchasers in the form of higher prices.

The Minister for the Environment's technical advisory group noted that paying development contributions before titles are issued or construction commences may also be problematic for developers as banks may be reluctant to lend for development contributions because of poor security²⁴.

Some developers have suggested that delaying the charging of development contributions (charging at the time at which building consents are issued, for example) could reduce the costs they face and may overcome some of the problems that they face in obtaining finance. Savings may then be able to be passed onto purchasers. Auckland Council currently postpones payment of development contributions (as part of its development contribution policy) as a way of reducing costs to developers. Similarly, Central Otago District Council agreed to defer payment of development contributions to assist developers through the economic downturn in 2009²⁵.

However, 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 timeframe²⁶.

To provide infrastructure before land is developed, local authorities may have to take out loans and face debt serving costs until they can repay the loans through revenue from rates and development contributions. Extending the time period for payment of development contributions, therefore, could increase the amount of interest local authorities have to pay. In 2011 local authorities paid \$508 million in interest, of which \$161 was related to roading, transportation, and water and wastewater infrastructure²⁷.

²⁴ Minister for the Environment's Urban Technical Advisory Group (2010), pg. 60

²⁵ *Council concession for Central Otago Developers*, Southland Times, 26 March 2009

²⁶ As noted by the Australian Government's Productivity Commission (2009), pg. 193

²⁷ Statistics New Zealand, *Local authority financial statistics: Year ended June 2011*

Options to help address issue 2 include: 3, 5, 6, 7, 12 and 14

Issue 3: A one size fits all approach to charging development levies on houses provides little incentive to builder smaller or more affordable housing.

Assuming the same location, types of materials used, quality of fittings and that those working on a house have the same qualifications and experience, the cost of a larger house will be higher than for a smaller house.

The New Zealand Productivity Commission (2012) has noted that a distinctive feature of the New Zealand new house market is that of supply tending to be in the form of relatively expensive houses, or to a lesser extent, apartments that are targeted at the top end of the market, rather than the affordable end of the market²⁸. Fletcher Building confirmed this in their submission to the Productivity Commission noting that they did this to maximise their returns on expensive land.

Since the 1950s the average new house size in New Zealand has increased from less than 150 square metres to over 200 square metres in 2010. The majority of new houses built now have three or more bedrooms, with half of new houses being built in 2011 having four bedrooms²⁹.

Analysis of current or draft council development contributions policies by the Department of Internal Affairs suggests that the majority of policies do not differentiate housing according to:

- the size or form of housing development;
- the entity that is undertaking the work (except to the extent of whether the work is by the Crown or not); and
- the form of land ownership

In particular, most development contribution policies do not sufficiently differentiate between certain sizes or types of housing or the type of land on which it is located; for example a new four bedroom house being built by a developer for sale in an urban area is treated the same as both a two-bedroom house for papakāinga housing on multiply owned Māori land in a rural area. The latter may have little council-operated servicing available and may only consist of a one-two bedroom unit social housing development with communal recreational facilities.

This lack of differentiation can mean that:

- some developers are being inappropriately charged for services that they do not use, or create less demand for (see also the issues under fairness and equity);
- there may be little incentive for property developers to develop smaller, cheaper housing units in terms of the financial return from development;
- those wanting to build smaller units or other alternative forms of development are in effect discouraged from doing so if development contributions have been set based on the impacts of larger units; and
- in the case of development on multiply owned Māori land and some forms of social housing, policies do not recognise that contribution costs cannot be passed on, therefore impacting on the financial viability of such forms of development.

²⁸ New Zealand Productivity Commission (2012), pg 42

²⁹ Quotable Value, cited in the New Zealand Herald in May 2011

Options to help address issue 3 include: 3, 5, 8, and 12

Variability and inconsistency

Issue 4: Variability and inconsistencies within and between territorial authorities about how they manage development contributions makes charges hard to predict and raises concerns about transparency and fairness.

Variability in how, and to what, development contributions are applied has been a consistent theme since 1974³⁰. It has recently been raised again as an issue in the final report of the Minister for the Environment's Urban Technical Advisory Group (2010) and in the Productivity Commission's Housing Affordability Inquiry (2012).

As shown in Table 3: Use of Development Contributions in New Zealand, 45 out of 65 territorial authorities charge development contributions, and of those just 25 charge development contributions for reserves, and 29 charge development contributions for community infrastructure. Average total development contributions charged on a housing equivalent unit basis range from \$250 to nearly \$65,000.

Assuming the amount of the development contribution charged is related to the true marginal capital cost of providing infrastructure then some degree of variability is to be expected because some areas are more difficult and expensive to service than others³¹. Various commentators also argue that from an allocative efficiency viewpoint, reflecting the true costs of development through development contributions is beneficial in promoting more efficient use of land and infrastructure as it internalises the cost of additional infrastructure required by the development³².

Most concerns around variability and inconsistency appear to have arisen from a view that territorial authorities are not using a consistent development contributions formula or approach to calculating development contributions³³. Inconsistencies most commonly cited relate to:

- which services or infrastructure assets are charged for;
- the different ways in which some territorial authorities take into account benefits to the wider community from new infrastructure and how such benefits are reflected in the development contribution charged;
- variability in the standard of infrastructure or levels of service charged for³⁴;
- the time period over which benefits and costs are calculated (use of the ten year long-term plan horizon versus an asset life timeframe, for example). Shorter timeframes can create intergeneration equity issues and shift more of the cost to the developers (and buyers) who are the first to develop a given area;
- the timing of contribution charges;
- inconsistencies and a lack of transparency in the way development contributions are calculated for commercial developments (some councils use floor area as a measure,

³⁰ Unpublished Department of Internal Affairs paper on the Local Government Bill (2001)

³¹ For example see Klug S and Yoshitsugu (2010) and Trubka, Newman and Bilborough, also Australian Government Productivity Commission (2009)

³² Bluffstone, Braman et. al (2008), also Local Government Rates Inquiry (2007)

³³ Property Council submission to the Housing Affordability Inquiry, for example

³⁴ For example see the Todd Property submission to the Housing Affordability Inquiry

others use a HUE approach with a multiplier, and others use a per unit charge based around each type of service the development is expected to use).

A review of postings on various development and construction website forums³⁵ suggests that the main effects associated with variability and inconsistencies in the use of development contributions relate to the relative unpredictability of charges and perceptions that some charges are arbitrary or unwarranted. Similar themes in the use of development contributions in some Australian states also suggest that inconsistencies may lead to perceptions that some developers are being favoured or given an unfair advantage over others.

Options to help address issue 4 include: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 13

Issue 5: Lack of a clear purpose, fragmented structure and unclear wording of development contribution provisions in the LGA02, combined with a lack of up to date guidance, may contribute to variability and inconsistency in territorial authority practice.

Unclear purpose

The LGA02 does not contain an explicit reason or purpose for the existence of development contributions, with most current understandings being of the purpose of development contributions being inferred by individual interpretations of LGA02 section 199: “Basis on which development contributions may be required”.

Although development contributions are commonly described as one means “to fund, or partly fund, the enlargement of reserves and network infrastructure made necessary as a result of new development”³⁶ this description does not provide a clear direction to help territorial authorities decide whether:

- the use of development contributions is a preferable or appropriate financing mechanism compared to other means; or
- whether development contributions can or should be used for other purposes such as encouraging more efficient urban forms or types of development.

In a similar way, the principles that underpin the development contribution provisions of the LGA02 are also not explicit. In the absence of other comprehensive up to-date guidance sources, territorial authorities work out their own approaches to applying the provisions or rely on case law or both.

Fragmented Structure

Provisions relating to development contributions under the LGA02 are spread throughout the Act. For example, although sections 197 to 210 contain the bulk of the provisions that set out what development contributions can be charged for and the contents of a development contributions policy, section 101 (which sets out requirements to consider who creates demand for council activities and who benefits from those activities), and section 106 (which contains details for a policy on development contributions or financial contributions) are also relevant. In addition to those sections, section 203 then refers to Schedule 13 of the LGA02 where further provisions can be found which relate to the calculation of maximum development contributions for community facilities and how to attribute units of demand to developments.

