SUBMISSION

We are. LGNZ.

Local Councils have an active role to play in creating and enforcing NZ's laws

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

Local Government New Zealand's submission to the Local Government and Environment Select Committee

Contents

INTRODUCTION

Local Government New Zealand (LGNZ) welcomes the opportunity to submit on the Local Government Amendment Act 2002 (no 3). LGNZ represents the national interests of councils in New Zealand and leads best practice in the local government sector. We provide advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

LGNZ is a member based organisation representing all 78 local authorities in New Zealand. Our governance body is the National Council, the members of which are:

- Lawrence Yule, President, Mayor, Hastings District Council
- John Forbes, Vice-President, Mayor, Opotiki District Council
- John Carter, Zone 1, Mayor, Far North District Council
- Penny Webster, Zone 1, Councillor, Auckland Council
- John Tregidga Zone 2, Mayor, Hauraki District Council
- Jono Naylor, Zone 3, Mayor, Palmerston North City Council
- Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
- Richard Kempthorne, Zone 5, Chair, Tasman District Council
- Tracy Hicks, Zone 6, Mayor, Gore District Council
- Len Brown, Metro Sector, Mayor, Auckland Council
- Dave Cull, Metro Sector, Mayor, Dunedin City Council
- Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
- Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
- Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
- Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.

LGNZ fully supports the Government's overall reform objective of removing unnecessary legislative prescription that is currently creating inefficiencies in councils' decision-making and service provision arrangements, or has that potential. There are a number of provisions in this Bill that achieve exactly this, and they have our support. We prefer enabling rather than prescriptive statutes and in most cases we support frameworks that allow councils the discretion to tailor responses to local circumstances rather than a 'one size fits all' approach.

In relation to the current Bill we are pleased that it provides for more discretion in relation to consultation provisions, allows, in some circumstances, for elected members to join meetings from off-site locations and, as long as it is not too prescriptive, the 30 year infrastructure strategy. However, a number of our members have expressed concern at the potential increase in audit costs associated with the infrastructure strategy and we support their concerns. We are looking for some assurance from the Select Committee that this will not be the case and we are happy to provide further feedback on any drafting changes that the select committee may wish to consider.

The most important aspect of this Bill, and for some of our members the most concerning, are the proposed changes to development contributions. We agree with the Government that these provisions, which were first introduced in 2002, need reviewing and modernising. We are pleased with a number of the changes. However, we have flagged strong concerns at the re-definition of community infrastructure and some aspects of the new objection provisions. There are risks

associated with these changes that do not appear to have been fully recognised and considered and we have raised these in our submission for your consideration.

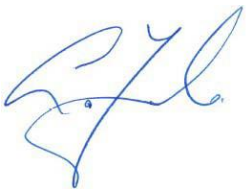
This Bill goes some of the way to dealing with the problem of overly prescriptive legislation; however there are many other statutes that impose complex processes leading to unnecessary costs. We look forward to working with the Government on simplifying and modernising these, especially the issues and statutes identified by the Productivity Commission in its recent report on Local Regulations.

There are also continuing issues with the LGA 2002 itself. Over recent years the size of the LGA 2002 has grown from 350 to 465 pages without considering the impact of the current Bill, which could add a further 50 pages. As the size of the Act increases so does the regulatory burden and cost faced by councils charged with its implementation. This is not consistent with the Government's efficiency agenda. In addition we are also concerned at the cumulative effect on local democracy of changes to the LGA 2002 that allow Ministers, and ministerial appointees, to either over-rule decisions of democratically elected local representatives materially constrain them. The ability of citizens to elect local representatives to make decisions about local matters is a constitutional right that, within our legal tradition, can be traced to the Magna Carta.

Our submission highlights the importance of developing good practice guidance and templates to assist councils implement the new provisions in the Bill and reduce duplication. LGNZ would like to work with the Department of Internal Affairs Government and other relevant agencies on the development of such resources and any training that might be necessary.

The views expressed in this submission were adopted following a full consultation process with our members and every attempt has been made to synthesise their views and opinions. Some councils have also chosen to make individual submissions - the LGNZ submission in no way derogates from their individual submissions.

Local Government New Zealand wishes to appear before the Select Committee to present its submission.



President
Local Government New Zealand

SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

1. LGNZ makes the following comments and recommendations:

Transitional arrangements:

A LGNZ notes that sections 48, 49(2), 50, 51 and 55 come into force one month after Royal Assent. While the changes to section 48 relating to local boards can be introduced immediately on receiving the Royal Assent, we recommend that sections 49(2), 50, 51 and 55 should not come into force at this time as planning timeframes are out of alignment. They should be aligned with the 2015 LTP.

B LGNZ considers that changes made to section 49, which amends the definition of development contributions and community infrastructure, will not be able to be incorporated into the decision making-processes for the 2014/15 annual plans as plans will be well advanced, if not adopted, by the time of Royal Assent. A transition period is required.

C LGNZ recommends that there should be a separation of implementation dates for new development contribution policies to be reviewed and amended in 2014. We suggest that the adoption date should be 1 July 2015 to align with the 2015-2025 Long Term Plans. This would also give developers a sense of certainty.

Guidance and implementation

A LGNZ recommends that DIA and OAG work with LGNZ to develop templates and best practice guides on the new requirements applying to development contributions.

B LGNZ recommends that guidance and templates be similarly developed, in association with relevant professional bodies, for the implementation of the 30 year infrastructure strategy to ensure it provides a meaningful and useful strategy for councils and their communities.

Local boards

A LGNZ supports the recommendation allowing the Local Government Commission to create in some circumstances directly elected local board chairs. We ask, however, that an alternative title is considered so as to distinguish elected chairs from appointed chairs.

B LGNZ recommends that clauses 48Q(3) and 48R, which provide for the Local Government Commission to consider a dispute between a local board and governing body and issue a binding ruling, to the extent of amending a council's Long Term Plan, are replaced by an alternative dispute resolution process.

Service delivery reviews

A LGNZ recommends that the three year cycle prescribed in section 17A is removed and replaced by a requirement to review service delivery on an ongoing basis instead. The proposed mandatory provision to review all services every three years is unnecessarily prescriptive and potentially expensive. A more flexible approach is preferred.

Development contributions

A LGNZ recommends that the definition of community infrastructure (s. 197) which currently includes such services as libraries, swimming pools, and community sports centres, should be left unchanged.

B LGNZ recommends that the objection process for development contributions is amended to remove the proposed quasi-judicial objections' process to be overseen by a separate category of commissioners. This is a disproportionate response to an undemonstrated need, the potential for which in any event is reduced by other provisions of the Bill.

