Property Council New Zealand

SUBMISSION ON LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO 3)

To : The Local Government and Environment Committee
From : Property Council New Zealand

PROPERTY COUNCIL NEW ZEALAND (at the address for service given below) makes the following submission on the Local Government Act 2002 Amendment Bill (No 3).

Introduction

Property Council fully supports the Department of Internal Affairs' recent work on development contributions, as this area is complex and has been affected by inequity and inconsistencies for a number of years. Getting development contribution charges right will have beneficial ramifications for local communities, territorial authorities, developers and public policy goals. Property Council considers the Local Government Act 2002 Amendment Bill (No 3) takes positive steps in seeking to make changes this respect. However, as recognised by central government, collaborative working, the provision of guidance, monitoring and sharing good practice will also be essential to ensure that issues are rectified going forwards.

Background

Property Council is a not-for-profit organisation representing the country's commercial, industrial, retail, property funds and multi-unit residential property owners, managers and investors – including thousands of New Zealanders with retirement savings in listed property trusts, unlisted funds and KiwiSaver.

Our 600 member companies, with billions of dollars invested in residential and commercial property, range from leading institutional investors, property trusts and financial organisations to private investors and developers.

Property Council actively involves itself with central, local and other government associated bodies, promoting the views, goals and ideas of our members. Property Council, like other organisations that represent residential, commercial and industrial ratepayers, has an interest in achieving public policy outcomes that:

- enable the delivery of an appropriate level of investment in the services and infrastructure necessary to improve productivity-driven economic growth
- minimise disincentives for investment within any given city, district or region
- ensure the equitable and proportionate allocation of cost, which reflects the distribution of benefits
- achieve a public policy environment that contributes to the long-term economic health of communities throughout New Zealand, as well as the economic prosperity of New Zealand as a whole.

Property Council's primary goal is the creation of well designed, functional, and economically sustainable built environments in New Zealand including, where appropriate, the preservation and adaptive re-use of heritage buildings. As building owners, developers, consumers, taxpayers and ratepayers, Property Council's members want to live and work in a built environment which is economically viable, sustainable, vibrant, and a desirable place to be. A vibrant and prosperous built environment, which evolves through better urban design, will attract more economic activity and investment (domestic and foreign), which in turn improves financial returns.

Property Council's public policy interests fall into three primary areas of analysis: urban strategy and infrastructure; compliance and legislation; and capital markets. Property Council supports the implementation of statutory and regulatory frameworks that enhance (and do not inhibit) productivity-driven economic growth and prosperity. Property Council is also a proponent of urban sustainability and heritage outcomes, which are realised through the active governance and management of the urban environment.

Context

To date, a lack of transparency on how levels of development contributions are determined by territorial authorities, and inconsistencies in application and approach across the country, has led to inequitable and inappropriate charges being levied on developers – as evidenced by a number of recent court judgments. Due to the lack of appeal rights apart from judicial review, and the time and costs associated with applying to the High Court for a judicial review, these cases only illustrate a small fraction of the actual problems being experienced by the industry.

Property Council members have first-hand experience of dealing with the issues in this area, and have been greatly frustrated at some of the excessive and unreasonable charges that have been levied as well as the often poor engagement on policy development.

Property Council acknowledges that this is a difficult area – the calculations are complex and influenced by a number of competing factors. Development contributions clearly can have a role to play in encouraging sustainable growth and developments. However, they must be legal, fair, and transparent - and supported by robust analysis.

Ensuring that charges are allocated in a transparent, fair and justifiable manner will have significant positive outcomes for local communities, territorial authorities, developers and New Zealand as a whole. It will result in clearer pricing signals, better match supply and demand and help with the efficient allocation of resources. Overall, outcomes should be: that costs are attributed equitably; territorial authorities are able to plan for and recoup the costs of relevant investments; and for local communities to have quality development and infrastructure.

Reforms

Most developers do not object to the principle that development contributions need to be factored into their costings, as long as there is clear evidence of the link between the level of development contributions and the demand created for infrastructure.

Developers also require certainty and transparency around amounts being charged, and the timeframes for the development contribution process. This is essential for financial planning and efficiency, and is important for both developers and territorial authorities.

Property Council supports legislative reforms that seek to:

- promote a policy and regulatory environment that ensures that territorial authorities only use development contributions for the <u>sole</u> purpose of recouping the costs of growth related capital expenditures that arise as a result of the development
- champion the development of, and adherence to, robust development contributions policies that are underpinned by rigorous cost allocation and cost recovery methodologies
- ensure appropriate appeal rights and mechanisms are in place, to ensure equity, transparency and accountability.

Choice of charging mechanism

Property Council agrees with the findings of the Productivity Commission that development contributions are particularly suited to recovering the incremental costs of major economic infrastructure assets, such as trunk water, sewerage and drainage, and major roads. Confining development contributions to such critical infrastructure (and reserves) would simplify the charging regime and better apportion costs according to:

- those who cause them to be incurred (<u>causation</u>). This ensures that the resource implications of people's decisions are correctly signalled and, in the absence of any externalities, promote efficiency; **and**

- those people who <u>benefit</u> from the infrastructure. This is particularly important where externalities are present, as cost causation fails to produce purely equitable outcomes.

In addition, the benefits to the territorial authority and existing ratepayers of the new asset or the expanded capacity of the existing asset (e.g. via improved service, extending asset life) arising from the development should be taken into account, and set off against the cost of the development contribution to avoid loading a disproportionately high share of costs onto residential and business growth.

Many territorial authorities focus on causation, or the fact that a development causes the need for the infrastructure spend, without appropriately apportioning some of the costs to those who will benefit from the infrastructure. In *Neil Group and others v North Shore City Council*[1], the Court found that the Council had erred by adopting such an approach without considering the overall benefits to the community and dividing the costs accordingly.

Whist the causation and benefits received principles are enshrined in case law, Property Council's view is that this is not property understood by many territorial authorities. As such, we particularly support the inclusion this requirement in the Bill (in the principles clause).

Rates - equity and efficiency

Where the development contribution charged to developers does not stymie the development, by making it uneconomic, the cost will be passed on to the end user. In respect of housing, this front loads the development contribution charge onto the first home buyer. Recovering the costs (or at least a portion of the cost) through rates, or a targeted rate over the life of the infrastructure, would improve intergenerational equity and ensure that all those who benefit from the infrastructure help pay for it. Over charging first homebuyers through development contribution policies is neither efficient (as it does not send accurate price signals) nor is it transparent.

Developments can significantly increase the size of the rating base and are beneficial to the local area and its ratepayers. As such, it is also important to factor in the benefit of the future rates payments from the site.

The global financial crisis decreased development, and resulted in territorial authorities collecting less development contributions than they had predicted. In this respect, rates would have been a more stable source of funding. In some cases, overreliance on development contributions as a source of funding could have resulted from an inability to levy requisite rates due to the small population base. This is of particular concern in places where there are large numbers of tourists or part year residents who place demands on the local infrastructure but do not contribute to it. Whilst it is clear that development contributions should not be used in these ways to inappropriately to cross subsidise territorial authorities' other expenditure, it is important for

[1] HC AK CIV 2005-404-4690 [21 March 2007]

central government to recognise this issue and consider how to rectify it – as it affects many smaller communities across New Zealand.

Similar issues arise in respect of past underinvestment by territorial authorities, and how to appropriately makeup and fund the shortfall.

Who should be able to charge development contributions?

