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## Glossary and abbreviations used in this document

### Accommodation unit
Units, apartments, rooms in one or more buildings, or cabins or sites in camping grounds and holiday parks, for the purpose of providing overnight, temporary, or rental accommodation (LGA02 s197(2))

### Affirmation
A solemn declaration that is asserted to be true, usually undertaken instead of taking an oath. An affirmation has the same status as an oath.

### cl
Clause (usually in reference to a schedule of the Local Government Act 2002 unless otherwise stated)

### Community facilities
Reserves, network infrastructure or community infrastructure for which development contributions may be required under section 199 of the Local Government Act 2002 (LGA02 s197(2))

### Community infrastructure
Under s197(2) of the LGA02 means the following assets when owned, operated, or controlled by a territorial authority:

- (a) community centres or halls for the use of a local community or neighbourhood, and the land on which they are or will be situated:
- (b) play equipment that is located on a neighbourhood reserve:
- (c) toilets for the use by the public

### Cross examination
The questioning by one party of persons giving statements or evidence for another party. This is usually done to test the accuracy and thoroughness of evidence or to show that different conclusions could have been reached from it

### Development
Means any subdivision, building (as defined in section 8 of the Building Act 2004), land use, or work that generates demand for reserves, network infrastructure, or community infrastructure; but does not include the pipes or lines of a network utility operator (s197(1) of the LGA02)
**Expert evidence**
Evidence given by a qualified or skilled witness on matters relating to the subject matter of their qualifications or skills (engineering, asset management, or planning for example)

**Expert witness**
A witness called by a party to proceedings to give evidence on matters relating to the subject matter of their qualifications, skills, experience, profession or trade

**LGA02**
Local Government Act 2002

**Minister**
Minister of Local Government (unless otherwise stated)

**Oath**
A statement by a person who is to be a witness that he or she swears by Almighty God that he or she will tell the truth (see also affirmation)

**Objector**
A person who has lodged a development contributions objection under section 199C and Schedule 13A of the Local Government Act 2002

**Person**
Either a natural person (an individual human being) or a body with legal personality such as a corporation sole, a body corporate, or an unincorporated body (s29 of the Interpretation Act 1999)

**Privilege**
In respect to a legal setting (such as a hearing or inquiry), means the ability to refuse to disclose certain evidence in the proceeding where disclosure of evidence would be adverse to a fundamental principle or relationship. This is most common in relation to legally privileged material between a person and their legal advisor

**Reconsideration**
Means a request made by a person to a territorial authority (under LGA02 s.199A) that the authority reconsider a development contribution they are requiring the person to pay, the process by which the territorial authority undertakes its consideration (as set out in their development contribution policy), and the outcome of the reconsideration

**Resource consent**
Has the same meaning as given to it under section 2(1) of the Resource Management Act 1991 and includes a change to a condition of a resource consent under section 127 of that Act
| **Respondent territorial authority** | The territorial authority whose development contribution requirement has been objected to |
| **RMA** | Resource Management Act 1991 |
| **s** | Section (of legislation) |
| **Territorial authority** | A city council or a district council named in Part 2 of Schedule 2 to the LGA02 |
| **Working day** | Has the meaning set out in section 5 of the LGA02 that being: |

A day of the week other than -

(a) a Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and

(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and

(c) if 1 January falls on a Friday, the following Monday; and

(d) if 1 January falls on a Saturday or Sunday, the following Monday and Tuesday.
CHAPTER 1: Statutory Context

1.1 Local Government Act 2002

The right for a person to object a development contribution that has been required by a territorial authority and the process for lodging and determining development contributions are to be found in the following parts of the LGA02:

- Part 8, Subpart 5: Sections 199C to 199P; and
- Schedule 13A

These provisions were inserted into the LGA02 by the Local Government Act 2002 Amendment Act (No 3) 2014 in August 2014.

Sections 199C to 199P of the LGA02 set out the right of a person to object to a development contribution, the scope of the objection, how development contributions commissioners are to be appointed to (or removed from) the register of development contributions commissioners, and various powers of commissioners. Section 199J contains the matters that development contributions commissioners must consider when deciding objections, while section 199M states that the respondent territorial authority is responsible for the administration and secretarial support of commissioners throughout the objections process.

Part 1 of Schedule 13A of the LGA02 contains the principal steps of the development contributions objections process. Part 2 of Schedule 13A contains further powers of development contributions commissioners and provisions that set out various administrative matters such as how notices are to be served and witnesses summoned.

1.2 Other relevant Acts

Although the LGA02 specifies the various powers of development contributions commissioners several other acts are relevant to the development contributions objection process. These acts include the:

- Evidence Act 2006
- Inquiries Act 2013; and
- Oaths and Declarations Act 1957.
CHAPTER 2: Development Contributions Overview

2.1 Development and local authority infrastructure

Most forms of development in New Zealand have a requirement for infrastructure. That infrastructure may take one or more of many forms 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; and
- reserves and community facilities.

Under the LGA02 these forms of infrastructure are collectively referred to as community facilities.

Although it is relatively common for a person to supply such things as pipes and roads on their development site or section, the infrastructure they provide is still likely to connect to community facilities owned or operated by a territorial authority.

For example, a driveway or road provided by a person for their development will directly (or indirectly if adjoining a state highway) connect to a road owned by the territorial authority at some point. Unless the person living on, or occupying, a piece of land never leaves that land and has no visitors, use will made of the road owned by the territorial authority. Similarly, unless a person provides for the treatment and disposal of wastewater entirely on-site themselves\(^1\), then the sewer pipes that person puts in will most likely connect to a territorial authority sewer line and, via that line, to a treatment plant (also likely to be owned or operated by the territorial authority).

Each new development has the potential to require a territorial authority to provide new or additional infrastructure, extend its infrastructure networks, or expand the capacity of an existing infrastructure asset. The development may do this by either, creating a need for certain community facilities in an area that did not exist before, or by using up a portion of the remaining capacity of an existing community facility asset (so contributing to the need for that asset to be replaced or have its capacity expanded at some time in the future). Under either scenario, the territorial authority concerned will incur capital expenditure to provide the new or additional asset, or expand the capacity of the asset. Depending on circumstances, this expenditure may not necessarily need to be incurred at the same time the development takes place, it may already have been incurred in anticipation of the development taking place, or may take place after the development has been completed.

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\(^1\) Via septic tank or some other similar system (such as is commonly found in rural areas)
2.2 What is a development contribution?

Development contributions are a funding tool under the LGA02 that enable a territorial authority to recover the costs of capital expenditure it incurs for community facilities that are required to serve growth and development.

A development contribution may be required from a person undertaking development to help pay for community facilities that have already been built or provided as well as for community facilities that are not yet built but which will be required as a result of development.

While development contributions may be an important tool for funding community facilities, they are not the only funding mechanism. Community facilities may also be funded from:

- general rates;
- targeted rates;
- borrowing / loans;
- grants from central government;
- user charges (e.g. entry fees or volumetric charges); or
- a combination of these.

The absence of the authority or the ability to require a development contribution on any particular community facility does not by itself prevent that community facility being provided, it means that funding for it will need to come from a different source.

The costs able to be funded

Development contributions are to fund, or partly fund, the capital costs of community facilities (e.g. purchase or construction costs). By definition, they cannot to be used to fund operational costs (e.g. staff wages and consumables) or maintenance costs of community facilities.\(^2\) Maintenance and operational costs are met from other funding sources (commonly general rates or user charges).

2.3 Differences when compared to financial contributions

Although they have some superficial similarities (including an ability to help pay for infrastructure\(^3\)) and sometimes they are grouped together (for example, for statistical purposes), development contributions are not the same as financial contributions under the RMA.

Differences in respect to primary function

Financial contributions can only be imposed as a condition of a resource consent under s108 of the RMA. Their primary function is to help pay for measures that will avoid, remedy or mitigate adverse effects (or ensure positive effects) on the environment, or offset adverse effects in some other way. Whether a particular development represents “growth” may be of

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\(^2\) See also s204(1)(b) of the LGA02 for a specific prohibition in regard to maintenance costs

\(^3\) Because of the broadness of the definition of “environment” under the RMA, the term is often taken as including infrastructure, such that some territorial authorities use financial contributions to pay for infrastructure
limited relevance when consideration is being given to whether a financial contribution should be required on a development.

Development contributions have a somewhat different purpose and function, that being

“… to enable territorial authorities to recover from those persons undertaking developments a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth” (see s197AA of the LGA02).

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 fiscal effect of requiring, or has required, a territorial authority to incur capital expenditure to provide, new, additional, or expanded infrastructure assets. The concept of the development being growth that creates a requirement for additional infrastructure is central factor when determining whether it is appropriate for a development contribution to be required on a development (whether alone, or in combination with other developments).