C LGNZ supports formalising a consistent development contributions reconsideration process based on being (and being seen to be) responsive to upholding the principles of natural justice through the ability to seek reconsideration of an administrative decision by officials of a territorial authority.

D LGNZ recommends that practice guidance is developed as an alternative to an infrastructure schedule in the development contributions policy. This would be more appropriate rather than the highly prescriptive legislative requirements in the Bill.

PROPOSALS TO AMEND THE LOCAL GOVERNMENT ACT 2002 (NO 3)

Our submission takes a clause by clause analysis of the Bill.

1. Clause 2 - relates to commencement and provides that different provisions of the Bill come into force on different dates. Unless otherwise specified, provisions come into force on the day after Royal assent.

   Comment

   LGNZ understands that the changes to section 48 relating to local boards could be introduced early next year, however, changes made to section 49, which replace the definition of development contributions and community infrastructure, cannot be sensibly incorporated into the decision-making processes for the 2014/15 annual plan.

   LGNZ **recommends** that changes to section 49 should be delayed to align with the next the Long Term Planning cycle and the new 30 year infrastructure plan.

2. Clause 4 amends the definitions of 'affected' and 'member', and adds definitions of a number of new terms.

   Comment

   This is a technical amendment which clarifies the meaning of 'affected' and is sensible.

3. Clause 5 inserts new section 8A into the Act, which also refers to new Schedule 1AA of the Act. New Schedule 1AA contains savings and transitional provisions relating to amendments made to the Act by this Bill.

   Comment

   The transitional arrangements will be important to those councils which have already charged development contributions to meet the cost of additional demand on community infrastructure.

4. Clause 6 is a consequential amendment and changes section 11A, which describes the core services that must be considered by a local authority in performing its role. The need for the amendment is created by section 49 which redefines 'community infrastructure'. The section now refers to "recreational and community facilities" instead of "community infrastructure."

   Comment

   The deletion of 'community infrastructure' from the list of core services and the definition of what is not included in the list of community infrastructure is very unhelpful. Councils are well placed to determine the link between new developments and increased demand on pools, libraries and museums. They are also best placed to decide how that increased demand should be funded and the appropriate shares to be met by new entrants and existing residents and ratepayers.

5. Clause 7 amends section 14 which lists the principles a local authority must consider when performing its role. The amendments:

   - replace section 14(1)(e) to strengthen the principle that local authorities should collaborate and co-operate; and

- replace section 14(1) (g) to provide that a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets.

Comment

This now brings the total number of principles to be considered to 11 and makes explicit what is currently implicit. LGNZ believes the new principles in themselves are valid considerations, although they do reflect normal practice in virtually all local authorities. They also reflect a growing tendency to use the blunt instrument of legislation to improve practice, which is a concern.

6. Clause 8 replaces section 15, which relates to the triennial agreements that local authorities within a region are required to enter into in order to facilitate consultation on proposals for new regional council activities. The revised section broadens the scope of triennial agreements by:
   - requiring the inclusion of processes and protocols for identifying, delivering, and funding facilities and services of regional significance;
   - expressly authorising the local authorities within a region to constitute joint governance entities, and to identify matters to be included in the terms of reference for those entities (including delegations); and
   - providing for a local authority to notify the other local authorities in the region when making decisions that are, or may have, consequences which are, significantly inconsistent with a triennial agreement.

Comment

Compliance with these provisions need not be onerous and should strengthen opportunities within regions. Councils currently have a successful track record in joint management and joint planning and this amendment should build on and improve those initiatives.

7. Clause 9 amends section 16, which relates to significant new activities proposed by a regional council. References to a draft long-term plan are replaced with references to the consultation document under new section 93A.

Comment

LGNZ supports these amendments.

Clause 10 replaces section 17 to clarify the process by which regional councils may transfer responsibilities to territorial authorities, and vice versa. Any responsibility, duty, or legal obligation, and any associate powers, may be transferred by agreement, except for responsibilities conferred by another Act.

Comment

Provisions for the transfer of responsibilities apply both ways and the proposed changes should increase the rigour by which any transfer proposals are considered. LGNZ supports this provision which improves procedural clarity and certainty as well as the required cost benefit analysis.

8. Clause 11 inserts 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 (CCOs),

other local authorities, and/or other persons or agencies.

Comment

Currently, councils already undertake reviews of their service delivery arrangements. In our view such reviews are best undertaken when opportunities arise and these do not necessarily equate with three yearly electoral cycles.

This provision requires such reviews to be regular and organisation-wide. These could range from simple to more complex review exercises but the idea that at the same time, every three years, all local authorities across the country will undertake meaningful assessments of all their service delivery arrangements is not considered practical and also not an efficient way of using staff resources within a council. More flexibility is required.

A mandatory provision to review all services every three years for all activities is over-prescriptive and inefficient. It also places service delivery personnel in an ongoing state of uncertainty regarding organisational arrangements which ultimately forced up wages and costs – as there will always be the risk of large scale and expensive redundancies. The loss of institutional knowledge also creates significant service delivery and regulatory risk. We note that the Government does not review its own services on a three basis.

LGNZ supports provision for periodic reviews but **recommends** that the three year requirement should be replaced by 'periodically'.

Local Boards

9. Clause 12 amends section 23 by specifying how local boards must be named.

Comment

LGNZ supports this amendment as it provides clarity.

10. Clause 13 amends section 24 by adding new matters that may be dealt with in an application to reorganise local boards.

Comment

LGNZ supports these changes.

11. Clause 14 amends section 42, which sets out matters for which the chief executive of a local authority is responsible. The amendment inserts a new subsection (2A) that specifies certain extra responsibilities of a chief executive of a unitary authority if the district of that unitary authority includes local board areas. In particular, the chief executive is responsible to the unitary authority for:

- implementing the decisions of each local board;
- implementing each local board agreement;
- providing advice to each local board and its members; and
- providing administrative and other facilities to local boards.

Comment

LGNZ notes note that the provision of administrative facilities to local boards is welcomed in the Bill. The experience of local boards in Auckland would suggest that this was a critical element that was not necessarily fully considered when Auckland Council was first established.

12. Subpart 1A adapts the local board provisions from the Local Government (Auckland Council) Act 2009 and allows the Local Government Commission to establish local boards as part of a re-organisation process involving the establishment of any unitary authority.

Comment

LGNZ notes that local boards appear to be working well within the Auckland Council and that overall the legislative framework itself is soundly based and sees no reason for limiting the Commission in its considerations with regard to other re-organisation proposals.