Property Council considers that, as operators of the consent processes, only city and district territorial authorities should be able to charge a development contribution. Other Crown agencies (such as NZTA) and regional authorities should not, as it is too difficult to establish a causal nexus.

However, Council Controlled Authorities, who charge infrastructure growth charges, should have these charges subjected to the same rules, notification and appeal rights as development contributions. Infrastructure growth charges are de facto development contributions and therefore have the same impact on property development. As such, they should not be exempted from the controls proposed in this Bill.

In this respect, Property Council has concerns that Auckland Council's Watercare's charges are in effect development contributions, but are not subject to sufficient transparency and accountability. Members have informed us that average development contribution charges are $21,000 in the Auckland metropolitan area. Watercare charges are $9775 – making total charges around $30,000 – a not insignificant sum. Members advise that the charges are even higher in other areas. Widespread opinion is that Watercare's charges are too high, and this indicates that both Watercare (in terms of its reputation) and the development community would benefit from greater transparency.

The Bill

Most of our comments on the clauses of the Bill relate to development contributions. However, we have an interest in local government efficiencies and amalgamations and have provided some high level comments on this aspect of the Bill as well.

The Annex to this submission provides background information on the issues our members have experienced in relation to development contributions to date.

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7 Section 14 amended (Principles relating to local authorities) • (1) Replace section 14(1)(e) with: • "(e) a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes; and". (2) Replace section 14(1)(g) with: • "(g) 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; and".	Support increased obligation on local authorities to collaborate and co-operate with other local authorities and bodies to improve effectiveness and efficiency. Whilst it is clear that some local authorities already do this, others do not. Having legislative obligations should help spur more proactive action in this respect. Support addition of planning for future management of assets for similar reasons.

11 New section 17A inserted (Delivery of services)
• After section 17, insert:
 	
"**17A Delivery of services**
• "(1) A local authority must, as soon as practicable after each triennial election, review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions.
"(2) A review under **subsection (1)** must consider options for the governance, funding, and delivery of infrastructure, services, and regulatory functions, including, but not limited to, the following options:
  • "(a) responsibility for governance, funding, and delivery is exercised by the local authority:
  • "(b) responsibility for governance and funding is exercised by the local authority, and responsibility for delivery is exercised by—
    • "(i) a council-controlled organisation of the local authority; or
	Support reviews of cost effectiveness, to help ensure efficiencies are being made and ensure good process.
	
	Important that any council-controlled organisations are still publically accountable and subject to the similar requirements as the local authority. For instance, Watercare in Auckland's de facto development contribution charges are not subject to the same requirements as Council's development contributions are. This results in a lack of accountability and transparency.

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• “(ii) a council-controlled organisation in which the local authority is one of several shareholders; or • “(iii) another local authority; or • “(iv) another person or agency: • “(c) responsibility for governance and funding is delegated to a joint committee or other shared governance arrangement, and responsibility for delivery is exercised by an entity or a person listed in **paragraph (b)(i) to (iv)**. “(3) If responsibility for delivery of infrastructure, services, or regulatory functions is to be undertaken by a different entity from that responsible for funding or governance, the entity that is responsible for governance must ensure that there is a contract or other binding agreement that clearly specifies— • “(a) the required service levels; and • “(b) the performance measures and targets to be used to assess compliance with the required service levels; and • “(c) how performance is to be assessed and reported; and • “(d) how the costs of delivery are to be met; and • “(e) how any risks are to be managed; and • “(f) what penalties for non-performance may be applied; and • “(g) how accountability is to be enforced. “(4) **Subsection (3)** does not apply to an arrangement if the entity that is responsible for governance is satisfied that— • “(a) the entity responsible for delivery is a community group or a not-for-profit organisation; and • “(b) the arrangement does not involve significant cost or risk to any local authority.	

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“(5) The entity that is responsible for governance must ensure that any agreement under **subsection (3)** is made publicly available. “(6) Nothing in this section requires the entity that is responsible for governance to make publicly accessible any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.”	
18 New section 76AA and cross-heading inserted • After the subpart 1 heading, insert: “*Significance and engagement policy* “**76AA Significance and engagement policy** • “(1) Every local authority must adopt a policy setting out— • “(a) that local authority's general approach to determining the significance of proposals and decisions in relation to issues, assets, or other matters; and • “(b) any criteria, or procedures that are to be used by the local authority in assessing the extent to which issues, proposals, decisions, or other matters are significant; and • “(c) how the local authority will respond to community preferences about engagement on decisions relating to specific issues, assets, or other matters, including when use of the special consultative procedure is desirable; and • “(d) how the local authority will engage with communities on other matters. “(2) The purpose of the policy is—	Useful for transparency and accountability and helping ensure good practice. However need to ensure that processes are still robust and provide for sufficient public input – particularly on key issues.

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• “(a) to enable the local authority and its communities to identify the degree of significance attached to particular issues, assets, or other matters; and
• “(b) to provide clarity about how and when communities can expect to be engaged in decisions about different issues, assets, or other matters; and
• “(c) to inform the local authority from the beginning of a decision-making process about—
  • “(i) the extent of any public engagement that is expected before a particular decision is made; and
  • “(ii) the form or type of engagement required.
“(3) The policy adopted under **subsection (1)** must list the assets considered by the local authority to be strategic assets.
“(4) A policy adopted under **subsection (1)** may be amended from time to time.
“(5) When adopting or amending a policy under this section, the local authority must consult in accordance with section 82 unless it considers on reasonable grounds that it has sufficient information about community interests and preferences to enable the purpose of the policy to be achieved.
“(6) To avoid doubt, section 80 applies when a local authority deviates from this policy.”	

21 Section 82 amended (Principles of consultation) • Replace section 82(1)(f) with: • “(f) that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority.”	Understand the objective of avoiding undue cost and delays resulting from local authorities having to provide individualised or tailored packages of information to persons who have presented their views. However, amendment may have gone too far. We suggest including an obligation for local authorities to provide information on the reasons for, or rationale behind, their decisions - without it having to be

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	individualised. This is important for transparency and accountability.
34 New section 101B inserted (Infrastructure strategy) • After section 101A, insert: “**101B Infrastructure strategy** • “(1) A local authority must prepare and adopt, as part of its long-term plan, an infrastructure strategy for a period of at least 30 consecutive financial years. “(2) The purpose of the infrastructure strategy is to— • “(a) identify significant infrastructure issues for the local authority over the period covered by the strategy; and • “(b) identify the principal options for managing those issues and the implications of those options. “(3) The infrastructure strategy adopted under this section must outline how the local authority intends to manage its infrastructure assets, taking into account the need to— • “(a) renew or replace existing assets; and • “(b) respond to growth or decline in the demand for services reliant on those assets; and • “(c) allow for planned increases or decreases in levels of service provided through those assets; and • “(d) maintain or improve public health and environmental outcomes or mitigate adverse effects on them; and • “(e) provide for the resilience of infrastructure assets in the event of natural disasters by identifying and managing risks relating to such disasters and by making appropriate financial provision for those risks. “(4) The infrastructure strategy adopted under this section must include—	Strongly support planning for infrastructure requirements, focusing on identifying issues and options for managing issues. It is vital to look at how to address past underinvestment, and think ahead to priorities going forward. However, strategies must also be flexible to account for unforeseen issues and events. Development must be linked to infrastructure provision and, as such, development contributions policies and annual plans will need to integrate with the infrastructure strategy as well as private developer agreements (as envisaged under this Bill). It is likely that regular updates of all relevant Council plans will be vital to ensure this integration and holistic planning takes place.