Notes:

Growth

As sections 106, 197AA and Schedule 13 of the LGA02 refer to growth and link it to increased demand for community facilities. The implication is that unless demand is a result of growth, then it is not appropriate to require development contributions. Increases in demand resulting solely from higher levels of service rather than growth would therefore not justify the use of development contributions.

The concept of growth is not defined in the LGA02. However in common usage the word incorporates ideas of something increasing (in size or number). Like-for-like replacement of a building or structure with another, is unlikely to be considered growth therefore (unless it in some way resulted in an increased requirement for community facilities). In this respect there may be some parallels or overlap with the concept of an existing use under the RMA.

Differences in respect to the point at which a contribution can be required

Unlike a financial contribution (which can only be charged as condition on a resource consent) a development contribution can be required at any one or more of the following stages of the development process:

- granting of a resource consent under the RMA;
- granting of a building consent (or a certificate of acceptance if a building consent had not been obtained) under the Building Act 2004; or
- granting or authorisation for a service connection.

In practice, this means that a development contribution can be (and often is) required for developments that may be permitted activity under a plan prepared under the RMA.
2.4 Development contribution policies

The link to funding and financial policies

Development contributions are imposed in accordance with the policies that territorial authorities are required to adopt under s102 of the LGA02. The purpose of such a policy is to provide predictability and certainty about the where funding will come from, and how much will be required. Section 102(2)(d) specifically requires a local authority to have a policy on development contributions or financial contributions.

Policy on development contributions or financial contributions

Section 106 of the LGA02 requires territorial authorities to provide an explanation of the choices they have made when deciding to use a particular source of funding to meet the costs of capital expenditure that are attributable to growth. In particular, under s106(2) territorial authorities are required to (amongst other matters):

a) summarise and explain the capital expenditure that the territorial authority expects to incur to meet the increase demand for community facilities resulting from growth; and

b) state the proportion of that capital expenditure that will be funded by development contributions, financial contributions, and other sources of funding; and

c) explain, in terms of the matters required to be considered under LGA02 s101(3)\(^4\) in relation to each activity why the local authority has determined to use these funding sources to meet expected capital expenditure; and

d) 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; and

e) if development contributions will be required, comply with the requirements set out in sections 201 and 202 of the LGA02.

Additional content of development contributions policies

Sections 201, 201A and 202 of the LGA02 set out the required additional content of a development contribution policy where a territorial authority has determined to seek funding for community facilities under s102. In addition to the matters set out in section 106, sections 201 and 202 require a development contributions policy to include:

- a schedule of development contributions payable in each district (or part of a district if different development contributions are payable in different parts of a district) in accordance with the development contributions methodology in relation to reserve, network infrastructure and community infrastructure.

The schedule must also specify the event or trigger that will give rise to a development contribution being required (e.g. a resource consent, building consent, certificate of acceptance, or an authorisation for a service connection);

\(^4\) Note in particular s101(3)(ii) and (iv) of the LGA02 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
• an explanation of, and justification for, the way each development contribution in the schedule is calculated;

• the significant assumptions underlying the calculation of the schedule of development contributions;

• the conditions and criteria that will apply in relation to the remission, postponement, or refund of development contributions, or the return of land; and

• the basis on which the value of additional allotments or land is assessed for calculating the maximum development contribution payable for reserves.

Section 202A of the LGA02 requires that development contributions policies also contain, in addition to the matters set out in sections 106, and 201 to 202 (and any regulations made under s259(1)) the process by which a person can request a reconsideration of a development contribution requirement.

Notes:

Reconsiderations

Reconsiderations provided for under sections 199A and 199B of the LGA02. Their purpose is to provide a transparent means by which a person can request that the territorial authority have another look at a development contribution they are requiring a person to make, on the basis that the territorial authority:

• made an error in its calculations; or

• incorrectly applied its development contributions policy; or

• when assessing the contribution to be required, relied on, recorded or used information that was incomplete or contained errors.

Development contributions commissioners have no direct role in reconsiderations. However, a person who is dissatisfied with a territorial authority decision on a reconsideration may lodge a development contribution objection. In these instances there is likely to be some overlap in evidence and commissioners may consider questioning parties as to why matters could not be adequately addressed through the reconsideration process.

Once an objection has been lodged, the objector is prohibited from applying for a reconsideration (s199A(4) of the LGA02). If time permits, it may however be possible for a person to withdraw their objection and then request a reconsideration (such as where that person finds, after lodging the objection, that a territorial authority is amenable to correcting an error that materially impacted on the development contribution requirement).

Schedule of assets required to be in development contributions policies

Section 201A of the LGA02 sets out the requirement for development contributions policies to contain a schedule of assets for which development contributions will be used. The schedule may be in hard copy or electronic form (as provided for under s201A(6)) and must list:
• each new asset, additional asset or asset of increased capacity, or programme of works for which development contribution requirements set out in the development contributions policy are intended to be used or have already been used; and

• the estimated capital cost of each asset, the proportion of the cost that is to be recovered through development contributions, and the proportion of the cost to be recovered from other sources.

The assets must be grouped according to the district or parts of the district for which the development contribution is to be required, and by the activity or group of activities for which the development contribution is required.

Because several or more assets may be closely related (forming part of a specific project or programme of works, as in the case of a sewer network extension that involves, pipes pumping stations and holding tanks), section 201A of the LGA02 allows assets to be grouped in a way that reflects intended or completed programmes or works or capacity expansion.

Notes:

The schedule of assets

The schedule of assets required under section 201A of the LGA02 will be a useful reference source for development contributions commissioners when considering an objection, particularly those made on the grounds:

• that the developer’s development does not require, or has not relation to, community facilities for which development contributions are being required; or

• that the territorial authority has incorrectly applied its development contributions policy.

The schedule should contain information that assists in demonstrating the relationship between developments in a particular area and the infrastructure assets they may or may not connect to, use or require. In instances where the schedule is insufficiently detailed, commissioners could still use it to guide their questioning to better understand the relationship between a development (either by itself or in combination with other developments) and its infrastructure requirements.

The schedule of assets should also assist in understanding how a territorial authority arrived at the capital cost allocations it used when calculating development contributions that will be required in a given area.

2.5 Methodology for calculating development contributions

Basic requirements for the methodology

The basic requirements for calculating development contributions are set out in Schedule 13 of the LGA02. In order to calculate the maximum contribution that can be required a territorial authority must apply the following steps:
1. identify the total cost of the capital expenditure that the local authority expected to incur in respect to community facilities to meet increased demand resulting from growth within the district or part of the district; and

2. identify the share of that expenditure attributable to each unit of demand (e.g. a lot, or household equivalent unit), using units of demand for the community facility or for separate activities or groups of activities by which the impact of growth has been assessed.

In identifying the total cost of capital expenditure in 1 a territorial authority may draw on asset or work programme information described in their long-term plan. However, cl2 and cl3 of schedule 13 of the LGA02 also allow the territorial authority to include assets or groups of assets that will be built after the period covered in the authority’s long-term plan if these are identified in the development contributions policy.

2.6 Basis on which a development contribution may be required

**Consistency with the development contribution policy**

Section 198(2) of the LGA02 states that a development contribution can only be required as provided for in a development contribution policy adopted under s102(1) and that is consistent with section 201.

The development contribution requirement must be consistent with the content of the development contribution policy adopted under s102(1) that was in force at the time the application for a resource consent, building consent, or service connect was submitted (accompanied by all required information).

**The three steps to determine if a contribution may be required**

Section 199 of the LGA02 states that a territorial authority may require a development contribution 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 for reserves, network infrastructure and/or community infrastructure.

“Effect” in this context includes “cumulative effects” a development may have in combination with other developments (s199(3) of the LGA02).

In *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC), the High Court outlined a three-step approach that should be undertaken before a decision on requiring a development contribution can be made:

These steps are:

1. Is the subdivision or development a “development”, i.e. does it generate a demand for reserves or infrastructure? (see the s197 of the LGA02 for the definition);
2. Does the development (either alone or cumulatively with another development) require new or additional assets or assets of increased capacity to provide for...
reserves or infrastructure which will cause the council to incur capital expenditure (s.199(1)) or has already caused the council to incur capital expenditure for the development? (see s199(2) of the LGA02); and

3. Is there an alternative source of funding? (see s200 of the LGA02).

Despite, recent changes to the wording of s.199, the basic order and nature of these steps remains unchanged. For a development contribution to be required, the questions in the first two steps need to be answered in the affirmative. In addition, the infrastructure for which a contribution is required must not funded or provided in a way that would result in the requirement being contrary to s.200 (limitations applying to requirement for development contribution).

