Guide:
To developing and operating development contributions policies under the Local Government Act 2002
Publishing information

This guidance document is published by the New Zealand Department of Internal Affairs. The Department administers the Local Government Act 2002.

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ISBN: 978-0-473-55604-4 (Online)

URL for this document at January 2021 is: www.dia.govt.nz/Resource-material-Our-Policy-Advice-Areas-Local-Government-Policy#Guidance

Disclaimer

Although every reasonable effort has been made to ensure that this guidance document is as accurate as possible, the Department of Internal Affairs will not be held responsible for any action arising out of its use.

Acknowledgements

This guide has been developed during 2019/20 with input from many people and organisations and their support is gratefully acknowledged.

The Department offers thanks to all concerned, in particular:

- the Society of Local Government Managers
- Local Government New Zealand
- the local government sector’s Development Contributions Working Group
- the Property Council of New Zealand and Infrastructure New Zealand and some of their members
- Vale Consulting, Sweetman Planning Services and Atkins Holm Majurey
- Simpson Grierson
- staff from the Department’s Central/Local Government Partnerships and Policy, Regulation and Communities Groups
- others who worked on an earlier unpublished draft guidance manual that served as a starting point for the development of this document.
Development contributions were introduced by the Local Government Act 2002, when it came into force in July 2003, as a new funding tool for territorial authorities (councils) facing significant, growth-related costs in their district. Development contributions are used by many councils across New Zealand for a range of infrastructure affected by growth.

Development contributions can play an important role in keeping growing communities supplied with infrastructure that supports their wellbeing, attractiveness and ongoing vitality in an efficient and cost-effective way. Such infrastructure is vital to enabling a productive economy and the building of homes, workplaces and many other amenities that New Zealand communities need.

Since 2003, a great deal of experience has been gained with the legal, policy and practical aspects of development contributions. Some High Court decisions have clarified the law, changes have been made to the law and advances made in the disciplines that support the implementation of development contributions. This guide is intended to capture and build on the learnings and the body of good practice that has emerged over time to help to ensure that development contributions policies are appropriate and development contributions are consistently applied. It is a guide for reference only and its purpose is not to set the requirements for councils in the preparation and application of development contributions policies, but to support them. Councils are responsible in their own right for the content of their Development Contribution Policy and its compliance with the Local Government Act 2002.

It has been a pleasure working with local government practitioners and others from the development sector to produce this guidance document. The time and advice given by all during the production process is greatly appreciated.

The Department of Internal Affairs hopes and expects that this guidance document and the accompanying template for development contributions policies will prove to be very useful references for councils and developers alike.
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1. INTRODUCTION

This chapter outlines the purpose and structure of this guide and defines key terms.

1.1 PURPOSE OF THIS GUIDE

The purpose of this guide is to provide a technical resource for the preparation and operation of development contributions policies (DCPs) under the Local Government Act 2002 (LGA02). This guide is intended to be particularly helpful for smaller councils and officers new to development contributions.

It seeks to ensure that:

- Councils have accurate and up to date guidance and can confidently, competently and consistently prepare and operate their DCPs, while recognising that councils and their communities have varying needs and circumstances.
- The body of good practice for development contributions is captured and made widely available.
- The information base that councils use is consistent with, and complementary to, the guidance prepared for development contributions commissioners.
- Developers and others affected by development contributions, including the public, can also see what to expect from councils with respect to development contributions and DCPs and how they relate to other council roles and operations.
- Councils’ understanding of the development contributions principles is enhanced.
- Councils have ready access to a summary of particularly relevant development contributions case law.

1.2 OUTLINE OF THIS GUIDE

This guide has 13 chapters covering major development contributions topics; it is structured and sequenced to help councils:

- Build a sound conceptual understanding of development contributions and where they fit in a council’s toolkit.
- Decide whether development contributions are something they want to include in their financial toolkit.
- Understand what information and decisions are needed to develop and draft DCPs, and what content a DCP should include.
- Operate DCPs and deal with complexities associated with development contributions.

Resources, templates, and forms for councils to use (or adapt) are also included in chapters 10-12. A template DCP has also been developed and is available alongside this guidance.
<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>DESCRIPTION</th>
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</table>
| 1       | Purpose of this guide  
Outlines the purpose and structure of this guide and defines key terms. |
| 2       | Introduction to development contributions  
A high-level summary of the purpose and use of development contributions. |
| 3       | Laying the foundations  
- Council processes and functions that integrate with, inform and enable effective DCPs.  
- Principles that are critical to understanding and implementing development contributions.  
- Foundation level decisions that a council must make to develop and operate a DCP. |
| 4       | Building the Policy  
Guidance on the content required in a DCP and the process for adopting a DCP. |
| 5       | Assessing, requiring and payment  
Guidance on the process for assessing and requiring development contributions and seeking payment. |
| 6       | Limitations, use, and refunds of development contributions  
Guidance on legislative limits on requiring development contributions, permitted uses of development contributions, and refund requirements. |
| 7       | Record keeping, accounting, and management  
Record keeping and accounting obligations associated with development contributions and guidance on good practice for council managers overseeing development contributions. |
| 8       | Reconsiderations, objections and formal legal challenges  
Information about formal options for challenging the imposition of development contributions (reconsiderations, objections and judicial review). |
| 9       | Development agreements  
Information and guidance on development agreements. |
| 10      | Resources to help develop policies  
Example DCP sections to help councils develop their DCPs. |
| 11      | Resources to help operate policies  
Includes a development contribution notice of requirement, forms for requesting a reconsideration or lodging an objection, and a reconsideration decision template. |
| 12      | Resources to help enter into agreements with developers  
Resources to aid councils entering into agreements with developers including a payment deferral agreement, a development agreement outline, and an infrastructure funding agreement. |
| 13      | Law library  
Summary of judicial review cases and a quick reference legislation guide which includes:  
- Brief commentary on parts of the LGA02 related to development contributions.  
- References to where further discussion on specific legislation can be found in this guide. |
1.3 GLOSSARY OF TERMS

The following terms are used throughout this guide. Where further explanation or discussion of the term is provided in this guide, the relevant section is referenced.

Table 1.1. Glossary

<table>
<thead>
<tr>
<th>TERM</th>
<th>EXPLANATION</th>
<th>GUIDE REFERENCE</th>
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| Activity                      | A good or service provided by, or on behalf of, a local authority or a council-controlled organisation; and includes—
(a) the provision of facilities and amenities; and
(b) the making of grants; and
(c) the performance of regulatory and other governmental functions
LGA02 s.5
Note: In the context of DCPs, activities represent the headings that development contributions are charged under and usually reflect an asset management area such as stormwater, transport, parks. | 2.4, 6.4        |
<p>| Assessment                    | The process through which a council considers and evaluates an application for a resource consent, building consent, service connection or certificate of acceptance against the process and criteria set out in its DCP to determine if a development contribution is required and, if so, what that contribution is. | 4.8, 5.1, 5.2, 5.3 |
| Asset management plan         | Council plan for the management of assets that applies technical and financial management techniques to ensure that specified levels of service are provided in the most cost-effective manner over the life-cycle of the asset. | 3.5             |
| Capacity life                 | Capacity life is not defined in the LGA02. It is generally taken to indicate the period over which an asset or programme can provide service for expected growth, usually translated to HUEs (or another unit of demand used in a DCP). | 3.6             |
| Capital expenditure           | Capital expenditure is not exhaustively defined in the LGA02, although the Act refers to the use of generally accepted accounting practice (GAAP) where relevant (s.111). It refers generally to expenditure on assets (expenditure that may be capitalised). LGA02 s.204 reinforces that development contributions must be used for capital expenditure and explicitly prohibits their use for maintenance. The capital expenditure can be both historical (actual) and projected. LGA02 s.197 | 3.5, 3.10, 3.11, 4.3 |
| Catchment                     | An area of a council district within which developments are grouped together for the purpose of calculating development contributions. A catchment is normally defined geographically but could also be based on, say, availability of connection to a network. Some councils might choose to use the term “funding area” instead of catchment in their DCP. Catchments in the DCP may or may not align with topographical or service catchments, schemes or other planning boundaries. | 3.7, 4.7        |</p>
<table>
<thead>
<tr>
<th>TERM</th>
<th>EXPLANATION</th>
<th>GUIDE REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community facilities</td>
<td>Reserves, network infrastructure, or community infrastructure for which development contributions may be required in accordance with LGA02 s.199.</td>
<td>2.4, 6.4</td>
</tr>
</tbody>
</table>
| Community infrastructure| (a) Land, or development assets on land, owned or controlled by the territorial authority for the purpose of providing public amenities; and  
(b) Includes land that the territorial authority will acquire for that purpose.                                                                                       | 2.4, 6.4        |
| Cost allocation        | The process of, or result of, allocating costs of an asset or programme across cost categories typically including at least renewal, level of service (backlog) and growth. Refer LGA02 Schedule 10, cl.3.                                    | 3.8             |
| Council                | This guide uses the common term “council” to refer to the types of local authorities that can use development contributions. This includes territorial authorities (city and district councils) and unitary authorities but excludes regional councils. |                 |
| Developer              | In this guide the term “developer” is used to refer to the person (which might be an individual, partnership, company, trustee or other legal entity) that applies for a consent or other authorisation for a development, and who becomes liable to pay development contributions. |                 |
| Development            | (a) Any subdivision, building (as defined in s.8 of the Building Act 2004), land use, or work that generates a demand for reserves, network infrastructure, or community infrastructure; but  
(b) Does not include the pipes or lines of a network utility operator.                                                                                       | 5.1             |
| Development agreement  | A voluntary contractual agreement made under LGA02 s.207A to 207F between one or more developers and one or more territorial authorities for the provision, supply, or exchange of infrastructure, land, or money to provide network infrastructure, community infrastructure, or reserves in one or more districts or a part of a district. | Chapter 9, 12.2 |
| Development contribution| A contribution—  
(a) provided for in a development contributions policy of a territorial authority; and  
(b) calculated in accordance with the methodology; and  
(c) comprising—  
(i) money; or  
(ii) land, including a reserve or esplanade reserve (other than in relation to a subdivision consent), but excluding Māori land within the meaning of Te Ture Whenua Maori Act 1993, unless that Act provides otherwise; or  
(iii) both.                                                                                                                      | 2.1, 3.11, 4.4, 5.5 |
<table>
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<tr>
<th>TERM</th>
<th>EXPLANATION</th>
<th>GUIDE REFERENCE</th>
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</thead>
<tbody>
<tr>
<td>Development contribution objection</td>
<td>An objection lodged under LGA02 Schedule 13A, cl.1 against a requirement to make a development contribution.</td>
<td>8.1, 8.3, 11.4</td>
</tr>
<tr>
<td>Development Contributions Policy (DCP)</td>
<td>The policy on development contributions adopted under LGA02 s.102(1).</td>
<td>2.3, chapter 4</td>
</tr>
</tbody>
</table>
| Financial contribution               | A contribution of—
(a) money; or
(b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Māori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or
(c) a combination of money and land. | 2.3, 2.7, 4.3 |
<p>| Group of activities                  | One or more related activities provided by, or on behalf of, a local authority or council-controlled organisation. | 2.3, 3.5 |
| Growth expenditure                   | Capital expenditure (also referred to as growth capex) that delivers infrastructure service capacity to manage the increased demand from growth at the adopted level of service. | 3.3, 3.8, 3.9, 4.3 |
| HUE (Household unit equivalent)      | A unit of demand used in DCPs representing the demand from a nominal household for activities. Different terms for the same concept include Household Units of Demand (HUDs), Dwelling Equivalent (DE), or Equivalent Housing Units (EHUs). A HUE is typically quantified using first principles and the demand of an average household for a particular activity, e.g. 750L/day (water supply), 10 trips/day (transportation), 300m² impervious surface area (stormwater), etc. | 2.4, 3.4, 4.7 |
| Level of service expenditure         | Expenditure that is required to bring the infrastructure service provided to the existing community up to the adopted level of service. This is sometimes called backlog expenditure in the industry. | 3.3, 3.8, 3.9 |
| LGA02                               | The Local Government Act 2002.                                             |                |
| Local authority                      | A regional council or territorial authority.                                | LGA02 s.5      |
| Lot                                 | Has the meaning given to “allotment” in s.218(2) of the RMA.               | LGA02 s.197    |
| Network infrastructure               | The provision of roads and other transport, water, wastewater, and stormwater collection and management. | 2.4, 6.4 |
| Operating expenditure               | Has the same meaning as under generally accepted accounting practice.      | 2.4, 3.5, 6.4 |
| Producers Price Index (PPI)          | The PPI Outputs for Construction provided by Statistics New Zealand (referred to in LGA02 s106(2C)). PPI indices can be found under Economic Indicators at <a href="http://archive.stats.govt.nz/infoshare/">http://archive.stats.govt.nz/infoshare/</a>. | 4.9, 5.2, 5.4, 5.5 |</p>
<table>
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<th>TERM</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Reconsideration</td>
<td>A review by the council of a development contribution it has required, following a request from the person to whom that requirement relates on one or more of the grounds specified in LGA02 s.199A(1).</td>
<td>5.2, 8.1, 8.2</td>
</tr>
<tr>
<td>Renewals expenditure</td>
<td>Expenditure that renews existing infrastructure assets or replaces them with modern assets of the same capacity.</td>
<td>2.3, 3.8</td>
</tr>
<tr>
<td>Reserves</td>
<td>Reserves are not defined in the LGA02 but are referred to (e.g. LGA02 s.204-206). It typically means the land which is or will be held and used for a park or reserve (as provided for under the Reserves Act 1977). Development contributions for reserves may be used for the development of land or facilities on land or an interest in land.</td>
<td>2.4, 6.4</td>
</tr>
<tr>
<td>Residential unit</td>
<td>Building(s) or part of a building that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities.</td>
<td>3.4, 4.7</td>
</tr>
<tr>
<td>Service connection</td>
<td>A physical connection to a service provided by, or on behalf of, a territorial authority.</td>
<td></td>
</tr>
<tr>
<td>Subdivision (of land)</td>
<td>As defined in RMA s.218.</td>
<td></td>
</tr>
<tr>
<td>Supporting information</td>
<td>Information, assumptions, and calculations a council has used in developing its DCP and summaries of these in the DCP.</td>
<td></td>
</tr>
<tr>
<td>Territorial authority</td>
<td>A city council or a district council named in LGA02 Schedule 2, pt.2.</td>
<td></td>
</tr>
<tr>
<td>Total cost of capital expenditure for growth</td>
<td>The total cost related to servicing growth, this includes both the growth-related capital expenditure and interest/debt/financing costs. This represents the figure that can be recovered through development contributions.</td>
<td>3.5, 3.8, 3.9, 3.10, 3.11, 4.3</td>
</tr>
<tr>
<td>Unit of demand</td>
<td>A measure of demand used in a DCP to quantify the impact of growth on a service. It is used in growth forecasts, the charge calculations, and in assessments for requiring development contributions. The most common unit of demand used is HUEs (or equivalents) and/or area of land developed.</td>
<td>3.4, 4.7</td>
</tr>
</tbody>
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### 1.4 LEGISLATION QUICK REFERENCE GUIDE

The LGA02 provisions governing development contributions are relatively complex and the order they appear in the Act doesn’t always align with a logical, stepwise approach to developing or operating DCPs. Consequently, this guide does not follow exactly the order of the LGA02 provisions.

This guide contains a quick reference resource in chapter 13 which provides:

- Commentary on all parts of the LGA02 that relate to development contributions.
References to where further discussion on specific legislation can be found within this guide.

This information is intended as an aide only and should not be construed as legal advice. When applying the legislation, it should be considered whether legal advice specific to the circumstances is required.

This guide is based on the LGA02 provisions current at the date of publication. When using this guide, it is recommended to check for any amendments to the LGA02 since that date.
2 INTRODUCTION TO DEVELOPMENT CONTRIBUTIONS

This chapter provides a high-level summary of the purpose and use of development contributions.

2.1 WHAT ARE DEVELOPMENT CONTRIBUTIONS?

Development contributions are charges that may be levied under the LGA02 that enable councils to “…recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term” (LGA02 s.197AA).

This recognises that most growth-related developments will create a need for new or increased infrastructure capacity, such as:

- Roads and/or other transportation infrastructure.
- Potable water supply, treatment and reticulation systems.
- Wastewater treatment and disposal systems.
- Stormwater disposal systems and retention areas.
- Reserves and community facilities.

The development contributions are set in a council’s Development Contribution Policy (DCP) made under the LGA02. Development contributions may be required upon the granting of a resource or building consent (or a certificate of acceptance), or a service connection authorisation.

2.2 COUNCIL FUNDING STREAMS AND FUNDING POLICY

Development contributions are just one part of the comprehensive funding system councils can use to meet the costs of their activities, including providing infrastructure and other facilities for growth. Other funding tools that may be used by councils include general and targeted rates, user charges, and financial contributions applied as a condition of a resource consent under the RMA. Councils may also borrow or receive central government grants or subsidies.

This system is guided by a council’s Long-term Plan, Infrastructure Strategy, and related decisions that the council makes in relation to LGA02 s.101(3). These decisions are ultimately reflected in its Revenue and Financing Policy.

---

1 Only territorial authorities may use development contributions as a funding mechanism. Regional councils cannot impose development contributions. A unitary authority can impose development contributions for its territorial authority functions only. For the purposes of this guide, the term “council” is used to describe local authorities that are permitted to use development contributions.
Councils have choices about how they fund growth-related infrastructure and facilities. They can use the same funding sources they use for other capital expenditure in an activity, such as general rates. This will mean that the costs of growth infrastructure are spread over all existing and future ratepayers. This does not increase the cost of undertaking new developments but:

- increases rates for everyone who pays, and arguably means that the people who benefit directly from the infrastructure are being subsidised by the wider community; and
- fails to send any price signals to the development community about the true cost of developing (i.e. including costs incurred by council on their behalf).

Alternatively, councils can use financial contributions under the RMA, development contributions under the LGA02, or both, as long as they do not charge for the same thing under both. While this makes developments more expensive for developers to undertake, it means that the burden of funding growth infrastructure rests with those who cause the need for that infrastructure - and primarily benefit from that investment.

The Infrastructure Funding and Financing Act 2020 provides another option to pay for growth infrastructure, giving the option for councils to establish Special Purpose Vehicles (SPVs). These SPVs may have access to private capital for infrastructure, without putting pressure on council balance sheets or constraining debt limits. Instead of development contributions, the SPV recovers the costs of the infrastructure through a levy charged to the ratepayers who either caused and/or benefit from the infrastructure. If a council has used development contributions to fund infrastructure that is now to be funded through an SPV, the council will have to ensure that ratepayers do not end up paying for the same infrastructure twice. See section 6.5.

The use of development contributions can require significant investment in information, planning, policy development, and administration. They are likely to be more appropriate for councils that have (or expect) material levels of growth and related capital expenditure. Other factors that support the choice to use development contributions include:

- The need for a dedicated funding source for growth infrastructure to provide more certainty, whereby growth costs can be directly attributed to development activity.
- Relatively high funding is sought from parts of the community that do not benefit directly from any growth.
- A need to better signal and to pass on the cost of providing growth infrastructure for different parts of the district to the development community.

Factors that tend to weigh against the use of development contributions include:

- Identified capital expenditure for growth is relatively low and expected to remain low.
- Levels of growth are variable, highly uncertain or low across all or most of the district.
- The cost of preparing and administering a DCP, particularly where little revenue is expected.
- The risk of dampening growth and development.
- The council’s existing approach (e.g. use of financial contributions under the RMA) adequately mitigates the effects and costs of infrastructure related to new developments.
Requirement to have a policy on development contributions or financial contributions

Every council must adopt a policy on development or financial contributions as part of a suite of funding and financial policies. If a council chooses:

(A) Not to use development contributions or financial contributions, it must state that position as its policy on development or financial contributions and explain why it has taken that position. This should be strongly reflected in the council’s Revenue and Financing Policy.

(B) To use development contributions, a DCP is required that complies with all the content requirements of the LGA02.

(C) To use financial contributions, the policy must meet the LGA02 requirements related to financial contributions (LGA02 s.106) - as well as meet requirements for financial contributions under the RMA and be in the Regional or District Plan.

(D) To use both development contributions and financial contributions, it must comply with the requirements of both (B) and (C).

Deciding whether to use development contributions?

The flow process in figure 2.0 outlines the key questions to be answered when deciding whether to use development contributions.
2.3 WHAT CAN DEVELOPMENT CONTRIBUTIONS FUND?

Development contributions can be used, in a manner consistent with a council’s Revenue and Financing Policy, to partly or fully fund the total cost of capital expenditure incurred by councils on community facilities, provided they are needed to provide for growth. Community facilities means:

- **Network infrastructure**: The provision of roads and other transport, and water, wastewater, and stormwater collection and management.
- **Reserves**: The acquisition of land or development of parks and reserves. The term “reserves” is not defined within the LGA02 but is understood to include parks as well as reserves under the Reserves Act 1977. LGA02 s.204-206 also outline what reserve related development contributions revenue can be used toward. Permitted uses include the acquisition of land, the development of land, and a range of other specific uses.

- **Community infrastructure**: Land, or development assets on land, owned or controlled by the council for the purpose of providing public amenities. This is a wide definition and can potentially include community centres or halls for local or neighbourhood use, play equipment on neighbourhood reserves, public toilets, recreation and sports complexes and pools, and libraries.

DCPs must state the **activities** or types of assets that development contributions will be required for (LGA02 s.106(2)(d)). The names and coverage of the activities can be chosen by the council provided they come within the meaning of network infrastructure, reserves, or community infrastructure.

A council may also have more than one catchment affecting the same area for similar activities but not to fund the same assets. For example, a council can set a district-wide charge for community infrastructure that funds a large pool complex that serves the whole district and set separate charges for local community infrastructure provided in smaller catchments.

Growth-related expenditure of council-controlled organisations can also be recovered through development contributions set by the council where:

- The expenditure is or becomes capital expenditure of the council.
- This is authorised by a specific legislative power, as is the case for Auckland Transport’s capital expenditure.\(^2\)

Development contributions cannot be used to fund:

- Operational costs (e.g. staff wages and consumables) or maintenance costs of community facilities.\(^3\) Maintenance and operational costs must be met from other funding sources such as rates or user charges.
- Capital expenditure incurred by other entities such as Waka Kotahi the New Zealand Transport Agency (Waka Kotahi) or other central government bodies unless:
  - this is specifically provided for in legislation; or
  - the entity has delegated to the council functions, duties and powers (including that related to construction maintenance and control of the asset); and
  - the expenditure is or becomes capital expenditure of the council.

\(^2\) Auckland Council is explicitly authorised to charge development contributions relating to capital expenditure incurred by Auckland Transport; see Local Government (Auckland Council) Act 2009, s100.

\(^3\) See also LGA02 s.204(1)(b) for a specific prohibition against funding maintenance costs.

\(^4\) Which would in effect mean the council has virtually all the powers and duties of ownership of the asset concerned without the actual asset ownership changing (the LGA02 does not actually specify asset ownership as a test for being able to require development contributions, but the council must have incurred capital expenditure in relation to the asset).
A fundamental aspect of development contributions is that they are based on the identified total cost of capital expenditure for growth. This can include: expenditure that has already been incurred in anticipation of development; capital expenditure identified in the long-term plan; and capital expenditure beyond the period covered by the long-term plan (as long as it is identified in the DCP). As individual contributions are collected, the revenue raised is applied to that capital programme.

2.4 HOW ARE DEVELOPMENT CONTRIBUTIONS DETERMINED?

Development contributions for each activity reflect a share of the cost of providing capacity in that activity for new developments. In this respect, the calculation relies on a simple relationship.5

\[
\text{Charge per unit of growth} = \frac{\text{Infrastructure growth costs}}{\text{Total growth units}}
\]

While simple in principle, development contributions can be difficult to calculate in practice. The calculation may also need to account for inflation, interest costs and, depending on the funding model, indexing. See section 3.10. As explained in more detail in chapter 3, it also requires a council to navigate several complex policy and funding issues, and to have good information about expected growth and the infrastructure needed to support it.

2.5 WHO PAYS DEVELOPMENT CONTRIBUTIONS?

Development contributions can be levied on people undertaking development such as subdivisions, new homes, changes in land use and new or altered non-residential buildings. If the development is generating a demand for an activity covered in the council’s DCP for that area, a development contribution can be required. However, note that the Crown is not liable to pay development contributions. See section 6.2.

LGA02 s.197AA states that the purpose of the development contributions provisions is to

\[...\text{enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.}\]

This provision must guide council decision-making from high level funding policy right down to how the DCP is administered.

The term “proportionate” impacts on key elements of a DCP such as cost allocation, and how development contributions apply to a development. The contributions should be proportional

5 This is essentially the relationship conveyed in LGA02 Schedule 13.
to each development’s impact on infrastructure, as outlined for that development type in the DCP.

2.6 FINANCIAL CONTRIBUTIONS VERSUS DEVELOPMENT CONTRIBUTIONS

Development contributions under the LGA02 and financial contributions under the RMA can both be used to fund growth-related infrastructure and councils can choose to use neither, one, or both.

While financial contributions and development contributions have some similarities, they are not the same, nor are they good substitutes in many cases - but can act in a complementary way. Where both are used, this must be designed in an integrated way. Under LGA02 s.200, a development contribution cannot be required if a financial contribution has already been required from a development for the same purpose. Together with LGA02 s.106, this has been interpreted as meaning that councils should choose to apply development contributions or financial contributions, but not both, in respect of the cumulative impacts on each activity. This helps provide predictability for developers.⁶

However, there are cases where financial contributions and development contributions can be used in relation to the same activity. For example, a developer may be required to fund a pipe to connect their development to the council’s network (financial contribution) and also pays for an appropriate share of network-wide capacity increases through development contributions. While the contributions are for the same activity, they are for different assets and purpose (a pipe vs intake, treatment, reservoir). Typically, only larger “network-scale” projects are funded through development contributions.

There are significant differences between development contributions and financial contributions in relation to:

- Their purpose and how charges are determined.
- The range of developments that can be charged.
- The amount of effort required to develop and administer the charges.

Despite being more onerous to develop and administer, development contributions are generally regarded as a better tool for funding infrastructure upgrades required to meet cumulative demand growth arising from multiple unrelated developments.

Table 2.0. Development contributions and financial contributions

<table>
<thead>
<tr>
<th>DEVELOPMENT CONTRIBUTIONS</th>
<th>FINANCIAL CONTRIBUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operate under the Local Government Act 2002</td>
<td>Operate under the Resource Management Act 1991</td>
</tr>
<tr>
<td>Can only be used by territorial authorities (including unitary authorities)</td>
<td>Can be used by territorial authorities and regional councils</td>
</tr>
<tr>
<td>Fully integrated with growth, asset management and financial planning</td>
<td>No required integration with asset management or financial planning</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purpose and charge</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Financial contributions</strong></td>
<td></td>
</tr>
</tbody>
</table>
| The RMA allows councils to require a financial contribution to achieve the sustainable management purpose of the RMA (refer to s.108). Financial contributions generally address the direct impacts of a particular development, and their purpose is to help pay for measures that will avoid, remedy or mitigate adverse effects on the environment, or offset adverse effects in some other way. Whether a development represents “growth” may be of limited relevance when determining if a financial contribution should be required.  

There is considerable variation in how financial contributions are used in relation to infrastructure to give effect to the RMA purpose, and how they are calculated.  

Some examples of financial contributions:  

- As payment towards a shorebird management programme to offset the potential loss of protected birds as a result of wind turbine bird strike.  
- For reserve provision, with the charges based on a percentage of the value of the land being developed.  
- Related to the value or debt associated with an activity (such as a local water supply) to recognise and defray the cost of infrastructure already paid for by others. Essentially an equity buy-in charge.  
- Related to the cost of providing car parking and imposed where a development does not meet a District Plan requirement for car parking. |
For the council to undertake works in the vicinity of the development to deal with the immediate effects of the development. For example, an intersection upgrade at the entrance of a development or a new valve on a council’s water mains to provide the water feed to the site. These are often taken in lieu of the developer undertaking the work directly.

**Development contributions**

Development contributions have a somewhat different purpose, being:

“... to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth” (LGA02 s.197AA).

The important aspect is not the environmental effects of the new development as such, but whether the development (either by itself or in combination with other developments) has the effect of requiring, or has required, a council to incur capital expenditure to provide new, additional, or expanded infrastructure assets.

Development contributions are based on recovering the cost of specified growth-related infrastructure and the maximum charge able to be levied must comply with LGA02 Schedule 13. Each development pays a share of the costs of that infrastructure that is proportional to the demand they generate.

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**Range of developments subject to contributions**

Financial contributions can only be imposed as a condition on a resource consent or designation. Development contributions can be imposed on a much wider range of developments, including activities that do not require resource consent.

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**Policy and administrative complexity**

Financial contributions provisions within a district or regional plan must be adopted through a plan review or change process under RMA Schedule 1, which provides for rights of submission and appeal to the Environment Court. Once in effect, the provisions remain in force for at least 10 years or until changed by the council.

DCPs must be reviewed and adopted following public consultation in accordance with s.82 of the LGA02 every three years and tend to involve much more pre-planning of infrastructure for growth and integration across these areas than for financial contributions. LGA02 requirements also place significant obligations and limitations on how councils develop and administer DCPs, and how funds are used. As a result, development contributions tend to be more complex to use.

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**2.7 UNDERSTANDING THE IMPACT OF DEVELOPMENT CONTRIBUTIONS ON DEVELOPMENT**

DCPs can either enable or discourage growth. By contributing towards the impact on public services of new developments, DCPs can relieve pressure on rates and be an efficient and fair mechanism to meet the costs of growth.
However, development contributions also result in some combination of a reduction of raw land prices, reduction in the margins of developers and an increase in the completed dwelling price (i.e. increased house prices). Who incurs what cost depends on the ability of the property owner, developer or buyer to transfer or avoid the impact of charges. Ideally, DCPs are well-signalled, clear and understood by the market so that charges are incorporated into land values ahead of the development process. Where they are unclear, change or where land supply is constrained, property owners will seek to avoid costs, resulting in higher costs of development and either reduced margins or more expensive housing (and commercial development).

Larger increases in development contributions can have a more significant impact on development. Higher fees can result in the developer reassessing the feasibility of the development, scaling down development projects, or halting development within the catchment or local authority and looking for development opportunities elsewhere. When development is halted, local authorities do not receive planned revenue to fund infrastructure or the future planned revenue of new residents and ratepayers. Reduced development can significantly impact property prices, including affordable property in the area, which itself has numerous detrimental effects on communities.

The significance of the development contribution to the total development cost will also be something of consideration for developers. For example, developers may be able to return a margin post-development; however, higher development contributions may restrict cashflow which a developer needs to proceed with the development. Cashflow implications will generally affect smaller companies with limited track records or developers with significant landholdings in the city.

For a city to not only embrace growth, but continue to grow, competition in the residential and non-residential market is required. Competitive development contributions are one factor that encourages developers to a region. Planning rules are another. Collaboration between a council’s planning, infrastructure, and financial teams will be essential to achieving affordable property markets. It is important for local authorities to remember development contributions are just one part of the comprehensive funding system councils can use to meet the costs of their activities. Other funding tools should also be considered when determining the development contributions and likely impact on development. See section 2.2.
This chapter outlines:

- Principles that are critical to understanding and implementing development contributions (3.1).
- The council processes and functions that integrate with, inform and enable an effective DCP (3.2-3.3).
- Foundation level decisions that a council must make to develop and operate a DCP (3.4-3.11).

The scale and complexity of the approach to each process a council uses should be appropriate for the size of the council and district, and the extent of growth within it. If the council is small, new to development contributions, and/or expecting only modest growth then the council should focus on simple approaches to most of the processes discussed in this chapter.

### 3.1 PRINCIPLES

**Principles governing development contributions**

LGA02 s.197AB sets out seven principles that must be taken into account when preparing a DCP or requiring development contributions. Every decision a council makes in relation to development contributions should so far as possible be consistent with the principles.

As outlined in more detail below, the principles affect:

- The calculation of development contributions and the liability of individual developments for paying them (LGA02 s.197AB(a), (b), (c) and (g)).
- Policy transparency and accountability (LGA02 s.197AB(d), (e) and (f)).

Collectively, the principles encourage councils to develop DCPs that provide:

- Fairness and equity: Ensure that those who create a need for new or additional assets/capacity contribute a proportionate share of the cost of providing those assets/capacity.
- Simplicity: Ensure that the DCP is easy to understand and administratively simple to apply.
- Certainty and transparency: Provide developers with a clear understanding of what will be funded from development contributions, what they will have to pay towards those costs, and when.
- Consistency: Ensure that like developments are treated in a like manner.
Creation of a requirement for new assets or increased capacity

Principle LGA02 s.197AB(a): Development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity.

There must be a genuine causal link between growth and the infrastructure expenditure the council is seeking to fund via development contributions. Development contributions must not be used to shift funding cost of non-growth assets or programmes away from rates or other funding sources such as central government funding.

When applying the DCP, there must be a link between the individual development and some of the assets or programmes in the schedule of assets for each activity and catchment. This link forms part of a fundamental test that should apply for each development for which the council intends to charge development contributions. See sections 4.8, 5.1, and 5.2.

However, this does not mean that every individual development must justify, by itself, any individual asset or programme in the schedule of assets for the relevant activity and catchment. Development contributions may be required to address the cumulative effects of a development in combination with other developments.

Nor does it mean that every individual development must be connected in some way with every asset or programme in the schedule of asset for the activity and catchment. Principle 197AB(g) allows councils to pool areas and assets/programmes when setting development contributions.

Consistency with asset capacity life and avoiding over-recovery

Principle LGA02 s.197AB(b): Development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding.

This should be read in conjunction with section 3.6.

Development contributions should recover growth costs related to the capacity that the assets are expected to provide for growth. This is called the capacity life of the asset and is usually expressed as the total units of demand that the asset provides for. For example, if an asset provides growth capacity for 500 standard residential units/HUEs, then the calculations for development should take that into account and recover the growth costs for those 500 residential units/HUEs.

It also implies that a council should able to determine when assets or programmes have been paid for and therefore, should no longer form part of the schedule of assets for which development contributions are being sought. See section 7.3.
Proportional cost allocations

Principle LGA02 s.197AB(c): Cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets.

Both benefit and causation must be considered when allocating costs between renewal, level of service and growth at the individual asset or programme level. The council must have a system for allocating the costs for all assets and programmes in the DCP that is consistent with this principle, especially the emphasis on proportionality. See section 3.8.

Grouping of developments

Principle 197AB(g): When calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that—

(i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and

(ii) grouping by geographic area avoids grouping across an entire district wherever practical.

Grouping by geographic area (catchments) and the type of land use (development types) assists practical implementation by enabling a degree of averaging in relation to:

- The charge per unit of demand, as growth costs are spread and shared between all growth in a catchment.
- Demand assessments, as all developments within a certain category will be assessed as having the same level of demand, regardless of individual variations.

This principle effectively allows consideration of administrative efficiency against fairness and equity – this results in an averaging effect. Any geographic catchment, or development type category will include winners and losers within it; for example, developments or areas that require less or more of the assets in the DCP schedule of assets, or developments that generate lower or higher demand than the average/typical property within the relevant development type.

Councils can make reasonable judgments about the level of variation that should be recognised (and associated averaging effects) when determining catchments and associated charges, and when assessing different development types. This enables development contributions, as a funding tool, to have relatively low transaction costs and provide a level of certainty for councils and developers.

The principle also creates a presumption against the use of district wide catchments. A council would be required to explain in its DCP why it is “not practical” to avoid such a catchment (i.e. why it has used a district wide catchment), where it has chosen to do so. See sections 3.4 and 3.7.
The use of development contributions

**Principle LGA02 s.197AB(d): Development contributions must be used—**

(i) for or towards the purpose of the activity or the group of activities for which the contributions were required; and  
(ii) for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required.

Councils must spend development contributions for the benefit of the catchment that they were collected toward the purpose of the relevant activity, i.e. providing growth-related stormwater assets, water assets, transport assets etc. That investment can be made outside of the catchment, provided it is still for the benefit of the catchment.

The term *purpose* in this principle refers to the provision of the activity to which the development contribution relates (i.e. stormwater, local reserves, roading etc) for growth.

*Purpose* does not mean the exact list of assets or programmes contemplated and defined in the DCP’s schedule of assets. LGA02 s.201A(5) and (7) make it clear that a council may spend funds collected on a different set of assets, provided the assets that are constructed are for the same general function and purpose as those set out in the schedule, and the schedule is or will be updated accordingly. See sections 2.3 and 6.4.

Information about development contributions

**Principle LGA02 s.197AB(e): Territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used.**

Councils should be proactive in demonstrating expenditure is compliant with the LGA02 and is in line with their DCPs, including by publishing information about:

- The use of development contributions revenue towards the activities and assets specified in the schedule of assets; or
- Alternatives that achieve the same general purpose and function. If alternatives are used, the reporting should also explain why.

There is no prescribed way or form for making this information available, so councils should consider (at a minimum) an annual report on assets or programmes constructed that year and funded by development contributions. A council may also wish to consider an annual update of the schedule of assets. See sections 4.9, 6.4 and 7.4.
Predictable development contributions

*Principle LGA02 s.197AB(f): Development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority’s development contributions policy under LGA02 s.106, s.201, and s.202.*

Development contributions are intended to provide a level of certainty for councils and developers about revenue and costs respectively. People must be able to determine what they are going to be charged for and that the charges imposed are consistent with the DCP.

Councils must not step outside of their DCPs when requiring development contributions, except where permitted by the DCP and the LGA02 (e.g. development agreements).

### 3.2 A FULLY INTEGRATED, TEAM APPROACH

DCP development and operation requires a team approach. Inputs are needed from growth, policy and infrastructure planners, resource and building consent teams, development engineers as well as finance and information technology staff.

**Figure 3.0. Council functions that inform and enable development contributions**

- **Growth Planning (see section 3.3)**
  - Growth forecasts
- **Asset Management Planning (see section 3.3)**
  - Capital programme
  - Capital expenditure
- **30-year Infrastructure Strategy**
  - Significant infrastructure issues
  - Proposals for funding and expenditure (information for schedule of assets)
  - Factors affecting levels of service
  - Estimates of projected capital
- **Financial Management**
  - Selecting funding sources
  - Total cost of capital expenditure for growth to be recovered by development contributions
- **Development Contributions Policy**
  - Activities and per-unit charges
  - Policy operating details
  - Summary of methodology
  - Schedule of assets for which contributions are or will be used
- **Regulatory Services**
  - Advice
  - Assess and require development contributions on consent applications and/or service connections
- **Management & Review**
  - Accounting
  - Monitoring
  - Reporting
  - Administration of objections and refunds etc.
Financial decisions and management

Financial decision making is informed by asset management planning which covers the council’s capital expenditure programme and how it relates to renewals, growth and levels of service – building the right asset, the right size, at the right time.

Councils must determine how to fund this expenditure from available funding sources. For capital expenditure on infrastructure these sources are usually rates, fees and charges, subsidies (e.g. from the New Zealand Transport Agency), development contributions (for the growth component) and financial contributions.

The evaluation of the appropriate funding sources is set out in a council’s Revenue and Financing Policy. This means that decisions relating to development contributions are integrated with other elements of the long-term and annual planning cycle. In most cases the DCP will be prepared and adopted alongside plans and strategies and will use the same assumptions (e.g. for inflation and interest rates). The DCP should be fully consistent with such plans and strategies. See sections 2.1 and 4.3.

Regulatory services

This section should be read in conjunction with chapters 4, 5, and 7.

The council must determine how to integrate the management of development contributions with existing regulatory processes. This includes early involvement of building and resource consenting and service connection teams, who generally take a lead role in administering the DCP.

The implementation of new or amended DCPs may require significant operational changes supported by careful planning and management over several weeks or months. It is also likely that DCP changes will involve changes to enterprise systems and related applications.

Key considerations include:

- The triggers for requiring development contributions.
- How the assessment process will be applied and recorded, including the steps taken to establish that a given application corresponds with a ‘development’.
- How applicants receive formal advice of the assessment.
- Assessment and handling of remissions, reconsiderations, and objections.
- When development contribution notices and invoices are issued, and when development contributions become payable.
- Checking development contributions have been paid before approvals or certificates (e.g. RMA s.224(c) certificates) are issued (unless the DCP allows for payment at a later stage).
- How prospective property purchasers can find information about development contribution liabilities (e.g. through land information memoranda issued under the Local Government Official Information and Meetings Act 1987).
- Record-keeping to support DCP operations - including payments, approvals, surrendered consents, stages of multi-stage developments, refunds and development agreements.
Staff authorisations to carry out DCP functions or exercise relevant council powers and how these are reflected in the delegations register.

Management and review
This section should be read in conjunction with sections 7.2 - 7.5.

Financial and accounting systems must be able to support development contributions, including identifying:

- Revenue received for each activity and catchment.
- Use of that revenue for items in the schedule of assets (or towards other assets with the same general function and purpose) within an appropriate timeframe (LGA02 s.197AB, s.209 and s.210).

Councils should also monitor:

- Growth and revenue to indicate when changes should be made to the capital programme. The programme may need to speed up, slow down, or be altered in other ways.
- Growth against assessed units of demand to check that the DCP is operating as expected and whether any changes are needed to the DCP or how it is administered. A programme of auditing assessment decisions should be part of this monitoring activity.
- The actual cost of delivering a capital asset or programme against estimates. This helps to identify when a DCP update is needed to ensure development contributions remain consistent with changing asset or programme delivery costs.

3.3 GROWTH PLANNING

Growth planning overview
Good growth planning is essential for the development of a DCP and the council infrastructure programme (which is based on the cumulative effects of growth). Such planning informs many of the policy decisions required in the DCP and is a fundamental component of the formula used for calculating development contributions.

All councils are required to undertake growth planning as part of their responsibilities under the RMA and LGA02. Some councils are also required to develop growth strategies under the National Policy Statement for Urban Development 2020. Others may choose to develop growth strategies for the benefit of their communities. These strategies may be supported by spatial or structure plans for particular areas.

Growth planning identifies the expected way that the district will grow and change over time, considering demographic and economic trends and the council’s District Plan and/or growth strategy. It is presented as projections of future population, residential units, and businesses at district and sub-district levels.

Councils usually commission economic studies or research to help inform long-term demand for different types of business land (including projections of gross floor area and associated employment).
Forecasts for long-term projections of population and residential units can be provided by private sector demographers or sourced from Statistics New Zealand. If a council uses Statistics New Zealand projections, it will need to choose between the low, medium and high series. Any modification of those figures, or the use of alternative projections, should be explained within any supporting information in the DCP.

The residential and non-residential projections need to be matched with areas, townships suburbs, or specific parcels of land to enable district spatial planning, asset planning, and DCPs to make use of them. This reflects the critical spatial element of growth. Growth occurs at specific locations and one part of a district may experience a high level of development, even as other parts of that district have a declining population or minimal development activity. This exercise should also recognise the uncertainty of future projections. This uncertainty increases the further out the forecast goes, and the smaller the catchments or areas concerned get.

Discussions between council officials and local developers can help refine council growth models. Developers will often hold information on market trends (e.g. changes in housing density) and the areas that are most feasible or attractive to develop.

Whatever approach a council uses, the growth assumptions used throughout the council should also provide the basis for the DCP.

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**National Policy Statement for Urban Development 2020**

The National Policy Statement for Urban Development 2020 (NPS-UD)\(^7\) places obligations on councils to provide sufficient land to serve the needs of housing and business over the short, medium, and long term.

The NPS-UD sets out minimum growth planning requirements that must be met by local and regional councils. For tier 1 and tier 2 local authorities (as defined in the NPS-UD), this includes a future development strategy, a housing and business needs assessment, bottom line growth estimates, and a requirement to provide a competitiveness margin.\(^8\)

The forecasts used for development contributions purposes should be consistent with this information, including any competitiveness margin. For planning and policy development purposes, the assumption should be that it will occur, and the council needs to account for it.

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**Growth planning and development contributions**

For development contribution purposes growth planning must:

- Be disaggregated enough to be able to provide projections at the catchment level used in the DCP.

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\(^8\) A competitiveness margin is a margin of development capacity, over and above the expected demand that tier 1 and tier 2 local authorities are required to provide, that is required in order to support choice and competitiveness in housing and business land markets. It is 20% for the first 10 years and 15% for years 11-30.
• Provide projections for both residential and non-residential development. These may be broken down further to different types or sizes of residential developments, or into different categories of non-residential developments (such as retail, commercial and industrial) depending on the size and sophistication of the council and its DCP.

• Be able to translate the projections into the **unit of demand** (units) used in the DCP for each infrastructure service. Projections of future units are a critical input to asset management planning, the capital programme, and the unit charges. The most common unit of demand used in DCPs is the household unit equivalent (HUE). Councils may use a different term, but they all represent the demand from a nominal residential unit on infrastructure services. For simplicity, this guide uses HUEs to represent this concept where applicable. See section 3.4.

Projections should extend to at least 30 years, consistent with the period covered by the council’s Infrastructure Strategy. Infrastructure capacity is lumpy and often provides capacity for longer than the 10 years of the Long-term Plan. Looking out 30 years or longer helps ensure that the council properly considers the capacity life of infrastructure when calculating development contributions (as required by LGA02 s.197AB(b)).

It is likely the council will need to adapt forecasts to provide a suitable base for the DCP and asset planning. The information may be used in other calculations or models to determine infrastructure demand changes over time, or adjustments may need to be made to account for non-chargeable developments.

**Growth in demand not connected with population increases**

Demand for services and infrastructure may change for reasons that are not connected with an increase in population. Examples include the impact of reducing average household size and changes in demographics. For example, consider a city with a constant population of 200,000 people, and an average household occupancy of 2.6 people per household. If the average occupancy reduces to 2.55 (in line with long-term trends) over 10 years with no change in population over that period, then the number of residential units needed effectively increases by 0.2 per cent each year, or around 1,500 residential units in total. This creates a demand for some forms of supporting infrastructure, even without any increase in population.

**Recognition and treatment of demand from developments where the DCP does not apply**

Some developments cannot be charged development contributions. For example, if the development:

• Is undertaken by the Crown. LGA02 s.8 means the Crown is not bound by provisions relating to development contributions. For example, school developments undertaken by the Ministry of Education. See section 3.3.

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9 Lumpy infrastructure is infrastructure that provides capacity in large increments. For example, a two-lane road can generally provide up to 18,000 vehicle movements per day; and pipes (especially large diameter pipes) often provide for a wide range of potential demands.
Is yet to be realised or constructed but all ‘trigger’ consents/authorisations were granted before the introduction of the council’s first DCP. A similar issue may arise if the development received consent before the introduction of an amended DCP that would have made it subject to development contributions - such as introducing a new catchment. If the development does not require any future consent/authorisation from the council, there will be no opportunity for the council to require development contributions.

Is on land that has historical credits under the DCP (see section 4.7). The development may not be required to pay any development contributions if the credits recognised under the DCP are greater than or equal to the assessed units for the development.

Does not require any ‘trigger’ consents or authorisations. For example, the District Plan might allow significant increases in impervious surface as a permitted activity, so a resource consent is not required. Another example would be exempted building work under the Building Act 2004.

As the DCP does not apply in these cases, where possible, council growth and revenue projections should identify such developments and the corresponding share of capital expenditure should be funded from a source other than development contributions. See sections 3.8 and 3.9.

Managing uncertainty of growth projections

The forecasts used for growth may be the most important assumptions used in the development of the DCP. The actual level of growth, its distribution, and composition could vary significantly from those assumptions. LGA02 s.201(1)(b) requires the DCP to recognise this and explain what the potential effects or impacts of that uncertainty could be.

For this reason, growth planning should allow the effect of different growth scenarios to be tested so that the related uncertainty and risks can be understood. At a high level, the impacts are likely to be as follows:

- Growth and revenue are higher than expected and the infrastructure programme may need to be accelerated.

- Growth and revenue are lower than expected and the infrastructure programme may need to be delayed. The shortfall in the council’s revenue may also lead to higher than planned debt and debt servicing costs and may constrain the council’s ability to undertake other capital works. Higher debt servicing costs may also increase future development contributions.

- Growth is in different locations from those assumed in the DCP. The impact of this could vary significantly depending on whether the council can change its infrastructure programme or has ‘stranded’ growth infrastructure with no funding source (at least temporarily). Depending on the circumstances, impacts could be similar to either of the higher- or lower-growth scenarios above.
- Growth composition is different from that assumed in the DCP. This may affect the infrastructure demand intensity of development and cumulative demands on infrastructure. If demand intensity is higher than expected, infrastructure capacity is used up more quickly than expected and more investment may be required. If demand intensity is lower than expected, capacity may be used more slowly. The council may even have excess capacity, the cost of which the council may not be able to recover from development contributions.

Ongoing monitoring of actual development patterns will help to ensure deviations from expected growth can be identified early and risks managed. See section 7.4.

3.4 UNITS OF DEMAND AND DEVELOPMENT TYPES

The calculation of a development contribution, and their application in DCPs is centred around the concept of a unit of demand.

A unit of demand is a common measure of demand for infrastructure services. It is intended to enable growth cost to be shared between different developments according to their relative levels of demand.

The unit of demand is used as the “measure” of growth in the calculation of development contributions. Consequently, we use units of demand in our basic formula for calculating development contributions from chapter two as follows.10

\[
\text{Development contribution per unit of demand} = \frac{\text{Infrastructure growth costs}}{\text{Total units of demand}}
\]

It is up to each council to determine the units of demand they use in their DCPs, and they may use more than one unit type if needed.

