

Extra-ordinary Whangarei District Council

Notice of Meeting

A extra-ordinary meeting of the Whangarei District Council will be held in the Council Chamber, Forum North, Whangarei on:

**Wednesday
12 February 2014
11.30am**

Committee

Her Worship the Mayor (Chairperson)

Cr S J Bell

Cr S J Bretherton

Cr C B Christie

Cr P A Cutforth

Cr S J Deeming

Cr S M Glen

Cr C M Hermon

Cr P R Halse

Cr G C Innes

Cr G M Martin

Cr B L McLachlan

Cr S L Morgan

Cr J D T Williamson

1. Local Government Act Amendment Bill

Reporting officer Alan Adcock (Group Manager Support Services)

Date of meeting 12 February 2014

Vision, mission and values

This item is in accord with Council's vision, mission and values statement.

Background

In March 2012 the Government released a discussion document entitled *Better Local Government*, outlining changes the government wanted to see within the local government sector in terms of its purpose and fiscal responsibilities.

In 2012 the first round of changes to the Local Government Act 2002 came into effect, most notably a change to the purpose of local government, changes to the process for re-organisation, a strengthening of Mayoral powers and increased financial prudence and intervention measures.

These changes formed part of the Government's wider legislative reform programme.

A further Local Government Act 2002 Amendment Bill (the Bill) passed its first reading in Parliament in December 2013. Submissions are due on 14 February 2014.

The Bill proposes changes in the following broad areas:

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

Whangarei District Council submission

Staff met with the Local Government Reform Steering Group on 08 January 2014 to work through both the Bill and key recommendations from the draft Local Government New Zealand (LGNZ) submission.

It was noted at that time that the local government sector has had significant input to the content of the Bill through both LGNZ and the Development Contributions Working Group (DCWG). In addition, both of these entities are submitting on the Bill.

The attached submission was finalised following a workshop with Council on 5 February 2014. The submission has regard to, and builds upon, the work undertaken by industry bodies. In doing so it enables Council to focus on issues/changes that are material and will result in a better outcome from the current round of legislative changes.

Recommendation

1. That Council receive this information.
2. That Council adopts the submission to the Local Government and Environment Select Committee.
3. That Council authorises the Chief Executive Officer to make any changes agreed at this meeting and any necessary minor drafting, typographical or presentation corrections.
4. That the Chief Executive Officer be delegated to be heard in support of the adopted submission should it be considered necessary closer to the time of hearings.

Attachment

[Whangarei District Council Submission on the Local Government Act \(2002\) Amendment Bill No 3](#)

Secretariat
Local Government and Environment Committee
Select Committee Office
Parliament Buildings
WELLINGTON 6011

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

Submission from: Mark Simpson
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The following is the submission of Whangarei District Council (WDC) with respect to the Local Government Act (2002) Amendment Bill (No. 3). WDC wishes to be heard in support of this submission.

Executive Summary

Having reviewed the Local Government Act 2002 Amendment Bill No. 3 Whangarei District Council makes the following comments and recommendations:

- That the existing provisions of Schedule 3 s15 of the Local Government Act 2002 be retained so that local boards are only an option where an area is urban or predominantly urban and has, or is predicted to have within a period of 5 years after public notice of the draft proposal, a population that exceeds 400 000.
- That workable commencement provisions for the review and amendment of Development Contribution policies be brought in line with the adoption of the 2015-2025 Long Term Plan (1 July 2015).
- That the principle of averaging be recognised in the Act as integral to the methodology that determines Development Contribution charges.
- That the definition of Community Infrastructure be amended to include libraries, pools/aquatic facilities, community sports centres, changing rooms and sports fields (e.g. artificial surfaces) for residential developments only, or that reasonable transition clauses allow for the collection of Development Contributions for existing community infrastructure.
- That transitional provisions be included to enable the collection of Development Contribution charges for existing community infrastructure no longer defined as “Community Infrastructure” in the Act and charges for developments that have been assessed at the time of Royal Assent but for which an invoice has not yet been issued.
- That the objection process be removed from the Bill.
- That the Act provides for invoiced Development Contributions to be treated as a charge against the land as allowed by section 59 of the Local Government Act.
- That the adoption date for the Policy on Significance and Engagement be changed to work within the Long Term Plan process for 2015 (an adoption date of no later than 30 June 2015).

1. Introduction

- 1.1. In March 2012, Government released a discussion document entitled *Better Local Government*. The document foreshadowed changes the Government wanted to see within the local government sector in terms of its purpose and fiscal responsibilities. In continuation of this initiative Government introduced the Local Government Act 2002 Amendment Bill No. 3 (the Bill) in September 2013.