³⁵ For example, www.propertytalk.com, and the comments sections attached to various articles on www.stuff.co.nz

³⁶ For example, the Local Government and Environment Select Committee report on Local Government Bill 2002, pg. 32

This fragmentation means the existence of linkages between some sections of the LGA02 are difficult to recognise or apply. It is not clear how much consideration local authorities give to the benefits of new infrastructure to the wider community when managing development contributions.

Unclear wording

With the benefit of time some of the terminology and phrasing of the development contribution provisions in the LGA02 have been shown to be unclear. Words and phrases that have been identified by territorial authorities as being unclear and likely to result in variable interpretation include:

- “total cost of capital expenditure” (it is unclear as to what is to be included);
- “development” (section 197, the current definition refers to “other development” in a circular fashion), and also the relationship between “growth in section 199 and “development” in other parts of the LGA02;
- “third party” (section 200, it is unclear as to whether or whether ratepayers are a third party)
- “to the extent that” (section 202); and
- “for the same purpose” (section 202).

It is also difficult to determine to what extent the Crown is, or should be, eligible to pay development contributions.

Different interpretations as to what these words (and others in LGA02) mean are likely to have resulted in confusion in how they are to be applied and have been a contributor in degree of variation in methodologies applied by territorial authorities.

Lack of guidance

The Development Contributions Working Group, in their submission to the Productivity Commission Housing Affordability Inquiry noted the administrative difficulties some local authorities have with development contributions and partially attributed this to the level of resources available. Similarly it was noted in the Local Authority Rates Inquiry (2007) that the design and implementation of development contribution policies is “fraught with difficulties, at the conceptual level and in their detail³⁷” and the concept of a shared approach to overcome issues was suggested.

Comparatively little up to date guidance exists for territorial authorities to help them formulate and apply development contributions. The most comprehensive and accessible publication was released in 2003³⁸ and no longer reflects current practice. Anecdotal evidence from territorial authorities is that little attention is now paid to it, while some developers are concerned that it does not reflect good practice.

The Productivity Commission Housing Affordability Inquiry (and a number of submitters to it) recommended that better guidance material would help overcome some of the issues with the use of development contributions.

Options to help address issue 5 include: 1, 2, 4, 11, 13, and 14

Issue 6: The ability to use development contributions to help recoup costs of meeting increased demands on infrastructure is not consistent across all providers of infrastructure

Assuming the causal nexus approach is sound and the fundamental basis for determining whether development contributions are appropriate, a question may be asked as to whether there is consistency as to who can charge development contributions.

³⁷ Local Government Rates Inquiry (2007) pg. 153

³⁸ Local Government New Zealand (2003) *Best Practice Guide to Development Contributions*

The State highway network is owned, operated and maintained by the NZTA, while regional councils provide infrastructure associated with transport³⁹ and flood control. Growth and development can impact on the infrastructure of both the NZTA and regional councils by:

- requiring the extension of networks;
- the upgrade of facilities to provide the additional capacity needed to meet increased demand; or
- the rebuilding of infrastructure to address safety or hazard issues arising from increased use of the infrastructure.

However, although there can be a link between increased demand driven by growth and the need for capital expenditure to provide infrastructure, neither the NZTA or regional councils have the legal ability to charge development contributions.

Although regional councils do have an ability to charge financial contributions under the RMA, NZTA has reportedly found that the decreased use of financial contributions by territorial authorities has impacted on the amount of financial compensation they receive to offset adverse effects on the State highway network.

This issue was last looked at as part of the Local Government Rates Inquiry in 2007. At that time the Inquiry panel considered central government as the owner of State highways will already receive additional revenue to fund any upgrades that would be required as a result of new developments through additional taxes paid by new developments, excise duties, and road user charges⁴⁰.

The Rates Inquiry panel therefore did not support giving Transit New Zealand the power to levy development contributions, but considered there may be a case for regional councils to levy development contributions on the same basis that territorial authorities can.

Options to help address issue 6 include: 1, 2, 8, and 13

Fairness and equity

Issue 7: The type of infrastructure for which development contributions are charged, and the way in which charges are apportioned can be unfair and create inequities through not properly recognising benefits to the wider community.

Range of Infrastructure covered by development contributions

Development contributions in New Zealand are used to fund a broad range of infrastructure when compared to development contributions in Australia, the United States, the United Kingdom and Canada (see Appendix D). In Australia, only New South Wales and Victoria use development contributions for a broader range of assets.

³⁹ Generally public transport, although this could potentially extend to some regionally significant arterial roads in a small number of cases

⁴⁰ Local Government Rates Inquiry (2007) pg. 153

International literature suggests that equity and fairness in the use of development contributions or impact fees is tied to both a causal nexus approach and to recognising that those who benefit from new infrastructure should contribute to its cost.

The causal nexus approach is related to the “user pays” or “exacerbator pays” principle that those who create the need or demand for a service should pay for it. Many commentaries on the application of development contributions or the funding of infrastructure suggest that such an approach is appropriate where those services are for the exclusive use of those who pay for them, or in instances where the incremental costs can be established⁴¹. Common justifications for this position are that such an approach is:

- fair and equitable (those who do not use services are not required to pay for them); and
- promotes greater allocative efficiencies through internalising the true costs of particular choices or actions.

A distinction can be drawn between local network infrastructure (roads, water and wastewater systems for example) and community-wide infrastructure (including sports grounds, libraries and recreation centres and larger reserves) when determining who benefits from infrastructure.

Local network infrastructure (pipes, pumping stations, minor roads and neighbourhood parks, for example), is akin to a private good where those who use it are generally in close proximity and easy to define, and there is comparatively little (if any) use made of it by those outside the immediate area (either because they do not have access to it, or because they have no need for it as their needs are already being met elsewhere).

In contrast, community-wide infrastructure (such as sport fields, aquatic centres and larger libraries) are more like public goods where the wider community, not just those living in the immediate vicinity, has access to them and benefits from them. In such instances it is inequitable to only charge local users when other parties may be benefitting at no cost.

Recognising the causal nexus approach, the benefiter pays approach and the distinction between public and private goods the Australian Government Productivity Commission First Home Ownership Inquiry⁴² expressed the view that:

- it is appropriate for the cost of [local] basic infrastructure which is contained within a particular development and is of predominant benefit to future home owners, to be borne by the developer and included in house prices;
- where major infrastructure (trunk services and head works) is shared amongst developments and where the incremental costs can be well established there is a good case for apportioning costs according to use; and
- where benefits are provided in common to users across the community there is a case for funding infrastructure (particularly that related to community facilities and open space) out of general revenue sources.

The New Zealand Productivity Commission reached a similar view during its Housing Affordability Inquiry in 2012 and a similar theme was made in the Local Government Forum and Property Council of New Zealand report “Taxing Growth and Development” (2010).

Borrowing from these reports some developers claim that the costs of reserves and community infrastructure should be borne by the wider community through a general revenue source (such as rates)⁴³.

⁴¹ For example the Australian Productivity Commission (2004) and the New Zealand Productivity Commission (2012)

⁴² Ibid

⁴³ See the New Zealand Property Council submission to the Housing Affordability Inquiry for example

Options to help address issue 7 include: 1, 3, 4, 5, 6, 8, 9, 10, 11 and 13

Issue 8: The aggregation of developments of different sizes, characteristics and locations in development contribution policies does not reflect the actual demand on services and can result in inequities through under or over charging.

There is also a view amongst developers that they are being required to pay more than the marginal costs of their development (i.e. that they are paying for infrastructure of a type, quality, or capacity that is greater than is actually required to serve their development).

Although in part this issue relates to the type of infrastructure they are being required to contribute to and its relative benefit to the wider community, there is also concern about paying for a level of demand that is not commensurate with the scale, nature or location of their development⁴⁴.