The most common approaches to units of demand are:

- Amount of land developed. Demand is assumed to be directly proportional to the amount of land developed.
- Household unit equivalent (HUE). Councils may use a different term, but they all represent the demand that a nominal residential unit places on infrastructure services. Demand for all developments is assessed relative to the demand from a nominal residential unit.

The chosen approach must be applied to different types of developments on a consistent and equitable basis, as required by LGA02 Schedule 13, cl.2. Councils must be able to translate or use the unit of demand for different types of developments. Each of these types must be defined, and the DCP must state how the number of units of demand for each type is assessed for each activity.

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10 This is a simplified expression of the calculation, ignoring adjustments normally made in the funding model to account for inflation, interest costs, indexing etc. See section 3.10.
The DCP is not expected to define every conceivable development type as such an approach would be unworkable. The selection of the set of development types for each DCP needs to recognise the limits to forecasting the exact nature of development accurately.

Where developments are grouped by categories of land use, the grouping must balance practical and administrative efficiencies with considerations of fairness and equity. This may lead to several different types of residential and non-residential developments.

The more categories of land use listed, the more information the council will need to be able to translate its units of demand to those land uses, and the more complex the DCP and its operation will become. Selecting a manageable number of development types to use should allow a reasonable and justifiable assessment of demand from a development without seeking to reflect the subtleties of each individual development.

This requires consideration of:

- Expected types of development and the number of each type.
- The range of demands from those types of development, on a scaled basis\(^{11}\) for each activity.
- The ability to define each development type in such a way that covers all developments, without overlap or ambiguity.
- Other provisions that might be made in the DCP for unique developments (e.g. special assessment or remissions).

The categories of land use the council uses should be consistent with those in the District Plan, the National Planning Standards\(^ {12}\) and in any land development standards and should, where possible, be reflected in the outputs of growth planning. A list of commonly used development types is shown in table 3.0.

**Table 3.0. Commonly used development types**

<table>
<thead>
<tr>
<th>RESIDENTIAL DEVELOPMENT TYPES</th>
<th>NON-RESIDENTIAL DEVELOPMENT TYPES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential lots or residential units</td>
<td>Educational facilities</td>
</tr>
<tr>
<td>Papakāinga or Kaumātua housing</td>
<td>Places of worship and other places of assembly</td>
</tr>
<tr>
<td>Retirement villages</td>
<td>Retail</td>
</tr>
<tr>
<td>Small residential units</td>
<td>Commercial</td>
</tr>
<tr>
<td>Visitor accommodation (hotel, motel, hostel, campground units)</td>
<td>Industrial</td>
</tr>
</tbody>
</table>

**Special assessments**

DCPs should also indicate how developments are to be treated if they generate:

---

\(^{11}\) For example, per residential unit for residential developments, per square metre of floor area for non-residential developments. This allows the scale or size of each development to be accounted for, as this is also a key driver of demand in most cases.

- an uncertain level of demand. For example, a council may choose to assess each development within a development type category individually against the demand measures for an activity. This approach could also be used for unusual developments that do not match any of the development types listed. i.e. an “other” category; or
- a level of demand that will be materially different from the level assumed in the DCP for that type of development. For example, developments that generate significantly higher or lower levels of demand for a given activity compared to the demands assumed in the DCP. Without some way of deviating from the standard assessment rates, these developments may materially under-contribute, or be required to over-contribute to the cost of providing growth infrastructure. This runs counter to the purpose of development contributions as set out in LGA02 s.197AA (specifically – the concept of proportionality).

Special assessments are the most common method for dealing with these issues. Special assessments enable an individual assessment of the demands placed on infrastructure by a particular development based on evidence and the unique features of that development. Special assessments should be based on the infrastructure demand measures used in the DCP when making this assessment (see below).

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**Household unit equivalent (HUE)**

Some DCPs may use a different term, such as Household Equivalent Units (HEUs), Household Units of Demand (HUDs) or Dwelling Equivalent (DE), but they all represent the same HUE concept used in this guide.

HUEs work well for all types of infrastructure, are important for a range of planning purposes, enable conversions for non-residential development, and are readily understood by most stakeholders.

**Infrastructure demand measures**

Councils using HUEs must determine how the demand from different types of development relates to the demand for each activity from a HUE. For example, how the demand from a retail mall or storage facility development compares with the demand from a residential unit for a particular activity.

This can be determined by referring directly to the demands placed on an infrastructure service by a nominal residential unit and used in the design for each type of infrastructure. The council can compare this with the demand placed on infrastructure services for other types of developments – and then make a conversion to HUEs.

For example, if households typically use 600 litres of water per day on average in a peak week, this becomes the HUE demand measure for water. This figure is used for design of new infrastructure and can be directly compared with the peak demands expected from other types of developments to determine their relativity. If retail developments are expected to use 200 litres per day on average per 100m\(^2\) of gross floor area, then 300m\(^2\) of retail gross floor area is equal to one HUE. Alternatively, 100m\(^2\) of retail gross floor area is equal to 0.33 HUEs.

A similar comparison can be made for other infrastructure services. A summary of demand measures that are often used for infrastructure services in DCPs is included in table 3.1.
Table 3.1. Common demand measures for determining assessment factors

<table>
<thead>
<tr>
<th>TYPE OF ACTIVITY</th>
<th>COMMON MEASURES</th>
<th>EXAMPLE OF 1 HUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stormwater</td>
<td>Impervious surface area</td>
<td>300m$^2$ of impervious surface</td>
</tr>
<tr>
<td>Transport</td>
<td>Trips per day, or vehicle movements per day</td>
<td>10 trips per day</td>
</tr>
<tr>
<td>Water supply</td>
<td>Litres per residential unit per day</td>
<td>600 litres per day</td>
</tr>
<tr>
<td>Wastewater</td>
<td>Litres per residential unit per day</td>
<td>480 litres per day</td>
</tr>
<tr>
<td></td>
<td>(wastewater is often a % of the water, for example 80%)</td>
<td></td>
</tr>
<tr>
<td>Reserves</td>
<td>Reserve land per residential unit</td>
<td>20m$^2$ per residential unit</td>
</tr>
<tr>
<td>Community infrastructure</td>
<td>Occupancy</td>
<td>2.5 people</td>
</tr>
</tbody>
</table>

These measures will need to be determined by each council as appropriate. Councils can also determine the “quantity” to use with each demand measure (such as 600 litres for water). A variety of sources can provide estimates for these, including:

- The data held by the council on water consumption, dry weather wastewater flows, and in geographic information systems for impervious surface areas and land uses.
- Professional service providers and consultancies.
- The NZ Trips database and Waka Kotahi.
- BRANZ.
- Surveys and field research.

The demand measures used should be consistent with any similar measures used in land development manuals, engineering standards, and/or the District Plan.

However, the demand measures do not need to account for all the complex factors typically involved in infrastructure design. For example, diurnal flows, wet weather flows, inflow and infiltration, fire-fighting flows and pressures, peak a.m. and p.m. traffic rates, Q5, Q20, and Q100 storm events etc may all need to be considered in designing and building infrastructure, but they do not need to all be used in the DCP. The measures used should be made as simple as practicable, provided they are clear and fair to the majority of developments.

HUEs can differ between councils because demands placed on services can differ significantly throughout New Zealand, as can the type of developments that predominate, or the range of developments that occur. These differences can be influenced by factors like:

- The character and density of a district or its growth areas. For example, whether it’s a dense urban area with more apartments and townhouse developments with lower individual impervious surface areas and small or no gardens per residential unit, or a low density small provincial town with large gardens.
- Industries or clusters that operate locally that have relatively low or high demand for services.
- Whether the council charges a flat rate per year for water or has water meters and volumetric charges (which may lower demand for water and, as a result, also lower wastewater discharges).
HUE assessment rates

Once demand measures have been determined they can be applied to the different development types.

Where a DCP uses a smaller number of broad development types, the council may rely more heavily on special assessments to determine development contributions, particularly for non-residential developments. When undertaking a special assessment, the council should be guided by the demand measures listed in its DCP.

Residential development types

Residential developments may be assessed at the rate of one HUE per residential unit or lot. This approach is simple to administer and commonly used.

Some councils differentiate between various types of residential developments to better align the assessment rates used in DCPs with the demands placed on infrastructure. While this may be considered fairer, it is more complex to administer, particularly in relation to subdivisions (discussed below).

Should the council wish to pursue a differentiated approach, assessments can be made based on the size of a residential unit, measured by the gross floor area or the number of bedrooms (or both). This recognises that there is a relationship (on average) between the size of residential unit and the:

- Number of occupants within residential units, which generally determines the demands placed on water, wastewater, transport, reserves, and community infrastructure.
- Amount of impervious surface area, which determines the amount of stormwater run-off created.

A simple example of this approach is illustrated in table 3.2, using bedrooms as a basis for setting differential HUE rates. This approach has the advantage of also being applicable to commercial residential facilities such as student hostels, visitor accommodation, or retirement villages. It requires a robust definition of a “bedroom” to ensure the system is not abused by people seeking to reduce their development contributions. The policy template developed alongside this guidance includes a definition that can be used for this purpose.

<table>
<thead>
<tr>
<th></th>
<th>MINOR RESIDENTIAL UNIT</th>
<th>SMALL RESIDENTIAL UNIT</th>
<th>STANDARD RESIDENTIAL UNIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Bedrooms</td>
<td>1</td>
<td>2</td>
<td>3 or more</td>
</tr>
<tr>
<td>HUE Discount</td>
<td>50%</td>
<td>25%</td>
<td>Nil</td>
</tr>
<tr>
<td>HUE assessment for all activities</td>
<td>0.5</td>
<td>0.75</td>
<td>1</td>
</tr>
</tbody>
</table>

As a small residential unit may change over time, the DCP will also need to address how development contributions will apply if it is enlarged. An approach to dealing with this, matching the table above, is illustrated in table 3.3.
Table 3.3. Example residential extension assessment HUE rates

<table>
<thead>
<tr>
<th>TYPE OF EXTENSION</th>
<th>ADDITIONAL HUE PAYABLE</th>
<th>TOTAL HUE PAID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extend Minor residential unit to a Small residential</td>
<td>0.25</td>
<td>0.75</td>
</tr>
<tr>
<td>unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extend Minor residential unit to a Standard residential</td>
<td>0.5</td>
<td>1</td>
</tr>
<tr>
<td>unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extend Small residential unit to a Standard residential</td>
<td>0.25</td>
<td>1</td>
</tr>
<tr>
<td>unit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Case study**

Auckland Council’s HUE rates for residential developments from its 2019 DCP are below. Note that Auckland has used gross floor area, rooms, and dwelling units as the basis for HUE differentials.
Differential residential HUE rates and subdivision

Differential residential HUEs work well for building consents, connection authorisations and land use consents that consider the nature of buildings to be constructed. However, residential differentials are more difficult to apply to subdivision consents where the size of the residential unit to be constructed on each lot may not be known. Subdivisions are usually the first opportunity to require development contributions. Accordingly, many councils choose to levy development contributions at this stage at the flat rate of one HUE per lot.
Each council will need to determine whether it applies differentiated residential rates to subdivision, and if they do:

- What information the council requires to support a lower residential assessment at subdivision stage.
- Whether the council will seek any top-up payments from the subdivider or building consent applicant. It will only be able to recover top-up payments from the subdivider if it has a formal agreement (i.e. contract) with them to that effect.

Alternatively, the council could assess the subdivision as one HUE per lot but agree to postpone payment until after building consent have been issued. The council can then reassess and reduce the development contributions payable accordingly. See sections 4.4, 4.8 and 5.5.

**Reserves development contributions and HUEs**

Development contributions for reserves are sometimes specified by reference to the value of the lot created or a minimum amount of land required per lot, rather than as a dollar amount per unit. Sometimes both approaches are used for different types of reserves infrastructure, see section 3.11. DCPs must be clear about how these approaches apply to different development types and the unit of demand used. An example is below from Nelson City Council’s 2018/2019 DCP. This makes it clear that a component of the charge is a fixed $ per HUE\(^{13}\), and that another portion of the contribution can be in money or land per HUE\(^{14}\).

<table>
<thead>
<tr>
<th>Activity</th>
<th>$ per HUD (exc GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NETWORK INFRASTRUCTURE</td>
<td>$11,680</td>
</tr>
<tr>
<td>Stormwater(^1)</td>
<td>$3,230</td>
</tr>
<tr>
<td>Wastewater</td>
<td>$5,000</td>
</tr>
<tr>
<td>Water supply</td>
<td>$2,050</td>
</tr>
<tr>
<td>Transportation</td>
<td>$1,370</td>
</tr>
<tr>
<td>COMMUNITY INFRASTRUCTURE</td>
<td>$280</td>
</tr>
<tr>
<td>Community infrastructure</td>
<td>$280</td>
</tr>
<tr>
<td>RESERVES</td>
<td>$1,160 + 40m(^2)/HUD</td>
</tr>
<tr>
<td>General reserves (^2)</td>
<td>$1,160</td>
</tr>
<tr>
<td>Neighbourhood reserve land</td>
<td>40m(^2) land/HUD, or cash equivalent</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$13,090</strong></td>
</tr>
</tbody>
</table>

---

\(^{13}\) Nelson City Council’s DCP uses the term Household Unit of Demand (HUD) instead of HUE, but they are the same unit of demand.

\(^{14}\) Nelson City Council’s DCP requires 40m\(^2\) of land per HUD. This is still in accordance with s.203(1) of the LGA02 as long as the total development contributions for reserves does not exceed 7.5% of the value of the additional lots created. See section 6.1.
**Non-residential development types and HUEs**

Non-residential development types used in DCPs will vary widely, but retail, commercial, and industrial are three types commonly used.

Gross floor area of buildings or impervious surface area (for stormwater) are often used as the primary basis for assessing HUEs for non-residential developments. Examples of how this can be expressed are in table 3.4. The numbers used in the examples will all result in the same HUE assessment.

**Table 3.4. Methods for relating HUEs to Gross Floor Area (GFA)**

<table>
<thead>
<tr>
<th>METHOD</th>
<th>EXAMPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 HUE = X m²</td>
<td>1 HUE = 125 m² GFA.</td>
</tr>
<tr>
<td>100 m² GFA = X HUEs</td>
<td>100 m² GFA = 0.8 HUEs.</td>
</tr>
<tr>
<td>1 m² GFA = X HUEs</td>
<td>1 m² GFA = 0.008 HUEs</td>
</tr>
</tbody>
</table>

Gross floor area may not be a good basis for calculating HUEs, and councils should consider alternatives that most accurately reflect actual demand.

Other bases for assessing HUEs for non-residential developments include:

- Size of water and wastewater laterals.
- Number of car parks provided.
- Equivalent vehicle movements (for example, one truck and trailer units = eight car trips).
- Runoff co-efficient (stormwater).
- Land area per lot (reserves provided).
- Occupancy.

Whatever approach is used, the supporting rationale should be clear, and alignment with the District Plan and/or Land Development Standards will make implementation easier.

Assessment HUE rates used can, and normally do, vary between different infrastructure services for any given development type. It is not necessary to prescribe just one assessment rate, such as 0.8 HUEs per 100 m² gross floor area, for all services. For example, most retail developments are likely to use a modest amount of water but will generate a relatively high number of vehicle movements. The assessment HUE rates the council uses in the DCP for different services can reflect these differences.

The different development types and their assessment HUE rates can be listed in a range of ways. Some councils even convert these to $ per measure of gross floor area to aid understanding of what will be charged. A simple example is shown in table 3.5. The HUE rates used here are for illustration only.

It is important from a DCP administration point of view that the underlying unit (e.g. gross floor area, lateral size) is readily available at the time of assessment and objective. This provides the developer with certainty, enables an efficient assessment and invoicing process, and avoids subjective arguments.
Table 3.5. Example assessment HUE rates based on 100m² GFA (*or impervious surface area for stormwater)

<table>
<thead>
<tr>
<th>DEVELOPMENT TYPE</th>
<th>WATER</th>
<th>WASTEWATER</th>
<th>STORMWATER*</th>
<th>ROADING</th>
<th>RESERVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial category 1</td>
<td>0.4</td>
<td>0.4</td>
<td>0.33</td>
<td>0.5</td>
<td>0.4</td>
</tr>
<tr>
<td>Industrial category 2</td>
<td>0.4</td>
<td>0.4</td>
<td>0.33</td>
<td>0.5</td>
<td>0.4</td>
</tr>
<tr>
<td>Retail large format</td>
<td>0.25</td>
<td>0.25</td>
<td>0.33</td>
<td>2.0</td>
<td>0.8</td>
</tr>
<tr>
<td>Retail less than 500m²</td>
<td>0.25</td>
<td>0.25</td>
<td>0.33</td>
<td>1.5</td>
<td>0.8</td>
</tr>
<tr>
<td>Commercial etc...</td>
<td>0.25</td>
<td>0.25</td>
<td>0.33</td>
<td>1.0</td>
<td>1.0</td>
</tr>
</tbody>
</table>

Case study

Selwyn District Council’s assessment HUE rates for non-residential developments (including retirement villages) from its 2018 DCP are below. Note that Selwyn has used gross floor area and occupancy as a basis for assessment and has also indicated that it will rely on special assessments for several development types.

Non-residential subdivision

It can be difficult to fully assess development contributions for non-residential subdivisions because the size or type of buildings to be constructed on the new lots may be unknown. In these cases, DCPs may delay all or most of the development contributions until the building consent stage. See section 4.8.

3.5 BUILDING THE INFRASTRUCTURE PROGRAMME

This section should be read in conjunction with section 4.5.
Asset management planning and growth forecasts include predictions of changes in service demand and the asset investments required for growth. This process also considers other investments needed for renewals and to meet the existing community’s future needs at the adopted level of service. Collectively, this forms an important input to the council’s Infrastructure Strategy.

Asset management planning is a well-established discipline with standards and associated training and qualifications. Consequently, this guide will focus only on elements that are critical to development contributions.

For development contributions, the process must consider assets already constructed in anticipation of growth and future growth assets and programmes for at least the 10 years of the Long-term Plan. However, infrastructure capacity often goes beyond the 10 years of the Long-term Plan. Consequently, it is recommended that growth-related asset planning extends to at least 30 years. A longer-term view of infrastructure enables careful consideration of the capacity life of infrastructure when calculating development contributions charges (as required by principle 197AB(b)).

It also enables councils to identify assets that are required for growth today that will be provided after the Long-term Plan period. Under LGA02 Schedule 13, councils can charge development contributions for assets programmed after the 10 years of the Long-term Plan provided those assets are listed in the schedule of assets. No limit to this ability is specified in the LGA02, although there must still be a causal relationship between development today and the need for the asset(s). The strength of this relationship is likely to diminish the further into the future an asset is expected to be provided.

The capital programme that results from asset management planning is one of the critical drivers for a DCP. The programme helps to identify the capital expenditure required to service growth. This expenditure is summarised and presented in several parts of the DCP, as well as forming a basis for the charges themselves. See sections 4.3, 4.4 and 4.5.

This asset planning process must also provide enough information on each asset or programme to understand the:

- Location, general function and purpose of the asset or programme.
- Capacity life of each asset or programme.
- Areas the asset or programme is providing capacity for.
- Elements of the asset or programme that relate to growth, renewal, and to meeting level of service requirements for existing residents and businesses.

This helps inform how much of an asset or programme’s costs should be allocated to and recovered from growth, over what period, and where. See sections 3.6, 3.7 and 3.8.

It may also be vital information for a development contribution objection or judicial review. The information should be documented and filed in a standardised way, such as in summary business cases, that also helps to ensure compliance with other good asset management practices.
Aggregating assets into programmes

Under LGA02 s.201A the council is entitled in its DCP to group individual assets together into logical and appropriate groups of assets that reflect the intended or completed programmes of works or capacity expansion. Councils should carefully consider the level of aggregation it uses in its schedules. Schedules that are too detailed create the potential for complications with LGA02 s.209 when removing elements of the schedule, and may require more detailed capacity life estimates, making it difficult to calculate and account for development contributions.

Assets delivered by council-controlled organisations

Councils often use council-controlled organisations to plan, manage and construct their infrastructure, including assets needed to provide for growth. The costs associated with growth-related assets can be recovered by the council through development contributions provided the expenditure is, or ultimately becomes, capital expenditure of the council.

The costs may also be recovered though development contributions where this is authorised by a specific legislative power, as is the case for Auckland Transport’s capital expenditure.15

Providing for growth

To confirm that an asset or programme is required to service growth, a council must confirm that either:

- The need for the asset or programme is primarily driven by growth. This can include mitigating the effects of growth on infrastructure or the environment.
- The asset or programme provides capacity or material benefits to growth (e.g. reserve development). This can include assets or programmes where the primary driver is renewal or levels of service, but growth is also being provided for. An example is a wastewater treatment plant being upgraded - there is a renewal portion for the replacement of the existing plant, a level of service component for the existing community to meet higher legislative requirements, and a capacity (growth) component to provide capacity for future development.

The growth-related costs of providing all of these assets can potentially be funded by development contributions.

A council should ensure it has robust grounds for including assets and programmes in its DCP as this is a focus for litigation.

Managing uncertainty risk associated with programme

Developing an infrastructure programme over 10-30 years requires making assumptions. Possible approaches to managing risks associated with these assumptions can include:

- Identifying opportunities to provide infrastructure in a scalable way.

15 Auckland Council is explicitly authorised to charge development contributions relating to capital expenditure incurred by Auckland Transport; see Local Government (Auckland Council) Act 2009, s.100.
• Evaluating the risks associated with providing some forms of infrastructure slightly earlier or later.
• Changing the timing or scale of the capital programme, or the location of larger projects.
• Making provision for larger development (e.g. through catchment arrangements, linking works to development milestones, or development agreements).
• Monitoring the rate and pattern of growth in the district.

3.6 CAPACITY LIFE

Development contributions should recover growth costs over the period that the assets or programme are expected to provide for growth (i.e. ‘capacity life’). The concept of capacity life is different to the concept of asset life. A pipe may take 30 years to reach capacity (capacity life) but may last 100 years in service (asset life).

Capacity life is usually expressed as the total units of demand/HUEs that the asset programme provides for. It is an important input into the cost allocation process, and in the calculation of development contributions.

For example, if an asset or programme provides growth capacity for 500 homes, expected over 20 years, then the calculations for development contributions should take that into account and recover the growth costs over 500 homes.

Recovery over a shorter period (say 250 homes expected within 10 years) will artificially increase the charge in the short term and may mean future developments do not contribute to meeting the cost of capacity provided for their benefit. Recovery over a longer period (say 30 years’ worth of growth – 750 homes) will mean future developments are contributing to the costs of an asset or programme that is not providing any capacity for them.

In practice, it is usually much more complex than in this simple example, and there is no single right way to determine capacity life, for example:

• Individual assets in a programme will have different capacity lives. The information requirements needed to determine the capacity life of each asset in a large programme can be demanding.
• Over time, a programme will provide a collective capacity life longer than the individual capacity lives of assets within the programme. This tends to be the level that most charges are calculated at.
• Assets may provide capacity for demand loadings that are never actually taken up (e.g. lumpy infrastructure).

Consequently, LGA02 s.197AB(b) provides that development contributions should be determined in a manner that is generally consistent with the capacity life of the assets. This tends to require a degree of simplification in determining capacity lives to ensure development contributions can be calculated and operated, while preserving the intent of this principle.

Approaches that can be used to do this include:

• Aggregating assets into a larger programme for the purposes of determining their collective capacity life.
- Simplifying capacity life into blocks of years.
- Determining capacity lives on the basis on the total (and maximum) number of units of demand in the catchment.

These are discussed further below. Whichever approach is taken, the supporting documentation, such as the summary business case, should make it clear how the capacity life for the asset or programme has been determined. A summary of the approach the council takes to determine capacity lives should be included in the supporting information in the DCP.

---

**Aggregating assets into a larger programme**

If the assets collectively provide capacity over time and logically form a programme, the council can estimate the number of units they collectively provide for over that time period and use that as the capacity life estimate for all of the assets in that programme. For example, a programme involving a series of wastewater pump station upgrades that individually provide only incremental capacity increases but collectively provide for 20 years’ worth of growth in a catchment.

This approach can be taken regardless of whether the DCP lists the asset as a single programme or individually. The case for applying a common capacity life should be clearly outlined in the supporting documentation.

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**Simplifying capacity life into blocks of years**

A council could simplify capacity life to the closest five years (i.e. ±2.5) or 10 years (i.e. ±5 years) and the number of units of demand expected in that time. This avoids false precision and enables it to cluster growth assets into 5 or 10-year period blocks, which simplifies calculations. It is also easier to track clusters of assets and monitor how much of their capacity life has been used and paid for, than it is to track hundreds of assets each with individual capacity lives in one-year intervals.

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**Determining capacity life based on the total (and maximum) number of units of demand in the catchment**

This approach addresses the problem of infrastructure provision where the full theoretical capacity of the asset will never be taken up by the catchment it is servicing (or by others). For example, a link road provided to a new greenfield area with theoretical capacity for up to 18,000 vehicle movements per day. However, the new area it services will only create a maximum of 9,000 vehicle movements per day from 2,000 homes over 150 hectares. In this case, the appropriate capacity life is 2,000 HUEs (or if the unit of demand is land developed, 150 hectares). A similar approach can be taken for most other assets or programmes.

Similarly, care should be taken in using a very long capacity life – it may not be practical to recover the cost of an asset over 50 years, and the interest implications can also be counter-productive.
The National Policy Statement on Urban Development (NPS-UD) requires tier 1 and 2 councils to provide a competitiveness margin when planning development capacity. A competitiveness margin is a margin of development capacity, over and above the expected demand that tier 1 and tier 2 local authorities are required to provide, that is required in order to support choice and competitiveness in housing and business land markets. It is 20% for the first 10 years and 15% for years 11-30.

This requirement does not affect the application of the “capacity life” principle to assets or programmes:

- If an asset is unchanged as a result of the competitiveness margin and provides for 15 years of growth (without the competitiveness margin) or for a fixed catchment, then the capacity life estimate is unchanged.
- If it affects the scope or capacity of an asset planned, the council may need to increase the estimate of the asset’s capacity life a result.
- If it requires new assets to be added to the programme, then the timing and capacity life of those assets should still be determined according to the capacity they provide.

The impact of the requirement to provide a competitiveness margin in planning will largely affect when capacity is taken up:

- If the competitiveness margin is taken up because of higher than expected growth, it will mean that the capacity is taken up in the relevant period.
- If the competitiveness margin is not taken up because growth occurs as expected, then some residual capacity will remain at the end of the relevant period. The council will still be able to take that into account in future DCPs and recover the cost of providing that capacity from future development at that point.

### 3.7 CATCHMENT DETERMINATION

Development contribution calculations and charges per HUE for each activity may be the same for the whole district or may vary for different ‘catchments’ in the district. Catchments are usually defined as areas within a map.

For each catchment, all the growth costs and growth are pooled for the purposes of calculating a charge per unit of demand that will apply in that catchment for an activity. To enable practical implementation and help keep transaction costs low, this involves a degree of averaging of growth costs across different developments and development areas within the catchment.

How many and how large catchments should be are decisions for each council to make when developing a DCP. Catchment arrangements can have a significant impact on the level of the development contributions charged in different parts of the district. Having more catchments tends to increase the complexity of developing and operating a DCP and the range of per-HUE charges across those catchments also tends to increase. Some small catchments may pay very high, targeted contributions.
When determining catchment arrangements for a DCP, a council must consider LGA02 s.197AB(g) which requires that grouping:

- Is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity.
- Across an entire district is avoided wherever practical.

Balancing these requirements is a matter of judgment.

If the council has fewer resources able to support the development and operation of DCPs, it may lean towards fewer catchments to ensure it can efficiently operate its DCP. This may apply if a council serves a smaller district, has only moderate growth and/or is new to development contributions. Conversely, larger councils with more resources and multiple, large development fronts are more likely to be able to support a DCP with a larger number of catchments, and so long as their overall approach is still generally fair and equitable.

Consideration should be given to fairness. For example, if developers could face extreme differences in development contributions across the district for similar levels of service. Or, developers in one part of the district (where growth costs are low) effectively subsidising developers in another part of the district where growth costs are high.

It should usually be possible to avoid grouping across an entire district, although this may be appropriate for some activities. For example, where a whole district is served by a single water or wastewater treatment plant or major roading improvements will benefit all of the district. In these cases, a council can set a single attachment or pro-rata costs to smaller catchments. The council should explain in its DCP why it is not practical to avoid use of a district wide catchment in these circumstances.

A council may also have more than one catchment affecting the same area for similar activities - but not to fund the same assets. For example, a council may set a district wide charge for community facilities that may fund a large pool complex, but also have smaller catchments and charges for local community facilities that reflect variations in the assets provided locally.

Other factors that may be helpful in determining the right catchment approach for each council include:

- The nature of each type of infrastructure and how it is used by the community.
- How development in different areas relates to demand, or the need for infrastructure and expenditure in the council’s programme.
- The benefits of signalling the costs of developing in particular areas (which may support separating areas where infrastructure requirements are markedly different).
- The degree of commonality across different areas (supporting aggregation where appropriate).
- The potential for and implications of vastly different per-HUE charges for sites that are near to each other.
- Whether infrastructure is supporting greenfield or brownfield development and any strategies the council has for encouraging intensification.
- The ease and certainty for developers to establish the catchments that relate to their developments.
The catchment arrangement does not need to reflect the variations in the degree of use of infrastructure that arise from locations within a served area. For example, it would be rare for catchments to be used to assign per-HUE charges to developments that differed depending on whether they connected at the upstream or downstream end of a network.

Whatever catchment approach a council determines is right for their district, catchments should be unambiguously defined. The DCP should also summarise the rationale used by the council for making its catchment decisions.

Infrastructure growth costs of individual assets or programmes must not be shared between district wide and local catchments in a manner that can result in any development incurring costs twice for the same growth capacity. The methodology that underpins the allocation of costs between district wide and local catchments should be clear in the DCP.

### 3.8 COST ALLOCATION

Asset management planning identifies the capital investment programme and associated expenditure required by the council. This programme is driven by three primary outcomes:

- **Renewal** – projects and expenditure that renew existing assets or replaces them with modern assets of the same capacity.

- **Levels of service** - projects and expenditure that are required to bring the service provided to the existing community up to the adopted level of service in the council’s Long-term Plan and asset management plans (sometimes called backlog).

- **Growth** – projects and expenditure that deliver service capacity to manage the increased demand from growth at the adopted level of service.

The design and analysis of the capital programme must recognise that infrastructure projects will often deliver more than one of these outcomes. For example, the installation of a new, larger stormwater pipe may address inadequate protection against flood risk for an existing community and also provide capacity to service new development areas. This achieves the required level of service for the existing community and provides for expected growth. There may also be an element of renewal, if all or part of the pipe is nearing the end of its useful life, which again is a benefit to the existing community.

An illustration of the different possible elements in a project is provided in figure 3.1.
Supporting funding decisions

The cost of a council’s capital works programme must be allocated across the three outcomes. This is required as part of council planning for capital expenditure under LGA02 Schedule 10, cl.3 regardless of whether development contributions are used as a funding tool.

The cost allocations between renewal, level of service, and growth are functions of asset replacement and provision of services. Regardless of funding source, the drivers of the project will remain the same.

Once information on capital expenditure for growth is available, a separate decision can be made on whether it is appropriate to use development contributions as a mechanism for funding this. See section 3.9.

To enable the council to understand the aggregate picture and calculate development contributions, the allocation of costs must be undertaken for each asset. If several assets are closely related, forming part of a wider programme of works, the council may instead undertake this apportionment at the programme level.

Cost allocations for development contributions

If development contributions are being used as a funding source, it is especially important that a rigorous, robust and repeatable cost allocation process is undertaken and documented by the council. A summary of the approach used should also be included in the DCP. See section 4.4.

The cost allocation process must also account for specific LGA02 requirements, namely:
The apportionment must occur for all assets or programmes in the past, in the Long-term Plan, and beyond the Long-term Plan if they are covered by the DCP.

The system used for apportioning costs must comply with the cost allocation principles embodied in LGA02 s.197AB(g).

LGA02 s.197AB(c) is clear: the cost allocation process should consider who benefits from the work, as well as who caused the need for the work and the allocation of costs should be proportional to this balance. It does not matter that growth might be the primary reason for undertaking the work. If the existing community benefits in some way, the council cannot allocate all costs to growth.

The council must devise a systematic way of allocating costs that focuses as much on benefits, as it does causation. There is no single right way to do this, but the sections below outline some of the common issues and provide guidance on ways to consider them in developing the cost allocation process.

A simple approach to cost allocation is to attribute costs according to demand at construction and growth thereafter, on an average cost of capacity basis. The formula for this approach is:

\[
Growth\ % = \frac{Demand\ at\ capacity - Demand\ at\ construction}{Demand\ at\ capacity}.
\]

Demand can be determined in a range of ways appropriate to the asset - m³ per day, impervious surface area, vehicles per day, or HUEs.

For example, consider a $1m project built in 2030 with a 20-year capacity life. Demand at construction is 5,000 HUEs, growing to 7,500 HUEs in 2040.

\[
Growth\ % = \frac{7,500 - 5,000}{7,500} = \frac{2,500}{7,500} = 33%
\]

The remainder of costs is a combination of renewal and levels of service, both funded by the existing community.

This approach is simple but does not distinguish between the level of service and renewal component (although both are often funded from the same source), and potentially under-allocates costs to renewal and over-allocates costs to growth. It also assumes only growth that occurs after construction of the asset causes or benefits from the asset and may not be appropriate for larger more complex projects.

For this reason, councils often use other approaches to cost allocation which deal with renewals first, before moving onto the cost allocation between level of service and growth. These approaches are discussed below.

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**Renewal**

All growth projects replacing an existing asset with a new asset of increased capacity, such as the stormwater pipe example on pg. 48, will involve renewal. Whether any costs should be
allocated to renewal will generally depend on how old the asset is and/or its condition. The justification for allocating costs to renewal increases the closer the asset is to the end of its useful life.

For example, upgrading the capacity of a long-life asset like a pipe which may have a useful life of 100 years. In the last 10 years of its life this clearly involves a substantial renewal component. If that same upgrade occurred half-way through its life (say 50 years), it is harder to form a compelling case that it is a renewal that benefits the existing community.\textsuperscript{16}

These two extremes are clear. In the instance where renewal would be needed soon anyway, renewal is a major driver and should be apportioned a significant share of the costs. The approach most councils take to this is to estimate the cost of the renewal works as a stand-alone project and compare that to the cost of the upgrade project. In the instance where renewal is several decades away, none of the costs should be attributed to renewal.

The challenge lies in crafting a system that enables a fair attribution of costs to renewal between these two extremes. Common approaches to dealing with this are to:

- Set a window (e.g. 10 years before the end of an asset’s life), within which renewal will be considered at full replacement cost. How large the window is may depend on the expected life of assets, with smaller windows for shorter-lived assets.
- Set a proportion of an asset’s life, say 80%, after which renewal will be considered at full replacement cost.
- Apply a sliding scale to the full replacement costs based on how far an asset is through its useful life (say 70%). This approximates the depreciation expenditure (and funding) that has accumulated on the asset.
- Do a combination of the above.

In all cases, the useful life should reflect the condition of the asset. If an asset is deteriorating substantially more or less than expected/normal, the useful life used in the assessment should reflect that situation.

Table 3.6 provides an example of a simple system for allocating costs to renewal where projects will replace an existing asset. The upgrade used in the example is a replacement stormwater pipe that costs $5m and provides additional capacity to meet the required level of service for:

- The existing community. e.g. the existing pipe was designed for a 1 in 5-year storm event, but the level of service is a 1 in 10-year storm event.
- Growth and development.

The cost of replacing the current pipe with a modern pipe of equivalent capacity to the existing one is estimated to be $3.5m.

\textsuperscript{16} From a purely accounting point of view, the council should have accumulated 50% of the pipe replacement value via depreciation, but this view does not fully take account of the requirements of LGA02 s.197AB(c).
Table 3.6. Simple renewal costs apportionment system

<table>
<thead>
<tr>
<th>ASSET LIFE</th>
<th>APPROACH</th>
<th>EXAMPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-70%</td>
<td>No apportionment to renewals.</td>
<td>Stormwater pipe is 40 years old and has 100-year life. No portion of the costs are attributed to renewal.</td>
</tr>
<tr>
<td>70-90%</td>
<td>Sliding scale - Apportionment to renewals determined by how far an asset is through the useful life</td>
<td>The pipe is 75 years old or 75% of the way through its useful life. 75% of the $3.5m equivalent replacement cost is attributed to renewal – $2.625m. The $2.625m is compared to the total cost of the project ($5m) to give a renewal proportion of 52.5%. The balance of the project cost - $2.375m - is apportioned between level of service and growth.</td>
</tr>
<tr>
<td>90-100%</td>
<td>Full replacement cost - Apportionment to renewal based on the full cost of a stand-alone renewal project</td>
<td>The pipe is 90 years old. This full amount of the replacement cost ($3.5m) is compared to the total cost of the project ($5m) to give a renewal proportion of 70%. The balance of the project cost - $1.5m - is apportioned between level of service and growth.</td>
</tr>
</tbody>
</table>

Whatever system a council uses, it will need to determine the basis it uses for estimating the cost of standalone renewals works. Two common approaches are outlined below:

- Use the equivalent replacement value as derived from the council’s asset management system. This information is easy and low cost to access and should be available already for all assets. However, the unit rates used in the system may be estimates and are likely to reflect a degree of averaging. They may not reasonably reflect actual replacement costs for some assets, particularly for large and/or complex projects.

- Commission an estimate of the standalone cost of the work. This is likely to provide a more accurate estimate of what would be the actual replacement cost of an asset but requires more time and will be costlier to commission.

After determining the value of any renewal component of the cost, the balance of the project’s cost will need to be apportioned between level of service and growth (discussed below).

**Average cost of capacity approach**

An alternative to the replacement cost approach is apportioning costs based on the average cost of capacity. For example, if existing capacity represents 25% of the capacity provided by the upgrade, 25% of the project cost should be attributed to renewal.

This is similar to the simple cost allocation approach discussed earlier. As this approach may result in growth subsidising the renewal of existing capacity, it should be used with care and may not be appropriate when renewal is a major driver of a project.

**Levels of service and growth**

Once the renewals share of a project has been determined, the balance of costs must be apportioned between level of service and growth.
Approaches to allocating costs between level of service and growth generally fit into one of five approaches, discussed below. Table 3.9 ranks these approaches against useful attributes of a cost allocation system.

**Average cost of capacity**

Appointed costs are based on the average cost of capacity. If 75% of the additional capacity (i.e. over and above renewal) provides for growth, 75% of the remaining costs are apportioned to growth.

In this apportionment method, it is assumed that the existing community and growth will benefit in proportion to the capacity provided for them. It is an especially useful approach for three waters assets, where capacity is likely to be well defined and is highly likely to reflect the benefit received (as required by LGA02 s.19AB(c)).

**Principal cost and marginal cost**

Identify the principal project driver and estimate the standalone costs of a project that provides capacity for that driver (principal cost). The difference between that cost and the full cost of the project is the marginal cost of providing for the other outcome.

For example, the principal driver for a wastewater treatment plant upgrade is to meet new consent requirements but the council is also taking advantage of the work to provide capacity for growth. A standalone upgrade that only provides for current demand levels may cost $7m, but a combined project may cost $8m. In this case, the council may attribute $7m to levels of service, and $1m to growth.

This approach may not adequately reflect the proportionality expected by LGA02 s.197AB(c), so it should be used with caution. The ‘piggy back’ effect benefits the second driver – the principal driver pays more for its share of capacity. It is not recommended when the principal driver is growth. This is because the marginal cost of providing the extra capacity (and potentially benefit) to cater for level of service is likely to be low. This outcome could be construed as growth subsidising level of service capacity.

**Future beneficiary split**

This approach looks at the number of existing and future units of demand (beneficiaries) in a catchment that will benefit from a project and allocates the cost of the project in proportion to the future beneficiary split. For example, a stormwater project will benefit the existing community (1,000 HUEs) and growth (500 HUEs) by delivering the targeted level of protection for all. The proportion of the project cost attributed to level of service would be 67% (1,000/1,500) and 33% (500/1,500) would be attributed to growth.

The cost apportionment tries to be a direct reflection of the benefits that the existing and future community will receive from the project. This broadly assumes that each ‘unit’ will enjoy an equal benefit (or at least will in aggregate). In some ways, this approach tries to mimic the average cost of capacity approach but makes greater use of a council’s growth forecasts directly.

This approach is especially useful for assets or programmes where capacity is:

- Harder to define, as may be the case for reserves.
• Lumpy, so not all the capacity may be taken up.

This approach requires careful consideration of how to define who benefits and the size of the catchment used, as these can have a significant impact on the apportionment. For example, a large new reserve intended to service a large area including existing communities should consider a large catchment and existing communities nearby. A small local purpose reserve, completely surrounded by new developments, should consider a very small catchment, which may consist entirely of growth.

**Expected use**

This approach looks at likely demands on the asset being constructed and uses that as the basis to allocate costs. For example, a new road or library may be needed to service growth but will also provide a benefit to existing residents. If 30% of the use is expected to be by existing residents, and 70% of the use is expected to be from growth, the council can allocate cost accordingly.

This can provide a useful basis for allocating costs if this information is available, particularly for assets where capacity is harder to define, or all of the capacity may not be taken up. However, its use can be limited by the kinds of assets being considered and by the availability of the information needed to make the assessment.

**Balanced qualitative assessment**

This approach uses an average of two scores derived from qualitative assessments - one score each for:

• Causation – the extent to which levels of service for existing residents or growth drives the need for an asset.

• Benefit – the extent to which existing residents benefit from an asset compared to future residents.

The scores are percentages ranging from 0-100% and could be in bands or fixed increments. The qualitative assessments can use standardised description statements, multi-criteria analysis or an assessment matrix to arrive at a score. A simple average of the two scores is used to reflect that LGA02 s.197AB(c) requires councils to consider who causes and who benefits from an asset. They both have equal weighting in this calculation.

This approach acknowledges that the information requirements for detailed technical assessments can be difficult or costly to apply in practice. It tries to codify and systemise “engineering judgment” so that it can be applied consistently and transparently across different assets and asset types.

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17 Hamilton City Council uses a more sophisticated version of this system for its DCP. Information on their system can be found on their website.

18 A weighted average could be used but would need a sound justification.
Potential factors that may be considered in the assessment are suggested below (although this is not an exhaustive list). The causation assessment factors listed here deliberately focus on the extent that non-development related factors drive a project. This ensures that the council turns its mind to those factors when considering causation, rather than focusing primarily on growth in any assessment. The level of service score can then be deducted from 100% to get the growth causation score.

**Causation:**

- The extent that there are capacity and growth demands that are independent from development;
- the significance of any level of service deficit being addressed (e.g. minor vs major improvement); and
- the range of levels of service being addressed (e.g. addressing one or three levels of service).

**Benefits:**

- The extent to which the identified benefits accrue to new residents compared to existing residents (e.g. minor benefit to existing residents); and
- which area(s) of the district will enjoy those benefits (e.g. a small existing area and a large growth area).

A simple illustration of the balanced qualitative assessment concept is below, using a basic scoring system. No guidance on making the assessment is provided here other than “none, very low” etc for simplicity. In this system, the score is deliberately limited to a maximum of 90% for each assessment to provide a level of conservatism and acknowledge uncertainties.

### Table 3.7. Balanced qualitative assessment scores

<table>
<thead>
<tr>
<th>Level of service deficit addressed / Extent of benefit (growth)</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very high</td>
<td>90%</td>
</tr>
<tr>
<td>High</td>
<td>70%</td>
</tr>
<tr>
<td>Medium</td>
<td>50%</td>
</tr>
<tr>
<td>Low</td>
<td>30%</td>
</tr>
<tr>
<td>Very low</td>
<td>10%</td>
</tr>
<tr>
<td>None</td>
<td>0</td>
</tr>
</tbody>
</table>

Once an asset or programme has been rated against both causation and benefit, the scores can be used to derive an average score which is used as the cost allocation. Some examples, using the scoring system above, are illustrated below.
Table 3.8. Balanced qualitative assessment examples

<table>
<thead>
<tr>
<th>ASSET COST</th>
<th>CAUSATION ASSESSMENT</th>
<th>BENEFITS ASSESSMENT</th>
<th>FINAL DEVELOPMENT CONTRIBUTION %</th>
<th>COST ALLOCATED TO GROWTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td>(B)</td>
<td>(C) i.e.100% - (B)</td>
<td>(D) i.e. (C+D)/2</td>
<td>(F) i.e. (A) x (E)</td>
</tr>
<tr>
<td>Cost of project</td>
<td>% of project capacity towards existing shortfall (level of service)</td>
<td>% of project capacity for development related reasons</td>
<td>% of benefits accruing to new residents as compared to existing residents</td>
<td>% Average of Step 1 and Step 2</td>
</tr>
<tr>
<td>$10m</td>
<td>70</td>
<td>30</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>$10m</td>
<td>30</td>
<td>70</td>
<td>50</td>
<td>60</td>
</tr>
<tr>
<td>$10m</td>
<td>50</td>
<td>50</td>
<td>30</td>
<td>40</td>
</tr>
<tr>
<td>$10m</td>
<td>0</td>
<td>100</td>
<td>90</td>
<td>95</td>
</tr>
</tbody>
</table>

There are many possible variations on this concept that councils can use, tailoring it to their needs. For example, a council may modify the benefit and capacity score weightings after considering the four well-beings (social, cultural, economic, environmental).

Table 3.9. Attributes of different apportionment growth/level of service systems

<table>
<thead>
<tr>
<th></th>
<th>ABLE TO BE USED ON A WIDE RANGE OF ASSET TYPES</th>
<th>EASE OF USE</th>
<th>REFLECTS PROPORTIONALITY</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average cost of capacity</td>
<td>~</td>
<td>✔</td>
<td>✔</td>
<td>Very good for a limited range of assets</td>
</tr>
<tr>
<td>Principal cost and marginal cost</td>
<td>✔</td>
<td>~</td>
<td>~</td>
<td>Caution should be used when principal driver is growth as system does not strongly reflect proportionality</td>
</tr>
<tr>
<td>Future beneficiary split</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>Good ‘all-rounder’ approach</td>
</tr>
<tr>
<td>Expected use</td>
<td>X</td>
<td>X</td>
<td>✔</td>
<td>Very good for a limited range of assets</td>
</tr>
<tr>
<td>Balanced qualitative assessment</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>Good ‘all-rounder’ approach</td>
</tr>
</tbody>
</table>

Capacity life and cost allocation

When considering all of these approaches, the council also needs to consider how the capacity life of the asset should be reflected in the costs allocated to growth. If the capacity life of the asset provides for growth beyond the 10 years of the Long-term Plan, then the cost allocation should reflect this with a greater share being allocated to growth.
The council will need to determine how to fund the extra share attributed to growth outside of the Long-term Plan period. The two main choices are to fund it via development contributions levied against ‘future’ developments (i.e. undertaken outside of the Long-term Plan period) or from other sources such as rates.

A council must not increase its current charges to fund the extra share. This would result in ‘current’ developments funding the cost of providing capacity for ‘future’ developments.

Pragmatically, it might consider limiting capacity life and cost recovery periods to a maximum of 30 years. The rationale is twofold. First, longer recovery periods necessitate demand projections that exceed 30 years, which are difficult to produce with any degree of certainty. Second, longer recovery periods increase the total interest costs associated with each project.

Sources of demand for additional capacity

Councils often presume that demand for additional capacity is (more-or-less) all development-related and therefore, development should be the funder. In reality, there can be other drivers and not all demand for additional capacity is development-related.

The need for additional capacity may reflect increasing demand from the existing population or from external sources. For example, traffic movements are known to increase (on a per-capita basis) with incomes and vehicle ownership. This increased mobility may, in turn, increase demand for community facilities (where demand is also sensitive to other factors, such as demographic shifts).

Where this effect is material, it should be considered in cost allocations with more capacity or benefit attributed to the existing community (or at least not to growth and development).

Third party contributions

Generally funding by a third party will not influence the initial cost allocation as the cost allocations between renewal, level of service and growth are functions of asset replacement and provision of services. Regardless of funding source, the drivers of the project will remain the same.

However, third party funding will ultimately affect how much of the costs are funded by development contributions and other council funding sources, and what is reported in the DCP.

A pragmatic approach could be to deduct third party funding from the cost of a project before considering cost allocations. However, caution should be taken when doing this as it can materially affect the subsequent cost allocations if there is a substantial renewal component. If the council deducts third party contributions, renewal will form a greater share of the net project cost. This may inadvertently shift more of the burden of council funding toward depreciation. The reason for the third-party funding is important to understanding how it should be treated. See section 3.9.
Catchments and cost allocation

New infrastructure may benefit growth and existing residents in a small single catchment, or may provide benefits widely, benefiting a number of catchments or even the whole of the district. For example, roading, trunk mains, and water or wastewater treatment plants often service large areas.

A council’s cost allocation process must take this into account when considering allocations to growth and existing residents, and between catchments. If every growth unit gets the same benefits (or the council can reasonably assume so), that should be straightforward. However, where the strength of causation or the scale of benefits materially differs between catchments, the council may need to consider its allocation between catchments more carefully.

These factors may also influence the catchment decisions that councils make. Councils can either apportion cost for infrastructure to individual catchments (which may be used for other activities as well) or establish a single larger catchment that includes all growth areas that benefit.