**Maximum development contribution that can be required**

Section 203 of the LGA02 sets out the maximum development contributions that cannot be exceeded when a development contribution is required. These limits are:

- when the development contribution pertains to a reserve:
  - 7.5% of the value of the additional allotments created by a subdivision; and
  - the value equivalent of 20 square metres of land for each additional household unit created by the development;

- when the development contribution is related to network infrastructure or community infrastructure, the contribution cannot exceed the amount calculated by [emphasis added]:
  - 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 s106(2B).
CHAPTER 3: The Objections Process

3.1 Introduction
Although the right of a person to object to a development contribution is set out in s199C of the LGA02 and the grounds for objections in 199D, much of the objections process itself is set out in Schedule 13A. This chapter covers all the provisions relevant to the process steps themselves. Other chapters cover related provisions associated with the powers of commissioners, administrative matters, and the matters that commissioners must give due consideration to when making decisions.

A flow-diagram at the back of this chapter sets out the main statutory steps of the development contributions objections process, including the key timeframes that apply.

3.2 The right of a person to object
As set out in s199C of the LGA02, any person that has been provided with a notice (or other formal advice) of a requirement to pay a development contribution may object to the amount that territorial authority has assessed as being payable.

A person may lodge an objection whether or not they had first requested a territorial authority to reconsider a territorial authority's requirement to pay a development contribution (as provided for under sections 199A and 199B of the LGA02).

Notes:

Limitations on the right to object

The right to object does not extend to the content of the territorial authority’s development contributions policy (see s199C(3) of the LGA02). Challenges to the content of the policy can be made at the time a development contributions policy is being prepared, reviewed or amended. This could be done either by way of submission or (if necessary) a judicial review or application for a declaratory judgement.

3.3 Lodgement of an objection
The provisions relevant to the lodgement of an objection are set out in cl1 of Schedule 13A of the LGA02. This states that development contributions objections are to be lodged with the territorial authority that issued the requirement to pay the development contribution.

Content and timeframe for lodging an objection
A person lodging an objection must do so with 15 working days after the date of:

1. receiving notice (or other formal advice) of the level of development contribution that the territorial authority is proposing to require; or

2. where a person had previously requested a reconsideration, the date on which the person receives notice of the outcome of the reconsideration.
A notice of an objection that is served on a territorial authority must be in writing and must set out:

- the grounds and reasons for the objection;
- the relief (decision) sought; and
- whether the person making the objection wishes to be heard.\(^5\)

**Notes:**

**Extension of timeframes**

Clause 1(4) of Schedule 13A of the LGA02 enables a territorial authority to extend the timeframe for lodging a development contribution objection beyond the 15 working day limit if exceptional circumstances exist. A development contributions commissioner has no power to waive or extend the timeframe for lodging an objection (see s199J(3) of theLGA02).

**Serving the notice of objection**

Clause 12A of Schedule 13A of the LGA02 sets out the requirements for servicing notices related to the objections process. Notice may be served in person, fax, email, or by pre-paid post.

**Permitted grounds for objections**

Under s199D of the LGA02, a development contributions objection can only be made on one of four grounds. These grounds are, that the territorial authority:

1. 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

2. required a development contribution for community facilities not required by, or related to, the objector’s development, whether on its own or cumulative with other developments; or

3. required a development contribution in breach of s200 of the LGA02; or

4. incorrectly applied its development contributions policy to the objector’s development.

**3.4 Withdrawal of objection**

**Rights to withdraw and service of notice**

Clause 1A of Schedule 13A of the LGA02 allows for a person who has made an objection to withdraw their objection at any time. To do so, they must serve notice on:

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\(^5\) Clause 1(3)(d) of Schedule 13A of the LGA02 uses the word “objector” but note that the definition of objector refers back to a “person”
• the territorial authority whose development contribution requirement they were objecting to; and

• any development contributions commissioner who had been selected to determine the objection.

Notes:

**Serving the notice of a withdrawal of objection**

Clause 12A of Schedule 13A of the LGA02 sets out the requirements for servicing notices related to the objections process. Notice may be served by personal delivery, fax, email, or by pre-paid post.

**Right to re-lodge an objection**

A person who has withdrawn an objection may lodge another objection on the same or different grounds in relation to the same development contribution requirement, provided that the original 15 working day timeframe under which their first objection was lodged has not expired.

Although development contributions commissioners may need to be aware that an objector has re-lodged an objection, the administration of the re-lodged objection will be a matter for the respondent territorial authority.

If a re-lodged objection is lodged after the time period for lodgement has expired, the territorial authority will determine whether it will waive or extend the lodgement timeframe and accept the objection. As development contributions commissioners have no jurisdiction over, or power to waive or extend, lodgement timeframes the principal way for an objector to challenge a refusal to accept a late, re-lodged, objection will be judicial review.

**Recovery of costs by the territorial authority**

The territorial authority that has been administering the development contribution objection up to the point at which the objection is withdrawn, retains the right to recover any actual or reasonable costs that it incurred in respect of the objection under s150A of the LGA02. The costs recoverable relate to the selection, engagement and employment of development contributions commissioners (if this has occurred), secretarial and administrative support of the objection process, and preparing and organising the hearing. If the withdrawal of the objection occurs part way through a hearing then the territorial authority may also be able to recover costs associated with holding the hearing.

**3.5 Selection of Development Contributions Commissioners**

Once a territorial authority is in receipt of an objection, it must as soon as practicable, select up to three development contributions commissioners to decide the objection. In selecting a development contributions commissioner, the territorial authority must ensure that the persons appointed have the necessary skills, knowledge and experience to:

• conduct a fair and appropriate hearing; and

• understand and determine the principal matters in contention.
Notes:

**Selection of development contributions commissioners**

The number of commissioners that a required, and the skills and knowledge required, will need to be determined by the territorial authority on a case-by-case basis. For relatively straightforward objections, only one commissioner may be required. For more complex objections, two or three commissioners may be required. In deciding how many commissioners to select territorial authorities should be mindful of:

- ensuring that the commissioner (if sitting alone) or the chair (and potentially at least one other commissioner, if a panel) has the appropriate skills, knowledge and experience to conduct a fair and appropriate hearing (for example, a background in mediation, arbitration, judicial or quasi-judicial hearings, or training under the *Making Good Decisions* programme); and

- the complexity and nature of the issues and evidence that may need to be considered, and whether an individual would in themselves have the knowledge, experience or capacity to consider all relevant technical and legal arguments that may be raised; and

- whether it would be appropriate for a commissioner to be making decisions on areas outside their area professional knowledge or whether it would be preferable to have an additional person with professional knowledge in that area assisting the hearing.

The grounds on which the objection was lodged and any reasons given may provide assistance in understanding the skill and knowledge mix that will be required.

**Selection of persons from the register of commissioners**

A territorial authority selects development contributions commissioners in accordance with cl2 of Schedule 13A of the LGA02.

Under cl2 the territorial authority must select development contributions commissioners from a register of persons appointed by the Minister of Local Government. The register of persons (the “Register of Development Contributions Commissioners”) can be found in electronic form on the Department of Internal Affairs website and notices of appointment in the Government Gazette.

To lessen the potential for there to be actual or perceived conflict of interest or bias, cl2(2) of Schedule 13A places a particular prohibition on a territorial authority selecting a person who is:

- an elected member of the respondent territorial authority (such as a councillor or, if elected, a local board member or community board member); or

- a staff member of the respondent territorial authority (this would include any persons who are in permanent employment or fixed-term employment); or

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6 A programme for the training of RMA hearings commissioners and decision makers, administered through the Ministry for the Environment
• a board member, shareholder or owner of the objector; or
• a person who is an employee of contractor of the objector.

Notes:

Meaning of “objector”

The definition of “objector” under the LGA02 refers to a “person”. The term “person” is used in the legal sense, and can include a natural person (or individual) a corporation, a body corporate or an unincorporated body (see s29 of the Interpretation Act 1999).

Selection of persons from outside the register of commissioners

From time to time there may be a need for a territorial authority to select a person who is not on the register of development contributions commissioners to decide an objection. Such instances may occur where:

• the objection related to matters that require skills or knowledge that is not available from those persons appointed to the register by the Minister of Local Government; or
• a person who has been appointed to the register who has the requisite skills and knowledge to decide a development contribution is not available and there are no other commissioners on the register with those skills or that knowledge.

Under such circumstances, the territorial authority responsible for administering the objection may request that the Minister of Local Government approve the selection of another person who is not on the register but who, in the opinion of the territorial authority, has the relevant skills and knowledge and is available to decide the objection (see LGA02 s.199H).

A person who is selected and approved in this manner has all the functions, powers and responsibilities of a development contributions commissioner, but only in relation to the objection which they are to decide, and only for the period necessary to decide the objection (refer to s199H(3) of the LGA02).

