

# Regulatory Impact Statement

## Better Local Government: Improving Development Contributions

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs. It provides an analysis of options to improve the fairness, appropriateness and workability of development contributions charged under the Local Government Act 2002 and to ensure that they do not unnecessarily contribute to problems of housing affordability.

The particular problems that this RIS seeks to address are associated with development contributions being used to fund inappropriate forms of infrastructure, variable practice in the apportionment of infrastructure costs according to who created the need for infrastructure and who will benefit from it, and gaps in transparency and accountability.

Evidence to inform proposals contained in this RIS and the impact of the preferred proposals and alternative options has been collated from:

- international studies of development contribution approaches and New Zealand territorial authority development contribution policies;
- consultation and submissions received on a development contributions review discussion paper; and
- statistics from Statistics New Zealand, Quotable Value, the Real Estate Institute of New Zealand and reports commissioned by the Department of Internal Affairs.

However, there is a lack of empirical data that can be used to reliably predict the nature and scale of council or developer behaviours in response to particular options. Similarly, the wide range of factors that impact on development decisions, housing markets, and local authority finances means that detailed modelling of the impact of options on these has not been possible. In a range of instances the likelihood of some outcomes occurring (and their scale) is unknown or untested. Uncertainties and risks associated with particular options are discussed in more detail under each proposal or option.

While acknowledging the above limitations, the principal policy options are not expected to impair private property rights or market competition to an extent any greater than the status quo. Some options do have the potential to shift costs from some businesses to others (such as ratepayers), but otherwise it is expected that costs to developers will decrease and incentives for investment and innovation will increase. Adherence to common law principles is expected to be unchanged.

*I have reviewed the RIS prepared by the Department of Internal Affairs and consider the information and analysis summarised in the RIS meet the quality assurance criteria.*

..... Date...../...../ 2013

Paul James, Chair, Regulatory Impact Assessment Panel, Department of Internal Affairs

# Contents

<b>Contents</b>	<b>2</b>
<b>Executive Summary</b>	<b>3</b>
<b>Introduction</b>	<b>5</b>
Context for this regulatory impact statement	5
Decisions already taken	5
<b>Status quo and problem definition</b>	<b>6</b>
Key features of the status quo	6
Benefits and costs of the status quo	8
Problems with the status quo	10
<b>Objectives</b>	<b>17</b>
<b>Regulatory impact analysis</b>	<b>18</b>
OPTION 1: Enhanced guidance and training (non-regulatory intervention)	19
OPTION 2a: Changes to improve transparency, workability and accountability (preferred option)	20
OPTION 2b: Changes to improve transparency including the introduction of Environment Court appeals	24
OPTION 3: Development contributions regulations	26
OPTION 4: Capping of development contributions	28
OPTION 5: Removal of development contributions	31
Comparative assessment of options against objectives	33
Other options discounted	35
<b>Consultation</b>	<b>37</b>
<b>Conclusions and recommendations</b>	<b>39</b>
<b>Implementation</b>	<b>40</b>
<b>Monitoring, evaluation and review</b>	<b>41</b>
Monitoring and evaluation	41
Review	42
<b>Appendix One: Simplified representation of who provides infrastructure</b>	<b>43</b>
<b>Appendix Two: New Zealand development contribution charges per unit of development</b>	<b>44</b>
<b>Appendix Three: Technical Amendments and Clarifications</b>	<b>45</b>
Definitions	45
Costs and benefits calculated over the life of an infrastructure asset	45
Development contributions in respect to certificates of acceptance	45
Relationship between rates and development contributions	45
Development contributions to fund infrastructure in anticipation of development	46
Disclosure of projected costs of capital expenditure council plans and reports	46

## Executive Summary

1. This RIS considers options to improve the fairness, appropriateness and workability of development contributions charged under the Local Government Act 2002 (LGA02) and to ensure that they do not unnecessarily contribute to problems of housing affordability. The critical underlying consideration throughout the analysis is who should pay for infrastructure required to service new development and how.
2. Development contributions under the LGA02 are a form of territorial authority levy charged against developers to recoup some of the capital costs incurred by territorial authorities when building or expanding infrastructure to support new development.
3. The origins of the development contributions review to which this RIS relates are found in Cabinet decisions made in March 2012. Cabinet agreed to a review of development contributions as part of Phase Two of the Better Local Government reform programme, to test their appropriateness and make improve to them [CAB Min (12) 9/4 refers]. The Better Local Government programme was aimed at improving efficiency in local government.
4. In October 2012 the review of development contributions was subsequently widened in scope to include consideration of alternatives to the current development contributions system (including capping and removal) as part of the response to the Productivity Commission's *Housing Affordability Inquiry* report [CAB Min (12) 35/4A refers].
5. Nine objectives were developed to guide the analysis in this RIS. These objectives reflect desired improvements over the status quo and the need to complement wider government work programmes such as the Business Growth Agenda and the Housing Affordability work programme.
6. The nine objectives include overall themes of avoiding unnecessary housing cost increases, ensuring the infrastructure being charged for is appropriate and more reflective of benefits to developers and the community, improving transparency and accountability, improving territorial authority capability and capacity, and promoting the timely and innovative provision of infrastructure.
7. Aside from the status quo, a total of 11 options were considered as part of the regulatory impact analysis process. The six principal options that are the focus of this RIS are:
  - *Option 1*: enhanced guidance and training (the non-regulatory option);
  - *Option 2a*: making changes to legislation to improve transparency, workability and accountability (with a mechanism for resolving development contribution disputes that is not reliant on the Courts);
  - *Option 2b*: making changes to legislation to improve transparency, workability and accountability (including the introduction of Environment Court appeals for challenging development contributions);
  - *Option 3*: empowering the Minister of Local Government to make regulations pertaining to development contributions;

- *Option 4*: capping development contributions at one or more fixed maximum amounts; and
- *Option 5*: removing the ability of territorial authorities to charge development contributions entirely.

With the exception of option 5, the options listed above are not mutually exclusive. Guidance or regulations can be used to support other options.

8. Based on the analysis of impacts and the degree to which each option is able to meet each of the nine objectives, the Department considers that option 2a is the most appropriate way of improving the current development contributions system. The Department considers that the effectiveness of option 2a would be further enhanced by complementing it with guidance of the nature envisaged as part of option 1.
9. The combination of options 1 and 2a are expected to result in development contributions policy preparation and charging practices that are fairer, more transparent, and more accountable. At the same time the range of infrastructure for which development contributions are charged is expected to become more appropriate, focussed, and reflective of who benefits from it. Encouragement of greater use of development agreements is expected to promote greater private provision of infrastructure and greater innovation.

## Introduction

### Context for this regulatory impact statement

10. In March 2012, Cabinet agreed to the Better Local Government (BLG) reform programme to improve efficiency in local government [Cab Min (12) 9/4 refers]. The programme was to be undertaken in two phases, both involving legislative amendments and some non-legislative elements. The first Bill was developed and enacted in 2012; the second is proposed for introduction in October 2013 – with enactment likely in mid 2014.
11. The BLG programme is part of the Government's broader agenda, and relates particularly to its strategic priorities of:
  - building a more productive and competitive economy; and
  - delivering better public services within tight financial constraints.
12. BLG seeks to contribute to the Government's strategic priorities, by improving the performance of the local government system in order to:
  - enhance its positive contribution and minimise its negative effects on economic growth; and
  - enable better delivery of local public services.
13. These objectives recognise that a critical part of strengthening the economy lies in ensuring local government institutions and processes are sound. Local authorities' decisions have important consequences for national and local economies in relation to core infrastructure, housing affordability, regulations, and public services.
14. The proposals set out in this RIS have been developed in this context. They aim to ensure that development contributions provisions of the LGA02, and the way that they are implemented, achieve an appropriate balance between encouraging economic growth and development while avoiding unreasonable or unfair costs being placed on the rest of the community as a result of that development.
15. Separate Cabinet papers have been developed for further BLG Phase Two reforms in relation to:
  - options to improve local government efficiency; and
  - making the local authority board model available outside Auckland.

### Decisions already taken

#### The direction to undertake a review of development contributions

16. A review of the use of development contributions, to ensure they are consistent with the Government's growth strategy and work on housing affordability, was part of the second phase of the BLG programme agreed to by Cabinet in March 2012 [CAB Min 9/4 (12) refers].

## Expansion of the review as part of the Housing Affordability work programme

17. In October 2012, Cabinet agreed, as part of its response to the Productivity Commission's *Housing Affordability Inquiry* report, that the BLG work programme would widen its review of development contributions to consider alternatives to the current system, including:

- enhanced guidance on the use of development contributions;
- capping development contributions; and
- removing development contributions entirely [CAB Min (12) 35/4A refers].

## Status quo and problem definition

### Key features of the status quo

#### Local authorities are important infrastructure owners and providers

18. Local authorities are a major infrastructure owner and provider to their communities. In 2011 it was estimated that local authorities collectively owned \$79 billion in infrastructure assets (not including a further \$12 billion in land and buildings, some of which may be classed as community infrastructure). The collective amount of capital expenditure that local authorities spend is projected to increase from \$7.7 billion per year in 2013 to \$8.4 billion per year in 2022,<sup>1</sup> largely driven by the cost of building, replacing or renewing infrastructure.

19. Territorial authorities<sup>2</sup> generally provide the following infrastructure to communities:

- **network infrastructure** which can include:
  - *headworks infrastructure* (large infrastructural assets such as water and wastewater treatment facilities and reservoirs);
  - *trunk infrastructure* (water and sewer mains pumping stations, and major roads, for example); and
  - local pipes, roads and other transport infrastructure<sup>3</sup> that serve communities;
- **community infrastructure**: facilities and land that serve the social and cultural needs of a community, such as halls, swimming pools and libraries; and
- **reserves**: potentially including neighbourhood parks, sports grounds, or larger scale parks.

---

1 Report of the Local Government Infrastructure Expert Advisory Group (2013).

2 Local authorities that are city councils, district councils or unitary authorities (but excluding regional councils)

3 Including ancillary equipment such as traffic lights and signs.

20. Territorial authorities tend to be the primary providers of this infrastructure through a mix of historical circumstances (legislative requirements, for example) and because the type of infrastructure they provide has characteristics that are either unattractive to many private sector investors or tend to favour operation by natural monopolies.<sup>4</sup>
21. However, territorial authorities do not provide all the infrastructure required to service new subdivisions and developments. In most cases, the infrastructure within new subdivisions or developments (local pipes, roads and street lighting for example) will be provided by the landowner or developer. That infrastructure connects to local authority headworks infrastructure and is usually vested in a local authority on completion (see diagram in Appendix One). Approximately \$241 million of infrastructure assets were vested in local authorities in 2011.<sup>5</sup>

### **Development contributions are used to help pay for new infrastructure required to service growth**

22. Local authorities fund infrastructure through a variety of sources including rates, user charges, dividends, sales, bonds and contributions (development contributions under the LGA02, and financial contributions under the RMA<sup>6</sup>).
23. Development contributions are only used to pay for the fixed capital costs of new or expanded infrastructure. The ongoing costs of the operation, maintenance, replacement and renewal of infrastructure (including that vested by developers) are paid for from rates, user charges or dividends.
24. Income from development contributions and financial contributions generally makes up around two or three per cent of total territorial authority operating revenue, although this can be higher for territorial authorities with higher levels of development.
25. In 2011, local authorities received a total of \$142 million in development contributions and financial contributions.<sup>7</sup> This is expected to rise to \$418 million in 2022.<sup>8</sup> Analysis of 2012 local authority long-term plans indicates that local authorities expect to raise approximately \$3.4 billion for new or expanded infrastructure works from development contributions and financial contributions over the next ten years. The majority of this money is likely to be used for new or expanded roading, water and wastewater infrastructure.

### **Existing legislative provisions relating to development contributions**

26. Provisions enabling territorial authorities to use and require development contributions are found in sections 101-103, 106, Subpart 5, and Schedule 13 of the LGA02. The main features of these provisions are:

---

4 A natural monopoly occurs where sunk costs are high, capital specialised, and the market small or limited. The presence of two or more providers in the market would result in inefficient use of capital, making it difficult for competitors to enter and survive.

5 Statistics New Zealand (2012), *Local Authority Financial Statistics*.

6 Land or money that is used to offset or mitigate adverse effects on the environment.

7 Ibid. However, these statistics do not separate development contributions and financial contributions. The actual revenue received is about half of what was projected prior to 2011, reflecting the impact of the global economic situation on construction activity.

8 According to an analysis of 2012 local authority long term plans.

- territorial authorities must have a policy on development contributions (even if their policy is not to charge them);
- development contributions can only be charged by territorial authorities in accordance with their development contribution policies;
- development contribution policies are public documents that are publicly consulted on during their preparation (this may involve holding hearings, if requested);
- development contributions can only be used to fund the capital cost of infrastructure required to service growth;
- development contributions can take the form of money or land and may be required when:
  - a resource consent is granted under the Resource Management Act 1991 (RMA);
  - a building consent is granted under the Building Act 2004; and
  - a territorial authority grants an authorisation for a service connection.
- development contributions cannot be charged where funding of infrastructure is being provided for the same purpose from another source; and
- the ability to challenge anything in a development contributions policy, or a decision made in respect of requiring a development contribution, is limited to seeking a judicial review or a declaratory judgement in the High Court.

## Benefits and costs of the status quo

27. The fundamental theoretical underpinnings of the development contribution system are generally sound. They are based on, or similar to, relatively well established principles that are also used in overseas jurisdictions such as Australia, Canada, Ireland, the United Kingdom and the United States. However, the development contribution provisions of the LGA02, and the way in which they are being implemented, are not without problems (as outlined in the section on problems with the status quo).

## Benefits

28. Development contributions send price signals that are important to *allocative efficiency*<sup>9</sup>; ensuring that developers and territorial authorities are made aware of, and consider, the economic implications of providing expensive infrastructure to land that is difficult to service when there may be cheaper alternatives.

29. The price signals sent by development contributions are generally up-front, ensuring that they are properly considered when the key decisions around development are taken. This has the benefits of:

---

9 Defined as “employing the least-cost combination of inputs for given level of output” (Wetzstein M. [2005] *Microeconomic Theory*).



- forcing consideration of the costs of infrastructure before substantial capital is committed; and
  - ensuring the costs of providing infrastructure are clear and cannot be ignored (rates, or targeted rates can obscure the true cost of providing infrastructure to a particular location as the costs will fall on subsequent purchasers).
30. The report of the Local Government Rates Inquiry<sup>10</sup> noted that development contributions also promote efficiency by internalising the costs of additional infrastructure in such a way that excessive use of infrastructure resources is discouraged.
31. Development contributions are more transparent and have a higher degree of accountability associated with them than rates. In the view of the New Zealand Productivity Commission, this means that there may be less risk of territorial authorities ‘gold plating’ infrastructure<sup>11</sup> compared to situations where infrastructure is being funded entirely through general revenue sources such as rates.

## Costs

32. International research<sup>12</sup> suggests that when a housing market is inelastic it is common for all, or almost all, of the development contribution charge to be passed on to buyers of new homes through the purchase price.<sup>13</sup> In such circumstances development contributions can directly contribute to the purchase price of new subdivision sections and new houses.
33. Amongst the territorial authorities that use development contributions in New Zealand, charges in 2012 reportedly range from \$249 per house to nearly \$65,000 per house in one district. The median total development contribution charged nationwide in 2012 was approximately \$12,000 per house<sup>14</sup> (three per cent of the national median house price of \$390,000 in April 2013<sup>15</sup>).
34. There are instances where development contributions are substantially higher than the national average. In 2012 at least 11 territorial authorities were charging more than \$20,000 per additional household unit (three were charging close to, or over, to \$30,000<sup>16</sup>). In these instances development contributions can make up between 10 and

---

10 Local Government Rates Inquiry Panel (2007), *Funding Local Government*, page 152.

11 New Zealand Productivity Commission (2012) *Housing Affordability Inquiry*, page 140.

12 SGS Economics and Planning (2011) *Developer Contributions – Potential Impact on House Prices and Housing Affordability*, for example.

13 Which is consistent with the findings from interviews undertaken by Covec (2004) as part of their report *The Socio-economic impact of development contributions*, prepared for the former Waitakere City Council.

14 Covec Consultants Ltd. (2012) *Analysis of Draft Development Contribution Policies 2012*. A summary of the development contribution charges they looked at is contained in Appendix Two.

15 Real Estate Institute of New Zealand on-line statistics (2013). See also Appendix Two.

16 Officially this does not include Auckland. However, if WaterCare Infrastructure Growth Charges are added, average charges for Auckland would be between \$21,000 and \$50,000 (depending on location).

17 per cent of the house price<sup>17</sup> (potentially higher once financing costs to pay for the contributions are factored in).

35. Some developers suggest that development contributions may also contribute to higher house prices indirectly through restricting supply. That suggestion appears to rely on the assumption that development contribution charges, on subdivisions in particular, are the difference between a development with marginal economic viability proceeding or becoming unviable and not proceeding. However, there is currently little empirical data available to test the validity, scale and effect of this issue in New Zealand.
36. The preparation of development contribution policies and the administration of those policies also have time and monetary costs for territorial authorities. As with the amounts collected through development contributions, there is significant variability in how much development contributions cost to prepare and administer. A study of five territorial authority development contribution practices found that development contributions policy preparation costs ranges from \$33,000 to \$550,000. Development contributions policy administration costs ranged from \$10,000 to \$600,000.<sup>18</sup> However, the costs of preparing and administering development contribution policies are far outweighed by the funds for capital works that are received

## Problems with the status quo

### **Problem 1: Use of development contributions extending to infrastructure that is not justified or may not be fair and equitable**

#### *Nature and significance of the problem*

37. Leading practice in the use of development contributions suggests that to be fair, equitable and efficient, development contributions should be charged according to who benefits as well as who created the demand for infrastructure. Although no universally accepted principles exist, general themes extracted from principles espoused by various authors<sup>19</sup> suggest that charging for infrastructure should be along the lines set out in table 1 (next page):

---

17 Or in some cases, a third or more of the section price (based on 2012 figures) before a house is built. However, taking into account regional house prices nationwide, the maximum development contributions charged by seven provincial territorial authorities exceeded 10% of the average house in their district.

18 SPM Consultants (2012) Development Contribution Case Studies.

19 Such as, Australian Productivity Commission (2009) *Public Infrastructure Financing: An International Perspective*, and SGS Economics Ltd, Frontier Economics (2008) *Development Contributions to the Water Corporation*, and the U.S. Department of Housing and Urban Development. Some similarities also exist with the economic principles contained in the *Best Practice Guide to Development Contributions* (2003) that is part of the Local Government New Zealand KnowHow Series. Generally these principles are consistent to those which deal with differences between funding public goods and private goods.

**Table 1: The relationship between who benefits and who pays for infrastructure**

Who created the demand	Who benefits	Who pays and how
The developer	Only the developer	The developer, either through providing the infrastructure themselves (e.g. in-subdivision infrastructure) or development contributions
Several developers	Several developers, with little or no benefit to the community	The developers, through development contributions apportioned according to their share of the demand that they created
Developers and the community	Developers and the community	Sharing of costs proportional to the benefit gained. Developers pay through development contributions, the community through rates
The community as a whole (but may also be applied where services are dispersed or there is no clear link between development and the infrastructure required)	The community as a whole	The community, through a general revenue source such as rates or user charges

38. Analysis of a sample of 18 territorial authority revenue and financing policies<sup>20</sup> found up to five councils (approximately 28 per cent) are using development contributions to fund, or part fund, one or more of the following:

- cemeteries and crematoria;
- art galleries;
- botanical gardens;
- beaches and coast operations;
- ports and airfields;
- aquatic centres; and

---

<sup>20</sup> Thames-Coromandel District, Whangarei District, Auckland Council, Kapiti Coast District Council, Timaru District Council, Whakatane District Council, Wellington City Council, Far North District Council, Waimakariri District Council, New Plymouth District Council, Upper Hutt City Council, Waitaki District Council, Christchurch City Council, Kaikoura District Council, Wanganui District Council, Nelson City Council, Palmerston North City Council and Tasman District Council.

- storage and archive facilities.
39. These types of facilities are generally for the benefit of entire communities and it is difficult to link the demand for them to specific new developments. Under the charging principles outlined above, paying for this infrastructure out of a general revenue source (such as rates) would be more appropriate than charging development contributions.
40. The same analysis also found that development contributions were being used to finance activities that may not even have an obvious infrastructure component. In this category were activities such as:
- community health and safety (regulations, licensing and animal control);
  - district leadership;
  - governance; and
  - tangata whenua relations.

*Root cause of the problem*

41. The current development contributions regime provisions allow territorial authorities to collect development contributions for community infrastructure as well for as network infrastructure and reserves.
42. The definition of *community infrastructure* in the LGA02 is general and vague, referring to “land and assets on land” to “provide public amenities”.<sup>21</sup> The terms “assets” and “amenities” can cover a multitude of items of varying scales. In seeking to be flexible, the definition provides little direction as to what development contributions can and cannot be charged for.
43. If the definition of community infrastructure is read in the absence of section 101(3)<sup>22</sup> of the LGA02 (cross references to which are indirect), it is possible the definition may be read as encouraging charging of development contributions for infrastructure that is of primary benefit to the wider community.
44. Further contributing factors to this problem may be a lack of guidance and training to assist territorial authorities with limited experience, knowledge or access to advice on good practice on the use of development contributions. There has been little central government assistance with either development contributions guidance or training for territorial authorities since 2003, while the primary guidance document that is available (part of Local Government New Zealand’s *KnowHow* series) has not been updated for many years.

---

21 Section 197 of the Local Government Act 2002.

22 Section 101(3) requires local authorities to consider when determining the means by which its activities (including infrastructure) is to be paid for, the benefit to the community or any part of the community, as well as actions (or inactions) of those who created the need for the activity.

## **Problem 2: Variable practice and transparency in the apportionment of costs and benefits**

### *Nature and significance of the problem*

45. As demonstrated by various media stories and reports,<sup>23</sup> many developers believe that territorial authorities are overcharging development contributions because development contribution policies and charges are not fairly apportioning costs to who benefits from new or expanded infrastructure.
46. Despite case law<sup>24</sup> that reinforces the application of LGA02 section 101(3)<sup>25</sup> to development contributions, there are complaints that the effect of the section is being ignored.<sup>26</sup>
47. When costs are not appropriately apportioned according to who benefits, development contributions may be charged on types of infrastructure more appropriately funded from other revenue sources. The proportion of costs being funded by developers through development contributions may also be higher than it should be.
48. However, there is also evidence of territorial authorities under-charging development contributions in an effort to encourage development, assist developers through difficult financial times, or for other reasons.<sup>27</sup> In these instances the territorial authority has not only recognised the benefit of the infrastructure to the wider community, but also an actual or perceived wider benefit arising from development generally.
49. The exact scale and extent of this issue is hard to ascertain as many development contribution policies do not provide sufficient details as to what development contributions are being used to pay for. Other than references to community benefit having been considered, many policies also provide little indication as to what proportion of new infrastructure is being funded from general revenue sources in recognition of the benefit to the community.
50. A lack of transparency as to what infrastructure is being paid for, and to what extent community benefit has been factored in, means that developers and the wider community find it harder to understand and challenge the content of draft development contribution policies while they are being prepared. This information asymmetry is inequitable and can result in poor outcomes.

### *Root cause of the problem*

51. The root cause of the problem is largely one of territorial authority practice and the clarity of linkages between sections in the LGA02.

---

23 For example, Local Government Forum and Property Council New Zealand (2010) *Taxing Growth and Development* .

24 *Neil Construction Ltd. v North Shore City Council* [2008] NZRMA 275, High Court.

25 Section 101(3) requires local authorities to consider when determining the means by which its activities (including infrastructure) are to be paid for, the benefit to the community or any part of the community, as well as actions (or inactions) of those who created the need for the activity.

26 Submissions of the Property Council New Zealand to the *Housing Affordability Inquiry* and the *Development Contributions Discussion Paper*, for example.

27 For example Whangarei District Council, Dunedin City Council and Upper Hutt City Council.

52. The High Court in *Neil Construction Ltd. v North Shore City Council* [2008], demonstrated how the fundamental principles requiring apportionment of costs according to who benefits and who created the demand for infrastructure are contained within LGA02 and how they relate to each other.
53. Anecdotal evidence suggests the failure of some territorial authorities to properly consider the benefits of new or expanded infrastructure to the community, or how they have proportioned costs between those who benefit and those who created the demand, may be the result of a combination of three circumstances:
- the principal development contribution policy provisions of the LGA02 (sections 201 and 202) do not require the content of development contribution policies to include details of the projects that are being funded from development contributions or how costs are being apportioned;<sup>28</sup>
  - references from sections 201 and 202 back to the sections that require consideration of community benefit are indirect (through sections 102 or 106 for example) and not apparent to those unfamiliar with the structure of the LGA02; and
  - lack of territorial authority capacity and capability, particularly in smaller territorial authorities.
54. It is also possible that the lack of territorial authority capacity and capability may be being exacerbated by a lack of up-to-date guidance on development contributions<sup>29</sup> and relatively few opportunities for training.

### **Problem 3: Variable territorial authority capacity and capability**

#### *Nature and significance of the problem*

55. Lack of understanding, capacity or capability amongst territorial authorities can contribute to poor practice amongst territorial authorities, including charging development contributions for inappropriate infrastructure and failing to properly allocate costs according to who benefits as well as who created the demand.
56. Inspection of a sample of 18 territorial authority development contribution policies and revenue and financing policies, alongside anecdotal evidence, found variations in policy quality and the understanding of the legislative intent and effect of the development contribution provisions of the LGA02. Understanding of the provisions of the LGA02 and the economic principles that underpin development contributions appeared to be better amongst larger territorial authorities.

#### *Root cause of the problem*

57. The scale and availability of resources to, New Zealand territorial authorities are highly diverse. The complexity of the law, financing principles, and administration of

---

<sup>28</sup> However, this exercise does form part of sections 101 and 106 of the LGA02.

<sup>29</sup> The Local Government *KnowHow* development contributions guidance has not been updated for 10 years, for example.

development contributions is generally agreed to be testing the resources and capabilities of some territorial authorities, particularly the smaller ones.<sup>30</sup>

58. Although the practice and understanding of development contributions should have increased as experience with development contributions accumulated, training and guidance resources available to territorial authorities has not kept pace or has not been updated. There has been relatively little support from central government in providing up-to-date guidance since 2003.

#### **Problem 4: Limited independent mechanisms to resolve challenges to development contribution charges**

##### *Nature and significance of the problem*

59. Developers have complained about the lack of an appeal process for development contributions since their introduction in 2002. Their options for legal redress have been limited to seeking a judicial review or a declaratory judgement in the High Court.
60. The ability to challenge government decisions that impact on a person or party is generally held as an important safeguard to ensure principles of natural justice are upheld and is inherent in the New Zealand Bill of Rights.<sup>31</sup> The ability to challenge decisions also serves as an important check on decision quality and has been seen by the New Zealand Productivity Commission as a way of strengthening incentives for territorial authorities to follow good practice when setting and implementing development contribution charges.<sup>32</sup>
61. Although developers believe there are many decisions that should be challenged, little information is available on how frequently they make complaints about development contribution charges to territorial authorities. A search of Lexis Nexis online databases found just five judicial review cases concerning development contributions over 10 years.<sup>33</sup>

##### *Root cause of the problem*

62. The provisions of the LGA02 provide no formal objection or appeal mechanism other than seeking judicial review or a declaratory judgement.
63. Although the LGA02 requires territorial authorities to state the requirements that will apply in relation to the remission, postponement or refund of development contributions in their development contribution policies, this is not in itself a formal mechanism for resolving disputes. There is no requirement for territorial authorities to have a policy or process through which those charged development contributions can object to these charges or request that they be reconsidered.
64. The low number of High Court decisions is unlikely to be a reflection of the satisfaction with decisions made by territorial authorities. Conversations with developers indicate a

---

30 New Zealand Productivity Commission *Housing Affordability Inquiry*, and submissions to both the Housing Affordability Inquiry and the Development Contributions Review Discussion Paper.

31 Section 27 of the New Zealand Bill of Rights Act 1990.

32 New Zealand Productivity Commission (2012) *Housing Affordability Inquiry*, page 149.

33 However, this does not report applications for judicial review that are subsequently withdrawn, or out of Court settlements.

much greater influence is likely to be the actual or perceived cost and time associated with challenging development contributions through the High Court.

65. Pursuing a judicial review in the High Court can be time consuming and expensive,<sup>34</sup> while the scope of such reviews also tends to be limited to points of law or such issues as procedural fairness.<sup>35</sup> Similarly, there is a view in the development community that appeals to the Courts are only economic for larger developments where benefits of a successful challenge are likely to significantly exceed the costs of the legal challenge.

### **Problem 5: Reluctance to explore private provision of infrastructure**

#### *Nature and scale of the problem*

66. There is increasing interest in the provision of infrastructure from the private sector, particularly in providing in-subdivision infrastructure that serves a discrete area as well as trunk infrastructure. The private provision of infrastructure has the potential to:
- bring development forward in time by being less reliant on timing and availability of territorial authority funding;
  - promote innovative solutions to infrastructure design and provision that could reduce the cost of good quality infrastructure; and
  - provide developers with greater certainty and control over the infrastructure aspects of their developments.<sup>36</sup>
67. However, despite these potential benefits, relatively few agreements to provide private infrastructure are entered into.

#### *Root cause of the problem*

68. Although the provisions of the LGA02 are enabling, they do little to encourage territorial authorities to explore options for greater private provision of infrastructure. The development contribution provisions do not explicitly mention the potential for territorial authorities and developers to enter into agreements for the provision of infrastructure.
69. According to territorial authorities that made submissions to the Department's *Development Contributions Discussion Paper*, the absence of explicit provisions that confirm such agreements are acceptable under the LGA02 is one of several reasons why territorial authorities do not enter into them.<sup>37</sup> Other concerns cited were:
- inferior standards of infrastructure being built, meaning higher maintenance costs to the territorial authority in the longer term;
  - loss of consistency of approach to infrastructure management;

---

34 For example, the Wanganui District Council reportedly spent \$77,000 seeking a judicial review in 2012 and the Tararua District Council spent \$100,000 defending itself in judicial review proceedings in 2005.

35 As noted in submissions to the Development Contributions Review Discussion Paper and in the newspaper article "Council 'Tax' to develop unfair", in the *Manawatu Standard*, 12 October 2012.

36 One of the benefits that the Hobsonville Land Company has said has worked well for it.

37 For example, the New Plymouth District Council was concerned that agreements for private provision of infrastructure could be contrary to section 10 of the Local Government Act (relating to the purpose of local government).



- developments failing, leaving the territorial authority to pick up the cost; and
- adverse effects on the environment from infrastructure failing.

70. Similarly, developers will not enter into a development agreement if the risks to them are unacceptably high.<sup>38</sup> However, some developers have also expressed frustration at territorial authorities either refusing to consider requests to enter into, or trying to insert matters into agreements that go beyond the scope or level of service that they consider is required.

## Objectives

71. The LGA02 does not contain a statutory requirement to review the development contributions provisions it contains. However, the provisions have been in force for 10 years without a review and have been the source of regular complaints (as demonstrated by various media stories in the period 2002 to 2012).

72. In undertaking the review of development contributions, options were measured against nine objectives. These objectives are derived from the outcomes desired in addressing the problems identified as part of the BLG programme, the Government's housing affordability programme (refer to objective one), and assisting the Government's Business Growth Agenda (refer to objective nine).

73. The objectives, and the issues they relate to, are in the following table:

**Table 2: Objectives for the review and their origin**

Objective	Origin / issue being addressed
<b>Objective 1:</b> development contributions do not unnecessarily increase the cost of housing	<ul style="list-style-type: none"> <li>• Housing affordability</li> </ul>
<b>Objective 2:</b> territorial authorities do not charge development contributions for infrastructure that is more appropriately funded from other revenue sources	<ul style="list-style-type: none"> <li>• Use of development contributions extending to infrastructure that is not justified or may not be fair and equitable</li> </ul>
<b>Objective 3:</b> development contribution charges better reflect the benefits of new or expanded infrastructure to the community as well as the demand for new infrastructure created by development	<ul style="list-style-type: none"> <li>• Variable practice and transparency in the apportionment of costs and benefits</li> </ul>
<b>Objective 4:</b> improved transparency around what development contributions are paying for and how costs are being apportioned	<ul style="list-style-type: none"> <li>• Variable practice and transparency in the apportionment of costs and benefits</li> </ul>

<sup>38</sup> However, some developments may still fail or stall if the business model is based on assumptions that subsequently prove to be incorrect (as seen in "The Lakes" development in Tauranga).

Objective	Origin / issue being addressed
<b>Objective 5:</b> developers have access to a low cost and fair means by which they can seek reconsideration of, or challenge, the development contributions they have been charged	<ul style="list-style-type: none"> <li>Few independent checks on the way in which development contributions are charged</li> </ul>
<b>Objective 6:</b> improving territorial authority capacity and capability to prepare and administer good development contribution policies and charges	<ul style="list-style-type: none"> <li>Variable territorial authority capacity and capability</li> </ul>
<b>Objective 7:</b> improved clarity and workability of development contribution legislative provisions	<ul style="list-style-type: none"> <li>Variable territorial authority capacity and capability</li> </ul>
<b>Objective 8:</b> greater innovation and efficiency through encouraging greater private provision of good quality infrastructure	<ul style="list-style-type: none"> <li>Housing affordability</li> <li>Supports the Government's Business Growth Agenda</li> <li>Reluctance to explore private provision of infrastructure</li> </ul>
<b>Objective 9:</b> ensuring that economic infrastructure <sup>39</sup> important for business growth is able to be provided in timely manner	<ul style="list-style-type: none"> <li>Supports the Government's Business Growth Agenda</li> </ul>

## Regulatory impact analysis

74. Five broad options have been identified to address the problems with the development contributions regime and achieve the objectives identified. Two of the options are related (4a and 4b), differing only in terms of who considers and determines objections to development contribution charges and the scope of the objection that is allowed.
75. The regulatory impact analysis is divided into seven parts. The first five parts cover each of the five main options. Each option is presented with a brief description as to what it is, followed by the costs, benefits, risks and opportunities of the option.
76. The remaining two parts contain a summary of the analysis of how well each option meets the nine objectives (presented in table to make comparing options easier) and an overview of other options discounted at an earlier stage of the regulatory impact analysis (and the reasons why they were discounted).

---

<sup>39</sup> Generally described as water, wastewater, drainage, telecommunications, energy and transport infrastructure.

**OPTION 1: Enhanced guidance and training (non-regulatory intervention)**

**Proposal**

- 77. This option is to rely on non-regulatory guidance and training only. Existing guidance would be updated and supplemented or replaced and complemented by training to assist territorial authorities.
- 78. The guidance would be developed by the Department of Internal Affairs, with input from the local government and development sectors and could cover such matters as:
  - the rationale and principles behind development contributions;
  - good practice in preparing development contribution policies;
  - apportioning infrastructure costs according to who benefits;
  - calculating demand for charging;
  - development contribution charging practice, including invoicing and enforcement; and
  - fair and equitable means of managing disputes.

**Costs and benefits associated with option 1**

<b>Costs</b>	<b>Scale</b>	<b>Impacts on</b>
Cost of developing good practice guidance materials and training workshops	<p><b>National impact</b> – \$10,000s to \$100,000s<sup>40</sup> depending on the range, depth and approach to compiling guidance and whether this is supplemented by training</p> <p><b>Local impact</b> – unknown. Some territorial authorities may assist with monetary contributions or “in-kind” assistance</p>	Territorial authorities, and possibly a combination of LGNZ, SOLGM and central government
<b>Benefits</b>	<b>Scale</b>	<b>Who benefits</b>
Improvements to territorial authority practice	<p><b>National impact</b> – unknown. Depends on uptake</p> <p><b>Local impact</b> – unknown. Will depend on uptake of guidance and what changes are made to development contribution methodologies and calculations as a result</p>	Local authorities, developers
Increased understanding of development contribution practice by developers and the wider community	<p><b>Unknown.</b> Uptake of guidance is likely to be lower for developers and the community unless they encounter development contributions on a frequent basis</p> <p>Any financial benefit from an increased understanding is difficult to quantify, though there is potential for developers to use the information to improve due diligence and improve their assessments of the viability of projects</p>	Developers, community

---

40 Based on experiences with the Ministry for the Environment’s involvement in the Quality Planning website and associated training workshops during the period 2005-2012.

## Risks

79. As guidance is by its nature, voluntary there is a moderate to high risk that not all local authorities will follow it, or will only follow parts of it.<sup>41</sup> In these circumstances, improved guidance may have no direct impact on territorial authority practice.
80. By itself, guidance would do little to promote greater consistency amongst territorial authorities as to how the charge development contributions (including what they are charging development contributions for).
81. Guidance, by itself, will do little to improve housing affordability. If adopted, guidance may improve the accuracy and sophistication of some territorial authority development contribution approaches, but housing affordability is not likely to improve if:
  - use of the guidance indicated to a territorial authority that they have been under-charging development contributions; or
  - the reduction in development contributions is too small to encourage developers to reflect it in section or house prices; or
  - house price inflation continues at a rate that more than offsets a reduction in development contributions.

## Opportunities

82. The development of guidance and training programmes provides an opportunity for central government, local authorities and the development sector to work together on approaches that meet the needs of both, and gain a better understanding of the challenges each faces.
83. Guidance could also be used in conjunction with one of the other options, such as to provide supplementary information to explain provisions in legislation or regulations and explain how they are intended to be applied.

## **OPTION 2a: Changes to improve transparency, workability and accountability (preferred option)**

### Proposal

84. Under this option the basic development contributions approach of the LGA02 would be kept, but with modifications to make it more focused, transparent and fair. The modifications would be based around six areas of change:
  - **introducing new development contribution purpose and principle provisions** into legislation to help provide clarity around what development contributions are for and how they should be applied;
  - **narrowing and clarifying the types of community infrastructure** for which development contributions can be collected so as to reduce the potential for

---

<sup>41</sup> However, this may not be problematic if the territorial authorities concerned do not use development contributions or collect little in the way of development contributions (20 territorial authorities currently do not use development contributions).

development contributions to be collected for infrastructure that should be financed from other sources of revenue;

- **improving transparency and cost apportionment practice** by requiring territorial authorities to include a schedule in their development contribution policies that sets out the projects that are being paid for out of development contributions and the portion of the costs that are being met from sources other than development contributions (in recognition of community benefit). The schedule would be a live document that is updated as needed to reflect changes in projects and circumstances;
- **encouraging private infrastructure provision** through the greater use of developer agreements (as an alternative to development contributions);
- **introducing the ability for developers to object to development contribution charges** and have their objection determined by an independent decision maker; and
- **technical clarifications and improvements** to improve clarity and workability of existing provisions (see Appendix Three).

### Costs and benefits associated with Option 2a

Cost	Scale	Impacts On
Lost revenue from less infrastructure being able to be charged for	<p><b>National impact</b> – in the order of \$10,000,000s (for example \$35 million per year to \$80 million per year for residential development alone - depending on rates of development and how narrow the range of infrastructure that can be charged for becomes)<sup>42</sup></p> <p><b>Local impact</b> – \$0 to \$10,000 per unit of development. For Auckland Council this could mean over \$500 million over the next ten years</p>	Territorial authorities, ratepayers, businesses
Cost and time of administering an objection process	<p><b>National impact</b> – unknown, will be dependent on the number of objections and their complexity</p> <p><b>Local impact</b> – unknown, but expected to be in the order of \$2,000 to \$50,000 per objection.<sup>43</sup> The exact amount would be determined according to the complexity of the issue under dispute and the number and type of expert witnesses (if any) parties employ</p>	Territorial authorities, developers, home owners (if translated into rates or house prices)
Time and money spent amending development contribution policies to reflect legislative changes	<p><b>National impact</b> – cumulative impact across all territorial authorities of millions of dollars (but not anticipated to exceed \$20 million)<sup>44</sup></p> <p><b>Local impact</b> – \$0 to \$600,000 (depending on whether a territorial authority decides to use development contributions and the process)</p> <p>The amendment process would be expected to take 6</p>	Territorial authorities

42 This figure is a very rough approximation derived from dwelling consent numbers issued each year between 1991 and 2011, multiplied by a figure approximating to the average development contribution charge for community infrastructure. The total amount is likely to be higher if commercial consents are added. However, development contributions for these are charged on a more variable basis and have not been able to be modelled here.

43 Based on charge out rates of mediators and lawyers that may be the decision makers, venue hire and the employment of experts to assist the decision makers.

44 Assuming no more than 45 territorial authorities use development contributions and the Auckland Council development contribution policy preparation costs (\$550,000) are representative of the high end of the cost spectrum.

	months to a year	
Increased transaction costs in the form of effort, delays and money associated with a possible increase in the use of developer agreements	<p><b>National impact</b> – likely to be less than \$5 million as development agreements tend to be useful for large developments only</p> <p><b>Local impact</b> – \$1000s, to \$10,000s<sup>45</sup> per developer agreement. However, developer agreements are more likely to be used for larger scale developments such that the average per section / house cost will be small.</p> <p>The total cost across New Zealand is likely to be dependent upon:</p> <ul style="list-style-type: none"> <li>• the number of developer agreements being negotiated;</li> <li>• scale of projects concerned;</li> <li>• the scale of holding costs incurred while waiting for an agreement; and</li> <li>• the complexity of issues that need to be resolved</li> </ul>	Territorial authorities, developers
<b>Benefit</b>	<b>Scale</b>	<b>Who benefits</b>
A reduction in development contribution charges / construction costs	<p><b>National impact</b> – Potential savings nationwide are likely to be measured in tens of millions of dollars per year</p> <p><b>Local impact</b> – a reduction in construction costs of between \$0 and \$10,000 per unit of development</p>	Developers (and property buyers if savings are passed on)
Developer agreements can be negotiated and are therefore flexible and more able to meet the particular circumstances of a particular development	<p><b>National impact</b> – unknown (but has the potential to save \$100,000s)</p> <p><b>Local impact</b> – unknown (but has the potential to save \$10,000s per development)</p> <p>The benefit will be dependent upon:</p> <ul style="list-style-type: none"> <li>• the number of agreements entered into; and</li> <li>• the characteristics of the developments that are the subject of developer agreement.</li> </ul> <p>Benefits may also take the form of increased certainty. This could translate into easier finance terms or increased investor confidence that reduces the need for more expensive forms of finance</p>	Developers, territorial authorities
Savings for developers in challenging development contribution charges	<p><b>National impact</b> – unknown. The scale will be dependent on number of High Court challenges avoided.</p> <p><b>Local impact</b> – \$1,000s per High Court case avoided, potentially over \$100,000. However the main saving may be from an ability to challenge development contributions in such a way that the actual development contribution is reduced. The scale of these savings would be dependent on scale of the development but could be millions of dollars for some large developments if a challenge is successful</p>	Developers (property buyers if savings are passed on)

## Risks

45 Discussions with territorial authorities who have entered into voluntary agreements have indicated a cost range of \$1,500 to \$10,000 excluding staff time. Legal costs to the developer are assumed to be similar, but their total cost could include holding costs.

85. There is a low to moderate risk that a reduction in the range of community infrastructure that is able to be financed from development contributions may see a reduction in the provision of that infrastructure or a reduction in its quality.
86. There is a moderate risk that some territorial authorities will increase their use of financial contributions under the RMA in order to raise revenue for infrastructure no longer able to be financed through development contributions. This risk is mitigated by the built-in checks within the current RMA plan preparation processes that incorporate submissions, hearings and appeal processes. Those checks enable developers to challenge financial contributions that appear inappropriate or poorly justified.
87. There is a possibility that some local authorities may transfer the ownership or operation of infrastructure assets to Council Controlled Organisations (CCOs) in an effort to finance infrastructure through CCO fees and charges instead of development contributions. The likelihood of this occurring is generally considered to be low. Development contributions will still be able to be charged in relation to the types of infrastructure that make up the bulk of most territorial authorities' infrastructure spending. As such, setting up a CCO to get around restrictions on development contributions would offer few advantages in most instances. The effort of setting up or transferring infrastructure to a CCO would most likely outweigh any benefit able to be obtained.
88. The introduction of an independent dispute resolution approach that is low-cost creates a moderate risk of encouraging parties to object to development contribution charges. If this was to occur then it would result in higher development contribution administration costs for territorial authorities.
89. The introduction of new purpose and principles may add complexity to legislation and development contribution policy processes and increase the potential for judicial review.
90. There is a low to moderate risk that over-use of developer agreements could increase uncertainty around costs as the outcome of such agreements may be influenced more by the negotiating skills of the parties than set according to a development contribution policy that is based around known objectives, revenue and financial assumptions. However, this risk is mitigated by the likelihood that developers are only likely to enter into development agreements for large subdivisions or development projects which are not particularly common (which has been the Australian experience according to the Australian Productivity Commission (2009)).
91. There is also a moderate risk that increased use of developer agreements could see more costs shifted onto ratepayers if territorial authorities use them to encourage particular developments and get around existing policies.<sup>46</sup> Taken to its extreme, this could undermine the causal nexus approach that is fundamental to the operation of the development contribution approach.
92. The changes proposed in this option may not significantly improve housing affordability. If adopted, the changes may improve the appropriateness territorial

---

46 The Australian Productivity Commission (2009) noted there was anecdotal evidence of this occurring in Australia although no details were provided as to the extent.

authority development contribution approaches and encourage innovative approaches to the provision of the infrastructure. However, house prices may not decrease if:

- territorial authorities are already compliant with the changes proposed; or
- territorial authorities have been under-charging development contributions; or
- the reduction in development contributions is too small to encourage developers to reflect it in section or house prices; or
- house price inflation continues at a rate that more than offsets a reduction in development contributions.

### **Opportunities**

93. The introduction of an independent dispute resolution process could assist with increasing transparency and accountability in the charging of development contributions and improve perceptions as to fairness.
94. Development agreements offer increased flexibility that could lead to more innovative infrastructure provision solutions. Such innovative solutions may have lower costs or promote higher performance. This could result in savings for developers (through costs of infrastructure provision being lower than those used to calculate the development contributions that may otherwise be charged). It also has the potential for improved health and environmental outcomes should the increased flexibility enable new technologies and innovative approaches to be adopted which result in higher levels of performance than those would have otherwise been provided.

## **OPTION 2b: Changes to improve transparency including the introduction of Environment Court appeals**

### **Proposal**

95. This option is the same as option 2a except in respect to how objections and disputes related to development contributions are managed. This option replaces the low-cost objection process with:
  - an ability to appeal the content of development contribution policies to the Environment Court; and
  - an ability for developers to appeal the quantum of development contribution they have been charged, and merits upon which the charges were based, to the Environment Court.

### **Costs and benefits associated with option 2b**

96. In addition to the costs and benefits associated with option 2a, the following costs and benefits are anticipated:



Cost	Scale	Impacts on
<p>Cost and time of resolving disputes in the Environment Court, including:</p> <ul style="list-style-type: none"> <li>- legal expenses</li> <li>- holding costs</li> <li>- loss of opportunities or competitive advantage</li> </ul>	<p><b>National impact</b> – unknown and dependent on number of appeals. However, should more than five appeals make it to hearing each year the costs for all parties would be likely to exceed \$1 million</p> <p><b>Local impact</b> – variable and dependent on the nature of the issue, representation, the time for the appeal to get to a hearing, the length of the hearing, and the scale of the development</p> <p>Determination of disputes would normally be expected to take months. Legal costs would normally be measured in \$10,000s or \$100,000s per appeal.<sup>47</sup> However not all cases may get to a hearing. Current experience with RMA cases is that many cases are resolved through mediation</p>	<p>Territorial authorities, developers, and ratepayers</p> <p>Homeowners (if the cost is passed on from the developer)</p>
<p>Increased costs and time of preparing development contributions policies</p>	<p><b>National impact</b> – unknown.</p> <p><b>Local impact</b> – potentially \$1,000s to \$10,000s for some individual territorial authorities. The threat of legal action tends to make some territorial authorities more risk averse. These councils try and reduce risk by commissioning additional expert advice and more sophisticated modelling</p>	<p>Territorial authorities</p>
Benefit	Scale	Who benefits
<p>Successful challenges to charges may result in a reduction in development contributions payable</p>	<p><b>National impact</b> – \$0 - \$millions (total unknown)</p> <p><b>Local impact</b> – \$0 - \$millions (total unknown)</p> <p>The total scale of the benefit is unknown as it will be dependent on the number of successful appeals, the size of the original development contribution charged, and the size of the development contribution reductions determined by the Court</p>	<p>Developers</p>
<p>Improved quality of development contributions policies and decisions</p>	<p><b>Unknown.</b> Case law has been noted to have an impact on territorial authority practice as territorial authorities seek to reduce legal risks. However, the savings associated with improved policies and decisions have not been modelled or quantified</p>	<p>Territorial authorities, developers</p>

97. In addition to the risks and opportunities identified in part of option 2a the following risks and opportunities may also exist.

## Risks

98. Decisions on development contributions policies are made by local elected representatives. Introducing a right of appeal on the content means that non-elected persons would be making decisions on matters that have may have significant financial impacts on both territorial authorities and their ratepayers without those persons being accountable to those ratepayers.

---

<sup>47</sup> Based on historical costs of appeals of low to moderate complexity before the Environment Court under the RMA.

99. As with other legal challenge processes, the ability to challenge and seek changes to territorial authority policies carries a risk of litigious minority groups or interests being given a disproportionate influence over policy decisions through:
- the threat of legal action and subsequent risk averse behaviours of the territorial authority;
  - using the appeals processes to delay the introduction of policy changes<sup>48</sup>; and
  - challenging policies through the Courts where they have greater leverage, rather than through the public submissions and hearings process.
100. Territorial authorities may adopt risk-averse or conservative approaches that under-recover the actual development contributions that would be payable. This would result in an inequitable shifting of costs onto parties who neither created a demand for additional infrastructure or benefit from it.
101. Evidence suggests that the option of being able to appeal development contributions decisions to the Environment Court may not overcome perceptions that it will be too costly and time consuming for developers. There appears to have been a limited willingness to appeal financial contribution charges (which are similar to development contributions in many respects) to the Environment Court in the past. A search of the LexisNexis online database in mid-2012 found less than 25 RMA cases, where financial contributions were one of the principal reasons for the appeal, over 21 years.

## Opportunities

102. Establishment of a body of case law around development contributions may assist in providing guidance and direction around how development contributions provisions are intended to operate and be implemented. However, this will be tempered by decisions of the Environment Court not being able to set precedents in the manner that decisions made in the higher Courts can (Environment Court determinations are made on the particular circumstances of each case).
103. Development contributions are often linked to developments consented under the RMA. Bringing development contributions within the jurisdiction of the Environment Court could enable the Court to automatically align contributions with decisions it makes around appeals on consents for the development that triggered the contribution.

## OPTION 3: Development contributions regulations

### Proposal

104. This option would see the development contributions provisions of the LGA02 retained but supplemented with regulations promulgated by the Minister of Local Government. The regulations would comprise of a mix of standards, processes, and methodologies that could include:

---

48 As is reputed to have occurred with financial contributions under the RMA (one of the issues that gave rise to the current development contributions regime not incorporating an Environment Court appeal option).

- principles relating to the application of development contributions that must be adhered to;
- consultation and procedural requirements regarding preparation of development contributions policies;
- the required content of development contributions policies (potentially extending to a template to direct the content and format of the policies); and
- standardised terminology and methodologies for the calculation of development contributions.

105. New provisions in the LGA02 would provide for existing development contributions provisions to continue to have effect until the regulations are in force.

### Costs and benefits associated with option 3

Cost	Scale	Impacts on
Time and money spent amending development contributions policies to fit regulations	<p><b>National impact</b> – up to \$20 million<sup>49</sup></p> <p><b>Local impact</b> – \$0 to \$600,000 (depending on whether a territorial authority decides to use development contributions and the process)</p> <p>The process of amending development contribution policies would be expected to take 6 months to a year (on top of the time taken to prepare the regulations themselves)</p>	Territorial authorities
Increased complexity of complying with regulations as well as the primary legislation (e.g. legal and administrative costs)	<b>Unknown.</b> Will depend on the nature, detail and drafting clarity of the regulations	Territorial authorities
Benefit	Scale	Who benefits
A potential reduction in development contribution policy development costs through the adoption of standardised provisions.	<b>Unknown,</b> but the savings are not likely to be substantial as a lot of the technical work and data required to implement the methodology would still be required. The costs of consultation would be expected to be similar to those that already exist	Territorial authorities
Increased certainty through improvements in consistency	<b>Unknown</b>	Developers

### Risks

106. The methodology in the development contributions regulations may include a level of detail, or require territorial authorities to have a level of expertise, that is inappropriate or poorly matched to the circumstances of smaller territorial authorities. This risks smaller territorial authorities incurring costs that are disproportionate to the revenue they expect to receive, or abandoning development contributions in favour of less onerous revenue collection means to fund infrastructure.

107. The reduced flexibility of regulations could run counter to the objective of improving housing affordability if councils are forced into methodologies that do not allow for them

<sup>49</sup> Assuming no more than 45 territorial authorities use development contributions and the Auckland Council development contribution policy preparation costs (\$550,000) are representative of the high end of the cost spectrum.

to provide for discounts, the methodology is based on higher levels of service than are currently provided by a territorial authority, or the methodology is so inflexible that it prevents local infrastructure solutions being adopted that may reduce costs (and thereby, the development contributions charged).

108. The introduction of regulations may not significantly improve housing affordability. Regulations may mean development contribution methodologies more standardised, but house prices may not decrease if:
- territorial authority development contribution practice is already consistent with the regulations; or
  - territorial authorities have been under-charging development contributions; or
  - the reduction in development contributions is too small to encourage developers to reflect it in section or house prices; or
  - house price inflation continues at a rate that more than offsets a reduction in development contributions.

### Opportunities

109. Standardisation of development contribution policies and administration processes through regulations could assist territorial authorities to share good practice and expertise by ensuring development contribution policies and processes having a higher degree of commonality.
110. Adherence to regulations may limit potentially expensive debates about whether a territorial authority is using the correct development contributions methodology.

## OPTION 4: Capping of development contributions

### Proposal

111. Under this option the maximum development contribution for each lot, dwelling unit or other unit of development would be capped at a monetary amount that would be set through regulations. Amendments would need to be made to the LGA02 to enable the regulations to be made.

### Costs and benefits associated with option 4

Costs	Scale	Impacts on
Loss of development contributions revenue to territorial authorities (assuming there is no replacement of revenue from other sources)	<p><b>National impact</b> – potentially millions of dollars per year, but the actual quantum is dependent on where the cap is set</p> <p><b>Local impact</b> – variable: For a cap of \$20,000 the impact on individual territorial authorities would range from \$0 per unit of development (where they do not use development contributions, or have development contribution charges below the cap) to \$15,000 or more. For some territorial authorities (such as Auckland) the effect of the cap could be up to \$10 million or more per year (depending on the volume of new subdivision and development)</p>	Territorial authorities, ratepayers, businesses

Transfer of costs and risks to other territorial authority revenue sources	<p><b>National impact</b> – potentially millions of dollars per year, but the actual quantum is dependent on where the cap is set</p> <p><b>Local impact</b> – increased rates (likely to range \$10s to \$1000s per year per rateable unit) in territorial authority areas where development contributions are used. Higher capital values and rating differentials mean that businesses are likely to pay more in rates than residential ratepayers. Higher rates will also affect those on low fixed incomes more than the community as a whole.</p> <p>The scale of cost transfer will depend on where the cap is set and decisions by individual territorial authorities as to much how revenue they need to seek from other sources</p> <p>For territorial authorities who are under the cap, there will need to be no transfer of costs or risk</p> <p>The size of increases to user charges<sup>50</sup> is unknown and would be dependent on the extent to which rates are used as the primary replacement source of revenue</p>	Territorial authorities, ratepayers, businesses
Distortion of price signals potentially resulting in development occurring in areas that are difficult to service compared to other sites	<b>Unknown</b> - will depend on the level of the cap. Costs could be up to millions of dollars	Territorial authorities, ratepayers
<b>Benefits</b>	<b>Scale</b>	<b>Who benefits</b>
Lower land development and building costs	<p><b>National impact</b> – potential savings measured in \$millions, but dependent on where the cap is set</p> <p><b>Local impact</b> – Will depend on the level of the cap.<sup>51</sup></p>	Developers and builders
Improved certainty to developers as to the maximum development contribution able to be charged	Scale of benefit <b>unknown</b>	Developers and builders

## Risks

112. The imposition of a cap on development contributions carries a moderate risk of perverse outcomes. Territorial authorities may become reluctant to supply infrastructure because of uncertainty around how it will be paid for. This may reduce the supply of serviced land available for development and slow the pace of development. A stalling, or drop, in supply relative to demand would most likely result in section and house prices increasing.
113. The introduction of a development contributions cap in New South Wales is thought to have been a contributor to a slow down of development in Western Sydney.<sup>52</sup> There is a risk that territorial authorities close to the maximum debt levels they consider they can sustain, or those struggling to meet proposed financial prudence requirements,

50 Entry fees for reserves or halls, or volumetric charges for water, for example.

51 For example, a cap set at \$20,000 would result in a reduction in costs of \$0 to \$40,000 per unit of development depending on location, but in most instances may result in savings of less than \$5,000 (if any savings are made at all – a cap of \$20,000 would only would affect 10 territorial authorities)

52 Independent Pricing and Regulatory Tribunal (IPART) Submission to the *Green Paper New South Wales Planning System Review*, September 2012. IPART cites Hills Shire Council and Liverpool City Council are cited as examples of councils pulling *back on planning initiatives that would have enabled development*.

could feel that they have no alternative other than to avoid rezoning land for new development or decline resource consents.<sup>53</sup> Even without a cap, Hamilton City Council has previously considered deferring or postponing the provision of infrastructure in face of high debt levels and lower than expected development contribution revenue.<sup>54</sup>

114. Should the capping of development contributions result in territorial authorities being reluctant to invest in infrastructure then there are potential risks to human and environmental health and business growth (as critical infrastructure may not be provided, or infrastructure that is provided may be of lower capacity or quality).
115. There is a low to moderate risk that some territorial authorities with development contributions charges below the cap may raise their development contributions close to the level set by the cap in the belief that they have been under-charging, or that the cap is a de facto benchmark as to what level of charging is acceptable.
116. There is a moderate to high risk that some territorial authorities may still breach the cap if they have no acceptable alternative source of revenue. This would undermine the effect of the cap. This appears to have been the case in parts of Australia, though the exact circumstances are not clear.<sup>55</sup>
117. There is a moderate risk that some territorial authorities will increase their use of financial contributions under the RMA to get around the cap (there is no hard cap on the maximum financial contribution able to be charged). This risk mitigated by the built-in checks within the current RMA plan preparation processes that incorporate submissions, hearings and appeal processes. Those checks enable developers to challenge financial contributions that appear inappropriate or poorly justified.
118. There is a possibility that some local authorities may transfer the ownership or operation of infrastructure assets to CCOs in an effort to finance infrastructure through CCO fees and charges instead of development contributions. The likelihood of this occurring is generally considered to be low. The effort of setting up or transferring infrastructure to a CCO solely for this reason would most likely outweigh the benefit.
119. Capping development contributions may not significantly improve housing affordability where:
  - current territorial authority development contributions charges are under the cap;
  - the reduction in development contributions is too small to encourage developers to reflect it in section or house prices<sup>56</sup>; or
  - house price inflation continues at a rate that more than offsets a reduction in development contributions brought about by the cap.

---

53 On the basis that infrastructure needed to avoid, remedy or mitigate environmental effects cannot be provided, for example.

54 Waikato Times, *To curb debt, mayor would stop building*, 6 September 2010.

55 In 2009 it was reported by the Urban Taskforce of Australia that 19 local authorities in New South Wales were in breach of a \$20,000 cap that was set in 2008.

56 Given currently prices, a cap may only shave up to five per cent of the price of a new house where territorial authorities have charges that would otherwise be higher than the cap.

## Opportunities

120. The setting of a cap could provide a benchmark against which territorial authorities, developers, and others can test the reasonableness of development contribution charges. It could also be used as a guide for territorial authorities who are unsure where to set the level of development contributions.
121. The comparison of true marginal costs of providing infrastructure against the level set by the cap could be used by territorial authorities to help identify projects that cost well in excess of the cap. This could be used by the developer and territorial authority as an indicator as to the likely affordability and viability of proposed developments.

## OPTION 5: Removal of development contributions

### Proposal

122. Under this option the existing development contribution related provisions of the LGA02 would be repealed. Where a territorial authority continues to provide infrastructure, that infrastructure would be funded from sources other than development contributions, such as rates, or provided privately.

### Costs and benefits associated with option 5

Cost	Scale	Impacts on
Loss of development contributions revenue to territorial authorities (assuming no replacement by other revenue sources)	<p><b>National impact</b> – between \$142 million per year and \$418 million per year<sup>57</sup></p> <p><b>Local impact</b> – The impact on individual territorial authorities will be variable (\$0 to more than \$100 million per year for each territorial authority). Most territorial authorities will lose in between \$1 million to \$10 million in revenue per year</p> <p>The total cost could be up to \$3.4 billion across all local authorities over 10 years<sup>58</sup></p>	Territorial authorities, communities and business
Distortion of price signals potentially resulting in development occurring in areas that are difficult to service compared to other sites	<p><b>Unknown.</b> Loss of price signals may lead to increased costs to territorial authorities from providing services to areas with difficult terrain or remote land that may otherwise not have been developed</p> <p>Developers and private infrastructure providers may also face increased costs associated with the infrastructure they provide</p>	Territorial authorities, ratepayers and business
Territorial authorities increase rates or user charges to cover revenue shortfalls	<p><b>National impact</b> – rates increases across New Zealand would be between 3% and 4% on average</p> <p><b>Local impact</b> – rates increases worth \$100s to \$1000s per year per rateable unit. Rates increases would be expected, however the size of the increase will vary greatly from council to council.<sup>59</sup> Rates increases may not be limited to a one-off increase or may themselves need to increase over time</p>	Ratepayers

57 Based on the amounts collected, or projected to be collected from 2012 to 2022 (as set out in local authority Long-Term Plans).

58 Based on analysis of projected income from local authority Long-Term Plans covering 2012-2022.

59 For example Tauranga City Council cited potential rates increases of 16.3% in their submission on the *Development Contributions Review Discussion paper*.

	If costs are paid from targeted rates then rates increases in some of the areas covered by the targeted rates could exceed 20%. This would mean a rates bill of \$2,000 for a residential property would increase to \$2,400. Rates increases to business would most likely be significantly higher because of higher land and capital values (many territorial authorities use capital value based rating approaches) and rating differentials	
Benefits	Scale	Who benefits
Lower land development and building costs	<p><b>National impact</b> – a reduction in development costs of between \$142 million to \$418 million per year. This assumes no transfer to charges. Over 10 years savings could be in the vicinity of \$3.4 billion over ten years</p> <p><b>Local impact</b> – a reduction in construction costs of between \$0 and \$65,000 per housing equivalent unit (with a potential average of \$14,133)<sup>60</sup> assuming territorial authorities do not seek to recover charges through another means that impact on section or house purchase prices</p>	Developers and builders
Reduced development contribution policy preparation and implementation costs	<p><b>National impact</b> – savings of millions of dollars per year. Spread across all territorial authorities' savings could be up to \$20 million dollars<sup>61</sup></p> <p><b>Local impact</b> – Savings in development contributions policy development costs of up to \$550,000 per policy review</p> <p>Savings in development contribution administration costs of up to \$600,000 per year<sup>62</sup> per territorial authority</p>	Territorial authorities

## Risks

123. There is a high risk that savings to developers will not be reflected in lower house prices. In many instances the removal of development contributions may reduce costs of development by less than five percent of the house price (as development contributions do not directly contribute more than five percent to the cost of new houses in most cases). Overseas experience is that in an inelastic housing market such savings may not be reflected in a change to the average house price as many developers or sellers do not pass the savings on.
124. Territorial authorities experiencing high growth may find it harder to build new infrastructure, particularly if limits are placed on the amount of debt they can carry. Unless the infrastructure is provided from other sources in a timely manner development may be delayed or not be able to proceed at all in some areas. Hamilton City Council has previously suggested that this is the scenario that they have been considering as they try to rein in debt.<sup>63</sup> A drop on the supply of serviced land in the face of strong demand for housing could push house prices higher.

60 Covec (2012) *Analysis of Draft Development Contribution Charges for 2012*.

61 Assuming 45 territorial authorities use development contributions and the Auckland Council development contribution policy preparation costs (\$550,000) are representative of the higher end of the cost spectrum (Figure taken from SPM (2012) *Development Contributions Case Study Report 2012* ).

62 Based on Auckland Council figures given in SPM Consultants (2012).

63 Waikato Times, *To curb debt, mayor would stop building*, 6 September 2010. Anecdotal evidence suggests that some works have already been delayed around Rotokauri and Rototuna.



125. Should development be allowed to proceed in the absence of infrastructure, or with inadequate infrastructure there may be a risk of poorer environmental and health outcomes (from poorly managed wastewater disposal for example). Any delay in the provision of infrastructure could also impact on business growth by, for example:
- denying businesses the infrastructure they need at the time they wish to establish, grow or exploit a new opportunity; and
  - forcing businesses that want to locate to a greenfields site to put in the infrastructure themselves, instead of spending that capital on areas of the business.
126. The removal of development contributions may see a return to a reliance on financial contributions. Problems encountered with the financial contribution system under the RMA would return (such as contributions only being able to be collected on resource consents, policy implementation being delayed by appeals and policies taking so long to come into force that they are already outdated).

### Opportunities

127. In theory, lower land development and building costs may increase the housing supply by making previously marginal developments viable. However, there appears to be little empirical evidence that demonstrates that removal of development contributions will, by itself, result in higher rates of subdivision or house building.

### Comparative assessment of options against objectives

128. In the assessment of options against objectives (table 3, on the next page) the following five-point scale is used:

Scale	Description of expected degree of change from status quo
xx	Moderate to large net negative impact
x	Minor to moderate negative impact
-	Neutral: Little or no change expected
✓	Minor to moderate improvement
✓✓	Moderate to large positive impact

**Table 3: Evaluation of options against development contribution review objectives**

Objective	Option 1 Guidance	Option 2a Change (Preferred)	Option 2b Change	Option 3 Regulations	Option 4 Capping	Option 5 Removal
1. Development contributions lower or do not unnecessarily increase housing costs	-	✓	✓	-	✓	✓
2. Reduced incidence of territorial authorities charging for inappropriate infrastructure	✓	✓✓	✓✓	✓✓	✓	✓✓
3. Improving fairness and equity in the sharing of costs and benefits	✓	✓✓	✓✓	✓✓	x	xx
4. Improved transparency and accountability around what development contributions are paying for and how costs are being apportioned	✓	✓	✓	✓	✓	✓
5. Developers have access to a low cost and fair means of challenging development contributions	-	✓✓	✓	-	-	-
6. Improvements are made to territorial authority development contribution capacity and capability	✓✓	✓	✓	✓	-	-
7. Legislative provisions are clarified	✓	✓	✓	✓	x	✓✓
8. Encouragement of greater private infrastructure provision	✓	✓	✓	-	-	x
9. The provision of economic infrastructure important to business growth is enabled	✓	✓	✓	-	x	xx
<b>Aggregate Ranking</b>	<b>3rd</b>	<b>1st</b>	<b>2nd</b>	<b>4th</b>	<b>6th</b>	<b>5th</b>

## Commentary

129. The preferred option, 2a, is considered the option that will best achieve all nine objectives, and therefore has the highest ranking. Importantly, this option does not result in outcomes across the objectives that are worse than the status quo. It is also only one of three options that incorporate measures to actively encourage greater provision of private infrastructure.
130. Option 2b is considered the second best option. The option is a derivative of the preferred option that differs principally in the scope of the objection process and who makes decisions on the objections. It is ranked lower than the preferred option because the costs of resolving disputes through the Courts is likely to be higher than the alternative in option 2a (which has a dispute resolution approach that is not Court-based).
131. The options of guidance (option 1) and regulations (option 3) have a similar effect overall, but differ in terms of emphasis. Regulations require compliance and are enforceable such that their effect in ensuring the correct infrastructure is being charged for is stronger. However, regulations are also likely to be less flexible to local

circumstances and may not be able to respond quickly enough to innovative or newly emergent technologies.

132. Guidance is more likely to build territorial authority capacity and help them to find solutions to risks that present actual or perceived barriers to private infrastructure solutions. Although guidance will also allow for flexibility, it is not enforceable and therefore will not have the same impact in regard to reducing charging for inappropriate types of infrastructure, improving consistency of approach between and or within territorial authorities, or address poor cost allocation practice.
133. However, although guidance and training alone is not the preferred option, it could be used to supplement and enhance any of the other options other than the removal of development contributions. In this respect it can also form part of the preferred option when combined with the legislative change in option 2a.
134. Removing development contributions entirely (option 5) is seen as having little overall benefit. Potential gains in a reduction of house and section purchase prices could be undermined (in whole or in part) if territorial authorities become reluctant to provide infrastructure (potentially impacting on both future housing development and business growth). The greatest benefits are that legislative provisions will be clearer and there will be less debate over councils charging for inappropriate types of infrastructure (as the provisions will be repealed entirely). However, with costs being transferred entirely to ratepayers, this option ranks lowest in respect to fairness and equity.
135. The capping of development contributions (option 4) is considered the option least likely to achieve all desired outcomes. There is potential for housing costs to be reduced in some areas but they are unlikely to be of a scale that will see section and house prices drop to any noticeable extent. The weakening of price signals may also undermine allocative efficiency, potentially encouraging development to take place in areas that are more expensive to develop than other alternatives. As with removal of development contributions, there is a negative effect on fairness and equity should costs be transferred onto ratepayers who get no benefit from the infrastructure provided.
136. Option 4 also ranked lowest because additional legislative provisions around how caps operate will complicate legislative provisions without providing additional support or direction as to how development contributions are supposed to be applied.

## **Other options discounted**

### **A levy based on the percentage of the value of the additional units of growth created**

137. Although a percentage-based levy is easy to understand and apply, the value of sections or houses that will be created is a poor indicator of the demand that will be created for infrastructure. This creates inherent issues around the fairness and equity of the approach. The coarseness of the approach is unlikely to reflect the characteristics of a particular area<sup>64</sup> or the demand mitigation features that may be incorporated into a development. This means:

---

<sup>64</sup> For example topography, population density and growth, availability of existing services, or the age and condition of existing assets.

- the lack of a direct relationship between charges and demand for services has more in common with a capital gains tax than a true charge. While administratively efficient, this approach may not be fair, equitable, or have the best overall economic efficiency; and
- there is a high risk that development contributions charges are more likely to undercharge in some areas and overcharge in others.

138. International experience is that there can also be significant litigation around the valuation of the additional units created (putting even the main benefit, administrative efficiency, at risk).

### **Use of bonds as an alternative means of raising finance**

139. This option has been discounted as the ability to raise finance through bonds already exists (but is not widely used).<sup>65</sup> Territorial authorities who made submissions to the *Development Contributions Review Discussion Paper* noted that there was a high administrative burden in using bonds, which makes their use unattractive for most territorial authorities (particularly given easy access to loans from banks).

### **Explicit discounts for low-cost and affordable housing, or housing that places little additional demand on or for infrastructure**

140. Although discounts on developer levies are used in overseas jurisdictions to encourage low-cost housing there is often no direct link between the size or price of a house and the demand for infrastructure an individual houses creates. Requiring councils to provide discounts for affordable housing therefore creates risks of:

- undermining the causal nexus approach that is commonly seen as fundamental to fairness and equity within the development contributions regime; and
- inequalities arising from ratepayers and developers who are not providing, or get no benefit from, affordable housing subsidising affordable housing developments.

141. Regardless of the risks above, LGA02 provisions already enable territorial authorities to provide discounts on housing types that create a lower demand on services, or have some other community benefit. The Act only limits the maximum development contribution that can be charged (section 203 for example). Section 201 of the Act meanwhile requires a development contributions policy to state the conditions and criteria that will apply in relation to remissions (which could be applied to houses of a smaller size, for example). The latter aspect can be read as already providing a permission to provide discounts, where they can be justified appropriately.

### **Combining the development contributions under the Local Government Act 2002 with financial contributions under the RMA**

142. Development contributions and financial contributions serve quite different purposes and have different triggers that make combining them into a single tool problematic.

---

<sup>65</sup> As at March 2013 the New Zealand Stock Exchange lists five fixed-rate bond issues by the Auckland Council.

143. Development contributions are solely for the purpose of helping finance the capital cost of new infrastructure, while financial contributions are used to help pay for measures to avoid, remedy or mitigate adverse environmental effects<sup>66</sup> whether or not an activity is related to growth.
144. Whereas development contribution requirements can be triggered by resource consents, building consents, or connections, financial contributions are only required for resource consents (meaning that a territorial authority has no ability to collect contributions for activities that generate demand for new infrastructure but do not need a resource consent).

### **Tax increment funding as an alternative to development contributions**

145. Tax increment funding is where tax revenue from an increase in property value within a specified development area is used to fund the infrastructure or services that led to the property value increase.<sup>67</sup>
146. The use of tax increment funding would most likely require changes to the Local Government (Rating) Act 2002 and significant changes to the way in which territorial authorities manage their revenue and expenditure. These matters were considered to be outside the scope of the development contributions review.

## **Consultation**

147. Between November 2012 and June 2013 meetings were held to share and discuss emerging issues and options related to development contributions. The meetings were held with officers of several territorial authorities,<sup>68</sup> the Society of Local Government Managers, Local Government New Zealand, and the Property Council New Zealand.
148. During the development contributions review process and the regulatory impact analysis the following departments were consulted: the Treasury; the Ministry of Business, Innovation and Employment; Ministry for the Environment; Te Puni Kōkiri; Ministry of Transport; New Zealand Transport Agency; Ministry for Primary Industries; Ministry of Health; Ministry of Education; Ministry of Social Development; Ministry of Justice and the Canterbury Earthquake Recovery Authority.
149. On 10 February 2013, a 61 page *Development Contributions Review Discussion Paper* was released publicly and submissions called for over a period of five weeks. Copies of the discussion paper were sent to all territorial authorities, and property development companies. Iwi, hapu and Māori housing groups were also notified of the availability of the on-line version of the paper.
150. The Department received 129 submissions on the discussion paper. The principal submitters, by broad classification were:

---

66 Including on Infrastructure by virtue of it being a “physical resource” under section 2 of the RMA.

67 NERA Consulting and Ian Wallis and Associates (2013) *Value capture mechanisms to fund transport infrastructure*.

68 Tauranga City Council, Auckland Council, Hamilton City Council and Taupo District Council.

- territorial authorities and groups that represent local authority interests (44 submissions); and
  - property development companies, individuals and groups that represent property development company or property owner interests (43 submissions).
151. The remaining 42 submissions were from groups and organisations of great diversity including universities, iwi, lawyers acting on their own behalf, and institutions or associations representing engineers, surveyors, and other professions.
152. Key themes to emerge from submissions were:
- development contributions should be retained as it is fair that those who create the demand for infrastructure pay for it rather than be subsidised through rates;
  - updated development contribution guidance and training would help transparency and consistency and could be used to support other changes;
  - there is a need for an independent dispute resolution mechanism, but the Courts are seen as an expensive and time consuming way of resolving disputes;
  - development agreements are supported, provided there are adequate safeguards and checks relating to the standard of infrastructure, and risks can be managed; and
  - capping development contributions would distort price signals important to allocative efficiency and result in ratepayers subsidising development.
153. The main concerns about the preferred option identified in this analysis were:
- narrowing the range of infrastructure for which development contributions could be charged for may result in costs being recovered through rates, increased territorial authority debt, or the non-provision of community infrastructure; and
  - enabling challenges to development contributions policies to be determined by persons or parties that are independent of the territorial authority undermines local governance, the integrity of development contribution policies, and is inconsistent with approaches taken in relation to other territorial authority revenue raising means.
154. Proposals in this paper were subsequently amended to address these concerns by:
- allowing development contributions to still be charged for community infrastructure identified on a list rather than repealing the definition entirely; and
  - limiting objections to development contributions to the application of the development contributions policy and errors or oversights by territorial authorities when charging development contributions. It is also envisaged that territorial authorities will play a role in appointing the independent decision makers.

## Conclusions and recommendations

### **Development contributions can be made fairer, more focussed and transparent and workable**

155. Although the theoretical underpinnings of development contributions are sound, the way in which development contributions are used in New Zealand can be improved.
156. Issues exist in relation to development contributions being charged for infrastructure that is more appropriately funded through other revenue sources, variable practice in how costs and benefits of infrastructure are apportioned, lack of an independent dispute resolution mechanism by which development contributions can be challenged, and the lack of resourcing, capability, or capacity in some territorial authorities.
157. Measured against nine objectives, a reform package centred on six areas of change is considered the most appropriate way of improving the current development contributions system. The changes would comprise:
- introducing new development contribution purpose and principle provisions into legislation to help provide clarity around what development contributions are for and how they should be applied;
  - narrowing and clarifying the types of infrastructure for which development contributions can be collected, so as to reduce the potential for development contributions to be collected for infrastructure that should be financed from other sources of revenue;
  - improving transparency and cost apportionment practice by requiring territorial authorities to include a schedule in their development contribution policies that sets out:
    - the projects that are being paid for out of development contributions; and
    - the portion of the costs that are being met from sources other than development contributions (in recognition of community benefit);
  - encouraging private infrastructure provision through the greater use of developer agreements (as an alternative to development contributions);
  - improving transparency, accountability and fairness by introducing the ability for developers to object to development contribution charges and have their objection determined by an independent decision maker; and
  - making various technical changes to the legislative provisions to improve their clarity and workability.

### **The preferred option can be further enhanced by up to date and expanded guidance**

158. Although expanded and updated development contribution guidance is not, by itself, the option that is best able to meet all objectives, it can complement and enhance the preferred option.

## Changes to development contributions are unlikely to significantly improve housing affordability

159. Development contributions contribute to the cost of housing and housing affordability but pay for infrastructure that, in the absence of development contributions, would have to be paid for another way, possibly by other parties at a different time.
160. The degree to which development contributions contribute to house and section costs is relatively small, such that their removal is likely to do little to reduce the price of housing while demand is inelastic. On the contrary, there is a risk that territorial authorities, faced with less revenue to pay for infrastructure, may be more reluctant to rezone land or grant resource consents where there are concerns about whether infrastructure can be provided to the area being developed.
161. Given current housing market circumstances, it is unlikely that any of the policy options proposed would, by themselves improve housing affordability to a significant degree. However, a reduction in development contributions in combination with other changes being worked on as part of the Government's wider housing affordability programme may have some impact.

## Implementation

162. The preferred policy option will require the preparation of legislative amendments to the LGA02. The Local Government Reform Bill is included on the 2013 legislative agenda and has been given priority classification 5. It is proposed that the Bill would be enacted by mid 2014.
163. Several of the proposals in the preferred policy option will require territorial authorities to make changes to their development contribution policies (and possibly their revenue and financing policies also). The particular proposals most likely to require amendments to policies relate to:
  - new development contributions purpose and principle provisions;
  - the requirement to incorporate a schedule outlining the costs of projects being financed through development contributions and who the costs are apportioned; and
  - requirements to incorporate a development contribution charge reconsideration process into development contribution policies.
164. Although territorial authorities will have some warning of proposed changes before a Bill is enacted, transitional provisions will need to be included in the Bill that ensure sufficient time is provided for territorial authorities to change their policies before compliance is mandatory. The length of the timeframe required will be discussed with the local government sector during the drafting of legislation and considered as part of the select committee process.
165. It is proposed that the legislative changes proposed by the preferred policy option will be supported by guidance for territorial authorities (a derivative of policy option 1). This will help ensure the legislation achieves its objectives and reduce transition costs and risks.