Case study

Hutt City Council included several proposed roading assets projects in its 2018-2028 DCP. Roading projects by their nature tend to be used widely, not exclusively by developments nearby. Their initial cost allocation apportioned costs between existing residents and growth at a city-wide level. They could have chosen to have a city-wide catchment for roading. Instead, they sub-allocated the development-related costs to several catchments (which they also use for other activities) based on expected use in relation to the roading infrastructure.

Documentation

Whatever cost allocation approach the council uses, it is strongly recommended that the approach is documented, and summarised in the DCP. Any instances where the council may depart from this standard approach should be well recorded in supporting information.

The council should make the documentation and record keeping process clear to staff undertaking cost allocation analysis. A simple process flow map that can be used or adapted for this purpose is illustrated below.
The cost allocation analysis for each project or programme should be recorded and held by the council should they be needed by the council in the future or to defend the allocations.

**Figure 3.2. Growth-related assets cost allocation process**

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**Community infrastructure constructed between August 2014 and May 2019**

The Local Government (Community Well-being) Amendment Act 2019 replaced and widened the definition of *community infrastructure* in the LGA02. It also introduced specific transitional provisions for councils wishing to recover through future DCPs part of the cost of any community infrastructure (as defined now) built between 8 August 2014 and 14 May 2019 that did not meet the definition of *community infrastructure* during that time. These transitional provisions include special requirements for listing these assets in the schedule of assets and allocating costs. See LGA02 Schedule 1AA, cl.15.
3.9 FUNDING DECISIONS AND FUNDING ALLOCATIONS

Once information on capital expenditure for growth is available from the council’s cost allocation process a separate decision must be made on whether, and to what extent, it is appropriate to use development contributions to fund these.

These decisions are guided by LGA02 s.101(3) and are recorded in the council’s Revenue and Financing Policy, which is the primary and over-arching statement on a council’s approach to funding its activities. It outlines how all activities will be funded, and the rationale for the preferred funding approach.

LGA02 s.106(2)(c) requires councils to explain their decisions on how to fund growth expenditure in their DCP, with reference to LGA02 s.101(3). See sections 2.2 and 4.3.

The five considerations set out in LGA02 s.101(3)(a) cover:

- The community outcomes to which the activity contributes.
- The distribution of benefits.
- The period over which the benefits are expected to occur.
- The extent to which the actions or inactions of parts of the community create or influence the need for the expenditure.
- The costs and benefits for funding the activity separately from other activities.

The Neil Construction and Ors v North Shore City Council [2008] judgment indicates that the council must consider, weigh and evaluate each of these factors, for each activity. It cannot consider a factor and then completely reject or exclude it. See section 13.1.

Under LGA02 s.101(3)(b), the council must also consider the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community. In Neil the Court called this a “stand back” check.

After considering these matters, a council may choose to fund all or a portion of growth costs from sources other than development contributions. Reasons for not funding via development contributions could include:

- Concerns about the level of development contributions and its impact on housing affordability or the encouragement of development in the council’s district.
- The benefits to the community from increased development, including increased economic activity and job opportunities.

A council may also be receiving third party funding for growth and this may affect how much can be recovered from developments contributions (see below).

The outcome of these decisions can be referred to as funding allocations.

The funding allocation assigned to development contributions is the initial basis for the amount to be recovered by development contributions. This amount may need to be adjusted to account for any financing costs before development contributions can be calculated. See sections 3.10 and 3.11.
Third party funding

How third party funding affects the funding allocation will depend on the purpose of the third party contribution. If the funding is from central government in the form of a subsidy for capital works (e.g. NZTA financial assistance), the default approach is to spread that funding across all drivers, reducing the funding required from development contributions and other council funding sources on a pro-rata basis. If the funding is for a specific purpose (e.g. increasing level of service), then the funding should be attributed to the relevant driver.

Where the funding is specifically for growth costs (say as part of a direct investment by a developer under a development agreement), then this will affect the portion of growth costs to be funded through development contributions. To comply with LGA02 s.200, funding from third parties must be subtracted from the amount that will form the basis for calculating the development contributions payable.

The impact of applying a default approach versus growth-targeted third party funding is illustrated in table 3.10, using a $1m project and $100,000 of third party funding.

Table 3.10. Example of third party impact on council funding allocations

<table>
<thead>
<tr>
<th>COST ALLOCATION</th>
<th>FUNDING ALLOCATION TO DCS AFTER ACCOUNTING FOR THIRD PARTY CONTRIBUTIONS*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Default approach for non-targeted third-party funding</td>
</tr>
<tr>
<td>Third party</td>
<td>$100,000 (10%)</td>
</tr>
<tr>
<td>Growth</td>
<td>$225,000 (22.5%) (i.e. pro-rata reduction in funding allocation)</td>
</tr>
<tr>
<td>Growth (i.e. $250,000 minus $100,000 of third-party growth-related funding)</td>
<td></td>
</tr>
</tbody>
</table>

* These are the figures a council must report in the DCP to comply with LGA02 s.201A.

As noted in section 3.8, many councils deduct third party funding from the cost of a project before considering cost allocations. This may inadvertently shift the funding burden toward renewal and may not properly account for third party funding targeted to growth expenditure. Consequently, caution should be taken if a council is using this approach. When accounting for third party funding, the approach outlined above is recommended.

Recognition and treatment of demand from developments where the DCP does not apply

As noted in section 3.3, some developments cannot be charged development contributions, such as Crown developments. In these cases, where possible, council growth and revenue projections should identify such developments and the corresponding share of capital expenditure should be funded from another source.
3.10 FUNDING MODEL

The council will need a development contributions funding model to determine how growth-related costs are recovered from different developments over time. The model may account for interest costs incurred and any annual inflation adjustment to the development contributions.

The funding model is a key step in the calculation of development charges because it helps the council understand the total cost of capital expenditure for growth - including interest or financing costs. This is the amount that can be recovered from development contributions. It also helps the council understand what its expected revenue, debt, and future charges will be.

To illustrate what a funding model does – consider a programme of growth expenditure totalling $2,060,633 over 10 years and a capacity life of 1,000 HUEs. The programme costs divided by capacity life equals $2,060 per HUE ($2,060,633/1,000 HUEs). However, the council will incur interest costs on debt it incurs to fund the programme. If it only charges $2,060 per HUE, it will not have received sufficient funding after 10 years to pay off all the costs (i.e. including interest). On the other hand, if it collects revenue ahead of undertaking the works, it may receive interest that should offset the overall costs that need to be recovered.

The funding model helps a council to estimate the interest costs it will incur (or receive) and then factor that into the development contributions. It tries to balance total revenue with total costs over time.

A simple example of this is presented in table 3.11. The table shows the (flat) charge needed to balance the total cash flows, including positive and negative financing costs, over the 10-year period at an interest rate of 5%. It gives a total cost of capital expenditure for growth of $2,195,922 made up of project costs ($2,060,633) and the total financing costs ($135,289), and gives a per-HUE charge of $2,196 ($2,195,922/1,000 HUEs).

Note that in this case financing adds approximately seven per cent to the per-HUE charge. For projects recovered over a longer time frame this difference can be much larger. For example, a main trunk sewer pipe or water supply works project may have expenditure being incurred at the start of the period which is recovered over 20 to 30 years. In this case, financing costs may be of a similar order to (or larger than) construction costs.
Table 3.11. Calculation of total cost of capital expenditure for growth accounting for timing of cash flows

<table>
<thead>
<tr>
<th>YEAR</th>
<th>CAPITAL EXPENDITURE FOR GROWTH (INFLATED) ($)</th>
<th>GROWTH HUES</th>
<th>PER-HUE CHARGE ($)</th>
<th>REVENUE LESS EXPENDITURE ($)</th>
<th>FINANCING COSTS ($)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>$5,490</td>
</tr>
<tr>
<td>2</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>$16,745</td>
</tr>
<tr>
<td>3</td>
<td>$306,030</td>
<td>100</td>
<td>$2,196</td>
<td>-$86,430</td>
<td>$20,911</td>
</tr>
<tr>
<td>4</td>
<td>$1,442,421</td>
<td>100</td>
<td>$2,196</td>
<td>-$1,222,821</td>
<td>-$10,775</td>
</tr>
<tr>
<td>5</td>
<td>$312,181</td>
<td>100</td>
<td>$2,196</td>
<td>-$92,581</td>
<td>-$44,199</td>
</tr>
<tr>
<td>6</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>-$43,233</td>
</tr>
<tr>
<td>7</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>-$34,415</td>
</tr>
<tr>
<td>8</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>-$25,155</td>
</tr>
<tr>
<td>9</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>-$15,433</td>
</tr>
<tr>
<td>10</td>
<td>$0</td>
<td>100</td>
<td>$2,196</td>
<td>$219,600</td>
<td>-$5,225</td>
</tr>
<tr>
<td>Total</td>
<td>$2,060,633</td>
<td>1,000</td>
<td></td>
<td>-$135,289</td>
<td></td>
</tr>
</tbody>
</table>

* Based on the half-year balance applying for 12 months (i.e. assuming revenue and spend are distributed evenly across each year). Negative figures are interest paid by the council.

The funding model needs to be able to undertake these calculations for all activities for all catchments, for as long as the charges will recover growth costs.

A simple funding model (in MS Excel for example) can run an iterative process to solve the equation. Each time it adjusts the charges, it affects future debt level and therefore interest costs incurred and charges - and keeps running this process until it balances cash flows. This same process can be used with other periods and can be rolled forward each year as required. More sophisticated models are available and are advisable for larger programmes and more complex DCPs.

Modelling will require the council to make several assumptions that should be recorded in the DCP, see section 4.4. These include assumptions about:

- Growth rates from the council’s growth planning to help determine revenue in any year.
- Inflation rates used for adjusting the estimated cost of future projects.
- Interest rates.
- When debt will be incurred to fund capital projects.
- The period the council modelling applies to.
- How interest costs are spread over growth units through time. Because different projects may have different capacity lives, the council is going to need to make some judgments about how far into the future these will be recovered over.

For the first 10 years, the first three assumptions should be the same as those the council uses elsewhere in its Long-term Plan.
**Flat or indexed charges**

The council will also need to decide whether it will levy a flat development contributions charge or annually adjust the charge, i.e. an indexed charge. A flat charge means that once it is determined, it will stay at that level and not increase. The charge will remain constant in nominal terms.

An indexed charge is adjusted annually by inflation. It will remain constant in real terms. In this case, LGA02 s.106(2B) and s.106(2C) provide that councils may increase development charges (excluding the interest cost portion) by the Producers Price Index Outputs for Construction provided by Statistics New Zealand. See section 4.9. These price increases can be factored into the funding model. In terms of the flat charge, the methodology for calculating development contributions Schedule 13, cl.1 of the LGA02 refers to the total cost of capital expenditure that a local authority expects to incur, which allows for the inclusion of inflation within the charges calculated under the methodology, as opposed to relying on an inflation adjustment under s.106(2C).

Both approaches can enable the council to recover the same amount of funds in present value terms. However, they have markedly different impacts on the funding model and how the charges will change over time, and therefore how the funding burden is shared across different developments that occur at different points in time. The flat charge approach also requires a local authority to make an assumption about the rate of inflation it will be using in its funding model.

To see how this works in practice, figure 3.3 shows the charges for a hypothetical project that will be recovered over 20 years. The first set of charges are fixed in nominal terms, while the second set is indexed to increase at 2.5% per annum.

Although both produce the same revenues in present value terms, the second set of charges are cheaper for roughly the first half of the asset’s capacity life, but more expensive thereafter. Charge indexation means developers that pay during the early years of asset capacity life pay less, and those that pay later pay more (relative to flat charges). This reflects that money paid earlier is worth more than money paid later. In this example, the indexed charge is roughly 20% cheaper than the flat charge in year 1, but about 30% higher by year 20.

**Figure 3.3. Example of flat vs indexed charges**
The use of a flat or indexed charge is an important decision for the council to make. It clearly has a significant impact on how costs are shared between developments over time. It will also have a significant impact on the complexity of the council’s funding model. Indexing is much more difficult to manage over time though various interactions of the DCP as circumstances change. The pros and cons of using flat charges vs indexed charges are summarised in table 3.12.

Table 3.12. Advantages and disadvantages of flat vs indexed charges

<table>
<thead>
<tr>
<th>PROS</th>
<th>CONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flat charge</td>
<td></td>
</tr>
<tr>
<td>• Policy and model simplicity and transparency.</td>
<td>• Loads costs up front for developers.</td>
</tr>
<tr>
<td>• Helps maintain debt because it generates greater revenues in the earlier years, which reduces early interest costs and in turn future debt levels.</td>
<td>• Loss of equity and efficiency, because flat charges don’t account for the increasing costs of servicing debt over time, or developers’ ability to pay.</td>
</tr>
<tr>
<td>Indexed charge</td>
<td></td>
</tr>
<tr>
<td>• Better matches cost of servicing debt over time.</td>
<td>• Funding model is much more complex and less transparent.</td>
</tr>
<tr>
<td>• Better matches cost of charges and developers’ ability to pay.</td>
<td>• Council’s debt levels will be higher initially compared to flat charge approach.</td>
</tr>
</tbody>
</table>

If a council is indexing charges, it is important that the funding model excludes the interest cost portion of the charge per unit of demand from the indexing calculations. LGA02 s.106(2C)(ii) prohibits the interest and financing cost portion of development contributions from being inflation-adjusted.

### 3.11 CALCULATING THE CHARGES PER UNIT OF DEMAND

The basic formula outlined in LGA02 Schedule 13 for calculating development contributions introduced earlier in this guide is:

\[
\text{Charge per unit of demand} = \frac{\text{Infrastructure growth costs}}{\text{Total units of demand}}
\]

Undertaking this calculation requires a lot of good information to support it. It is complicated by decisions required on capacity lives, catchment determination, the unit of demand used, cost allocations, the funding model used, interest costs and whether or not the council wishes to index its development contributions.

This section shows how to pull all of this together to derive the charges per unit of demand. Two approaches are discussed:

- A simple approach that can be undertaken where assets have similar capacity lives and the council is using a flat rate charge.
A more complex approach that accounts for multiple assets or programmes with differing capacity lives, and potentially the use of indexed charges.

In both instances, the calculations need to be undertaken in parallel with (or as part of) running the funding model. The funding model requires the capital expenditure-related components of the calculations to help estimate revenues and outgoings and the expected interest costs (or income) to include in the calculations. The funding model will also need to inform how the charges should be adjusted to account for any indexing.

A DCP must show how the development contributions charges are calculated. The approaches outlined below can be combined with the schedule required by LGA02 s.201A in the DCP. See sections 4.4 and 4.5.

### Simple development contribution calculations

The calculation of development contributions charges is straightforward if the council uses a flat rate charge and either:

- The catchment has very few assets.
- The assets within the catchment all have similar capacity lives.
- The council treats a series of assets as part of a wider programme which provides capacity over a longer timeframe.

The calculation to determine the charge per unit of demand is illustrated in table 3.13 for a single activity and catchment. An example is shown in italics. The calculated charge is $23,000 per unit.\(^{19}\)

#### Table 3.13. Simple charge per unit calculation

<table>
<thead>
<tr>
<th>ASSET</th>
<th>TOTAL CAPEX $</th>
<th>CAPEX % FUNDED BY DEVELOPMENT CONTRIBUTIONS</th>
<th>DEVELOPMENT CONTRIBUTION FUNDED $</th>
<th>RECOVERABLE GROWTH / CAPACITY LIFE (UNITS)</th>
<th>CHARGE PER UNIT (GST EXC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Growth Expenditure</td>
<td>A $5,000,000</td>
<td>B 80%</td>
<td>C $4,000,000</td>
<td>E 200</td>
<td>DC1 = C/E $20,000</td>
</tr>
<tr>
<td>Loan Interest</td>
<td></td>
<td>IC $600,000</td>
<td></td>
<td>E 200</td>
<td>DC2 = IC/E $3,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>TGC = C+IC $4,600</td>
<td></td>
<td>DCT = DC1+DC2 $23,000</td>
<td></td>
</tr>
</tbody>
</table>

**Key**

A = Total Capex (GST exclusive). Inflation-adjusted for future projects. Actual capex incurred for past assets.

B = Proportion of capex to be funded by development contributions.

C = Costs to be funded by development contributions.

E = The units of growth over which DC funded costs are to be recovered. This will be the capacity life of the asset(s) in most cases except where special circumstances apply.

DC1 = programme capital costs per unit.

IC = Interest costs incurred derived from the funding model.

---

\(^{19}\) This example uses inflation-adjusted capital expenditure figures. It is possible to use capital expenditure figures that are not inflation-adjusted but the funding model will need to take this into account and make appropriate allowances for interest and inflation.
DC2 = Interest cost per unit.
TGC = Total costs of capital for growth to be recovered from development contributions (i.e. capex plus interest).
DCT = Charge per unit (GST exclusive) for the catchment and relevant activity.

**Complex development contribution calculations**

In practice, most development contributions calculations will be more complex as each catchment will involve a range of assets with different capacity lives, some of which may already have been constructed and some which may be planned to be constructed beyond the 10 years of the Long-term Plan. This effectively means a charge needs to be calculated at the individual asset or programme level. This is summed and then combined with interest costs per unit to give the charge.

Different capacity lives also make it much more complicated to spread interest costs in the funding model and will require that the council make decisions about how to recover these in the development contributions calculations. If a council wishes to use indexed charges, the funding model becomes more complicated again.

Taking these factors into consideration, the calculations will need to take on a form similar to table 3.14 for each activity and catchment. An example is shown in italics. The calculated charge per unit is $12,700 if flat charges are being used, and $10,400 if indexed charges are being used.

Another example of how these calculations can be shown in a DCP along with the requirements of LGA02 s.201A is illustrated in section 4.5 and in the DCP template that is published alongside this guidance.

**Table 3.14. Complex charge per unit of demand calculation**

<table>
<thead>
<tr>
<th>ASSET</th>
<th>TOTAL CAPEX ($)</th>
<th>CAPEX % FUNDED BY DEVELOPMENT CONTRIBUTIONS</th>
<th>DEVELOPMENT CONTRIBUTION FUNDED ($)</th>
<th>RECOVERABLE GROWTH / CAPACITY LIFE (UNITS)</th>
<th>CHARGE PER UNIT (GST EXC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Future project 1</td>
<td>A1 $200,000</td>
<td>B1 100%</td>
<td>C1 = A1 x B1 $200,000</td>
<td>E1 400</td>
<td>DC1 = C1/E1 $500</td>
</tr>
<tr>
<td>Future project 2</td>
<td>A2 $800,000</td>
<td>B2 50%</td>
<td>C2 = A2 x B2 $400,000</td>
<td>E2 200</td>
<td>DC2 = C2/E2 $2,000</td>
</tr>
<tr>
<td>Historic project 3</td>
<td>A3 $1,200,000</td>
<td>B3 50%</td>
<td>C3 = A3 x B3 $600,000</td>
<td>E3 100</td>
<td>DC3 = C3/E1 $6,000</td>
</tr>
<tr>
<td>Historic project 4</td>
<td>A4 $4,000,000</td>
<td>B4 75%</td>
<td>C4 = A4 x B4 $3,000,000</td>
<td>E4 1,000</td>
<td>DC4 = C4/E2 $3,000</td>
</tr>
<tr>
<td>Loan Interest</td>
<td></td>
<td>IC $600,000</td>
<td>Eic 500</td>
<td></td>
<td>DCIC = IC/Eic $1,200</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>TGC = C1 + C2 + C3 + C4 + IC</td>
<td></td>
<td>RDCT = DC1 + DC2 + DC3 + DC4 + DCIC</td>
<td>$12,700</td>
</tr>
<tr>
<td>Index Charge Adjustment*</td>
<td></td>
<td>(IDA)</td>
<td></td>
<td></td>
<td>(2,300)</td>
</tr>
<tr>
<td>Adjusted Development Contribution</td>
<td></td>
<td></td>
<td></td>
<td>ADCT = RDCT + IDA</td>
<td>10,400</td>
</tr>
</tbody>
</table>

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Key

$A_x =$ Total capex (GST exclusive) for asset or programme 1, 2 etc. Inflation-adjusted for future projects. Actual capex incurred for past assets.

$B_x =$ Proportion of capex for asset or programme 1, 2 etc to be funded by development contributions.

$C_x =$ Costs of asset or programme 1, 2 etc to be funded by development contributions.

$E_x =$ The units of growth over which DC funded costs are to be recovered for asset or programme 1, 2 etc. This will be the capacity life of the asset(s) in most cases except where special circumstances apply.

$DC_x =$ Charge per unit for asset or programme 1, 2, etc.

$IC =$ Interest costs incurred derived from the funding model.

$EIC =$ Recoverable units used for the purpose of interest cost recovery.

$DCIC =$ Interest cost per unit.

$TGC =$ Total costs of capital for growth to be recovered from development contributions (i.e. capex plus interest).

$RDCT =$ Charge per unit (GST exclusive) before any adjustment to account for charge indexing. If a flat rate charge system is being used the RDCT is the development contributions charge for the catchment and the relevant activity.

$IDA =$ Adjustment made to RDCT to account for any indexing of charges. This is derived from the funding model and will lower the charge levied in the first few years of recovery.

$ADCT =$ Charge per unit (GST exclusive) for the catchment and the relevant activity after adjusting to account for charge indexing.
This chapter provides guidance on the content required in a DCP and the process for adopting a DCP.\textsuperscript{20}

The scale and complexity of a DCP should be appropriate for the size of the council and district, and the extent of growth within it. If the council is small, new to development contributions, and/or expecting only modest growth, it is likely to be able to make the DCP and the policy decisions within it simpler.

4.1 A GOOD PRACTICE GUIDE TO POLICY DEVELOPMENT

The importance of clarity

As for the other mandatory financial policies, the DCP aims to provide certainty on sources and levels of funding. The DCP will often form the basis for raising millions of dollars. It imposes material costs on those carrying out development.

Some who become liable for development contributions will be very experienced in such dealings with councils, while many will not be regular property developers. The DCP should therefore be clear and understandable to the general public.

To aid understanding, use plain English where possible and examples to explain and illustrate ideas or processes. The wording of the DCP will underpin its success in communicating council requirements to a diverse audience.

A council may only require development contributions under a DCP which complies with the statutory requirements for DCPs (ref LGA02 s198(2)). High Court cases on development contributions have considered the wording of several different development contribution policies. Judgments have confirmed the importance of clarity and following the provisions of the LGA02. It is expected that councils will take appropriate legal advice on the drafting of their DCPs.

\textsuperscript{20}At the time of publishing this guide, the Local Government (Rating of Whenua Māori) Amendment Bill is progressing through Parliament. The intentions of this Bill are to support the development and provision of housing on Māori land and to modernise rating legislation affecting Māori land. The Bill proposes to amend s.102 of the LGA02 to provide that an additional purpose of adopting funding and financial policies (including DCPs) is to support the principles set out in the Preamble to Te Ture Whenua Maori Act 1993. It is not yet clear how DCPs will need to give effect to this purpose.
Customer-focused information

Information about development contributions should be accessible for people that are contemplating building work, subdivisions, or other forms of development. Aside from the DCP itself and information that the council is required to make available, it is good practice to make maps or assessment tools available through the council’s website, and to provide guides or frequently asked questions (FAQs). This helps customers understand the DCP and how it applies to their circumstances.

4.2 CONTENT AND STRUCTURE OF A POLICY

Content requirements

Most of the LGA02 content requirements for a DCP are in s.106, s.201, s.201A, s.202 and s.202A. These are summarised in the table below and discussed in more detail in sections 4.3-4.6.

Table 4.0. Summary of LGA02 DCP content requirements

<table>
<thead>
<tr>
<th>SECTIONS OF LGA02</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>106(2)</td>
<td>Funding and funding policy summary</td>
</tr>
<tr>
<td></td>
<td>Requires the DCP to:</td>
</tr>
<tr>
<td></td>
<td>• Summarise and explain the total cost of growth-related capital expenditure identified and expected for community facilities.</td>
</tr>
<tr>
<td></td>
<td>• State the proportion of that total cost which will be funded by development contributions, financial contributions, or other sources of funding.</td>
</tr>
<tr>
<td></td>
<td>• Provide an explanation of the choices the council has made when deciding to use those funding sources, by reference to the considerations in LGA02 s.101(3).</td>
</tr>
<tr>
<td></td>
<td>• Provide a high-level summary of the cost of providing infrastructure for growth, including specification of the total amount of funding sought from development contributions or financial contributions, for each activity or group of activities which will require such funding.</td>
</tr>
<tr>
<td></td>
<td>• Provide a summary of the council’s financial contribution provisions (which would be contained in the District Plan) if the council uses financial contributions.</td>
</tr>
<tr>
<td>201 and 202</td>
<td>Charges per unit of demand</td>
</tr>
<tr>
<td></td>
<td>Together these sections require the DCP to:</td>
</tr>
<tr>
<td></td>
<td>• List the charges that will apply for each activity for each catchment and to specify how the triggers in LGA02 s.198 will be used in the DCP.</td>
</tr>
<tr>
<td></td>
<td>• Explain and justify how the charges are calculated.</td>
</tr>
<tr>
<td></td>
<td>• Outline the significant assumptions underpinning the DCP and how the charges were calculated.</td>
</tr>
<tr>
<td></td>
<td>• State the council’s policy on development contribution remissions, refunds and postponements.</td>
</tr>
<tr>
<td>201A</td>
<td>Schedule of assets</td>
</tr>
<tr>
<td></td>
<td>Requires the DCP to provide a schedule detailing the assets or programmes that development contributions will fund, including the estimated cost, percentage funded by development contributions, and percentage funded from other sources. The schedule(s) must include past and future assets, and the assets must be grouped by catchment and activity.</td>
</tr>
<tr>
<td>SECTIONS OF LGA02</td>
<td>COMMENTS</td>
</tr>
<tr>
<td>------------------</td>
<td>----------</td>
</tr>
<tr>
<td>202A</td>
<td><strong>Reconsideration process to be in DCP</strong>&lt;br&gt;Requires the DCP to set out the process for requesting development contribution reconsiderations.</td>
</tr>
</tbody>
</table>

To be effective and to fully comply with the LGA02, a DCP should also include:

- The policy and administration decisions enabled by the LGA02 that have been made by the council.
- References to (and explanations of) important statutory provisions that govern development contributions.

These impact the DCP and how it is administered so they should be clear to both council staff and the public. These are discussed in sections 4.7 and 4.8.

**DCP structure**

A DCP that simply follows the order that requirements appear in the LGA02 will be confusing. That approach would result in an illogical presentation of policy justification and administrative elements. Many of the things customers will want to find out about on a ‘day-to-day’ basis would also end up near the back of the document.

A structure that is more intuitive for readers, especially for members of the public, is desirable. For example, the DCP could be structured to clearly distinguish between often-used ‘key administrative elements’ and information that is largely policy background and justification:

- **Key administrative elements**: Information needed to understand if, when, and how development contributions and financial contributions will apply to developments, explain peoples’ rights, and the steps required to properly operate the DCP. This is what most customers are going to want to know most of the time. The sections of the DCP that are particularly relevant to this include:
  - The charges and catchments.
  - How assessments will be carried out.
  - The points when development contributions will be assessed and when they must be paid.
  - Guidance for reconsiderations and objections.
  - Criteria and considerations for remissions and postponements, if any.
  - The glossary or definitions section.

- **Policy background and justification**: Information needed to explain the council’s policy decisions and how the development contributions were calculated, and to comply with the accountability and transparency requirements of the LGA02.

A policy template developed alongside this guidance provides a user-friendly structure that will help councils to comply with the LGA02 and follow the recommendations of this guide.
4.3 FUNDING AND FUNDING POLICY SUMMARY

LGA02 s.106(2) requirements overview

LGA02 s.106(2) requires councils to provide a high-level summary of the cost of providing infrastructure for growth and how this is funded. Also required is an explanation of the choices made when deciding to use development contributions or financial contributions and a summary of financial contributions (if used). In particular, the DCP is required to:

- Summarise and explain the total cost of capital expenditure (across all activities) that the local authority expects to incur (or has incurred) to meet the increased demand for community facilities resulting from growth.
- State the proportion of that capital expenditure cost that will be funded by development contributions, financial contributions, and other sources of funding.
- Identify separately each activity or group of activities for which a development contribution or a financial contribution will be required and specify the total amount of funding to be sought by development contributions or financial contributions.
- Explain, in terms of the matters required to be considered under LGA02 s101(3)\(^\text{21}\), why the local authority has determined to use these funding sources to meet expected capital expenditure costs.
- Summarise the provisions that relate to financial contributions in the District Plan under the RMA.
- Provide the information outlined in LGA02 s.201 and s.202A (this is specified under LGA02 106(2)(e) and is discussed in section 4.4).

The requirements of LGA02 s.106(2) relate to growth costs funded by development contributions and by financial contributions. The policy must cover both.

Guidance on LGA02 s.106(2)(a), (b) and (d) requirements: Total cost of capital expenditure for growth and funding sources

Collectively, these requirements mean the DCP must summarise and explain the:

- Identified total cost of capital expenditure across activities that the council expects to incur (or has incurred) to meet increased demand from growth, for each activity. This must be the entire growth-related cost of capital expenditure and not just the amount proposed to be funded by development contributions.
- Activities that development contributions will be charged for. The names and coverage of the activities can be chosen by the council; however, these should align with the activities described in the Long-term Plan and asset management framework so that linkages between the DCP and the Long-term Plan can be easily made. Any difference should be clearly explained. See section 2.3.

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\(^{21}\) Note in particular LGA02 s.101(3)(ii) and (iv) which relate to consideration of the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals, and the extent to which the actions or inactions of particular individuals or a group contribute to the need to undertake an activity
Total amount proposed to be funded by development contributions or financial contributions (separately), for each activity. Note - this may be different from the costs allocated to growth if not all growth costs are funded by development contributions.

Proportion of the total cost of capital expenditure (for each activity) to be met from development contributions, financial contributions and other sources.

When compiling this information, ensure that the capital expenditure totals account for growth-related works that:

- Were undertaken in anticipation of growth (i.e. past assets or programmes).
- Are programmed in the Long-term Plan.
- Are outside of the 10 years of the Long-term Plan that are included in the DCP.

It is usual practice for the capital expenditure figures used in these calculations to be exclusive of financing costs i.e. they should relate to the inflation-adjusted budgets for future assets or programmes and the outturn costs for past assets or programmes. This ensures that the funding apportionment reported relates to the direct cost of an asset or programme, and not to how it is financed over time. However, the schedule should ensure that the total costs to be recovered by development contributions are inclusive of any interest or financing costs.

A simple example of how this information can be presented is below. In this case, all growth costs are being funded by development contributions. If some of the growth costs were being funded from other sources, the Growth Capex column and the Development Contribution Funded Capex column may have different figures.

### Table 4.1. Total cost of capital expenditure for growth and funding sources

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>TOTAL CAPEX</th>
<th>GROWTH CAPEX</th>
<th>DEVELOPMENT CONTRIBUTION FUNDED CAPEX</th>
<th>DEVELOPMENT CONTRIBUTION INTEREST</th>
<th>TOTAL AMOUNT TO BE FUNDED BY DEVELOPMENT CONTRIBUTIONS</th>
<th>TOTAL CAPEX PROPORTION FUNDED BY DEVELOPMENT CONTRIBUTIONS</th>
<th>CAPEX PROPORTION FUNDED FROM OTHER SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total water supply</td>
<td>$12M</td>
<td>$10M</td>
<td>$10M</td>
<td>$0.7M</td>
<td>$10.7M</td>
<td>83%</td>
<td>17%</td>
</tr>
<tr>
<td>Water supply area 1</td>
<td>$10M</td>
<td>$8M</td>
<td>$8M</td>
<td>$0.5M</td>
<td>$8.5M</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Water supply area 2</td>
<td>$2M</td>
<td>$2M</td>
<td>$2M</td>
<td>$0.2M</td>
<td>$2.2M</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Total transport</td>
<td>$20.5M</td>
<td>$12M</td>
<td>$12M</td>
<td>$1.2M</td>
<td>$13.2M</td>
<td>59%</td>
<td>41%</td>
</tr>
<tr>
<td>Transport area 1</td>
<td>$5.5M</td>
<td>$2M</td>
<td>$2M</td>
<td>$0.2M</td>
<td>$2.2M</td>
<td>36%</td>
<td>64%</td>
</tr>
<tr>
<td>Transport area 2</td>
<td>$15M</td>
<td>$10M</td>
<td>$10M</td>
<td>$1M</td>
<td>$11M</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>$32.5M</td>
<td>$22M</td>
<td>$22M</td>
<td>$1.9M</td>
<td>$23.9M</td>
<td>68%</td>
<td>32%</td>
</tr>
</tbody>
</table>

This information is intended to be a high-level summary. It is complementary to, and should be consistent with, the detailed schedule of assets required by LGA02 s.201A which provides similar information at the asset/programme level for each activity for each catchment.

Depending on the complexity of the DCP, it may even be possible to combine the information required by both sections in one table. If this is done, the DCP must make it clear that the resultant table is designed to fulfil the requirements of both sections of the LGA02.
Case study

Hamilton City Council’s 2019/20 DCP contains the information required by LGA02 s.106(2)(a), (b), and (d) in Schedule 2 of its policy (first page below). Note that the schedule is clear in how it treats the interest costs expected to be recovered from development contributions. It excludes interest costs from the capital expenditure sums and percentage calculations, but ensures they are included in the total costs to be recovered via development contributions.
LGA02 s.106(2)(c): Funding analysis

LGA02 s.106(2)(c) requires that the council explain and justify in the DCP its decisions on how to fund growth expenditure, with reference to the matters set out in LGA02 s.101(3). This analysis must be consistent with the council’s adopted Revenue and Financing Policy but can provide more detail specific to the growth expenditure and the activities funded in the DCP. See section 3.9.
Summary of financial contribution provisions

If the council uses financial contributions under its district or regional plan, then these provisions need to be summarised in the DCP. This summary can be brief, and should reference the plan provisions, including the purposes that the financial contributions are collected for because this will help users understand how financial contributions and development contributions work together.

4.4 DEVELOPMENT CONTRIBUTION CALCULATION AND APPLICATION

LGA02 s.201 and s.202 set out information that must be provided about how and when development contributions apply and how they were calculated.

Specifically, LGA02 s.201 and s.202 require a DCP to:

s.202

- Include a schedule of development contributions payable in the district (or part of a district) in relation to reserves, network infrastructure and community infrastructure.
- Specify the event or trigger that will give rise to a development contribution being required (i.e. a resource consent 22, building consent, certificate of acceptance, or service connection authorisation).

s.201

- Explain and justify the way each development contribution in the schedule is calculated.
- Outline the significant assumptions underlying the calculations.
- Specify the conditions and criteria that will apply in relation to the remission, postponement, or refund of development contributions, or the return of land given in lieu of development contributions.
- Explain the basis on which the value of additional lots or land is assessed for calculating the maximum development contribution payable for reserves.

Schedule of charges and triggers (s.202)

The DCP must include a schedule of charges, based on the unit of demand, for each activity at the catchment level. This information should be near the beginning of the policy document to make it easy to find.

A format similar to table 4.2 is commonly used, but information can also be ordered by geographic area (catchment) and then by activity.

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22 This refers to resource consents granted under both the RMA and the COVID-19 Recovery (Fast-track Consenting) Act 2020.
### Table 4.2. Schedule of charges

<table>
<thead>
<tr>
<th>ACTIVITY/CATCHMENT</th>
<th>CHARGE PER HUE (GST INCLUSIVE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity 1</td>
<td></td>
</tr>
<tr>
<td>Catchment 1.1</td>
<td>$XX</td>
</tr>
<tr>
<td>Catchment 1.2</td>
<td>$XX</td>
</tr>
<tr>
<td>Activity 2</td>
<td></td>
</tr>
<tr>
<td>Catchment 2.1</td>
<td>$XX</td>
</tr>
<tr>
<td>Catchment 2.2</td>
<td>$XX</td>
</tr>
<tr>
<td>Catchment 2.3</td>
<td>$XX</td>
</tr>
<tr>
<td>Activity 3</td>
<td></td>
</tr>
<tr>
<td>Catchment 3.1</td>
<td>$XX</td>
</tr>
<tr>
<td>Catchment 3.2</td>
<td>$XX</td>
</tr>
</tbody>
</table>

These charges can also be represented in a way that is meaningful to specific development types. For example, a charge based on gross floor area for non-residential developments or charges for residential units based on the number of bedrooms.

If development contributions are required for reserves, the charges may be specified as a dollar amount, a requirement for an amount of land per HUE, or by reference to the value of lots created. Regardless of the approach a council uses for reserves, the DCP must explain how the value of the additional lots or land is assessed for the purposes of the limit on reserve development contributions in LGA02 s.203(1). See section 6.1.

The schedule of charges should be GST inclusive, so the total development contribution cost is clear.

**Triggers**

The DCP must also state how the development contribution triggers in LGA02 s.198 will be used in relation to each charge. For example, whether and when the council will apply each of the triggers. A common approach is to apply the same rules for all charges for all catchments, and then address any exceptions.

There is a detailed discussion on the triggers and their use in sections 4.8 and 5.1.

**Development contribution calculations: LGA02 s.201(1)(a)**

DCPs must summarise the methodology behind the setting of the per-HUE development contribution and show how each charge is calculated. This information is drawn from the foundation work for establishing a DCP (see chapter 3) and will usually cover:

- A general summary of the information and process used for calculating development contributions.
- A schedule showing how each charge was calculated under that process.

**Summary of process**

LGA02 Schedule 13 outlines the fundamentals of calculating development contributions. It requires that the maximum development contribution applicable for each catchment and for each activity = total growth costs/units of demand.
However, this simple relationship is complicated by a range of council decisions that are necessary to make the calculations work in practice. LGA02 s.201(1) requires the council to summarise and explain how the charges are calculated in their DCP, taking those decisions into account. This summary will usually explain key steps in the process of calculating the charges in the form of a flow diagram or table outlining the steps. An example of a simple calculation process summary is contained in table 4.3.

Table 4.3. Example of simple calculation process summary

<table>
<thead>
<tr>
<th>STEP</th>
<th>DESCRIPTION / COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Forecast growth</td>
<td>Estimate potential land supply and likely take up of that land by key development types. The estimates help provide household and business growth forecasts to use in this DCP. The forecasts are derived from council-wide growth strategy and planning work, which also informs reviews of the District Plan and the Long-term Plan.</td>
</tr>
<tr>
<td>2. Identify asset projects required to facilitate growth</td>
<td>Develop the works programme setting out the assets needed to facilitate growth. These are determined as part of the development of a council’s asset management plans and Infrastructure Strategy. Growth assets for the first 10 years are reflected in the council’s Long-term Plan. The council may also have undertaken growth-related works in anticipation of growth.</td>
</tr>
<tr>
<td>3. Determine the cost allocation for projects</td>
<td>Apportion the cost of each asset project between renewal, growth, and levels of service in accordance with the council’s cost allocation system. Consider a range of factors, paying particular regard to who causes and who benefits from the programme. Also consider how any works that span more than one catchment are allocated between catchments.</td>
</tr>
<tr>
<td>4. Determine growth costs to be funded by development contributions</td>
<td>The council will need to determine whether to recover all of the growth costs identified in step 3 from development contributions, or whether some of the growth costs will be funded from other sources.</td>
</tr>
<tr>
<td>5. Divide development contribution growth costs by estimated growth</td>
<td>The development contribution growth costs from step 3 are divided by the estimated growth (defined in the relevant units of demand) within each catchment for the relevant capacity life of each programme. These are totalled to give a raw charge per HUE.</td>
</tr>
<tr>
<td>6. Adjust for interest costs and charge inflation adjustments</td>
<td>The raw charges require adjustments in the funding model to ensure total revenue equals total costs after accounting for interest cost and annual inflation adjustment of the charges. This produces a charge per HUE accounting for the total cost of capital expenditure.</td>
</tr>
</tbody>
</table>

Summary of calculations

DCPs must include a schedule showing how each charge was calculated under the process outlined above. Key elements of that schedule include a summary of growth costs, development contribution funded growth costs, interest or finance costs, and growth estimates.

Showing these calculations as GST exclusive enables easy reconciliation with the Long-term Plan. GST can be added at the end of the calculation to align with the GST inclusive schedule of charges.

Depending on the complexity of a DCP, it may be possible to combine this information with the information required under LGA02 s.201A, provided it is clear that the resultant table is designed to fulfil the requirements of both sections.
Significant assumptions and effects: LGA02 s.201(1)(b)

DCPs must explain the significant assumptions that have been used to develop the charges, and an estimate of the potential effects if there is a significant level of uncertainty on the scope and nature of the effects.

The identification of these assumptions and related risks provides an opportunity to consider the council’s approach to managing risk for the preparation and administration of its DCP. Assumptions that are often relevant for development contributions are outlined below.

**Level, timing, and location of growth**

The capital programme can be sensitive to the overall level and timing of growth. The location and sequencing of growth can be a particular risk for reticulated networks because they tend to be relatively less adaptable to changes in development location, intensity and pace once constructed. This risk can be managed by good monitoring, linking capital spend to growth or development milestones, careful selection of catchments, and evaluating the relative risks of providing various types of infrastructure ahead of, alongside or slightly after development.

The council will also need to make assumptions about when development contribution payments will be received, based on expected timing of development and expected payment terms. This is needed in the funding model to calculate cash flows and related financing costs for the council. This risk can be understood and potentially mitigated by working closely with the teams developing and managing the council’s growth plans.

**Provision of services**

Uncertainties related to future provision of services include:

- The scale of the overall capital programme, which can be affected by future decisions about the council’s Financial Strategy or funding priorities. This can have various impacts as the capital programme will often deliver capacity for growth and other outcomes.
- Decisions about levels of service, including externally imposed requirements (e.g. standards of wastewater treatment required through resource consent conditions).
- Decisions about delivery of services through council-controlled organisations.
- The level of future subsidies or funding through other parties (including central government subsidies for transport works).

These uncertainties can usually be considered on a ‘best available information’ basis, with particular attention paid where uncertainty or possible impacts are greater.

**Interest and financing costs**

Interest rates used in the funding model (interest incurred by the council for loan funded capital works and interest earned on development contributions revenue) are usually set on a council-wide basis. These rates can affect the total cost of capital expenditure and the charges, depending on how they are calculated. The supporting information should identify which interest rates have been used and the basis for them.
Remission, postponement, and refund of development contributions: LGA02 s.201(1)(c)

A DCP must outline the conditions and criteria (if any) that will apply in relation to the postponement, remission or refund of development contributions or the return of land.

**Remission**

Remissions can reduce the development contributions or eliminate them altogether. A council is free to make its own policy on remissions, but it must state that policy in its DCP.

There are two types of remissions:

- Demand-based remissions. These are not strictly speaking remissions because they affect the calculation of the assessment itself but are sometimes referred to as remissions. These are like special assessments and should be dealt with in the same way. See section 4.7.

- Remissions for reasons unrelated to demand. For example, because the:
  - Organisation or development has a charitable purpose.
  - Council wants to encourage a specific type of development for strategic reasons, such as high-density housing in its town centre(s).

The financial impact on a council differs for the two types of remissions. Remissions based on demand should be treated the same as a special assessment. The development’s impact on infrastructure is accounted for in the charges that are levied, so no special treatment is required.

Remissions that are based on other reasons effectively create a funding gap in the development contribution accounts as infrastructure capacity is taken up but not paid for. That gap must be funded somehow. For this reason, many councils do not permit such remissions or do so only at their complete discretion. Should a council wish to pursue remissions that are not related to demand, they should be explicit about how that gap is funded in their Long-term Plan. For example, funded by rates. Councils must not push the cost of that gap onto other developments by implicitly or explicitly recovering it through their development contributions.

**Postponement**

This section should be read in conjunction with section 5.5.

Like remissions, a council is free to make its own policy decisions about the postponement of development contributions. There is no obligation to provide any provisions that allow the postponement of payment. Indeed, that is the approach many councils take, viewing development contributions as another cost of business that developments should take account of and budget for from the outset.
Other councils are willing to offer postponement, usually under certain conditions and as a last resort. This may be because they are trying to better match development contribution collection with developers’ cash flow and/or they are trying to encourage and de-risk development in a slow local market. A council may also wish to postpone payment, so it can undertake a reassessment using differential housing assessment rates after building consents have been issued. See section 3.4.

Whatever the reasons, should the policy allow postponement, there should be an attempt to protect the council’s interests somehow. The most common approaches for doing this are to:

- Accept a bank bond for the value of the development contribution. If a council wishes to use bonds, the DCP must provide for this along with guidance on their use and any standard terms.
- Register the development contribution on the record of title under subpart 5 of Part 3 of the Land Transfer Act 2017.
- Take some other interest in the development, often recorded against the land.

**Refunds**

This section of the guide should be read in conjunction with section 6.5 which provides further guidance on refunds.

The DCP must outline the council’s policy on refunds. At a minimum, the DCP should outline where refunds (or the return of land) are required under LGA02 s.209 and s.210.

These sections outline two scenarios where refunds are required:

- Refunds where a development does not proceed. This will usually relate to the lapsing or surrender of a relevant consent.
- Refunds (or the return of land) where the council has not provided the reserve, network infrastructure or community infrastructure for which the contribution was required.

LGA02 s.210(1) specifies a default maximum period of 10 years for providing the infrastructure (from when money is received) in relation to reserve development contributions. However, s.210(1) also enables councils to set a different (shorter or longer) time period in their DCPs for the delivery of reserves before refunds are required. Where it is reasonable to do so, a council may wish to specify a longer timeframe in its DCP, particularly if a reserve may not be provided within this timeframe.

**Basis of land valuation for reserves development contributions: LGA02 s.201(1)(d)**

This section should also be read in conjunction with section 6.1.

Development contributions for reserves are subject to limits under LGA02 s.203, which states that they must not exceed the greater of:

- 7.5% of the value of the additional lots created by a subdivision; and
- the value equivalent of 20m² of land for each additional household unit or accommodation unit created by the development.
Under LGA02 s.201(1)(d) the DCP must set out the basis on which the value of additional lots or land is assessed to determine whether these limits are exceeded.

It is up to each council to set out this basis, but it must be fair and reasonable. Common approaches include registered valuations or council-initiated valuations at time of payment. A council may choose to use a coarse basis of valuation for initially testing whether the limits might be exceeded (such as a comparison with surrounding lots) and then use a formal valuation if the initial test indicates that they are.

It is important to note that it is not necessary to test whether the limits in LGA02 s.203 have been breached for every development. The requirement is to have a basis for checking whether the limits have been breached (and for assessing the charge) - if needed.

In their DCP, councils can state the value of a lot that would result in the first limb of the test being breached. This provides a clear signal to all concerned about the value of lots where these limits may apply. For example, if a council’s reserve development contribution is $7,500 per HUE (GST inclusive), only lots valued around $100,000 or lower may be affected by the limits in LGA02 s.203. It is difficult to provide similar guidance in the DCP for the value of 20m$^2$ of land as this will depend on a range of factors outside of a council’s control. Councils may instead prefer to hold estimates for this limit internally for different circumstances and update these regularly.

### 4.5 SCHEDULE OF ASSETS

Under LGA02 s.201A, the DCP must contain a schedule of the assets that are intended to be funded by the revenue generated from development contributions. The schedule allows those paying development contributions to see what their payments are intended to be used for. It also increases transparency of the basis for setting the charges.

The schedule must:

- List each project (asset or programme of works) for which development contributions are intended to be used and the estimated capital cost of each project. This includes projects:
  - Already delivered in anticipation of growth (past projects).
  - In the Long-term Plan.
  - Programmed outside of the 10 years of the Long-term Plan.

- Identify the proportion of the capital cost of each project proposed to be recovered through development contributions and through other sources.

The schedule must group this information separately for each activity and for each catchment.

A council should carefully consider the level of aggregation it uses in its schedules. Under LGA02 s.201A, the council is entitled in its DCP to group individual assets together into logical and appropriate groups of assets that reflect the intended or completed programmes of works or capacity expansion. Schedules that are too detailed may create problems under LGA02 s.209 for even minor changes, and may require more detailed capacity life estimates, making it difficult to calculate and account for development contributions.
The figures used in the schedules should be the actual cost incurred for past projects, and inflation-adjusted estimates for future projects. The future cost estimates should be consistent with the asset management plan, Long-term Plan, and Infrastructure Strategy. The calculations should be GST exclusive to be consistent with the Long-term Plan.

If the DCP and infrastructure programme are not too large or complex, these schedules can be combined with other information and configured to show how the development contributions are calculated, as well as providing the information required by LGA02 s.106(2)(d).

A simple example is shown in table 4.4. The table contains the required information on future assets and the debt balance carried forward from past assets and programmes for recovery from future growth is listed. Past projects will still need to be listed in a separate table. This example also provides additional information, not required by LGA02 s.201A, showing how the development contribution is calculated, and the years that future projects are expected to be undertaken.