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• “(a) indicative estimates, for each year covered by the strategy, of projected capital and operating expenditure requirements associated with the management of infrastructure assets; and
• “(b) the following assumptions on which the indicative estimates are based:
    • “(i) the assumptions of the local authority about the life cycle of significant infrastructure assets:
    • “(ii) the assumptions of the local authority about growth or decline in the demand for relevant services:
    • “(iii) the assumptions of the local authority about increases or decreases in relevant levels of service; and
• “(c) if assumptions referred to in **paragraph (b)** involve a high level of uncertainty,—
    • “(i) the nature of that uncertainty; and
    • “(ii) an outline of the potential effects of that uncertainty.
“(5) A local authority may meet the requirements of section 101A and this section by adopting a single financial and infrastructure strategy document as part of its long-term plan.
“(6) In this section, **infrastructure assets** includes—
• “(a) existing or proposed assets to be used to provide services by or on behalf of the local authority in relation to the following groups of activities:
    • “(i) water supply:
    • “(ii) sewerage and the treatment and disposal of sewage:
    • “(iii) stormwater drainage:
    • “(iv) flood protection and control works:
    • “(v) the provision of roads and footpaths; and	

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• "(b) any other assets that the local authority, in its discretion, wishes to include in the strategy."	

36 Section 106 amended (Policy on development contributions or financial contributions)
• (1) After section 106(2), insert:
• "(2A) This section does not prevent a local authority from calculating development contributions over the capacity life of assets or groups of assets for which development contributions are required, so long as—
  • "(a) the assets that have a capacity life extending beyond the period covered by the territorial authority's long-term plan are identified in the development contributions policy; and
  • "(b) development contribution charges per unit of development do not exceed the maximum amount allowed by section 203.
• "(2B) Development contribution charges for a particular asset or group of assets in a territorial authority's district, or part of a district, may be increased annually, by the authority of this subsection, in accordance with the increases (if any) in the Producers Price Index Outputs for Construction provided by Statistics New Zealand for the previous year.
• "(2C) Increases under **subsection (2B)** may be made without consultation, formality, or a review of the development contributions policy if the territorial authority makes documents containing the newly adjusted development contributions publicly available before any increase takes effect."
(2) Replace section 106(6) with:
• "(6) 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."
	For clarity and consistency the meaning of capacity life should be defined (e.g. "useful life"?). Otherwise it could be interpreted in different manners, e.g. time, volume, physical life etc.
	
	It is also important to show that this is the most efficient way of funding the asset, and this section should not be able to be used in a way which enables gold plating.
	
	If, as envisaged under 2B, local authorities are to increase charges in accordance with PPI increases they should not be allowed to increase for interest as well – as this would be "double dipping". This is important, as currently there is a built in factor to inflate charges to allow for interest.

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45 New sections 150A to 150F and cross-heading inserted • After section 150, insert: "**150A Costs of development contribution objections** • "(1) If a person objects to a territorial authority's requirement that a development contribution be made, the territorial authority may recover from the person its actual and reasonable costs in respect of the objection. "(2) The costs that the territorial authority may recover under this section are the costs incurred by it in respect of— • "(a) the selection, engagement, and employment of the development contributions commissioners; and • "(b) the secretarial and administrative support of the objection process; and • "(c) preparing for, organising, and holding the hearing. "(3) A territorial authority may, in any particular case and in its absolute discretion, waive or remit the whole or any part of any costs that would otherwise be payable under this section. "(4) A territorial authority's actual and reasonable costs in respect of objections are recoverable under section 252.	Strongly oppose. The legislation should encourage territorial authorities to establish robust policies and procedures. These provisions do not act to send these signals – as they do not sufficiently deter territorial authorities from going through the objections process, as there is no risk for them being liable for costs. Deterrence, and encouraging sound territorial authority policies and decisions, is a key reason for having an objections process. It is also inequitable that a territorial authority may have acted illegally but not suffer consequences from doing so. In order to send the right deterrence signals, costs should be recoverable by the party who is successful in the objections process. This is in accordance with normal court procedures, and would still act to deter spurious claims, whilst incentivising territorial authorities to ensure their development contributions charges are legal. Commissioners should have power to order costs. We also note that there should be no costs involved with going through the reconsideration process - this is in accordance with the current situation.
48 New sections 197AA and 197AB inserted • Before section 197, insert: "**197AA Purpose of development contributions**	Strongly support the new purpose and principles. A national approach will help with certainty, and developing a more consistent approach across the country. It will guide territorial authorities in attempting to deal with this complex issue.

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• The purpose of the development contributions provisions in this Act is to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the costs of capital expenditure necessary to service growth.
 	
“**197AB Development contributions principles**
• A territorial authority must take into account the following principles when preparing a development contributions policy under section 106 or requiring development contributions under section 198:
  • “(a) development contributions should only be required if developments create or cumulatively have created a requirement for the territorial authority to provide new or additional assets or assets of increased capacity:
  • “(b) 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:
  • “(c) cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided as well as those who create the need for those assets:
  • “(d) development contributions must be used—
    • “(i) for or towards the purpose of the activity or the groups of activities for which the contributions were required; and
    • “(ii) in the district or the part of the district in which the development contributions were required:
  • “(e) territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used:
	Suggest slight amendment to the purpose, to ensure clarity “The purpose of the development contributions provisions in this Act is to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the costs of capital expenditure necessary to service growth that is attributable to the relevant development.”
	
	The suggested principles reflect the purpose of development contributions, and are in accordance with case law.
	
	Property Council particularly supports clause 197AB(c) which requires costs be apportioned between people who will benefit from and asset as well as those who created the need for the asset – i.e. the causal nexus approach.
	
	As such, development contribution policies should account for the benefits to those who will use the infrastructure, as well as benefits of increased future rate payments from the site. Assessing the total effect of proposed developments ensures that levies better reflect the costs and benefits to the community. (For instance, it is clear that developments within a city that do not strain existing infrastructure, but significantly increase the size of the rating base, are beneficial to the city and its ratepayers.)
	
	In relation to 197AB(d)(ii) we have concerns that “district” is too broad/large an area, and therefore this contravenes the

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• “(f) development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority’s development contributions policy under sections 106, 201, and 202.”	causal nexus approach by not being closely enough linked to the particular development. 197AB(e) will be particularly important in increasing transparency and accountability in this area.
49 Section 197 amended (Interpretation) • (1) In section 197(1), definition of **development**, paragraph (a), replace “or other development” with “, building (as defined in section 8 of the Building Act 2004), use, or work”. (2) In section 197(2), replace the definition of **community infrastructure** with: “**community infrastructure** means the following assets when owned, operated, or controlled by a territorial authority: • “(a) community centres or halls for the use of a local community or neighbourhood, and the land on which they are or will be situated: • “(b) play equipment that is located on a neighbourhood reserve: • “(c) toilets for use by the public”. (3) In section 197(2), insert in their appropriate alphabetical order: “**accommodation units** means units, apartments, or rooms in 1 or more buildings for the purpose of providing overnight, temporary, or rental accommodation “**development agreement** means a voluntary contractual agreement made under **sections 207A to 207F** between 1 or more developers and 1 or more territorial authorities for the provision, supply, or exchange of infrastructure, land, or money to provide network infrastructure, community infrastructure, or reserves in 1 or more districts or a part of a district “**development contribution objection** means an objection lodged under **clause 1 of Schedule 13A** against a requirement to make a development contribution “**development contributions commissioner** means a person appointed under **section 199F** “**objector** means a person who lodges a development contribution objection”.	In the past, local authorities have used the ability to charge for “community infrastructure” to fund inappropriate items from development contributions (examples we are aware of include gas barbecues, event centers, lakeside cafes etc.). In such instances, the causal nexus is tenuous at best. These items benefit the broader community and therefore should be funded via rates – ensuring communities have better transparency over what is being bought by the territories authority and ensuring that funds are spent on items the community actually desires. It is vital that the causal nexus approach is respected, in order to ensure allocative efficiency – i.e. justifiable, efficient and transparent pricing that better matches supply and demand and helps ensure the efficient allocation of resources. Property Council agrees with the findings of the Productivity Commission that development contributions are particularly suited to recovering the incremental costs of major economic infrastructure assets, such as trunk water, sewerage and drainage, and major roads. Confining development contributions to such critical infrastructure (and reserves) would simplify the charging regime for infrastructure arising from development and respect the causal nexus approach.