In part, the issue appears to relate to the degree of aggregation that occurs within some development contribution policies in order to reduce complexity and improve administrative ease. The effect of this can be that developments with quite different characteristics are treated the same even though they may place different demands on infrastructure.

Developments occurring in some areas may not have access to, or not require access to a full range of council services (for example housing developments rural or peri-urban areas may use septic tank or rainwater collection systems that reduce, or have no demand on, council services).

For some infill development projects, the cost of retrofitting or upgrading infrastructure can be greater than for new services in greenfield areas.

In theory the existing causal nexus approach should allow for the differences in demand on infrastructure (as influenced by the location, scale and type of development) to be recognised and reflected in the development contributions charged. However the ability to recognise those differences can be lost in attempts to simplify development contribution policies through the use of flat network charges that apply regardless of location.

Options to help address issue 8 include: 1, 3, 4, 5, 9, 10, and 11

Complexity and efficiency

Issue 9: The amount of detail and effort put into development contribution policies can result in increased complexity and reduced transparency without a commensurate increase in accuracy and fairness of outcome.

Cost of policy development and accuracy of results

The costs of developing and implementing a development contributions policy vary according to council size and the complexity of the model used. A case study of five territorial authorities in 2012 suggested that the cost to develop a policy ranged from around \$33,000 in Central Otago District to over \$550,000 at the Auckland Council. Implementation expenses appeared to range from approximately \$10,000 per year in Central Otago District to approximately \$600,000 in

⁴⁴ A similar issue exists in parts of the United States according to the Newport Partners et al (2008)

⁴⁵ SPM Consultants (2012)

Auckland Council⁴⁵. The table below shows how these costs compare against the revenue anticipated to be obtained through the collection of development contributions:

Table 4: Expenditure on development contributions policy and implementation relative to revenue

Council	Anticipated 2013 development contribution revenue	P o l i c y Preparation costs	P o l i c y Preparation Costs as a per cent of revenue	Implementation Costs	Implementation costs as a proportion of revenue
Central Otago District Council	\$1.33 million	\$33,000	2.54%	\$10,000	0.75%
Auckland Council	\$88.24 million	\$550,000	0.62%	\$600,000	0.68%

Anecdotal evidence from territorial authorities suggests that significant effort is made to model future growth and infrastructure needs, anticipated revenue and expenditure, and benefits over the life of multiple assets. However aggregation of the margins of error for each assumption and the ability of the circumstances that underpin assumptions to change rapidly can mean that maintaining the accuracy of charges overtime (if initially achieved at all) is difficult. This can mean that:

- development contributions may become out of touch with fast moving local changes in development pressures, input costs, or approaches in providing infrastructure not previously anticipated; and
- despite good intentions, development contributions may not always accurately reflect the actual costs of providing infrastructure to a given area, resulting in development contributions that may be too high or too low.

Effect of complexity on transparency

An ideal development contribution approach requires detailed calculations of existing and future demands on each type of infrastructure on a development by development basis, fully considering costs and benefits to multiple parties. However, such an idealistic approach, if fully documented, results in complex development contribution policies. As well as increasing costs, such complexity can make development contribution documents larger and with a level of technical detail that makes them difficult to understand for those without expertise in their use.

For developers and builders, the complexity and transparency of development contributions may also be increased through development contributions being able to be charged more than once in a development process (when a subdivision consent is granted, building consent approved, and when services connected). Anecdotal evidence suggests that multiple payment approach creates confusion amongst section buyers, builders, and real estate agents as to what has already been paid for, what still needs to be paid for, and who should bare the cost. Such confusion is reported to have cost sales and has been perceived as unfairly taxing builders. Various people have suggested that complexity could be reduced, and transparency improved, through development contributions only being charged once⁴⁶.

The Productivity Commission⁴⁷ believed that the development contributions charging regime could be simplified by concentrating the use of development contributions on major infrastructure and dropping their use for community infrastructure.

The Productivity Commissions of both Australia and New Zealand also believe that transparency could be improved through the use of clearly stated principles to guide the preparation of development contribution policies and the charging of contributions under those policies.

⁴⁶ For example see *Shift to Once Paid Format For Development Praised*, Nelson Mail, 23 October 2012

⁴⁷ Productivity Commission (2012), pg 141

Options to help address issue 9 include: 1, 2, 4, 5, 6, 8, 11, 12, 13 and 14

Dispute resolution

Issue 10: Current challenge and dispute resolution mechanisms are expensive and time consuming, or lack transparency.

The ability to challenge government decisions that impact on a person or party is generally held as an important safeguard to ensure principles of natural justice are upheld and is inherent in the New Zealand Bill of Rights⁴⁸. The ability to challenge government decisions also serves as an important check on decision quality and has been seen by the New Zealand Productivity Commission as a way of strengthening incentives for councils to follow good practice when setting and implementing development contribution charges⁴⁹.

However, the ability to challenge decisions about development contributions under the LGA02 is limited to seeking a judicial review or declaratory judgement in the High Court⁵⁰. For a small scale development this can be too costly⁵¹ for the benefit that may be obtained and it may not be economic for individual developers to take on the legal cost of a challenge⁵². A search of case law databases found just five examples of judicial review proceedings relating to development contributions between 2002 and 2012. However, not all challenges are heard in Court⁵³.

The LGA02 provides no other formal means to challenge decisions on development contributions, although section 201 does require councils to state the conditions and criteria that will apply in respect of postponement, remission or refunds of development contributions. However, section 201 is neither a formal objection mechanism in itself, nor does it detail the requirements that should be met for councils to have a formal objection mechanism that is transparent, robust and timely. Although some councils do have quite detailed procedures for dealing with objections to development contribution charges, invariably, decisions are still made by council officials or one or more elected representatives.

Various submitters to the Productivity Commission's housing affordability inquiry have suggested a return to using appeals to the Environment Court as a way of resolving disputes. Both the now repealed LGA74 development levies and contributions system and financial contributions under the RMA allow appeals on merit to be made to the Environment Court.

⁴⁸ Section 27 of the New Zealand Bill of Rights Act 1990

⁴⁹ New Zealand Productivity Commission (2012) *Housing Affordability Inquiry*, page 149

⁵⁰ DLA Phillips Fox (2008)

⁵¹ For example news media reports suggests Wanganui District Council spent \$77,000 seeking a judicial review of a Department of Corrections decision in late 2012 while Tararua District Council reportedly spent \$100,000 defending itself in a judicial review in 2005

⁵² *Council 'tax' to Develop is Unfair*, Manawatu Evening Standard, 12 October 2012

⁵³ According to the Kapiti Observer newspaper (29 September 2010) Kapiti Coast District Council refunded more than \$270,000 to developers after the legality of their charging, and overcharging was challenged.

The LGA02 development contribution provisions were conceived with appeals to the Environment Court deliberately omitted because of the time and cost it took to resolve disputes through formal court processes.

The New Zealand Productivity Commission said that although appeals to the courts should not be ruled out; the benefits of some form of mediation include:

- low cost relative to other options considered;
- allows retention of the existing ability to complain to the Ombudsman, and the Ombudsman may be more willing to look into complaints where a council had refused to allow mediation; and
- the option does not rule out increasing access to court appeals later if mediation proves to be ineffective.

Options to help address issue 10 include: 1, 9, 10, 13 and 14

PART 4: THE SOLUTIONS

Introduction

This section contains a range of possible solutions to address the issues identified. The solutions do not represent government policy, nor does any combination of them represent a preferred policy package. They are presented to elicit views and comments about their acceptability, workability and ability to address the issues. The table below shows which issues the proposed solutions relate to.

The solutions have been grouped according to the degree of change from the status quo, with those requiring least change to the LGA02 listed first. Proposed solutions could possibly be applied singularly or in combinations.

The degree of change from the status quo was estimated according to the expected amount of redrafting of legislation that would be required to give effect to the option and amount of administrative effort it would take for local authorities to change their charging policies or financial systems.