**Table 4.4. Schedule of future assets and charge per HUE calculation (GST excl. except where indicated otherwise)**

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>TOTAL CAPEX $MILLION</th>
<th>GROWTH CAPEX $MILLION</th>
<th>DEVELOPMENT CONTRIBUTION $MILLION</th>
<th>TOTAL CAPEX % FUNDED BY DEVELOPMENT CONTRIBUTIONS</th>
<th>COST PER YEAR $MILLION</th>
<th>CAPACITY LIFE (HUES)</th>
<th>$ / HUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Future project A</td>
<td>1.00</td>
<td>0.50</td>
<td>0.50</td>
<td>50%</td>
<td>$0.50</td>
<td>100</td>
<td>$5,000</td>
</tr>
<tr>
<td>Future project B</td>
<td>0.15</td>
<td>0.15</td>
<td>0.15</td>
<td>100%</td>
<td>$0.15</td>
<td>100</td>
<td>$1,500</td>
</tr>
<tr>
<td>Future project C</td>
<td>3.00</td>
<td>2.00</td>
<td>2.00</td>
<td>67%</td>
<td>$2.00</td>
<td>100</td>
<td>$20,000</td>
</tr>
<tr>
<td>Future projects total</td>
<td>4.50</td>
<td>2.65</td>
<td>2.65</td>
<td>59%</td>
<td></td>
<td>100</td>
<td>$26,500</td>
</tr>
<tr>
<td>Historic project growth costs still to be recovered</td>
<td>0.75</td>
<td>0.75</td>
<td></td>
<td>50</td>
<td>$15,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance costs</td>
<td>0.10</td>
<td>0.10</td>
<td></td>
<td></td>
<td></td>
<td>100</td>
<td>$1,000</td>
</tr>
<tr>
<td>Total costs to be recovered</td>
<td>3.50</td>
<td>3.50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charge per HUE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$42,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charge per HUE (GST incl.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$48,875</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


This schedule can also be provided in electronic form where providing it in hard copy is considered impractical (LGA02 s.201A(6)).

**Community infrastructure constructed between August 2014 and May 2019**

The Local Government (Community Well-being) Amendment Act 2019 replaced and widened the definition of *community infrastructure* in the LGA02. It also introduced specific transitional provisions for councils wishing to recover through future DCPs part of the cost of any community infrastructure (as defined now) built between 8 August 2014 and 14 May 2019 that did not meet the definition of *community infrastructure* during that time. These transitional provisions include special requirements for listing these assets in the schedule of assets. See LGA02 Schedule 1AA, cl.15.

For example, a library constructed in a new suburb in 2017 will not have been able to be included in a council’s DCP adopted on 1 July 2018 because it did not meet the definition of community infrastructure at that time. However, it will be able to be included in any DCPs adopted after 14 May 2019 and charged to future developments since the definition of community infrastructure was broadened from that date. The portion of the cost of the library attributed to growth and recovered from future growth must be adjusted down to account for any growth serviced by the new library in the period before 14 May 2019. This cannot be recovered from future growth.

**Changes to the schedule**

The schedule of assets can be updated at any time without consultation to reflect changes in the infrastructure programme, provided the total development contributions payable do not increase (LGA02 s.201A(5)). Changes to the programme that increase the development contributions payable will require consultation. See section 4.9.

<table>
<thead>
<tr>
<th>Helpful hint</th>
</tr>
</thead>
<tbody>
<tr>
<td>The schedule of assets required under LGA02 s.201A is a useful reference source for development contribution commissioners when considering an objection, particularly those made on the grounds that the developer’s development does not require or has no relation to community facilities for which development contributions are being required.</td>
</tr>
</tbody>
</table>

### 4.6 RECONSIDERATION PROCESS

Under the LGA02, the DCP must include the process for requesting a reconsideration of a requirement for development contributions. The process must include:

- how the request can be lodged with the council; and
- the steps in the process that the council will apply when carrying out the reconsideration.

The purpose of the reconsideration process is to allow a person who has been required to pay development contributions to formally question whether the assessment is incorrect, the DCP has been incorrectly applied, or the information used in the assessment was incomplete or had errors (LGA02 s.199A).

This process would typically include:
- Acknowledging the request.
- Confirming the matters to be covered and factors to be considered.
- Deciding whether a hearing or meeting will be held.
- Seeking additional information if necessary.
- Confirming who will carry out the reconsideration (ensuring a level of independence from the original assessment).
- Administration and timing information.
- Delegations to authorise decision makers to make decisions on behalf of the council. See section 7.6.

The council may specify an application fee or other charges. See section 8.2.

The DCP should also contain similar guidance relating to objections, including the council’s approach to recovering the costs (LGA02 s.150A). This will ensure that operating processes are transparent and support the making of appropriate delegations.

### 4.7 OTHER NECESSARY CONTENT FOR A DEVELOPMENT CONTRIBUTIONS POLICY

This section provides advice on a range of other content that is not explicitly required by the LGA02 but is necessary to give effect to the intent of the legislation, administer the DCP, or ensure that the DCP is clear and transparent.

This includes:

- A glossary or definitions section.
- The geographic areas (catchments) for each activity.
- The units of demand and how they are applied to different development types.
- The council’s policy on credits.
- Limits on requiring development contributions.
- The assessment, notice, invoicing and payment processes.

These are discussed below, except for the assessment, notice, invoicing and payment processes which are discussed in section 4.8.

---

**Glossary**

The DCP should contain a glossary or definitions section. As noted below this would (among other things) define each of the types of development that will be assessed for development contributions, and the scope of the activities for which development contributions are required under the DCP.

---

**Catchments**

This section should be read in conjunction with section 3.7.
Catchments can be presented in a range of different ways but must be defined unambiguously, such as on maps that show their boundaries. An example map is provided in section 10.5. It is common for these to be available online through a council’s GIS system, meaning that the location of any site within a catchment can be confirmed. A council may use different catchments for different activities. For example, the catchment maps for water development contributions may differ to the catchment maps for stormwater.

Whatever approach a council takes to determining catchments, it should summarise its rationale in the supporting information.

**Specified network catchments**

Generally, catchments will be defined by “area” maps like the example in section 10.5.

In some cases, a council may wish to levy development contributions when connections are made to a specific water, stormwater or wastewater network on an optional basis – such as a rural extension of an urban scheme. Catchment maps encompassing large swaths of land around the networks may create an impression that all developments within the map are subject to development contributions. An alternative approach in these cases is to specify the water, wastewater, or stormwater network that any connections to will incur development contributions.

---

**Units of demand and how they are applied to different development types**

This section should be read in conjunction with section 3.4.

The DCP must explain the units of demand being used, the underlying demand characteristics of each unit of demand, and how it relates to the types of development that are being used for assessment purposes.

The development types and basis for their assessment can be presented in a range of different ways depending on the units of demand being used, and how many categories of development a council is using.

A simple example using HUEs is shown below (HUE rates are for illustrative purposes only).

**Table 4.5. Residential HUE demand assessment**

<table>
<thead>
<tr>
<th>RESIDENTIAL DEVELOPMENT</th>
<th>ASSESSMENT (HUES) FOR ALL ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>One standard residential unit or residential lot (incl rural-residential serviced)</td>
<td>1</td>
</tr>
<tr>
<td>One-bedroom residential unit</td>
<td>0.5</td>
</tr>
<tr>
<td>Two-bedroom residential unit</td>
<td>0.75</td>
</tr>
<tr>
<td>One papakāinga / kaumatua housing unit</td>
<td>0.75</td>
</tr>
<tr>
<td>One retirement village unit</td>
<td>0.5</td>
</tr>
</tbody>
</table>
Table 4.6. Non-residential HUE demand assessment per 100m² GFA (*except stormwater which is based on 100m² of impervious surface area)

<table>
<thead>
<tr>
<th>NON-RESIDENTIAL DEVELOPMENT</th>
<th>WATER (HUES)</th>
<th>WASTEWATER (HUES)</th>
<th>STORMWATER* (HUES)</th>
<th>RESERVES (HUES)</th>
<th>TRANSPORT (HUES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>0.25</td>
<td>0.25</td>
<td>0.33</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Retail</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial</td>
<td>0.25</td>
<td></td>
<td></td>
<td>0.25</td>
<td>0.25</td>
</tr>
</tbody>
</table>

These tables are typically supported by information on the underlying demand characteristics of each unit of demand for each activity (called demand measures). For example, the peak or average amount of water or wastewater used per day for 1 HUE, trips per day for 1 HUE, the average occupancy of residential units in the district, the occupancy rates per annum for visitor accommodation and so on. An example of this is shown in the following section.

**Special assessments**

The DCP should also indicate when special assessments will be used. Two approaches that could be used are to:

- Specify criteria for accepting a special assessment. For example, a development is expected to have twice the impact, or half the impact assumed for that type of development in the DCP, or a non-residential development that is expected to use more than 5m³ water per day.

- Permit a special assessment only where the council judges that a development will deviate significantly from the demand assumption used in the DCP.

Such approaches help to ensure administrative efficiency and maintain the benefits of predictability from allowing councils to group development types under LGA02 s.197AB(g), while still providing relief for developments where the averaging would result in a manifestly unfair assessment.

Councils can require developers to provide the information needed to inform a special assessment as part of their assessment of the impact of the development on infrastructure.

**Case study**

Christchurch City Council’s *Extraordinary circumstances and special assessment* section from its 2015 DCP is below. Note that the section outlines criteria for the use of special assessments and references its demand measures to guide the assessment. These help to ensure the special assessments retain relativity with the HUE assessment rates used elsewhere in the DCP.
Credits

Credits are a way of acknowledging and handling pre-existing development as part of the assessment process. Credits recognise that only the additional demand created by a development should be liable for development contributions. Credits can be applied to an assessment to reduce or eliminate liability for a development contribution for one or more activities.

Credits are usually given in the unit of demand used in the DCP. For example, one HUE for a typical residential lot or home. It is important to note that it is the HUEs (or other unit of demand) themselves, not the amount of funds paid, that are recognised in the credit process. This better reflects the intent of assessing development under the concept of units of demand. Were credits awarded in dollars, then the value of credits would diminish over time regardless of whether there had been any changes on a site.

Credits are not a refund entitlement. Rather, they are used to offset development contributions for development on the same site and for the same activity in respect of which they were created. Unused credits can be retained to offset against future development.

The DCP must set out the council’s approach to credits. There are two types of credits generally used – actual credits and historical credits.

Actual credits

Actual credits recognise contributions that have been paid previously. For example, an earlier development paid them at the subdivision stage. The credits recognised are usually based on the HUEs (or other unit of demand) that have been previously paid for. The DCP can also recognise any previous systems for paying for growth infrastructure that may have been levied and translate these into credits. For example, financial contributions under the RMA that were collected to fund a council’s growth infrastructure before the introduction of development contributions.
**Historic credits**

These recognise pre-existing buildings or land uses that were on the site before the current development started, even though no development contributions have been paid. Because no development contributions have been paid, the value of the credit needs to be determined some other way. This is usually determined by either:

- using the DCP to assess the HUEs (or other unit of demand) for the site at present as if it were a development. This then becomes the credit. This is often used for non-residential land and buildings; or
- mandating a figure to be used, such as 1 HUE. This is often used for residential land or buildings.

An example for a non-residential development is below. In this example the stormwater demand measure used is 1 HUE = 300m² of impervious surface area.

**Table 4.7. HUE assessment for non-residential development incorporating credits**

<table>
<thead>
<tr>
<th>SIZE OF DEVELOPMENT (IMPERVIOUS SURFACE AREA)</th>
<th>HUE ASSESSMENT</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed development</td>
<td>9,600 m²</td>
<td>9,600 m²/300m² = 32</td>
</tr>
<tr>
<td>Site at present</td>
<td>6,600 m²</td>
<td>6,600m²/300m² = 22</td>
</tr>
<tr>
<td>Net HUE increase</td>
<td>10</td>
<td>This is the net HUE assessment used for calculating the development contribution</td>
</tr>
</tbody>
</table>

The DCP should specify conditions that must be met before historic credits will be granted. Commonly used criteria relate to:

- The land or building currently generating a demand for the relevant service, possibly setting limits on how far back in time the council will look to consider previous development and uses.
- Zoning (e.g. only credit land zoned as an urban area at x date).
- Whether or not a property was already ‘connected’ to a service by virtue of a lateral to the boundary and/or being rated for water or wastewater services, regardless of whether a building was on site.
- The lifecycle and design basis for the types of infrastructure covered by the activities.

Alternatively, a council could simply grant the right to credits for lots and/or buildings on the basis that they existed at a specified point in time. For example, the date the council first introduced development contributions.

Whatever approach is used, the council should consider carefully how to give effect to the intent behind credits in the council’s district i.e. to recognise that only the additional demand created by developments that cause the need for growth infrastructure should be liable for development contributions.
Case study
The use of credits in Waikato District Council’s 2018 DCP is guided by the following principles.

11.9.2 General principles of credit

a) Residential credits will apply at the rate of one HEU per connected service per existing allotment or independent dwelling unit.
b) Non-residential credits will be calculated on the basis of the GFA of the existing development, and converted to HEUs using the conversion factors set out in Table 2 in Section 9.
c) On subdivision of undeveloped land, historic credits of one HEU per service connected per existing allotment will be allocated.
d) For existing non-residential buildings that are extended or demolished and re-built to the same or higher intensity, the assessment of credits will be based only on the existing development prior to rebuilding.
e) For existing residential buildings that are demolished or destroyed, no development contributions will be payable provided that the same number or fewer independent dwelling units are rebuilt. Any additional units will be assessed for payment of development contributions according to the terms of this policy.
f) Credits must be allocated to the same allotment or allotments. This prevents the transfer of credits from one allotment to another.
g) Credit will not be granted for infrastructure provided in excess of that required as a condition of any consent(s) issued by the council.
h) Credits cannot be used to reduce the total number of HEUs to a negative number. That is to say, credits cannot be used to force payments by the council to the developer.

Limits on requiring development contributions
The section should be read in conjunction with section 6.3.

LGA02 s.200(1) limits councils’ ability to require development contributions to avoid ‘double-dipping’. A council may not charge a development contribution if, and to the extent that, the infrastructure is already being provided or funded by the developer or another party.

The DCP should include a clear statement of the limitations referred to in LGA02 s.200. The council’s development contribution assessment process must also include a check that none of the limitations in LGA02 s.200(1) apply.

4.8 PROCESS FOR REQUIRING DEVELOPMENT CONTRIBUTIONS
This section introduces the process for requiring and assessing development contributions and related content required for a DCP. This section should be read in conjunction with chapter 5.
Process overview

After a resource consent23, building consent, certificate of acceptance, or service connection application has been made, the steps for assessing and requiring payment of development contributions are:

ASSESS
Assess development for development contributions

NOTICE
Issue formal notice of development contribution requirement

INVOICE
Send invoice requiring development contribution payment

PAYMENT
Development contribution paid

The DCP should clearly outline when and how developments are assessed for development contributions, when notices and invoices are issued, and when payment is required.

Each step is discussed further below.

Triggers for assessing development contributions

Under LGA02 s.198, councils can require a development contribution for a development upon the granting of:

- A resource consent24.
- A building consent (or a certificate of acceptance in the absence of a consent for the building work).
- An authorisation for a connection to water, wastewater or stormwater services.

The granting of a consent or authorisation is not an automatic entitlement to require development contributions. Before requiring a development contribution, a council must first assess whether one can be required under both the LGA02 and the council’s DCP (discussed below). An application for a consent or authorisation acts as the trigger for undertaking this assessment.

A council can choose when and to what extent it will use these triggers to undertake assessments and require development contributions, but it must specify its policy in its DCP (LGA02 s.202(1)(b)). A council can use all or just some of the triggers. The approach may also be different for different development types, activities, or catchments. The chosen approach must be clearly stated in the DCP.

For example, a council may elect to assess and charge development contributions only on building consents for a particular activity and catchment, or it may choose to only partly assess at subdivision stage and reassess at building consent stage.

In general, an approach of undertaking assessments at the earliest opportunity is recommended. For many new developments, the resource consent is often the first step in the process and therefore the first opportunity to assess for development contributions.

23 This refers to resource consents granted under both the RMA and the COVID-19 Recovery (Fast-track Consenting) Act 2020.
24 This refers to resource consents granted under both the RMA and the COVID-19 Recovery (Fast-track Consenting) Act 2020.
This approach helps ensure that:

- Developers understand the cost of development contributions at the earliest opportunity (this is important as the cost may affect the feasibility of the project).
- The council is likely to receive payment of development contributions sooner.
- Developments that are similar, but take different consenting paths, will pay the same or similar a level of contributions.
- Development contributions are paid for residential lots before they receive title, minimising the potential for conflict to arise from “unexpected” or additional costs for home builders.

There are some instances where it can be helpful to a council and developers to modify or depart from the general approach recommended above. Where the impact on infrastructure is strongly linked to the size or nature of a building being constructed on a site, basing all or most of the assessment at building consent (or land use consent) can enable a more accurate assessment.

This is a common issue for non-residential subdivisions as a council may not know what size building or what type of industry will be situated on a new lot. It can also be an issue for residential subdivision where the DCP has differential residential assessment rates.

In these cases, a council may undercharge or overcharge at subdivision stage. The council can address these issues by either:

- deferring assessments at the subdivision stage completely; or
- part-assessing at the subdivision consent stage, and then reassessing at a building consent, land use consent, or service connection authorisation stage.

Part-assessing is common practice for non-residential subdivisions. The subdivision assessment in these cases may be based on a conservative demand assessment, such as one HUE, or a minimum expected scale of development.

For residential subdivision, a council also has other options for dealing with differential residential assessment rates and overcharging. See section 3.4.

Where development contributions were not assessed (or were only part-assessed) at one trigger, this does not prevent a council from assessing contributions at a subsequent trigger for the same development.

Whatever approach a council takes to assessment triggers, it must recognise credits in the assessment process. See section 4.7.

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Assessment

Assessments must be consistent with the DCP (including the schedule of charges) that applied when a trigger application was submitted or, if deficient, when all of the information needed to consider the application and to make an assessment under the DCP was received.

Once a council receives an application and determines the appropriate DCP to assess it against, it must:
• test that the development is subject to development contributions under the LGA02; and
• assess the proposed development against the DCP.

Sections 5.1 and 5.2 contain detailed discussion on the assessment process. Below is a discussion on the process at a level which is typically contained within a DCP.

**Determining that the development is subject to development contributions**

Before assessing a development against the details of the DCP, a council must confirm all of the following: 25

- It is a “development” as defined by the LGA02, i.e. it generates a demand for reserves, network infrastructure, or community infrastructure (LGA02 s.197);
- the effect of the development (either alone or cumulatively with other developments) is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs (or has already incurred) capital expenditure to provide appropriately for reserves, network infrastructure or community infrastructure (LGA02 s.199); and
- the development is liable for development contributions under the council’s DCP (LGA02 s.198(2)).

In addition, the infrastructure for which a contribution is required must not be funded or provided in a way that would result in the requirement being contrary to LGA02 s.200. See section 6.3.

The DCP should refer to these determinations (tests), even if the wording, structure and placement is different from above.

**Case study**

Tauranga City Council’s version of these tests in its 2019/2020 DCP is below. In this case, the Council has combined the first two tests with the requirement under LGA02 s.198(2) to apply development contributions only in accordance with the DCP. In this case, the LGA02 s.200 test is contained elsewhere in the DCP.

---

**In accordance with the Local Government Act 2002, Council may require a Citywide Development Contribution and/or a Local Development Contribution in circumstances where an individual development proposal (an application for resource consent, building consent, certificate of acceptance or authorisation for service connection) meets the following three criteria:**

(a) It will generate a demand for reserves, network infrastructure or community infrastructure; and

(b) Either alone or in combination with another development, it requires new or additional assets or assets of increased capacity (reserves or infrastructure) which causes the Council to incur capital expenditure; and

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25 See Neil Construction and Ors v North Shore City Council [2008].
(c) The Development Contributions Policy provides for the payment of a Citywide Development Contribution and/or a Local Development Contribution in the given circumstance.

If, in the Council’s opinion, these three criteria are not all met, development contributions will not be required on an individual consent/authorisation application.

Assessing the proposed development against the DCP

Once satisfied that development contributions can be required, the council must assess a development in accordance with its DCP. This assessment will typically involve:

- Determining which development type under the DCP is applicable (or potentially multiple types) and/or whether a special assessment is warranted.
- Calculating the HUEs (or other unit of demand) applicable for each activity.
- Identifying whether any credits or non-standard treatments apply.
- Multiplying the number of HUEs (or other unit of demand) by the charge(s) for the relevant catchment(s) for each activity, to get a total charge for each activity.

While the order and elements of the process may differ slightly for different councils, DCPs should contain a summary of the process so that everyone involved understands the steps to be followed.

Development contribution notice

Once the assessment is complete, the council issues a development contribution notice. The notice formally notifies the applicant of the requirement to pay development contributions and the charges payable. It also triggers their rights to request a development contribution reconsideration or to lodge an objection. Normally the notice is issued at the same time the relevant consent/authorisation is granted, although in some cases, the notice may be issued later. The DCP should include this information.

Invoice

Development contribution invoices set out the charges, provide an accounting record, and initiate the payment process.

When the invoice is issued will depend on policy decisions the council makes about when payment must be made. For example, if the council requires payment of development contributions at the time a consent/authorisation is granted (or shortly after) it is likely that the invoice will need to be issued at the same time as the development contribution notice.

However, councils can require payment of development contributions at different times for different types of development. An example of a typical approach is summarised in table 4.8.

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26 LGA02 s.198(2) states that a development contribution can only be required as provided for in a DCP adopted under LGA02 s.102(1) and that is consistent with LGA02 s.201.
Table 4.8. Invoice timing

<table>
<thead>
<tr>
<th>INVOICE TIMING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Building consent</strong></td>
</tr>
<tr>
<td><strong>Certificate of acceptance</strong></td>
</tr>
<tr>
<td><strong>Resource consent for subdivision</strong></td>
</tr>
<tr>
<td><strong>Resource consent (other)</strong></td>
</tr>
<tr>
<td><strong>Service connection</strong></td>
</tr>
</tbody>
</table>

Whichever approach a council takes, it should be clearly outlined in the DCP.

Councils cannot carry out a re-assessment of development contribution levels under a later DCP (i.e. one that came into force after the original assessment notice was issued).

Payment

As noted above, the time when development contributions must be paid is for the council to decide. The three main payment timing options are:

- Immediately upon granting of consent/authorisation (or shortly after).
- Some date or time after granting of consent/authorisation – such as the 20th of the following month or 10 or 20 working days.
- Payment prior to issue of code compliance certificate under the Building Act 2004 or issue of a certificate under RMA s.224(c) (applicable only for building consents and subdivision consents respectively).

The time when development contributions must be paid may have significant financial implications for developers as the development process is often cash flow negative until completion.

In deciding when contributions must be paid, a council should consider:

- The nature of development in its district, including typical scales, types and durations.
- Developers’ cashflows and the council’s cashflows.
- The statutory power to withhold completion certificates or approvals until development contributions are paid.
- When the capacity of a network is ‘committed’ to a development and when developments typically start to generate demand.
- Administrative efficiency and the council’s normal practices and systems for payment and debtors.
- The alternatives to payment in cash that the council offers, for example through bonds or development agreements. See section 5.5.
An example of a typical approach that is aligned with the invoice approach in the preceding section is outlined in the table below.

### Table 4.9. Payment timing

<table>
<thead>
<tr>
<th></th>
<th>PAYMENT DUE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building consent</td>
<td>20th of the month following the issue of the invoice</td>
</tr>
<tr>
<td>Certificate of acceptance</td>
<td>Prior to issuing the certificate of acceptance</td>
</tr>
<tr>
<td>Resource consent for subdivision</td>
<td>Prior to release of the certificate under RMA s.224(c)</td>
</tr>
<tr>
<td>Resource consent (other)</td>
<td>20th of the month following the issue of the invoice</td>
</tr>
<tr>
<td>Service connection</td>
<td>Prior to issue of the connection approval and associated invoice</td>
</tr>
</tbody>
</table>

A council’s approach to payment timing should be clearly outlined in its DCP, along with the statement that until the development contributions have been paid in full, the council may exercise its powers under LGA02 s.208 to:

- Prevent the commencement of activities authorised by a resource consent.
- Withhold a certificate under RMA s.224(c).
- Withhold a code compliance certificate under s.95 of the Building Act 2004.
- Withhold a service connection to the development.
- Withhold a certificate of acceptance under s.99 of the Building Act 2004.
- Register the development contribution under the Land Transfer Act 2017, as a charge on the title of the land in respect of which the development contribution was required.

The DCP should also outline any debt collection proceedings the council undertakes to pursue monies owing – for example, by engaging a debt collection agency.

### Multiple assessments

If a development might be subject to more than one assessment, the DCP must be clear about how those assessments will work together - only one development contribution payment is required in relation to each HUE and each activity. For example, where a building and subdivision consent are submitted simultaneously for a non-residential development, a notice may be issued in respect of each application. Payment of the contribution will be required at the earlier of application for the code compliance certificate or the certificate under RMA s.224(c). Once paid, ‘actual credits’ will be recognised on the remaining application. This may negate any further development contributions requirement.

### Made, paid, and bonds

The LGA02 refers to contributions being required (s.199) and being made or paid (s.208).

Most development contributions are in the form of money, so “paid” has its ordinary meaning. A council may also deem other arrangements such as bank guaranteed bonds or provisions within a development agreement to represent payment. Any criteria and terms associated with accepting bank bonds should be outlined in the DCP. See section 5.5.
Development contributions being “made” refers to development contributions provided in the form of land – mainly associated with reserve development contributions. Land development contributions are rarely used for any other infrastructure types.

If a council permits land development contributions, it should specify when this will be acceptable, and any criteria and terms associated with such development contributions. The council should be clear as to when or how the development contribution is “made” - for example, when the survey plan is lodged, or a settlement process has reached an unconditional stage.

4.9 ADOPTING AND CHANGING A DEVELOPMENT CONTRIBUTIONS POLICY

This section provides an overview of the requirements and process for adopting and changing DCPs. It also provides guidance on common issues experienced by councils as they transition to development contributions, or when they change their DCPs following review.

Adoption and review cycle

Councils must adopt a policy on development and/or financial contributions as part of a suite of funding and financial policies under LGA02 s.102. Councils must also review their policies at least once every three years under LGA02 s.106(6).

Reviewing and adopting DCPs is usually undertaken in parallel with the Long-term Plan or Annual Plan and associated growth and infrastructure planning processes. See sections 3.2, 3.3 and 3.5. The process is likely to follow a timeline similar to the one outlined in table 4.10.

Table 4.10. Generic development contributions review and adoption timeline

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>TYPICAL TIMING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information from growth and asset management planning</td>
<td>February to November</td>
</tr>
<tr>
<td>Initial policy decisions (selection of funding tools)</td>
<td>June to December</td>
</tr>
<tr>
<td>Initial targeted engagement</td>
<td>June to December</td>
</tr>
<tr>
<td>Draft DCP approved for public consultation</td>
<td>December to March</td>
</tr>
<tr>
<td>Formal consultation (typically alongside other annual consultations)</td>
<td>4-6 weeks in March, April or May (the earlier the better)</td>
</tr>
<tr>
<td>Adoption of final DCP</td>
<td>June</td>
</tr>
<tr>
<td>DCP in force</td>
<td>1 July</td>
</tr>
</tbody>
</table>

While DCPs are usually reviewed and adopted alongside the Long-term Plan or Annual Plan, this is not a legislative requirement. A councils can choose to review or adopt its DCP at any time, provided:

- Any necessary amendments are also made to associated policies and plans such as the Long-term Plan.
- The council complies with its consultation obligations for adopting a DCP (discussed below) and for making amendments to associated plans and policies.
Once in place, a council should ensure information from operating and monitoring its DCP is used to inform its next review. This will enable updated DCPs to address any emerging issues and allow fine tuning of the DCP over time.

Planning and carrying out engagement

Legal requirements

LGA02 s.102(4) requires that a council consult on its DCP in a manner that gives effect to the requirements of LGA02 s.82 before it is adopted. The main requirements of s.82 are:

- Consultation must be undertaken in accordance with the six principles in LGA02 s.82(1), broadly requiring that:
  - The council provide adequate information to persons that may be affected by, or interested in, the decision to be made and to try to involve and encourage them to present their views to the council.
  - Views presented through consultation must be received with an open mind.
  - The final decision and material relating to the decision must be made available.
- The council must have processes in place for consulting with Māori.
- That the approach to consultation must have regard to:
  - The requirements of LGA02 s.78.
  - The costs and benefits of any process.
  - Information already known to the council about the views and preferences of people affected.
  - The nature and significance of the decision from the perspective of those persons.

LGA02 s.82A outlines the information that must be provided when undertaking the consultation. The council must prepare a proposal document that sets out:

- The reasons for the proposal.
- The draft DCP to be adopted or, if the DCP is only being amended, details of the proposed changes.
- An analysis of the reasonably practicable options, including the proposal, identified under LGA02 s.77(1). This is usually provided in summary form.

The proposal document must be made publicly available and can be used as part of promoting the proposal and inviting stakeholders to express their views. The steps that the council must take to make this information publicly available are set out in LGA02 s.5(3).

If the DCP is included as part of the Long-term Plan or Annual Plan process, these requirements will be satisfied if the DCP is included in the full Long-term or Annual Plan consultation process.

How to give effect to the above legal requirements are for each council to determine. However, it must be consistent with the council’s Significance and Engagement Policy.
**Good practice**

Taken together, the legislative requirements direct a council to carefully consider and document its proposed approach to engagement and consultation with affected parties.

While there is likely to be a greater level of engagement when DCPs are being prepared, stakeholder engagement should be considered an ongoing process.

**Stakeholder groups typically include:**

- The local developer community.
- Developer advisors such as lawyers, surveyors, planners, engineers and architects.
- Other infrastructure providers such as Waka Kotahi.
- Special interest groups, i.e. groups within an area that is being developed.

**Good practice development contributions engagement includes:**

- Starting engagement as early as possible in the policy development process, especially with the development sector. This will help refine the growth model, provide information to help inform policy decisions, and identify any significant issues or concerns they may hold early.
- Stakeholder analysis, including contacting those most likely to be affected by any policy changes, e.g. as identified from consent applicant lists, key accounts, past submissions, existing forums or mailing lists, and industry associations.
- Ensuring that information about the intended policy process is available and easy to find on the council’s website.
- Updating online information, e.g. when reports are considered by the council or a relevant committee.
- Advertising and holding developer forums and workshops to provide information, seek feedback, and enable engagement between staff working on the DCP and the development community.
- Issuing newsletters or regular updates.
- Ensuring that background information e.g. from the growth model or asset management planning or technical reports is also available and accessible.
- Inviting feedback on specific elements of the DCP.

**Supporting development of a first DCP**

If a council is developing its first DCP, it will need to commit sufficient time and resources to developing the information and systems that underpin its success. Development contributions are a complex and specialist area of local government funding, and the initial move to a development contribution system brings its own challenges. The council may need to consider recruiting specialist advisors or contracting support.
This guide outlines the foundation work, decisions, and systems the council will need to develop and operate the DCP – particularly chapters 3, 4 and 7. Stepping through the required processes can take considerable time. Depending on how mature and detailed a council’s growth and asset planning information is, the process should start 12-18 months ahead of the expected DCP adoption date.

Transitioning

Transitioning needs to be considered in DCPs when a council:

- Introduces its first DCP.
- Includes a new activity charge.
- Has decided to stop using development contributions for one or more activities.
- Has significantly increased or decreased the per-unit charges.

Developments will be in progress when these changes take place and may be affected.

For example, a retirement village intending to construct 30 units may take five years to complete. During their second year, the council introduces its first DCP. The units that apply for building consent after the new DCP comes into force may be liable for development contributions. A similar issue may occur if the land use consent was subject to development contributions under one DCP, but the council subsequently introduced a new activity charge and that applied to the building consents.

While not required under the LGA02, councils should consider how different consents for these developments are to be treated during transition. Councils should try to ensure that the transition is fair and equitable to the developers undertaking those developments, other developers, and the community as a whole.

A council may choose not to provide transition rules, instead preferring the approach of applying its current DCP to each new consent or authorisation without reference to past DCPs. This is more common when there is a degree of stability between DCPs.

However, if they are to be used, transition rules must be specified in the DCP.27

A common transition approach used is to enable new assessments to take account of assessments undertaken under the earlier DCP for the same development. This can be structured to allow developers a window of time to complete their development under the approach and charges in those earlier DCPs - including if the council’s previous policy was not to use development contributions under a DCP. Historical credits can achieve a similar outcome for existing sites when a DCP is first introduced. See section 4.7.

Where a development contribution is to be discontinued, the council will need to consider how:

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27Because development contributions must be consistent with the content of the DCP that is in force at the time that the application for a resource consent, building consent, or service connection was submitted, the transition rules may in effect allow the council to apply the requirements of older DCPs.
the capital programme for that activity will be funded in the future; and
how to treat development contributions that have already been required but not yet paid.

Whatever approach a council takes, any transition rules specified in the DCP must be clear. This ensures that the development community has certainty about the development contributions that they will face for any individual development.

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**Producer price index charge increases**

Under LGA02 s.106(2B) and (2C), councils may:

- Increase development contributions charges specified in an adopted DCP by the rate of increase in the producer price index outputs for construction (the index) as provided by Statistics New Zealand.28
- Make this change without consultation, formality or a review of the DCP.

These provisions are intended to enable councils to maintain the price of development contributions relative to the costs of providing infrastructure. Councils should carefully consider whether it is appropriate to make these adjustments if they use ‘flat-rate’ charges per HUE. See section 3.10.

The updated charges can be applied to new notices and invoices sent out after they become effective. See sections 5.4 and 5.5. The adjustments can be made to the charges per HUE in the current version of the DCP, as well all development contributions levied under previous versions of the DCP. These are likely to be applicable for older consents. The council may need to continue updating these charges for several years, if not decades.

When making any adjustments under the authority of LGA02 s.106(2B) and (2C), the council must:

(A) only increase the portion of the charge by the index that does **not** relate to interest and other financing costs (see section 3.11); and

(B) provide publicly available information before the increase takes effect setting out the adjusted charges per HUE and how the increase complies with the requirement in (A). This effectively requires the council to set out the calculations. A simple example of this calculation is illustrated in table 4.11.

The steps councils must take to make this information publicly available are set out in LGA02 s.5(3).

The LGA02 does not specify the timing of such updates or how often they are permitted. However, it is common practice to make only annual adjustments that align with financial years (1 July - 30 June). The indices are updated quarterly and the update to March 31 is usually released in May. This provides sufficient time to meet the notification requirements for the new charges to become effective from 1 July.

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Table 4.11. Simple example of producer price index charge increase

<table>
<thead>
<tr>
<th>AMOUNT WHEN DCP WAS ADOPTED</th>
<th>ADJUSTMENT: PPI OUTPUTS FOR CONSTRUCTION (25%)*</th>
<th>AMOUNT AFTER PPI ADJUSTMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portion of the charge per HUE related to interest and finance costs</td>
<td>$2,000</td>
<td>No PPI adjustment</td>
</tr>
<tr>
<td>Portion of the charge per HUE not related to interest cost and finance</td>
<td>$13,000</td>
<td>+25% ($3,250)</td>
</tr>
<tr>
<td><strong>Total charge per HUE</strong></td>
<td><strong>$15,000</strong></td>
<td>-</td>
</tr>
</tbody>
</table>

* In this example, the PPI was 2000 when the DCP was adopted, and 1250 when the adjustment above was made several years later.

**Updating the schedule of assets**

The schedule of assets required by LGA02 s.201A lists the assets or programmes intended to be funded by development contributions.

Should a council wish to make changes to the assets or programmes funded by development contributions, it must change its schedule of assets at some point to reflect this. The process and timing of the update depends on the type of change.

If the changes result from a change in circumstances relating to the asset and do not increase the total or overall development contribution\(^{29}\) that will be required, then the council is permitted to update the schedule of assets at any time without consultation or further formality (LGA02 s.201A(5)), should it choose to do so.

If s. 201A(5) does not apply and the change is to include assets constructed for the same general function and purpose as those already in the schedule, then the council must update the schedule of assets and charges when the DCP is next changed or reviewed (LGA02 s.201A(7)). See section 6.1. However, the development contributions may still be spent on those new assets in the meantime.

Any other change to the schedule of assets, e.g. adding an entirely new asset or programme, must be the result of a formal amendment to the DCP, before development contribution funding can be used towards it.

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\(^{29}\) This test is applied to an individual activity charge per HUE, not the combination of all charges that may apply.
This chapter provides guidance on the four-step process for assessing and requiring development contributions and seeking payment. This chapter should be read in conjunction with sections 4.7 and 4.8.

### 5.1 ASSESSING AND REQUIRING DEVELOPMENT CONTRIBUTIONS

The process for requiring development contributions largely follows LGA02 s.197, s.198, s.199 and s.200.

LGA02 s.198 provides that development contributions may be required under a DCP by a council upon the granting of:

- A resource consent.
- A building consent (or a certificate of acceptance).
- An authorisation for a service connection as defined by LGA02 s.197.

The granting of a consent or authorisation is not an automatic entitlement to require development contributions. Before requiring a development contribution, a council must first assess whether one can be required under both the LGA02 and the council’s DCP. An application for a consent or authorisation acts as the trigger for undertaking this assessment.
Assessment steps

To be able to require a development contribution for a subdivision, building\(^{30}\), land use, or work when granting a consent or authorisation, the council must first confirm:\(^{31}\)

(A) It is a **development** as defined by LGA02 s.197 (i.e. it generates a demand for reserves, network infrastructure, or community infrastructure).\(^{32}\)

(B) The effect of the development (either alone or cumulatively with other developments) is to require new or additional assets or assets of increased capacity and, as a consequence, the council will incur (or has already incurred) capital expenditure to provide appropriately for reserves, network infrastructure, or community infrastructure (LGA02 s.199 – often referred to as the ‘causal nexus test’).

(C) The development is liable for development contributions under the council’s DCP (LGA02 s.198(2)).

In addition, the purpose or infrastructure for which a contribution is required must not be funded or provided in some other way that would result in the requirement being contrary to LGA02 s.200. For example, if the council has already charged a financial contribution for the same purpose for the same development. See section 6.3.

The council must keep a record of this assessment for each development.

If the subdivision, building, land use, or work is proposing to connect to council services (if applicable) and is within the relevant catchment map set out in the DCP, it will likely meet the requirements of A-C; however, these three questions should always be explicitly addressed.

Some cases may require more careful consideration. For example, if a site is already connected to council services and is changing to a different type of land use that may alter the demand for council services.

Each step is further discussed below.

**Confirmed status as a ‘development’**

A subdivision, building, land use, or work is a development if it generates a demand for reserves, network infrastructure, or community infrastructure.

Evidence of generating a **demand** can include:

- A connection to council services such as water, wastewater and roads.
- Stormwater eventually making its way to a council managed stormwater network, or the property is protected or situated in a location serviced by a council managed stormwater network. It is not just runoff from the property that generates demand for stormwater works.
- Inclusion within the catchment for community infrastructure and reserves.

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\(^{30}\) As defined in s.8 of the Building Act 2004.

\(^{31}\) See Neil Construction and Ors v North Shore City Council [2008].

\(^{32}\) Does not include the pipes or lines of a network utility operator.
Increased demand due to increased building size, occupancy potential or change of land or building use.

The LGA02 does not require an immediate connection in a temporal sense between a development and the corresponding “demand” generated by the development. Requirements for assessments are made when consents or authorisations are granted and must be for a development, but do not have to be made prior to or contemporaneously with that development.

**Confirming requirement for council growth expenditure**

The causal nexus test has two parts:

- The effect of the development (either alone or cumulatively with other developments) is to require new or additional assets or assets of increased capacity; and
- as a consequence, the territorial authority incurs (or has already incurred) capital expenditure to provide appropriately for reserves, network infrastructure or community infrastructure (LGA02 s199).

The first test requires that the cumulative effects of developments together drive the need for the council to provide growth-related assets and that the development being assessed **contributes** to that need. This second test requires that the council has or will incur capital expenditure to provide those assets.

In practice, the test will be met if a development contributes to the demand for any one or more of the assets in the schedule of assets for the relevant catchment.

It is important to note that the development does not need to contribute to the need for all of the assets listed in the schedule of assets for a development contribution to be payable. However, a development will not satisfy this test if no reasonable causal nexus can be made to any of the assets in the schedule of assets.

**Confirming that the DCP applies to the development**

A DCP will apply to a development if:

- the DCP covers the development type proposed; and
- the development is within a catchment area (or as noted in sections 3.7 and 4.4, connects to a specified water, wastewater or stormwater network); and
- the development is not explicitly excluded from being subject to development contributions in the DCP.

**Confirming that the assets are not otherwise funded**

This section should be read in conjunction with section 6.3.

A council must consider if, and to what extent:

- The council has imposed a condition on a resource consent in relation to the same development for the same purpose (LGA02 s.200(1)(a)).
The developer or a third party will fund or otherwise provide for the same reserve, network infrastructure, or community infrastructure (LGA02 s.200(1)(b) and (c)).

The council has already required a development contribution for the same purpose in respect of the same building work, whether on the granting of a building consent or a certificate of acceptance (LGA02 s.200(1)(ba)).

If any of those circumstances apply, the council may not be able to charge development contributions, or the amount of development contributions charged will need to be adjusted to the appropriate extent.

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**Applying the correct DCP**

LGA02 s.198(2A) requires development contributions to be assessed under the DCP in force at the time the consent/authorisation application was submitted, accompanied by all required information.

If required information is missing when the application is first lodged, then the DCP that applies will be the one in force when the missing information is provided - or a new, complete application is submitted.

A council can base its determination on whether a consent application was accompanied by all required information on:

- Its decision to accept a resource consent application for processing under RMA s.88.
- The building consent authority’s decision that a building consent application complies with the requirements of s.45(1) of the Building Act 2004.

If an application is withdrawn and a new application subsequently submitted, it is the DCP in force at the time the subsequent application is submitted (with all required information) that applies.

This requirement cannot be altered except through a development agreement.

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**Assessment where consents are amended or appealed**

Consent holders may seek to vary a resource or building consent. This may require a decision by the council about whether a new consent is required, or the original consent can be amended.

Where a consent is amended, the amended consent is subject to the DCP in force at the time the original consent was lodged with all required information. Any change in the demand (represented by a change in the number of HUEs for one or more activities) should be recognised in a new assessment.

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33 This is the consent/authorisation application that the council has chosen as the trigger to undertake the assessment for development contributions, not necessarily the first consent/authorisation application for the development. See section 4.8.

34 While not stated explicitly in the LGA02, the same treatment should apply to an application for a certificate of acceptance.

35 It is the date that the application (with all required information) is submitted that applies for the purposes of LGA02 s.198(2A), not the date that the council determines that the application has all required information.
Where a new consent is required, the new consent is subject to the DCP in force when the new consent application is lodged with all required information.

Because DCPs change over time this can mean a significant difference in development contribution amounts. It is good practice for decisions on whether a consent can be amended or whether a new consent is required to be made independently of any development contributions considerations.

The applicant will also usually have the option to surrender their consent and then submit a new consent application, with consequent time and cost implications.

Re-assessments of appealed consents can be carried out once the appeal decision is made. Whatever the effect of the appeal, as per LGA02 s.198(2A), the consent is subject to the DCP that was in force at the time that the consent was lodged with all required information.

5.2 THE ASSESSMENT PROCESS

Table 5.0 is a summary of key steps in the development contributions assessment process and how they help ensure compliance with the LGA02.

Table 5.0. Example development contributions assessment process

<table>
<thead>
<tr>
<th>STEP</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Receive application for a resource consent, building consent, service connection or certificate of acceptance and check for completeness</td>
</tr>
<tr>
<td></td>
<td>After receipt, check that all required information has been included. The relevant DCP is the one in force on the date the application is submitted with all required information.</td>
</tr>
<tr>
<td></td>
<td>It is helpful to operate a consents process that ensures that applications that are likely to be subject to development contributions have a specialised review.</td>
</tr>
<tr>
<td>2</td>
<td>Check for other relevant consents or authorisations</td>
</tr>
<tr>
<td></td>
<td>Other consents/authorisations or applications for the same site should be identified. These will help evaluate the overall nature of the development on the site and:</td>
</tr>
<tr>
<td></td>
<td>▪ Allow other past or current development or financial contributions to be identified to determine whether the limitations under LGA02 s.200(1)(a) or (ba) apply.</td>
</tr>
<tr>
<td></td>
<td>▪ Identify whether this is a new application, an amendment to an existing application, or part of a staged application.</td>
</tr>
<tr>
<td>3</td>
<td>Check that development contributions can be required</td>
</tr>
<tr>
<td></td>
<td>Before assessing a development against the details of the DCP, confirm:</td>
</tr>
<tr>
<td></td>
<td>A. It is a development as defined by LGA02 s.197 i.e. any subdivision, building, land use, or work that generates a demand for reserves, network infrastructure, or community infrastructure.36</td>
</tr>
<tr>
<td></td>
<td>B. The effect of the development (either alone or cumulatively with other developments) is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs (or has already incurred) capital expenditure to provide appropriately for reserves, network infrastructure, or community infrastructure (LGA02 s.199).</td>
</tr>
<tr>
<td></td>
<td>C. The development is liable for development contributions under the council’s DCP (LGA02 s.198(2))</td>
</tr>
</tbody>
</table>

36 Does not include the pipes or lines of a network utility operator.
<table>
<thead>
<tr>
<th>STEP</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td><strong>Determine if the development has non-standard treatment</strong>&lt;br&gt;Check whether the development is the subject of an agreed non-standard treatment. For example, where a consent or a related consent is the subject of an earlier reconsideration, objection or development agreement or other non-standard agreement.&lt;br&gt;If the developer is providing some or all of the works included in the DCP’s schedule of assets (s.201A), or the council has imposed a financial contribution for the same purposes as development contributions, the council may need to consider how to adjust the assessment and/or development contributions to account for this.&lt;br&gt;See section 6.3.</td>
</tr>
<tr>
<td>5</td>
<td><strong>Determine the development type and calculate the number of units for each activity</strong>&lt;br&gt;The development should fit within one or more of the development types specified in the DCP. Each of these development types will be subject to relevant development contribution activity charges. The DCP may specify that the development is subject to different activities for different types of applications.&lt;br&gt;The number of HUEs that the development represents, for each applicable activity, can be determined from the assessment rates in the DCP (see example in section 4.4). This assessment represents the application of LGA02 Schedule 13, cl.2.</td>
</tr>
<tr>
<td>6</td>
<td><strong>Identity and calculate any credits that apply</strong>&lt;br&gt;Identify and calculate any actual or historic credits that apply. See section 4.4.&lt;br&gt;Actual credits are for development contributions that have been imposed and paid in the past.&lt;br&gt;Historic credits are usually calculated by applying the assessment factors in the DCP to past or present land uses or buildings that are eligible for such credits.</td>
</tr>
<tr>
<td>8</td>
<td><strong>Identify the per HUE charges</strong>&lt;br&gt;The catchment that the development site is within will determine which HUE charges apply for each activity.</td>
</tr>
<tr>
<td>9</td>
<td><strong>Calculate net HUEs and charges for each activity, and the total charge</strong>&lt;br&gt;The number of HUEs for each activity is calculated based on the number of HUEs that the development represents (step 5), reduced (to a minimum of zero) by the applicable credits (step 6). This figure is multiplied by the relevant per-HUE charge.&lt;br&gt;i.e. (Assessed HUEs – credits) x development contributions charge per HUE = development contribution payable&lt;br&gt;This represents the maximum development contribution that can be imposed for each activity under LGA02 s.203(2) and Schedule 13, cl.1.&lt;br&gt;Councils have discretion to require a lesser contribution, but it is rare for this to be applied in practice.37&lt;br&gt;Development contributions for reserves are also subject to a cap under LGA02 s.203(1). The amount of the contribution (calculated by multiplying the number of units by the relevant amount in the schedule of charges) must not exceed the greater of 7.5% of the value of additional lots created by a subdivision or the value equivalent of 20m² of land for each additional household unit or accommodation unit created by the development. If needed, the reserve development contribution must be reduced to comply with these limits.&lt;br&gt;The development contributions payable for all activities are summed.</td>
</tr>
</tbody>
</table>

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37 See Beaumont Trading Company vs Auckland City Council at para 4425.
### STEP 10: Issue development contribution notice

Formal notice of the development contribution required is issued when the consent or authorisation is granted. The notice must specify the amount payable (or area of land required) and should contain key information related to the assessment, when invoices will be issued, payment due dates, contact details, and the right of the recipient to request a reconsideration or objection.

Where the assessment relates to a building consent, under s.36 of the Building Act 2004, the council must prepare a development contribution notice in the form prescribed by the Building (Forms) Regulations 2004. Because this form provides only limited information, it is recommended that you issue another development contribution notice, with more information, at the same time.

See sections 5.4 and 11.1.

### STEP 11: Record assessment and charges payable in council systems

Records must be kept of the assessment. This includes information needed to support the assessment and notice, and to facilitate payment. The council will also need to ensure that records for related consents are updated to ensure that final certificates and approvals (e.g. certificates under RMA s.224(c) and code compliance certificates under the Building Act 2004) are only issued once the DCP’s requirements for this are met (e.g. that the development contributions have been paid).

See sections 5.5 and 7.1.

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### 5.3 SPECIFIC ASSESSMENT ISSUES

Some specific assessment issues are summarised below along with guidance on how they can be addressed, subject to ensuring consistency with the council’s DCP.

#### Calculating development contributions for mixed-use developments

Where a development includes both residential and non-residential uses, these uses can usually be assessed separately. However, the definitions of development types and the assessment process must be clear enough to support this. This could apply to both the development and to any prior development or contributions that generate credits.

For example, a development in a town centre may include a retail component on the ground floor (with associated parking) and one or more floors of residential units (with their own associated parking). It may be necessary to assign floor area, parking, and impervious surface areas between these different elements of the development.