14. Clause 48E (c)(ii) varies the Auckland local board model by allowing the Local Government Commission (LGC) to provide, though an order in council, that the chair of a local board should be directly elected. Cl 48E(b) allows for the governing body to appoint a member to a local board.

Comment

Some feedback received by LGNZ highlighted the potential for confusion between elected mayors and elected chairs should these provisions be enacted. New Zealand has a model in which mayors are directly elected; they have a broad mandate on behalf of all citizens within a district. Will this mandate will be undermined if some local boards have directly elected chairs – how will the two mandates be balanced and how will citizens perceive the two roles, particularly if they are in conflict?

The other view, also expressed, is that local boards will have strong leadership roles in some communities, particularly larger urban communities and an elected chair might be important to give effect to this leadership imperative. However, an alternative tile for an elected chair is probably necessary as citizens will not necessarily know whether or not a chair actually has a directly elected mandate without an appropriate title.

In relation to Cl. 48E(b) the majority of views received by LGNZ supported the ability of governing bodies to appoint a member on a local board. Based on the experience of territorial authorities and community boards this option was seen to be an important way of strengthening relationships, proving a conduit for communication and counter acting council silos. On the other hand, at least one council expressed concern that appointed members on local boards may represent a conflict of interest that could create ongoing governance problems.

LGNZ supports the recommendation allowing the Local Government Commission to create, in some circumstances, directly elected local board chairs. We ask, however, that an alternative title is considered so as to distinguish elected chairs from appointed chairs.

15 Clause 48L (3) requires that the non-regulatory activities allocated to local boards are identified in the long term and annual plans of each authority.

Comment

LGNZ supports this provision.

17. Clauses 48Q and 48R detail the process for dealing with disputes that might arise between a local board and its governing body. Cl 48Q(3) enables a local board to take a dispute with the governing body to the Local Government Commission for a binding determination. Cl. 48R outlines the role of the Commission. The authority given to the Commission extends to amending a council's long term plan without consultation.

Comment

LGNZ is concerned, a concern also expressed in our submission on the Local Government (Auckland Council) Bill, that this provision is simply inconsistent with councils' status as democratic organisations. There are two issues:

- First it undermines the accountability of councillors to local citizens and local tax payers and places government appointees above the citizens' elected representatives. Under the LGA 2002 councillors are responsible and accountable for the allocation of local taxes and meeting the proposed prudent financial benchmarks.
- Second, since councils cannot afford the risk of their LTPs being amended by the Commission, actions which may put a council in default of its fiscal benchmarks, this measure provides opportunities for local boards to indulge in gaming behaviour, potentially holding their governing body to ransom.

It also contravenes the constitutional separation of the two spheres of government. Either the governing body has the right to make decisions and be held accountable through triennial elections or they haven't.

LGNZ **recommends** that Cl. 48Q(3) and Cl. 48R are replaced by an alternative dispute resolution process.

19. Clause 16 amends section 56 and substitutes a new sub clause (1), which no longer requires the use of the special consultative procedure when consulting on the creation of a council-controlled organisation (CC)). Instead, consultation in accordance with section 82 is required. Clause 17 replaces section 61, which currently requires local authorities that obtain goods or services from CCOs to do so under a contract for the supply of goods or services (in certain circumstances).

Comment

LGNZ supports these changes.

Significance and engagement policies

20. Clause 18 inserts a new section 76AA. The new section replaces current section 90. It requires a local authority to have a significance and engagement policy. The new section contains more detail about the required content and purpose of the policy.

Comment

This clause requires current significance policies to be reviewed and should encourage greater forethought as to when and how to engage according to the circumstance/significance of a decision. This will be a challenging exercise as it will require a great deal of consideration about the range of decision-making scenarios likely to occur and determination of a suitable response. However linking significance policies with approaches to engagement provides a more holistic approach.

LGNZ supports the changes and recommends that, to reduce the cost on councils of developing their own policies, good practice guidance and templates should be developed by DIA and OAG working together with LGNZ.

21. Clause 19 amends section 77, which relates to requirements in relation to decision making; to simplify the way the requirement to assess benefits and costs is expressed.

Comment

A number of the provisions for the assessment of options relating to the future as well as factors which are qualitative are proposed to be deleted as mandatory considerations. Their deletion could expose some council decisions to challenge, especially those that deal with issues that involve considerations beyond the immediate and quantifiable.

Noting the increased procedural risk that may arise, councils will need to start using cost benefit analysis alongside a risk assessment process in order to comply with their previously amended purpose statement. LGNZ recommends that there should be some consideration given to the wording of this clause to ensure there is no misalignment with the purpose statement of local government to:

(a) enable democratic local decision making, and
(b) meet the need for local public services ... in a way that is most cost effective for households and businesses.

22. Clause 20 amends section 79, which relates to compliance with procedures in relation to decisions. It clarifies that the question of the significance of matters affected by a decision is determined in accordance with the significance and engagement policy under new section 76AA.

Comment

LGNZ supports the provisions, see discussion on clause 18 for our full views.

Consultation

23. Clause 21 amends section 82, which relates to the principles of consultation. The amendment is to clarify that there should be access to a record of relevant decisions for those who present views (submitters) rather than providing individualised or tailored packages.

Comment

LGNZ welcomes this amendment as the requirement for individualised packages was an onerous element in the submission process and often duplicated available information.

24. Clause 22 inserts a new section 82A, which relates to general information requirements for consultation in accordance with section 82. It does not apply where the Act requires the use of the special consultative procedure, or consultation in relation to an annual plan.

Comment

LGNZ believes section 82A to be a useful addition in the Bill.

25. Clause 23 replaces section 83, which relates to the special consultative procedure, and also inserts a new section 83A. Section 83 is revised to allow for increased use of modern methods of obtaining the views of the community. It includes provision for the presentation of views by way of audio link or audio-visual link.

Comment

LGNZ support the use of technology to increase the engagement of the community. There needs to be clear definition as to what represents community views as opposed to formal submissions, so that procedural challenges can be avoided. For example should comments made in a blog be regarded as a submission?

24. New section 83A replaces current section 89, which sets out the requirements for the content of a summary of information contained in a statement of proposal. The new section is similarly updated to enable modern methods of communication and consultation. The requirement in current section 89(c) for the summary to be distributed has been moved to new section 83(1)(c).

Comment

LGNZ notes that councils recognise that the SCP is still available, if chosen, for other engagement circumstances. Recent court decisions have made very literal interpretations of a local government's legal position regarding consultation practice. Exercising greater "flexibility' will introduce additional legal risk in consultation practice, consequently flexibility may be more apparent than real.

Sector feedback would indicate that most councils intend to develop more robust engagement policies to ensure their communities are aware of what they will be consulted on, when, and how. This is in an attempt to limit any legal risk.