Linkages between issues and options

Proposed Solution	Issues Area Addressed				
	Housing affordability	Variability and inconsistency	Fairness and equity	Compliance and efficiency	Dispute resolution
1. Updated and improved guidance for territorial authorities		●	●	●	●
2. Consolidation and clarification of development contributions provisions (see Appendix C)		●		●	
3. Explicit discounts enabled for housing of a type and location that creates less demand for services	●		●		
4. New purpose and principles provisions for development contributions		●	●	●	
5. Facilitating increased private provision of infrastructure through enhanced developer agreements	●		●	●	
6. Tightening the range of infrastructure that can be funded from development contributions	●	●	●	●	

Proposed Solution	Issues Area Addressed				
	Housing affordability	Variability and inconsistency	Fairness and equity	Compliance and efficiency	Dispute resolution
7. Changing the timing as to when development contributions can be charged	●	●			

8. Capping of development contributions at a set dollar amount	●	●	●		
9. Independent dispute resolution hearings		●	●		●
10. Reinstatement of appeals to the Environment Court		●	●		●
11. Regulations to promote greater consistency in development contribution approaches		●	●	●	
12. Percentage based infrastructure levy as a financing tool	●	●		●	
13. Abolition of development contributions as a financing tool	●	●		●	●
14. Infrastructure bonds as an alternative financing mechanism	●	●	●	●	●

Solutions requiring minimal change to legislation or regulations

Option 1: Updated and improved guidance on development contributions

Existing guidance on development contributions could be updated and potentially expanded to improve practice and consistency amongst and within territorial authorities. Sub-options could include:

- a. expanding training on development contributions;⁵⁴ and
- b. supplementing the guidance with principles for how development contributions are to be applied (see also the option on the inclusion of purpose and principles).

Option 2: Consolidation and clarification of existing LGA02 development provisions

This option would see current legislative provisions for development contributions in the LGA02 brought together into one place in the LGA02. At the same time, a number of clarifications and technical changes would be made to clarify and improve the workability of the development contribution provisions (see Appendix B for a list of possible technical fixes).

Solutions requiring moderate changes to legislation or regulations

Option 3: Explicit discounts for housing types and locations with lower demands for services

The development contribution provisions of the LGA02 could be amended to explicitly enable discounts on standard HUE development contributions charges to encourage smaller and more affordable houses and housing on Māori land.

Examples of the discount could include:

- introducing a differential or ratio for small houses based on the reduced level of demand on services (for example, a two bedroom house may be charged 66 per cent of the normal HUE charge);

⁵⁴ Some workshops are provided through the Society of Local Government Managers (SOLGM)

- reducing or potentially waiving development contributions for papakāinga housing on Māori land as defined by the Te Ture Whenua Act 1993 (there is already a restriction on the taking of land within section 197 of the LGA02). The costs of any infrastructure not charged for, but used, would most likely be funded from general rates.

Examples of current use:

Ottawa, Canada introduced a policy to encourage inner-city development in 1994 through waiving development charges. The effect of this was reported to be a saving of \$10,000 on the purchase price of new residential units, increasing their affordability⁵⁵. Other examples of cities offering rebates to encourage affordable housing include Albuquerque (New Mexico), Austin (Texas) and Fort Collins (Colorado).

Many cities in the United States differentiate charges in a way that reflects different scales and circumstances of development (see Appendix A). The rates of discount vary greatly, but many are in the 30 per cent to 60 per cent range when compared to stand alone single family dwellings.

Some local authorities in Tasmania also provide discounts on development contributions based on the number of bedrooms a dwelling has. For example, a house with two bedrooms pays 75 per cent of the full HUE amount, while a house with only one bedroom pays 50 per cent of the full HUE amount.

Option 4: New purpose and principles provisions for development contributions

New sections or clauses could be inserted into the LGA02 which outline the purpose of development contributions and the principles by which they are to be charged. Purpose and principles statement could, by way of example:

- clarify that development contributions take the form of a charge that is related to the additional demands on infrastructure created by growth;
- clarify that development contributions can relate to the marginal costs of growth;
- incorporate more explicit direction around the need consider both the cause of demand on infrastructure and who will benefit from it, when setting development contributions; and
- clarify the extent of consultation required when development contributions policies.

Examples of current use:

The government of Western Australia⁵⁶ sets out the objectives of development contributions, the principles for their use, and the requirements around formatting of development contribution plans and reports as part of their State Planning Policy 3.6. The guiding principles apply to:

- need and nexus;
- transparency;
- equity;
- certainty;
- efficiency;

⁵⁵ Canada Mortgage and Housing Corporation, Affordable Housing Centre (2012), available on line at <http://www.cmhc-schl.gc.ca/en/inpr/afhoce/>

⁵⁶ Western Australian Government (2009)

- right of consultation and arbitration; and
- accountability.

The use of similar principles, either incorporated into legislation or regulations, are used in New South Wales⁵⁷, Queensland and Victoria and have been recommended for wider application by both the Australian Productivity Commission⁵⁸ and New Zealand Productivity Commission.

Option 5: Facilitating increased private provision of infrastructure through enhanced developer agreements

New provisions could be inserted into the LGA02 to make more explicit territorial authorities' ability to enter into agreements with private developers for them to build and operate infrastructure. Developers who provide infrastructure would not be charged development contributions for the infrastructure they provide (as already provided for in section 200).

To allow greater flexibility in the standard and type of infrastructure provided, developers would not need to match the standard of infrastructure that would have been provided by the territorial authority, provided the requisite environmental standards (imposed under standards and plans under the RMA) and health standards are met. In return, the LGA02 would make it clear that the territorial authority is under no legal obligation to accept, or take over responsibility for the private infrastructure unless it is brought up to the standard the local authority applies to its own infrastructure.

Examples of current use:

The Hobsonville Point development in Auckland represents a good example of what can be achieved with a developer agreement approach in a New Zealand context.

The Hobsonville Land Company (HLC) provided the low-impact design stormwater infrastructure for the development, along with the land and infrastructure for parks and reserves. These were provided as part of infrastructure funding agreements (IFAs) between HLC and the Auckland Council (incorporating the former Waitakere City Council). The IFAs set out the amount and location of land and infrastructure to be provided, and the performance specifications for the infrastructure.

In return for HLC providing parks and stormwater infrastructure the Auckland Council does not charge HLC development contributions for that land and infrastructure. This gives HLC greater control and certainty over its development costs.

HLC has also negotiated a partnership deal with Vector Limited to install electricity and ultra-fast broadband infrastructure. The electricity infrastructure provided by Vector is future-proofed to support renewable generation and smart energy management facilities⁵⁹.

Overseas, planning agreements are authorised under section 93F of New South Wales' Environmental Planning and Assessment Act to negotiate a voluntary agreement between councils and developers. In practice such agreements have tended to be used to extend or reduce the range of infrastructure funded through development contributions, rather than

⁵⁷ Australian Government Productivity Commission (2004), pg. 164

⁵⁸ Australian Government Productivity Commission (2004)

⁵⁹ *Hobsonville Land Company Seals Deal with Vector*, Vector News, 1 October 2009

enable developers to provide alternative infrastructure arrangements that operate in stand alone fashion from council services⁶⁰. Development agreements in New South Wales have also tended to be most useful and viable for larger-scale developments where ownership is not fragmented, and the planning of land use and infrastructure integrated across the whole site.

Option 6: Tightening the range of infrastructure that can be funded from development contributions

The range of items for which development contributions can be charged for would be more tightly defined to align more closely with the degree of benefit to the wider community and whether the item is a public good or a private good. Potential sub-options could include:

- a. the LGA02 being amended to clarify that development contributions for network infrastructure can only be charged for headwork infrastructure and trunk services;
- b. restricting the use of development contributions for reserves and community infrastructure to local facilities designed for use by the local community as opposed to the wider community as a whole (which would be funded through rates); and
- c. only charging development contributions on network infrastructure.

Under this option assets no longer funded by development contributions would either be funded through rates, user charges or financial contributions under the RMA (as appropriate).