#### Assessments for staged developments

The assessment process needs to recognise staged developments, noting that larger staged developments may also run over several years and may be subject to more than one DCP or set of charges. A typical scenario is a subdivision and land use consent that establishes a series of “super lots”, each of which is further subdivided and built on through a series of later subdivision, land use and building consents.

One approach that can be taken to these types of development is to assess each stage independently, as consents are applied for. This means that the super lots in the initial
subdivision are assessed as single lots, and credits given for those contributions in the later assessments for each stage. An alternative is to base the initial assessment on information provided in the land use consent, which for a residential development will usually specify the expected total number of lots or residential units.

A further alternative (particularly in the case of industrial or commercial subdivisions) is to partially or fully defer assessing contributions until the building consent stage, on the basis that it is only then, rather than the subdivision or land use consent stage, that the intensity of the development and hence the demand for infrastructure can be accurately assessed. See section 4.8.

The approach that is chosen should ensure that the treatment of each stage and the time when contributions are to be paid is clear.

Managing large developments that were not anticipated

Large developments that were not anticipated within asset management planning and the DCP can present challenges for the operation of development contributions. If the Long-term Plan does not include funding for supporting infrastructure then development contributions will not be able to be collected for that infrastructure, and/or the development may not be able to proceed.

If it can proceed, the development may also consume capacity for growth that was effectively expected to take place in other parts of the district.

Such developments can present opportunities and the council should engage with the developer on potential solutions. These could include:

- Changing planned capital expenditure, and potentially the DCP.
- Delaying planning approval until infrastructure needs are fully understood and planned for.
- Infrastructure provision conditions on the development.
- Entering into a development agreement specifying how infrastructure will be provided and funded.

5.4 DEVELOPMENT CONTRIBUTION NOTICES

The development contribution notice is normally issued upon granting of the relevant resource consent, building consent, certificate, or service connection. In some cases, a notice may be issued earlier (see Building Act 2004 requirements below), later, or re-issued (for example, following a reconsideration or objection).

The development contribution notice formally notifies the applicant of the requirement to pay development contributions and the charges payable. It also triggers their rights to request a reconsideration or to lodge an objection.

In addition to the development contribution payable, the notice should contain the following:

- The date of issue and the DCP that the notice is being issued under.
- A brief summary of the development and reference to any relevant resource or building consent numbers.
- The catchment(s) that the development is being considered under for each activity.
- The amount of HUEs assessed for each activity.
- Any credits being recognised in the assessment.
- Any special treatment or remissions being applied.
- Information on land value used for assessing reserve development contributions (if applicable).
- Information about when invoices will be issued and when payment is required (or land is to be transferred).
- Notice of whether the council may adjust the charges in line with the Producer Price Index when invoices are issued.
- Any action the council will take if payment is not made.
- Advice about the recipient’s right to seek a reconsideration of the development contribution assessed, or to object to their assessment.
- Who is issuing the notice.

Development contribution notices do not constitute an invoice or an obligation to pay for the purposes of the Goods and Services Tax Act 1985, and the notices should make this clear.

A template development contribution notice is included in section 11.1.

While not mandatory, a council may also refer to the need to pay development contributions in resource and building consent advice notes for the convenience of the developer. However, LGA02 s.198(3) stipulates that a requirement for a development contribution is not:

- A condition of a resource consent that gives rise to any right of objection or appeal (so is not able to be appealed through RMA processes).
- A matter that gives rise to any right to apply for a determination under the Building Act 2004.

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**Building Act 2004 notices**

Under s.36 of the Building Act 2004, if a development contribution is payable, the council must issue a development contribution notice (in the specified form38) stating the development contributions payable and stating that a code compliance certificate for the building work will not be issued unless the development contribution is paid. This notice is to be attached to a project information memorandum (PIM) or provided to the building consent authority for attaching to the building consent.

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38 Building (Forms) Regulations 2004, Form 3.
Issue of the notice is only required if a development contribution is “payable” and a
development contribution is payable only once it is required by a territorial authority under
one of the triggers in LGA02 s.198. Consequently, the council should only issue a notice-if a
requirement has already been made for a development contribution under one of the
triggers in LGA02 s.198. That will include when a building consent is granted but does not
include instances where a PIM is issued ahead of a building consent.

However, the development contribution notice provides only limited information, excluding
most of the information recommended above. Councils should not rely on it as formal notice
of a development contribution requirement. When issuing a building consent, councils
should require development contributions in accordance with LGA02 s.198.

5.5 PAYMENT OF DEVELOPMENT CONTRIBUTIONS

Invoice

This section should be read in conjunction with section 4.8.

Invoices set out the charges, provide an accounting record, and initiate the payment
process. The invoice should specify when payment must be made.

There may be a delay between when a notice is issued and when an invoice is issued. Again,
it is not possible to reassess contributions under a later DCP that is in force at the time of
invoicing.

Payment

Under LGA02 s.208, until development contributions have been paid, a council may:

- Prevent the commencement of a resource consent.
- Withhold a certificate under RMA s.224(c).
- Withhold a code compliance certificate under s.95 of the Building Act 2004.
- Withhold a service connection to the development.
- Withhold a certificate of acceptance under s.99 of the Building Act 2004.
- Register the development contribution under the Land Transfer Act 2017, as a charge
  on the record of title of the land in respect of which the development contribution was
  required (discussed below).

These powers apply regardless of whether or not payment is overdue, and their use is
discretionary. The approach taken, within the DCP and in practice, must be carefully
considered to ensure that the council’s interests are protected and that developments can
be completed successfully.

If payment is past due, a council can also start debt collection proceedings in line with its
usual practice. Development contributions are recoverable as a debt owed to a council
under LGA02 s.252.
A council may choose to defer payment of development contributions. For example, it may wish to make development more attractive by easing cash flow or it may defer payment to enable the development contributions paid to reflect the mix of standard and smaller housing ultimately constructed in a subdivision. See section 4.4.

If doing so, the council should protect its interest, and the most common approach for doing this is to accept a bank bond (discussed below).

Once the development contributions have been paid the council will need to update the records for related consents and authorisations to ensure that appropriate final approvals and certificates can be issued.

Where development contributions are made in the form of land, the council will need to ensure that all elements of the land transfer process are carried out. This could include completing a subdivision to create the new title, transfer of ownership of the new title, rezoning that land, giving the land a reserves classification, adding the land into the council’s property database and asset register, preparing a management plan, carrying out initial works (e.g. fencing, public access) and ensuring that the land is maintained.

**Statutory Land Charges**

The council can register an unpaid development contribution as a charge on the land under subpart 5 of Part 3 of the Land Transfer Act 2017 (LGA02 s.208). This records the existence of the unpaid contribution in a way that makes it apparent to any potential purchaser. The purchaser would usually then require the removal of the charge (i.e. that the contribution is paid to the council) before settlement with the seller.

In each case, the council should register the development contribution as a charge on the title of the land in respect of which the development contribution was required.

Registrations also support any further council efforts to recover contributions through a court process, should this be necessary.

The landowner’s permission is not needed to register the charge, although it is good practice to ensure that the developer is aware of the council’s intentions.

Registrations may not be effective in all cases, and do not necessarily guarantee payment. For example, the land may not be sold causing the developer to go into liquidation, or it may be sold under circumstances (e.g. a mortgagee sale) that mean the council’s interest may not be protected.

**Bonds**

If provided for in the DCP, the council may allow a developer to defer payment by accepting a guaranteed bond. Bonds can enable a developer to complete their development and generate the cash flow needed to pay the development contributions.

A bank bond enables a council to request funds from the developer’s bank should the developer default. The bank usually secures the value of the bank bond against assets owned by the developer. If the guarantee is provided by an appropriate institution (e.g. a trading bank) then the council has minimal risk in such an arrangement.
The costs associated with bonds (including security-related fees charged by the guarantor) should be met by the developer. Councils may wish to seek legal advice when bonds are being considered. The terms for accepting a bond should not forgo the ability to institute debt collection proceedings.

Bonds required as a condition of resource consent are covered in RMA s.108, s.108A and s.109. These RMA provisions do not apply to development contributions which are not imposed as a condition of resource consent. However, in practice, bonds used by councils to secure payment of financial contributions and development contributions tend to be similar.
This chapter provides information and guidance on legislative limits to requiring development contributions, permitted uses of development contributions, and refunds.

6.1 MAXIMUM DEVELOPMENT CONTRIBUTIONS

This section should be read in conjunction with sections 3.11 and 4.4.

Network and community infrastructure

LGA02 s.203(2)\(^{39}\) and Schedule 13 specify a maximum development contribution that can be required for an individual development for each activity. The calculation required to determine the maximum is illustrated below.

\[
\text{Maximum development contribution per activity} = \text{Activity charge per unit of growth}^* \text{ adjusted for any producer price index movements}^{**} \times \text{Units of demand (e.g. HUEs) for the development}^{***}
\]

* Calculated in accordance with LGA02 Schedule 13
**Permitted by LGA02 s.106(2C) and (2B)
***Assessed in accordance with the relevant development type specified in the DCP

In practice, this is the standard calculation used for determining the development contributions payable for most activities. LGA02 s.203(2) prohibits councils from requiring more than this. Councils have discretion to require a lower contribution – for example, when applying their Rates Remissions Policy.

Reserves

Development contributions for reserves are subject to a separate additional “soft cap”\(^{40}\) under LGA02 s.203(1), which states that development contributions for reserves must not exceed the greater of:

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\(^{39}\) LGA02 s.203(2) refers only to network infrastructure or community infrastructure (not reserves) but LGA02 Schedule 13, cl. 1 applies to community facilities i.e. including reserve activities.

\(^{40}\) A soft cap is one where there is no fixed, absolute, dollar amount. A soft cap can increase in line with circumstances. In this case, the value of land.
(A) 7.5% of the value of the additional lots created by a subdivision; or
(B) the value equivalent of 20m² of land for each additional household unit or accommodation unit created by the development.

The limit is whichever is the greater of either (A) or (B), not the value of (A) and (B) combined.

Both (A) and (B) can apply to subdivision developments, but only (B) applies where no new lots are created, such as a building consent for an apartment building on an existing lot.

While the maximum in LGA02 Schedule 13 applies to each individual reserve activity charge per HUE, the maximum in LGA02 s.203(1) applies to all reserve activity charges collectively, i.e. the sum of all reserve-related development contributions imposed.

LGA02 s.203(1) does not define a methodology by which the council’s level of growth-related capital expenditure on reserves is to be determined or how reserve development contributions must be calculated. Growth-related capital expenditure for reserves and the maximum charge per HUE, like any other activity, must be determined in accordance with the principles in LGA02 s.197AB and the methodology outlined in LGA02 Schedule 13.

### 6.2 THE CROWN AND DEVELOPMENT CONTRIBUTIONS

The Crown is bound by only a handful of sections of the LGA02 (refer to s.8), and Crown developments are therefore not subject to development contributions.

The Crown is not defined in the LGA02, and there is no universal definition of the Crown that applies for the purpose of the LGA02. However, s.2 of the Public Finance Act 1989 can be used as a guide. This defines the Crown to include all Ministers of the Crown and all departments (as defined in the Public Service Act 2020). The following are specifically excluded from the meaning of the Crown under that Act:

- State-owned enterprises.
- Crown entities (e.g. the Accident Compensation Corporation, Crown research institutes, school boards of trustees, and tertiary education institutions).

However, for Boards of Trustees of state schools\(^{41}\), Schedule 6, cl.2 of the Education Act 1989 is relevant as it states that these boards are entitled as the agent of the Crown “to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges”.

Any applicant claiming they are part of the Crown should be asked to indicate the basis for that claim, and to confirm that the development in question aligns with the purpose of that applicant and its statutory powers. Designations in the District Plan can also be used as a guide in some cases.

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\(^{41}\) The Ministry of Education has a useful resource for information on schools, including their status, on its website at [https://www.tki.org.nz/Schools](https://www.tki.org.nz/Schools)
As development contributions are required from the applicant for a consent or authorisation, it is the status of the applicant that is important, not the nature or ownership of the land involved.

6.3 DEVELOPMENT CONTRIBUTION LIMITATIONS

LGA02 s.200(1) limits councils’ ability to require development contributions in certain circumstances to protect developers from councils ‘double dipping’. A council may not charge a development contribution if, and to the extent that, the infrastructure is already being provided or funded by the developer or by another party. Depending on the circumstances, the council may not be able to require a development contribution at all or may need to reduce the amount of a development contribution.

A breach of LGA02 s.200 is one of the grounds for lodging an objection.

The meanings of “if, and to the extent”, “purpose”, and “same infrastructure” are particularly important when interpreting each subsection of LGA02 s.200(1)- discussed below.

Resource consent condition for same purpose: LGA02 s.200(1)(a)

A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that it has, under section 108(2)(a) of the Resource Management Act 1991, imposed a condition on a resource consent in relation to the same development for the same purpose

The purpose of LGA02 s.200(1)(a) is primarily to ensure that councils do not charge financial contributions and development contributions for the same purpose. This is particularly important as a council transitions from financial contributions under the RMA to development contributions.

Under LGA02 s.200(1)(a) “if, and to the extent” refers to the purpose(s) for which a consent condition was imposed on a development. In other words, how closely a consent condition imposed on a consent reflects the same purpose that a development contribution is charged for. That purpose for development contributions is to fund the provision of network wide infrastructure associated with growth, for a specific activity. If there is a close match, then the council is effectively prohibited from requiring a development contribution.

For example, a council cannot require both a reserve financial contribution and a reserve development contribution if the financial contribution charge has the same purpose as the reserve development contribution. However, the council may charge a financial contribution for parking and a development contribution for transport, provided the purpose of each charge is different – meaning they fund different activities.

It is possible that the purpose of a financial contribution and a development contribution have some common elements but are not the same. In this instance, the council will need to consider to what extent it should recognise this in its requirement for development contributions.
“If, and to the extent” does not refer to the cost or cost difference between a financial contribution for an activity, compared with the cost of a development contribution for the same activity.\textsuperscript{42} For example, if development contributions for reserves are more expensive than reserve financial contributions. Development contributions cannot be used to ‘top up’ the contribution toward reserve funding if a reserve financial contribution has already been imposed as a resource consent condition.

In this way, LGA02 s.200(1)(a) provides recognition of past contributions in a similar way to credits for development contributions paid in the past. For this reason, it is common for councils to acknowledge financial contributions paid for a site in their policy on credits.

**Provision of infrastructure**

Consent conditions often require the provision of infrastructure. Developers sometimes conflate the provision of this infrastructure with the purpose of development contributions and argue LGA02 s.200(1)(a) applies to prohibit a council from requiring development contributions. For example, if they have provided stormwater treatment, detention and conveyance within their development, they may argue that they should not need to pay a development contribution for stormwater.

However, the purpose of the development contribution is different from the purpose of such infrastructure related consent conditions. Councils’ development contributions funded programme is normally focused on network wide impacts, while the infrastructure required as a consent condition is typically internal to the development or addresses the immediate environmental impact on network infrastructure, reserves, or community infrastructure. It would be very unusual for the extent of the infrastructure required under consent conditions to mirror the purpose of a development contribution - and the works programme that sits behind it.

However, there can be some cross over between the infrastructure required under consent conditions and individual elements of the works proposed in the DCP’s schedule of assets. For example, a developer may be required under their consent to undertake an upgrade of an intersection, and that same asset is proposed in the DCP’s schedule of assets. The council should recognise this when requiring development contributions in the same way it would under LGA02 s.200(1)(b)- discussed below.

\textsuperscript{42} Refer Domain Nominee Ltd v Auckland City Council.
A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that the developer will fund or otherwise provide for the same reserve, network infrastructure, or community infrastructure

In LGA02 s.200(1)(b), the same reserve, network infrastructure, or community infrastructure means the assets proposed in the DCP’s schedule of assets for that activity for that catchment. To the extent refers to how much of that schedule is being funded or provided by the developer.

Developers may provide or directly fund elements of a DCP’s schedule of assets because they:

- Develop ahead of a council’s programme as scheduled in the DCP and need the infrastructure in place early for their development to proceed.
- Are undertaking the works at the request of the council in parallel with their own work because the two are interconnected. For example, an intersection or road upgrade next to their development, the upsizing of a water or sewer main they are laying through or near their development, or because the works are intended to be situated on the developer’s land.

In some cases, provision of these works may be a condition of consent.

A council may choose to fund these works directly by compensating the developer or even contracting them to undertake the work. This approach is recommended, particularly when a council is using its authority under the RMA to require the works as a condition of consent because it avoids several issues (discussed below). It also enables the council to fund any non-growth-related portion of the works directly.

However, where this does not occur, LGA02 s.200(1)(b) protects the developer from also paying for the growth portion of the works through the development contributions they are charged.

There are two possible approaches to adjusting the charges (and total amount payable) to account for the limitations imposed by LGA02 s.200(1)(b).

- **Proportional reduction.** Do not charge the developer the portion of development contribution attributable to the works undertaken by the developer. The rest of the development contribution relates to the other assets and programmes in the schedule of assets. This meets the requirements of LGA02 s.200(1)(b). However, the developer may still pay most of the cost of undertaking the growth portion of the works, which are reflected in the charges being levied on other developers. This would breach LGA02 s.200(1)(c) and would result in over-recovery. The approach may be considered unfair as the council effectively shifts most of the burden of funding the growth-related portion of the works onto an individual developer and passes that benefit onto other developers.

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43 Or assets of the same general function and purpose as the assets in the schedule of assets (LGA02 s.201A(7)).
- **Funded offset.** Offset the value of the works funded by development contributions in the DCP’s schedule of assets against the development contributions payable by the developer. This approach reflects the requirements of LGA02 s.200(1)(b) but also tries to ensure that the council bears more of the burden of funding the growth-related portion of the works, which are then recovered from other developers. This is similar in effect to the council directly funding the growth portion of the works. If the value of the works is less than the relevant development contribution that would otherwise by required, no change is needed to the development contribution and no over-recovery will occur. However, if the value of the works exceeds the contribution that would otherwise be required, this may also breach 200(1)(c) and would result in over-recovery.

As noted, both approaches may fall short of the council fully funding the growth portion of the work, potentially resulting in over-recovery and a breach of 200(1)(c) for other developments. This is almost certain under a proportional reduction approach but will depend on the circumstances under a funded offset approach.

A council can reduce its charge per HUE to account for this in its next DCP update or review. The council may need to consider reviewing its charges immediately if the impact is significant. This will only benefit future developments, not developments that have already paid unless the council chooses to pursue part-refunds.

The impact on developers and councils of the two approaches is illustrated in an example in table 6.0. In the example:

- The charge per HUE is $10,000.
- The developer is liable for 150 units and a total contribution of $1.5m before any recognition for the work undertaken.
- The value of the work in the council’s DCP schedule is $1m, $500,000 of which is funded by development contributions.
- This represents 5% of the overall programme funded by development contributions for this catchment and activity, and therefore 5% of the development contributions charge.

### Table 6.0. LGA02 s.200(1)(b) approaches to reducing development contributions

<table>
<thead>
<tr>
<th>Impact</th>
<th>PROPORTIONAL REDUCTION</th>
<th>FUNDED OFFSET</th>
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<tbody>
<tr>
<td></td>
<td>Reduce the charge per HUE by 5% to $9,500. The developer will pay $1,425,000 in development contributions in total. The $75,000 reduction reflects the proportion of the charges attributable to the works undertaken. The council will avoid $425,000 in growth-related capital costs it was otherwise expecting to incur and which is being funded by other development via development contributions.</td>
<td>The value of the work intended to be funded by development contributions is $500,000. This is offset against the total charges ($1.5m) that would otherwise be levied. The developer will pay $1m in development contributions in total. The council has effectively paid for the growth-related portion of the work by forgoing revenue equal in value to the work.</td>
</tr>
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</table>
Charging at the time of granting a building consent or certificate of acceptance: LGA02 s.200(1)(ba)

A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that the territorial authority has already required a development contribution for the same purpose in respect of the same building work, whether on the granting of a building consent or a certificate of acceptance

LGA02 s.200(1)(ba) prohibits a council from charging a development contribution on both a building consent and a certificate of acceptance for the same building work.

For example, a development contribution for water is levied at the time a building consent is granted for a house. The house was not completed in time to get a code compliance certificate and as a result, the builders sought a certificate of acceptance for the building. The council is prohibited from charging a development contribution again for water.

LGA02 s.200(1)(ba) applies only to the extent that the scale or intensity of the development is the same as that contemplated in the original building consent. LGA02 s.200(4) allows a reassessment in some cases if the scale or intensity of the development has increased since the original development contribution assessment.

Third party funds or provides work: LGA02 s.200(1)(c)

A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that a third party has funded or provided, or undertaken to fund or provide, the same reserve, network infrastructure, or community infrastructure

LGA02 s.200(1)(c) applies both where third party funding or provision of an asset(s) was anticipated at the time of calculating the development contributions in the DCP, and where it was not. The appropriate treatment in each case is discussed below.

Anticipated

Where third party funding was anticipated to help meet the cost that the council incurs for an asset, this should be reflected in the funding allocation for the asset or programme. The appropriate treatment for this is discussed in section 3.9.

Where a third party was anticipated to fund or provide some of the asset directly (rather than providing those funds to the council), this should be reflected by reducing the capital expenditure expected to be incurred by the council in the schedule of assets.

If the third party is providing all of the asset, then the asset should not be included in the council’s DCP.

Not anticipated

Where third party funding was not anticipated and becomes available after the development contributions have been set in the DCP, a reduction in the charges must be made if, and to the extent that the funding has reduced the net cost of the asset to the council.
The council can reduce its development contributions to account for this in its next DCP update or review. The council may need to consider reviewing its charges immediately if the impact is significant. This will only benefit future developments, not developments that have already paid unless the council chooses to pursue part-refunds.

This reduction should follow a similar approach to the proportional reduction approach outlined in respect of LGA02 s.200(1)(c). If the net costs to the council have not changed because, for example, the third-party funding provides relief from an increase in the cost of delivering the asset(s), no reduction is warranted.

Similar adjustments are required if, and to the extent that, a third party provides the asset directly.

6.4 USE OF DEVELOPMENT CONTRIBUTIONS

This section should be read in conjunction with section 2.3.

Under LGA02 s.204, development contributions revenue must be used toward capital expenditure on the activity for which it was required. It cannot be used for maintenance.

Principle (d) in LGA02 s.197AB requires that development contributions be used for the benefit of the catchment that they were collected toward, and for the purpose of the relevant activity (i.e. providing growth-related stormwater assets, water assets, transport assets etc). This investment can be made outside of the relevant catchment, provided it is still for the benefit of the catchment.

The schedule of assets lists the assets or programmes that are intended to be funded by development contributions. The funding requirements for these assets or programmes form the basis for calculating development contribution charges. While assets already constructed are ‘locked in’, councils are not rigidly bound to the asset or programme proposed in the schedule for construction in the future.

A council may spend development contributions collected on a different set of assets, provided the assets constructed are for the same general function and purpose as those set out in the schedule (LGA02 s.201A(5) and (7)). This recognises that the solution ultimately constructed will often vary from the asset or programme proposed in the schedule of assets. There are many reasons why this could occur including a change in strategy for dealing with infrastructure demand growth, adoption of new technical standards, or because of options, feasibility, and design reviews undertaken prior to construction.

For example, provided the works benefit the catchment that development contributions were collected from, a council may provide:

- Additional capacity in a wastewater network by construction of additional storage, rather than upgrading a main as proposed in the schedule.
- A new reserve rather than upgrading an existing reserve as proposed in the schedule.

What constitutes a benefit to the relevant catchment and same general function and purpose must be judged in each specific circumstance.
A council should make sufficient information available to demonstrate what development contributions are being used for and why they are being used (LGA02 197AB(e)). For example, it can do this by publishing information about:

- The use of development contributions revenue towards the activities and assets specified in the schedule of assets.
- Alternatives that achieve the same general function and purpose. If alternatives are used, the reporting should also explain why.

There is no prescribed way or form for making this information available, so councils should consider, at a minimum, an annual report on assets or programmes constructed and funded by development contributions.

**Use of reserve development contributions**

LGA02 s.205 and s.206 require development contributions received for reserves purposes to be spent on purchasing or developing reserves.

LGA02 s.205 outlines a range of permitted uses for the funds within a council’s district. These include the purchase of reserve land, the development of community or recreational facilities associated with the use of a reserve, and in certain circumstances:

- Improving recreational facilities at a school.
- Payments to other bodies that manage or control reserves to enlarge, enhance, or develop reserves.

LGA02 s.206 allows councils to use development contributions received for reserves purposes to be spent outside of its district in certain circumstances if the council considers it:

- has adequate reserves or it is impracticable to purchase or develop reserves locally; and
- the investment will benefit the residents in its district.

For example, a council may add to, improve, or develop land it owns for public recreation purposes outside of its district or, with the permission of the Minister of Local Government, owned by another council or public body.

**Changes to the schedule of assets**

Should a council make changes to its programme funded by development contributions, it must change its schedule of assets at some point to reflect this. See sections 4.5 and 4.9.

If the change does not increase the total or overall development contribution that will be required, then the council is permitted to make the change at any time without consultation or further formality (LGA02 s.201A(5)).
Changes to include assets or programmes of the same general function and purpose as existing assets or programmes must be made when the DCP is next changed or reviewed (LGA02 s.201A(7)(b)). Other changes to the schedule (e.g. including brand new assets or programmes) must be made before development contribution funding can be used for that asset or programme.

6.5 REFUNDS OF DEVELOPMENT CONTRIBUTIONS

The situations where a refund or return of land must be made are outlined in LGA02 s.209 and s.210, although a council may choose to provide other grounds for refunds in their DCP. A refund must be made where a consent is surrendered or lapses, or where the council fails to provide some or all of the assets being charged for.

Refunds may also be required as a result of a successful reconsideration, objection or judicial review.

Surrendered or lapsed consent

LGA02 s.209(a), (b), and (c) require the refund of development contributions (or the return of land) where a consent is surrendered or lapses, and consequently the development proposed in the consent does not proceed. A refund is required only in these instances if and to the extent that payment has been made prior to the consent lapsing or being surrendered.

As the public may not be aware of their entitlement to a refund, councils should have systems in place for reviewing consents that have lapsed or been surrendered and proactively notify the consent holder of their entitlement.

Infrastructure not provided

LGA02 s.209(d) requires a council to provide a refund where it does not provide the reserve, network infrastructure, or community infrastructure for which the development contribution was required. Reserve, network infrastructure, or community infrastructure under LGA02 s.209 means the assets or programmes funded by development contributions, as reflected in the schedule of assets. If the council fails to deliver these assets or programmes without substituting another asset(s) of the same general function and purpose, a refund is required.

LGA02 s.210 also requires a refund if reserve development contributions received have not been applied within 10 years of payment (or another period specified in the DCP).

These requirements seem simple but can be complex to apply in practice. The following factors must be considered to determine when and how to make refunds:

- The timeframes included in the LGA02.
- Changes and substitutions in a council’s programme.
- Whether or not the service is provided.
- How to apply LGA02 s.210.
**The timeframes included in the LGA02**

Development contributions may be required in advance of providing the reserve, network infrastructure, or community infrastructure. The anticipated gap between when a development contribution is required and when an individual element of the infrastructure programme listed in the DCP is provided could be several years, or even decades.

Under LGA02 Schedule 13, cl.1 councils can charge development contributions for assets programmed after the 10 years of the Long-term Plan, provided those assets are listed in the schedule of assets. No time limit to this ability is specified in the LGA02, but there must be a causal relationship between development today and the need for the asset(s) in the future for it to be included in the DCP.

This is not a conflict with LGA02 s.210(1) which specifies a default maximum period of 10 years for providing the infrastructure (from when money is received) in relation to development contributions for a specified reserve purpose. LGA02 s.210(1) also enables a council to set a different (shorter or longer) time period in its DCP for the delivery of reserves before refunds are required. For example, a council may specify a refund period of 30 years, although that would have to be based on reasonable grounds (e.g. an anticipated 30-year horizon for provisional reserves).

No timeframe is specified in the LGA02 for the provision of other types of infrastructure before the obligation to refund is triggered.

**Changes and substitutions in council’s programme**

A council may change its future infrastructure programme through a review of its Annual Plan, Long-term Plan, Asset Management Plan, Infrastructure Strategy, or DCP. As a result, assets or programmes may be deferred (delayed), changed or substituted, or removed from the programme.

**Deferment**- Taken together, the provisions above mean that a council can defer provision of assets for many years without triggering the need for a refund - provided the asset (or substitute asset) remains in future DCPs. This signals the council’s continued intention to provide the asset at some stage.

However, a council should be cautious of deferring reserve assets if it pushes expected provision outside of 10 years (or another period specified in the DCP) from when money is received. This may eventually lead to triggering the refund requirements of LGA02 s.210(1) (see below).

**Changed or substituted**- As noted in sections 4.9 and 6.4, a council may change the assets or programme funded, or intended or be funded, from development contributions, provided that:

- the assets substituted are for the same general function and purpose; and
- these changes are reflected in an update of the DCP when it is next reviewed.

Where these conditions are met, no requirement to refund is triggered simply because of that change.
**Removed from the programme**— The need to make a refund is triggered where a council removes (not defers) the assets or programme from its infrastructure programme via a formal decision made in relation to its Annual Plan, Long-term Plan, or DCP. The extent that a council needs to refund the relevant development contribution will depend on whether or not a property receives a service (see below).

**Service provisions and refunds**

Where a council has decided not to provide an asset or programme, a full development contribution refund for that activity is not required in most cases. An individual asset or programme will usually only represent a portion of the development contribution. The refund required relates only to that portion. For example, if funding for the asset represented 10% of the development contribution, a refund of 10% is warranted (assuming there has been no other asset or programme that has substituted the asset/programme not provided).

However, where the removal of an asset or programme results in a development or area not being serviced at all by the activity in the catchment, a full refund is likely to be required. This is because the removal of the asset in the programme may have severed the causal nexus required by LGA02 s. 197 and s.199 (i.e. the link between the development, or development in an area), and the need for the council to incur capital expenditure to provide new or additional assets or assets of increased capacity.

For example, consider a council-provided water scheme extension to a new rural residential area funded by development contributions. The council ultimately changes its plans and decides to provide water to only half of the new area, removing projects from the Long-term Plan and DCP that are needed to service the other half. The costs of the removed projects represent 30% of the water development contributions charge.

- The original consent holders for properties that received water will be due a 30% refund.
- The original consent holders for properties that did not receive water will be due a 100% refund.

The lack of service provision is usually clear when reticulated water and wastewater services are involved. This may be less clear for transport, stormwater, community infrastructure, or reserves as the levels of service may simply reduce – in which case a proportional refund may be appropriate. Councils will need to decide what the impact is in each case based on the individual circumstances.

The council may also need to review its approach to recovering costs for the remaining programme and update these at its next scheduled DCP review, or sooner if the impact of a refund is material.

**Practical implications of refunds under LGA02 s.209**

The sections above outline councils’ obligations and rights under the LGA02. In exercising their authority or complying with the LGA02, councils should also act reasonably.

For example, councils should not repeatedly defer significant assets or programmes over decades or keep them consistently beyond the 10 years of the Long-term Plan. This indicates a lack of commitment to delivering the assets or programme. Proper consideration should be given to whether such assets or programmes should be removed from the DCP, and refunds provided.
Conversely, councils should also consider the materiality of any programme changes when assessing whether a refund is required under LGA02 s.209(1)(d), particularly if the cost of administering a refund process is similar to the refunds owed (see section on permitted retentions below). Councils can assist with this by ensuring that assets are sufficiently grouped and aggregated together into logical programmes within the schedule of assets, as permitted by LGA02 s.201A(2). This will help ensure that refunds are not triggered by minor changes in the programme.

**Refund time limits for reserves**

Reserve development contributions are subject to additional obligations under LGA02 s.210. This section requires a refund if money paid for reserve development contributions is not used within 10 years from the time the council receives the money, or within another period specified in the DCP. A full refund is not required in all cases. It can be a part-refund based on the extent that the funds were not applied in the relevant period.

For example, a reserve asset (A) is planned for year 10 of the Long-term Plan/DCP and formed 25% of the reserve development contribution. The remaining 75% of the charge relates to other reserve assets (B-D) planned earlier in the Long-term Plan period. The council delivered assets (B-D) as scheduled but decided to defer to the provision of asset (A) to year 12. Assuming the council did not specify a longer refund period in its DCP, a refund is due to anyone that paid the development contribution in the first two years. That refund will be 25% of the charge.

**Transfer or return of development contributions under the Infrastructure Funding and Financing Act 2020**

The Infrastructure Funding and Financing Act 2020 (IFF Act) provides another tool for special purpose vehicles (SPV) to fund and finance growth demanded infrastructure.

If an Infrastructure Funding and Financing levy (IFF levy) is imposed on rating units within developments that had already been subject to development contributions, then action must be taken to ensure that ratepayers do not pay for the same asset twice.

When this situation arises, s.91-95 of the IFF Act outline options for councils to deal with this.

These sections provide two pathways to address previously paid development contributions:

1. The previous contributions are to be transferred to the SPV, in which case an appropriate proportion of the IFF levy is to be remitted in respect of the properties for which contributions have been made; or
2. the territorial authority must return the previous contributions paid to the current ratepayer of the property.

The IFF Act outlines a four-step process to determine which approach to take.
If the situation results in step four and the entire, or part, of the original development contribution paid needs to be refunded, then councils will need to identify the appropriate amount to return to the current owner of each rating unit.

In cases where the property is still under the ownership of the original developer, this should be very straightforward.

In cases where the original development has been completed, or partially completed with development contributions paid and the properties on-sold to individual owners, then councils will have to decide how to appropriately distribute the original development contributions paid between current ratepayers. This will require councils to have kept good record of the original development contribution calculation.

As development contributions are calculated per unit of demand, it is advised that councils use best judgment to appropriately assign the units of demand paid for to the current rating units. This could prove complex in some situations, and s.95 of the IFF Act acknowledges that this apportioning can only be done so as far as the information available allows.

**Treatment of interest received**

Interest may accrue on development contributions collected. How this interest is to be treated in a refund situation is not specified in the LGA02. However, LGA02 s.209 provides that councils “must refund or return ... a development contribution paid or land set aside” and similar wording is provided in LGA02 s.210.

Consequently, the refund requirement is only in relation to the development contribution paid and councils are not obliged to account for interest accrued when making refunds. Councils can choose to pay the consent holder any interest revenue received, and this is recommended as a matter of fairness and equity.

This position may be different if the council has incorrectly or unlawfully collected the money. The council should seek legal advice on the appropriate treatment of interest in these circumstances.
Permitted retentions

Under LGA02 s.209(2) a council may retain a portion of a development contribution or land referred refunded in LGA02 s.209(1) of a value equivalent to the costs incurred by the council in relation to the development or building and its discontinuance. Translated, this means that the council may deduct from the refund to be paid any administrative and legal costs it has incurred in assessing, imposing, and refunding a development contribution or returning land.

This section is most clearly applicable where consents have lapsed or been surrendered, or where full refunds are required. Notwithstanding that LGA02 s.209(2) refers generally to a development contribution or land referred to in subsection (1), it is unlikely that this section would allow the council to retain any portion of a development contribution where a refund is triggered by the circumstances in LGA02 s.209(1)(d) i.e. non-provision of the reserve, network infrastructure or community infrastructure.

Where a refund is required under LGA02 s.210, the council may retain money or land of a value equivalent to the costs of the authority in refunding the money or returning the land. This is similar to LGA02 s.202(2) above, but permitted retentions are limited only to the costs incurred in refunding a development contribution or returning land.

The consent holder

LGA02 s.209 requires that refunds be made to the consent holder (i.e. the person who was granted the original consent/authorisation that triggered the development contribution) or their personal representative.

For land use or subdivision consent, an alternative (incorrect) view is sometimes promoted that the current owner of the land could be considered the consent holder based on RMA s.221, which states that a land use consent and a subdivision consent attaches to the land to which the consent relates and may be enjoyed by subsequent owners. However, the RMA has no bearing on the obligation to pay, or entitlement to receive, a refund of development contributions.

Refunds under reconsiderations, objections, and judicial reviews

Although not specified in the LGA02, refunds may also be required if a reconsideration or objection alters the requirement for development contributions. These are straightforward and simply represent a correction to the requirement for development contributions for the individual development (i.e. a council refunding an amount over-charged).

In most cases where a reconsideration or objection has been lodged, the developer will not have paid a development contribution as they await the outcome of the process. However, if a development contribution has been paid and it is altered on a reconsideration or objection then the council must refund the difference. The same would apply if there was a judicial review of a specific assessment or generally related to the DCP. The amount of the refund will depend on the specific nature of the case under consideration.
This chapter outlines core obligations associated with record keeping and accounting for development contributions and provides guidance on good practice for council managers overseeing development contributions.

7.1 RECORD KEEPING

General requirement to create and maintain records

Under s.17 of the Public Records Act 2005, councils must create and maintain full and accurate records of their affairs, in accordance with normal, prudent business practice.

Any records that document the development of a DCP are also protected records and councils must not dispose of them without written authority from the Chief Archivist.45

These records provide information needed for councils to operate development contributions efficiently and may be produced as evidence in the event of an objection or judicial review.

Operational record keeping

Councils must have systems in place that ensure records are kept from when an application for a consent/certificate or authorisation is received. For development contribution purposes, important records include:

Application

- The consent/certificate or authorisation application, the date received, date it is accepted for processing, and consent/certificate or authorisation reference number(s).

Assessment and notice of requirement

- The assessment undertaken to determine whether the development is subject to development contributions. See sections 4.8, 5.1 and 5.2. A standard assessment template should be used.
- The development contribution notice, including the information noted in section 5.4. Any supporting documents associated with this information are also important records.

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45 Refer to the list of protected records for local authorities, published in the New Zealand Gazette, Issue 117 on 28 August 2013.
- Any special arrangements, such as development agreements, special assessments, remissions, or reductions under LGA02 s.200(1).

**Payment**

- Due date for payment (from invoice), copy of invoice, copy of receipt, and date paid. This is important to ensure the council properly accounts for its income.

**Other records**

- Records of any surrendered consents and refunds made as a result.

**Council systems**

These records and the associated data should be linked in council systems with the relevant consent/certificate or authorisation, and with the relevant properties to help with:

- Ensuring that development contributions are paid before RMA s.224(c) certificates and Building Act 2004 code compliance certificates are issued, or a service connection authorisation is granted.
- Identifying when any refunds are needed.
- Assessing future developments on the site, for example by accounting properly for credits due or any development agreements.

The HUEs and revenue for each activity and catchment also need to be recorded in systems that enable a council to properly account for development contribution revenue and associated asset capacity. See section 7.3.

The record and data needs for different purposes are summarised below. The respective systems should be connected to enable records and data to flow from one system to another if they are not already a fully integrated enterprise system.

**Figure 7.0. Development contribution records links**
7.2 ACCOUNTING FOR DEVELOPMENT CONTRIBUTIONS

The council’s financial and accounting systems must be able to support development contributions. This should include identifying revenue received for each activity and catchment, and the use of that revenue towards assets identified in the schedule of assets or substitutes permitted under LGA02 s.201A.

This will also allow the council to confirm that development contributions have been used to provide the reserves, network infrastructure or community infrastructure for which they were required within an appropriate timeframe. See section 6.4. Providing this information to the public and the development community is an important part of using this funding tool transparently. It will also help with governance and oversight of development contributions. See section 7.4.

Recognition of income

Income is normally recognised on an accrual basis following generally accepted accounting practice, although it can be quite complex to apply to development contributions. A council’s DCP and accounting policies may also influence the timing of income recognition. For example, if payment is not required until a code compliance certificate is due to be issued. It is recommended councils seek professional advice about income recognition when operating DCPs.

Unpaid development contributions

Reporting on unpaid development contributions should distinguish between assessments that may or may not become payable (depending on the progress of the underlying consent) and those that have become payable. This is particularly important where invoices are issued, as this can trigger:

- A requirement for the council to account for GST.
- Consideration (eventually) of any need to exercise council powers under LGA02 s.208.

Invoicing for GST

Development contributions are subject to GST. It is expected that councils will take appropriate advice to ensure that the processes and documents they use to require and receive contributions comply with GST requirements. Particular issues are the treatment of contributions provided in the form of land and the time of supply provisions of the Goods and Services Tax Act 1985.

7.3 ACCOUNTING FOR CAPACITY

The calculation of development contributions (including cost recovery timeframes) is tied to the capacity life of an asset or programme. LGA02 s.197AB(b) requires that:

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46 See Goods and Services Tax Act 1985, s.5(7B) and (7C).
“development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding.”

Council systems need to ensure revenue and HUEs for each activity and catchment are accounted for against the schedule of assets. This will allow the council to identify when relevant costs have been fully recovered or capacity has been fully taken up.

While simple in principle, this requirement can be difficult to put into practice, especially if the council uses a different capacity life estimate for each asset in its schedule of assets. For this reason, it is recommended that councils employ a degree of simplification when determining capacity lives. See section 3.6.

Financial systems must be able to account for HUEs and be adaptable through multiple DCPs and associated charge and programme changes.

7.4 MANAGEMENT, MONITORING AND REPORTING

Development contribution management and reporting arrangements should support oversight and decisions on the following questions:

- Are levels of revenue in line with projected amounts? This helps to inform the financing of and potential timing or scale of the capital programme.
- Are levels of development in line with projections?
- Does the DCP need to be amended to address emerging risks or issues (e.g. regular challenges or requests for clarifications, reconsiderations, or objections on a particular point, different growth patterns or rates than those predicted)?
- Are development contribution systems and processes working properly? See section 7.5.

Record keeping and monitoring of DCP implementation will also support compliance with the financial reporting requirements of the LGA02, including reporting of revenue from different sources within the Annual Report.

Information about the time between assessments and payments supports cash flow and financing models. The level of unpaid contributions provides a view of potential future cash flows and how growth revenue and growth expenditure might vary over time. In carrying out these projections, it is critical to recognise that some assessments will never become payable as they are conditional on the progress of the underlying developments.

Ongoing review and monitoring of the DCP will identify whether growth and revenue are proceeding as expected. This will help to identify when the DCP may need amending and whether any change should be made to the capital programme. Development agreements entered into by the council should also be reported to management, as they can also have a significant impact on the capital programme.

The programme may need to be sped up, slowed down, or altered in other ways. Such changes are typically made as part of the Annual Plan process.
The monitoring should also allow the assumptions set out in the DCP to be tested, and support verification that the DCP is working effectively as part of the council’s overall funding and strategic approach to growth and asset management.

7.5 AUDIT AND QUALITY ASSURANCE

Councils should apply a range of quality control processes to the preparation and administration of DCPs. This will help identify and correct any issues and risks early.

**DCP audit**

There is no explicit requirement for DCPs to be audited, although expected revenue will be included in Long-term Plans and may be examined as part of the Long-term Plan audit. Possible approaches include:

- Carrying out an internal or external review of a draft DCP, or particular elements of it.
- Ensuring that information taken from the growth model is accurate and interpreted correctly.
- Ensuring that the capital programme has been recorded correctly in the schedule of assets.
- Checking that the council’s adopted cost allocation system is being applied and used correctly.
- Peer review or audit of the funding model and charge calculations.
- Reviewing and sensitivity testing the significant assumptions and associated risks.
- Checking the DCP complies with all requirements of the LGA02, as discussed in chapter 4.

**Process and sample audit**

Quality assurance should also ensure that development contributions are applied and collected correctly from all relevant developments. This should cover the full assessment, requirement and payment process as discussed in chapter 5, and can include process or sample reviews of:

- Consent applications to ensure all potential developments (as defined in the DCP) are identified for assessment (most councils will require contributions for only a small fraction of the total consents that they grant).
- Individual assessments, including calculation of HUEs for the proposed development and any credits or remissions available under the DCP.
- Development contribution notices.
- Record keeping, especially ensuring development contribution assessment, requirement, and payment information is recorded in consent and property files.
- Receipt of development contribution payments and ensuring that the records for related consents and properties are updated.
- RMA s.224(c) certificates, Building Act 2004 code compliance certificates, or connection authorisations, ensuring that these are only issued if development contributions are paid (or in accordance with the council’s DCP).
- The vesting of contributions in the form of land.
- The accounting for contributions, including for GST.

### 7.6 DELEGATIONS

Councils are permitted to develop and operate DCPs under the LGA02. Councils must formally delegate their powers under this Act to allow them to be exercised by management and staff, thus enabling the efficient management and operation of the council’s development contributions regime in accordance with the LGA02 and its DCP.

The type of delegations that need to be adopted will depend on the details of each council’s DCP, the style of its delegation manual and decisions on the level of authority to be held by different officers, committees or the full council. Table 7.0 provides an example of the types of powers that will be relevant to many councils.
<table>
<thead>
<tr>
<th>LGA02 REFERENCE</th>
<th>POWER OR DUTY</th>
<th>SUGGESTED DELEGATION LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>s.106 Part 8, subpart 5 Schedule 13</td>
<td>All of the responsibilities, duties, and powers associated with any DCP prepared in accordance with LGA02 s.106, not already specifically provided for below.</td>
<td>General manager (cover-all delegation)</td>
</tr>
<tr>
<td>s.198, 106, 200 and 208 s.36 of the Building Act 2004</td>
<td>Power to require development contributions under LGA02 s.198, make assessments (including special assessments), issue notices and exercise the powers under LGA02 s.208 if development contributions are not made. Excludes the power to register a development contribution as a charge on the title of the land.</td>
<td>Key administering staff</td>
</tr>
<tr>
<td>s.208</td>
<td>Power to register a development contribution under the Land Transfer Act 2017, as a charge on the title of the land in respect of which the development contribution was required.</td>
<td>General manager</td>
</tr>
<tr>
<td>s.199A and 199B</td>
<td>Power to hear and determine reconsiderations, including requesting further information from reconsideration applicant.</td>
<td>Any two general managers / managers acting jointly Note: People hearing reconsideration should be separate from the staff that made original assessment to ensure objectivity.</td>
</tr>
<tr>
<td>Schedule 13A</td>
<td>Power to manage initiation of the objections process - including appointment of commissioners and to allow an objection to be served after the 15-working-day period specified in the LGA02.</td>
<td>General manager</td>
</tr>
<tr>
<td>s.199I</td>
<td>Authority to provide information and represent council at objection hearings.</td>
<td>Key administering staff</td>
</tr>
<tr>
<td>s.150A</td>
<td>Power to recover actual and reasonable costs in respect of a development contribution objection.</td>
<td>General manager</td>
</tr>
</tbody>
</table>
| s.207A – 207F | Power to:  
- make decisions on requests for development agreements  
- request development agreements  
- enter into development agreements up to $X | General manager or manager |
<table>
<thead>
<tr>
<th>LGA02 REFERENCE</th>
<th>POWER OR DUTY</th>
<th>SUGGESTED DELEGATION LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>s.207A – 207F</td>
<td>Power to: ▪ make decisions on requests for development agreements ▪ request development agreements ▪ enter into development agreements over $X</td>
<td>Committee or sub-committee</td>
</tr>
<tr>
<td>s.106(2)(b) and (2)(c)</td>
<td>Power to inflation-adjust the charges annually.</td>
<td>General manager</td>
</tr>
<tr>
<td>s.209 and 210</td>
<td>Authority to refund development contributions or return land in accordance with the DCP up to $X.</td>
<td>General manager</td>
</tr>
<tr>
<td>s.209 and 210</td>
<td>Authority to refund development contributions or return land in accordance with the DCP over $X.</td>
<td>Committee or sub-committee</td>
</tr>
<tr>
<td>Under the DCP</td>
<td>Power to agree to a bond or payment arrangement in accordance with the DCP.</td>
<td>General manager</td>
</tr>
<tr>
<td>Under the DCP</td>
<td>Authority to accept land rather than payment.</td>
<td>General manager or managers</td>
</tr>
</tbody>
</table>
8

RECONSIDERATIONS,
OBJECTIONS AND FORMAL LEGAL CHALLENGES

This chapter provides information about the three formal options for challenging the imposition of development contributions, namely reconsiderations, objections and judicial review. Brief comments about declaratory judgments are also included.

8.1 OVERVIEW

Table 8.0 provides a summary of each challenge option, which represent an escalation in formality, likely precedent value and potential impact on a council’s current or future DCP or implementation approach.