Appointment of the chairperson

If more than one person is selected by a territorial authority to decide a development contribution objection the territorial authority must appoint one person to be the chairperson (cl2(3) of Schedule 13A of the LGA02).

Although the LGA02 does not provide further detail as to who may make an appropriate chairperson, it would generally be desirable for the person to have had previous experience in a chairing role in a quasi-judicial setting and that have a good understanding of hearing processes. Such a person may also need to be familiar with preparing decision documents in a local government hearing or tribunal setting.

7 This could, for example, include (but is not limited to) a person who holds a chairing endorsement under the Making Good Decisions programme for RMA decision makers
3.6 Exchange of briefs of evidence

Commissioners set the timeframe for the exchange of briefs

As soon as development contributions commissioners have been selected by the territorial authority the territorial authority should forward copies of the objection to each commissioner selected to decide the hearing.

Upon the receipt of objection documentation the commissioner (or commissioners) must determine how long parties (the objector and the respondent territorial authority) will be given to complete the preparation of their evidence and to exchange briefs of evidence. Once the timeframe has been decided, notice of the date by which briefs of evidence must be exchanged must be given to parties to the objection (see cl3(1) of Schedule 13A of the LGA02).

Notes:

Determining the timeframe for exchanges of briefs of evidence

The timeframe for the exchange of evidence is matter of judgement for commissioners. The only statutory restriction is that evidence cannot be exchanged later than 10 working days before the hearing commences, or another date fixed by the commissioners (if it appears that decisions may be made on papers). In considering an appropriate timeframe, commissioners could:

- consider the complexity of the objection and how much time parties have had to prepare evidence since the objection was lodged with the territorial authority;
- liaise with parties to the objection to determine a timeframe that is practicable; and
- liaise with other development contributions commissioners to seek agreement or second opinion as to what may be a workable timeframe (drawing on collective experiences as to what is reasonable).

Commissioners may also need to be aware of factors that may influence the availability of persons working on, or who may be expert witnesses in relation to, the objections (such as statutory holidays or illness).

Giving notice

Consistent with the general requirements of serving notice under clause 12A of Schedule 13A of the LGA02, it is envisaged that commissioners would give notice to the parties by email, fax or prepaid post, or by personal delivery of the notice.

The exchange of briefs of evidence

By the date notified by the commissioners in accordance with cl3 of Schedule 13A of the LGA02 parties to the objection must provide briefs of evidence to:

- each development contributions commissioner that will decide the objection;

8 Clause 3(2) of Schedule 13A of the LGA02
• the territorial authority (if the party providing the brief is the objector); and
• the objector (if the party providing the brief is the territorial authority).

Additional evidence or amendments to briefs of evidence
Parties to an objection may add to, or amend briefs of evidence provided they provide copies of the evidence to each development contributions commissioner, and the other party to the objection. Under cl3 Schedule 13A of the LGA02 this information must be provided no later than 10 working days before:
• the date set down for the hearing by the commissioners; or
• if there is to be no hearing, a date fixed by the commissioners.

3.7 Obligation to hold a hearing

Presumption of a hearing
Schedule 13A of the LGA02, and in particular cl4, presumes that a hearing will be held on a development contributions objection unless one of the following circumstances apply:
• the objector has indicated that they do not wish to be heard; or
• the objector has otherwise agreed that no hearing is required; or
• the development contributions commissioner or commissioners are satisfied, having regard to the nature of the objection and the evidence already provided, that they are able to determine the objection without a hearing.

Even if one of these circumstances apply, the use of the words “need not be held” in cl4 implies that the final decision still rests with development contributions commissioners. Commissioners are still expected to exercise their judgement in finding an appropriate balance between process efficiency and a sound, fair decision.

Indication by an objector they do not wish to be heard
The objector may indicate that they do not wish to be heard in relation to their objection as part of their notice of objection under cl1(3) of Schedule 13A of the LGA02. However, the objector may also indicate to the commissioners at a later time that they do not wish to be heard, such as when:
• there has been a change in circumstances that mean the objector will not be available during the time of the hearing, but wishes the hearing to continue in their absence; or
• information in the briefs of evidence that have been exchanged suggest that the facts of the case are not in dispute and/or the commissioners' decision will be straightforward and can be made without further input.

Regardless of when the objector provides the indication that they do not wish to be heard, it is desirable for commissioners to notify the respondent territorial authority that the objector will not be at the hearing at the earliest practicable opportunity.

Where an objector has decided not to be heard, commissioners may ask the territorial authority as to whether they still wish to be heard. It is likely that the respondent territorial
authority may still wish to present technical evidence or want to be present in case they are required to explain the finer points of their original development contribution assessment or development contributions policy.

**Determining the need for a hearing**

Regardless of whether an objector has requested to be heard or not, cl4 of Schedule 13A of the LGA02 provides commissioners with the discretion to determine a development contribution without a hearing (make a decision "on papers" only). In exercising this discretion commissioners must:

- have regard to the nature of the objection and the evidence already provided; and
- be satisfied that they are able to determine the objection without a hearing.

It is anticipated that the ability to make a decision without the need for a hearing is most likely to occur when there are few facts in dispute and those that are, are either:

- related to the interpretation or application of the development contributions policy; or
- straightforward technical matters where both parties have already supplied sufficient evidence to enable commissioners to reach the conclusions necessary to make a decision.

**Notes:**

**Seeking the views of parties**

Although not required by the LGA02, it may be desirable for commissioners to seek the views of both the objector and the respondent territorial authority if there is a likelihood of the commissioners deciding a hearing will not be necessary. Undertaking this task will help ascertain if there is something about the nature of the matters under dispute or the evidence that commissioners may need to discuss with parties and may reduce the risk of a successful judicial review of commissioners’ decisions not to hold hearings.

**3.8 Hearing date and notice**

If development contributions commissioners have decided a hearing is necessary, they must then fix the date time and place of the hearing and service notice of those details on the objector and respondent territorial authority. Notice must be served no later than 10 working days before the date the hearing will take place.

Even if the objector has said that they do not wish to heard, but the hearing is to be held anyway (such as when it is considered desirable to hear technical evidence from the territorial authority), it is prudent to notify the objector of the time and place of the hearing. This ensures transparency of process and provides the objector with an indication of the progress of their objection. In other instances, it may also avoid misunderstandings that could dilute natural justice (such as if a person acting on behalf of the objector misunderstood the objector’s instructions about attendance).

Requirements related to the service of notices are set out in cl12A of Schedule 13 of the LGA02. Notice may be serviced by personal delivery, by fax, by email or by prepaid post.
An example of what a notice of hearing notice could look like is provided in Appendix 2 of this manual.

Notes:

Setting the time, date and place

There are no legal requirements as to the time, place or date of hearings. However, when choosing a date, time and venue, it would be good practice to consider:

- the availability of parties (avoiding particular times or days when it will be difficult for a party to attend or otherwise be represented appropriately);
- the accessibility and convenience of the venue in respect to where the parties live or work;
- where a hearing involves tangata whenua, whether it is practical to hold the hearing (or the part of the hearing where tangata whenua will give evidence) at a venue less intimidating to Māori (such as a local marae) and
- the likely cost of the venue and the impact this may have on those who will have to pay for the cost of the hearing.

In relation to the last aspect, development contributions commissioners should liaise with the territorial authority staff providing administrative support. The territorial authority may already have a venue that is conveniently located for all parties which does not need to be rented.

As there will generally only be two parties represented at a hearing (aside from the development contributions commissioners themselves) the room needed for a hearing should not need to be big. It is anticipated that a room capacity of 10 to 15 persons would be adequate for most hearings. If the hearing is to be held in public, and strong public interest is considered likely, a larger room may be required.

3.9 Replies to briefs of evidence (no hearing)

Directions to provide replies

Where development contributions commissioners have determined that no hearing is to be held, they may direct the objector and respondent territorial authority to provide written replies to each other’s evidence in accordance with a timeframe set by the commissioners. In exceptional circumstances commissioners have a discretion to waive or extend the timeframe (see s199K(3) of the LGA02).

Copies of replies to briefs of evidence must be serviced on the objector, the territorial authority and each of the development contributions commissioners deciding the objection (cl6(2) of Schedule 13A of the LGA02).
Notes:

**Purpose of direction to provide replies**

A direction to provide replies to briefs of evidence is at the discretion of development contributions commissioners (note the use of the word “may” in cl6(1) of Schedule 13A of the LGA02). However, commissioners should be aware of the role the replies are intended to fulfil.

The written replies are intended to perform the same general function as a “right of reply” that may have been exercised had there been a hearing. More specifically, in the context of a development contribution objection, the written replies are intended to enable a party to:

- to correct or offer counter-evidence to that of the other party;
- respond to allegations or assertions;
- acknowledge errors that have been identified by the other party; and
- identify areas of common ground (which commissioners will not need to look into further).