25. Clause 24 repeals section 84, which relates to the use of the Special Consultative Procedure (SCP) in relation to a long-term plan. This is now dealt with by new sections 93A to 93G (see clause 29).

Comment

No comment – a technical change.

26. Clause 25 repeals section 85, which relates to the use of the Special Consultative Procedure (SCP) in relation to an annual plan. The special consultative procedure is no longer required (see clauses 31 and 32 for new requirements regarding consultation on an annual plan). The intention is to increase options for obtaining participation in processes and to enlarge community involvement in decision-making and engender greater confidence in same.

Comment

Flexibility in the use of the SCP could lead to efficiencies in the process of obtaining and inputting community views into decision-making, noting that there may well be increased procedural risk if the community has not received sufficient consultation or engagement on matters they view as important.

LGNZ supports the shift from the prescriptive use of the SCP to more discretion, allowing consultation to be either principle-based or, if a council so determines, the full SCP. However, removing the right of citizens to make a submission on a council's annual plan and budget is a significant change and risks undermining the emphasis on engagement reflected in other measures in the Bill. Every year thousands of New Zealanders make use of this opportunity in order to raise concerns about a local matter, provide feedback on existing policies and programmes or highlight issues of performance. The Government may need to explain to New Zealand citizens that consultation on annual plans is not longer a right and the nature of the new framework.
We are pleased that over time the number of provisions in the LGA 2002 which trigger councils to use the SCP have diminished. Many triggers, however, exist in other statutes, such as the Gambling Act.

27. Clause 26 replaces section 86, which relates to the use of the special consultative procedure in relation to making, amending, or revoking bylaws. The amendments are to reflect changes made to section 156 (see clause 46).

Comment

In the current LGA there are many circumstances where mandatory use of the SCP is required including bylaws. LGNZ agrees that the special consultation procedure in relation to bylaws is necessary as often these are sensitive issues which can be open to legal challenges and need to have good community input and engagement.

28. Clause 27 repeals section 90.

Comment

No comment; technical issue.

29. Clause 28 amends section 93, which relates to the long-term plan. The amendment omits from the listed purposes of a long-term plan the purpose of providing an opportunity for participating in decision- making processes. This is intended to be a purpose of consultation on the long-term plan rather than a purpose of the plan itself.

Comment

LGNZ agrees; a matter of clarification.

30. Clause 29 inserts new sections 93A to 93G, which relate to consultation on a long-term plan. The special consultative procedure is still to be used, but the requirement for a statement of proposal and a summary is replaced with a requirement to use a consultation document. The new sections 93A to 93G set out the requirements for this document.

Comment

The proposed requirements for the consultation document's content and format, in addition to those continuing to apply to full LTPs, mean that LTPs will require greater attention and resources. This will be a challenge to some councils, but also an opportunity to adopt innovative approaches to communicating the intent of their LTPs to citizens.

There are risks, however, that given the large number of matters still to be included in LTP documentation, and the diversity and complexity of the local government operating environment, that aspirations for 'clarity and simplicity' will be frustrated.

LGNZ supports this amendment (subject to confirmation that the trigger for what constitutes "significant and material difference" in section 95 (1) and so trigger an SCP process) can be determined by an adopted ''significance and engagement" policy under Clause/18/section 76AA).

The LTP will still be a complex document. While the summary will simplify things for the community, councils still have to produce the full financials, 30 year infrastructure strategy, finance policies, engagement policies and performance measures for a 10 year period. This is another reason why the timing of implementation of all the amendments has to be carefully considered.

31. Clause 30 amends section 94, which relates to an audit of a long-term plan. It clarifies the requirements in relation to the audit report in the case of an amended long-term plan.

Comment

No comment.

32. Clause 31 amends section 95, which relates to the annual plan. The requirement to use the special consultative procedure is replaced with a requirement to consult in a manner that gives effect to the requirements of section 82, using a consultation document that complies with new section 95A.

Comment

LGNZ agrees with this proposal.

33. Clause 32 inserts into the principal Act new sections 95A and 95B. New section 95A sets out the requirements for the consultation document for an annual plan.

Comment

No comment; technical amendment.

34. New section 95B outlines the requirements for combined or concurrent consultation on a long-term plan and an annual plan. It requires the content of the respective consultation documents to be combined and the special consultative procedure to be used.

Comment

LGNZ supports this amendment.

35. Clause 33 amends section 101A (2), which describe the purposes of a financial strategy. The existing subsection provides that a purpose of a financial strategy is to facilitate consultation on the local authority's proposals for funding and expenditure. The substituted subsection instead provides that a purpose of a financial strategy is to provide a context for consultation on those proposals.

Comment

LGNZ supports this amendment.

Infrastructure strategy

36. Clause 34 inserts into the principal Act new section 101B, which requires local authorities to prepare and adopt, as part of their long-term plan, an infrastructure strategy for a period of at least 30 consecutive financial years. The purpose of an infrastructure strategy is to:

- identify significant infrastructure issues over the period covered by the strategy; and
- Identify the principal options for managing those issues, and the implications of those options.

Comment

The additional mandatory LTP requirements will entail a significant amount of preparatory work. The requirements state that key elements of the strategy are to be included in a council's LTP consultation document.

This provision extends the focus of infrastructural, but not non-infrastructural, groups of activities in LTPs from 10 (as is the practice) to 30 years, adding detail and complexity to the LTP document and related processes. This added complexity runs counter to the drive to simplify and streamline the LTP process and have focused engagement around proposals set out in detail for the first three years and in outline for the following seven years.

While this information exists in asset management plans it is heavily conditional and significant assumptions will be required for the strategy to be meaningful. These include the pattern of land use demand and growth over 30 years which drive infrastructural service demands, yet the parallel requisites of land use and transport strategies will not be in place to support this.

The local government sector has long argued for fundamental reform of the three key planning statutes, in order to achieve meaningful, integrated long term plans, and for Government to extend its planning horizons so that communities will have greater clarity about its intentions as well as imposing this obligation on local government. By choosing to extend the horizon for LTP planning in this partial and incomplete way, there are real risks of an imbalanced and partial long-term view being taken of Councils' activities, significant confusion and loss of credibility of LTP processes.

While LGNZ supports the inclusion (clause7 amendment to section 14) of the principle of prudent stewardship of resources, there is still more clarity needed in the definitions of 'prudence'. Clarity is also required on the assumptions to be used for inflation if there is to be financial alignment with the infrastructural strategy, as well as all other financial elements of the LTP.