Examples of current use:

The range of services for which development contributions can be charged is broadly similar to that of the Australian state of Victoria. However the Australian States of Queensland, Western Australia, South Australia, and Tasmania charge development contributions on a significantly narrower range of items (they exclude public transport, libraries, community centres, recreation facilities, and sports grounds for example).⁶¹ In the United States, of the 28 states that charge impact fees, Texas, Illinois, Pennsylvania, and Virginia do not charge fees for parks⁶².

New South Wales currently only allows development contributions for parks and community facilities to be charged for “local parks” and “land and facilities for local community infrastructure that services a development site or precinct”. Costs for facilities that benefit existing communities cannot be recovered⁶³.

Option 7: Delaying when development contributions can be charged

Development contributions would only be payable upon the issuing of a building consent under the Building Act 2004 or the authorisation of a service.

A sub option may be to provide an explicit provision within the LGA02 that allows a local authority to require a development contribution at the time of subdivision, but postpone actual

⁶⁰ Australian Government Productivity Commission (2009)

⁶¹ Australian Government Productivity Commission (2009), pg 125

⁶² Mullen (2012)

⁶³ Australian Government Productivity Commission (2011), pg 663

payment until such time as sections or houses can be sold with an ability to pass on a share of the interest costs that the council has accrued in the interim period.

Example of current use:

Auckland Council currently allows payment of development contributions on some residential developments to be deferred for a period to make it easier for a developer to finance their development.

Central Otago District Council also agreed to using a similar approach in 2009. Under that Council's approach the payment of development contributions was able to be deferred up to the time sections were sold, with interest and administration charges being incurred for if the deferred period exceeded three months.

Option 8: Capping development contributions

The level of development contributions payments would be limited, and this cap prescribed either through legislation or in regulations and could apply to individual types of infrastructure, or to the total development contribution.

Sub-options associated with this option could include:

- a. the Minister of Local Government having the ability to permit cap breaches in exceptional circumstances⁶⁴;
- b. caps on particular types of infrastructure;
- c. an automatic adjustment in the cap tied to the Producers Price Index to avoid a real-terms sinking lid effect that could lead to underinvestment in infrastructure; and
- d. a differential in the maximum cap that recognises differences in house size, location, or land ownership.

Examples of current use:

Capping of development contributions is used in New South Wales and Queensland in Australia, where development contributions charged by territorial authorities cannot exceed:

- a general cap of \$AUD 20,000 in New South Wales. However, the cap for housing in designated greenfield "release areas" is \$AUD 30,000 in recognition of the higher costs of creating well planned communities in these areas⁶⁵; and
- \$AUD 20,000 for a house with two bedrooms or less, or \$AUD 28,000 for a house with more than two bedrooms in Queensland⁶⁶.

Victoria provides for a statutory maximum limit on charges for community infrastructure (\$900) that is contained in section 46J of the Planning and Environment Act 1987⁶⁷.

⁶⁴ This was an approach that was previously used in New South Wales. The Independent Pricing and Regulatory Tribunal (IPART) now undertake investigations into breaches of the cap

⁶⁵ New South Wales Government (2010)

⁶⁶ Sunshine Coast Daily (12 April, 2011) *Developers Costs To be Slashed*

⁶⁷ George (2012)

SPM Consultants (2012) reported that although none of the New Zealand territorial authorities they included in their report capped or discounted development contributions, they were aware that others did.

Option 9: Independent dispute resolution hearings

New, explicit, dispute resolution provisions could be included in the LGA02. These would include a process, timing and requirements for developers who have been unable to resolve disputes over development contributions informally, to seek a formal resolution. Determination of the dispute would be by a person (or persons) who are neither elected or staff of the territorial authority who charged the development contribution. Sub-options include:

- a. disputes only on points of process and whether the council applied its policy correctly; and
- b. disputes on points of merit (whether the council had taken into account mitigating factors for example) and process.

Decisions of the independent person appointed to resolve disputes would be binding on all parties concerns. Further legal challenge would only be through judicial review.

Example of current use:

The RMA currently allows for independent commissioners to hear submissions on resource consent applications and make decisions as to whether to grant or decline such applications. Commissioners are selected from a pool of accredited persons who have had training in hearings.

Option 10: Reinstatement of appeals to the Environment Court

This option could be used in place of, or in addition to, the dispute resolution mechanism listed above. Although the role of the Court would primarily be to make determinations on disputes regarding the use or application of development contributions it is recognised that Court rulings can also provide direction on how legislative provisions are to be interpreted and applied.

Several sub-options for reintroducing appeals exist:

- a. replacement of the limitation on development contributions being treated as a condition of a resource consent and appealable as such under the RMA (LGA02 section 198(3));
- b. inclusion of a specific provision that is a broad equivalent of RMA section 120, or former LGA74 section 300 that allowed appeals by certain parties within a set timeframe on points of merit;
- c. limitation of appeals to points of law and whether a territorial authority has correctly applied its own development contribution policy.

Note that sub-options “a” and “b” above could include the ability for councils to also challenge decisions on the application of their own development contribution policy where they believe it has not been applied correctly. There are also sub-options as to who would have standing in appeals. These options include:

- d. the party being charged the development contribution and council who charged it; and
- e. the party charged the development contribution, the council, and the Minister for Local Government and the Attorney-General (when representing a matter of public interest).

Examples of current use:

Appeals to the Environment Court regarding financial contributions can still be made under section 120 of the RMA (or Schedule One of the RMA in respect to provisions in RMA plans). Legal challenge of development contributions is a common characteristic of development contribution systems in Australia and overseas. For example, section 97 of the Environmental Planning and Assessment Act 1979 in New South Wales allows developers who are dissatisfied with a contribution to appeal to the Land and Environment Court.

Option 11: Regulations to promote greater consistency

The LGA02 could be amended to allow regulations to be made. The regulations would supplement and provide more detail around what types of infrastructure development contributions can be charged for, the timing of particular charges, and format and content of development contribution policies. The regulations could also include direction on:

- the process for developing a development contribution policy;
- key definitions, principles and concepts that are to be used in development contribution policies;
- clearer requirements around the calculation of benefits for infrastructure and that those benefits are to be reflected in a development contributions policy; and
- the key requirements as to how development contributions are to be calculated and applied.

Example of current use:

The Western Australian Planning Commission sets out its requirements for development contributions in the form of a State Planning Policy, made under section 26 of the Planning and Development Act 2005. The policy sets out the principles and considerations that are to be applied to development contributions, processes for determining development contributions, and model provisions.

Section 94A of the New South Wales Environmental Planning and Protection Act 1979 allows the state government to make development contributions regulations which prescribe the means by which the proposed cost of carrying out development is to be estimated or determined, and the maximum percentage of a levy that is able to be charged. Section 94EA enables the state government to make regulations about the preparation and approval of development contributions plans, including the format, structure and subject-matter of plans.

Solutions requiring significant changes to legislation or regulations

Option 12: Percentage based infrastructure levy as an alternative financing tool

The existing approach to development contributions under the LGA02 could be replaced by a levy based on a percentage of the anticipated value of the completed development work. The maximum levy would be set through regulations, with local authorities able to impose different

percentages up to the maximum levy according to the infrastructure required to service each catchment or land use type.

A percentage based maximum levy would serve as a soft cap on development contributions that is non-regressive in nature.

Example of current use:

Warringah Council in New South Wales operates a percentage based levy as its development contributions approach. It is based on Section 94A of the Environmental Planning and Protection act 1979 which enables Councils to levy charges based on a percentage of the estimated cost of works as an alternative to the causal nexus type development contribution approach. This percentage (set at State Government Level) varies according to the following circumstances⁶⁸:

Development value	Levy payable
Projects less than \$100,000	No levy payable
Projects with a total cost of \$100,000 to \$200,000	0.5% of project value
Projects with a total cost of more than \$200,000	1.0% of project value

Although the maximum \$AUD20,000 appears not to apply to the indirect (as opposed to causal nexus) approach that section 94A of the Environmental Planning and Protection Act 1979 appears to allow, Warringah has used the \$20,000 figure as a benchmark for determining whether a project will be economic⁶⁹.