In general terms, commissioners should expect to see a written reply from one party take the form of a response to points raised by the other party. Ordinarily written replies do not contain new points, or evidence that was not previously raised.

However, because commissioners have powers to accept evidence that would not be admissible in a court, development contributions commissioners can exercise their discretion in accepting replies that do appear to raise new points. This reflects the presumption that some persons involved in development contributions objections will be lay persons who are not well versed in legal proceedings.

3.10 Hearings

**Introduction**

A hearing must be held on the date and at the time and place the development contributions commissioners specified in their notice (see section 3.7 of this manual).

Clause 7(2) of Schedule 13A of the LGA02 states that the development contributions commissioners themselves must establish a hearing process that is appropriate and fair in the circumstances, and that:

(a) avoids unnecessary formality; and

(b) recognises tikanga Māori where appropriate.

More information on hearings, including processes, is provided in Chapter 4 of this manual.

**Public attendance at hearings**

Clause 7(3) of Schedule 13A of the LGA02 makes it clear that there is no obligation for commissioners to hold hearings in public. This is because, unlike RMA hearings, there will
generally be no other parties (such as submitters) to the objection. In addition, some of the material covered during the course of the hearing may be of a commercially sensitive nature.

However, if commissioners think there is benefit in holding the hearing in public, or if there is no good reason for specifically excluding the public, then commissioners may hold the hearing in public with the agreement of the objector and the respondent territorial authority.

3.11 Consideration of the objection

Statutory requirements
The statutory requirements as to what development contributions commissioners must consider when deciding a development contributions objection are set out in s.198IA of the LGA02. Under that section, due consideration must be given to:

(a) the grounds on which the development contribution objection was made;

(b) the purpose and principles of development contributions (sections 197AA and 197AB of the LAG02);

(c) the provisions of the development contributions policy under which the development contribution that is the subject of the objection was, or is, required;

(d) the cumulative effects of the objector’s development in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the development contribution is to be used for or toward; and

(e) any other relevant factor associated with the relationship between the objector’s development and the development contribution to which the objection relates.

Each of these considerations is explained in more detail in Chapter 5 of this manual.

3.12 Decisions on objections

Form and content of the decision
Whether or not a hearing is held, development contributions commissioners must give their decision in writing. The decision must either:

- uphold all or part of the objection; or
- dismiss all or part of the objection.

Decisions may quash, or direct that amendments be made to the requirement for a development contribution that was the subject of the objection (cl8(3) of Schedule 13A of the LGA02). Development contributions commissioners must not, in their decisions, direct the amendment of a development contributions policy, but they may make observations on the policy in the course of deciding the objection.

In addition to the decision itself, the written decision must state:

- the reasons for the decision;
a summary of the issues that were in contention;

- the relevant provisions of the development contributions policy of the territorial authority that required the development contribution that is being objected to; and

- a summary of the evidence presented.

At this time, there are no formal requirements as to the form a written decision should take, but a suggested example is provided in Appendix 2 of this manual (page 84).

**Service of decisions**

Under cl9 of Schedule 13A of the LGA02, written copies of the development contributions commissioners’ decision must be served on:

- the objector;
- the respondent territorial authority; and
- the Secretary for Local Government.

Service of decisions is required within 15 working days after the end of a hearing (or if no hearing is held, the last day of the commissioners’ consideration of evidence). Section 199K(3) of the LGA02 allows this timeframe to be extended in exceptional circumstances.

**Notes:**

**Service of decisions generally**

Under clause 12A of Schedule 13A of the LGA02, it is envisaged that commissioners would serve notice of the decision by personal delivery by email, fax or prepaid post. Given the importance of the document, commissioners may want to consider serving notice on the objector electronically first (fax or email) so as provide timely service, and then follow up with hard copy documents in prepaid post.

**Service of decisions on the Secretary for Local Government**

The purpose of serving decisions on the Secretary for Local Government is to enable the Department of Internal Affairs to monitor the implementation and development of the development contributions objections process, including trends, issues, and good practice. That information is intended to be used to identify and to monitor the effectiveness of the objection process generally. It will also be used to develop further iterations of this manual, and areas where additional support or guidance is needed. However, the Secretary cannot, and will not, review the appropriateness (or otherwise) of commissioners decisions.

The address for service is:

Secretary for Local Government
Department of Internal Affairs
46 Waring Taylor Street
P O Box 805
WELLINGTON 6140
Attn. Local Government Systems Team

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9 The Department of Internal Affairs has the overall responsibility for administering the LGA02 and reports to the Minister of Local Government.
Figure 1: Flow-chart of the objection process

1. Notice of assessed amount of development contribution or other formal advice (s.199C) or Notice of decision on a request for a reconsideration is given (s.199C)

2. Person lodges objection with the territorial authority, citing grounds, reasons and relief sought (cl.1)

3. Territorial authority selects development contributions commissioners (cl.2)

4. Development contributions commissioners set date for exchange of evidence (cl.3)

5. Territorial authority and objector exchange briefs of evidence with copies served on commissioners (cl.3)

6. Commissioners determine whether a hearing is required (cl.4)

7. Commissioners fix date, time and place of hearing (cl.5)

8. Commissioners deliberate and make decisions (s.199J and cl.8)

9. Commissioner’s decisions served on Territorial authority, objector and the Secretary for Local Government (cl.9)

**Note:**
WD= Working day

Department of Internal Affairs 2014
Notes:

**Figure 1: Flow-chart of the objections process**

The figure 1 flow-chart demonstrates the most likely order of procedural steps as described in legislation. However, the provisions do allow for some variations to the process, including:

- the commissioners fixing a date for the hearing at an earlier stage in the process (such as soon after they are appointed, such that other steps are then aligned to achieve that date); and
- commissioners determining the need for a hearing earlier in the process (such as where it is already clear from documents provided as part of the objection that a hearing will be required, or is not required).

Although not shown in the diagram, it should be noted that cl4(2) of Schedule 13A of the LGA02 states that briefs of evidence must be exchanged not later than 10 working days before the commencement of a hearing, or another date fixed by the commissioners (if there is to be no hearing). In some instances this will mean that the content of the briefs and the date on which they are served will be a determinant as to the earliest possible date for a hearing. If special circumstances exist, then the commissioners may waive or extend the timeframe (see s199K(3)).
CHAPTER 4: Hearings

4.1 Parties at hearings

*Who can be heard*

Only the objector and the respondent territorial authority have an automatic right to be heard at a development contributions objection hearing. However, the development contributions commissioners may, at their discretion, invite any other person or organisation to attend and be heard to the extent allowed by the commissioners.

Notes:

*Invitations to additional parties*

Section 199I(4) of the LGA02 provides commissioners with the discretion to invite additional parties to a hearing. This discretion complements, or could be used in place of, provisions related to the summoning of witnesses (see cl11 of Schedule 13A of the LGA02) as commissioners see fit.

Section 199I(4) is intended to allow parties who may have an interest in the outcome of an objection, or may be affected by the development for which the development contribution that is being objected to relates, to be invited attend the hearing and present their views or comments to commissioners. By way of example, these parties could include:

- the New Zealand Transport Agency (if the development contribution objected to happens to relate to a project that impacts on, mitigates effects on, the state highway network);
- a network utility operator whose network may be affected by the work or programme to which a development contribution relates;
- neighbouring territorial authorities (if the objector’s development happens to create demands on infrastructure associated with, or owned by, that authority); and
- other developers whose development is in the same area or catchment as the objector’s development (such as when the commissioners want more information on cumulative effects of development on the requirement of the territorial authority to provide infrastructure).

In some instances development contributions commissioners may also want to seek additional assistance from a person, other than the principal parties, to advise on a technical aspect that has arisen in the course of an objection. Section 199I(4) caters for that circumstance also.

*Role of the commissioners*

The role of commissioners at the hearing is to ensure that they obtain the information and evidence they need to reach a decision.

Commissioners must also manage the hearing in such a way that proceedings are fair and orderly without resulting in unnecessary formality. Depending on circumstances, it is
important that commissioners ensure there is adequate opportunity for parties to put their case in te reo Māori and in a way that recognises tikanga Māori.

**Role of the objector**

The role of the objector is relatively straightforward. Their role is to set out the grounds for their objection, and provide evidence to back their claims and the relief they seek. In presenting their case, an objector may or may not call expert witnesses to provide evidence.

**Role of the territorial authority**

The territorial may have up to three roles in the objections that they will need to manage carefully (including by creating an appropriate separation) to avoid perceptions of conflict of interest or bias. These roles could include two or more of the following:

- respondent (or defendant) in respect of the objection;
- objection process administrator; and
- providing advice to the commissioners.