Clause 101B(3)(e) sets out the need to "provide for the resilience of infrastructure assets from natural disasters by identifying and managing risks relating to such disasters and by making appropriate financial provision for those risks". LGNZ is concerned that the phrase 'natural disaster' is insufficient to reflect the nature of the risks facing communities and not consistent with the RMA reference to 'natural hazards', which would include the cumulative effects of climate change and sea level rise, for example, which would not be accommodated by the reference to 'disaster'.

LGNZ supports the submission from IPENZ that this clause is amended to read: "provide for the resilience of infrastructure assets in the event of natural hazards that could have a significant impact on services provided to the community by identifying and managing the risks of these impacts and making appropriate financial provision".

LGNZ also seeks a guarantee, perhaps through the provision of detailed guidance, that years 10 – 30 of the 30 year infrastructural strategy will be indicative rather than detailed. Care must be taken in the drafting to ensure that this does not become an extremely onerous and expensive requirement.

LGNZ **recommends** that Clause 101B(3)(e) is amended by replacing "natural disasters" with "natural hazards".

37. Clause 35 amends section 102. A new subsection (4) is substituted which no longer requires the use of the special consultative procedure when consulting on draft funding and financial policies. Instead, consultation in accordance with section 82 is required**.**

Comment

No comment; technical amendment.

38 Clause 36 amends section 106 of the principal Act, which relates to local authority policies on development contributions or financial contributions, by inserting new subsections (2A) to (2C) and replacing subsection (6).

New subsection (2A) provides that development contributions can be calculated over the capacity life of assets or groups of assets. New subsection (2B) provides for the annual adjustment of development contribution charges in accordance with the Producers Price Index Outputs for Construction provided by Statistics New Zealand. New subsection (2C) provides that the increases may be made without consultation, formality, or a review of the development contributions policy, if the newly adjusted development contributions are made publicly available before any increase takes effect.

New subsection (6) provides that a policy adopted under section 102(1) must be reviewed at least once every 3 years using a consultation process that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ supports Sub section 2(A) and would also suggest that this 3 year cycle must be in line with the LTP development.

39. Clause 37 amends section 108, which relates to the policy on remission and postponement of rates on Māori freehold land. A new subsection (4A) is substituted, which provides that a policy adopted under section 102(1) must be reviewed at least once every 6 years using a consultation process that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ comments that alignment with other aspects of activity within an individual council's activity needs to be considered as well.

40. Clause 38 amends section 109, which relates to the rates remission policy. A new section 109(2A)(a) is substituted, which provides that a rates remission policy must be reviewed at least once every 6 years using a consultation process that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

As with the previous amendment, LGNZ comments that there needs to be an alignment with other aspects of an individual councils' business.

41. Clause 39 amends section 110, which relates to the rates postponement policy. A new section 110(2A)(a) is substituted, which provides that a rates postponement policy must be reviewed at least once every 3 years using a consultation process that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ supports this amendment as it is aligned to the LTP and other financial strategies.

42. Clause 40 consequentially amends section 123(a) of the principal Act, which relates to the outline of Part 7 of the Act, by removing a reference to the process that a local authority must follow in assessing water and sanitary services.

Comment

LGNZ supports this amendment.

43. Clause 41 repeals section 125(3) of the principal Act, which provides that a territorial authority's assessment of water and other sanitary services may be included in its long-term plan or otherwise adopted using the special consultative procedure.

Comment

LGNZ supports this amendment.

44. Clause 42 inserts into the principal Act new section 126, which states the purpose of section 125 assessments concerning the adequacy of water and other sanitary services available to communities within a territorial authority's district.

Comment

LGNZ supports this amendment and sees it as a minor amendment which reinstates clarity and reduces potential confusion and variation without adding any new obligations.

45. Clause 43 amends section 139, which relates to the protection of regional parks. A new section 139(5) (b) is substituted which provides that, before disposing of part of a regional park in the circumstances permitted by section 139(4), the regional council must consult in a manner that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ supports this amendment.

46. Clause 44 amends section 150, which relates to the power of local authorities to prescribe fees. A new section 150(3) (b) is substituted, which provides that fees may be prescribed following a consultation process that gives effect to the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ supports this amendment.

47. Clause 45 inserts into the principal Act new sections 150A to 150F. New section 150A enables a territorial authority to recover the actual and reasonable costs it incurs in respect of a development contribution objection.

Comment

LGNZ supports this amendment but has concerns that the full cost recovery of the process will not be achievable. Much of the work in preparation will be done before a commissioner is appointed.

New sections 150B to 150E set out the process whereby a local board may propose the making, amendment, or revocation of a bylaw to apply only within its local board area. New section 150F provides that these powers can be exercised jointly by 2 or more local boards. These sections are similar to sections 24 to 28 of the Auckland Council Act.

Comment

LGNZ supports this amendment.

48. Clause 46 amends section 156 to provide that, when making, amending, or revoking bylaws, a local authority is required to use the special consultative procedure only in certain cases. In other cases, the local authority must consult using a consultation process that gives effect to the requirements of section 82.

Comment

LGNZ supports this amendment.

49. Clause 47 amends section 160, which relates to the procedure for and nature of the review of bylaws. The effect of the amendment is that if a local authority determines that a bylaw should continue without amendment it must consult using a consultation process that gives effect to

the requirements of section 82 (rather than by using the special consultative procedure).

Comment

LGNZ supports this amendment.

Development contributions

50. Clause 48 inserts into the principal Act new sections 197AA and 197AB, which propose a purpose and set of principles for development contributions (DC).

New section 197AA states the purpose of development contributions, which is to enable territorial authorities to recover from developers a fair, equitable, and proportionate portion of the costs of capital expenditure necessary to service growth. New section 197AB sets out the development contributions principles, which include the following:

- development contributions should only be charged if developments create or cumulatively have created a requirement for the territorial authority to provide new or additional assets or assets of increased capacity; and
- development contributions should be determined in a manner that is consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over recovery of costs allocated to development contribution funding.

Comment

This amendment will require all councils to review their development contributions (DC) policies for which an SCP is discretionary. Greater prescription in documenting policies and their rationale will produce greater clarity and consistency across councils and the potential for greater public understanding of them - but at an increased compliance cost.

Given that the Bill also opens up greater opportunity to challenge to councils' decisions on development contributions this amendment has a potential positive and negative implication - on the one hand discouraging frivolous objections while on the other increasing them in different circumstances.

It is hard to argue that clarity in legislative purpose is not a good thing and to this extent cl. 48 brings Subpart 5 of Part 8 of the Act into line with other parts of the Act where policy-making discretion is imposed. In relation to principles, those proposed make clear the legitimacy of DCs and should instil confidence in the regime.