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	However, should this proposal not be accepted, given the historical context, we support tightly defining the term "community infrastructure" in the Local Government Act 2002 to help ensure consistency and equity. In this respect, we suggest a slight amendment to the "community infrastructure" definition in this clause so that it explicitly states that the community infrastructure should be linked to the development and located in the local area. We note that some opponents to the Bill argue that community infrastructure would not be built without development contributions. This objection ignores the "benefits" test set out in case law, which states that those who benefit from the infrastructure must pay for it – e.g. via rates. We also note that if there may be significant implications for some local authorities' balance sheets if amendments to the definition of community infrastructure is applied retrospectively. Whilst we strongly support the need to amend this provision, practical application of the provision will need to consider implications on local communities in this respect.
50 Section 198 amended (Power to require contributions for developments)	Support proposal - charging development contributions as late as possible can assist developers in obtaining finance –

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• After section 198(1)(b), insert: • “(ba) a certificate of acceptance is issued under the Building Act 2004 for building work situated in its district (whether issued by the territorial authority or by a building consent authority):”.	potentially having positive implications for issues such as housing affordability by encouraging development.

51 New section 198A inserted (Restrictions on power to require contributions for reserves)
• After section 198, insert:
 	
“**198A Restrictions on power to require contributions for reserves**
• “(1) Despite section 198(1), a territorial authority may not require a development contribution to be made to the territorial authority for the provision of any reserve—
  • “(a) if the development is non-residential in nature; or
  • “(b) for the non-residential component of a development that has both a residential component and a non-residential component.
“(2) For the purpose of **subsection (1)**, visitor accommodation units are deemed to be residential.”
	Strongly support – is in line with the causal nexus approach that development contributions be linked to the need. Non-residential growth does not require reserves.

53 New sections 199A to 199N inserted • After section 199, insert: “**199A Right to reconsideration of requirement for development contribution** • “(1) If a person is required by a territorial authority to make a development contribution under section 198, the person may request the territorial authority to reconsider the requirement if the person has grounds to believe that—	**The reconsideration process** We support the option of having a reconsideration process. However, being be able to opt out of the reconsideration process is particularly positive and important as, in some cases, it will be clear that the reconsideration process will not work and the extra delays will incur prohibitive additional costs for developers.

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• “(a) the development contribution was incorrectly calculated or assessed under the territorial authority’s development contributions policy; or • “(b) the territorial authority incorrectly applied its development contributions policy; or • “(c) the information used to assess the person’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. “(2) A request for a reconsideration must be lodged and decided according to the procedure set out in a development contributions policy under **section 202A(2)**. “(3) A request for a reconsideration must be made within 10 working days after the date on which the person lodging the request receives notice from the territorial authority of the level of development contribution that the territorial authority is proposing to require. “(4) A person may not apply for a reconsideration if the person has already lodged an objection under **section 199C and Schedule 13A**. “**199B Territorial authority to notify outcome of reconsideration** • “(1) The territorial authority must, within 15 working days after the date on which it receives all required relevant information relating to a request, serve written notice of the outcome of its reconsideration on the person who made the request. “(2) A person who requested a reconsideration may object to the outcome of the reconsideration in accordance with **section 199C**. “**199C Right to object to requirement for development contribution** • “(1) A person may, on any ground set out in **section 199D**, object to—	**The need for legal redress options** At present the only possible legal remedy available to developers who disagree with territorial authority decisions is judicial review through the High Court. The costs of these proceedings is prohibitive, and many potential appellants can’t afford to go through this process. This situation is inequitable – as evidenced by recent High Court decisions in favour of developers – as there is no incentive for territorial authorities to efficiently deliver infrastructure and make well founded decisions. Members’ experience is that this can result in early delivery of capacity, often in the wrong location and not linked to demand. Territorial authorities seek to then protect these investments, making it difficult to progress more economic developments. “Gold-plating” of infrastructure also takes place. Infrastructure is also often funded from development contributions when it actually should be phased over time and separately funded. This is wasteful, inefficient and inequitable. There needs to be a strong impetus on territorial authorities to stick to the law and levy appropriate levels of charges. In this respect, territorial authorities need to be held accountable for their actions. Given this context, Property Council strongly supports the introduction of an objections process as well as retaining the

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• "(a) a notice given to the person by a territorial authority that specifies the assessed amount of the development contribution that the territorial authority proposes to require from the developer; or • "(b) if notice has not been given, the development contribution that the territorial authority requires from the person under section 198. "(2) The right of objection conferred by **subsection (1)** applies irrespective of whether the person has previously requested a reconsideration of a requirement for a development contribution under **section 199A**. "(3) The right of objection conferred by this section does not apply to challenges to the content of a development contributions policy prepared in accordance with section 102. "**199D Scope of development contribution objections** • An objection under **section 199C** may be made only on the ground that a territorial authority has— • "(a) failed to properly take into account features of the objector's development that significantly increase or decrease the requirement for community facilities, activities, or groups of activities in the territorial authority's district or parts of that district; or • "(b) required a development contribution for community facilities, activities, or groups of activities not required by, or related to, the objector's development; or • "(c) incorrectly applied its development contributions policy to the objector's development. "**199E Procedure for development contribution objections** • **Schedule 13A** applies in relation to objections under **section 199D**. "**199F Appointment and register of development contributions commissioners**	ability to seek judicial review We would also advocate for an option to appeal decisions to the environment court to ensure a proper system of checks and balances to prevent misuse of power. **Development contributions policies** One potential issue we wish to explore, is the inability under the Bill to challenge the territorial authority's development contributions policy through the objections process. This places significant pressure on the territorial authority's consultation process to get the policy right – and there may not be a proper review of the policy during the consultation period, particularly in areas with not much development or in times of economic downturn. There is a real risk developers may come to the policy later (e.g. when deciding to develop in a new area) and find there is an issue but be unable to do anything about it. Inputs into the policy are key as, if set too high, they lead to inappropriately high development contribution charges (e.g. budgeting for 30% contingencies). As such, we advocate for an appropriate window where the policy can be appealed to the Environment Court after it becomes operative. After the window of appeal timeframe has expired, we agree with the omission of the ability to review the policy as part of the objections process; given that it would cause significant uncertainty, delays and difficulties if the policy were constantly subject to, or at risk of, change.