Option 13: Removal of development contributions as a financing tool

The existing provisions of the LGA02 relating to development contributions would be repealed and development contributions no longer used as financing mechanism for infrastructure.

Funding of infrastructure would still continue through other mechanisms including: rates, targeted rates, user charges (entry fees for parks for example) financial contributions under the RMA.

Example of current use:

Twenty territorial authorities in New Zealand do not use development contributions according to Covec (2012). However, these local authorities are smaller centres or are centres with low growth rates. Most of the twenty local authorities that do not use development contributions appear to rely on a combination of rates and RMA financial contributions.

Option 14: Bonds as an alternative infrastructure financing mechanism

A further development of the option to abolish development contributions would be to create a replacement infrastructure financing mechanism in the form of infrastructure bonds.

More explicit permission would be provided in the LGA02 to allow infrastructure bonds to be sold by a territorial authority or a Council Controlled Organisation to pay for all infrastructure services required to service a development. Payment of the bond principal and interest

⁶⁸ New South Wales Parliamentary Library (2011)

⁶⁹ Report of Warringah Council Meeting on 9 February 2010

costs would then be recovered from the purchasers and owners of the new sections and buildings (including houses) through regular instalment payments until the bonds and interest are paid off.

Example of current use:

Bonds have been used in a variety of circumstances where attempts to get the private sector to finance projects has been unsuccessful because of concerns around risk exposure.

Auckland Council already uses bonds as means of financing infrastructure (including libraries, sports fields and community facilities)⁷⁰. The bonds are available to any person, form part of the Council's wider borrowing and are secured by a charge over the Council's rates revenue. Bonds are also used by the Local Government Funding Authority under the terms of the Local Government Borrowing Act 2011.

Infrastructure bonds are used by Municipal Utility Districts (MUDs) in Texas as a means of financing parks, roads, water, sewer and drainage services to large new areas of development where municipal services are not available. The MUDs provide for the payment of the principal and interest on the bonds through their powers to levy and collect taxes on all property in the MUD's boundary. Homeowners and other users in the MUDs also pay monthly water and sewer fees to pay for the costs of owning and maintaining the systems.

MUDs must satisfy strict financial feasibility rules issued by the Texas Commission on Environmental Quality before they can issue any debt. These rules include the completion of all water services, streets and roads and the completion of at least 25 per cent of the projected value of houses, buildings and/or other improvements. MUDs must also show that land values, existing improvements and projected improvements will be sufficient to support a reasonable rate of revenue for debt servicing while maintaining competitive utility rates.⁷¹

The use of bonds by MUDs in Texas is considered to be successful as the MUD's can access loans at a cheaper financing rate than individual property developers and pass the savings on.

⁷⁰ *Auckland Council Opens New Retail Bond Offer*, Scoop Independent News, 10 December 2012

⁷¹ Allen B and Oliver D (undated)

APPENDICES

APPENDIX A: A brief history of development contributions

The origins of development levies and contributions can be traced back at least as far as the Municipal Corporations Act 1954⁷² and the Counties Act 1956, which were subsequently consolidated into the Local Government Act 1974 (LGA74).

As enacted, Part XX of the LGA74 contained a wide variety of provisions relating to the subdivision and development of land. These provisions included the requirement for developers to contribute land or money for reserves and contribute to the upgrade of infrastructure such as:

- financial contributions for reserves up to 7.5 per cent of the value of the new subdivision lots created (10 per cent for commercial developments) or land to an equivalent value; and
- levies collected for the construction or upgrading of regional roads, regional waterworks, regional trade waste disposal, or refuse disposal that are required as a result of new developments. The levy was based on the cost of the works required.

Land owners and other persons affected by decisions (including those relating to development levies and contributions) could appeal those decisions to the Planning Tribunal (predecessor to the Environment Court)⁷³.

In practice the approach taken under the LGA74 had a range of limitations, including:

- charges being applied inconsistently with limited predictability of outcome;
- the formulaic land area and percentage ratios were inflexible, were not easy to apply to local circumstances and often bore little relationship to the demands various developments created;
- development contribution policies were challenged through the Planning Tribunal which delayed their implementation;
- regular appeals to the Planning Tribunal created uncertainty about the type and quantum of contributions to be paid, and delayed the final approval of scheme plans.

When control of land use and subdivision was transferred to the Resource Management Act (RMA) in 1991 Part XX of the LGA74 was repealed. The system of levies and contributions that existed under the LGA74 was largely replaced by financial contributions imposed through conditions on resource consents⁷⁴, charged in accordance with policies and rules set out in a regional or district plan.

The RMA takes an effects-based approach which means no formula or maximum chargeable amounts are prescribed for financial contributions. However, plan provisions that authorised the charging of financial contributions, and the resource consent conditions through which financial contributions are imposed, can be appealed to the Environment Court. Importantly, case law on

⁷² However the Municipal Corporations Act of 1920 required property owners to provide land for roads and reserves so is considered by some to be a form of development contribution

⁷³ Former LGA74 section 300

⁷⁴ Although transitional provisions allowed these to be retained where no RMA plan had yet been developed or RMA plans did not contain provisions relating to financial contributions (RMA section 409)

financial contributions under the RMA has confirmed there needs to be a connection between the effects of development (including on infrastructure, or infrastructure required to mitigate adverse effects on the environment) and the charge imposed.

Since the RMA came into effect a number of difficulties relating to development contributions have arisen including:

- an inability to charge financial contributions on permitted activities (financial contributions are a condition of a resource consent⁷⁵) even where those activities create a demand for additional infrastructure;
- appeals against financial contributions provisions in proposed plans meant that it initially took a long time before contributions could be charged (so conditions became out of date, and councils had to bear the cost of new infrastructure in the interim)⁷⁶;
- the ability to appeal both the financial contributions provisions of a proposed plan, and the quantum charged as a condition of a resource consent makes it hard to predict how much a local authority can expect in revenue, and how much a developer is expected to pay;
- resource consents can't be implemented until appeals have been resolved⁷⁷. Appeals against financial contribution conditions of resource consents can in themselves result in costs and delays for developers; and
- the lack of any clear principles or methodology as to what and how financial contributions were to be applied resulted wide variation of approaches, inconsistencies in implementation, and reduced certainty and predictability of compliance costs for developers.

Recognition that there were problems with the RMA financial contributions approach resulted in proposals for a new infrastructure cost recovery regime to be included in a new Local Government Bill in 2001.

As originally proposed the Local Government Bill did not provide for development contributions to be charged on community infrastructure or reserves, these were added in at the Select Committee stage in order to provide an additional financing source for libraries, community centres, recreation centres and public toilets⁷⁸. The proposal to incorporate new formulae for the calculation of development contributions into regulations was replaced with the methodology now set out in LGA02 Schedule 13.

Since 2002, only small changes have made to development contribution provisions of the LGA02. These have been largely of a technical nature, either as a consequential amendment in response to legislative changes made elsewhere, or to correct errors. There has been no substantial review.