Table 8.0. Summary of reconsiderations, objections and judicial review

<table>
<thead>
<tr>
<th></th>
<th>RECONSIDERATION</th>
<th>OBJECTION</th>
<th>JUDICIAL REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Decision maker</strong></td>
<td>The council.</td>
<td>Independent development contribution commissioners chosen by the council from a list of commissioners appointed by the Minister of Local Government.</td>
<td>The High Court.</td>
</tr>
<tr>
<td><strong>Scope</strong></td>
<td>The council’s decision to require development contributions and/or the amount required.</td>
<td>The council’s decision to require development contributions and/or the amount required.</td>
<td>The council’s process for assessing and requiring development contributions. The DCP and its compliance with the requirements of the LGA02. The process for consulting on the DCP.</td>
</tr>
<tr>
<td><strong>Application process</strong></td>
<td>The developer lodges a reconsideration request as per the procedure in the DCP within 10 working days of receiving a development contribution notice. Note: A reconsideration cannot be sought if an objection has been lodged (LGA02 s.199A).</td>
<td>The developer lodges an objection with the council within 15 working days of receiving a development contribution notice, or the outcome of a reconsideration, or after that period by the discretion of the council if satisfied there are exceptional circumstances. Note: An objection can be lodged irrespective of any reconsideration request (LGA02 s.199C).</td>
<td>The developer lodges a statement of claim in the High Court and formally serves this on the council. No time limit.</td>
</tr>
<tr>
<td><strong>RECONSIDERATION</strong></td>
<td><strong>OBJECTION</strong></td>
<td><strong>JUDICIAL REVIEW</strong></td>
<td></td>
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<tr>
<td>---------------------</td>
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</tr>
<tr>
<td><strong>Fees or charges for a challenge</strong></td>
<td>Determined by the council and set in the council’s fees and charges schedule.</td>
<td>The council may recover charges for the objection process (LGA02 s.150A). These can include the “actual and reasonable costs in respect of the objection”, including costs associated with the engagement of commissioners, administrative support of the objection process, and costs associated with the hearing (such as room hire costs). The fees and allowances for a witness (internal or external) appearing at a development contribution objection hearing must be paid by the party on whose behalf the witness is called (LGA02 s.199I(1)). The council may set charges and a deposit in its fees and charges schedule. The cost of commissioners is normally charged on the basis of actual cost incurred.</td>
<td>Each party bears their own cost of taking the matter to Court. The High Court generally awards costs against the losing party based on a scale of costs set out in the High Court Rules.</td>
</tr>
<tr>
<td><strong>Grounds</strong></td>
<td>Must relate to specified grounds (LGA02 s.199A), which relate to errors in calculation, assessment, application of the DCP, or the information used to inform assessments.</td>
<td>Must relate to specified grounds (LGA02 s.199D) which relate to demand impacts of the development, facilities not being required by the development, a breach of LGA02 s.200 (so called double dipping); or the incorrect application of the DCP. Cannot be a challenge to the content of the DCP itself (LGA02 s.199C).</td>
<td>Can challenge any decision by the council relating to the DCP or a specific assessment decision on the basis of procedural unfairness, unreasonableness, or unlawfulness / error of law.</td>
</tr>
<tr>
<td><strong>Procedure</strong></td>
<td>As determined by the council and stated in its DCP (LGA02 s.199A).</td>
<td>Subject to LGA02 Schedule 13A (LGA02 s.199E), commissioners determine process, often after consultation with the objector and the council. Degree of formality usually based on complexity and the amount of the charges involved.</td>
<td>Set by the Court but generally the decision is made on the basis of affidavit evidence from witnesses and legal submissions. The hearing will therefore only include the presentation of legal submissions and no evidence.</td>
</tr>
<tr>
<td><strong>Decision timeframe</strong></td>
<td>Within 15 working days of having all information (LGA02 s.199A).</td>
<td>The decision must be given within 15 working days after the end of any hearing or, if no hearing is held, 15 working days after the last day of the commissioners’ consideration of the evidence.</td>
<td>Set by the Court. There is no statutory timeframe by which a decision must be made. The Court generally attempts to issue decisions within three months of hearing a conclusion.</td>
</tr>
</tbody>
</table>

Reconsiderations should be seen as a routine element of administering a DCP (i.e. errors will sometimes happen and need to be corrected), but care should be taken to avoid errors wherever possible.
Proper process will help to ensure that objections and judicial review are rare events, as they may represent a significant risk to a council’s DCP, revenue, and reputation.

An appropriate management system is needed to respond to objections and judicial reviews and to bring them to the attention of senior council leaders. This includes evaluating the breadth of the challenge, potential outcomes and implications. The council may provide delegations to staff to manage discussions with the developer concerned and enable alternative dispute resolution approaches.

As a challenge progresses it is important to ensure:

- Effective, accurate communications to stakeholders.
- Continued operation of the DCP.
- Maintenance of the integrity of DCP-related processes.
- A process for managing the outcome of a decision (particularly for changes or further action needed if a challenge is upheld).

The instigation of an objection or judicial review does not prevent a council from continuing to deal with disputes informally on a without prejudice basis, for example by negotiating a settlement of any dispute.

8.2 THE RECONSIDERATION PROCESS

Anyone who is required to make a development contribution may ask the council to reconsider that requirement under LGA02 s.199A. The process steps and timeline are illustrated in Figure 8.0.
All reconsideration requests must be processed according to the procedure set out in the council’s DCP.

Initial actions on receipt of a reconsideration request would typically include:

- Acknowledging the request.
- Confirming the matters to be covered and factors to be considered.
- Seeking additional information if necessary.
- Identifying who will carry out the reconsideration (ensuring a level of independence from the original assessment).

**Procedural options for reconsiderations**

Councils can choose how to address reconsideration requests. Examples of possible options are:

- A review of the original assessment by an officer who was not involved in that assessment.
- Maintaining a panel of staff to review assessments subject to reconsideration requests.
- Reconsideration by a council subcommittee (elected members).

The DCP should clearly describe the reconsideration procedure and cover off matters such as:
- Whether the applicant can be heard or whether the process will just be in writing.
- Whether a report will be prepared ahead of time (e.g. if the reconsideration will be heard/considered by a panel or subcommittee).

If a hearing is held, the hearing may involve (depending on circumstances) relevant council officers, and it is good practice to include the person who requested the reconsideration and potentially any persons the requestor requires to corroborate the facts of their reconsideration request.

In all cases, it is good practice for reconsiderations to be completed by someone other than the officer that undertook the initial assessment, although clarifying inputs or explanations by that officer is appropriate.

**Reconsideration decisions**

Decision-makers must have appropriate delegations. See section 7.4.

Written advice of the outcome of the reconsideration (i.e. the decision) must be given to the requestor within 15 working days of receiving all required information. This advice should include:

- A clear explanation of the reasons for the decision and cover off all the points raised in the reconsideration request.
- Information to the effect that an objection to the decision may be lodged within 15 days of receiving the advice.

If a fee is charged for a reconsideration, it may be appropriate to identify in the DCP circumstances when the council may exercise its discretion and refund the fee. For example, where the reconsideration concludes that the council made an error in the original assessment.

**8.3 THE OBJECTION PROCESS**

Any person that is required to pay development contributions can object to that requirement (LGA02 s.199C). LGA02 Schedule 13A sets out the objection procedure. An overview of the procedure steps and timeline is provided in figure 8.1.

Decisions on objections are made by one or more independent development contribution commissioners. Commissioners are chosen (formally appointed) by the council from a register of appointed commissioners established by the Minister of Local Government.

The decision of the commissioner(s) is binding on both parties, although this does not affect the ability of either party to seek judicial review.

**Objection grounds**

Objections against the amount of a development contribution may be raised on one or more of four specific grounds set out in LGA02 s.199D. These grounds are that the council has:
LGA02 s.199D(a): Failed to properly take into account features of the objector’s
development that, on their own or cumulatively with those of other developments, would
substantially reduce the impact of the development on requirements for community
facilities in the territorial authority's district or parts of that district.

What this ground means in practice is that an objector would have to show that there are
particular features or characteristics of their development that either on their own or with
those of other developments substantially reduce the impact that their development has in
terms of demand generation. For example, in the objection case of *Ryman Healthcare v
Auckland Council* the commissioners accepted the argument that Ryman could show that the
features of its facility (development) and the characteristics of its residents were such that the
residents’ demand for reserves was 50% less than that of the general population. Ryman was
able to show that this was a substantial reduction of its development’s impact on the
requirement for community facilities such that the development contributions should be
reduced accordingly.

LGA02 s.199D(b): Required a development contribution for community facilities not
required by, or related to, the objector’s development, whether on its own or cumulatively
with other developments.

This ground relates to the causal link between the development under consideration and the
community facilities that are funded by development contributions. If an objector can show
there is no link whatsoever between the development and these facilities (i.e. the assets and
programmes set out in the LGA02 s.201A schedule) then the development contributions
should not be charged. However, this objection ground would not typically be made out simply
by the objector demonstrating that some assets or programmes could not be linked to their
development, as this phenomenon may be a function of catchments being set at a broad
geographical level.

LGA02 s.199D(c): Required a development contribution in breach of section 200.

This ground is often referred to as the ‘double dipping’ ground. What it essentially means is
that a council cannot charge a development contribution if the council has already received
funds for the same reserve, network infrastructure or community infrastructure from another
source, including from the developer themselves (LGA02 s.200(1)). See section 6.3.

LGA02 s.199D(d): Incorrectly applied its development contributions policy to the objector’s
development.

This ground is relatively straightforward in that it will generally be clear if the DCP has not
been correctly applied.

The right to object does not apply to challenges to the content of a DCP (LGA02 s.199C).
Similarly, the commissioner’s decision may not direct the amendment of the DCP (LGA02
Schedule 13A, cl.9), although it may contain observations on the DCP.
Figure 8.1. Development contribution objection process steps and timeline

- **Notice of assessed amount of development contribution or other formal advice (s.199C)**
- **Notice of decision on a request for a reconsideration is given (s.199C)**

**Within 15 Working days**

- **Person lodges objection with the territorial authority, citing grounds, reasons and relief sought (cl.1)**
- **Territorial authority selects development contributions commissioners (cl.2)**
- **Development contributions commissioners set date for exchange of evidence (cl.3)**
- **Territorial authority and objector exchange briefs of evidence with copies served on commissioners (cl.3)**

**No hearing (decision on papers)**

- **Commissioners determine whether a hearing is required (cl.4)**

**Hearing**

- **Commissioners may direct exchange of replies to evidence within a timeframe set by the commissioners (cl.6)**
- **Territorial authority and objector exchange replies to briefs of evidence, serving copies on the commissioners**

**at least 10 Working days**

- **Commissioners fix date, time and place of hearing (cl. 5)**
- **Hearing according to a procedure determined by the commissioners (cl.7)**

**Within 15 Working days**

- **Commissioners deliberate and make decisions (s.199J and cl.8)**
- **Commissioners' decisions served on territorial authority, objector and the Secretary for Local Government (cl.9)**

**Notes:**
- Note 1
- Note 2
- Note 3
- Note 4
- Note 5
<table>
<thead>
<tr>
<th>NOTE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The council acknowledges receipt of an objection, checks that it is within the time specified, confirms that it is based on one or more relevant grounds, and confirms that all necessary information has been received. The council may accept late objection requests if it is satisfied that exceptional circumstances exist. The council may require a deposit to be paid to help cover the costs of the objection process.</td>
</tr>
<tr>
<td>2</td>
<td>The process for selecting commissioner(s) is set out in LGA02 Schedule 13A, cl. 3. Up to three commissioners may be selected from the register, or in special circumstances (such as when commissioners with the necessary expertise are not available) with the approval of the Minister, from outside the register (LGA02 s.199H). The council should have a process and delegations in place for selecting and appointing commissioners with appropriate skill, knowledge and experience. Once commissioners are appointed, the council provides administrative support to them through the objection process. As soon as development contributions commissioner(s) have been selected the council should forward copies of the objection to each commissioner. The council should ensure there is separation between the administrative elements of this process and the preparation of its evidence and other material relating to the content of the objection. What this means is the persons producing evidence should not be the same persons providing administrative support to the commissioners.</td>
</tr>
<tr>
<td>3</td>
<td>The briefs of evidence will provide details setting out the issues in dispute and the views of the parties on those. They may also identify common ground (i.e. issues that are not in dispute). Depending on the nature of the objection, development of the briefs could involve staff related to policy, legal, finance, assessment, asset management, or specialist engineering (for water, wastewater, stormwater, or traffic) matters.</td>
</tr>
<tr>
<td>4</td>
<td>If a hearing is held the council will need to make the relevant people available. This is likely to include at least the people that prepared briefs of evidence. The right of reply in the hearing (or a reply to evidence in the absence of a hearing) allows each party to respond to points made by the other party in their evidence.</td>
</tr>
<tr>
<td>5</td>
<td>Under LGA02 Schedule 13A, cl.9 the commissioners must give a decision on an objection in writing, including reasons for the decision. The decision must uphold, or dismiss, all or part of the objection. The decision may quash, or direct that amendments be made to, the requirement for a development contribution. It must not direct the amendment of a DCP but may make observations on the DCP. The council retains all of its “functions, duties, responsibilities and powers” (LGA02 s.199M(2)) relating to development contributions, except the ability to amend or overturn the commissioners’ decision. LGA02 s.150A(3) allows the council to waive or remit any objection fee the developer may have paid at its own discretion.</td>
</tr>
</tbody>
</table>
8.4 JUDICIAL REVIEW

This section provides only a brief overview of judicial processes and proceedings that may arise out of DCP preparation and operation. Normally, suitably experienced lawyers would represent and act on behalf of the parties involved.

Judicial review

Any decision made by a council (or any other public body) can be subject to judicial review, under the Judicial Review Procedure Act 2016. Applications for judicial review are heard by the High Court. An application for judicial review may relate to the decision to adopt the DCP, which includes a challenge to the content of the DCP itself, or to a requirement for development contributions on a specific development.

At the time of publishing this guide, there had been four judicial reviews relating to development contributions that resulted in High Court decisions. These are summarised in section 13.1.

The approach usually taken to a judicial review is described in the judgment Neil Construction and Ors v North Shore City Council [2008], paragraphs 11 to 16, and can be summarised as:

... the Court ... determines, as a matter of law, whether proper procedures were followed, whether all relevant, and no irrelevant considerations were taken into account, and whether the decision was one which, upon the basis of the material available to it, a reasonable decision-maker could have made. Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine, but of course, there must be some material capable of supporting the decision.

Except for the Neil Construction and Ors case, judicial review cases to date have tended to focus on alleged errors in a council's application of particular LGA02 provisions (s.197, s.198, s.199 and s.200) and the assessment of contributions rather than flaws in the council's decision-making process.

A possible process for a judicial review is outlined in table 8.2. Once this process starts, it is controlled through the Court. This does not prevent the parties from having other discussions, and they may choose to settle the issue at any time up to the judgment being issued.

Once the judgment is issued, it is binding on the parties (subject to any appeal) and represents case law that other councils and developers will need to carefully consider for situations that are similar to those covered in the judgment.
Table 8.2. Possible development contributions judicial review process

<table>
<thead>
<tr>
<th>STEP</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Statement of claim lodged in the High Court and served on the council</strong>&lt;br&gt;A judicial review process is initiated by the applicant filing a statement of claim and notice of proceeding in the High Court. The statement of claim will set out one or more grounds for the challenge to the DCP or assessment. The applicant must also give initial disclosure of any key documents referred to in the claim.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Statement of defence filed by council with High Court and served on party seeking review</strong>&lt;br&gt;The council files a statement of defence addressing the statement of claim's allegations of fact and grounds for challenging the DCP or assessment. The council must also give initial disclosure of any additional documents not disclosed by the applicant.</td>
</tr>
<tr>
<td>3</td>
<td><strong>Timetable and other procedural matters agreed</strong>&lt;br&gt;A timetable for discovery, evidence and other procedural matters such as the scope of discovery, are typically agreed between the parties and an agreed memorandum filed with the Court. In the absence of agreement, the Court determines these matters.</td>
</tr>
</tbody>
</table>
| 4    | **Case management conference held**<br>The parties may request, or the Judge may determine, that a case management conference be held. This usually happens in the absence of agreement between the parties and is intended to ensure the hearing proceeds smoothly and expeditiously. To ensure this, the Judge can make a range of orders including:<br>• Settling the issues to be determined at the hearing; clarifying the parties involved and who is to be served; setting timeframes.  
• Requiring parties to make an admission on questions of fact or otherwise prove the question at hearing.  
• Requiring the provision of further or better particulars of the matters under review.  
• Clarifying the scope of discovery.  
• Permitting questions to be asked by one party of the other (interrogatories).  
• Determining whether records of the decision under review should be filed.  
• Fixing a time and place for the hearing; and other directions. |
| 5    | **Discovery and inspection of documents**<br>The parties are required to provide documents included in the court determined discovery order between the two parties. Depending on how wide the order to produce documents or the discovery order is, the council may be required to disclose all notes, emails, reports and other material relating to the preparation of the DCP and the individual assessment, including the record of the DCP hearing and decision-making process.  
The withholding grounds included in s.7 of the Local Government Official Information and Meetings Act 1987 (other than maintaining legal professional privilege) do not protect information that must be disclosed pursuant to a discovery order. This means (for example) that information from confidential agenda items (if it is not legally privileged) is discoverable. |
| 6    | **Affidavit evidence prepared and filed with the Court**<br>The council will prepare one or more affidavits, which is how evidence is given in judicial review proceedings. These will explain the process followed by the council in relation to the decision under challenge, and the matters considered in reaching that decision. It will typically annex relevant documents generated during the council process or leading up to the council decision that is being challenged. The applicant may also file evidence, although affidavit evidence may have been filed in support of the statement of claim initiating the review process. The focus in judicial review is typically on the council's decisions and decision-making processes rather than actions of the applicant. |
### 7 Hearings in the High Court

The hearing day allows each party to present oral submissions to the Court through counsel. Judicial reviews do not usually involve cross examination of the people who have provided affidavit evidence.

### 8 High Court issues judgment

The judgment will be issued by the Court, typically several weeks, or longer, after the hearing day. The Court can decide that the decision made by the council was unauthorised or otherwise invalid, and if this is the finding made then the Court can set aside the DCP decision. The Court can also make a direction that the DCP decision must be reconsidered in whole or in part and must give directions as to the reconsideration of the decision. A decision of the High Court can be appealed to the Court of Appeal.

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### Managing the outcomes from a judicial review

Where a challenge is upheld, or upheld in part, by the High Court, the council should seek appropriate legal advice before taking any further action. The general comments that follow are intended to inform that advisory process.

If a challenge relates to a single development and a single assessment, strictly speaking the Court’s decision only binds the parties to the proceedings and relates to that single development. However, following a challenge being upheld, the council may (if not already directed to by the Court) reconsider the approach taken in its DCP, or DCP implementation, in requiring contributions from other developments that have similar characteristics.

Possible responses could include amending the DCP implementation approach for future developments, amending the DCP itself, or a proactive review of past development contribution assessments made on other similar developments.

### 8.5 DECLARATORY JUDGMENTS

A council (or other person) can request that the High Court make a declaratory judgment on the validity of any action by the council, where this depends on the interpretation or proper application of legislation or a document (such as the council’s DCP). The Court will not necessarily agree to provide a judgment and will not provide answers to hypothetical questions not grounded in particular factual circumstances.

While one party, at the outset of proceedings, will usually initiate this process, the Court will seek to identify other parties that might be interested or affected, and determine whether they wish to be involved in the proceedings.

If part of a DCP (or a development contributions assessment) is declared by a declaratory judgment to be invalid, the practical effect is the same as if that part of the DCP or the assessment had been declared invalid (or quashed) in judicial review proceedings.
This chapter provides information and guidance about entering into development agreements.

9.1 INITIAL CONSIDERATIONS FOR DEVELOPMENT AGREEMENTS

Recognising the potential for improved outcomes

Development contributions will most commonly be paid in the form of money, thereby assisting the council to fund an identified capital programme. However, in some cases there may be better ways of providing the infrastructure related to growth, including when a developer is intending to carry out large scale works themselves as part of a development. From time to time, developers may also propose to undertake a development that is out of step with the council’s capital works programme but could generate positive outcomes.

It is important that developers have a way of bringing such opportunities to the council’s attention, and that the council can respond effectively. Equally, a council may approach a developer with a proposal for working together.

The LGA02 provides explicitly for “development agreements”. The provisions relating to development agreements sit alongside (and do not limit) the council’s general ability to enter into agreements under LGA02 s.12. While a council might only enter into a small number of development agreements, they are an important option to consider when beneficial outcomes can be achieved from working more closely with a developer.

Situations where a development agreement might be appropriate include:

- The development requires infrastructure that the council has planned, but the development will take place before the council is able to provide that infrastructure.
- The developer is able to provide infrastructure that will achieve the same or better outcomes as that planned by the council, at lower overall cost (e.g. by combining it with other works on or near the development site) or using a better design (e.g. by integrating it with a planned subdivision layout) or using an innovative approach.
- The developer seeks greater control over the coordination of the infrastructure works and other development works and can take on some of the risks associated with infrastructure provision.
- The development is able to be self-serviced in part, meaning a lower need for council infrastructure in that area.
- The developer wants to undertake a development in an area that is not planned to be serviced.
- There has been a special assessment regarding the level of development contributions and this needs to be recorded.
For particular reasons (such as the scale of the development or the length of the development period) the developer wishes to (and the council is prepared to) lock in particular contribution levels, thereby protecting the developer from increases in charges over time under subsequent DCPs.

In such cases it may be appropriate for the council and the affected developer to enter into a development agreement. Under LGA02 s.207A-207B, this can be initiated by a written request from the council or a developer to the council and both parties must consider any requests.

Situations where there is more than one developer can be addressed through a single agreement covering all parties, or a series of agreements.

The nature of development agreements

Development agreements are specifically provided for in LGA02 s.207A-207F. They are a particular type of agreement (contract) made voluntarily between the council and a developer. A development agreement overrides the DCP, to the extent of any conflict (s.207D(5)). It is important that development agreements (made under s.207A) are distinguished from:

- The normal operation of the DCP (which operates according to the statutory powers and the DCP provisions).
- Consent conditions, which operate under the relevant Act (typically the RMA or the Building Act 2004).
- Agreements that the council might enter into as part of its powers of general competence (i.e. as provided for in LGA02 s.12).
- Contracts that the council may enter into as part of its ordinary delivery of infrastructure projects, typically following a contestable tender process.

It is good practice that development agreements made under LGA02 s.207A clearly state that they are development agreements under these provisions of the LGA02. Development agreements are legally enforceable contracts (s.207D) and it is good practice for councils to take appropriate legal advice in preparing and executing these.

It is important to recognise that preparing a development agreement represents a mixture of statutory and contractual considerations and provisions. Typically, the council will waive or reduce one element of its statutory entitlement (e.g. requiring development contributions at $X per unit at a certain time) in exchange for the developer undertaking certain contractual obligations (e.g. the provision of infrastructure).

While development agreements can represent a good outcome for both parties (and for the community as a whole), the council must consider its wider risks and its ability to address a situation where the developer becomes unable to meet their obligations (for example through insolvency). This can be particularly important where related infrastructure is located on the developer’s land and services other land. In such cases the council could retain responsibility for infrastructure provision, contracting the developer to deliver these as a usual works contract (and sharing the advantage of any related efficiencies). That developer, and other developers, then continue to pay development contributions in the usual way.
**Operating a development agreement**

A development agreement is likely to specify departures from the way that the development would otherwise be treated under the DCP. It is also likely to specify that works are to be provided by either party, with a particular timing and to a specified standard. Provision must be made within the development agreement for ensuring that these obligations are able to be delivered by both parties.

For example, if the subject development is not to be charged for one or more activities, or is to be charged at a lower or higher per-unit rate, as compared to what the DCP says, then the staff involved in operating the DCP need to be aware of this. The agreement may also require ongoing liaison, monitoring or reporting, and these requirements will need to be resourced within the appropriate teams. If the assets to be provided by the council change, the schedule of assets may need to be updated. See section 4.9.

**9.2 DEVELOPMENT AGREEMENT PROCESS**

The process for considering and creating a development agreement, based on a request from a developer (as provided for in LGA02 s.207A and s.207B) is set out below.

**Figure 9.0. Generic development agreement process (developer-requested)**
This process can be initiated by either the developer or the council. If the council receives such a request, it must consider the request without delay and provide written advice of its decision and the reasons for that decision (LGA02 s.207B). A council is not required to accept a request to enter into a development agreement. Like any agreement, it involves the consent of both parties.

Councils will need to ensure that they have appropriate internal mechanisms for handling requests for development agreements. This will include ensuring that there is a process for bringing these requests to the attention of the appropriate manager, and ensuring that there are appropriate delegations to consider those requests, negotiate agreements, and execute the agreements once they are finalised between the parties.

9.3 CONTENTS OF A DEVELOPMENT AGREEMENT

LGA02 s.207C sets out the mandatory and optional contents of a development agreement. A development agreement must include:

- The legal names of the developer and council.
- The legal description of the land that the agreement relates to, and if applicable its street address and other identifiers.
- Details of the infrastructure (which should include reference to a specification for that infrastructure\(^{47}\)) that each party will provide or pay for.

A development agreement may also include other provisions, such as the following:

- A description of the development (including references to related consents).
- Timing of infrastructure, including timing and arrangements for its design, approval, acceptance and vesting.
- Who will own, operate and maintain the infrastructure.
- Mechanisms for ongoing liaison, maintaining and sharing of information, and dispute resolution.
- Timing and arrangements for transfer of land.
- Confidentiality provisions (subject to the Local Government Official Information and Meetings Act 1987).
- Financial contributions that could apply to the development.
- A sunset or long stop date that the agreement ends.
- The nature, timing and amount of any payments between the parties.
- Enforcement approaches in the event of a breach (for example, a guarantee, bond or memorandum of encumbrance or other mechanism).

\(^{47}\) This would often be achieved by reference to the council’s standards for public infrastructure as expressed in a design manual or code of practice.
It would usually also be appropriate to state that the agreement is a development agreement, to outline the reasons for it, and to specify the way in which the agreement is deemed to end (see also LGA02 s.207F). Section 12.2 of this guide includes an outline for a development agreement.

9.4 CONTEXT FOR PREPARING A DEVELOPMENT AGREEMENT

In considering a request for a development agreement, or preparing or negotiating one, it is important to note how they operate alongside the council’s regulatory functions and the DCP itself.

LGA02 s.207D ensures that the council’s regulatory powers are not constrained by a development agreement. In particular, the council is not obliged through the development agreement to grant or issue a building consent, resource consent, code compliance certificate or authorisation for a service connection. This also applies to the operation of any RMA financial contributions provisions that the development may be subject to. It would be appropriate for financial contributions to be noted in the agreement to ensure that all parties are fully aware of these.

This provision recognises that the council must continue to carry out its regulatory functions under the relevant Acts and those regulatory duties and powers cannot be constrained or circumvented by an agreement made under the LGA02. Equally, the council may not refuse to issue any of these consents or approvals on the basis that a development agreement has not been entered into.

However, under LGA02 s.207D(5), a development agreement is deemed to override any conflicting requirement of the DCP. For example, the development agreement might specify that the stormwater activity is not charged within the development or is charged at a different per-HUE rate (because of the works provided under the agreement). Such exceptions should be stated explicitly within the agreement.

Under LGA02 s.207E, a development agreement may not, without the developer’s agreement, require a developer to provide more infrastructure than would have been provided under the DCP. In practice this will mean that the DCP provides a baseline for the development agreement, and departures from the DCP should represent a good outcome for all parties to the agreement (including the community as represented by the council).

Apart from these matters, the LGA02 does not specify any limitation to the scope of a development agreement. In practice a development agreement is unlikely to contain material provisions that are not related to the provision of infrastructure for the activities included in the DCP and the development itself. If the agreement has a wider scope and development contribution matters are a smaller part of it, then it may be appropriate for the agreement to be made under both the council’s general powers in LGA02 s.12 as well as the power to enter into a development agreement.

48 This restriction relates to infrastructure that is of a “nature or type ... higher standard ... or ... [larger] scale” than would have been provided if a development contribution was required.
This chapter provides an example schedule of assets and example catchment map to help councils develop their DCPs. A policy template was developed alongside this guidance and is available as a separate document.

### 10.1 EXAMPLE SCHEDULE OF ASSETS

The following table is a hypothetical example of a schedule of assets prepared under LGA02 s.201A. The schedule shown is prepared in way that reflects the order intended by LGA02 s.201A. However, as demonstrated on the next page, there are alternative approaches used for a variety of practical reasons.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Activity</th>
<th>Asset / Programme</th>
<th>Proposed Capital Expenditure</th>
<th>Expenditure funded from development contributions</th>
<th>Expenditure proposed from other sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District-wide</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Wastewater</td>
<td>Alberton treatment plant capacity upgrade</td>
<td>$4,500,000</td>
<td>$900,000 (20%)</td>
<td>$3,600,000 (80%)</td>
</tr>
<tr>
<td>2</td>
<td>Wastewater</td>
<td>Chesterton Street main upgrade (to 600mm pipe)</td>
<td>$500,000</td>
<td>$100,000 (20%)</td>
<td>$400,000 (80%)</td>
</tr>
<tr>
<td>3</td>
<td>Water</td>
<td>Tulloch Highway pumping station replacement</td>
<td>$3,000,000</td>
<td>$1,200,000 (40%)</td>
<td>$1,800,000 (60%)</td>
</tr>
<tr>
<td>4</td>
<td>Transport</td>
<td>Tulloch Highway widening (6m) and intersection improvement</td>
<td>$3,200,000</td>
<td>$800,000 (25%)</td>
<td>$2,400,000 (75%)</td>
</tr>
<tr>
<td>5</td>
<td>Transport</td>
<td>Korowai Stream bridge replacement and capacity upgrades (new two-lane bridge)</td>
<td>$4,000,000</td>
<td>$1,000,000 (25%)</td>
<td>$3,000,000 (75%)</td>
</tr>
<tr>
<td><strong>Papawai North Growth Cell</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Wastewater</td>
<td>Range Road Pumping Station</td>
<td>$1,800,000</td>
<td>$900,000 (50%)</td>
<td>$900,000 (50%)</td>
</tr>
<tr>
<td>7</td>
<td>Wastewater</td>
<td>Range Road main extension</td>
<td>$600,000</td>
<td>$300,000 (50%)</td>
<td>$300,000 (50%)</td>
</tr>
<tr>
<td>8</td>
<td>Reserves</td>
<td>Papawai Park land purchase (2.25ha)</td>
<td>$1,500,000</td>
<td>$500,000 (33%)</td>
<td>$1,000,000 (66%)</td>
</tr>
<tr>
<td>9</td>
<td>Water</td>
<td>Range Road main extension</td>
<td>$1,900,000</td>
<td>$950,000 (50%)</td>
<td>$950,000 (50%)</td>
</tr>
</tbody>
</table>
Although it would be simpler if water, wastewater, stormwater and transport catchments all aligned, this is not always the case. In such circumstances councils may have to consider ordering their schedules along activity lines as shown below.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Catchment or geographic area</th>
<th>Asset/ Programme</th>
<th>Proposed Capital Expenditure</th>
<th>Expenditure funded from development contributions</th>
<th>Expenditure proposed from other sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Water</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W1</td>
<td>Districtwide</td>
<td>Tulloch Highway pumping station replacement</td>
<td>$3,000,000</td>
<td>$1,200,000 (40%)</td>
<td>$1,800,000 (60%)</td>
</tr>
<tr>
<td>W2</td>
<td>Papawai North Growth Cell</td>
<td>Range Road main extension</td>
<td>$1,900,000</td>
<td>$950,000 (50%)</td>
<td>$950,000 (50%)</td>
</tr>
<tr>
<td><strong>Wastewater</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WW1</td>
<td>Districtwide</td>
<td>Alberton treatment plant capacity upgrade</td>
<td>$4,500,000</td>
<td>$900,000 (20%)</td>
<td>$3,600,000 (80%)</td>
</tr>
<tr>
<td>WW2</td>
<td>Districtwide</td>
<td>Chesterton Street main upgrade (to 600mm pipe)</td>
<td>$500,000</td>
<td>$100,000 (20%)</td>
<td>$400,000 (80%)</td>
</tr>
<tr>
<td>WW3</td>
<td>Papawai North Growth Cell</td>
<td>Range Road Pumping Station</td>
<td>$1,800,000</td>
<td>$900,000 (50%)</td>
<td>$900,000 (50%)</td>
</tr>
<tr>
<td>WW4</td>
<td>Papawai North Growth Cell</td>
<td>Range Road main extension</td>
<td>$600,000</td>
<td>$300,000 (50%)</td>
<td>$300,000 (50%)</td>
</tr>
<tr>
<td><strong>Stormwater</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SW1</td>
<td>Papawai North Growth Cell</td>
<td>Pieters Road retention pond land and works</td>
<td>$2,400,000</td>
<td>$1,200,000 (50%)</td>
<td>$1,200,000 (50%)</td>
</tr>
<tr>
<td>SW2</td>
<td>Papawai North</td>
<td>Victoria Avenue (East end) capacity upgrade (375mm)</td>
<td>$400,000</td>
<td>$100,000 (25%)</td>
<td>$300,000 (75%)</td>
</tr>
<tr>
<td><strong>Transport</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R1</td>
<td>District-wide</td>
<td>Tulloch Highway widening (6m) and intersection improvement</td>
<td>$3,200,000</td>
<td>$800,000 (25%)</td>
<td>$2,400,000 (75%)</td>
</tr>
<tr>
<td>R2</td>
<td>District-wide</td>
<td>Korowai Stream bridge replacement and capacity upgrades (new two-lane bridge)</td>
<td>$4,000,000</td>
<td>$1,000,000 (25%)</td>
<td>$3,000,000 (75%)</td>
</tr>
<tr>
<td></td>
<td>Reserve</td>
<td>Description</td>
<td>Initial Investment</td>
<td>Initial Contribution</td>
<td>Additional Contribution</td>
</tr>
<tr>
<td>---</td>
<td>---------</td>
<td>-------------</td>
<td>-------------------</td>
<td>---------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>R3</td>
<td>Papawai North Growth Cell</td>
<td>Langley Avenue footpath (new)</td>
<td>$500,000</td>
<td>$100,000 (20%)</td>
<td>$400,000 (80%)</td>
</tr>
<tr>
<td>R1</td>
<td>Papawai North Growth Cell</td>
<td>Papawai Park land purchase (2.25ha)</td>
<td>$1,500,000</td>
<td>$500,000 (33%)</td>
<td>$1,000,000 (66%)</td>
</tr>
</tbody>
</table>
10.2 EXAMPLE CATCHMENT MAP

DOWLER DISTRICT DEVELOPMENT
CONTRIBUTIONS CATCHMENTS - WASTEWATER
This chapter provides resources for using when operating a DCP, including templates for a development contribution notice of requirement, forms for requesting a reconsideration or lodging an objection, and a reconsideration decision.

### 11.1 DEVELOPMENT CONTRIBUTION REQUIREMENT NOTICE TEMPLATE

Applicant’s name

Applicant’s address

(date)

Dear applicant / applicant’s agent

Development Contribution Requirement Notice for RM#/BC#/Authorisation#

Your resource/building consent/authorisation application has been assessed for development contributions under Name of District Council’s Development Contributions Policy. Development contributions are required because:

- your resource/building consent/authorisation relates to a development as defined by the Local Government Act 2002; and

- the effect of your development (either alone or cumulatively with other developments) requires Council to incur capital expenditure on new or additional Council assets or assets of increased capacity, as detailed below.

This notice summarises the assessment outcome and indicates the amount of the development contributions that will be payable after an invoice has been issued. This notice is NOT an invoice.
Summary of assessment

<table>
<thead>
<tr>
<th>Activity</th>
<th>Catchment</th>
<th>Initial HUES(^{49}) assessment</th>
<th>Adjustments HUES</th>
<th>Net HUES</th>
<th>Charge per HUE Excl. GST</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity 1</td>
<td>Name of catchment</td>
<td>x</td>
<td></td>
<td>x</td>
<td>$x</td>
<td>$x</td>
</tr>
<tr>
<td>Activity 2</td>
<td>Name of catchment</td>
<td>x</td>
<td></td>
<td>x</td>
<td>$x</td>
<td>$x</td>
</tr>
<tr>
<td>Activity 3</td>
<td>Name of catchment</td>
<td>x</td>
<td></td>
<td>x</td>
<td>$x</td>
<td>$x</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Excluding GST</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$x</td>
<td>$x</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GST(@15%)</td>
<td>$X</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total Including GST</td>
<td>$X</td>
</tr>
</tbody>
</table>

The value of land used in relation to the reserves development contribution is $_____/ m² based on______________________________________

(NOTE- DELETE IF NOT NEEDED)

NOTE: If relevant you will need to identify and adjust for any development contribution credits that apply.

Invoice and payment

An invoice will be issued separately from this notice (date, timing, or future event) and will specify when payment is required. If the development contribution is not paid by the due date, the Council may initiate debt collection proceedings unless a payment arrangement has been made and, if the Council deems it necessary:

- withhold the certificate/authorisation under (name relevant s.209 subsection); and/or
- register the development contribution under the Land Transfer Act 2017 as a charge on the title of the land in respect of which the development contribution is required.

Reconsideration and objection rights

Reconsideration request

Under section 199A of the Local Government Act 2002 you are able to request a reconsideration of the development contribution requirement in this notice if you have grounds to believe that:

- the development contribution was incorrectly calculated or assessed under the Council’s Development Contributions Policy; or
- the Council incorrectly applied its Development Contributions Policy; or

\(^{49}\) Household unit equivalent (HUE) is the unit of demand used in this template, however alternative units of demand may be used.
• the information used to assess the development against the Development Contributions Policy or the way the Council has recorded or used it when requiring a development contribution was incomplete or contained errors.

A reconsideration request must be lodged with the Council within 10 days of receipt of this notice and according to the procedure set out in the Development Contributions Policy. A fee of $x applies, which must be paid when a request for reconsideration is lodged.

A reconsideration request will not be accepted if you have already lodged an objection to the development contribution requirement under section 199C and Schedule 13A of the Local Government Act 2002.

**Objection**

Irrespective of whether you apply for reconsideration of the requirement for a development contribution, you may object to the assessed amount of the development contribution requirement in this notice on grounds set out in section 199D of the Local Government Act 2002. An objection is heard by independent development contributions commissioners appointed by the Council.

The objection must be lodged with the Council within 15 working days of receipt of this notice or the notice of any reconsideration outcome. Further details can be obtained from the Council’s website.

A deposit fee of $x applies for objection hearings, which must be paid when an objection is lodged, and further charges may be payable.

The right of objection does not apply to challenges to the content of the Council’s Development Contributions Policy.

**Further information**

Please contact xxx xxx (name / title / phone / email) if you have any further questions about this assessment.

Name:

Position:

Notice issued under delegated authority
11.2 EXAMPLE RECONSIDERATION REQUEST FORM

DEVELOPMENT CONTRIBUTIONS RECONSIDERATION REQUEST

Under section 199A of the Local Government Act 2002, I hereby request a reconsideration of the development contribution assessment in relation to the development detailed in this form.

1. Applicant details:

<table>
<thead>
<tr>
<th>Full name of applicant:</th>
<th>..........................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone number:</td>
<td>(___ )..................................................</td>
</tr>
<tr>
<td>Mobile phone:</td>
<td>(___ )..................................................</td>
</tr>
<tr>
<td>Email:</td>
<td>..........................................................</td>
</tr>
<tr>
<td>Postal address:</td>
<td>..................................................................</td>
</tr>
<tr>
<td></td>
<td>..................................................................</td>
</tr>
<tr>
<td></td>
<td>..................................................................</td>
</tr>
<tr>
<td>Post code:</td>
<td>___________________</td>
</tr>
</tbody>
</table>

2. Agent details [skip to next section if not applicable]:

<table>
<thead>
<tr>
<th>Full name of applicant:</th>
<th>..........................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company name:</td>
<td>..........................................................</td>
</tr>
<tr>
<td>Phone number:</td>
<td>(___ )..................................................</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>(___ )..................................................</td>
</tr>
<tr>
<td>Mobile phone:</td>
<td>(___ )..................................................</td>
</tr>
<tr>
<td>Email:</td>
<td>..........................................................</td>
</tr>
<tr>
<td>Postal address:</td>
<td>..................................................................</td>
</tr>
<tr>
<td></td>
<td>..................................................................</td>
</tr>
<tr>
<td>Post code:</td>
<td>___________________</td>
</tr>
</tbody>
</table>
3. Development details:

Address of development: ________________________________________________
Legal description (if known): ____________________________________________
Nature of development: ________________________________________________
(e.g. subdivision of X lots, or X residential units)

Resource consent number(s): (specify NA if none)_________________________
Building consent number(s): (specify NA if none)_________________________
Service connection reference(s): (specify NA if none)_______________________

4. Development contribution assessment details:

Date of the assessment that is the subjection of this request: _____/_____/_______
Number of units assessed (as stated in the notice of assessment): ________________ (or NA if not known)
Value of contributions assessed as payable: $NZD_____________._____

5. Grounds for reconsideration

The grounds on which I am requesting a reconsideration are (please tick as many as are applicable):

| a) The development contribution was incorrectly calculated or assessed under the Council’s Development Contributions Policy. | [   ] |
| b) The Council incorrectly applied its Development Contributions Policy. | [   ] |
| c) The information used to assess the development against the Development Contributions Policy has been recorded or used in error by the Council. | [   ] |
| d) The information used to assess the development against the Development Contributions Policy was incomplete or contained errors. | [   ] |

Please ensure that you attach any information that supports the grounds for reconsideration that you have identified above.
IMPORTANT: Notes for applicant / person making the request:

1. You may not apply for a reconsideration of your development contribution assessment if you have already lodged an objection under section 199C of the Local Government Act 2002 in relation to the same assessment.

2. Under section 199A(3) of the Local Government Act 2002, a request for a reconsideration must be made within 10 working days of the date on which the person making the request receives notice from the Council of the contribution required.

3. Consistent with section 199A(1) of the Local Government Act 2002, the grounds on which you may request a reconsideration can only be those that are listed in this form.

4. Once the Council has received all relevant information from you and has established that your request is consistent with the grounds on which a request can be made, the Council will give you written notice of the outcome of its reconsideration within 15 working days.

5. The process for the reconsideration will follow that set out in chapter XX of the Council’s Development Contributions Policy. You may be invited to speak to your request or clarify aspects of it in accordance with the process set out in the policy.

6. If you are dissatisfied with the outcome of the reconsideration, then you retain the right to object to it under section 199C of the Local Government Act 2002. Any objection must be lodged with the Council within 15 working days of receiving the written notice of the outcome of your reconsideration.

Fees

7. The council reserves the discretion to charge a fee of $XXXX where a reconsideration is requested based on the grounds the information used to calculate the development contribution contained errors or was incomplete, and the origin of the error or omission is found to rest with the requestor. Fees will be charged in accordance with the Council’s schedule of fees and charges as set out in _________.
11.3 EXAMPLE RECONSIDERATION DECISION NOTICE

[date]

Dear applicant / contact person

Ref: Application / Address: Assessment (number)

Thank you for lodging the above request for a reconsideration of the requirement for a development contribution. We have now reconsidered the requirement according to the process outlined in the Development Contributions Policy.

Summary of decision

The council has reconsidered the information related to your development, the requirement for a development contribution and information provided with your request for a reconsideration. The outcome is that ...

[There is no change to the original requirement for a development contribution.]

[The requirement for a development contribution has been amended as sought in your request.]

[The requirement for a development contribution has been amended in part as sought in your request.]

[A revised notice of assessment is attached to this letter.]

Further information and the reasons for this decision are provided below.

The development and the requirement for a development contribution

[Provide a brief summary of the development, the relevant consents and the assessment.]

The reconsideration request

[Outline the request, including the grounds and the relief sought.]
The Council’s reconsideration

[Outline the process followed by the council, including any hearings or meetings, further information that was sought, and who made the decision. Include the reasons for the decision. Refer to the LGA02 or policy provisions as necessary to clarify the reasons for the decision.]

Further information

The Development Contributions Policy, the reasons for the Council’s use of contributions and a summary of your options to raise an objection or other challenge to this assessment is available from the Council’s website at www.XXX.govt.nz/contributions.

Please contact xxx xxx (name / title / phone / email) if you have any further questions about this decision.

Regards

Name / Position
11.4 EXAMPLE OBJECTION LODGEMENT FORM

DEVELOPMENT CONTRIBUTIONS OBJECTION

Under section 199C and Schedule 13A of the Local Government Act 2002 notice is hereby served in relation to my development contribution objection to the ________________ Council.

1. **Objector details:**

   **Full name of objector:** __________________________________________
   **Phone number:** (___ )__________________________________________
   **Mobile phone:** (___ )__________________________________________
   **Email:** _______________________________________________________
   **Postal address:** ________________________________________________
   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
   **Post code:** ______________

2. **Objector's agent details [skip to next section if not applicable]:**

   **Full name of objector’s agent:** __________________________________
   **Company name:** ________________________________________________
   **Phone number:** (___ )__________________________________________
   **Facsimile:** (___ )______________________________________________
   **Mobile phone:** (___ )__________________________________________
   **Email:** _______________________________________________________
   **Postal address:** ________________________________________________
   ________________________________________________________________
   ________________________________________________________________
   __________________________
   **Post code:** ______________

3. **Type of objection:**
This objection is (please tick one):

<table>
<thead>
<tr>
<th>a)</th>
<th>an objection to an original assessment (a reconsideration has not been lodged previously); or</th>
</tr>
</thead>
<tbody>
<tr>
<td>b)</td>
<td>an objection to the Council’s decision on a request for a reconsideration.</td>
</tr>
</tbody>
</table>

If your objection is in relation to a decision on a reconsideration, then please fill in the box below (otherwise leave blank):

<table>
<thead>
<tr>
<th>The details of the reconsideration I am objecting to are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name or person who made the reconsideration request: ______________________________</td>
</tr>
<tr>
<td>Date on which the decision on the request was received: <strong><strong><strong><strong>/</strong></strong>__/</strong></strong>___</td>
</tr>
<tr>
<td>Reference number(s) of the reconsideration (if known): ______________________________</td>
</tr>
</tbody>
</table>

4. Development details:

<table>
<thead>
<tr>
<th>Address of development:</th>
<th>_________________________________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal description (if known):</td>
<td>_____________________________________________</td>
</tr>
<tr>
<td>Nature of development:</td>
<td>_____________________________________________</td>
</tr>
<tr>
<td>(e.g. subdivision of X lots, or X residential units)</td>
<td>_____________________________________________</td>
</tr>
</tbody>
</table>

| Resource consent number(s): | (specify NA if none)________________________________ |
| Building consent number(s): | (specify NA if none)________________________________ |
| Service connection reference(s): | (specify NA if none)________________________________ |

5. Development contribution assessment details:

<table>
<thead>
<tr>
<th>Date of the assessment that is the subject of this request:</th>
<th><em><strong><strong><strong>/_____/</strong></strong></strong></em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of units assessed (as stated in the notice of assessment):</td>
<td>______________________ (or NA if not known)</td>
</tr>
<tr>
<td>Value of contributions assessed as payable:</td>
<td>$NZD _____________, ______</td>
</tr>
</tbody>
</table>

5. Grounds for the objection:

The grounds on which I am objecting are (please tick as many as are applicable):
a) The Council failed to properly take into account features of the objector’s development that, on their own or cumulatively with those of other developments, would substantially reduce the impact of the development on requirements for community facilities in the Council’s district or parts of that district.

b) The Council required a development contribution for community facilities not required by, or related to, the objector’s development, whether on its own or cumulatively with other developments.


d) The Council incorrectly applied its Development Contributions Policy to the objector’s development.

Note that development contributions commissioners appointed to make decisions on your objection will direct you to provide further information to support the grounds you have indicated above.

6. Relief sought (the decision you want the commissioners to make):

I seek that the requirement to pay a development contribution be (tick one):

a) Quashed (no contribution be payable):

b) Amended (reduced, reapportioned or postponed for example) as follows:

_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

8. Hearings

I would like to be heard in support of this objection (please tick one):

YES [  ]

NO [  ]

IMPORTANT: Notes for the objector and their agent

1. You will not be able to lodge a request for a reconsideration in relation to the same development contribution assessment once you have lodged this objection.
2. The Local Government Act 2002 only allows you to lodge an objection on the grounds stated in this form.

3. Objections must be lodged **within 15 working days** of the date on which the person lodging the objection receives notice from the Council of the level of development contribution required, or **within 15 working days** of the day following the date of notification of the result of a reconsideration of a development contribution assessment.\(^{50}\)

4. You may withdraw your objection at any time provided that you serve notice on the Council and any development contributions commissioners appointed to decide your objection. The Council retains the right to recover actual and reasonable costs it has incurred up to the point of your withdrawal (see further notes in relation to fees and charges below).

5. If you decide to withdraw your objection you retain the right to lodge a replacement objection provided that the original 15 working day timeframe (note 3 above) has not expired.

6. Once it has been established that the objection meets the ground(s) for objection, it will be decided by one or more independent development contributions commissioners. These commissioners will direct you to provide evidence to support your objection within a timeframe that they will set.

7. The Council may appoint up to three commissioners depending on the complexity of the matters raised in your objection to ensure sufficient coverage of skills, knowledge and expertise.

8. The commissioners will decide whether or not a hearing will be required. If a hearing is required you will be sent a notice of the date, time and place of the hearing. This will be at least 10 working days in advance of the hearing.

**Fees and charges**

9. Under section 150A of the Local Government Act 2002, the Council is empowered to recover the actual and reasonable costs of administering the objection process, including:
   a. the selection and engagement of development contributions commissioners;
   b. secretarial and administrative support of the objection process; and
   c. preparing for and organising the hearing.

10. Administration fees will be charged in accordance with the Council’s schedule of fees and charges as set out in _________. Commissioner fees will be charged at the rate agreed by commissioners.

11. The Council requires a deposit of $________ on lodgement of the objection. This deposit will be refundable if you subsequently decide to withdraw your objection within 5 working days of lodging it.

---

\(^{50}\) A council may allow late objections if satisfied that exceptional circumstances exist. (Schedule 13A, cl.1(4))
This chapter provides resources to aid councils who are entering into agreements with developers. Resources include an example payment deferral agreement, an infrastructure funding agreement and a development agreement outline.

12.1 EXAMPLE PAYMENT DEFERRAL AGREEMENT

DEVELOPMENT CONTRIBUTIONS DEFERRAL AGREEMENT

Name of Development

between

____________DEVELOPER

and

____________ COUNCIL

AGREEMENT dated the day of 2020

BETWEEN DEVELOPER

AND XXX COUNCIL
BACKGROUND

A. The Developer is undertaking the development authorised by the Consent at the Property which, among other things, would result in the creation of the Proposed Lots.