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• "(1) The Minister must appoint suitable persons as approved development contributions commissioners who are to decide development contribution objections. "(2) The Minister must compile and keep a register of approved development contributions commissioners. "(3) The Minister must ensure that the persons named in the register individually or collectively have— • "(a) knowledge and experience in adjudication and mediation, including the conduct of hearings or inquiries; and • "(b) knowledge, skills, and experience relevant to the subject matter likely to arise in an objection; and • "(c) knowledge of tikanga Māori. "(4) The Minister may, by notice in the *Gazette*, specify additional criteria for the appointment of development contributions commissioners (being in addition to, but not inconsistent with, the criteria specified in **subsection (3)**). "(5) Before compiling the register or specifying additional appointment criteria, the Minister must consult persons that the Minister considers are representative of parties that are most likely to be participants in development contribution objections. "(6) The term of appointment for a development contributions commissioner on the register expires— • "(a) 3 years after the date on which his or her appointment takes effect; or • "(b) at the close of the term of his or her reappointment; or • "(c) at the close of the extension of his or her term; or • "(d) as soon after the completion of his or her term of appointment or reappointment as is necessary to enable him or her to complete any outstanding work, but not later than the notification of his or her final decision as a commissioner.	We suggest amending clause 199D(a) by replacing "significantly" with "materially" as "significantly" implies too high a threshold. We suggest amending clause 199D(b) by removing the words "or related to" as this creates ambiguity and undermines the causal nexus approach. **Selection of Commissioners** We support Ministerial appointment of commissioners. More complex cases are likely to require hearing via a panel of commissioners. For instance, the panel may comprise of someone with an engineering background, an economist and a legal expert. Deep levels of expertise *and a lack of bias/pre-determined views* will be essential in order to ensure robust decisions. We advocate that clause 199N is deleted, it appears pointless for the developer to pay the Council when the Council is unable to use the money.

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“(7) The Minister must notify all appointments of approved development contributions commissioners in the *Gazette*.
 	
“**199G Removal of development contributions commissioners**
• The Minister may remove any development contributions commissioner from the register kept under **section 199F**, but only—
  • “(a) because of the criminal activity or other misconduct of the commissioner; or
  • “(b) if the commissioner is unable to perform the functions of office; or
  • “(c) if the commissioner has neglected his or her duty.
 	
“**199H Who may decide development contribution objections**
• “(1) Any person named in the register of approved development contributions commissioners and selected by a territorial authority in accordance with **clause 2 of Schedule 13A** to decide a development contribution objection may hear and decide the objection.
“(2) A person who is not named in the register of approved development contributions commissioners may hear and decide a development contribution objection only if—
  • “(a) the territorial authority is satisfied that—
    • “(i) the objection relates to matters that require skills or knowledge that is not available from persons named in the register who are available to deal with the objection; and
    • “(ii) another suitable person with such skills or knowledge is available to deal with the objection; and
  • “(b) the Minister approves the territorial authority's selection of that other person to decide the objection.	

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"(3) A person approved by the Minister under **subsection (2)(b)** must be treated as a development contributions commissioner for the period necessary to enable the person to decide the relevant objection.
 	
"**199I Development contribution objection hearings**
• "(1) The applicable fees and allowances for a witness appearing at a development contribution objection hearing must be paid by the party on whose behalf the witness is called.
"(2) Before or at the hearing, a development contributions commissioner may request the objector or territorial authority to provide further information.
"(3) If information is requested before a hearing under **subsection (2)**, the party required to provide the information must serve copies of it on the other parties to the objection.
"(4) Only the territorial authority and the objector have a right to be heard at the hearing of an objection. The commissioners may, at their discretion, invite any other person or organisation to attend and be heard to the extent allowed by the commissioners.
"(5) **Part 2 of Schedule 13A** sets out supplementary provisions that apply in relation to development contribution objection hearings.
 	
"**199J Additional powers of development contributions commissioners**
• "(1) In addition to his or her powers under **section 199I and Schedule 13A**, a development contributions commissioner has, for the purposes of a development contribution objection hearing, the following powers :
  • "(a) to direct the order of business at the hearing, including the order in which evidence is presented and parties heard:
  • "(b) to direct that evidence presented at the hearing be taken as read or presented within a stated time limit:	

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• “(c) to direct that evidence be limited to the matters relevant to the dispute. “(2) Whether or not a hearing is held, a development contributions commissioner may direct that briefs of evidence be provided within a specified period ending not later than,— • “(a) if a hearing is to be held, 10 working days before the hearing commences; or • “(b) in any other case, 10 working days before the date on which the commissioner or commissioners intend to begin their consideration of the objection. “(3) A development contributions commissioner may waive or extend any period specified in **sections 199B to 199K or Schedule 13A** (except the period specified in **clause 1(1) of Schedule 13A**) if satisfied that exceptional circumstances exist. “(4) A development contributions commissioner may, on his or her own initiative or on application from the objector or the territorial authority, make an order that prohibits the communication or publication of any information supplied to the commissioner, or obtained by the commissioner, in the course of deciding a development contribution objection, if satisfied that the order is necessary to avoid— • “(a) serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu; or • “(b) the disclosure of a trade secret or commercial information that, if released, would be prejudicial to the business or operations of any party to the objection. “**199K Liability of development contributions commissioners** • A development contributions commissioner is not liable for anything the commissioner does, or omits to do, in good faith in performing or exercising the	

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functions, duties, responsibilities, and powers of a development contributions commissioner under this Act. "**199L Residual powers of territorial authority relating to development contribution objection decision** • "(1) This section applies to a decision of a development contributions commissioner. "(2) The territorial authority affected by the decision retains all the functions, duties, responsibilities, and powers of a territorial authority in relation to the requirement for the development contribution that is the subject of the decision as if the decision had been made by the territorial authority. "(3) **Subsection (2)** does not confer on a territorial authority the power to change, amend, or overturn a decision made by a development contributions commissioner. "(4) However, nothing in **subsection (3)** affects a territorial authority's right to apply for judicial review of a decision made by a development contributions commissioner. "**199M Territorial authority to provide administrative support for development contributions commissioners** • A territorial authority must supply all secretarial and administrative services necessary to enable development contributions commissioners to perform their functions under this Act. "**199N Interim effect of development contribution objection** • "(1) 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.	

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"(2) If a territorial authority does not require a development contribution pending the determination of an objection, the territorial authority may withhold consents or permissions in accordance with section 208 until the objection has been determined."	

54 Section 200 amended (Limitations applying to requirement for development contribution)
• (1) After section 200(1)(b), insert:
• "(ba) the territorial authority has already required a development contribution in respect of the same building work, whether on the granting of a building consent or a certificate of acceptance; or".
(2) After section 200(2), insert:
• "(3) This section does not prevent a territorial authority from requiring a development contribution if—
  • "(a) income from rates is being used to meet a portion of the capital costs of the community facilities for which the development contribution will be used; or
  • "(b) a person required to make the development contribution is also a ratepayer in the territorial authority's district.
• "(4) Despite **subsection (1)(ba)**, 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."
	Support intention of this section. However, the amendment under (2), needs to be strengthened to prevent "double dipping" by territorial authorities. Irrespective of the current section 200, members have reported territorial authorities charging a development contribution, the developer also having to pay for infrastructure and vesting it in the territorial authority at no cost, and then the authority charging purchasers of the property connection costs and increased rates.
	
	As such, suggest inserting wording in this section to make this clear – e.g. a territorial authority must not charge development contributions where it has already received funding from other sources for the same project/matter.