⁷⁵ RMA section 108(10)

⁷⁶ This was partially addressed in a 1997 amendment to the RMA, which removed the requirement for a plan having to be operative before contributions were charged, however as the local authority still had a risk of their policy changing through appeal and having to refund contributions already collected

⁷⁷ RMA section 116(1)(b)

⁷⁸ Report of the Local Government and Environment Committee on the Local Government Bill in 2002

APPENDIX B: Example development contributions overseas

Australian development contributions, 2010⁷⁹: per residential lot (Australian Dollars)

Table 5: Australian development impact fees

New South Wales		Victoria		Queensland		Western Australia	
Pittwater	\$62,000	Moreland (infill only)	\$17,900	Redland	\$40,319	Wanneroo	\$31,003
Camden	\$59,000	Cardinia	\$17,000	Gold Coast	\$32,146	Perth	\$5,000
Kuringai	\$54,000	Stonnington (infill only)	\$12,400	Sunshine Coast	\$26,089		
Hills Shire	\$54,000	Whittlesea	\$12,000	Brisbane	\$25,798		
Hawkesbury	\$51,000	Melbourne	\$11,000	Moreton Bay	\$24,818		
Blacktown	\$44,000	Yarra (infill only)	\$8,400	Townsville	\$24,511		
Campbelltown	\$41,000			Cairns	\$24,158		
Leichardt	\$40,000			Toowoomba	\$23,952		
Wyong Shire	\$35,000			Ipswich	\$22,952		
Hornsby	\$30,000			Logan City	\$15,271		
Sydney City	\$27,000			Scenic Rim	\$14,983		
Manly	\$20,000			Rockhampton	\$10,000		
Sutherland	\$14,500						
Warringah	1% of development cost						

Notes:

- Melbourne and Adelaide were charging less than \$6,000 for greenfield and residential lots on a similar basis to Perth⁸⁰. In Melbourne, water is provided by Melbourne Water, a State Government entity with its own, separate charging systems.
- Figures for New South Wales do not include Special Infrastructure Contributions required by the State government in addition to local authority development contributions where development is occurring in particular growth areas. From July 2011, State infrastructure costs in the North-West and South-West growth areas of Greater Sydney were approximately \$AUD 17,000 per lot⁸¹.
- Public open space requirements in Western Australia are generally 10 per cent of gross subdividable area (the New Zealand is maximum of 7.5 per cent).

⁷⁹ Productivity Commission of Australia (2011), pg. 213

⁸⁰ Op. Cit. pg. 212

⁸¹ New South Wales Parliamentary Library (2011).

United States impact fees in 2012⁸²

Table 6: United States infrastructure impact fees

City	State	Single Family Dwelling	\$NZD Equivalent (at \$0.82 USD)	Multiplex (2 Bedroom units)	\$NZD Equivalent (at \$0.82 USD)
Phoenix	Arizona	\$11,729	\$14,304	\$5,098	\$6,217
Sierra Vista	Arizona	\$4,818	\$5,876	\$3,345	\$4,079
Tuscon	Arizona	\$9,194	\$11,212	\$4,593	\$5,601
Long Beach	California	\$16,817	\$20,509	\$10,543	\$12,857
Sacramento	California	\$42,492	\$51,820	\$23,340	\$28,463
San Diego	California	\$36,103	\$44,028	\$24,348	\$29,693
Palo Alto	California	\$28,975	\$35,335	\$12,665	\$15,445
Boulder	Colorado	\$37,058	\$45,193	\$21,763	\$26,540
Fort Lauderdale	Florida	\$8,419	\$10,267	\$5,103	\$6,223
Miami	Florida	\$14,245	\$17,372	\$7,299	\$8,901
Nassau	Florida	\$3,726	\$4,544	\$3,726	\$4,544
Tampa	Florida	\$5,581	\$6,806	\$3,608	\$4,400
Honolulu	Hawaii	\$1,836	\$2,239	\$1,245	\$1,518
Boise	Idaho	\$5,068	\$6,180	\$3,735	\$4,555
Albuquerque	New Mexico	\$11,732	\$14,307	\$2,290	\$2,793
Santa Fe	New Mexico	\$2,748	\$3,351	\$896	\$1,093
Las Vegas	Nevada	\$3,861	\$4,709	\$2,957	\$3,606
Reno	Nevada	\$5,177	\$6,313	\$3,845	\$4,689
Delaware	Oklahoma	\$13,103	\$15,979	\$3,511	\$4,282
Portland	Oregon	\$17,460	\$21,293	\$11,286	\$13,763
Arlington	Texas	\$2,813	\$3,430	\$2,112	\$2,576
Fort Worth	Texas	\$3,052	\$3,722	\$1,461	\$1,782
Denton	Texas	\$5,430	\$6,622	\$1,151	\$1,404
National Average	USA	\$11,583	\$14,126	\$6,718	\$8,193

Note: Does not include State property taxes or levies. Figures for Texas do not include taxes imposed by municipal utility districts.

Canadian municipal infrastructure and land dedication charges in 2009⁸³

Table 7: Canadian infrastructure and land dedication charges

City	Infrastructure Charge	Land Dedication Charge	Total	Total in \$NZD Equivalent
Montreal	\$0	\$5,200	\$5,200	\$6,341
Quebec	\$0	\$6,750	\$6,750	\$8,231
Halifax	\$2,023	\$5,750	\$7,773	\$9,327

⁸² In abbreviated form, derived from Mullen (2012)

⁸³ Derived from Canada Mortgage and Housing Corporation (2010)

City	Infrastructure Charge	Land Dedication Charge	Total	Total in \$NZD Equivalent
Whitehorse	\$2,500	\$283	\$2,783	\$3,394
Winnipeg	\$3,400	\$861	\$4,261	\$5,196
Greater Sudbury	\$3,371	\$3,750	\$7,121	\$8,545
Burnaby	\$4,530	\$6,521	\$11,051	\$13,477
Prince George	\$4,724	\$920	\$5,644	\$6,773
Calgary	\$11,356	\$1,591	\$12,947	\$15,789
Windsor	\$12,316	\$2,475	\$14,791	\$18,025
Edmonton	\$13,247	\$1,023	\$14,270	\$17,402
Toronto	\$15,441	\$24,545	\$39,986	\$48,763
Hamilton	\$22,878	\$5,000	\$27,878	\$33,998
Waterloo	\$25,437	\$4,800	\$30,237	\$36,874
Saskatoon	\$26,312	\$1,364	\$27,676	\$33,751
Ottawa	\$26,808	\$4,413	\$31,221	\$38,074
Vaughan	\$35,528	\$10,500	\$46,028	\$56,132
Surrey	\$40,746	\$12,444	\$53,190	\$64,865
Sample Average	\$15,663	\$5,811	\$21,474	\$26,163

APPENDIX C: Possible technical changes to development contribution provisions

The following issues and suggested possible changes have been collated from a variety of sources. They represent various technical changes and clarifications that various parties consider could assist in making the existing LGA02 provisions more workable or equitable.

Ref. No.	Perceived Issue	Possible change
C.1	<p>Territorial authorities often have to fund infrastructure for growth ahead of growth occurring. Such work is often funded by loans with councils incurring interest charges while the portion of the loan to be recovered from development contributions is paid off.</p> <p>Without the ability to recover interest costs on loans taken out to fund infrastructure councils may be less willing to take on debt, so limiting their ability to provide infrastructure ahead of development occurring.</p> <p>The term “total cost” in relation to capital expenditure is not defined in the LGA02 although the view of the Court of Appeal in <i>Stop the Stadium v Dunedin City Council</i> [2009] suggests “total cost” can include debt servicing or interest charges.</p>	<p>Clarify that the total cost of capital expenditure includes the net interest costs associated with council debt to provide infrastructure ahead of development.</p>
C.2	<p>The current LGA02 provisions (Schedule 13 and section 203) for apportioning costs amongst units of growth appears not to allow for adjustments to be made to charges over the life of a development or asset to ensure those charges remain constant in real terms.</p> <p>Without adjustments (such as for inflation) early developers pay more in relative terms than later developers.</p>	<p>Clarification in legislation that development contribution charges for a particular asset or catchment can be adjusted in line with Producer Price Index increases (or alternatively Consumer Price Index increases).</p>
C.3	<p>New development areas can take longer than 10 years to be fully completed but it is not clear from legislation whether projections and growth beyond the 10 year long-term plan horizon could or should be included in development contribution calculations.</p>	<p>Clarify that, for the benefit of calculating development contributions, costs and benefits can include projects beyond the 10 year long-term plan horizon.</p>
C.4	<p>The definition of “development” is circular (the definition refers to development within itself) and this can create confusion as to what is and is not a development for the purposes of development contributions.</p>	<p>Amend the definition of “development” so that it conveys the appropriate intent without referring to itself. Possible options could include referring to the subdivision or building on land.</p>