B. The development authorised by the Consent has been assessed to pay the Development Contributions. The Council generally requires that the Development Contributions are paid prior to the issue of the section 224(c) certificate for subdivision consents under the Resource Management Act 1991.

C. The Developer has asked the Council to defer the payment of the Development Contributions until the settlement of the sale and purchase agreements for the Proposed Lots; and for the Council to otherwise issue the appropriate section 224(c) certificates as and when it completes the development.

D. To give effect to this arrangement, the parties have agreed to divide the Development Contributions by the number of Proposed Lots (being the Lot’s Share) and that a first ranking Statutory Land Charge would be registered against the certificate of title for the Property.

E. The purpose of this agreement is to facilitate this arrangement.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

  Consent means the subdivision consent referenced as [reference] and attached as Schedule 1 to this agreement.

  Developer means [insert name and incorporation number]

  Development Contributions means the development contributions payable by the Developer in respect of the development authorised by the Consent. A copy of the invoice for the Development Contributions is attached as Schedule 2.

  Lot’s Share means sum of $[reference] which represents each lot’s share of the Development Contribution.

  Property means the property contained in certificate of title [reference] and legally described as [reference]. It is owned by [reference]. A copy of the certificate of title for the Property is attached as Schedule 3.
**Proposed Lots** means the [reference] residential lots and [reference] non-residential lots authorised by the Consent and depicted on LT [reference]. For the avoidance of doubt, the term “Proposed Lots” does not include any lots that are intended to be dedicated to the Council, or any balance lot that will be the subject of further development. A copy of LT [reference] is attached as Schedule 4.

**Statutory Land Charge** means the first ranking statutory land charge to be registered on the certificate of title for the Property as security for the unpaid Development Contributions. The Statutory Land Charge must be in the form attached as Schedule 5 to this agreement.

1.2 Expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background.

1.3 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

1.4 References to parties are references to parties to this agreement and include their successors in title.

1.5 References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.

1.6 Words importing the singular number include the plural and vice versa.

1.7 The schedules to this agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this agreement.

1.8 References to sections, clauses and schedules are references to this agreement’s sections, clauses and schedules.

1.9 References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. **GENERAL AGREEMENT**

2.1 The Developer agrees:

(a) To pay the following sums, in cleared funds, by the 20th of the month following the receipt of appropriate invoices from the Council:

(i) $ [reference] (being the GST component of the outstanding development contribution)

(ii) $[$1500 plus $50 per every lot in excess of 30 lots] (plus GST) towards the Council’s legal fees and disbursements incurred in the negotiation, drafting and administration of this agreement.
(b) That it will, at its own cost, register in one e-dealing for the development, the following instruments in the following order:

(i) any instruments which are immaterial to the matters contained in this agreement

(ii) the Statutory Land Charge, as executed by the Council, as a first ranking charge over the Property (together with any memorandum of priority, in a form approved by the Council, with any charge holder or mortgagee necessary to ensure that the Statutory Land Charge described above is registered as a first charge over the Property)

(iii) any other instruments required to give effect to its development and obtain title

(iv) the partial discharges of Statutory Land Charge, as executed by the Council, in respect of any lots not constituting the Proposed Lots.

2.2 The Council agrees:

(a) to issue the section 224(c) certificate for the Consent once it receives an undertaking from the Developer’s solicitor as to the performance of the obligations described in paragraph 2.1 of this agreement provided that the Developer is otherwise entitled to be issued the section 224(c) certificate under section 224 of the Resource Management Act 1991.

(b) not to seek to recover the Development Contributions otherwise than in accordance with the provisions of this agreement.

2.3 The parties agree on the following procedure for the payment of the Development Contributions on the settlement of transactions for the sale and purchase of the Proposed Lots.

(a) The Developer’s solicitor will advise the Council of the date of settlement and undertake to:

(i) hold the executed discharge of Statutory Land Charge on the Council’s behalf, and to the Council’s order, until it receives the usual solicitor’s undertaking as to payment of the purchase funds from the purchaser’s solicitor

(ii) deduct the Lot’s Share from sale proceeds

(iii) attend to the payment of the Lot’s Share, in clear funds, immediately following settlement.

(b) On receipt of the undertaking described above, the Council will execute the appropriate discharge of Statutory Land Charge and forward the same to the Developer’s solicitor for registration in the same e-dealing as the transfer instrument.
(c) The Developer’s solicitor will then pay the Lot’s Share, in cleared funds, to the Council using the customer reference and invoice number supplied on the invoice.

2.4 The Developer further agrees:

(a) To pay the Development Contributions in full within 12 months of the date of this agreement.

(b) That it will not allow any transfer to be registered in respect of any lot for which Development Contributions remain unpaid. The Developer also agrees not to lease, licence or otherwise allow the occupation of any lot until the Lot’s Share has been paid for that lot.

(c) That it will not challenge, or encourage, support, or suffer any third party to challenge, the Development Contribution, or any Statutory Land Charge for the development. For the avoidance of doubt, this clause also applies to the methodology underpinning the Council’s Development Contributions Policy, the application of the Development Contributions Policy, and the assessment of the development under the Development Contributions Policy.

(d) That it will not transfer or assign its rights or obligations in this agreement without the Council’s prior written approval.

(e) That if it fails to comply with any of the obligations described in this agreement, all outstanding Development Contributions are a debt due to the Council (less any payments previously made) and are immediately payable to the Council. The Developer further agrees to meet all the Council’s costs and expenses, including solicitor’s costs, incurred in recovering the debt due from the Developer or its successors in title.

2.5 The Developer acknowledges that this agreement only applies to the Development as set out in the Consent and that any variation to that Consent that changes the amount of Development Contributions payable does not apply to this agreement unless the agreement is first varied in writing (as appropriate).

3. GENERAL PROVISIONS

3.1 **Act Reasonably**: In their dealings with each other, the parties shall act reasonably, and within reasonable timeframes, in implementing the terms of this agreement.

3.2 **Disputes Resolution**: If any matter cannot be resolved between the parties in good faith, the parties agree not to resort to litigation. Any dispute must be referred to arbitration in accordance with the Arbitration Act 1996 and the Second Schedule to the Arbitration Act 1996 will apply. The arbitrator will be nominated by the President of the [Region] Branch of the New Zealand Law Society and his or her decision will be final and binding on the parties.

3.3 The arbitration under clause 3.2 above will proceed in the following manner:
(a) submissions will be completed by the parties and exchanged within 10 working days of the appointment of the arbitrator

(b) the arbitrator will use his or her best endeavours to publish his or her written decision within 10 working days of receiving the submissions above

(c) the place of arbitration will be [Region], New Zealand

(d) the arbitrator’s costs will be borne equally between the parties. The arbitrator will bill his or her fees to the Council for payment. The Council will then invoice the Developer for its share of the fees, such fees being payable on the Council’s usual terms and conditions

(e) the arbitrator’s decision will be final.

3.4 **Costs:** Except as expressly provided in this agreement, each party will bear its own costs of and incidental to the matters referred to in this agreement.

3.5 **Further Assurance:** Each party will at the request of the other party sign any documents and plans and do anything else which may reasonably be required for the purpose of giving effect to the matters referred to in this agreement.

3.6 **Communication:** All agreements, approvals, directions, instructions, and requirements given by one party to the other will be given or made through the party’s representatives.

3.7 **The Council as Regulatory Authority:** Other than as expressly provided in this agreement, this agreement does not bind the Council in its capacity as a regulatory authority under the Resource Management Act 1991 or Building Act 2004 in any way, and any consent or agreement the Council gives under this agreement is not a consent or agreement in its regulatory capacity, and vice versa. When acting in its regulatory capacity, the Council is entitled to consider all applications to it without regard to this agreement.

3.8 **Signing of Agreement:** This agreement will not be binding on the parties until it has been signed by all parties. No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

3.9 **Confidentiality:** The terms of this agreement will be confidential to the parties, their legal advisers and financiers, and will not be disclosed, copied or transmitted to any other person except with the prior written consent of the other parties, unless the parties are required to disclose the contents of this agreement by law.

3.10 **Entire Agreement:** This agreement contains everything the parties have agreed in relation to the matters it deals with. No party may rely on an earlier document, or District Plan provision, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.
3.11 **Waiver**: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other obligation.

3.12 **Equitable Relief**: Nothing in this agreement shall preclude any party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

3.13 **Assignment**: A party must not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

EXECUTED AS AN AGREEMENT by:

**DEVELOPER**

Director  
Name (Please Print)

__________________  __________________

EXECUTED AS AN AGREEMENT by:

______________________________  COUNCIL

Director  
Name (Please Print)

__________________
Schedule 1: Consent

Schedule 2: Development Contributions Invoice

Schedule 3: Certificate of Title for the Property

Schedule 4: LT reference

Schedule 5: Statutory Land Charge
## 12.2 OUTLINE FOR A DEVELOPMENT AGREEMENT

<table>
<thead>
<tr>
<th>Section</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title page: Parties and land</td>
<td>Legal names of parties and legal and other description of the land (LGA02 s.207C(2)(a), (b) and (c)).</td>
</tr>
<tr>
<td>Preamble and rationale</td>
<td>Noting that the development is subject to the DCP; and that the parties see mutual benefit in this agreement; identify why the agreement is being entered into; and background information.</td>
</tr>
<tr>
<td>Interpretation</td>
<td>This would usually define at least:</td>
</tr>
<tr>
<td></td>
<td>• The land (LGA02 s.207C(2)(c)).</td>
</tr>
<tr>
<td></td>
<td>• The development, including related consents (LGA02 s.207C(3)(a)).</td>
</tr>
<tr>
<td></td>
<td>• The works (LGA02 s.207C(2)(d)).</td>
</tr>
<tr>
<td></td>
<td>• The DCP (as of a particular date or as in force from time to time).</td>
</tr>
<tr>
<td></td>
<td>• Stages (if relevant; LGA02 s.207C(3)(b)).</td>
</tr>
<tr>
<td>Statement of agreement</td>
<td>Explicit statements that:</td>
</tr>
<tr>
<td></td>
<td>• The agreement is a development agreement under LGA02 s.207A.</td>
</tr>
<tr>
<td></td>
<td>• The DCP applies except to the extent it is modified by this agreement.</td>
</tr>
<tr>
<td></td>
<td>• Financial contributions (if any) continue to apply.</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>If the agreement or part of the agreement is to be confidential this should be specified. However, the council’s obligations under the Local Government and Official Information and Meetings Act 1987 must be recognised in any wording – i.e. the council is not legally capable of &quot;contracting out&quot; of the Act.</td>
</tr>
<tr>
<td>Costs</td>
<td>Each party is typically responsible for their own costs in preparing the agreement and administering their obligations under it.</td>
</tr>
<tr>
<td>Developer’s obligations and rights</td>
<td>This could cover works, timing and services for the development and other land. Where works are to be provided, the agreement should also record the standard of works; how the design and construction will be approved; the acceptance and vesting process; maintenance requirements; and cost risks (LGA02 s.207C(3)(b), (c), (d)). In practice many of the above requirements are likely to be covered in the council’s relevant codes of practice / infrastructure standards and processes for approving public infrastructure. Nature, amount and timing of payments by developer (LGA02 s.207C(3)(g)). Arrangements for and timing of transfer of land (LGA02 s.207C(3)(f)), or access to land for various purposes.</td>
</tr>
<tr>
<td>Council’s obligations and rights</td>
<td>This could cover works and timing, and registrations relating to the agreement on the titles to affected land (LGA02 s.207C(3)(h)). Payment of money (LGA02 s.207C(3)(g)): for example, compensation for any infrastructure provided by the developer in excess of that required to service its development. Departures from standard operation of DCP.</td>
</tr>
<tr>
<td>Operational requirements</td>
<td>Roles for ongoing contact, including liaison meetings. Information to be exchanged. For larger developments, one party may maintain records of liabilities and payments of both parties and share these at regular intervals.</td>
</tr>
<tr>
<td>--------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Termination</td>
<td>The way that the agreement is intended to, or might, come to an end. This could be specified as a date or an event. It is common for development agreements to specify a sunset or long stop date, i.e. a date after which the normal operation of the DCP will be reinstated.</td>
</tr>
<tr>
<td>Breach, default and recovery</td>
<td>The situations that represent default or non-compliance with the agreement may need to be identified. These would typically include financial failure or material non-performance of a party’s obligations (e.g. failing to make any progress on works for several months without a valid reason for the delay). Information relating to managing any breach of the agreement (LGA02 s.207C(3)(h)). If the works are required for land outside the development, then the council may want to be able to complete the works in the event of a developer default.</td>
</tr>
<tr>
<td>Disputes and escalation</td>
<td>A mechanism can be provided for dispute resolution (LGA02 s.207C(3)(e)). This might include a series of steps involving senior management of the parties, mediation and/or arbitration. The right to judicial processes is usually retained.</td>
</tr>
<tr>
<td>Notices and variations</td>
<td>The process for exchange of notices and for raising variations should be specified.</td>
</tr>
<tr>
<td>Successors and assignment</td>
<td>Whether the agreement &quot;runs with the land&quot; and confers rights and obligations on the developer’s successor in title; and whether the agreement may be assigned by the developer to a third party.</td>
</tr>
<tr>
<td>Execution and date</td>
<td>Execution will depend on the nature of the parties. The council signatory will need delegated authority for this (LGA02 s.207D(1) and (2)).</td>
</tr>
</tbody>
</table>
| Schedules | These could cover:  
- Titles or maps of the land affected.  
- Relevant resource and/or building consents.  
- Plans of the works proposed and reference to specifications for these works.  
- Cost breakowns and cost share information.  
- Timeline or dates for works or payments.  
- Statutory land charges (if any) to be imposed under the agreement. |
EXAMPLE INFRASTRUCTURE FUNDING AGREEMENT

FOR [STORMWATER POND] AT XXX

between

___________________ COUNCIL

and

___________________ (Developer)

THIS AGREEMENT dated the _____day of_______ 2015

BETWEEN ___________ COUNCIL (Council)

AND ________________ (Developer)

BACKGROUND

A. The Developer has entered into an agreement for the sale of purchase of the Property from XXX. The Developer intends on carrying out development of that land within the context of Plan Change XXX.

B. The Pond is required for the provision of stormwater services in Precinct XXX of Plan Change XXX and is to be located on that part of the Property that the Council is preparing to acquire and is a requirement of the ICMP and will likely be a requirement of the future stormwater network discharge consent. The parties have yet to determine on which part of the Property they will seek to construct the [Pond].

C. The Council wishes to fund the provision of the [Pond] and associated infrastructure. The Council will recover its costs by levying development contributions in accordance with the Council’s Development Contributions Policy.

D. The parties are currently negotiating the acquisition of the Pond Land and once negotiations are completed, will enter into a sale and purchase agreement, as appropriate.
THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

**Acquisition Agreement** means the agreement for sale and purchase that will be concluded between Developer and the Council in respect of that part of the Property required for the Pond;

**Authority** means each and every territorial authority, regional authority, government or other authority having jurisdiction over the land and/or the Works referred to in this agreement;

**Budgeted Works Cost** is as set out in Schedule 2;

**Consent** means any resource consent, building consent, engineering approval, or other authorisation required for the construction and operation of the Pond;

**Contract** means one or more construction contracts which the Developer enters into with a person or persons other than the Council for the construction of the Pond;

**Council Approved Variations** means those variations under the Contract approved in accordance with clause 5.5 of this Agreement;

**Default Event** means:

(a) Either party is in material breach of its obligations under this agreement and such breach has not been remedied within 60 Working Days from the date the other party has served written notice on it of the breach and the manner in which the breach is to be remedied;

(b) Either party fails to pay any sum of money payable under this agreement on the due date for payment, and the sum of money has not been paid within 10 Working Days of written notice being given by the other party;

(c) Any of the Developer’s secured creditors takes possession of any of its businesses or undertakings (either by itself or by agent) or a receiver is appointed over any of its businesses or undertakings;

(d) The Developer has an application for liquidation made or a resolution passed by its creditors or members resolving or requiring that it be put into liquidation; or

(e) The Developer enters into any composition, assignment or other arrangement with, or for the benefit of, its creditors or becomes unable to pay debts as they fall due;
Development means activities authorised by the Consent(s);

Engineer means the engineer employed by the Developer to supervise the carrying out of the Works, but does not include the Developer’s Geotechnical Engineer;

Design and Engineering Approvals means the certification of the Council’s Development Engineering Manager or delegated officers that the plans and specifications for the Works comply with the Council’s infrastructure specifications for Council-owned infrastructure;

Handover Date means the date on which the Works or a Stage of the Works are delivered to the Council in accordance with clause 3.11;

Maintenance Period means, in relation to landscaping, a period of 24 months commencing from the Handover Date, but does not apply to any infrastructure works from the Handover Date;

Margin means [x]% of the physical Works Costs under the Contracts, and for the avoidance of doubt there is no Margin on the design consultants’ services, any application for a Consent, or any fees or charges arising from any regulatory function or process;

ICMP means XXX;

[Pond] means the pond that will be constructed on the Pond Land;

[Pond Land] means the area identified as XXX in Schedule 1;

[Pond Works] means the works as described in Schedule 3, including the associated reticulation, landscaping, the Reserve Landscape Design, and access road to the Pond;

Practical Completion means the completion of the Works (or Stages) as defined in the Contract;

Property means the property at XXX, legally described as Lot XXX DP XXX in computer freehold register XXX;

PWA means the Public Works Act 1981;

RMA means the Resource Management Act 1991;

Site means that part of the Pond Land and other places on or over or under which the Works are to be carried out, together with any other places made available to the Developer by the Council for the purposes of carrying out the Works;

Stage means a discrete package of Works as detailed in Schedule 3;

Working Day has the meaning given to the term in the RMA;

Works means the works as described in Schedule 3, including the associated reticulation, landscaping, and access road to the Pond; and
Works Cost is as determined under clause 5.4 of this agreement together with, and including, those costs incurred in undertaking the tender process, design, supervision and observation of the Contract, geotechnical observation and certification, administration and liaison with the Council, as-built/certification, survey costs, and the fees and charges for obtaining the Consents and approvals described in this agreement except that Works Cost does not include any parties’ legal fees in creating this agreement. Where the Works are undertaken in a Stage, a reference to ‘Works Cost’ shall apply only to the Stage being undertaken, as appropriate. For the avoidance of doubt the Works Costs does not include any margin, profit or overheads of the Developer in relation to the Works, other than the Margin.

1.2 Defined Expressions: Expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background;

1.3 Headings: Section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation;

1.4 Inclusive Expressions: The term includes or including (or any similar expression) is deemed to be followed by the words without limitation.

1.5 Negative Obligations: Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.6 Parties: References to parties are references to parties to this agreement and include their successors in title;

1.7 Persons: References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;

1.8 Plural and Singular: Words importing the singular number include the plural and vice versa;

1.9 Schedules: The schedules to this agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this agreement;

1.10 Sections, Clauses and Schedules: References to sections, clauses and schedules are references to this agreement's sections, clauses and schedules; and

1.11 Statutes and Regulations: References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. CONDITIONS AND LONG STOP DATES

2.1 Agreement Conditional: This agreement has no legal effect until the date the Acquisition Agreement become unconditional.
2.2 **Long Stop Date**: Unless otherwise agreed, if the Developer does not commence physical Works on the Property (including preparatory earthworks) within two years after the signing of this agreement, the Council may terminate this agreement and claim its costs and expenses incurred in anticipation of the Works proceeding.

2.3 **Handover Long Stop Date**: If the Developer does not complete Handover of the Works within five years after the signing of this agreement, the Council may terminate this agreement.

2.4 **Cancellation**: On a Default Event, the non-defaulting party may give written notice to the other party that it intends to cancel the agreement, and in the event that the relevant Default Event has not been remedied within 20 Working Days following receipt of such notice and intention to cancel, the non-defaulting party may cancel the agreement upon written notice to the other party.

2.5 **Termination**: Upon termination of this agreement:

(a) Where physical Works have not commenced, the Council may claim from the Developer the Council’s reasonable costs and expenses incurred in procuring another party to carry out the Works;

(b) where physical Works have commenced, the Council may:
   (i) resume possession of any land and complete the Stage of the Works using other resources; and
   
   (ii) to the extent that the cost to complete the relevant Stage exceeds the latest Works Costs Budget for that Stage directly due to the termination, the Works Costs owing to the Developer in respect of that particular Stage shall be deducted by an amount equivalent to such excess cost. The Council will also be entitled to deduct from any Works Costs owing to the Developer any losses, expenses or damages that the Council has incurred as a result of default by the Developer.

(c) The Developer will give possession and ownership of all reports, investigations, plans, specifications, documents and Consents it holds in relation to the relevant Works (including any landscape design) to the Council, provided that the Developer will continue to have full and free use of those documents;

(d) if required by the Council, the Developer will assign any subcontracts to the Council relating to the Works;

(e) any such termination is without prejudice to the rights and remedies of the parties under this agreement prior to the termination of the agreement.

3. **WORKS**

3.1 **Pond Works**: The Developer will procure and project-manage the investigation, design, consenting, construction and delivery of the Works in accordance with this agreement.
3.2 **Consents**: The Developer will be responsible for obtaining all Consents of whatever nature required to carry out, complete and maintain the Works. The fees for obtaining the Consents will form part of the Works Cost. For the avoidance of doubt, the Council is not responsible for any costs whatsoever associated with any resource consents or building consents required by the Developer to service any development it may wish to undertake.

3.3 **Design and Engineering Approvals**: The Developer will forward the proposed plans and specifications for the Works to the Council to obtain Design and Engineering Approval for each Stage of the Works before lodging the same for any Consent. The Developer must receive the Design and Engineering Approvals (in addition to the Consents required) before construction commences.

3.4 **Procurement of Works**: Subject to this agreement, the Developer will procure the design, construction and handover of the Works:

(a) at its own cost and at its sole risk;
(b) in a proper and workmanlike manner; and
(c) in accordance with the Consents, Design and Engineering Approvals and the proper requirements of all relevant Authorities.

3.5 **Contracts**: Any Contract entered into in respect of the Works will be based on NZS 3910:2003.

3.6 **Progress Reports**: The Developer will, on or before the fifth Working Day of each month, provide a monthly progress report to the Council on the Works including a works programme showing forecast and actual progress, an estimated Handover Date for each Stage of Works, and the financial information tracked against the Budgeted Works Cost in accordance with section 5 of this agreement.

3.7 **Vesting of Pond Land**: The Parties agree that it is their intention that the vesting date in the Council of the Pond Land will occur upon the settlement date of the Acquisition Agreement.

3.8 **Access from Vesting**: Following the vesting of Pond Land in the Council, the Council hereby allows the Developer, together with its contractors and equipment, to have full and free access to the Pond Land for the purpose of undertaking the Works and giving effect to this agreement.

3.9 **Obligations following Practical Completion**: Following Practical Completion of the Works, the Developer must provide the Council with:

(a) evidence that the Works have been carried out in accordance with this agreement, the requirements of the Consents and the Design and Engineering Approvals;
(b) a complete set of the as-built plans and records for the Works; and
(c) operation and maintenance manuals to the Council's relevant infrastructure standards.
3.10 **Handover**: The Handover Date for each Stage of the Works will be the date that such Stage has been approved, in writing, as being complete by the Council’s Development Engineering Manager and Stormwater Infrastructure and Development Manager, or delegated officers. In this context ‘complete’ means the construction, reinstatement, CCTV, as-built, operation and maintenance manual, geotechnical completion certificate (for the Pond), and landscaping.

3.11 **Control of Works**: On the Handover Date the ownership, control and operation of the Works (or the relevant Works Stage) transfers without further formality from the Developer to the Council.

3.12 **Defects Liability and Maintenance Period**: The handover of Works under this agreement does not override, or derogate from, any defects liability or maintenance period requirements associated with the Consents or Design and Engineering Approvals.

4. **COUNCIL PAYMENTS**

4.1 **Payments**: The Council agrees to fund the Works Cost in accordance with the payment process under clauses 4.2 to 4.6 of this agreement.

4.2 **Payment of Works Cost**: The Developer may submit invoices for the Works Cost, and the Margin, to the Council upon the Handover Date. The Council will make payment to the Developer by the 20th of the month following receipt of the invoice (less 10% of the Works Cost to be held as retention under clause 4.3).

4.3 **Retentions**: The Council will deduct and retain 10% of the Works Cost until the expiry of the defects liability period in the Contract. Upon the expiry of the defects liability period in the Contract, the Council will pay the Developer any amount held as a retention under clause 4.2 if all outstanding defects liability matters have been resolved to the reasonable satisfaction of the Stormwater Manager.

4.4 **Evidence of Payment**: With each invoice submitted to the Council the Developer shall provide copies of all relevant invoices from their contractor(s) or consultant(s) along with proof that each of the invoices has been paid in full.

4.5 **Works Cost Summary**: The Developer shall provide a financial summary of the project with each invoice submission, covering the current invoice(s), previous total invoices claimed, payments made, and tracking against Budgeted Works Cost and percentage of works completed. The Developer shall also include forecast claim dates and amounts based on the Works programme.

4.6 **Confidentiality**: Budgeted Works Cost and Works Cost payments are confidential and shall not be released to any contractor or sub-contractor.

5. **PROCUREMENT PROCESS**

5.1 **Procurement Process**: The Developer will conduct the following procurement process for the Works, or each Stage of Works if separate Contracts are let:
(a) There will be a transparent and contestable procurement process for the Works, either by tender or written quotations using at least three contractors, or by written proposals for professional services using at least three consultants.

(b) Any tags or exclusions to the tenders or quotes must be itemised and an estimated cost provided for each.

(c) Contingencies shall be clearly itemised on the schedules.

5.2 **Contract**: The Developer must not award the Contract until it has received confirmation from the Stormwater Infrastructure and Development Manager that the Council has approved a summary evaluation sheet, including a fully priced schedule of quantities and rates from each contractor. A Council engineer will compare this information against the Council’s standard schedule of rates, or may engage a quantity surveyor to do the same, to ensure fair market rates are used for the Works.

5.3 **Contract Procurement Process**:

(a) The Developer agrees that the Contract will include the following provisions:

(i) Where the Contract includes other works which are not the subject of this agreement, then the Works will be scheduled as separable portions of the Developer’s total contract works;

(ii) The defects liability or maintenance period for the Works shall be equivalent to that required by the Consents and in the case of landscaping shall be concurrent with the maintenance period of 24 months;

(iii) An acknowledgment that the benefit of any warranties will pass to and be assigned to the Council and/or its nominee on the Handover Date;

(iv) An obligation on the contractor to execute a continuity deed whereby the contractor agrees that, if the Council so elects, on termination of the Contract with the Developer the contractor will enter into a contract with the Council on the same terms as its Contract with the Developer for the completion of the Works;

(v) A statement under the Contracts (Privity) Act 1982 as follows:

*The obligations of the Contractor under this Contract (whether expressly stated in the relevant provisions of the Contract or not) shall for the purposes of the Contracts (Privity) Act 1982 be deemed inserted in the Contract for the benefit of the XXX Council (including, its successors and assigns) and shall be enforceable by the XXX Council against the Contractor but not so as to impose any greater liability on the Contractor towards the XXX Council than the Contractor owes or owed to YYY "the Developer";*

(vi) A statement that the Contract shall be observed by an engineer with the necessary professional qualifications and experience;

(vii) That the contractor will effect and maintain insurance policies with a reputable insurer for the Contract Works and public liability; and
(viii) The requirements of clauses 6.1 to 6.6 of this agreement (as appropriate).

5.4 **Works Cost:** The Works Cost will initially be the Budgeted Works Cost in Schedule 2, provided that:

(a) Where the accepted tender price in the Contract for the Works is equal to, or lesser than the Budgeted Works Cost, the Works Cost will be the accepted tender price

(b) Where the accepted tender price in the Contract for the Works is greater than the Budgeted Works Cost, the Works Cost will be the Budgeted Works Cost (unless otherwise first agreed in writing by the Stormwater Infrastructure and Development Manager)

(c) Subject to clauses 5.6 to 5.8 below, the Works Cost may be adjusted during the Contract for the certified cost of Council Approved Variations (if any) or where it is necessary to rely on the Works Cost Contingency for a particular budgeted item.

5.5 **Council-Approved Variations:**

(a) Any party may request, in writing, a variation to the Contract by serving notice on the other party.

(b) Within ten Working Days of receiving notice of the request (if Council initiated) or upon giving notice to the Council (if Developer initiated), the Engineer must advise both parties, in writing, of the estimated cost of the variation.

(c) However, no variation shall be made to the Contract unless approved in writing by both the Stormwater Infrastructure and Development Manager, and the Developer, such approvals not to be unreasonably withheld.

(d) Where an approved variation increases the cost of the Works such cost increase shall form part of the Works Cost, together with any fees reasonably incurred by the Developer in considering any such variation.

5.6 **Works Cost Contingency:** The Developer acknowledges that the Budgeted Works Cost already includes a [x]% contingency and that the Council expressly disclaims liability for any increase of the Works Cost (other than as a Council-Approved Variation).

5.7 **Right to Audit:** The Council, or its representative(s), shall be entitled to audit any financial records of the Developer or contractors and consultants for the purposes of reviewing and confirming the Works Cost.

6. **HEALTH AND SAFETY**

6.1 **No Limitations:** This clause does not limit the Developer’s obligations and responsibilities under any other part of this agreement or at law.
6.2 **No transfer of Developer duties**: The Developer is responsible for all their obligations and duties under the law and any health and safety processes and systems put in place by the Council do not relieve the Developer of their obligations and duties.

6.3 **Health and Safety Representative**: The Developer will procure its contractor to appoint a Health and Safety Representative responsible for liaising with the Council in relation to all health and safety matters arising out of or in connection with this agreement and provide the Council with the contact details of the Health and Safety Representative prior to commencing the Works.

6.4 **Compliance with Council’s health and safety requirements**: 

   (e) The Developer will comply with all Health and Safety policies and guidelines of the Council as notified and updated from time to time.

   (f) The Developer will procure its Contractor to provide the Council with a copy of their current Health and Safety Pre-qualification Certificate prior to commencing the Works.

   (g) The Developer will procure its Contractor to provide the Council with a Site-Specific Health and Safety Management Plan and Traffic Management Plan (if required) for approval prior to commencing the Works.

   (h) The Developer will procure its Contractor to provide the Council each month with a Health and Safety Report, detailing all incidents, including near misses and actions and steps implemented to prevent further incidents or near misses reoccurring.

   (i) The Developer will procure its Contractor to comply with any review or audit of their Health and Safety Plans and Systems by the Council as requested from time to time.

6.5 **Compliance with Health and Safety Legislation**: 

   (a) The Developer will comply with all applicable Health and Safety laws, regulations and WorkSafe NZ approved Codes of Practice. In particular:

      (i) The Developer will procure its Contractor to take all reasonably practicable steps to ensure the safety of the workers they engage directly, the workers they influence or direct, and any other person on Site.

      (ii) The Developer will procure its Contractor to ensure that they engage with their workers in accordance with relevant legislation in order to identify hazards and health and safety risks on the Site.

   (b) As the Developer has management and control of the Site, it will also, as far as is reasonably practicable, procure its contractor to:

      (i) ensure that the Site, the means of entering and leaving it and anything arising from it are without risks to the health and safety of any person;
(ii) organise Site meetings to co-ordinate work and checking health and safety systems, work practices and control measures;

(iii) take reasonable steps to ensure the Site is safe from unauthorised access;

(iv) put systems in place so that work is carried out safely even if the Developer is absent from the Site; and

(v) conduct regular audits of subcontractors and monitor their health and safety performance.

(c) If the duty is shared with other contractors or duty holders working on the Site, the Developer will ensure that they co-ordinate and consult with each other in respect of the above duties and ensure that any hazards on the Site (including entry and exit areas) are eliminated or isolated and that the Site is secured against unauthorised access prior to leaving the Site.

6.6 **Contractors**: The Developer shall ensure that all contractors and subcontractors comply with clauses 6.4 and 6.5 of this agreement.

7. **DEVELOPMENT CONTRIBUTIONS**

7.1 **Development Contributions**: For the avoidance of doubt, the Developer agrees and acknowledges that it is liable to pay full development contributions calculated in accordance with the Council’s Development Contributions Policy; and that nothing in this agreement entitles it to a credit or offset on any development contributions payable for any development it may undertake.

7.2 **Agreed Contributions**: Notwithstanding any provisions in the Council's Development Contributions Policy, the Developer agrees to pay its share of the Agreed Contribution per the invoice attached in Schedule [x] to this agreement by making one single payment to the Council, in cleared funds, by [date].

7.3 **Debt Due**: The Developer further agrees that if it fails to comply with any of the obligations described in clause 7.2 of this agreement, all outstanding Agreed Contributions are a debt due to the Council (less any payments previously made) and are immediately payable to the Council. The Developer further agrees to meet all the Council’s costs and expenses, including solicitor’s costs, incurred in recovering the debt due from the Developer or its successors in title.

8. **GENERAL PROVISIONS**

8.1 **Act Reasonably**: In their dealings with each other, the parties shall act reasonably, and within reasonable timeframes, in implementing the terms of this agreement, and in facilitating the construction of the Works.
8.2 **Mediation**: If any matter cannot be resolved between the parties in good faith, the parties agree not to resort to litigation. Any dispute must be referred to mediation by one party serving notice of the other parties within one month of the dispute arising. When a request for mediation is made, the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to him or her. The mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in mediation shall be without prejudice and shall not be referred to in any later proceedings. The parties shall bear their own costs in the mediation, and each party attending the mediation shall pay an equal share (together with the other parties attending the mediation) towards the costs of the mediator.

8.3 **Arbitration**: Should any dispute arising under this agreement not be resolved by mediation, the parties shall refer the dispute to arbitration in accordance with the Arbitration Act 1996 and the Second Schedule to the Arbitration Act 1996 will apply. The arbitrator will be nominated by the President of the [Region] Branch of the New Zealand Law Society and his or her decision will be final and binding on the parties.

8.4 **Arbitration Process**: The arbitration under clause 7.3 above will proceed in the following manner:

(a) written briefs of evidence will be completed by the parties and exchanged within ten Working Days of the appointment of the arbitrator;

(b) submissions and any written rebuttal evidence will be exchanged between the parties with copies provided to the arbitrator within five Working Days following the exchange of evidence under subclause (a);

(c) a formal hearing will not be required unless requested by the arbitrator;

(d) the arbitrator will use his or her best endeavours to publish his or her written decision within ten Working Days of receiving the rebuttal evidence under subclause (b);

(e) the place of arbitration will be [Region], New Zealand;

(f) the arbitrator’s costs will be borne equally between the parties. The arbitrator will bill his or her fees to the Council for payment and an equal apportionment will be made between the Council and the Developer at the time of the Handover Date;

(g) the arbitrator’s decision will be final.

8.5 **Costs**: Except as expressly provided in this agreement, each party will bear its own costs of and incidental to the matters referred to in this agreement.

8.6 **Further Assurance**: Each party will at the request of the other party sign any documents and plans and do anything else which may reasonably be required for the purpose of giving effect to the matters referred to in this agreement.
8.7 **Regulatory and Statutory Functions**: The Developer acknowledges that, notwithstanding the provisions of this agreement, the Council is required to carry out its regulatory and statutory functions. The obligations of the Council under this agreement cannot fetter the undertaking of its regulatory and statutory functions, and the exercise of those functions will not be considered to be inconsistent with this agreement. Any decisions or actions by the Council in undertaking its regulatory or statutory functions will not be treated as decisions or actions of them as parties to this agreement, and vice versa. The lawful exercise of those regulatory and statutory functions will not be a breach of this agreement or entitle any other party to any compensation, loss or damages whatsoever.

8.8 **Covenant on Sale or Transfer**: The Developer covenants with the Council that, if it wishes to sell, transfer or otherwise dispose of all or any part of the Property at any time before the end of the defects liability period of the Works, it will as a condition of the sale, transfer or disposal obtain from the purchaser, transferee or disposee (Transferee) a deed of covenant with the Council, to be prepared by the Council’s solicitors at the cost of the Developer, whereby the Transferee is bound to comply with and observe in all respects the obligations of the Developer in this agreement, including this clause.

8.9 **Signing of Agreement**: This agreement will not be binding on the parties until it has been signed by all parties. No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

8.10 **Confidentiality**: The terms of this agreement will be confidential to the parties and their legal advisers and will not be disclosed, copied or transmitted to any other person except with the prior written consent of the other parties, unless the parties are required to disclose the contents of this agreement by law.

8.11 **Entire Agreement**: This agreement contains everything the parties have agreed in relation to the matters it deals with. No party may rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.

8.12 **Waiver**: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other obligation.

8.13 **Equitable Relief**: Nothing in this agreement shall preclude any party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

8.14 **Assignment**: A party must not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

8.15 **Authorisation to do Works**: By signing this agreement the Landowners hereby undertake that they have given the Developer the authorisation to carry out the Works, with the authorisation of their mortgagees as required.
Executed as an agreement.

SIGNED for and on behalf of [XXX] COUNCIL by:

   Authorised Signatory

SIGNED for and on behalf of

____________________by:

   Director

Director/Authorised Signatory
13. LAW LIBRARY

This chapter includes a summary of judicial review cases and a quick reference legislation guide which includes:

- Brief commentary on parts of the LGA02 related to development contributions.
- References to where further discussion on specific legislation can be found in this guide.

13.1 DEVELOPMENT CONTRIBUTIONS CASE LAW

At the time of publishing this guide, there have been four judicial reviews in relation to development contributions that have resulted in High Court decisions. Brief notes on these are provided below. The judgments can be obtained from the Ministry of Justice website, under Judicial Decisions Online (https://forms.justice.govt.nz/jdo/Introduction.jsp).

Neil Construction Limited and Others v North Shore City Council

CIV 2005-404-4690, 21 March 2007, Potter J.

This was the first and most significant challenge to date to a territorial authority’s DCP. Neil Construction and others alleged that the North Shore City Council had made several errors of law in relation to its policy. These errors included that it provided for contributions to be assessed on developments that generated no demand for Council infrastructure, and that the Council had failed to consider the distribution of benefits when determining the "cost of growth" to be allocated to development contributions.

The High Court found that the Council made three errors of law in relation to its DCP. Notwithstanding those errors, the Court did not quash or set aside the policy, but instead, at the request of the parties, left them to negotiate relief separately. The result was that the Council paid significant refunds to those developers who had paid contributions under the policy found to have contained the errors of law.

The errors of law were:

- Failing to ensure that the DCP complied with the requirement under the LGA02 to assess development contributions against a "development" (as defined in LGA02 s.197) that generates a demand for reserves, network infrastructure and community infrastructure.
- Adopting a narrow concept of economic efficiency in the causative approach it had applied to the assessment of development contributions and excluding appropriate consideration of the distribution of benefits and equitable and proportionate allocation.
- Failing appropriately to explain in its DCP, as required by LGA02 s.106(2)(c), why in terms of LGA02 s.101(3) it had determined to use development contributions as a funding source.
However, the Court found that the Council's decision to adopt a reserve standard of 7.9 hectares per 1,000 people, and to fund the cost of reserves by development contributions within the limit set in LGA02 s.203(1), was neither unreasonable nor arbitrary.

**Ballintoy Developments Limited and Another v Tauranga City Council**

*CIV 2007-470-410, 12 February 2008, Allan J.*

Ballintoy Developments challenged a decision by the Tauranga City Council not to accept payment of development contributions calculated in accordance with its schedule of charges under an earlier DCP, on the basis that the contributions were to be calculated and became payable under the subsequent DCP.

The Court declared that the contributions payable were those set out in the earlier DCP, and that the plaintiff had accordingly tendered the correct amount to the Council.

The case turned on the proper interpretation of the Council's DCP and so is of limited wider application. However, the Court did record that the purpose of detailed provisions in the LGA02 in relation to development contributions was to ensure that a developer might understand the Council's approach to assessing contributions and thereby calculate in advance their liability for development contributions.

S.198(2A) was subsequently included in the LGA02 in 2014. This section clarifies that a development contribution must be consistent with the content of the policy in force at the time that the application for a resource consent, building consent, or service connection was submitted, accompanied by all required information.

**Domain Nominee Ltd v Auckland City Council**

*CIV 2007-404-2465, 1 September 2008, Winklemann J.*

This case concerned the correct interpretation of LGA02 s.200. The Auckland City Council had required financial contributions for open space as a condition of land use consent granted to a townhouse development in 2004. Three years later, after the Council had adopted a DCP, the Council had required development contributions for reserves from the same development, to "top up" the earlier financial contributions to the amount now payable under the DCP. The plaintiff argued the development contributions had been required in breach of LGA02 s.200.

The Court quashed the development contributions for reserves imposed by the Council and made a declaration as to the correct application of LGA02 s.200. It declared that where a council has imposed a condition on a resource consent for a financial contribution for a particular purpose, LGA02 s.200 does not enable the council to impose a development contribution on a subsequent consent in relation to the same development for the same purpose as the financial contribution.
Beaumont Trading Company Ltd v Auckland Council


Beaumont Trading challenged the Auckland Council's decision to require development contributions for reserves when granting unit title subdivision consent in relation to a recently completed hotel building. The developer asserted that the Council had erred because the unit title subdivision was not a "development" as defined in LGA02 s.197. It argued that the "development" was the construction of the hotel authorised by the land use consent and building consents previously granted, but the Council had chosen not to require reserves contributions when granting those consents.

The High Court found that the LGA02 does not require an immediate connection in a temporal sense between a development and the corresponding “demand” generated by the development. It found that the "hotel construction project" was a "development" in terms of LGA02 s.197 and the unit title subdivision consent granted by the Council was a consent granted “for” a development under LGA02 s.198(1)(a). Requirements for assessments are made when consents are granted and must be for a development, but do not have to be made prior to or contemporaneous with that development.

The developer appealed to the Court of Appeal, which overturned the High Court decision. It found that because the definition of “development” in LGA02 s.197 referred to a subdivision “that generates a demand for reserves”, the unit title subdivision which the Council had used as the “trigger” for assessing contributions had to generate a demand for reserves. The Council could not show that the unit title subdivision of a completed building generated an additional demand for reserves over and above that generated by the building and land use. The Court considered that the references in LGA02 s.198 to consent being granted “for a development” required a direct relationship with a particular consent or authorisation. It did not accept that a wider “project” analysis could be adopted that would allow the council, when determining whether there was a “development”, to look beyond what was authorised by the particular consent that was the trigger for assessing contributions. The Court set aside the Council’s decision to require a reserves contribution from the development.
13.2 LEGISLATION QUICK REFERENCE GUIDE

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### s.106(2)(c) A policy adopted under section 102(1) must, in relation to the purposes for which development contributions or financial contributions may be required,—

... (c) explain, in terms of the matters required to be considered under section 101(3), why the local authority has determined to use these funding sources to meet the expected total cost of capital expenditure referred to in paragraph (a); and

This section was critical in Neil Construction vs North Shore City Council.

A council must explain in its policy why it has used development contributions and/or financial contributions. Importantly, this explanation must consider those matters specified in s.101(3) when explaining why it uses these funding sources. This explanation must be recorded in the policy and is an additional requirement to the assessment that must be recorded in the council’s revenue and financing policy. Good practice is to ensure the two policies have similar text.

| Policy | 2.2 | 3.9 | 4.3 | 13.1 |

### s.106(2)(d) A policy adopted under section 102(1) must, in relation to the purposes for which development contributions or financial contributions may be required,—

...(d) identify separately each activity or group of activities for which a development contribution or a financial contribution will be required and, in relation to each activity or group of activities, specify the total amount of funding to be sought by development contributions or financial contributions; and

The policy must identify each activity/group of activities which will require development contributions and/or financial contributions and state the total amount to be recovered from development contributions and/or financial contributions for each activity/group of activities. This can be combined with the information required by LGA02 s.106(2)(b) or can be combined with the information required by s.201A (which can help to comply with Schedule 13).

| Policy | 4.3 |

### s.106(2)(e) A policy adopted under section 102(1) must, in relation to the purposes for which development contributions or financial contributions may be required,—

...(e) if development contributions will be required, comply with the requirements set out in sections 201 to 202A; and

If development contributions are being used, the policy must comply with the requirements of LGA02 s.201 and s.201A. These are covered in commentary on these sections below.

<p>| Policy | 4.2 | 4.4 |</p>
<table>
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<th>Section</th>
<th>Description</th>
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| s.106(2)(f) | A policy adopted under section 102(1) must, in relation to the purposes for which development contributions or financial contributions may be required,—
   ... (f) if financial contributions will be required, summarise the provisions that relate to financial contributions in the District Plan or Regional Plan prepared under the Resource Management Act 1991. |
| If financial contributions are being used, the policy must summarise the financial contributions provisions in the District Plan. |
| Policy | 2.2 2.6 4.3 |
| s.106(2A) | This section does not prevent a local authority from calculating development contributions over the capacity life of assets or groups of assets for which development contributions are required, so long as—
   (a) the assets that have a capacity life extending beyond the period covered by the territorial authority’s long-term plan are identified in the development contributions policy; and
   (b) development contributions per unit of demand do not exceed the maximum amount allowed by section 203. |
| This section authorises the taking of development contributions for assets over their capacity life, but requires that:
   - Any projects with a capacity life greater than 10 years are listed in the DCP.
   - Charges per unit of demand cannot exceed certain limits imposed by LGA02 s.203 (i.e. what they would be as calculated as under Schedule 13 (plus any inflation), or for reserves, 7.5% of the land value or the value of 20 m².
   The LGA02 s.203 limits are covered in commentary on these sections below. |
| Policy | 2.3 3.3 3.5 3.6 4.5 6.1 |
| s.106(2B) and (2C) | (2B) Subject to subsection (2C), a development contribution provided for in a development contributions policy may be increased under the authority of this subsection without consultation, formality, or a review of the development contributions policy.

(2C) A development contribution may be increased under subsection (2B) only if—

(a) the increase does not exceed the result of multiplying together—
   (i) the rate of increase (if any), in the Producers Price Index Outputs for Construction provided by Statistics New Zealand since the development contribution was last set or increased; and
   (ii) the proportion of the total costs of capital expenditure to which the development contribution |
| This section allows the council to inflation adjust charges without consultation. This is usually undertaken on an annual basis. Councils must use the Producers Price Index Outputs for Construction and can only adjust the proportion of the development contribution that does not relate to financing costs. Notification requirements must be met before any adjustment can come into effect. The ability to adjust is not required to be stated in a policy, but it is good practice to mention it for the benefit of the public. |
| Admin | 4.9 5.4 5.5 |
(b) before any increase takes effect, the territorial authority makes publicly available information setting out—
   (i) the amount of the newly adjusted development contribution; and
   (ii) how the increase complies with the requirements of paragraph (a).

### s.106(3)
If development contributions are required, the local authority must keep available for public inspection the full methodology that demonstrates how the calculations for those contributions were made.

Requires the full methodology for calculating development contributions to be available for public inspection. This process is often summarised in DCPs and most of the calculations are already in the DCP as required by various sections of the LGA02, but other information such as the funding model (including detailed financing calculations), information on individual projects and how their costs were apportioned must be held and made available if needed/requested.

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### s.106(4)
If financial contributions are required, the local authority must keep available for public inspection the provisions of the District Plan or Regional Plan prepared under the Resource Management Act 1991 that relate to financial contributions.

If financial contributions are required, the council must keep available for public inspection the provisions of the District Plan that relate to financial contributions (Note that a regional council cannot impose development contributions, but a unitary authority can in respect to its territorial authority functions only).

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### s.106(5)
The places within its district or region at which the local authority must keep the information specified in subsections (3) and (4) available for public inspection are—

   (a) the principal public office of the local authority; and
   
   (b) such other places within its district or region as the local authority considers necessary in order to provide members of the public with reasonable access to the methodology, provisions, or plan.

Requires a council to keep the information and documents specified in LGA02 s.106(3) and s.106(4) in its main office and other such places it determines.

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106(6) A policy adopted under section 102(1) must be reviewed at least once every 3 years using a consultation process that gives effect to the requirements of section 82.

Requires that a council review its policy on development contributions and financial contributions at least once every 3 years using a consultation process that gives effect to the requirements of LGA02 s.82.

| Process | 2.2 | 4.9 |
s.150A  Costs of development contribution objections

(1) If a person objects to a territorial authority’s requirement that a development contribution be made, the territorial authority may recover from the person its actual and reasonable costs in respect of the objection.

(2) The costs that the territorial authority may recover under this section are the costs incurred by it in respect of—
   (a) the selection, engagement, and employment of the development contributions commissioners; and
   (b) the secretarial and administrative support of the objection process; and
   (c) preparing for, organising, and holding the hearing.

(3) A territorial authority may, in any particular case and in its absolute discretion, waive or remit the whole or any part of any costs that would otherwise be payable under this section.

(4) A territorial authority’s actual and reasonable costs in respect of objections are recoverable under section 252.

A council may recover from an objector the costs it incurs in running the objection process. This section also allows councils to waive these costs if it chooses, which a council may elect to do if it loses the objection. Note that LGA02 s.199(1) stipulates that the fees and allowances for a witness (internal or external) appearing at a development contribution objection hearing must be paid by the party on whose behalf the witness is called. This means the council must bear the costs of any of its witnesses, and these costs cannot be recovered.

s.197AA  The purpose of the development contributions provisions in this Act is to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

This section sets out the overriding statutory purpose of development contributions which should be reflected in the development of the DCP and in its administration. Other sections of the LGA02 have specific requirements that reinforce this purpose. Nothing in a DCP or in its administration should be fundamentally contrary to this purpose.

s.197AB(a)  Development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity.