- 1.2. A number of key changes have been proposed in the Bill, relating to the following broad areas:
- Local boards outside of Auckland
 - Development Contributions
 - Efficient delivery and governance of local authority services
 - Consultation, decision making and long-term/annual plans
 - Infrastructure delivery and asset management
- 1.3. Whangarei District Council (WDC) acknowledges that the local government sector has had significant input to the content of the Bill through Local Government New Zealand (LGNZ) and the Development Contributions Working Group (DCWG), both of which will be submitting on the Bill. WDC is broadly in support of the draft submissions of these entities but acknowledge that the position of these entities may change in their final submissions which staff did not have access to at the time of writing.
- 1.4. This submission has been compiled having regard to the work undertaken by these entities and, rather than repeating that work, will build upon it. Given the work already done by the sector, and the broad WDC support for that work, this submission will focus on issues that are material to WDC rather than undertaking a clause by clause analysis of the Bill.

2. Local Boards Outside of Auckland

- 2.1. The Bill provides for the use of local boards more widely outside of Auckland, removing current population and demographic thresholds. It also enables the Local Government Commission to consider the use of local boards not only in establishing a unitary authority but also within an existing unitary authority. In addition, provision is made for local board planning, funding and accountability.
- 2.2. While the proposed changes to local boards do not impact upon WDC currently they would make local boards a representation option for Northland should the Bill be enacted before the Local Government Commission issues a Final Proposal.
- 2.3. WDC oppose the provisions of the Bill which aim to extend the use of local boards outside of predominantly urban areas that have, or will have, a population in excess of 400,000. Given the planning, funding and accountability requirements associated with local boards these thresholds ensure that the scale and density necessary for local boards to provide effective and efficient representation are present.

Change requested:

That the existing provisions of Schedule 3 s15 of the Local Government Act 2002 be retained so that local boards are only an option where an area is urban or predominantly urban and has, or is predicted to have within a period of 5 years after public notice of the draft proposal, a population that exceeds 400 000.

3. Development Contributions

- 3.1. The Bill proposes significant changes to Development Contributions. WDC is supportive of draft submissions from LGNZ and the DCWG, and fully concurs with suggested technical amendments on this topic. WDC would like to reiterate the following observations and areas of concern.
- 3.1.1. WDC's approach to asset provision is conservative, with planning based on significant research to understand the future needs within our community. The proposal to restrict the use of Development Contributions for community facilities simply changes who pays for it. Local government is charged with meeting the needs of local communities as determined by each community. If this change goes ahead there is a risk that the local authority will be unable to provide sufficient community infrastructure in growth areas without rates increases and reliance on debt. It may eventuate that Council will avoid investing in growth related infrastructure if some of the costs cannot be recovered through development contributions. WDC does not believe this outcome is in the best interests of the Whangarei district and

acknowledges that growth in this area is occurring at a faster rate than many other regions across the country.

- 3.1.2. WDC acknowledges the proposal to restrict charges on non-residential development (or non-residential component thereof) and in fact has practiced this philosophy for some time. Council believes that clarifying this in the Act is a positive step towards achieving the gains sought by the local government reform initiative.
- 3.1.3. The proposal to retain neighbourhood “pocket” playgrounds/parks as community infrastructure is contrary to contemporary parks asset management planning. Regional parks account for the majority of park usage. They are more cost-effective than pocket parks which are uneconomic, often vandalised and operationally financially draining.
- 3.1.4. Section 11A of the Local Government Act identifies libraries as a core service of Council. The proposal to no longer allow development contribution charges on the growth component of libraries shifts the burden of growth funding to ratepayers.
- 3.1.5. WDC therefore opposes the proposal to restrict the use of Development Contributions for community facilities such as libraries, swimming pools, sports centres and other facilities in parks and reserves.
- 3.1.6. The Bill proposes that commencement of section 49 be one month following Royal Assent. WDC considers that this timeframe is unreasonable and unworkable, and does not provide sufficient time for the development and release of much-needed industry guidance and templates nor for a proper review (including consultation with the public) of its Development Contributions Policy.
- 3.1.7. WDC does not believe that restricting the definition of community infrastructure will have any noticeable effect on housing affordability. Development Contributions make up a very small proportion of the costs of developing sections and houses, and removing development contributions from some items of community infrastructure will have minimal impact on the cost of development. In addition, there is no mechanism to ensure that any savings achieved by the developer are passed on to the purchaser.
- 3.1.8. Transitional provisions are required to accommodate those councils which have already built community infrastructure assets such as libraries where they have relied on Development Contributions funding. Provision is also required to allow the collection of community infrastructure charges for those developments that have been assessed at the time of Royal Assent but for which an invoice has not yet been issued. Without these provisions any remaining growth-related debt must be assigned to ratepayers effective immediately, placing an unfair burden on existing ratepayers.
- 3.1.9. While WDC acknowledges the proposed internal objection process as good practice, our view is that there is potential for an external commissioner headed objection process to be extremely costly and time consuming for all parties, creating an “industry” out of preparing for, initiating and/or defending objections.
- 3.1.10. Ensuring that commissioners are adequately qualified is also of concern given that there is no recognised professional discipline with relevant qualifications on the subject. WDC believe that the objection process could be successfully facilitated without the use of commissioners.
- 3.1.11. WDC also note that where a commissioner makes a decision that undermines the integrity of a development contribution policy, for example waiving or reducing development contributions that are specifically provided for under a policy, there is the potential for a precedent to be set and the commissioner's decision may need to be challenged. In this instance, or indeed if the party bringing the objection is not satisfied with the outcome, the potential for judicial review remains and it is questionable whether the intent of the proposed changes will have been achieved.
- 3.1.12. If Development Contributions were allowed as a charge against the rating unit as in section 59 of the Local Government Act, and had a similar status as rates it would allow Councils to be more flexible with the timing of payments (this would assist developers as payment for development contributions typically coincide with the lowest cashflow period for developers) for Development Contributions because there would be certainty of recovery even if the developer went bankrupt.