As the respondent, the territorial authority may either agree with the objector that an error has been made on their part (which should make the commissioner’s decision straightforward) or they may seek to defend their position and offer counter-evidence to demonstrate why the objector’s objection should not be upheld. The territorial authority may also choose to provide expert witnesses from within their own staff.

As the objections process administrator, the territorial authority will be responsible for providing the venue, hosting the hearing, and providing secretarial or support services to the development contributions commissioners. For these functions, no direct knowledge of development contributions may be necessary.

From time to time, it is possible that development contributions commissioners may wish to take advice on a technical or interpretation matter associated with a territorial authority’s development contributions policy. It may be that the only persons able to explain that aspect of the policy may be a staff member of the territorial authority itself. Should this occur it is important that, to the extent practicable, that officer not be a person who would otherwise be directly involved in the hearing. Commissioners would also need to make it clear that such persons are there to assist the commissioners through the provision of neutral advice, and are not present to represent the territorial authority on this occasion.

If a case or evidence is to be presented in te reo Māori or tangata whenua have indicated that they wish to attend the hearing territorial authorities who are responsible for the administrative support of hearings may also need to consider the necessity of ensuring a translator is on hand.

**Expert witnesses**

The objector and the respondent territorial authority have the right and ability to call expert witnesses to provide evidence on their behalf.

An expert witness is a witness called to give evidence on matters relating to the profession or trade in which they qualified and / or are experienced. Unlike other witnesses in other judicial or quasi-judicial settings, an expert witness is permitted to give evidence in the form of opinions.
Expert witnesses appearing in a development contributions hearing may come from a variety of professions including:

- engineering;
- planning;
- law;
- policy; and
- economics.

In the setting of a development contributions objection, an expert witness would most likely be used to offer professional opinions and provide technical evidence on matters in support of either the objector’s, or the respondent territorial authority’s, position. However, as with expert witnesses in a court setting, such persons should remain objective and should not:

- stray into areas of advocacy; or
- offer opinions on matters on which they are not qualified.

Notes:

**Establishing the standing of an expert witness**

Where, whether through the exchange of evidence or during the course of a hearing, a party has or will call an expert witness, it is important for commissioners to establish the standing of the witness in relation to subject matter on which they will be providing evidence.

Most expert witnesses should be familiar with the general expectation that they commence their written or oral evidence with a statement as to their qualifications and experience. If this is not provided, then commissioners are entitled to ask the witness for this information.

Expert witnesses who have previously given evidence in the Environment Court are also likely to be familiar with the Expert Witness Code of Conduct used in that setting. Development contributions commissioners may wish to encourage expert witnesses to adopt a similar understanding in respect to their code of conduct in development contributions objection setting.

An excerpt from the Environment Court’s practice note related to the Expert Code of Conduct (as at June 2014) is provided in Appendix 3 of this manual.

4.2 The hearing process

**Commissioners establish procedure**

Clause 7 of Schedule 13A of the LGA02 requires development contributions commissioners to establish a hearing procedure that is appropriate and fair in the circumstances, and which:

- avoids unnecessary formality; and
- recognises tikanga Māori where appropriate.
Other than these broad instructions, there are no statutory requirements with regard to hearing processes.

Notes:

Formality of hearing process

The development contributions objections process borrows where practicable, from practice developed over more than 22 years of hearings under the RMA. Some of the wording used is taken directly from the RMA and can be interpreted in a similar manner.

The development contributions objection hearing process is clearly not as formal as a court of law but is designed to ensure that commissioners gain a good understanding of:

- the issues and evidence surrounding the matters in contention; and
- the content, application and implementation of the territorial authority’s development contributions policy.

Steps in the hearing process

Although the process for the hearing is to be determined by the commissioners themselves, likely steps in the hearing process could include:

1. **the welcome from the chair** (or sole commissioner), which will usually include an overview of the process to be followed in the course of the hearing;

2. **addressing preliminary matters**, including (where relevant):
   a. confirmation or clarification of the grounds on which the objection was made;
   b. decisions on whether to waive timeframes, accept and/or circulate late evidence;
   c. any necessary decisions or directions necessary to manage conflicts of interest; and
   d. consideration of requests to (as appropriate), exclude the public, make an order prohibiting the communication or circulation of sensitive information, or hear from parties other than the objector and the respondent territorial authority;

3. **the objector presents their objection**. This will usually take the form of a statement that covers the same or similar material as the written briefs of evidence exchanged prior to the hearing. The objector may call on expert witnesses to support their statement and provide more detail on salient technical points. Commissioners may ask questions of the objector or any of the witnesses that appear on the objector’s behalf;

4. **the respondent territorial authority presents their response to the objection**. As with the objector, this will generally take the form of a statement that draws on material contained in written briefs of evidence. The territorial authority may also call on expert witnesses to provide technical evidence. Commissioners may ask questions of any person appearing on the territorial authority’s behalf;
5. **any other party that has been invited to the hearing** may then be invited to present statements and / or comment on matters raised in evidence presented by the objector and the respondent;

6. **further questions from commissioners**, may be asked of the objector, the territorial authority or any other party invited to the hearing;

7. **the objector and respondent territorial authority** may be invited to either exercise a right of reply or sum up their cases; and

8. **concluding remarks from the chair (or commissioner sole)** will end the hearing. The commissioners may take this opportunity to thank parties, and will normally reserve their decision and provide an indication as to when they may release their decision.

**Notes:**

**Management of preliminary matters**

The course of a hearing will generally be more cohesive and efficient if preliminary matters are dealt with at the start of the hearing. It avoids the hearing being slowed or interrupted part way through to deal with: matters that are out of scope; admissibility of evidence; or procedural issues.

**Tikanga Māori**

The eight steps outlined above do not include additional actions that may be required to recognise tikanga Māori

The incorporation of tikanga Māori into the hearing process could include:

- incorporating or allowing for a powhiri, whakatau or mihimihi at the start of the hearing;
- inviting or allowing kaumatua to speak at the start of the hearing for purposes of introductory formalities; and/or
- providing witnesses giving evidence with additional time to outline their whakapapa or ancestral relationships with land or waterways before they continue with the rest of their evidence.

Commissioners may wish to consider reading the Ministry for the Environment’s *Māori Values Supplement* to the *Making Good Decisions* course manual, published in 2010\(^\text{10}\) for further insights into Māori values and how these can be incorporated into hearings when appropriate.

\(^{10}\) Currently free for downloading at [http://www.mfe.govt.nz/publications/rma/maori-values-supplement/](http://www.mfe.govt.nz/publications/rma/maori-values-supplement/)
4.3 Evidence

**Power to direct the order of business**

Section 199K of the LGA02 gives development contributions commissioners the power, for the purposes of hearings, to:

- direct the order of business at the hearing, including the order in which the evidence is presented and parties heard;
- direct that evidence presented at the hearing be taken as read or presented within a stated time limit; and
- direct that evidence be limited to the matters relevant to the dispute (the objection).

**Power to receive and take oaths and affirmations**

Under cl13 of Schedule 13A of the LGA02, development contributions commissioners may, for the purpose of a hearing:

- receive any evidence that, in their opinion, may assist them to deal effectively with the development contributions objection, whether or not the evidence would be admissible in a court of law;
- take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by any commissioner; and
- permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by oath or affirmation.

**Notes:**

**Form of oaths and affirmations**

Oaths and affirmations are administered and taken in accordance with the provisions of the Oaths and Declarations Act 1957. They generally take the following forms (in English or in te reo Māori, as appropriate):

**Basic oath**

- The person administering the oath may commence with the words “You swear by Almighty God that,” (or words to similar effect) and conclude with the words of the oath as prescribed or allowed by law\(^{11}\). The person taking the oath then, while holding in their hand a copy of the Bible, New Testament, or Old Testament, indicates their agreement to the oath being administered by saying the words “I do” (or other words to similar effect); or
- The person taking the oath may, while holding in their hand a copy of the Bible, New Testament, or Old Testament, repeat the words of the oath as prescribed or allowed by law; or

\(^{11}\) Commonly, the words used are “to tell the truth, the whole truth, and nothing but the truth”
The oath may be administered and taken in any manner which the person taking it may declare to be binding on them.

The Scots form of oath:

The person administering the oath holds up their hand, and says to the witness, “Witness, hold up your hand, and repeat after me,—

“I swear by Almighty God, as I shall answer to God at the great day of judgment, that I will speak the truth, the whole truth, and nothing but the truth.”

Spoken affirmation

The person making the affirmation says “I [Name] solemnly, sincerely and truly declare” followed by the words of oath (usually “to tell the truth, the whole truth and nothing but the truth”).