Ref. No.	Perceived Issue	Possible change
C.5	<p>Section 200 of the LGA02 states that development contributions cannot be charged where funding has been provided (or will be provided) by a third party.</p> <p>Lack of clarification as to who is a “third party” in section 200 and the circumstances in which the funding was provided can create confusion as to whether ratepayers are third parties and whether the partial funding of infrastructure works from rates means development contributions can be charged.</p>	<p>Clarify that, for the purposes of section 200, development contributions can still be required where rates are being used to partially fund capital infrastructure works required to service growth.</p>
C.6	<p>Section 199(2) refers to a council’s ability to recover development contributions incurred in anticipation of “the development”. The inclusion of the word “the” is confusing as it appears to imply that specific development projects must be identified and anticipated in advance, which is not always practicable (particularly over the long time horizons associated with major infrastructure works). It also appears inconsistent with the concepts of multiple developments in 199(1) and 199(3).</p>	<p>Remove the word “the” from section 199(2) or replace the word “development” with “developments”.</p>
C.7	<p>Some councils have expressed uncertainty as to whether it is lawful to as to whether projects and growth and development beyond the 10 year timeframe of the long-term Plan can be included in development contribution policies.</p>	<p>Clarify that projects beyond the 10 year timeframe of the long-term Plan can be included in the calculation of development contributions in development contributions provided that charges do not exceed the incremental costs of each new unit of development.</p>
C.8	<p>The statement in section 198 that development contributions are charged when a building consent is granted means that it is unclear whether development contributions can be charged on building works that have been completed without first receiving consent, but which are then given retrospective approval through the Certificate of Acceptance process.</p> <p>Not charging for building work approved via a Certificate of Acceptance process creates inequities for those who obtained consent prior to completing their work.</p>	<p>Clarify that development contributions can be charged for building works retrospectively approved through a Certificate of Acceptance process.</p>

APPENDIX D: International Comparison of Infrastructure Funded By Development Contributions⁸⁴

Table 8: Comparison of infrastructure funded through development contributions, principal Australian States, UK, USA, Canada and New Zealand

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Canada	United States	United Kingdom	New Zealand
Basic services headworks	●	●	●	●	●	●	●	23	●	●
Parks / reserves	LO	●	LO	LO	LO	●	5	23	●	●
Education				LO			1	8	●	
Main Roads	●		●	●	●	●	8	27	●	●
Public Transport	●	●							●	●
Child Care Centres	●	●							●	
Libraries	●	●						12	●	●
Community Centres	●	●							●	●
Recreation facilities	●	●								●
Sports grounds	●	●								●
Protection / Policing							1	20		
Housing / Affordable Housing	●						2		●	

Notes:

- Numbers denote number of States (or Provinces) using that enable charging
- LO denotes “land only”
- Headworks in the context of this table is taken to mean water and wastewater treatment plants, trunk mains, water storage facilities

⁸⁴ Derived from Australian Government Productivity Commission (2009), Mullen (2012) and a selection of New Zealand council development contribution policies

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QUESTIONS TO HELP YOU DEVELOP A SUBMISSION

Introduction, context and current use of development contributions

- What do you understand to be the purpose of development contributions?
- Are development contributions an appropriate way to pay for infrastructure?
- Is the purpose and use of development contributions too wide or too narrow?
- Should the use of development contributions be limited to territorial authorities or should they be available to other parties (NZTA or regional councils, for example)?

The issues

- Do the issues reflect your experience with development contributions?
- How significant are each of the issues that have been identified?
- Are there other issues to be considered?
- Is there evidence missing about the issues?

The options

General

- What solutions have been missed?
- What would be the effect of the proposed solutions on your business, your local authority, your interests?
- What would be the effect of the proposed solutions on housing affordability? (for example, would there be savings and would those savings be passed on to buyers?)

Option 1: Updated guidance

- What sort of matters should be covered by the guidance? Who would use it?
- Would guidance help address issues around how development contributions are used? If not, how could guidance be made more effective?

Option 2: Consolidation and clarification of existing LGA02 provisions

- Which parts of the LGA02 are particularly problematic?
- How could the interpretation of the LGA02 be improved?
- Could consolidation of provisions go further? (combining the financial contributions of the RMA with the development contributions of the LGA02, for example)

Option 3: Discounts on housing types and locations to lower demand for services

- What is preventing this approach being applied now?
- What would be the impact if such discounts were applied?

- Would discounts be reflected in housing prices?

Option 4: New development contribution purpose and principles in legislation

- Would a new purpose and some guiding principles improve clarity about how development contributions operate or would this add complexity and confusion?

Option 5: Improve developer agreements

- Would self-contained developments with little or no reliance on local authority services be attractive to developers and property buyers?
- What prevents more use of developer agreements? How could these obstacles be overcome?

Option 6: Tightening the range of infrastructure that development contributions can be used for

- If development contributions are kept, what types of infrastructure should they relate to?
- Would the private provision and operation of infrastructure for stand alone developments be economically viable under a development agreement and would this be attractive to private sector developers?

Option 7: Delaying when development contributions can be charged

- Would delaying when development contributions charges can be applied to new developments encourage development?
- What would be the impact on local authority finances?

Option 8: Capping development contributions?

- How would a cap on development contributions affect investment certainty, house prices and local authority finances?
- At what level should a cap be set?
- Should there be different cap levels according to different types of development?

Option 9: Independent dispute resolution

- How are disputes usually resolved?
- Would it be beneficial to have an independent decision maker?
- Who would be a good independent decision maker?
- What decisions should an independent decision maker be able make?
- Would safeguards need to be put in place to ensure an independent dispute resolution system is not abused by any party as a delaying tactic?

Option 10: Reinstatement of appeals to the Environment Court

- Are appeals the most cost-effective and timely way to resolve disputes?
- What matters should be subject to an appeals process?

- Who should be able to be parties to appeals?

Option 11: Regulations to promote consistency

- What are the benefits of using regulations to promote consistency?
- What are the risks associated with using regulations to promote consistency?
- What should regulations cover?

Option 12: Abolishing Development Contributions

- What (if any) would be the effect of abolishing development contributions?
- What would be the impact on the ability to provide infrastructure for new developments in a timely way?

Option 13: Infrastructure Bonds

- Do infrastructure bonds offer significant advantages over development contributions or the use of targeted rates to finance infrastructure?
- What is preventing the greater use of infrastructure bonds to finance infrastructure currently?

Possible technical changes to development contributions

- Are there particular technical changes in Appendix C that you support or disagree with?
- What do you think would be the effect of the changes in Appendix C on you or your organisation?

DISCUSSION DOCUMENT SUBMISSION FORM

To:

Development Contributions Review
Policy Group
Department of Internal Affairs
P O Box 805
Wellington 6140

Submitter Details:

Name:

Organisation

Address:

Contact email: *[optional]*

The particular comments I wish to make about the issues identified are:

[Please state the issue number the topic]

[Continued on next page]

The particular comments I wish to make about the options identified are:

[Please state the option number the topic]

[Continue on separate sheets if necessary]

Use of Information and Official Information Act 1982 Requests

The information you provide will be used to inform the development of policy that will shape how development contributions will be applied (or no longer be applied) in future. As part of that policy process the Department of Internal Affairs may use all or part of your submission in future papers or documents. These documents may or may not be published on the Department’s website. Please indicate below whether you give your consent to you whole submission being published:

I consent to my full submission being available publicly: **Yes / No**

[Please circle one]

Submissions made on this discussion document may also be the subject of requests for information made to the Department of Internal Affairs under the Official Information Act 1982. Please indicate below if you have any objection to the release of any information contained in your submission, and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. The Department of Internal Affairs will take into account all such objections when responding to requests for information under the Official Information Act 1982.

I **do / do not** *[please circle one]* object to my submission being released in response to a request under the Official Information Act 1982.

The parts of my submission that I would like to be withheld are *[please indicate a reason]*: