



**Local Government
New Zealand**
te pūtahi matakōkiri

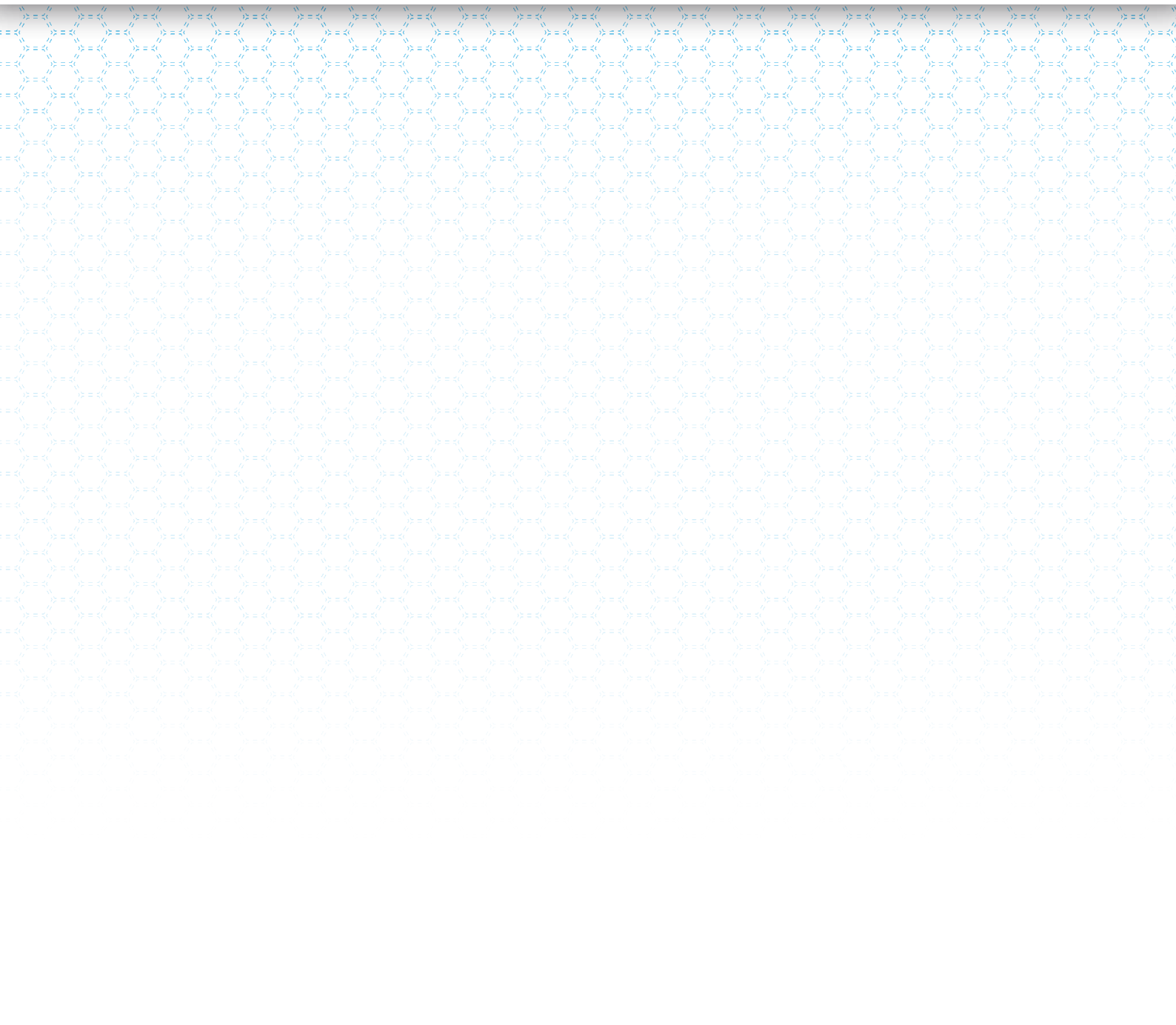


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Introduction

1. *Local Government New Zealand* thanks The New Zealand Productivity Commission (the Commission) for the opportunity to make this submission in relation to the Housing Affordability Issues Paper (June 2011)
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the Housing Affordability Issues Paper (June 2011)
4. This final submission was endorsed under delegated authority by:
 - Eugene Bowen, Chief Executive, *Local Government New Zealand*
5. *Local Government New Zealand* would be pleased to meet with The Commission for further discussion on any points raised in this submission.
6. *Local Government New Zealand* notes there will be further opportunity to review and make submissions on a draft report before a final report is presented to government in 2012.

***Local Government New Zealand* policy principles**

7. In developing a view on the provisions in this Issues Paper we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*: We would like the Commission to take these into account when reading this submission.
 - **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
 - **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
 - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.
 - **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face

common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.

- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Comments

INTRODUCTORY COMMENTS

8. Thank you for the opportunity to comment on the issues paper in relation to the Productivity Commission's inquiry into the factors influencing the affordability of housing. Local Government New Zealand has submitted previously on this topic, commissioned research work and hosted presentations on housing affordability related work. The details and links to this work are provided below in the interests of assisting your inquiry.
9. Submission to the Commerce Select Committee In the matter of Affordable Housing Inquiry 14 June 2007:
http://www.lgnz.co.nz/library/files/store_016/SubmissiontotheCommerceselectCommitteeinthematterofAffordableHousingInquiry.pdf
10. Submission to the Local Government and Environment Select Committee In the matter of the Affordable Housing (Enabling Territorial Authorities) Bill:
http://www.lgnz.co.nz/library/files/store_020/SubmissionontheAffordableHousing-EnablingTerritorialAuthorities-Bill29February2008.pdf
11. Local Government and Community Involvement in the Management and Ownership of Social Housing - MCKinley Douglas commissioned on behalf LGNZ 2000:
http://www.lgnz.co.nz/library/files/store_005/pub-mdr2000.pdf
12. The Role of Local Government in the Provision of Affordable Housing 2004 prepared McKinlay Douglas Ltd for Local Government New Zealand, Dunedin, Wellington and North Shore City Councils and New Plymouth and Western Bay of Plenty District Councils:
<http://www.lgnz.co.nz/library/publications/AffordableHousing.pdf>
13. In addition we have also invited speakers to a couple of our 2008 conference to cover this topic. The presentations are available from the page:
<http://www.lgnz.co.nz/events/conference/2008/Presentations.html>
14. There are several issues falling within the scope of the inquiry that are already under review through different processes within Government. These include reviews of the Resource Management Act 1991 and Building Act 2004. In addition the provision requiring the preparation of a "spatial plan" by the Auckland council represents the emergence of a new

approach to urban planning. There will also be a focus on issues around both the regulation of building and some aspects of urban planning as part of the process of reflection on the implications of the Christchurch earthquakes. We would encourage the inquiry to link closely with the various government agencies undertaking these reviews.

URBAN PLANNING, DESIGN AND LAND USE POLICIES

15. *Local Government New Zealand* made a substantial submission to the Ministry for the Environment in December 2010 on its discussion document *Building Competitive Cities- Reform of the Urban and Infrastructure Planning System*.
http://www.lgnz.co.nz/library/files/store_024/Submission_to_the_ministry_for_the_environment_on_the_building_competitive_cities_reform_of_the_urban_and_infrastructure_planning_system_discussion_document.pdf
16. That submission includes detailed comments and suggestions for improvements to the planning system. In general, however, LGNZ considers that the most significant issue with respect to the urban planning system is that the existing legislative framework constrains the ability for effective strategic planning through duplicative and overly litigious planning processes. In our view there is a need to align the planning processes under the Local Government Act, the Land Transport Management Act and the RMA. The Canterbury Urban Development Strategy, Smart Growth (Western Bay of Plenty) and the Wellington Regional Strategy to name but a few are well designed plans that have struggled in their implementation against the constraints of the RMA.
17. The time it takes develop planning documents and the lengthy delays through planning and plan change processes make it difficult to quickly accommodate and respond to changing community preferences.
18. Local authorities in urban areas have to consider growth issues and demand for additional urban land for residential development either through RMA planning processes or strategic planning exercises. Councils in a number of urban areas which until recent times faced significant growth pressures and/or affordability issues had undertaken extensive and detailed urban growth analysis and provision. These areas included, for example, the Auckland region, Western Bay of Plenty, Wellington region, Nelson/Tasman, and the Canterbury region that had all planned for 15-30 years capacity for growth through integrated planning.
19. The availability of land for new housing development is often restricted due to the actions of landowners, with practices such as 'land banking' by speculators or investors having been common in some areas. The impact of the economic recession has possibly temporarily masked this issue in recent times in many areas.

BUILDING CONTROLS

20. Local authorities carry out administrative functions for the Building Act 2004 (the Act) under delegation from the Crown. Day to day administration of the Act generally occurs under national policy and national building code / standards, not local policy. Administration by local authorities provides service delivery that is locally accessible, and sits alongside related regulatory and property based services.

21. The Department of Building and Housing is leading a comprehensive review of the Building Act and related matters such as rationalising the administration of the Act and a review of the current liability regime. The proposals amount to major reform for the building regime.
22. Local authorities' initial support for the review of the building regulatory system has been tempered somewhat by the piecemeal approach to reform. The issue of residual liability is a significant barrier to streamlining building regulation. Local authorities do not believe there are sufficient building practitioners with the necessary skills and knowledge to take on the responsibility of managing their own work without third party review. Given this and local authorities continued role in issuing compliance certification we are strongly in support of an exception to the common law principle of joint and several liability to ensure Councils, and their communities, bear only their fair share of liability from poor work practice.
23. Local authorities have invested considerable time and effort in the building consent authority accreditation scheme which was also "designed to help improve the control of, and encourage better practice and performance in, building design, regulatory building control and building construction." Given the similarity in the goals of the Department of Building and Housing work, i.e. the current review of administration of the Act and the accreditation scheme, it seems reasonable that any further changes to the administration of the Act should begin with a review of the status quo. This has not been undertaken and no evidence has been provided that the existing model of administration is adding unnecessarily to building costs.
24. Regional co-operation and clustering between building control authorities (BCA) has occurred in most areas. Each BCA is however a component of an independently local authority. There is benefit in co-operation but there are barriers to more formalised clustering or shared services, the accreditation process and liability regime for example. Clearly arrangements between neighbouring authorities in building control could have flow on effects for other regulatory functions. Cumulative impact of changes in regulatory responsibilities and arrangements must be considered. We are aware of the multiple law reviews that impact on territorial authority regulatory services, including: liquor law, public health law, food safety law. We have asked that the Government approach these reviews holistically and with consistency in their approach to the role of territorial authorities
25. Fundamentally local authorities strongly support the intent of the proposed amendments to rebalance and more appropriately allocate responsibility and accountability between consumers (homeowners), building consent authorities and building professionals as for too long local authorities have borne an unfair burden and been unfairly relied on to meet homeowner expectations for quality building under the existing regime.
26. We believe that a significant factor in the claims of inefficient and inconsistent BCAs is the poor level of understanding within the building industry of consent requirements, poor quality applications and poor knowledge of the Building Code. Creating the right package of reform to improve competency in the building industry and to assign appropriate responsibility should assist to change the current state.

LOCAL AUTHORITY RATES AND INFRASTRUCTURE CHARGES

27. The discussion on rates and Infrastructure charges (sections 8 and 12) might more usefully be considered together as they are simply complementary ways of paying for the infrastructure housing needs.
28. Most of the costs faced by territorial authorities are infrastructure-related, and most are recovered through rates. Financial and development contributions are simply optional mechanisms which allow "growth driven" infrastructure costs to be front ended, rather than collected at a later point in time through the rating system. We believe that the most appropriate treatment of both would be to view them both as aspects of the funding of local infrastructure.
29. Parliament has provided councils with the power to levy financial and development contributions so that the infrastructure costs created by new developments could be met by those who benefit from the services. Without these the timing of the payment would differ and costs would inevitably be distributed differently among households.

Local authority funding

30. Part 6 of the Local Government Act 2002 (LGA02) contains detailed requirements that local authorities are required to follow in developing their local term and annual plans. The long term plans sit on top of detailed asset management and activity plan which identify the levels of service that are to be provided and their associated costs. Councils are required to consider how various activities are to be funded from the range of options the legislation provides, such as financial and development contributions.
31. Where a local authority wishes to use development contributions they need to adopt a policy dealing with a range of matters specified in section 106, LGA02. These policies are part of the package which is then publicly consulted on and upon which members of the public can make submissions. The process as a whole is designed to ensure high levels of transparency and support effective accountability of councils to their local communities. We cannot agree with the view that development contributions, rates and other local authority charges lack transparency or accountability; in fact the opposite is true
32. The decision to use contributions reflects a consideration of the extent to which it is considered appropriate for the costs of infrastructure required by growth to be targeted to where the growth is occurring ("growth pays for growth") as opposed to being diffused more generally across the community and collected through rates. This is partly a judgment based on considerations of equity (is it fair for existing residents to pay the costs of growth related infrastructure?) and partly about efficiency (contributions can be seen as sheeting home what would otherwise be cost externalities). Even those local authorities that do use contributions usually settle for a sharing of these costs between the two mechanisms, reflecting the judgment that some benefits will accrue to existing residents.