There must be a genuine causative link between growth and the need for the expenditure which a council is seeking to fund via development contributions. When operating the DCP, there must also be a link between an individual development and the works. This link forms part of a fundamental test that should be assessed for each development that a council intends to require a development contribution from (the causal nexus).

Development contributions are not just a way of clipping the ticket and lowering the rates burden; they have to be justifiable, fair and transparent.
| s.197AB(b) | Development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding. | A DCP should identify the capacity life of each asset or programme in terms of the unit of demand. This should be supported by information at a project level held outside of the policy that shows how this was determined. A council must also keep good records of revenue collected to ensure it does not continue to charge for projects once their capacity life is taken up, i.e. it should be able to identify when an asset or programme is paid off or at capacity and cease collecting any development contributions for that particular asset or programme. | Policy 3.3 3.6 |
| s.197AB(c) | Cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets. | A council should have a clear and documented cost attribution system to apply to each project to meet this requirement. This methodology must take account of causation, as well as beneficiaries of the work, and should work without modification for 90% of projects. This section is intended to avoid a Neil Construction type situation where the vast majority of a programme’s cost is attributed to growth because it has triggered the need for the work but provides material benefits to existing residents. You cannot use the “but for” argument alone and must consider if existing residents will benefit from works when apportioning asset and programme costs. For example, a new reservoir may be needed because of growth. If it serves only growth and no existing residents benefit in any way, you can attribute 100% of costs to growth. However, if there is insufficient storage at present for existing residents, and the reservoir addresses that issue, you should attribute a portion of the costs to levels of service. | Policy and process 3.3 3.8 13.1 |
| s.197AB(d) | Development contributions must be used—
(i) for or towards the purpose of the activity or the group of activities for which the contributions were required; and
(ii) for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required. | A council must use the development contributions revenue collected for a particular activity (water, wastewater, roading, etc.) in a particular catchment only towards that activity and only in that catchment. Essentially, a council must keep the buckets of money for each activity for each catchment separate. A council cannot draw funds collected for say, water in one catchment, to pay for a water project in another catchment. The exception to this is if the work is still for the benefit of the catchment the money is collected from and achieves the same purpose for which the funds were collected. For example, the council decided to build one treatment plant shared by two communities, instead of one each. | Admin 2.3 3.3 6.4 |
| s.197AB(e) | Territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used. | Accounting records should keep track of how development contributions funds are expended. Where projects are undertaken ahead of development, the policy should include a schedule that clearly outlines the projects that development contributions are funding. | Policy and admin 3.3 4.5 4.9 |
s.197AB(f) Development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority’s development contributions policy under sections 106, 201, and 202.

Development contributions must be administered in compliance with the DCP.

Admin

s.197AB(g) When calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that—

(i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and

(ii) grouping by geographic area avoids grouping across an entire district wherever practical.

This provides explicit authority for “averaging” or grouping for different development types, and for different geographic areas.

A council may group certain types/forms of development together for the purposes of operating the DCP. Most often residential versus non-residential, or other categories of development such as industrial, light industrial, heavy industrial, commercial, retail, place of assembly, school or childcare, etc. Too many categories can make a policy complicated and provide false precision. An alternative approach to listing every conceivable type of development with individual demand assessments, is to rely instead on the demand factors or characteristics for each type of infrastructure activity that equates to one unit of demand. Units of demand are typically assessed as household unit equivalents (HUEs) or similar so that residential forecasts can easily be incorporated into a council’s development contribution calculations. For example, the peak daily demand for water for a typical household is around 1m³ per day on average. A demand assessment or lateral sizing can be used to form the basis of peak supply capacity for non-residential using 1m³ per day as a guideline. Similar for wastewater. Stormwater often uses impervious surface area over a site, and transportation estimated trips per day as their basis for assessment. There are several commonly accepted units of demand and demand characteristics for each infrastructure activity to draw from in development of the DCP. Even with these provisions, policies will often provide for the council or the applicant to apply for special assessments which allow bespoke assessments in special cases.

A council may group or combine growth costs for a particular infrastructure activity between areas within a wider catchment. This removes the requirement that all growth projects included in that catchment have to relate to all areas in the catchment. The catchment does not have to be the same catchment for each infrastructure activity. A catchment can be defined as a set of smaller discrete areas and it does not need to be a continuous area. For example, it can be a set of small townships in part of a region (without including all of the rural areas). What catchments a council chooses is largely a matter of judgment, taking into account factors such as the infrastructure involved, geography, community identity, where growth is or is expected, where the balance of
costs fall, the size and capability of the council to operate the DCP, the extent to which the council’s general funding philosophy accepts or rejects cost sharing/cross subsidisation, and fairness (discussed below).

It is easier to operate a less complicated policy with fewer categories of development and fewer catchments. As a result, the LGA02 puts tension on this temptation by requiring a council to explicitly consider the fairness and equity of the system it uses in its policy, especially in relation to catchments. Consideration of this balancing act should be recorded by the council in a formal report and resolved accordingly. Alternatively, the council should include a summary of the rationale used to make the final determination in the DCP.

| s.198(1) | A territorial authority may require a development contribution to be made to the territorial authority when—  
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</thead>
<tbody>
<tr>
<td>(a)</td>
<td>a resource consent is granted under the Resource Management Act 1991 for a development within its district;</td>
</tr>
<tr>
<td>(b)</td>
<td>a building consent is granted under the Building Act 2004 for building work situated in its district (whether by the territorial authority or a building consent authority);</td>
</tr>
<tr>
<td>(c)</td>
<td>an authorisation for a service connection is granted.</td>
</tr>
<tr>
<td>s.198(2)</td>
<td>A territorial authority may only require the development contribution as provided for in a policy adopted under section 102(1) that is consistent with section 201.</td>
</tr>
<tr>
<td>s.198(2A)</td>
<td>For the purposes of subsection (2), a development contribution must be consistent with the content of the policy adopted under section 102(1) that was in force at the time that the application for a resource consent, building consent or authorisation was made.</td>
</tr>
</tbody>
</table>

This section provides the authority for a council to require development contributions for a development. LGA02 s.198(4A) below also provides similar authority for when people are granted a certificate of acceptance.

These provisions do not provide unfettered power to require development conditions. Before a development can be required under these sections, each development must be assessed to ensure the following test is met (Neil Construction test), i.e:

- The development (subdivision, building, land use, or work) generates a demand for community facilities; and
- the effect of that development (together with other developments) is to require new or additional assets or assets of increased capacity in terms of community facilities; and
- the council has incurred or will incur capital expenditure to provide appropriately for those assets. This includes capital expenditure already incurred by the council in anticipation of development.
- Requiring the development contributions will not be contrary to LGA02 s.200.

The council will also need to ensure the development is liable for development contributions under the council’s DCP (LGA02 s.198(2)).

Policy and admin 4.8 5.1 5.2 13.1

A development contribution can only be required in the manner and circumstances set out in a statutorily compliant DCP. The council’s DCP must contain certain information as required by LGA02 s.201 (which also refers to s.202). If not, the council cannot require a development contribution. While this is true for most DCP content required by the Act, this section specifically mentions the information required by LGA02 s.201 so it is crucial that a DCP contain this.

Policy and admin 4.4 4.8 5.1 5.2

This is a very important section that dictates which policy and charges will apply to a consent or authorisation. As consents can be long lived (such as a large subdivision that takes several years to complete), this may mean that by the time a development actually occurs and charges must be paid, several years and several versions of the DCP may have passed.

Admin 4.8 5.1 5.2
| Consent, or service connection was submitted, accompanied by all required information. | Determining when a consent is submitted “accompanied by all required information” can be an important point to determine as a consent application may span to two policies. 

Note: this section does not stop inflation being applied to the charge. A council can still increase the charge from a DCP several years ago in accordance with LGA02 s.106(2B) and (2C).  

The LGA02 is silent on what DCP to apply to a certificate of acceptance. However, by analogy with the other applications, a council may consider using the date that the application for a certificate of acceptance, accompanied by all required information, was submitted for determining which policy to use. |
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<tbody>
<tr>
<td><strong>s.198(3)</strong> and <strong>(4)</strong></td>
<td><strong>s.198(4A)</strong></td>
</tr>
</tbody>
</table>
| (3) A requirement for a development contribution under subsection (1)(a) or (1)(b) is not—
  
  (a) a condition of a resource consent that gives rise to any right of objection or appeal; or
  
  (b) as the case may be, a matter that gives rise to any right to apply to the chief executive for a determination under the Building Act 2004.  

(4) Subsection (3) is for the avoidance of doubt. | If a development contribution policy provides for a development contribution under subsection (1)(b), the territorial authority may require that development contribution to be made when granting a certificate of acceptance under section 98 of the Building Act 2004 if a development contribution would have been required had a building consent been granted for the building work in respect of which the certificate is granted. |
| **s.199** | **s.199** |
| Basis on which development contributions may be required | Basis on which development contributions may be required |

(1) Development contributions may be required in relation to developments if the effect of the developments is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for—

  (a) reserves: | Subsection (1) and (3) are similar to LGA02 s.197AB(a). See commentary on that section. 

Note that (3) provides that a development alone does not need to trigger the need for works. Rather, the individual development, together with other developments may create the need (i.e. cumulative demand). 

Subsection (2) clarifies that development contributions can be used to recover the costs of future projects, as well as past projects. |
(b) network infrastructure:

(c) community infrastructure.

(2) This section does not prevent a territorial authority from requiring a development contribution that is to be used to pay, in full or in part, for capital expenditure already incurred by the territorial authority in anticipation of development.

(3) In subsection (1), **effect** includes the cumulative effects that a development may have in combination with other developments.

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<table>
<thead>
<tr>
<th>s.199A</th>
<th>Right to reconsideration of requirement for development contribution</th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>If a person is required by a territorial authority to make a development contribution under section 198, the person may request the territorial authority to reconsider the requirement if the person has grounds to believe that—</td>
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<td></td>
<td>(a) the development contribution was incorrectly calculated or assessed under the territorial authority’s development contributions policy; or</td>
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<td></td>
<td>(b) the territorial authority incorrectly applied its development contributions policy; or</td>
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<td></td>
<td>(c) the information used to assess the person’s development against the development contributions policy, or the way the territorial authority has recorded or used it when requiring a development contribution, was incomplete or contained errors.</td>
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<tr>
<td>(2)</td>
<td>A request for a reconsideration must be lodged and decided according to the procedure set out in a development contributions policy under section 202A(2).</td>
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<tr>
<td>(3)</td>
<td>A request for a reconsideration must be made within 10 working days after the date on which the person lodging the request receives notice from the territorial authority of the</td>
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<table>
<thead>
<tr>
<th>Subsection (1)</th>
<th>Establishes the right to seek a reconsideration by the council on the grounds set out in (a), (b), and (c).</th>
<th>Policy and admin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reconsideration right is largely limited to applying the facts of the case against a council’s DCP. Was there an error in the way the council applied the DCP to the development?</td>
<td>4.6</td>
</tr>
<tr>
<td>Subsection (2)</td>
<td>Requires the reconsideration application lodgement, and the consideration of the application by the council, to be undertaken in accordance with the requirements set out in the DCP (as required by LGA02 s.202A).</td>
<td>8.1</td>
</tr>
<tr>
<td></td>
<td>From an applicant’s perspective, this usually means the council will require an applicant to use a specified form when applying for a reconsideration and submitting that form in a specified way.</td>
<td>8.2</td>
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<td></td>
<td>From the council’s perspective, that means it will follow its process as outlined in the DCP when considering the application. There are many ways to do this – another officer reviews the assessment, a panel of staff reviews the assessment, it is considered by a sub-committee of council, etc. It can be helpful to set out the steps in the process - can the applicant be heard or is the process just in writing? Will a report be prepared ahead of time if the reconsideration is being heard by a panel, etc.</td>
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<td>In all cases, it is good practice to have reconsideration applications considered by someone other than the officer that undertook the initial assessment. The process must also be able to be completed within 15 working days so that the applicant can be notified in time to meet the requirements of s.199B(1).</td>
<td></td>
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<tr>
<td>Subsection (3)</td>
<td>States the timeframe within which a reconsideration application must be made.</td>
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<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>s.199B</td>
<td>Territorial authority to notify outcome of reconsideration</td>
</tr>
<tr>
<td>(1)</td>
<td>The territorial authority must, within 15 working days after the date on which it receives all required relevant information relating to a request, give written notice of the outcome of its reconsideration to the person who made the request.</td>
</tr>
<tr>
<td>(2)</td>
<td>A person who requested a reconsideration may object to the outcome of the reconsideration in accordance with section 199C.</td>
</tr>
</tbody>
</table>

| Subsection (1) | Sets out the time limits (15 working days) for completing the reconsideration process. |
| Subsection (2) | Preserves the right of the applicant to lodge an objection under LGA02 s.199C, even if the matter has been reconsidered by a council. |

| s.199C | Right to object to assessed amount of development contribution |
| (1) | A person may, on any ground set out in section 199D, object to the assessed amount of the development contribution that a territorial authority has required from the person under section 198, advised in— |
| | (a) a notice given to the person for that purpose by the territorial authority; or |
| | (b) if notice has not been given, such other formal advice of the requirement that the territorial authority has given to the person. |
| (2) | The right of objection conferred by subsection (1) applies irrespective of whether a reconsideration of the requirement for a development contribution under section 199A has been requested. |

| Subsection (1) | An objection is an independent review of the requirement for development contributions for a development. It is considered by one or more development contributions commissioner(s). Development contributions commissioners are appointed by the council to hear the objection from a pool approved by the Minister of Local Government under s.199F. The decision of the commissioners is final i.e. it is not a recommendation to the council. Both the objector and the council can seek a judicial review of the decision of the commissioner(s) (see LGA02 s.199M(4) and s.199N). |
| Subsection (2) | As noted in Schedule 13A, the commissioners have wide discretion to conduct an objection process as they see fit. This can range from a relatively informal process where the parties provide written material outlining their case only and/or discuss the matter informally, through to a judicial-like process following norms more often employed in court. In the latter cases, it is likely to be a high value objection where an important principle is being tested. In these cases, a council may want to engage solicitors to represent the council. |
| Subsection (2) | Establishes the right to object following receipt of a development contribution notice or other formal advice provided if a notice has not been provided. The grounds for objecting are limited and set out in s.199D. |
(3) The right of objection conferred by this section does not apply to challenges to the content of a development contributions policy prepared in accordance with section 102.

Allows an objection to be lodged even if the objector has already applied for a reconsideration. The two processes may deal with different or the same matters. The short time frame for concluding a reconsideration (15 working days) means the reconsideration process will be concluded before the objection proceedings start.

Subsection (3)

Establishes that the objection must relate to the administration of the DCP, not to the DCP content itself. In practice, this is difficult territory for commissioners to traverse, if the DCP does not comply with good practice or even the LGA02 for example. However, commissioners may comment/make observations on the policy, as permitted by LGA02 Schedule 13A, cl.9(5).

<table>
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<tr>
<th>s.199D</th>
<th>Scope of development contribution objections</th>
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<tbody>
<tr>
<td>An objection under section 199C may be made only on the ground that a territorial authority has—</td>
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<tr>
<td>(a) failed to properly take into account features of the objector’s development that, on their own or cumulatively with those of other developments, would substantially reduce the impact of the development on requirements for community facilities in the territorial authority’s district or parts of that district; or</td>
<td></td>
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<tr>
<td>(b) required a development contribution for community facilities not required by, or related to, the objector’s development, whether on its own or cumulatively with other developments; or</td>
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<tr>
<td>(c) required a development contribution in breach of section 200; or</td>
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<tr>
<td>(d) incorrectly applied its development contributions policy to the objector’s development.</td>
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This is an important section that outlines the only grounds on which an objection can be lodged. The case made by an objector must focus on these grounds.

Despite this, an objector may extend their arguments beyond these grounds. The commissioners will need to carefully consider what is in and out of scope. A council should be clear about what it considers to be in and out of scope, and why. It can be useful to prepare arguments on matters out of scope in case the commissioners have a broader interpretation of scope.

Subsection (a) is largely focused on demand on infrastructure services, or the provision of alternative services that reduce the need for council-provided assets. Note that it is a twin test and that the objector must show that their development would substantially reduce the impact on the requirement for the council’s assets. That is a high threshold. Many developments will be too small in scale to influence the wider infrastructure need.

On the face of it, subsection (b) appears to allow an objection based on an individual development not needing or connecting to some individual infrastructure project listed in the DCP for the relevant catchment. This would present a massive challenge/risk to councils as most policies pool to some extent projects in catchments, and not all projects will relate to all developments. However, this would present a direct challenge to the ability to group areas into a larger catchment as provided by s.197AB(g) and would seem to allow commissioners to change a DCP, in contravention of LGA02 s.199C(3).

Instead this section should be seen as a test of whether the development connects to or needs a particular infrastructure service at all provided by the council long term. For example, all water or wastewater services are provided on site and will operate like that on a permanent basis. The permanency of an arrangement is important, as a development may put in a temporary solution ahead of longer-term council infrastructure services (which still need to be funded).

For subsection (c), see LGA02 s.200 commentary.

Subsection (d) is similar to the grounds for reconsideration. The case will depend on the facts of the case and an individual council’s DCP.
<table>
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<tr>
<th>Section</th>
<th>Description</th>
<th>Commentary</th>
<th>Admin</th>
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<tbody>
<tr>
<td>s.199E</td>
<td>Procedure for development contribution objections</td>
<td>See commentary on Schedule 13A.</td>
<td>8.1</td>
</tr>
<tr>
<td>s.199C-199P</td>
<td>Refer legislation</td>
<td>Largely related to process, obligations and rights associated with the objection process.</td>
<td>8.1</td>
</tr>
</tbody>
</table>
| s.200(1) | (1) A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that—  
(a) it has, under section 108(2)(a) of the Resource Management Act 1991, imposed a condition on a resource consent in relation to the same development for the same purpose; or  
(b) the developer will fund or otherwise provide for the same reserve, network infrastructure, or community infrastructure; or  
(ba) the territorial authority has already required a development contribution for the same purpose in respect of the same building work, whether on the granting of a building consent or a certificate of acceptance; or  
(c) a third party has funded or provided, or undertaken to fund or provide, the same reserve, network infrastructure, or community infrastructure. | All of LGA02 s.200(1) is intended to prohibit a council from requiring development contributions when infrastructure is funded in some other way. i.e. double dipping.  
To what extent a reduction is warranted depends on the circumstances and which subpart applies. Subsections (a), (b) and (c) can be complex areas and readers are advised to read section 6.3 of this guide.  
Subsection (ba) prohibits a council from requiring a development contribution for the same purpose (i.e. activity) when granting a certificate of acceptance if, and to the extent that, it has already required a development contribution for the development at building consent stage. This is subject to some caveats outlined in LGA02 s.200(4). | 3.8   |
<p>| s.200(2) | This subpart does not prevent a territorial authority from accepting from a person, with that person’s agreement, additional contributions for reserves, network infrastructures, or community infrastructures. | While a council cannot require development contributions if and to the extent LGA02 s.200(1) applies, it may still accept offers of additional payment. | 6.3   |</p>
<table>
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<tr>
<th>Section</th>
<th>Description</th>
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| s.200(3) | This section does not prevent a territorial authority from requiring a development contribution if—  
- (a) income from the following is being used or will be used to meet a proportion of the capital costs of the community facilities for which the development contribution will be used:  
  - (i) rates;  
  - (ii) fees and charges;  
  - (iii) interest and dividends from investments;  
  - (iv) borrowings;  
  - (v) proceeds from asset sales; or  
- (b) a person required to make the development contribution is also a ratepayer in the territorial authority’s district or has paid or will pay fees or charges in respect of the facilities.  

A council may fund some of the costs of infrastructure, which development contributions will also fund, from other sources such as rates. The costs allocated to and funded by development contributions already account for this. Subsection (a) ensures that this alone does not trigger any of the sections in LGA02 s.200(1). Subsection (b) acknowledges that the people paying for the infrastructure through the other funding mechanisms in LGA02 s.200(3)(a) may also be a developer being charged development contributions, but clarifies that this fact does not trigger any of the sections in LGA02 s.200(1) for that developer. |
| s.200(4) | Despite subsection (1)(ba), a territorial authority may require another development contribution to be made for the same purpose if the further development contribution is required to reflect an increase in the scale or intensity of the development since the original contribution was required. A council may require additional development contributions for the same purpose (i.e. activity) on granting a certificate of acceptance even if it has already required a development contribution for the development at building consent stage if there has been an increase in the scale or intensity of the development since the building consent was issued. |
| s.200(5)(10) | Subsection (6) applies if a territorial authority or a council-controlled organisation has entered a funding agreement with the New Zealand Transport Agency under which—  
- (a) a specified amount of additional financial assistance is to be provided from the national land transport fund to the territorial authority or the council-controlled organisation to fund a specified network infrastructure project; and  

Preserves the Waka Kotahi funding rate assumed in the schedule of assets even when there are increases (or decreases) in that rate if they are offset by decreases (increases) in Waka Kotahi funding for other projects. Overrides LGA02 s.200(1)(c). |
(b) that specified amount of additional financial assistance is to be offset by reduced funding for 1 or more other projects or programmes.

(6) If this subsection applies, the specified amount of additional financial assistance must not be treated as third-party funding for the purposes of subsection (1)(c).

(7) Subsection (8) applies if a funding agreement referred to in subsection (5)—

(a) provides for some or all of the specified amount of additional financial assistance to be offset by the provision of a reduced amount of financial assistance for 1 or more other network infrastructure projects; and

(b) specifies the amount of financial assistance for each other network infrastructure project that would otherwise have been provided.

(8) If this subsection applies, to the extent that a network infrastructure project receives a reduced amount of financial assistance, subsection (1)(c) applies as if the amount of financial assistance provided for that project were the amount that would otherwise have been provided, and not the reduced amount.

(9) In this section, additional financial assistance means an amount of financial assistance for a network infrastructure project that is greater than the amount (if any) that would otherwise be provided from the national land transport fund in respect of that project.

(10) Subsections (5) to (9) prevail over subsection (1)(c).

s.201 Contents of development contributions policy

(1) If a territorial authority has determined to seek funding for community facilities under this subpart, the policy

Subsections (1)(a) and (b)
required by section 102(1) must include, in summary form, in addition to the matters set out in section 106,—

(a) an explanation of, and justification for, the way each development contribution in the schedule required by subsection (2) is calculated; and

(b) the significant assumptions underlying the calculation of the schedule of development contributions, including an estimate of the potential effects, if there is a significant level of uncertainty as to the scope and nature of the effects; and

(c) the conditions and criteria (if any) that will apply in relation to the remission, postponement, or refund of development contributions, or the return of land; and

(d) the basis on which the value of additional lots or land is assessed for the purposes of section 203(1).

(2) A development contributions policy must contain a schedule in accordance with section 202.

Requires a DCP to summarise how the charges are calculated. This involves explaining the key steps in the calculation process, including why a council has chosen that approach, major assumptions, effects and uncertainty. It should cover important aspects of the calculations such as:

- Cost allocation.
- Units of demand.
- Growth estimates.
- Charge determination for each activity.

This is often dealt with by including a section that covers this in two parts. The first deals with explaining the calculation process, and the second addresses assumptions, effects and uncertainty.

Subsection (1)(c)

Refunds – Many councils limit this section to specifying only the minimum refund requirements of the LGA specified in LGA02 s.209.

Postponement – many councils do not allow postponement, except where a bank bond or similar has been provided. Notwithstanding this, councils may elect to offer terms for paying off debt over time.

Remission – there are many circumstances where a council may elect to not charge or reduce charges. These are often justified on the basis that there are reduced levels of demand or self-supply. These may include circumstances such as small or minor residential units, or provision of stormwater detention. This has some cross over with assessments and can also be dealt with in the DCP by how the council uses its units of demand for different types of developments (for example, by applying a lower rate of HUEs to small homes) or via special assessment.

Others are special arrangements/incentives for special types of developments that they wish to encourage or recognise some kind of community good – such as charitable entities. A council should take care using these types of remissions, unless the council elects to fund these latter types of remissions via a budget funded by rates, otherwise the cost burden is picked up by other developers, contrary to the intent and purpose of development contributions.

Subsection (1)(d)

The DCP must state the basis for reserve development contribution valuations for the purposes of determining if the development contribution required will exceed the limits specified in LGA02 s.203(1). This applies to all DCPs that require reserve development contributions regardless of how the charge is calculated. The approach specified can be as simple as using the council rating database, an internal valuation, or an external valuation. It can often be graduated to help screen for likely breaches early using a coarse basis like the council’s rating database, and then moving into more sophisticated valuation approaches if breaches seem likely.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>s.201A</td>
<td>Schedule of assets for which development contributions will be used.</td>
</tr>
</tbody>
</table>

(1) If a territorial authority has determined to seek funding for community facilities under this subpart, the policy required by section 102 must include, in addition to the matters set out in sections 106 and 201, a schedule that lists—

(a) each new asset, additional asset, asset of increased capacity, or programme of works for which the development contributions requirements set out in the development contributions policy are intended to be used or have already been used; and

(b) the estimated capital cost of each asset described in paragraph (a); and

(c) the proportion of the capital cost that the territorial authority proposes to recover through development contributions; and

(d) the proportion of the capital cost that the territorial authority proposes to recover from other sources.

(e) if the asset is eligible infrastructure that has been, or is intended to be, transferred by a responsible SPV to a responsible infrastructure authority under section 90 of the Infrastructure Funding and Financing Act 2020, the proportion of the capital cost to be funded by a levy under that Act and from other sources.

(2) For the purposes of subsection (1), assets for which development contributions are required can be grouped.

Subsections (1)(a), (b), (c), (d) and (e)

The schedule of assets is a critical component of DCPs. See commentary on LGA02 s.106(2)(a) and (b). Usually provided as a large detailed table at the back of the DCP, although subsection (6) allows the council to provide it in other ways if it’s too large to fit into a DCP.

Subsection (2)

Provides that a council may group projects into a programme of work. This schedule often follows the project naming, listing, and grouping conventions used in a council’s Long-term Plan or AMPs. Grouping or consolidating in a different way may confuse and/or sever the line of sight to the council’s master work programme.

Subsection (3)

Past projects that development contributions will fund must be included in the schedule of assets.

Subsection (4)

The schedule of assets must clearly identify the activity and catchments. Most easily achieved by using separate tables for each activity for each catchment.

Subsection (5)

Allows changes to the schedule of assets provided the changes do not increase the development contributions charge.

This means new projects could be added, amended, or removed, or costs or cost allocations could be changed without requiring consultation. However, if it increases the charges, the council will need to consult before the increased charges could apply.

In many instances, councils leave changes to the Long-term Plan cycle unless they materially change the policy and/or the charges.

Subsection (6)
together into logical and appropriate groups of assets that reflect the intended or completed programmes of works or capacity expansion.

(3) A schedule under subsection (1) must also include assets for which capital expenditure has already been incurred by a territorial authority in anticipation of development.

(4) Information in the schedule under subsection (1) must group assets according to the district or parts of the district for which the development contribution is required, and by the activity or group of activities for which the development contribution is required.

(5) A territorial authority may make changes to the schedule required by subsection (1) at any time without consultation or further formality, but only if—

(a) the change is being made to reflect a change of circumstances in relation to an asset that is listed in the schedule or is to be added to the schedule; and

(b) the change does not increase the total or overall development contribution that will be required to be made to the territorial authority.

(6) If the territorial authority is satisfied that the schedule or any part of it is too large or impractical to print in hard copy form, the territorial authority may—

(a) provide the schedule in a publicly accessible electronic format; and

(b) provide and maintain an electronic link from the development contributions policy to the schedule (if the policy is on the Internet) or state where a hard copy of the schedule can be found and inspected.

(7) Subject to sections 204, 205, and 206, a territorial authority may use a development contribution for or towards any assets other than those set out in the schedule required by subsection (1) as at the time the development contribution was required, if—

Allows the council to keep the schedule out of the DCP if it is too large. It must still be accessible to the public in other ways. In practice, this test is unlikely to be met, except for very large and high-growth councils.

**Subsection (7)**

Important provision that allows the council to deviate from the exact programme specified in the schedules in the DCP i.e. deliver different works and use development contribution revenue to help fund those works. However, the works must still deliver on the same general function and purpose as the works previously listed in the policy. For example, once design commences, a council may elect to use a different scheme to provide potable water to a new growth area.

The revised programme must be included in the next DCP update. How soon this is undertaken will depend on the changes. If the changes involve major cost escalations requiring the charges to increase, the council may elect to change the policy sooner, although this will require consultation.
(a) the assets are for the same general function and purpose as those that were set out in the schedule required under subsection (1) as at the time the development contribution was required; and

(b) the schedule required by subsection (1) has been updated in accordance with subsection (5), or will be updated when the development contributions policy is next changed or reviewed, to identify the assets that the development contribution has been, or is intended to be, used for or towards.

### Contents of section 201 schedule

(1) The schedule of development contributions required by section 201(2) must specify—

(a) the development contributions payable in each district, calculated, in each case, in accordance with the methodology in respect of—

(i) reserves; and

(ii) network infrastructure; and

(iii) community infrastructure; and

(b) the event that will give rise to a requirement for a development contribution under section 198, whether upon granting—

(i) a resource consent under the Resource Management Act 1991; or

(ii) a building consent under the Building Act 2004; or

(iii) an authorisation for a service connection.

### Subsection (1)(a)

This subsection requires that the policy specify the development contributions that apply in the policy for each activity funded via development contributions.

### Subsection (1)(b)

This subsection requires that DCPs specify the “event” that gives rise to a development contribution, even though “development” and the triggers for requiring are defined in the Act. In practice, this requires a council to clearly outline these triggers in its DCPs.

### Subsections (2) and (3)

These subsections require that a council specifies separately the charge for each catchment (subsection (2)) for each activity (subsection (3)).

Technically, it also requires that a council specifies the event(s) that give rise to a development contribution payable for each catchment and each activity too. However, most policies have the same triggers in all cases, and they should say so if this is the case rather than repeating the triggers/events. Some DCPs do levy the charges at only one event or trigger rather than all - such as only at building consent or service connection time. In these instances, the policy will need to make this clear.
(2) If different development contributions are payable in different parts of the district, subsection (1) applies in relation to the parts of the district.

(3) The specifications required under subsection (1) or subsection (2) must be given separately in relation to each activity or group of activities for which separate development contributions are required.

<table>
<thead>
<tr>
<th>s.202A</th>
<th>Reconsideration process to be in development contributions policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>If a territorial authority has determined to seek funding for community facilities under this subpart, the policy required by section 102 must, in addition to the matters set out in sections 106 and 201 to 202, and subject to any regulations made under section 259(1)(e) or (f), set out the process for requesting reconsideration of a requirement under section 199A.</td>
</tr>
<tr>
<td>(2)</td>
<td>The process for reconsideration must set out—</td>
</tr>
<tr>
<td></td>
<td>(a) how the request can be lodged with the territorial authority; and</td>
</tr>
<tr>
<td></td>
<td>(b) the steps in the process that the territorial authority will apply when reconsidering the requirement to make a development contribution.</td>
</tr>
</tbody>
</table>

This provision requires a council to set out the process for making a reconsideration request in its DCP. This usually involves advising applicants:

- Of the timeframe for lodging reconsiderations (10 working days of receiving the council’s development contribution notice as per LGA02 s.199A(3)).
- How they apply, such as a form or online, and outlining what information is required (if any).
- If they need to pay a fee at the time of application and if so, when and how much.
- What will happen if the fee is not paid, or if insufficient information is provided – such as rejecting the application or requesting additional information or payment.
- If they have an opportunity to be heard or not, and if so, how that is arranged.

The DCP also needs to explain the process the council will go through when considering the request – is it heard by staff or does it go to a committee of some kind? It’s also helpful to include the timeframe for notifying applicants of the decision (15 working days after receiving a complete application as per LGA02 s.199B).

<table>
<thead>
<tr>
<th>s.203</th>
<th>Maximum development contributions not to be exceeded</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Development contributions for reserves must not exceed the greater of—</td>
</tr>
<tr>
<td></td>
<td>(a) 7.5% of the value of the additional lots created by a subdivision; and</td>
</tr>
<tr>
<td></td>
<td>(b) the value equivalent of 20m² of land for each additional household unit or accommodation unit created by the development.</td>
</tr>
</tbody>
</table>

Subsection (1)

This provision sets an upper limit on what can be recovered through reserve development contributions. It applies to all reserve development contributions.

Subsection (2)

This requires that the maximum charge required by a council for an individual development is the per unit of demand price (adjusted for inflation if needed) multiplied by the number of units of demand for an individual development. In almost all cases, this is the charge that is levied.
[2] Development contributions for network infrastructure or community infrastructure must not exceed the amount calculated by multiplying the cost of the relevant unit of demand calculated under clause 1 of Schedule 13 by the number of units of demand assessed for a development or type of development, as provided for in clause 2 of Schedule 13, and as amended for any Producers Price Index adjustment adopted in a development contributions policy in accordance with section 106(2B).

<table>
<thead>
<tr>
<th>s.204</th>
<th>Use of development contributions by territorial authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>A development contribution—</td>
</tr>
<tr>
<td></td>
<td>(a) must be used for, or towards, the capital expenditure of the reserve, network infrastructure, or community infrastructure for which the contribution was required, which may also include the development of the reserve, network infrastructure, or community infrastructure; but</td>
</tr>
<tr>
<td></td>
<td>(b) must not be used for the maintenance of the reserve, network infrastructure, or community infrastructure.</td>
</tr>
<tr>
<td>(2)</td>
<td>Subsection (1) is subject to section 205.</td>
</tr>
</tbody>
</table>

Subsection (1)(a)

Development contributions taken for a particular activity must be used towards funding capital expenditure for that activity. For example, water development contributions revenue for a particular catchment must be used for the provision of water services in that area. The requirement does not apply at the individual project or even programme level. This is further reinforced by LGA02 s.201A(7).

Subsection (1)(b)

Prohibits the use of development contributions revenue to fund the maintenance of assets.

Subsection (2)

See commentary on LGA02 s.205.

<table>
<thead>
<tr>
<th>s.205</th>
<th>Use of development contributions for reserves</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A territorial authority must use a development contribution received for reserves purposes for the purchase or development of reserves within its district, which may include—</td>
</tr>
<tr>
<td></td>
<td>(a) the development of community or recreational facilities associated with the use of a reserve:</td>
</tr>
<tr>
<td></td>
<td>(b) the provision or improvement of recreational facilities at a school established or about to be established under subpart 6 of Part 3 of the Education and Training Act 2020, if—</td>
</tr>
</tbody>
</table>

This is mainly concerned with how reserve development contributions are used. DCPs must ensure that the reserve programme funded by development contributions does not fall outside the scope of “purchase or development of reserves within its district” and a council must ensure that the eventual use of the funds is also consistent with this purpose. The section helpfully states a number of situations where the LGA02 allows the funds to be used, to remove uncertainty.
(i) a licence has been granted under section 6A of the Education Lands Act 1949 or section 70B of the Education Act 1989 in relation to the use or occupation of the community recreational facilities; and

(ii) the Minister for Sport and Recreation has notified the local authority in writing that he or she is satisfied that the licence provides for the reasonable use of the community recreational facilities by members of the public:

(c) the purchase of land or an interest in land—

(i) to be held for conservation purposes under the Reserves Act 1977:

(ii) that is, or will be, subject to a conservation covenant under section 77 of the Reserves Act 1977:

(d) payment, on terms and conditions the territorial authority thinks fit, to—

(i) another local authority or public body in which land in the district is vested to enlarge, enhance, or develop the land for public recreation purposes:

(ii) the administering body of a reserve held under the Reserves Act 1977 to enlarge, enhance, or develop the reserve:

(iii) the trustees or body corporate in whom is vested a Māori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies, to enhance the reservation for cultural or other purposes:

(iv) any person, to secure an appropriate interest in perpetuity in land for conservation purposes.

<table>
<thead>
<tr>
<th>s.206</th>
<th>Alternative uses of development contributions for reserves</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Despite sections 197AB(d) and 205, if the territorial authority considers that the district in which the development is</td>
</tr>
</tbody>
</table>

Lists where and how a council may spend reserve development contributions outside of the district in which they were collected.

Policy and admin 6.4
situated has adequate reserves, or that it is impracticable to purchase or develop reserves in that locality, it may, if it considers it will benefit the residents in the district in which the development is situated, use the development contributions—

(a) to add to, improve, or develop land outside the district that is vested in, or controlled by, the territorial authority for public recreation purposes:

(b) with the consent of the Minister and subject to the terms and conditions the Minister thinks fit, to make payments or advance money to a local authority or public body to add to, improve, or develop land outside the district that is vested in, or controlled by, the local authority or public body for public recreation purposes:

(c) if the territorial authority has control of the foreshore or the bed of a lake or a harbour under a coastal permit by virtue of section 384(1)(b) or section 425(3)(a) of the Resource Management Act 1991,—

(i) to improve or develop the foreshore (whether within or outside the district) for public recreational purposes:

(ii) to erect, improve, or develop for public recreational purposes—

(A) the bed of the harbour or of the sea immediately contiguous to the foreshore; or

(B) the bed of a lake (whether within or outside the district).

s.207A-207F

Refer legislation

These sections outline the various requirements for the proposal, accepting, making, amending, and terminating of a development agreement, and also clarify that the agreement overrides the DCP if there is any divergence or conflict.

Admin
**s.208(1) Powers of territorial authority if development contributions not paid or made**

(1) Until a development contribution required in relation to a development has been paid or made under section 198, a territorial authority may,—

(a) in the case of a development contribution required under section 198(1)(a),—

(i) withhold a certificate under section 224(c) of the Resource Management Act 1991:

(ii) prevent the commencement of a resource consent under the Resource Management Act 1991:

(b) in the case of a development contribution required under section 198(1)(b), withhold a code compliance certificate under section 95 of the Building Act 2004:

(ba) in the case of a development contribution required under section 198(4A), withhold a certificate of acceptance under section 99 of the Building Act 2004:

(c) in the case of a development contribution required under section 198(1)(c), withhold a service connection to the development:

(d) in each case, register the development contribution under subpart 5 of Part 3 of the Land Transfer Act 2017, as a charge on the title of the land in respect of which the development contribution was required.

One of the most important sections of the Act from the perspective of councils that have DCPs. This section provides councils with the ability to withhold consents, connection approval, certificates, commencement of a consent, etc. if development contributions are not paid. This acts as a strong incentive for landowners and developers to pay. If the debt is still due and (a)-(c) has not been incentive enough for payment, a council can register the development contribution owed as a charge on the land.

It’s important to note that “may” is used in the Act and should probably be reflected in any DCP. A council is not obliged to withhold certificates or consents but can choose to.

This appears to conflict somewhat with the notice made by regulation and required to be used by s.36 of the Building Act 2004, which states the code compliance certificate will be withheld, and a similar statement is repeated in s.94 of the Building Act 2004. See form 3 of the Building (Forms) Regulations 2014.[http://www.legislation.govt.nz/regulation/public/2004/0385/latest/DLM1904106.html#DLM1904106].

However, the **will** appears to apply when the building consent authority is not the council requiring the development contribution. Even then, s.94(4) provides the ability for the council and the person owing the money to agree to release the certificate and notify the building consent authority.

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**s.209 Refund of money and return of land if development does not proceed**

<table>
<thead>
<tr>
<th>Subsection (1)</th>
<th>Policy and admin</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>4.8</td>
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<tr>
<td></td>
<td>5.2</td>
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<td>7.2</td>
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</tbody>
</table>
A territorial authority must refund or return to the consent holder or to his or her personal representative a development contribution paid or land set aside under this subpart if—

(a) the resource consent—

(i) lapses under section 125 of the Resource Management Act 1991; or

(ii) is surrendered under section 138 of that Act; or

(b) the building consent lapses under section 52 of the Building Act 2004; or

(c) the development or building in respect of which the resource consent or building consent was granted does not proceed; or

(d) the territorial authority does not provide the reserve, network infrastructure, or community infrastructure for which the development contribution was required.

Subsections (a), (b), (c) are mostly straightforward bases for refunds. In some cases, a council is unlikely to have received payment (such as a subdivision consent lapsing), so no refunds are owed in these cases.

Subsection (d) is more complicated, as there are no timeframes specified. As noted in s.201A(7), the council can use development contributions for different assets as long as they are for the same general purpose and function. This could involve delays for several years. However, if the council has clearly determined that it will not provide a service for which it has collected development contributions from a property or area, it should refund the relevant development contribution to the consent holders.

Subsection (2)

This subsection enables a council to retain a portion of the development contributions equivalent to the costs incurred by the council in assessing, requiring, and refunding the charges. Most relevant to s.209(1)(a), (b), and (c).

s.210 Refund of money or return of land if not applied to specified reserve purposes

(1) If a development contribution has been required for a specified reserve purpose, a territorial authority must—

(a) refund money received for that purpose, if the money is not applied to that purpose within 10 years after the authority receives the money or other period specified in the development contribution policy; or

Establishes a default 'refund date' of 10 years (from the date the contribution was taken) if reserve development contributions are not used for the purpose for which the money was taken. A similar concept applies to returning land taken in lieu of contributions.

However, the section provides for a different period for refunds if it is specified in the DCP. A similar concept applies to land taken in lieu of development contributions, but the longer date must be agreed with the person who “made” the development contribution (i.e. contributed the land) rather than be specified in the DCP.

This section applies only to reserve development contributions.

Policy and admin 6.5
(b) return land acquired for the specified reserve purpose, if the authority does not use the land for that purpose within 10 years after the authority acquires the land or other period agreed by the territorial authority and the person who paid the development contribution.

(2) A territorial authority may retain part of the money or land referred to in subsection (1) of a value equivalent to the costs of the authority in refunding the money or returning the land.

If refunds are required, the council can retain the equivalent of its costs in administering the refund.

<table>
<thead>
<tr>
<th>Schedule 13</th>
<th>1. Methodology for relating cost of community facilities to units of demand</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) In order to calculate the maximum development contribution in respect of a community facility or an activity or group of activities for which a separate development contribution is to be required, a territorial authority must first—</td>
<td></td>
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<tr>
<td>(a) identify the total cost of the capital expenditure that the local authority expects to incur in respect of the community facility, or activity or group of activities, to meet increased demand resulting from growth within the district, or part of the district, as the case may be; and</td>
<td></td>
</tr>
<tr>
<td>(b) identify the share of that expenditure attributable to each unit of demand, using the units of demand for the community facility or for separate activities or groups of activities, as the case may be, by which impact of growth has been assessed.</td>
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</tr>
<tr>
<td>(2) A territorial authority may identify capital expenditure for the purposes of calculating development contributions in respect of assets or groups of assets that will be built after the period covered by the long-term plan and that are identified in the development contributions policy.</td>
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| Clause 1 | |
| Subclause 1 | Charges per unit of demand = total growth costs (being recovered from development contributions) / units of demand. |
| A DCP should explain how it undertakes cost allocations and how the development contributions are calculated to show compliance with these requirements. The actual calculations should be clear in the schedules in the DCP. |
| Subclauses 2 and 3 | This section allows a council to include in the development contributions recovery for projects outside of the 10 years of the Long-term Plan provided those projects (and associated capital expenditure) are included in the DCP itself. This information forms part of the schedule of assets. There is no time limit on this, but councils are required to plan out to 30 years in their infrastructure strategies and that would seem a suitable limit in most cases. The nexus between growth in the policy and the programme must still be present. |
| 3(b) also requires that if you go out further than 10 years, the growth costs used in the policy should relate to the growth in the policy and be a fair cost allocation. The policy cannot depart from the principle that there should be a link between growth and growth costs recovered and in how you allocate costs for projects. Nor should it try to recover costs for say, years 31+, if the DCP is based on 30 years of growth. |
| Clause 2 | A DCP must be based on at least one measure of unit of demand, and the policy must consider how each unit of demand used is applied to different types of developments on a consistent and equitable basis. Typical units of demand are household unit equivalents (HUEs) or similar, or land. Those based on household unit equivalents usually have some basis of demand factor underpinning them. These are often measured in trips, parking spaces, |

Policy 2.4 3.4 3.8 3.9 3.11 5.2 6.1
(3) The total cost of capital identified in subclause (1) may in part relate to assets intended to be delivered beyond the period covered by a territorial authority’s long-term plan if—

(a) the assets concerned are identified in the development contributions policy; and

(b) the total cost of capital expenditure does not exceed that which relates to the period over which development has been assessed for the purpose of setting development contributions.

2. Attribution of units of demand to developments

For the purpose of determining in accordance with section 203(2) the maximum development contribution that may be required for a particular development or type of development, a territorial authority must demonstrate in its methodology that it has attributed units of demand to particular developments or types of development on a consistent and equitable basis.

<table>
<thead>
<tr>
<th>Water or wastewater use per day, impervious surface area, or number of people, depending on the service involved.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A council is required to consider how the unit of demand is applied to different types of developments. It is left open to determine how to do this, but the overriding requirement is to be consistent and equitable. Most DCPs distinguish between residential and non-residential developments for this purpose as a minimum.</td>
</tr>
<tr>
<td>Many DCPs further disaggregate this for non-residential developments to distinguish between retail, commercial and industrial developments at least. Some policies go further to list more than a dozen types of non-residential developments and the way units of demand apply to them. A council should be mindful of false precision and the need to justify and explain why disaggregation is constructed the way it is in a policy. Using technical specifications for land development as a basis is a helpful approach. Other councils instead rely more heavily on special assessments for non-residential developments to address this. In this case, the demand factors (water per day, trips per day, etc.) used for the units of demand are often used to ensure a consistent and equitable basis for the assessment.</td>
</tr>
<tr>
<td>It is increasingly common for councils to make greater distinctions between residential developments. For example, treating smaller homes differently and/or basing demand of the number of bedrooms.</td>
</tr>
<tr>
<td>Also see commentary on LGA02 s.197AB(g).</td>
</tr>
</tbody>
</table>
s.36 and 45

and

Form 3 of the Building (Forms) Regulations 2004

Territorial authority may issue development contribution notice

(1) This section applies if a territorial authority considers that a development contribution under the Local Government Act 2002 is payable by the owner.

(2) The territorial authority must issue a notice, in the prescribed form, to the effect that a code compliance certificate for the building work will not be issued unless the development contribution is paid (development contribution notice).

(3) The development contribution notice must be—

(a) attached to the project information memorandum; or

(b) if no project information memorandum has been applied for, provided to the building consent authority.


S.36 and s.45 of the Building Act 2004 require a development contribution “notice” to be issued with PIMs. PIMs may be issued separately and prior to a building consent.

These sections exist because the building consent authority and the council levying the development contributions may be different entities. They are primarily intended to notify people that development contributions may be payable and that their code compliance certificate can be held back if they don’t pay development contributions, which is helpful.

However, s.36 of the Building Act 2004 requires “notice” be given using the prescribed notice form. The prescribed form requires that the development contribution for the development be specified i.e. the sum being payable. There are some issues this notice creates. The notice includes the following text:

“A code compliance certificate for the building work referred to in the attached project information memorandum will not be issued until a development contribution of $........ is paid.”

The first issue is that the issue of a PIM is not one of the triggers for requiring development contributions under LGA02 s.198 (1) or s.198(4A). The trigger for requiring development contributions in this case, is the granting of the building consent.

The second issue is that the form requires the contribution to be specified in $ before any assessment, and the charge levied at building consent could vary considerably because the nature of the development has changed, and/or because the policy has changed (in) between the time the PIM was issued and a building consent is issued.

The best way to deal with these issues is to add:

1. The following text in bold where the $ is required:

“A code compliance certificate for the building work referred to in the attached project information memorandum / territorial authority notification will not be issued until a development contribution, as required by Council’s Development Contributions Policy that is in force at the time your building consent application is received with all required information, is paid”

2. An explanatory note to the bottom of the form stating:

“Development contributions are required when a building consent is granted for the building works described in the PIM. They are due and payable in accordance with the provisions of Council’s Development Contributions Policy.”
<table>
<thead>
<tr>
<th>s.94</th>
<th>Matters for consideration by building consent authority in deciding issue of code compliance certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—</td>
<td></td>
</tr>
<tr>
<td>(a) that the building work complies with the building consent; and</td>
<td></td>
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<tr>
<td>(b) that,—</td>
<td></td>
</tr>
<tr>
<td>(i) in a case where a compliance schedule is required as a result of the building work, the specified systems in the building are capable of performing to the performance standards set out in the building consent; or</td>
<td></td>
</tr>
<tr>
<td>(ii) in a case where an amendment to an existing compliance schedule is required as a result of the building work, the specified systems that are being altered in, or added to, the building in the course of the building work are capable of performing to the performance standards set out in the building consent.</td>
<td></td>
</tr>
</tbody>
</table>

(4) If a development contribution has been required to be paid or made under section 198 of the Local Government Act 2002, a building consent authority that is other than the territorial authority that made the requirement must refuse to issue a code compliance certificate in respect of the relevant building work until the building consent authority has received—

(a) evidence that the development contribution has been paid or made by the owner concerned to the territorial authority; or |

(b) a copy of a written agreement between the owner and the territorial authority that the code compliance certificate may be issued. | No DCP implications. |

See commentary on LGA02 s.208. |  | Admin | n/a |
(5) Subsection (1) is subject to subsection (4).