LGNZ **recommends** that practice guidance is developed to ensure that councils take a consistent interpretation of the new provisions as well as mitigating against the increased potential for legal challenge.

51. Clause 49 amends section 197 of the principal Act, which defines terms used in subpart 5 of Part 8 of the Act. Sub clause (1) amends the definition of development to avoid a circular reference to development and to clarify that buildings, uses, and works are developments.

Sub clause (2) replaces the definition of community infrastructure with a definition that lists assets based on the types of infrastructure that service local neighbourhood needs, limited to

community halls, play equipment on neighbourhood reserves, and public toilets. Sub clause (3) inserts definitions of terms related to development contribution objections.

Comment

LGNZ supports sub clause (1) as this is a technical amendment. However, we oppose the change to Sub clause (2) which replaces the current definition of community infrastructure. Previously this included a wider range of public amenities, such as libraries, swimming pools and recreational facilities. These should not be excluded because they are causally related to development in the same way as elements of network infrastructure. There are also complex transition issues given that many councils will have commissioned work on community infrastructure on the basis of a revenue stream funded by development contributions.

We note that the Government of the United Kingdom recently legislated to give councils the right to levy development contributions for community infrastructure, including libraries and swimming pools, arguing that such services are essential for the well being of communities.

This proposed amendment shifts the cost of meeting new residents' need for community infrastructure to existing rate payers. Apart from undermining the principle of exacerbator pay, which councils consider when developing their funding policies, it also has a direct budgetary impact on a number of local authorities. For example, Tauranga City Council note that the change in definition would transfer $9.3 m of existing debt from future development contribution funding to rates funding as well as a future interest cost of $8.1 m, bringing the full cost to be met by existing ratepayers to $17.4 m. The council also notes that the impact on housing affordability would be a reduction of only $750.00 for a new three or four bedroom house.

Limiting community infrastructure to residential developments is also problematic as commercial and industrial development can and does, through increasingly concentrated daytime population, generate demand for community facilities in the same way that such developments have a causal relationship with network infrastructure. Establishing 'causal nexus' and a substantiated case for levying is addressed by other DC related provisions of the Bill.

LGNZ **recommends** that the proposal to narrow the definition of community infrastructure and exclude non-residential development not proceed. However, should the amendment go ahead we recommend that a transition provision is included to allow for the continued collection of development contributions for community infrastructure where this is specified under existing policies.

52. Clause 50 amends section 198 of the principal Act, which relates to a territorial authority's power to require contributions for developments, to enable a territorial authority to require a contribution from a developer when a certificate of acceptance is issued under the Building Act 2004 for the developer's building work situated in the authority's district.

Comment

LGNZ supports this amendment as it reduces the potential for otherwise qualifying developments to avoid paying development contributions.

53. Clause 51 inserts into the principal Act a new section 198A, which restricts a territorial authority's power to require a development contribution for the provision of any reserve. A

contribution cannot be required:

- if the development is non-residential in nature; or
- for the non-residential component of a development that has both a residential component and a non-residential component.

Comment

LGNZ believes that there will be varying views from the sector on this matter depending on the nature of the developments under consideration. However, large parts of our cities are given over to commercial or industrial activities and the willingness of people to work in those areas, and firms to invest, is partly influenced by the community amenities available. The rationale for removing the power to apply development contributions for reserves in non-residential areas is not immediately obvious.

54. Clause 52 amends section 199(2) of the principal Act, to ensure that the reference in that provision to development is a general reference and not a reference to a particular development.

Comment

LGNZ supports this amendment as it minimises the risk of inappropriate avoidance of DCs.

55. Clause 53 inserts into the principal Act new sections 199A to 199N, which relate to the reconsideration of requirements for development contributions. New section 199A confers the right to a reconsideration on the grounds that:

    - the development contribution has been incorrectly calculated or assessed under the territorial authority's development contributions policy; or
    - the development contributions policy has been incorrectly applied; or
    - the information used to assess the objector's development against the development contributions policy, or the way the territorial authority has recorded or used it when requiring a development contribution, was incomplete or contained errors. The procedure for reconsideration is to be set out in the development contributions policy.

    Other provisions include:

    - New section 199B requires a territorial authority to notify the out- come of reconsideration within 15 working days after the date on which it receives all required relevant information relating to the request.
    - New section 199C gives developers a right to object to a requirement to pay a development contribution, irrespective of whether a developer has first requested a reconsideration.
    - New section 199D sets out the grounds for objections.
    - New section 199E provides that the procedure in new Schedule 13A applies to objections.
    - New section 199F provides for the appointment of development contributions commissioners by the Minister of Local Government, and the compilation and keeping of a register of commissioners.
    - New section 199G provides for the removal of commissioners.
    - New section 199H enables a territorial authority to select a commissioner from the register to decide an objection, and also enables the territorial authority to select

any suitable non-registered person if necessary to enable the objection to be dealt with.

- New section 199I contains provisions relating to hearings. More detailed provisions about hearings (including the summoning of witnesses and evidential provisions) are set out in Part 2 of new Schedule 13A.
- New section 199J contains additional powers for development contributions commissioners, including:
    - directing the order of business at the hearing:
    - directing the time within which briefs of evidence must be provided:
- New section 199K protects development contributions' commissioners from proceedings relating to their acts and omissions as commissioners, provided that their conduct is in good faith.
- New section 199L provides that, once the commissioners have decided an objection, the territorial authority retains all its functions, duties, responsibilities, and powers in relation to the requirement for the development contribution as if the commissioner's decision had been made by the territorial authority.
- However, while this does not confer on a territorial authority the power to change, amend, or overturn a decision made by a development contributions commissioner, a territorial authority's right to apply for judicial review of a decision made by a development contributions' commissioner is not affected by this section.
- New section 199M requires territorial authorities to provide secretarial and administrative support for commissioners. New section 199N provides that, if a development contribution objection is lodged, the territorial authority may still require the development contribution, but must not use it until the objection has been determined.

Comment

LGNZ supports formalising a consistent development contributions' reconsideration process based on being (and being seen to be) responsive to upholding the principles of natural justice in the ability to seek reconsideration of an administrative decision by officials of a territorial authority.

LGNZ opposes prescribing a new, detailed, quasi-judicial objections process overseen by a separate category of commissioners as a disproportionate response to an undemonstrated need; the potential for which in any event is reduced by other DC related provisions of the Bill.

LGNZ notes that if an applicant is able to prove that any of the three grounds for making an objection in section 199D of the Bill exist the development contribution would be reduced automatically. LGNZ is concerned that this measure fails to recognise that DC policies are only workable where individual developments are grouped together into different categories or types of land uses for different geographic parts of a district. A degree of 'averaging' is necessary given the difficulty of calculating the exact impact of each development and the issue of cumulative effects.