Local Authority Rates

33. The New Zealand system of local government is unusual in several ways.

34. First, the degree of reliance on local land and property taxes is unusually high. Around 65 percent of the total expenditure of local authorities in New Zealand is funded from rates. This reflects the relative absence of transfers from higher levels of government to the local level. The only significant exception is the part funding of local roads through the proceeds of excise duties on petrol.
35. The second, unusual feature is that the activity and expenditure of New Zealand local authorities is unusually concentrated on the provision of infrastructure. In many overseas jurisdictions local authorities play a significant role in the delivery of social services, and this accounts for a large proportion of their budgets. This is not the case in New Zealand. For territorial authorities the largest area of expenditure is roading, followed by water and wastewater systems, followed by other community infrastructure such as libraries and other cultural and recreational facilities of various sorts. A high proportion of infrastructure costs (other than roads) are met from within local districts.
36. The levels of local authority rates have been a matter of considerable political interest over recent years. This has been a response to the fact that since the late 1990s, the general level of increase in the levels of local authority rates has been greater than the rate of general price inflation as represented by the CPI. As a result there have been extensive investigations into local authority rating and the underlying expenditure (see <http://www.dia.govt.nz/Agency-Independent-Inquiry-into-Local-Government-Rates-Index.>) One conclusion has been a general acceptance that the driver of these increases is the increasing cost of providing core local infrastructure. Work by BERL commissioned by the Society of Local Government Managers (SOLGM) shows that key input costs, and in particular those that relate to the provision of infrastructure have increased at a faster rate than the level of general inflation across the economy. The most recent BERL "adjustors" are available online at http://www.solgm.org.nz/site/Policy_Work/Berl.aspx

Infrastructure Charges

37. Local Government New Zealand is disappointed that the discussion paper has made uncritical reference to assertions by the Local Government Forum and Property Council that lack balance. Statements such as "development contributions lack transparency and weaken accountability of elected representatives" and "proceeds of development contributions are being used to "gold-plate" and "green-plate" should not have been included in the paper as they are neither true nor accurate, representing ideological positions rather than well-researched argument.
38. Similarly the claim that "the level of spending on infrastructure is often set politically or administratively often without regard to the willingness of users to pay" ignores the fact that decisions to invest in the provision of infrastructure are taken as part of the statutory planning processes outlined earlier. This is inherently a political decision made by elected councilors who are accountable to their communities. As virtually all local authority capital works (especially network infrastructure) is put out to competitive tender the level of the cost of providing that infrastructure is a market tested price.

39. Three other statements are made in the discussion paper cannot be left unchallenged, namely:
- residents of developments are effectively paying twice for some infrastructure through both upfront charges and rates or ongoing charges (double charging)
 - funds are not being spent on the designated purpose
 - lack of scope for, or excessive cost in, appealing against particular charges or requirements
40. It is true that the residents of developments pay both the contributions (to the extent that these are passed through the purchase price) and rates on an ongoing basis as residents. However, this does not amount to double payment. The costs recovered through development contributions, and the costs recovered through ongoing rates and charges, are for two separate aspects of whole of life asset costs. Development contributions may only be legitimately assessed to recover the capital costs directly attributable to development. The mechanism that is then available to fund the ongoing operating needs – operating costs, maintenance, depreciation and like – is the rating system. As everyone connected to a network (both in developments and outside developments) are using the asset and giving rise to a need for operating costs, and consuming future service potential, it is both equitable and efficient for all users to contribute.
41. No evidence has been provided to support the assertion that funds are not being spent on the designated purpose, we suspect if that was indeed true councils would by now have been facing legal challenge. Legally, development contributions are tied to funding only those works necessary to service growth. If there were evidence of funds being spent inappropriately then this would provide grounds for the contributions to be challenged through the courts. We are not aware that there has ever been such a challenge.
42. Finally, like any other local authority funding decision (such as setting rates), a development contribution may be judicially reviewed on grounds of failure to comply with the law, or unreasonableness (in the administrative law sense). Financial contributions set under the RMA are also appealable through the Environment Court.
43. It is unclear to us what makes a decision to levy a development contribution and the level of that contribution any different to setting a rate and so warrant a different appellate process, or different standard of proof. Notwithstanding the comments from the Local Government Forum and Property Council in our view the current legislative provisions for development and financial contributions appear consistent with the principles for infrastructure charges set out on page 29 of the paper.

Conclusion

44. *Local Government New Zealand* thanks The New Zealand Productivity Commission (the Commission) for the opportunity to make this submission in relation to the Housing Affordability Issues Paper (June 2011).



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