- 3.1.13. WDC considers that the principle of averaging needs to be recognised in the Act as it is integral to the methodology that every Council uses to determine Development Contribution charges. Any challenge to either an individual assessment or to a policy must be cognisant of this principle.

Changes requested:

That workable commencement provisions for the review and amendment of Development Contribution policies be brought in line with the adoption of the 2015-2025 Long Term Plan (1 July 2015). This allows time for the development and publication of industry guidance and best practice to assist and therefore encourage a level of consistency between councils.

That transitional provisions be included to enable the collection of any Development Contribution charges for existing community infrastructure no longer considered to be “Community Infrastructure” and charges for developments that have been assessed at the time of Royal Assent but for which an invoice has not yet been issued.

That the definition of Community Infrastructure be amended to include libraries, pools/aquatic facilities, community sports centres, changing rooms and sports fields (e.g. artificial surfaces) for residential developments only.

That the external objections process be removed from the Bill.

That the Act provides for invoiced Development Contributions to be treated as a charge against the land as allowed by section 59 of the Local Government Act.

That the principle of averaging be recognised in the Act as integral to the methodology that determines Development Contribution charges.

4. Efficient delivery and governance of local authority services

- 4.1. The Bill proposes a new section (17A) which requires local authorities to review the cost-effectiveness of service delivery arrangements, and provides an accountability framework for the performance of local authority services and functions by council-controlled organisations, other local authorities, or other persons or agencies.
- 4.2. Whilst WDC supports the need to review service delivery from time to time, we consider a three year cycle to be unreasonable and highly likely to incur unwarranted cost and effort.

Changes requested:

That the three-year mandatory review of the cost effectiveness of service delivery arrangements be removed.

That existing contracts are not subject to any review.

5. Consultation, decision making and long-term/annual plans

- 5.1. Over several years WDC has set a baseline of full and robust consultation with the community in line with the provisions of the Special Consultative Procedure and consultation principles. While WDC endorses the proposed relaxation to provisions in some areas, the community's expectations with regard to quality will continue to be met.
- 5.2. The Bill proposes strengthening legislation around decision making through the requirement of a comprehensive Significance and Engagement Policy specifying the range of decision making scenarios likely to occur and determination of a suitable response with regard to consultation with the public. WDC supports this proposal but does not believe that it is possible to do this properly prior to an adoption date of 1 December 2014.

Changes requested:

That the adoption date for the Policy on Significance and Engagement be changed to work within the Long Term Plan process for 2015 (an adoption date of no later than 30 June 2015).

6. Infrastructure delivery and asset management

- 6.1. Although WDC supports the proposed development of a 30 year infrastructure strategy we do not believe that this in any way simplifies or streamlines the LTP process as desired by the Better Local Government initiative. This is a significant piece of work and will add a significant amount of pressure to this council's limited planning resources. The Government needs to be mindful of this.

This submission was approved by Whangarei District Council at the Council meeting of 12 February 2014 with the Chief Executive Officer being delegated to make changes agreed at that meeting and be heard in support of the submission.

Signature of Delegated Authority

Name Signature

Position..... Date