55 New section 201A inserted (Schedule of infrastructure for which development contributions will be used) • After section 201, insert:	Strongly support requiring territorial authorities to report on how development contributions collected are spent. This is vital for transparency and accountability (to both developers and local communities). Suggest making it mandatory for the

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“**201A Schedule of infrastructure for which development contributions will be used** • “(1) If a territorial authority has determined to seek funding for community facilities under this subpart, the policy required by section 102 must include, in addition to the matters set out in sections 106 and 201, a schedule that lists— • “(a) each new asset, additional asset, asset of expanded capacity, or programme of works for which the development contributions requirements set out in the development contributions policy are intended to be used or have already been used; and • “(b) the estimated capital cost of each asset described in **paragraph (a)**; and • “(c) the proportion of the capital cost that the territorial authority proposes to recover through development contributions; and • “(d) the proportion of the capital cost that the territorial authority proposes to recover from other sources. “(2) For the purposes of **subsection (1)**, assets for which development contributions are required can be grouped together into logical and appropriate groups of assets that reflect the intended or completed programmes of works or capacity expansion. “(3) A schedule under **subsection (1)** must also include assets for which capital expenditure has already been incurred by a territorial authority in anticipation of development. “(4) Information in the schedule under **subsection (1)** must group assets according to the district or parts of the district for which the development contribution is required, and by the activity or group of activities for which the development contribution is required. “(5) A territorial authority may make changes to the schedule required by **subsection (1)** at any time without consultation or further formality, but only if—	schedule to be maintained and publicly accessible electronically to help facilitate this. Reporting back should also help facilitate refunds as envisaged under s209 and 210 (this doesn’t happen at present).

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• "(a) the change is being made to reflect a change of circumstances in relation to an asset that is listed in the schedule or is to be added to the schedule; and • "(b) the change does not increase the development contribution that will be required to be made to the territorial authority. "(6) If the territorial authority is satisfied that the schedule or any part of it is too large or impractical to print in hard copy form, the territorial authority may— • "(a) provide the schedule in a publicly accessible electronic format; and • "(b) provide and maintain an electronic link from the development contributions policy to the schedule (if the policy is on the Internet) or state where a hard copy of the schedule can be found and inspected. "(7) Subject to sections 204, 205, and 206, a territorial authority may use a development contribution for or towards any assets other than those set out in the schedule required by **subsection (1)** as at the time the development contribution was required, if— • "(a) the assets are for the same general function and purpose as those that were set out in the schedule required under **subsection (1)** as at the time the development contribution was required; and • "(b) the schedule required by **subsection (1)** has been updated in accordance with **subsection (5)**, or will be updated when the development contributions policy is next changed or reviewed, to identify the assets that the development contribution has been, or is intended to be, used for or towards."	
58 Section 203 amended (Maximum development contributions not to be exceeded)	In relation to maximum development contributions, we note that the maximum amount that is allowed under the Act for

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• In section 203(2), after "clause 2 of Schedule 13", insert ", and as amended for any Producers Price Index adjustment adopted in a development contributions policy in accordance with **section 106(2B)**".	reserves is generally charged rather than being linked to the demand.
60 New sections 207A to 207F and cross-heading inserted • After section 207, insert: "*Development agreements* "**207A Request to enter development agreement** • "(1) A territorial authority may enter into a development agreement with a developer if— • "(a) the developer has requested in writing that the territorial authority enter into a development agreement with the developer; or • "(b) the territorial authority has requested in writing that the developer enter into a development agreement with the territorial authority. "(2) This section does not limit section 12. "**207B Response to request for development agreement** • "(1) A territorial authority that receives a written request from a developer to enter into a development agreement must consider that request without unnecessary delay. "(2) The territorial authority may— • "(a) accept the request; or • "(b) accept the request in part; or • "(c) accept the request subject to any amendments agreed to by the territorial authority and the developer; or	Support, potentially encourages innovation and competition in provision of infrastructure and better aligning demand with supply and expenditure with revenue. It also allows developer flexibility in the standard and type of infrastructure provided to the development and the ability to lower development contribution levels. Requires minimum standards for the infrastructure. Suggest amending clause 201E to make it explicitly clear that a development agreement must not require a developer to provide infrastructure that is of a higher technical specification than that which would have been provided had the developer paid a development contribution. This is important to prevent gold plating – which is a real issue at the moment.

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• “(d) decline the request. “(3) The territorial authority must provide the developer who made the request with a written notice of its decision and the reasons for its decision. “(4) A developer who receives a request from a territorial authority to enter into a development agreement may, in a written response to the territorial authority,— • “(a) accept the request in whole or in part subject to any amendments agreed to by the territorial authority and the developer; or • “(b) decline the request. “**207C Content of development agreement** • “(1) A development agreement must be in writing and be signed by all parties that are to be bound by the agreement. “(2) A development agreement must include— • “(a) the legal name of the territorial authority that will be bound by the agreement; and • “(b) the legal name of the developer that will be bound by the agreement; and • “(c) a description of the land to which the agreement will relate, including its legal description and, if applicable,— • “(i) the street address of the land; and • “(ii) other identifiers of the location of the land, its boundaries, and extent; and • “(d) details of the infrastructure (if any) that each party to the agreement will provide or pay for. “(3) A development agreement may also include information relating to all or any of the following: • “(a) a description of the development to which the agreement will relate:	

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• "(b) when infrastructure will be provided, including whether the infrastructure will be provided in stages:
• "(c) who will own, operate, and maintain the infrastructure being provided:
• "(d) the timing and arrangements of any vesting of infrastructure:
• "(e) the mechanism for the resolution of disputes under the agreement:
• "(f) the arrangements for, and timing of, any transfer of land between the territorial authority and the developer:
• "(g) the nature, amount, and timing of any monetary payments to be made between the parties to the agreement:
• "(h) the enforcement of the development agreement by a suitable means in the event of a breach, including, but not limited to,—
    • "(i) a guarantee; or
    • "(ii) a bond; or
    • "(iii) a memorandum of encumbrance.
 	
"**207D Effect of development agreement**
• "(1) A development agreement is a legally enforceable contract.
"(2) A development agreement has no force until all parties that will be bound by the agreement have signed it.
"(3) A development agreement does not oblige a territorial authority or any other consent authority to—
• "(a) grant a resource consent under the Resource Management Act 1991; or
• "(b) issue a building consent under the Building Act 2004; or
• "(c) issue a code compliance certificate under the Building Act 2004; or
• "(d) grant a certificate under section 224 of the Resource Management Act 1991; or	

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• “(e) grant an authorisation of a service connection. “(4) A territorial authority or other consent authority must not refuse to grant or issue a consent, certificate, or authorisation (as the case may be) referred to in **subsection (3)** on the basis that a development agreement has not been entered into. “**207E Restrictions on use of development agreement** • “(1) A development agreement must not require a developer to provide— • “(a) infrastructure of a nature or type for which the developer would not otherwise have been required to make a development contribution; or • “(b) 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. “(2) However, a developer may agree to provide infrastructure of a nature or scale that is additional to, of greater capacity than, or of a different type to the infrastructure that would have been provided if the developer had been required to make a development contribution. “**207F Amendment or termination of development agreement** • “(1) A development agreement may be amended at any time through mutual agreement of all parties who are signatories to the agreement. “(2) A development agreement terminates— • “(a) on a date set out in the development agreement; or • “(b) on the date on which all actions, undertakings, or obligations that were agreed to by each of the signatories to the agreement have been fulfilled; or • “(c) on a date mutually agreed in writing by all parties that are signatories to the agreement.”	