166. It is envisaged the preparation of development contributions guidance would be led by the Department of Internal Affairs. The Society of Local Government Managers, Local Government New Zealand, and Property Council New Zealand, New Zealand Transport Agency and the Canterbury Earthquake Recovery Authority have all expressed an interested in being involved in the preparation of guidance.

## Monitoring, evaluation and review

### Monitoring and evaluation

167. The preferred option is proposed to be monitored and evaluated through a mix of surveys, checks and audits of documents that are publicly available or required to be supplied to the Department of Internal Affairs.

168. The table below sets out the areas that are proposed to be monitored, the indicators that are proposed to be used, and the intended source of data.

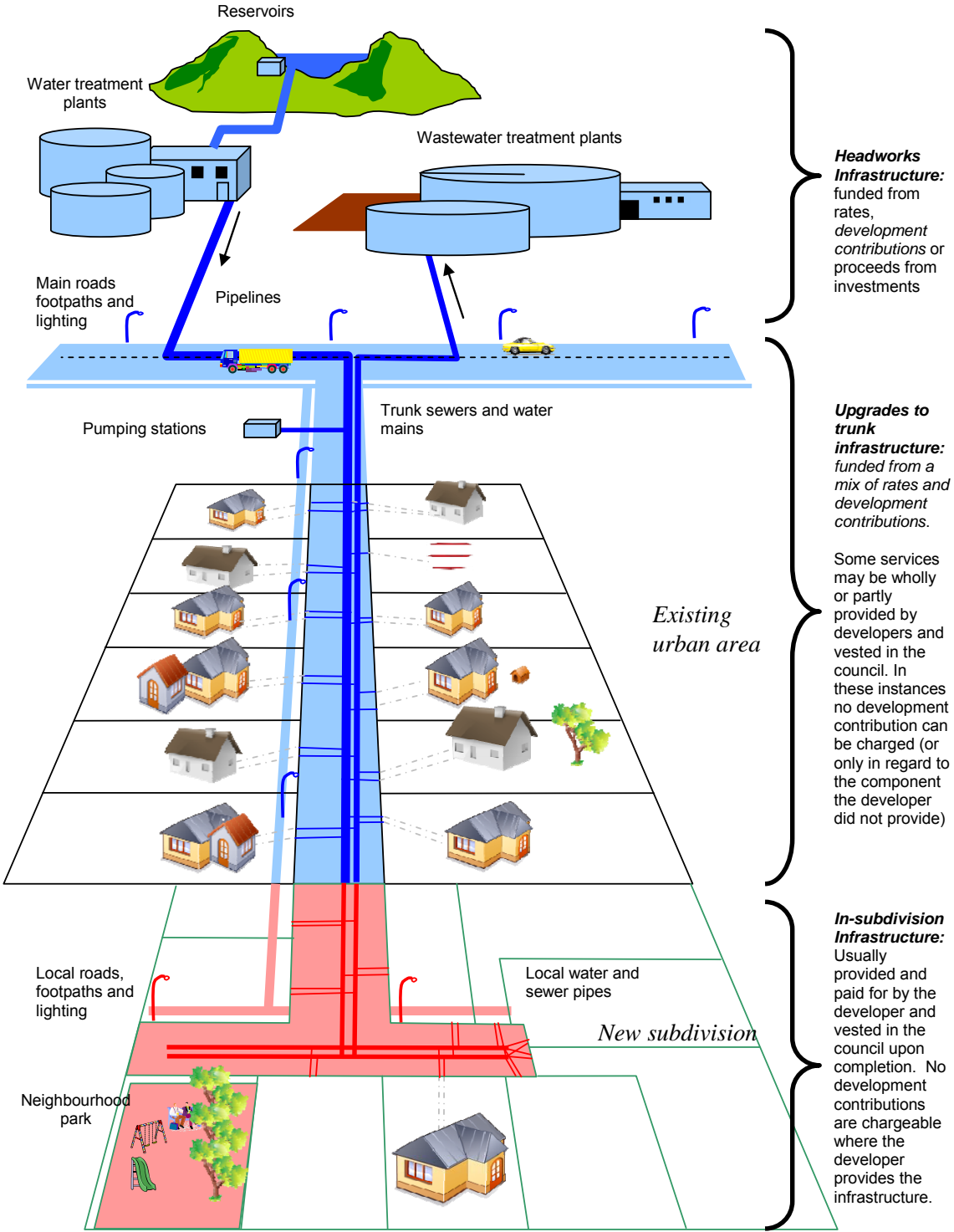
**Table 4: Proposed monitoring and evaluation of changes to development contributions**

Proposed Monitoring and Evaluation Approach		
Aspect being monitored	Proposed indicator(s)	Proposed source of data
New purpose and principles	<ul style="list-style-type: none"> <li>Proportion of development contribution policies that clearly reflect the principles</li> </ul>	Territorial authority development contribution policies
Narrowing of infrastructure financed through development contributions	<ul style="list-style-type: none"> <li>Number of territorial authorities charging development contributions on infrastructure not covered by legislation</li> </ul>	Territorial authority development contribution policies and revenue and financing policies
Requirement for a schedule of projects and apportionment of costs to be inserted into policies	<ul style="list-style-type: none"> <li>Proportion of development contribution policies with schedules at end of transition period</li> </ul>	Territorial authority development contribution policies
Development agreements	<ul style="list-style-type: none"> <li>Number of requests to enter into development agreements</li> <li>Number of development agreements concluded</li> <li>Level of satisfaction with outcome (developers and territorial authorities)</li> </ul>	Interviews with a sample of developers and territorial authorities
Development contribution objection process.	<ul style="list-style-type: none"> <li>Number of objections determined relative to number of charges levied</li> <li>Costs of engaging in the objection process</li> <li>Proportion of participants satisfied with independence of process</li> </ul>	<p>Surveys of a selection of developers and territorial authorities</p> <p>Monitoring of complaints and media comments from developers and territorial authorities</p>

## Review

169. There is no fixed or regular review period specified in the LGA02 for the development contribution provisions. A review of provisions can take place whenever issues (or opportunities) are of sufficient magnitude to warrant it.
170. Ongoing monitoring of development contribution practice, particularly in respect to the changes proposed, will be used to identify when and where there are issues that indicate that there is a need for a further review. However, it is anticipated that it would take three or more years before the changes proposed in the preferred policy option would have full effect and practice has settled enough to evaluate their overall impact.
171. A full or partial review of development contribution provisions, including changes proposed as part of the preferred option, may also be triggered by:
- changes to legislation that intersects with the development provisions of the LGA02; or
  - if widespread changes were made to the ownership and governance of infrastructure for which development contributions are collected.
172. The process for any review would be determined by the nature of the trigger that gave rise to the need for it.

# Appendix One: Simplified representation of who provides infrastructure



- Infrastructure provided by the developer is shown in shades of red
- Council provided infrastructure shown in shades of blue
- Private utility company (gas, electricity and telecommunications) not shown in this diagram

## Appendix Two: New Zealand development contribution charges per unit of development<sup>69</sup>

Infrastructure	Number of territorial authorities who charge	Lowest charge per unit of development	Highest charge per unit of development	Median charge per unit of development	Average charge per unit of development
Community Infrastructure	29	\$35	\$10,459	\$1,850	\$2,526
Reserves	25	\$28	\$14,879	\$1,550	\$3,759
Roading	41	\$94	\$32,297	\$1,000	\$2,622
Stormwater	36	\$4	\$12,914	\$1,000	\$1,919
Wastewater	43	\$15	\$23,143	\$3,500	\$4,923
Potable Water	43	\$58	\$52,608	\$2,400	\$3,661
<b>Nationwide (across all infrastructure types)</b>		<b>\$249</b>	<b>\$64,489</b>	<b>\$11,916</b>	<b>\$14,133</b>
Nationwide (all infrastructure types) as a proportion of the national average <b>house sale price</b> as at April 2013 (\$390,000) <sup>70</sup>		0.1%	16.5%	3.0%	3.6%
Nationwide (all infrastructure types) as a proportion of the national average <b>section sale price</b> as at April 2013 (\$180,000) <sup>71</sup>		0.1%	36.1%	6.6%	7.8%

69 Derived from Covec (2012) Analysis of Draft Development Contribution Policies 2012.

70 Real Estate Institute of New Zealand online database figures (accessed May 2013).

71 Ibid.

# Appendix Three: Technical Amendments and Clarifications

## Definitions

1. Amend the definition of “development” in section 197 by replacing the word “development” in clause (a) with “building, structure or work” (or words to similar effect). This removes the confusion created by the circularity of the definition of development referring to development.

## Costs and benefits calculated over the life of an infrastructure asset

2. Provide clarification that when calculating development contributions consideration of costs and benefits over the full life of a project can be considered and infrastructure assets beyond the 10 year time horizon of a long-term plan can be included provided:
  - a. that the infrastructure projects that extend beyond the 10 year time horizon are specifically identified in the development contribution policy; and
  - b. development contribution charges per unit of development do not exceed the incremental costs of each new unit of development.
3. Provide clarification in the LGA02 that development contribution charges for a particular asset or catchment can be automatically adjusted in line with increases in the Producer Price Index. This will ensure that developers who are the first to undertake works in an area are not penalised by paying more in real terms than those who hold on to land to develop it later. It will also reduce costs for territorial authorities by ensuring that they do not have to undertake a full development contribution policy review process each time they update figures in their development contribution policy to reflect increases in construction costs.

## Development contributions in respect to certificates of acceptance

4. Amend section 198 of the LGA02 by through adding a clause that allows development contributions to be charged upon the issuing of certificates of acceptance under sections 96-99 of the Building Act 2004 (certificates of acceptance did not exist when the LGA02 provisions were originally prepared). This avoids the situation of new developments avoiding being charged development contributions by obtaining a certificate of acceptance retrospective of completing building work without first obtaining a building consent. A consequential amendment will also need to be made to section 208 of the LGA02 (which relates to enforcement of payments).

## Relationship between rates and development contributions

5. Insert a new clause in section 200 of the LGA02 (restrictions on development contributions) that clarifies development contributions are still able to be charged where rates are also being partly used to pay for growth. Section 200 will then better reflect the approach of section 101, which implies an apportionment approach to funding infrastructure (whereby the choice and mix of financing means are determined by who benefits from the infrastructure and who created the need for it).

## **Development contributions to fund infrastructure in anticipation of development**

6. Remove the word “the” from the phrase “...for capital expenditure already incurred by the territorial authority in anticipation of the development” (section 199(2)). This wording implies that a territorial authority must anticipate a particular individual development occurring to charge development contributions. This is unrealistic for situations where major headworks need to be designed and built well in advance of development occurring. The singular use of the word development in subsection 199(2) is also at odds with subsections 199(1) and (3) which refer to multiple developments.

## **Disclosure of projected costs of capital expenditure council plans and reports**

7. Clauses 3 and 24 of Schedule 10 of the LGA02 permit local authority to show the projected costs of projects apportioned between costs for additional demand, improved service, and replacement of existing assets. The current wording requires territorial authorities to disclose projects under the category that reflects the primary purpose of the project. Allowing apportionment of costs between project purposes will avoid inconsistency between costs shown in the schedule to the development contributions policy and costs shown in long-term plans, annual plans and annual reports.