Written affirmation

Every affirmation in writing:

- begins with the words “I [Name] of [Place] solemnly and sincerely affirm”; and
- is signed by an appropriate person with the words “Affirmed at [Place] this day of [Date] before me [Name of person]”.

Additional information

Before or at the hearing, a development contributions commissioner has the discretion and power to request the objector or territorial authority to provide further information (s199I(2) of the LGA02). A party that is the subject of such a request must also serve copies of it on the other parties to the objection.

4.4 Cross Examination

No presumption in favour of cross-examination

The LGA02 contains no explicit provisions that permit cross-examination during the development contributions hearing.

However, cl7 of Schedule 13A of the LGA02 states that the hearing procedure established by the development contributions commissioners must avoid unnecessary formality. Parties at the hearing should not therefore assume that there is a presumption in favour of cross-examination. The words “avoid unnecessary formality” mean that formal court processes may not be followed, similar to resource consent hearings under the RMA.

Chairperson may allow questions

A chairperson may allow a party to ask questions of another at the discretion of the chairperson. If they do so, then the boundaries or limitations of allowable questioning should be explained to parties at the start of the hearing.
Notes:

Allowable questioning

The extent to which the chairperson allows questioning of one party by another, and the nature of those questions, may be determined by the type and purpose of the questions being asked. Some factors that may assist in determining whether a question should be allowed are:

- whether the question assists commissioners to better understand the evidence before them;
- whether the question will help commissioners reach conclusions relevant to deciding the objection;
- whether the person of whom the question is being asked is an expert witness or a lay person;
- whether the line of questioning (or the tone used) conveys an intent to unnecessarily provoke or intimidate the other party or a witness;
- whether parties have previously agreed to allow questioning of a nature similar to cross-examination.

In all circumstances it should be kept in mind that development contributions commissioners have the same powers that a District Court, in the exercise of its civil jurisdiction, has to conduct and maintain order should they consider the extent, timing or nature of questioning to be out of order or undesirable (see cl10 of Schedule 13A of the LGA02).

4.5 Legal protections in relation to hearing participants

Limitation of liability of commissioners

A development contributions commissioner cannot be held liable for anything the commissioner does, or fails to do, provided that they have acted in good faith when exercising their functions, duties, responsibilities and powers under the LGA02.

Immunities and privileges of participants

Witnesses and other persons participating in a hearing (other than legal counsel) have the same immunities and privileges as though they were appearing in civil proceedings. Subpart 8 of Part 2 of the Evidence Act 2006 applies as though the objection hearing was a civil proceeding and references to judges were a reference to the commissioners (see cl14 of Schedule 13A of the LGA02).

The privileges include, but are not limited to:

- privilege in respect of any communication between the person and their legal adviser if the communication was intended to be confidential and made in the course of obtaining or providing professional legal services;
• in relation to preparatory materials for proceedings, privilege in respect of a confidential document that a person has prepared, or caused to be prepared, in connection with an attempt to mediate the dispute or to negotiate a settlement of the dispute; and

• privilege against self-incrimination in a proceeding in respect of specific information required to be provided that would be likely to incriminate the person under New Zealand law for an offence.

A person who has a privilege of this nature cannot be compelled to disclose material protected by the privilege (either when giving evidence or when producing documents\(^{12}\)).

Note however that under s67 of the Evidence Act 2006 a judge (or, in this instance, a commissioner) must disallow a claim of privilege conferred by any of sections 54 to 59 and 64 of the Evidence Act 2006 in respect of a communication or information if they are satisfied there is a prima facie case that the communication was made or received, or the information was compiled or prepared:

• for a dishonest purpose; or

• to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.

A person also may waive their privileges. Should that person not be represented by counsel at the hearing then commissioners should make the person aware of the consequences of waiving privilege.

**Immunities and privileges of legal counsel**

Counsel appearing at the development contribution objection hearing have the same immunities and privileges as they would have as if they were appearing before a court.

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\(^{12}\) Noting that commissioners may make orders to this effect under section 52 of the Evidence Act 2006
CHAPTER 5: Consideration and decision making

5.1 Introduction
Under s198J of the LGA02 development contributions commissioners who are making decisions on an objection must give due consideration to:

(a) the grounds on which the development contribution objection was made;

(b) the purpose and principles of development contributions (sections 197AA and 197AB of the LGA02);

(c) the provisions of the development contributions policy under which the development contribution that is the subject of the objection was, or is, required;

(d) the cumulative effects of the objector’s development in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the development contribution is to be used for or toward; and

(e) any other relevant factor associated with the relationship between the objector’s development and the development contribution to which the objection relates.

5.2 Consideration of the grounds on which the objection was made
Objections can only be made on one or more of the grounds set out in s.199D of the LGA02. An objection made on grounds other than those set out in s199D will be outside the jurisdiction of what development contributions commissioners can consider under the development contribution objections provisions of the LGA02.

Where an objection is made on the grounds set out in s199D of the LGA02, the grounds chosen by the objector will help define the scope of the matters that are relevant to deciding the objection and may assist in guiding the line of inquiry that commissioners may wish to follow.

Objections can only be made on the grounds that the territorial authority:

- 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

- required a development contribution for community facilities not required by, or related to, the objector’s development, whether on its own or cumulative with other developments; or

- required a development contribution in breach of s200 of the LGA02, which states that a territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure, if and to the extent that:
a. the territorial authority has imposed a financial condition under the RMA 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

c. 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

d. a third party had funded or provided, or undertake to fund or provide, the same reserve, network infrastructure, or community infrastructure; or

- incorrectly applied its development contributions policy to the objector’s development.

5.3 Consideration of the purpose of development contributions

The purpose and principles of development contributions provide the broad overall direction for the use of development contributions. Similar to the Resource Management Act 1991, the purpose statement is the paramount reference point for establishing the rationale for development contributions, with the principles expanding on the purpose.

Under s197AA of the LGA02, the purpose of the development contributions provisions in the Act is set out as:

“...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.”

It is anticipated that much of the consideration by commissioners will be related to making decisions on the grounds under which the objection was made. However, there may be some circumstances when the purpose statement becomes relevant such as where the objector has objected under the grounds set out in s199D(a) or (c) of the LGA02 and claims:

- their development is not “growth” and therefore they should not be required to pay a development contribution; or
- their development does not require a council to incur additional capital expenditure and therefore they should not be required to pay a development contribution; or
- there are features of the developer’s development that reduce the impact on requirements for community facilities which have not been recognised and as such the development contribution is not fair, equitable or proportionate.

5.4 Consideration of the principles of development contributions

Section 197AB of the LGA02 sets out the principles for development contributions. All persons exercising duties and functions under subpart 5 of Part 8 of the LGA02 (including development contributions commissioners) are required to take these principles into account.
**Principle (a)**

Principle (a) states that 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.

**Notes:**

**Relevance to objections**

Principle (a) is intended to complement, and provides the context for, s199(1) of the LGA02 (Basis on which development contributions may be required). Both provisions are clear that a development contribution can only be required if the effect of a development (or that development in combination with other developments) results in territorial authority expenditure on new, additional or expanded infrastructure. If no effect can be demonstrated, then a development contribution should not be required.

Principle (a) could therefore be particularly relevant where an objection is made on the grounds that:

- the territorial authority 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 (s199D(b)); and
- the territorial authority required a development contribution in breach of s200 of the LGA02 (where a third party is funding or providing the infrastructure, in which case the territorial authority may not have, or may not, incur capital expenditure in regard to infrastructure).

**Principle (b)**

Principle (b) states that 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.

It is expected that principle (b) will mainly affect the methodology used by a territorial authority to calculate development contributions in its development contributions policy. However, it is possible that an objector may argue that the effect of features in their development (on its own, or cumulatively with other developments) will be such as to reduce the requirement for new community facilities, so extending the capacity life of the territorial authority’s assets.

By way of example, a large development that makes use of extensive rainwater and grey-water collection and reuse systems may result in the area in which it is located requiring less potable water than a territorial authority originally expected when it prepared its development contributions policy. This could result in the point in time when a local reservoir is expected to have had its remaining capacity used up being pushed back, such that a second reservoir tank is not required until 2030 (instead of 2025).
Depending on how a territorial authority’s development contribution policy had been set up to operate, a longer capacity life may impact on how development contributions are calculated under the policy, and thereby the amount of the contribution that may be required.

Notes:

**Capacity life**

The term "capacity life" is not defined in the LGA02. In its most simple form, it may be expressed as the time between a new infrastructure asset being built (or provided) and the point in time at which the capacity of that asset to service additional growth has been used up (at which point additional capacity will be required either through the provision of an additional asset or an expansion of capacity).

**Principle (c)**

Principle (c) states that 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.