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Schedule 6
Amendment to Schedule 13 **s 72**
 	
Clause 1
In clause 1, insert as subclauses (2) and (3):
• "(2) This clause does not prevent a territorial authority from identifying capital expenditure for the purposes of calculating development contributions for infrastructure that will be built after 10 years and that is identified in the development contributions policy.
• "(3) The total cost of capital identified in **subclause (1)** may in part relate to assets intended to be delivered beyond the period covered by a territorial authority's current long-term plan if—
  • "(a) the assets concerned are identified in the development contributions policy; and
  • "(b) the total cost of capital expenditure does not exceed that which relates to the period over which the development has been assessed for the purpose of setting development contributions."	

Schedule 7 **New Schedule 13A inserted in principal Act** **s 73** **Schedule 13A** **Procedure relating to development contribution objections** **ss 199E, 199I** Part 1 General provisions	**Selection of Commissioners** More complex cases are likely to require hearing via a panel of commissioners. For instance, the panel may comprise of someone with an engineering background, an economist and a legal expert. Deep levels of expertise, *and a lack of bias/pre-determined views*, will be essential for robust decisions.

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1 Lodgment of objection • (1) An objector lodges a development contribution objection by serving notice of the objection on the territorial authority within 15 working days after the date on which the objector received notice from the territorial authority of the level of development contribution that the territorial authority is proposing to require. (2) However, if an objector has received notice of the outcome of a reconsideration under **section 199B**, the 15-working-day period in **subclause (1)** begins on the day after the date on which the objector receives the notice of the outcome. (3) The notice of objection under **subclause (1)** must— • (a) be in writing; and • (b) set out the grounds and reasons for the objection; and • (c) the relief sought; and • (d) state whether the objector wishes to be heard on the objection. (4) A territorial authority may, in its discretion, allow an objection to be served on it after the 15-working-day period specified in **subclause (1) or (2)**, as the case may be, if satisfied that exceptional circumstances exist. **2 Selection of development contributions commissioners** • (1) A territorial authority that has received an objection under **clause 1** must, as soon as practicable after receiving the objection, select not more than 3 development contributions commissioners to decide the objection. (2) The development contributions commissioners must— • (a) be selected from persons named in a register of commissioners appointed by the Minister under **section 199F** or be selected in accordance with **section 199H(2)**; and • (b) not be elected members or employees of the territorial authority whose development contribution requirement is the subject of the objection; and	

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• (c) not be board members, shareholders, owners, employees, or contractors of the objector; and
• (d) in the opinion of the territorial authority, individually or collectively have the skills, knowledge, and experience necessary to—
  ◦ (i) conduct a fair and appropriate hearing; and
  ◦ (ii) understand and determine the principal matters in contention.
(3) If the territorial authority proposes to select more than 1 commissioner, it must appoint one of them as the chairperson.
 	
3 Development contributions commissioners to set date for exchange of evidence
• (1) Development contributions commissioners who have been selected to decide an objection must give the parties notice of the date by which briefs of evidence relating to the objection must be exchanged.
(2) The briefs of evidence must be exchanged not later than 10 working days before—
  ◦ (a) the commencement of a hearing under **clause 5**; or
  ◦ (b) if there is no hearing, a date fixed by the commissioners.
(3) Copies of the statements of evidence referred to in a brief of evidence must be provided to—
  ◦ (a) each development contributions commissioner appointed to decide the objection; and
  ◦ (b) the territorial authority; and
  ◦ (c) the objector.
 	
4 Obligation to hold hearing
• A hearing on an objection need not be held if—
  ◦ (a) the objector has—
    ▪ (i) indicated that the objector does not wish to be heard; or
    ▪ (ii) otherwise agreed that no hearing is required; or	

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• (b) the development contributions commissioners who will hear and decide the objection are satisfied, having regard to the nature of the objection and the evidence already provided, that they are able to determine the objection without a hearing. **5 Hearing date and notice** • (1) If a hearing on an objection is to be held, the development contributions commissioners must fix the date, time, and place of the hearing. (2) Notice of a hearing must be served on the territorial authority and the objector at least 5 working days before the date on which the hearing commences. **6 Replies to briefs of evidence where no hearing is held** • (1) Where no hearing is to be held, a development contributions commissioner may direct that the territorial authority and the objector provide written replies to each other's evidence and provide copies of those replies to the commissioners. (2) A direction made under **subclause (1)** must specify the period within which the written replies must be served on— • (a) the development contributions commissioners; and • (b) the territorial authority; and • (c) the objector. **7 Development contribution objection hearings** • (1) If a hearing is required, it must be held on the date and at the time and place specified in the notice given under **clause 5**. (2) The development contributions commissioners must establish a procedure that is appropriate and fair in the circumstances and that— • (a) avoids unnecessary formality; and • (b) recognises tikanga Māori where appropriate. (3) A hearing under this clause need not be held in public.	

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8 Decisions on objections • (1) Development contributions commissioners must give a decision on an objection in writing, whether or not a hearing is held. (2) A decision on an objection must— • (a) uphold all or part of the objection; or • (b) dismiss all or part of the objection. (3) A decision may quash, or direct that amendments be made to, the requirement for a development contribution. (4) A decision must be given in writing and state— • (a) the reasons for the decision; and • (b) a summary of the issues that were in contention; and • (c) the relevant provisions of the development contributions policy of the territorial authority that required the development contribution; and • (d) a summary of the evidence presented. (5) In their decision on an objection, the development contributions commissioners must not direct the amendment of a development contributions policy, but may make observations on the policy. **9 Service of development contribution objection decision** • (1) Written copies of the development contributions commissioners' decision under **clause 8** must be served on— • (a) the objector; and • (b) the territorial authority that required the development contribution; and • (c) the Secretary. (2) Service of the decision must be given within 15 working days after— • (a) the end of the hearing; or • (b) if no hearing is held, the last day of the commissioners' consideration of the evidence.	

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Part 2 Provisions supplementing section 199I **10 Development contributions commissioners' powers** • The commissioners conducting a hearing on an objection have the same powers that a District Court, in the exercise of its civil jurisdiction, has to cite parties and to conduct and maintain order. **11 Power to summon witness** • (1) A written summons may be issued requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the hearing. (2) A summons may be issued by a development contributions commissioner on his or her own initiative or on application. (3) The commissioner who issues the summons must be— • (a) the chairperson; or • (b) any commissioner authorised by the chairperson; or • (c) if there is no chairperson, any commissioner participating in the hearing or consideration of the objection. (4) A commissioner who may issue a summons may do any other act preliminary or incidental to the hearing or consideration of the objection. **12 Service of summons** • (1) A summons to a witness may be served— • (a) by delivering it to the person summoned; or	

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• (b) by posting it by registered letter addressed to the person summoned at that person's usual place of abode. (2) The summons must,— • (a) if served under **subclause (1)(a)**, be served at least 24 hours before the attendance of the witness is required: • (b) if served under **subclause (1)(b)**, be served at least 10 days before the date on which the attendance of the witness is required. (3) If the summons is posted by registered letter, it must be treated for the purposes of **subclause (2)(b)** to have been served at the time when the letter would be delivered in the ordinary course of post. **13 Evidence** • The development contributions commissioners may, for the purposes of a hearing,— • (a) receive any evidence that, in their opinion, may assist them to deal effectively with the development contribution objection, whether or not the evidence would be admissible in a court of law; and • (b) take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by any commissioner; and • (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by oath or affirmation. **14 Other immunities and privileges of participants** • (1) Witnesses and other persons participating in a hearing (other than counsel) have the same immunities and privileges as if they were appearing in civil proceedings and the provisions of subpart 8 of Part 2 of the Evidence Act 2006 apply to the inquiry, to the extent that they are relevant, as if— • (a) the hearing were a civil proceeding; and • (b) every reference to a Judge were a reference to a commissioner.	