A further problem is that the objection process may well introduce a risk-averse approach with councils backing away from providing growth related infrastructure, especially lead infrastructure, because of the uncertainty with the recovery of development contributions and a low appetite from the rate payer to fund a share of genuine growth related infrastructure. Should this occur new residential development will slow, as councils will be cautious about taking on additional debt if there is no guarantee that it can be repaid. Any slow down in the

provision of infrastructure development is also likely to affect the supply of new houses and put pressure on prices.

In relation to the selection of commissioners for a hearing we have received some comment form members that councils should first consult with affected developers. Similarly, where a commissioner should rule against a councils then some consideration should be given to how the cost of the case should be allocated.

56. Clause 54 amends section 200 of the principal Act, which relates to limitations applying to requirements for development contributions. Sub clause (1) inserts in section 200(1) new paragraph (ba), which provides that a territorial authority cannot charge a development contribution on both a certificate of acceptance and a building consent for the same building work.

Sub clause (2) inserts in section 200 new subsections (3) and (4). New subsection (3) provides that the section does not prevent a territorial authority from requiring a development contribution just because income from rates is being used to meet a portion of the capital costs of the reserve, network infrastructure, or community infrastructure for which the development contribution will be used.

New subsection (4) provides that a territorial authority may require another development contribution to be made for the same purpose if the further development contribution is required to reflect an increase in the scale or intensity of the development since the original contribution was required.

Comment

LGNZ agrees that both provisions are sensible as they minimise risk of inappropriate challenge to a council's development contributions policy.

57. Clause 55 inserts into the principal Act new section 201A, which requires a territorial authority to include a schedule of infrastructure in its policy under section 102(1) if it has decided to seek funding for community facilities.

Comment

This provision will require highly prescriptive and detailed future-focused asset registers. This implies a degree of precision in the design of new developments and areas out to the future that will not be available may not be practical and ultimately not justifiable at the initial stage of design, leading to identification of the need for DC funded infrastructure and reserves. This provision will likely give rise to frequent and ongoing schedule changes - as foreshadowed in the Bill – and may result in schedules so large that in some cases they will be impractical to publish in hard copy, which is also contemplated by the Bill. These practical issues present a rich source of potential delay in consenting processes, as well as dispute and litigation given the increased opportunity to challenge DC policy implementation.

As an alternative LGNZ recommends that practice guidance is developed, able to be nuanced to the variation in development and community circumstances across districts and regions. This would be more appropriate rather than highly prescriptive legislative requirements.

58. Clause 56 consequentially amends the heading to section 202 of the principal Act.

Comment

No comment, technical change.

59. Clause 57 inserts into the principal Act new section 202A, which requires that the development contribution reconsideration process be included in a local authority's development contributions policy.

Comment

This proposal will require councils to establish/adjust existing systems and procedures for decision reconsideration, the holding of hearings for objections to DC decisions, and identify suitable Commissioners to be available to decide on objections. While direct administrative costs of the objections process can be recovered from objectors additional costs that are unrecoverable are certain.

Since first introduced development contribution policies have been subject to scrutiny and challenge through the annual and long term planning processes. Applicants have always had the opportunity to request reconsideration of proposed charges.

Greater visibility and consistency in the ability to seek reconsideration of DC decisions may contribute to greater public confidence in Councils transparency and accountability. However institutionalising a whole new class of objection proceedings is an inefficient and disproportionate response to a potential problem of poor policy and its implementation which other provisions of the Bill seek to address/reduce in any case.

The recourse avenue of judicial review remains available to dis-satisfied parties for significant DC-related disputes. Litigious, rather than collaborative, behaviours are promoted by the proposed objection process which runs counterproductive to good outcomes.

LGNZ supports formalising a consistent DCs reconsideration process based on being (and being seen to be) responsive to upholding the principles of natural justice in the ability to seek reconsideration of an administrative decision by officials of a territorial authority.

LGNZ opposes prescribing a new, detailed, quasi-judicial objections process overseen by a separate category of commissioners as a disproportionate response to an undemonstrated need, the potential for which in any event is reduced by other DC related provisions of the Bill.

LGNZ recommends that the best outcome is achieved by non-litigious, collaborative engagement between councils and developers to resolve issues, with whom typically they have an ongoing relationship, such an approach being much more conducive to achieving the best outcome on the ground.

59. Clause 58 consequentially amends section 203 of the principal Act, which provides that the maximum development contribution must not be exceeded, to ensure that any calculation of development contributions for infrastructure includes the adjustments made in accordance with the Producers Price Index under new section 106(2B).

Comment

LGNZ believe this amendment provides certainty over whole of life consideration of projects for purposes of calculating DCs.

60. Clause 59 consequentially amends section 206 of the principal Act to ensure that the principle in new section 197AB (d) does not prevent the operation of section 206 (which provides for alternative uses of development contributions for reserves).

Comment

LGNZ approves of this amendment.

61. Clause 60 inserts into the principal Act new sections 207A to 207F, which relate to development agreements. They are:

- New section 207A enables a territorial authority to enter into development agreements with developers.
- New section 207B provides a mechanism for developers to request a development agreement.
- New section 207C relates to the content of development agreements, which must include:
  - the legal names of the parties;
  - a description of the land affected; and
  - details of any infrastructure to be provided or paid for by each party.
- New section 207D provides that development agreements are legally enforceable as contracts.
- New section 207E places restrictions on requirements that can be imposed by a development agreement. A developer cannot be required to provide:
  - infrastructure of a nature or type for which the developer would not otherwise have been required to make a development contribution; or
  - infrastructure of a scale that would exceed the infrastructure that would otherwise have been provided for if the developer had been required to make a development contribution.
- New section 207F provides for the termination of development agreements.

Comment

The ability for territorial authorities and private parties to enter into agreements to provide community facilities exists now and is in ongoing use. Typically the lower cost of capital and tested, continuous contracting resources available to councils may mitigate against private provision, but there is nothing stopping it. Experience shows agreements are typically situation specific and imposing statutory compliance requirements is likely to limit innovation rather than embrace it.

LGNZ supports the principle of local authorities choosing their own provision options. Making specific provision for, and setting strictures on, such agreements in the Act does not really 'add value'. At best it only codifies what is already happening and could, due to the limits imposed, inhibit the use of such agreements. LGNZ supports good practice guidance for councils on developer agreements.

62. Clause 61 amends section 208 of the principal Act to enable a territorial authority to withhold a certificate of acceptance under section 99 of the Building Act 2004 until a

development contribution is paid.

