

5. IMPACT OF THE DEVELOPMENT CONTRIBUTION PROVISIONS OF THE LOCAL GOVERNMENT BILL ON THE PROPOSED CITY PLAN

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Following the background provided to the financial contribution and development contribution provisions of the Proposed City Plan and Local Government Bill respectively in a preliminary report at the last Committee meeting, the purpose of this report is to assess in detail the impact of the development contribution provisions of the Local Government Bill on the Proposed City Plan.

INTRODUCTION

The Local Government 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. The Bill was introduced to Parliament on 19 December 2001, public submissions closed on 22 February 2002 and the Bill is now before the Local Government and Environment Select Committee. The Bill is expected to come into force on 1 July 2003, although its provisions and operative date may change in the interim as the result of submissions. The following assessment of the impact of the development contribution provisions of the Local Government Bill on the Proposed City Plan is accordingly based on the provisions of the Bill as proposed prior to submissions and assumptions made as to how they may change as the result of submissions.

DEVELOPMENT CONTRIBUTION PROVISIONS OF THE LOCAL GOVERNMENT BILL

The development contribution provisions of the Local Government Bill comprise Sections 161 – 167, being Subpart 9 (Development contributions) of Part 7 (Specific obligations, powers and restrictions of local authorities and other persons).

Section 161(1) sets out the circumstances in which a local authority may require a development contribution, being as a condition of resource consent or building consent, or as part of an authorisation for a service connection. Section 161(2) sets out the circumstances when a development contribution may not be imposed. Sections 161(3) and (4) set out the purposes to which a development contribution for reserves must be applied. Section 161(5) sets out the meaning of 'development' and 'development contribution.' Section 161(6) sets out the relationship of the section with the Building Act 1991 and the Resource Management Act 1991 (RMA). Section 161(7) provides for the power to obtain additional development contributions by agreement.

Section 162 provides that a local authority may withhold the final compliance approval of a subdivision or building, or a service connection, until a development contribution required under Section 161 is made.

Sections 163 and 164 provide for a refund or return of development contributions of money or land made under Section 161 where the development does not proceed or the money is not applied to the reserve purposes for which it was obtained.

Sections 165 and 166 reiterate the powers of land acquisition available to a local authority and compensation provisions under the Public Works Act 1981.

Section 167 provides that a local authority is not entitled to create a nuisance or deprive the Crown or any person of any right or remedy against it in respect of any nuisance.

IMPACT OF THE DEVELOPMENT CONTRIBUTION PROVISIONS OF THE LOCAL GOVERNMENT BILL ON THE PROPOSED CITY PLAN

As noted above, Section 161 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 it for costs associated with the incremental provision of reserves and network infrastructure. However, as the corresponding provisions of the RMA are not listed in the schedule of consequential amendments to other Acts, Section 161 of the Bill provides the Council with the option of taking development contributions under either the Bill or the RMA, but not both. How the development contribution provisions of the Bill relate to the financial contribution provisions of the RMA is not entirely clear, pending a brief article by the Ministry to clarify their relationship. The Council has, however, already indicated its support for provision for financial contributions to be incorporated into the Bill for a number of reasons, including that the power to require financial contributions does not sit easily within the effects based regime of the RMA.

While the Bill provides for development contributions for the same types of infrastructure which the Council decided to pursue in its variation to the Proposed City Plan (i.e. money for open space and recreation and network infrastructure for roading, water supply, sewage disposal and surface water management), its development contribution provisions are based on, but are more restrictive than, the transitional provisions of the Local Government Act 1974 upon which the Council presently relies. They are also more prescriptive than the types of financial contributions the Council is able to provide for under the RMA. The Council may therefore be obliged to 'widen the net' by retaining some financial contribution provisions in the Proposed City Plan. It is possible, however, that the development contribution provisions of the Bill may be made much more attractive and the RMA avenue closed as the result of submissions.

The taking of development contributions for network infrastructure must also be consistent with that prescribed by regulations. Section 234 of Part 11 (Miscellaneous provisions) provides that the Governor-General may make regulations prescribing development contributions for network infrastructure. These have apparently yet to be made and their contents are unknown. It is assumed that the regulations will be made in sufficient time to and enable the Council to take what it needs to in terms of network infrastructure.

The levels of development contributions taken for reserves are considered to be inadequate, providing for inequitable cash contributions only (as opposed to both cash and/or land), in respect of residential subdivisions only and at amounts insufficient to provide anything more than passive, neighbourhood reserves. It is also assumed that the final development contribution provisions of the Bill will enable the Council to take what it needs to in terms of reserves.

If the above assumptions are correct, the Bill (Section 161 in particular) will have a dramatic impact on the Proposed City Plan. A variation will still be required, but only for the purpose of deleting all existing financial contribution provisions, with the following exceptions:

- Objectives, policies and assessment matters for resource consents regarding such matters as the design and layout of subdivisions (which the RMA directs require resource consent) and any land vested for reserves, roading and waterways (the acquisition of which will occur under the Bill).
- *(What about rules providing that a permitted development that does not require resource consent but which places demands on reserves and/or network infrastructure is deemed to be a controlled activity for the purpose of a local authority imposing a financial contribution where appropriate?)*
- References to key parts of associated documents outside of the Plan (e.g. the Code of Urban Subdivision) which must be taken into account.

The latter would now include the long-term Council community plan introduced by the Bill. This must be prepared and, in accordance with the special consultative procedure in the Bill, be adopted not less than once every three years. The purpose of the long-term Council community plan is to:

- Describe the activities of the local authority and the community outcomes to which those activities will contribute; and
- Provide integrated decision-making and co-ordination of the resources of the local authority; and
- Provide a medium or long-term focus for the decisions and activities of the local authority; and
- Provide a basis for accountability of the local authority to the community; and
- Provide an opportunity for participation by the public in decision-making on activities to be undertaken by the local authority.

The long-term Council community plan must cover a period of ten consecutive financial years and include the funding and financial policies of the local authority. The long-term Council community plan will effectively replace the Council's Long-Term Financial Plan. There will accordingly be some overlap regarding the Council's financial contributions policy between the provisions of the Proposed City Plan and those of the long-term Council community plan. Rather than being wasted, it is into the latter that the work done to date on the Council's financial contributions policy for the variation to the Proposed City Plan (including the justification for and amount of financial contributions, their links to the Council's asset management plans, etc) will be incorporated. The Council is not likely to make significant changes to the amounts required now.

CONCLUSION

The development contribution provisions of the Local Government Bill look promising and a comprehensive submission made by the Council includes the concerns of relevant staff with respect to them. The uncertainty regarding their final form is such that it is not possible to comment further at this time. It is suggested that a further report assessing in detail their impact on the Proposed City Plan be presented to the Committee when the Bill becomes operative.

Recommendation from Chair:

That the information be received.