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(2) Counsel appearing at a hearing have the same immunities and privileges as they would have if appearing before a court.	

Conclusion

Property Council submits that a combination of legislative reform and practical measures be taken to improve the current system, and ensure equity, efficiency, and compliance with the law. We support a policy and regulatory environment that ensures that territorial authorities use development contributions for the sole purpose of recouping the costs of growth related capital expenditures that arise as a result of the development.

As described previously, ensuring that charges are allocated in a transparent, fair and justifiable manner will have significant positive outcomes for local communities, territorial authorities, developers and New Zealand as a whole. It will result in clearer pricing signals, better match supply and demand and help with the efficient allocation of resources. Change is vital to stop unfair, inefficient practices and their knock-on detrimental impacts on areas such as housing affordability.

Overall outcomes should be for costs to be attributed equitably, territorial authorities to be able to plan for and recoup the costs of investment in infrastructure, and for local communities to have quality development and infrastructure.

Property Council is grateful for the opportunity to provide comments on the Bill, and would like to be heard on this submission.

Please note the following Annexes.

DATED 14 January 2014

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Connal Townsend, Chief Executive
on behalf of Property Council New Zealand, P O Box 1033, Auckland 1140

ANNEX ONE

We have set out below a summary of feedback we have received from a number of our members, across the country. Their experiences, along with recent High Court decisions, serve to illustrate and emphasise that change is required in this area. Descriptions have been kept at a high level, to ensure confidentiality and protect the interests of our members.

Variability and inconsistency

Territorial authorities often apply complicated formulas to calculate levels of development contributions. Too commonly these do not appropriately link the causal relationship between the development and the need for capital expenditure on infrastructure. Due to the absence of the causal link, development contributions charges are variable and inconsistent. Examples of tenuous causal links, where development contributions have been charged, include: where there will be an additional building placed on a private school's property, and the school roll is capped so the structure will redistribute existing use rather than generate additional consumption/discharge, or an existing structure is demolished and a similar one put up in its place.

Many areas would benefit from having established national standards – for instance on levels of water consumption and discharge. Currently standards can vary significantly.

In *Ballintoy Developments Limited vs Tauranga City Council* (2008) the development company calculated the amount it had to pay for development contributions, in accordance with the territorial authority's policy, for a subdivision which was to be undertaken in stages. The territorial authority rejected payment for the whole subdivision, on the basis that the policy would be amended each year and the amount increased. As such, it considered that the development contributions should be paid in stages. The Court found in favour of the development company because, in line with the policy, the plaintiff was entitled to pay for the entire subdivision in one payment. The Court stated the need for certainty and transparency. Property Council members have advised of other instances where territorial authorities have initially sent out invoices for development contributions, and then almost immediately sent out further invoices with increased levels of charges. Some developers have had to pay the increased charges in order to obtain section 224c (completion) certificates, before taking the matter to their lawyers and threatening court action. Even where successful in litigation, they often do not recover all the costs incurred from this.

Fairness and equity

Development contributions are not set at equitable levels. Rather, they are often inflated and used to reduce costs to other ratepayers.

Rather than show a causal nexus, territorial authorities often use Citywide and Catchment charges.

There needs to be proper recognition of the benefits of growth.

A lack of transparency on development contributions policies and how they are calculated decreases the accountability of territorial authorities.

The case of *Domain vs Auckland City Council* (2008) is a clear example of an inappropriate attempt to impose development contributions. In this case the territorial authority wanted to impose a development contribution in addition to having charged a financial contribution.

A lack of transparency has allowed territorial authorities to “double dip”, for instance, by collecting capital income from existing users (such as depreciation collected through rates or user charges) for the express purpose of contributing to replace aging assets, only to then charge the costs of infrastructure (particularly replacement) onto growth related development. In essence, collecting for the same purpose twice. Our members have also informed us of “triple dipping” : i) the developer pays for infrastructure and then vests it in the territorial authority at no cost; ii) the territorial authority charges the developer a hefty development contribution (in some cases of almost $1million); iii) purchasers of the property pay connection costs and increased rates.

Where there is a significant item of infrastructure and the council is charging cost of capital, the developer cannot challenge the often “gold plated” item which is loaded with contingencies and consultant fees, nor the timing of the proposed infrastructure and then has to pay an interest factor based on some preconceived rollouts of that item.

Complexity and Efficiency

Spending levels on infrastructure is often inefficient, being politically or administratively determined without regard to user demand and willingness to pay.

There is no incentive for territorial authorities to efficiently deliver infrastructure and make well founded decisions. Members' experience is that this can result in early delivery of capacity, often in the wrong location and not linked to demand. Territorial authorities seek to then protect these investments, making it difficult to progress more economic developments.

Gold-plating of infrastructure takes place. Infrastructure is also often funded from development contributions when it actually should be phased over time and separately funded. This is wasteful, inefficient and inequitable. The case of *Neil Group and Others vs North Shore City Council* (2006) illustrates this point. Here, the court found that development contributions were cross-subsidising deferred capital expenditure to meet the needs of existing users.

Private investment is discouraged, where infrastructure (paid for by the developer) is given to the territorial authority without compensation.

Where development contributions are payable on building consent, they are required to be paid before construction has even begun and before any revenues are obtained by developers. This causes problems in obtaining finance, due to inadequate security, and can increase costs. It would be advantageous if the levy was payable prior to issue of a code of compliance certificate.

A risk-averse approach to cost management can result in inflated infrastructure charges. There is a mechanism within the legislation to refund budgeted money not spent on a project. However, this is impractical and provides no incentive for territorial authorities to accurately set budgets in the first instance.

Many territorial authorities use development contributions as the main source of funding for future asset development and to increase the capacity of existing assets. This does not give adequate recognition to the benefits of capital expenditure which will accrue to existing ratepayers as improved levels of service and through extending infrastructure life. It consequently loads a disproportionately high share of costs onto residential and business growth.

Impacts on housing affordability

The cost of land, materials, labour and development contributions all influence the overall cost of a development, and have obvious implications for the supply and affordability of housing. As such, it is important that development contributions are set at equitable and efficient levels.

For some years Auckland City Council encouraged the development of apartments, by not charging development contributions on apartments in the inner city area. When this policy was repealed, and expensive development contributions were introduced, development of apartments ceased almost immediately. This example indicates the impact that development contributions have on supply and consequently affordability.

Covec provides an example, that even small increases price can have significant implications on mortgage repayments. For instance a small increase of $9000 on a $200,000 20-year mortgage can increase the total loan by $17,401. Clearly this will impact on housing affordability, particularly for lower income families. (*The Socio-economic impact of development contributions for Waitakere Council*, 22 June 2004, p25.)

Property Council submits that development contributions make up a large proportion of land development costs and this has a material impact on the decision on whether or not to develop the area. It is also important to understand the compounding effect of development contributions – which result in increased GST and developer funding margins being passed on to home owners.

As a fixed sum, development contributions make up a higher proportion of the cost of a low cost house. This has the effect of encouraging developers to concentrate on higher value products.