Comment

LGNZ supports the principle of this amendment however there may be unforeseen consequences as a result, such as delays that may well be the worst outcome for all concerned.

63. Clause 62 amends section 235, to apply the same offence provisions to members of local boards as apply to members of local authorities.

Comment

LGNZ makes no comment on this.

64. Clause 63 amends section 252 of the principal Act, which provides for the recovery of debts by local authorities, to expressly cover money payable by a person to a local authority as a development contribution.

Comment

LGNZ supports this amendment.

65. Clause 64 amends section 255 of the principal Act by inserting a new subsection (2), which provides that the powers of the Minister under Part 10 of the principal Act may also be exercised in relation to a local board.

Comment

This seems consistent with the requirement placed on council governing bodies. However see notes 13 – 18 listed previously.

66. Clause 65 amends section 259 of the principal Act to enable regulations under that section to prescribe procedural requirements relating to the reconsideration of requirements for development contributions and to development contribution objections.

Comment

The proposal is designed to achieve a degree of consistency in the way in which reconsideration and objection processes will be handled. LGNZ expects to be involved in the design of this documentation with other relevant agencies.

67. Clauses 66 and 67 insert new section 315 and new Schedule 1AA into the principal Act, which provide for savings and transitional provisions. New Schedule 1AA is set out in Schedule 1 of this Bill.

Comment

No comment; technical change.

Amendments to schedules

68. Clause 68 and Schedule 2 set out amendments to Schedule 3 of the principal Act, which relates to the reorganisation of local authorities.

Comment

LGNZ approves of these amendments.

69. Clause 69 and Schedule 3 set out a minor amendment to Schedule 6 of the principal Act, to provide that communities may not be constituted for any part of a district within a local board area.

Comment

See previous notes 13 – 18.

70. Clause 70 and Schedule 4 amend Schedule 7 of the principal Act by:

- inserting a new clause 25A, which provides for a member of a local authority or any other person participating in a meeting of the local authority to be present at the meeting by audio link or audio-visual link; and
- inserting a new clause 27(5), which requires a local authority to provide in its standing orders for matters concerning the use of audio links and audio-visual links at meetings.
- inserting a new clause 30A requiring a local authority proposing to appoint a joint committee to reach agreement with each other local authority or public body that will also appoint members to that committee. The clause also sets out the key components that must be included in the agreement.

Clause 4 of new Schedule 1AA is a transitional provision that requires existing joint committees to enter into such an agreement within 12 months:

- inserting a new Part 1A that includes requirements relating to delegations to and by local boards, and the duty of members of local boards to comply with the code of conduct adopted by the governing body.

Comment

These points have already been covered in previous notes

71. Clause 71 and Schedule 5 amend Schedule 10 of the principal Act, which deals with long-term plans, annual plans, and annual reports. It adds requirements for local authorities to disclose the following rating base information:

- in long-term plans, the projected number of rating units for each year of the plan;
- in annual plans, the projected number of rating units and the projected capital value and land value on the district valuation roll on the last day of the previous financial year; and
- in annual reports, the actual number of rating units and the actual capital value and land value on the district valuation roll on the last day of the previous financial year.

Transitional provisions in new Schedule 1AA (inserted by clause 67) provide the dates on which the new requirements are to first apply to long-term plans, annual plans, and annual

reports.

Comment

Feedback from the sector would suggest that while preparing disclosure statements might be seen as minor additional work there is a considerable more effort and resources required to project rating assessments. On the matter of information being publicly available under LGOIMA, LGNZ supports increased transparency; however the fiscal measures being put forward in regulations will also be required to be reported in councils' annual reports for the 2013/14 year. This requirement does not seem realistic given that these measures will not be in regulations until possibly March 2014.

72. Clause 72 and Schedule 6 amend Schedule 13 of the principal Act.

Comment

No comment.

73. Clause 73 and Schedule 7 insert new Schedule 13A, which sets out procedural provisions about development contribution objections and supplementary powers for development contributions commissioners.

Comment

See notes 51-62.

74. Clause 74 and Schedule 8 make amendments to the Local Electoral Act 2001 to specify the basis for the election of chairpersons and members of local boards.

Comment

See previous discussion on local boards.

75. Clause 75 and Schedule 9 make amendments to the Local Government (Auckland Council) Act 2009. Clause 76 and Schedule 10 make consequential amendments to other Acts

Other Comments

In addition, LGNZ considers that section 55, which inserts into the principal Act a new section 201A requiring a territorial authority to include a schedule of infrastructure within its development contributions policy, should be aligned with the LTP process.

LGNZ notes that the consultation document must articulate a fair representation of all the complex issues relating to rates, debt, levels of service and the consequence of choices. LGNZ supports the concept in principle and again suggests that there needs to be guidance and best practice templates developed jointly with LGNZ to ensure the implementation achieves the desired result.

Section 101B 6(b) Infrastructure strategy: LGNZ believe that the elements within this strategy should be drawn from existing plans and documents and that these should feed across into the development of the infrastructure strategy. We are concerned that councils are already being asked to produce asset management plans relating to the five infrastructure areas and that these form part of the financial strategies and audit

requirements of an LTP. There must be an alignment between these plans within the LTP and the Infrastructure strategy extending to 30 years.

CONCLUSION

The Local Government Act 2002 Amendment Bill (no.3) is the final part of the Better Local Government reform package introduced in 2012. The linkages between this legislation and the regulation on fiscal prudence measures being introduced early next year is an important aspect that must be taken into consideration.

When councils throughout New Zealand enter their next phase of long term planning the relationship between the recently introduced new purpose statement, the changes to the definition of community infrastructure, the restriction on use of development contributions, the restraints of fiscal prudence, the expectations for improved services, and the desire for lower rates will all have to be balanced.

While in isolation each of the changes proposed in recent legislation can be viewed as logical there will be unforeseen consequences in the total package of reform which will most likely display itself in less expenditure on major areas of service, in particular a possible under investment in infrastructure spend.

If New Zealand is serious about the need for better economic performance it is difficult to view these recent reforms as enhancing the possibility of future investment by the public sector in valuable local infrastructure. This investment is in fact the backbone of infrastructure for the country and restricting the expenditure of local councils by using punitive measures is not assisting economic growth.

LGNZ also seeks the introduction of transitional provisions that allow for the continued collection of development contributions as planned for community infrastructure projects that have been completed or are currently under construction, even if these projects no longer comply with the new definition of community infrastructure.

LGNZ supports any reforms which achieve simplification and streamlining of processes and to this end we support many of the other reforms outlined in this amendment Bill.