

13. DEVELOPMENT CONTRIBUTION PROVISIONS OF THE LOCAL GOVERNMENT BILL

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The purpose of this report is to background the financial contribution and development contribution provisions of the Proposed City Plan and Local Government Bill respectively, in anticipation of a further report assessing in detail the impact of the latter provisions on the Proposed City Plan to be presented to the Committee in March 2002.

BACKGROUND

Financial contributions, defined as a contribution of money or land (including an esplanade reserve or esplanade strip other than in relation to a subdivision consent) or a combination thereof, are a funding mechanism presently provided for under the Resource Management Act 1991 (RMA) and implemented through the City Plan to allow integrated funding of new infrastructure and to offset the adverse effects of urban growth. Their emphasis is on the provision of off-site infrastructure and associated remedial/mitigation measures, on the grounds that developers fund on-site infrastructure directly. The underlying philosophy of the Proposed City Plan was that major infrastructural upgrading and extensions would be paid for by the ratepayers in general. The original financial contribution provisions of the Proposed City Plan, as publicly notified, were accordingly limited to:

- Water supply headworks;
- Water supply, stormwater and sewage disposal in specific existing cost-sharing areas;
- Road upgrading;
- Cash-in-lieu of parking in the central city;
- Heritage conservation;
- Land and/or money for open space and recreation (neighbourhood reserves and district sports fields); and
- Esplanade reserves or strips.

However, the Council is presently obliged to rely on the transitional provisions for financial contributions, being those in the Local Government Act 1974, until such time as the financial contribution provisions of the Proposed City Plan become operative.

Both submissions received from various development interests in the City and the Officer's report on them raised a number of issues and problems with the original financial contributions provisions of the Proposed City Plan, including:

- Lack of provision for financial contributions towards utility services required as a result of urban growth;
- Amounts required for financial contributions are unjustified, unfair, unreasonable and inappropriate, particularly those towards reserves;
- Difficulties with the construction of the rules, in terms of the certainty of the requirements, the ability of the Council to vary the requirement upon resource consent, and the timing of the payments; and
- Lack of consistency with the Resource Management Amendment Act 1997, which made significant amendments to the financial contribution provisions in Section 108.

The City Plan Hearings Committee decided that these problems could not be rectified through decisions on the submissions received, as the submissions did not offer adequate solutions. Instead of making and releasing decisions on the submissions received when the other decisions were released to the public in May 1999, the City Plan Hearings Committee determined in April 1999 that a variation to the Proposed City Plan was needed to introduce new financial contribution provisions to address the issues and problems identified. Although work has proceeded on the variation, these matters remain unresolved in terms of the Proposed City Plan preparation process and have recently been overshadowed by a review of the Local Government Act 1974 (LGA), including its funding powers, by the government.

The Local Government Act 1974 is the main piece of legislation defining the power and responsibility of local authorities. Since 1994, Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM) have been calling for a review of local government funding legislation. They are concerned that the current legislation, including the RMA provisions for financial contributions, is outdated, unnecessarily complex and restrictive, and difficult to interpret. A number of

the larger local authorities with significant population growth, notably Rodney and Tauranga District Councils, have experienced significant difficulties preparing and implementing the financial contribution provisions in their district plans. LGNZ and SOLGM consider that local government needs a modern and empowering statutory framework to meet the needs of its communities and its statutory obligations. In response to submissions on the Local Government Amendment Act No 3, the government agreed in 1995 that it would review the funding legislation.

In December 1998, the Department of Internal Affairs brought out a discussion document "A Future Direction for Local Government Funding Powers." LGNZ and the SOLGM made a joint submission on this document in March 1999, following extensive consultation with local government. Both have tended to support (in principle) moving the powers to levy financial contributions from the RMA to new funding legislation (or at least imbed appropriate powers in each). This is on the basis of the following considerations:

- Financial contributions are more of a tool for funding infrastructure development than managing environmental effects;
- The RMA is a slow and unwieldy regulatory regime – communities require greater flexibility and faster implementation;
- RMA case law should not be carried over into local government funding decisions;
- Financial contributions should form an integrated part of the funding policies of local authorities;
- The financial management principles and consultative procedures of the No 3 Act should apply to financial contributions; and
- Financial contributions should be subject to the same collection and enforcement procedures as rates.

A discussion document on the Funding Powers Review "Reviewing the Local Government Act 1974" was released in June 2001, with submissions closing in August 2001. This document discussed various options relating to financial contributions, including retaining the status quo under the RMA, the use of "fees and charges" under the LGA and the introduction of a new power to levy financial contributions under that Act. The Council made a submission to the discussion document relating to financial contributions, indicating its support for LGNZ's preference for financial contributions to be incorporated into the new local government legislation.

The uncertainty regarding the final statutory provisions for financial contributions has meant that it did not seem sensible for the Council to proceed with urgency to prepare the variation to the Proposed City Plan. However, work has continued on the development of the Council's policy on financial contributions and nature of financial contribution charges, required irrespective of the statutory regime involved.

The Local Government Bill was recently introduced to Parliament on 19 December 2001 and is now before the Local Government and Environment Select Committee. The Bill is the first comprehensive revision of the general law relating to local government in New Zealand since enactment of the current Local Government Act 1974 and will come into force on 1 July 2003. Sections 161 – 167, being Subpart 9 (Development contributions) of Part 7 (Specific obligations, powers and restrictions of local authorities and other persons) authorises a local authority, when granting resource consents, building consents, or authorisations for a service connection, to require a development contribution to be made to the local authority for costs associated with the incremental provision of reserves and network infrastructure. The Ministry is planning to get a brief article written on how this would relate to financial contributions under the RMA. The Committee is receiving public submissions on the Bill until 22 February 2002. Comments for a comprehensive submission from the Council have been sought from various Council staff, including those from City Plan with respect to the development contribution provisions of the Bill. The Bill has the potential to have a dramatic impact on the Proposed City Plan if it is enacted as it stands.

A further report assessing in detail the impact of the development contribution provisions of the Local Government Bill on the Proposed City Plan will be presented to the next Committee meeting on 15 March 2002.

Recommendation

from Chair: That the information be received.