Notes:

**Principle (c)**

Principle (c) will most likely affect the way a territorial authority prepares its development contributions policy. The principle has deliberate similarities with s101(3)(ii) and (iv) of the LGA02 which deal with the funding needs of local authorities, and its effect should be evident through the schedule of assets required under s201A.

It is the relationship between principle (c) and the schedule required under s201A of the LGA02 that may be relevant in the context of an objection. This would particularly be so if the schedule suggests that a development, either by itself or in combination with other developments, has no spatial, causal or temporal relationship with an infrastructure asset for which a development contribution is required.

**Principle (d)**

Principle (d) states that development contributions must be used:

- for or towards the purpose of the activity for the groups of activities for which the contributions were required; and

- 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.

Notes:

**Principle (d)**
It is not anticipated that principle (d) will have a particular direct bearing on a development contribution objection as it relates primarily to the way in which development contributions are spent. However, it should be noted that the principle does implicitly reinforce the idea of a linkage, both in terms of a requirement for infrastructure and a geography, between development and a development contribution that may be required.

**Principle (e)**

Principle (e) states that territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used.

It is unlikely that consideration of this principle alone will be the determining factor when deciding a development contribution objection, as it is not directly related to the grounds for an objection. However it may serve as a prompt for commissioners to:

- refer to the schedule of assets for which development contributions will be used (which may be useful in establishing the link between a development [or a combination developments], the infrastructure that it creates a requirement for or will connect to, and the development contribution that is required); or
- consider the methodology used in calculating a development contribution.

If the methodology or link between a development (or combination of developments) and the development contribution required is unclear, the commissioners may consider referencing this principle if (or when) exercising their discretion to make an observation on the territorial authority’s development contributions policy.

**Principle (f)**

Principle (f) states that 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 of the LGA02. A development contributions policy which produces inconsistent and unpredictable results could cause territorial authority to misapply its policy or point to unsound justifications for development contributions being required.

**Principle (g)**

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

- the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and
- grouping by geographic area avoids grouping across an entire district wherever practical.
Notes:

**Grouping**

Grouping is the practice of grouping multiple developments together according to a common type or location, on the basis of:

- developments sharing the use of an infrastructure asset (or group of assets); or
- the same type an scale of effect certain development types have on the requirement to provide an asset.

Under such an approach, it is common for the capital cost of the infrastructure asset required by the group of developments to be divided by the number of units of demand (e.g. houses) in that group to provide a per-unit cost which may form the basis of the development contribution required. Examples of geographic grouping may include:

- developments in a stormwater catchment area; or
- developments connecting to a particular trunk water or sewage main.

**Presumption against district-wide grouping**

Section 197AB(g)(ii) of the LGA02 states that grouping on a district-wide basis should be avoided where practical. This is because district-wide averaging is less likely to recognise localised circumstances or characteristics that may significantly increase or reduce requirements for particular infrastructure assets.

However, there will be some cases where district-wide averaging may be the only practical option (hence the words “wherever practical” in s197AB(g)(ii)) as, for example, when a city is served by a single wastewater plant and all development connects to that plant. In such cases, the territorial authority should be able to demonstrate why grouping across an entire district is the only practical option if they are to have a defence in the event of a challenge.

**Relevance to objections**

The issue of grouping is most likely to arise in relation to objections made on the grounds that the territorial authority:

- 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
- required a development contribution for community facilities not required by, or related to, the objector’s development, whether on its own or cumulative with other developments.

In both of these instances the commissioners may be required to carefully consider the appropriateness of the grouping used (if any) in relation to the objector’s development and the relationship between grouping and the concept of cumulative effects.

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13 Note that aside from the “wherever practical” consideration in s197AB(g)(ii) of the LGA02, consideration also needs to be given the balance between administrative efficiency and fairness and equity (as per s197AB(g)(i))
5.4 Consideration of the development contributions policy

Under section 198(2) of the LGA02 a territorial authority can only require a development contribution as provided for in a development contribution policy adopted under LGA02 s102(1) and that is consistent with s201.

Section 198(2) of the LGA02, in conjunction with development contributions principle (f) (s197AB of the LGA02), therefore establishes a strong expectation and requirement that development contribution requirements are to be derived from, and be consistent with, the methodology set out in a territorial authority’s development contributions policy.

In considering a development contributions policy, development contributions commissioners may provide observations on the policy, but cannot direct that the policy be amended.

Notes:

Relevance to objections

Under section 199D(c) of the LGA02 an objector may make an objection on the grounds that the territorial authority incorrectly applied its development contributions policy to the objector’s development. This will of necessity require development contributions commissioners to work through the relevant provisions of the policy.

Commissioners may choose to apply the development contributions policy themselves, using information provided through evidence and at the hearing in order to test whether, in their view, the policy has been interpreted or applied correctly. A result that is different to that obtained by the territorial authority may suggest that the objection be upheld, but may also suggest ambiguity in the way the policy is worded.

Care may be required when considering parts of the policy where a course of action is determined by a matter of discretion, judgement or interpretation of circumstances for which there can be no objective, formulaic, approach. Development contributions commissioners may need to seek advice from expert witnesses on the appropriate application of such provisions as they could be crucial to determining the outcome of the objection.

5.5 Consideration of cumulative effects

Development contributions commissioners are required to give due consideration to the cumulative effects that the objector’s development has in combination with the other developments in a district or parts of a district on the requirement to provide the community facilities.

The concept of cumulative effect is used in a number of places in the development contributions provisions of the LGA02, notably in relation to s199 where it is set in the context of the basis upon which development contributions may be required.

Under s199(1) of the LGA02, if the effect of the development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure for the infrastructure listed, then a development contribution may be
required. Section 199(3) of the LGA02 makes it plain that the word “effect” also includes the cumulative effects that a development may have in combination with another development. The concept is therefore similar to the discussion of cumulative effects under the RMA, and some of the case law under that Act could provide guidance.

The relevance of cumulative effects is most likely to be argued in the case of small developments, where an objector may argue that one or two units of development will have an effect that is too small to require a territorial authority to provide new or expanded infrastructure. However, taken in conjunction with additional units of development created by other developments, the cumulative effect of all those units may be to require a territorial authority to provide new or expanded infrastructure.

The High Court in *Neil Construction Ltd. v North Shore City Council* [2008] noted that a development could still be required to pay a development contribution if, although by itself it did not require additional assets or assets of increased capacity, its effect cumulatively with other developments was to require such assets (see paragraph 114 of the decision).

The following considerations are likely to play an important part in assessing the legitimacy of requiring a development contribution on the basis cumulative effects:

- the location of a development relative to other developments (and infrastructure);
- the type of infrastructure concerned; and
- the degree to which the infrastructure is networked (or interlinked in some other way).

### 5.6 Consideration of other relevant factors

The consideration of other relevant factors associated with the relationship between the objector’s development and the development contribution that is the subject of the objection acts as a general “catch all” provision.

To be relevant, the factor must have some bearing on grounds on which the objection was made, or have the potential to influence the decision on an objection made on those grounds.

**Notes:**

**Other factors that may be relevant**

The examples below are intended to illustrate the nature of matters that may be relevant in some development contribution cases. The list is not intended to be exhaustive, and the matters mentioned may not be applicable in any particular case that a commissioner has been asked to decide. Examples are:

- **whether infrastructure is part of an integrated network:** this may be relevant in cases where the grounds for an objection is that a particular asset is not required by, or related to the objector’s development. With some network infrastructure, the most direct route from headworks to a development site may not actually be the one that is used to serve the development if that route happens to be operating at maximum capacity already. Instead, the actual infrastructure being used may be located on a more indirect or remote
route because that happens to have the capacity to meet growth. The use of that alternative route or infrastructure may not be immediately apparent to an objector.

- **whether a financial contribution has already been required for the same development:** this will be relevant where the grounds for the objection is that the territorial authority’s requirement for a development contribution is in breach of s200 of the LGA02. Note that the words used in s200 “…if, and to the extent that…” could play an important role in deciding an objection made on these grounds. The High Court decision in *Domain Nominee Ltd. v Auckland City Council* [2009] 1 NZLR 113 contains some useful commentary in this regard.

- **the potential for a quick change in a development’s character, intensity or scale:** development contributions commissioners may need to be wary of arguments based around specific intensity of land uses if there is obvious potential for a development to be quickly and easily adapted or modified for a higher intensity of use that creates a greater requirement for territorial authority infrastructure.
CHAPTER 6: Commissioner Responsibilities

6.1 Declaring conflicts of interest
It is important that development contributions commissioners declare or provide information about their current employment or contractual circumstances and arrangements when approached by a territorial authority to decide a development contribution objection.

Restrictions in relation to current employment or appointments
Under cl2 of Schedule 13A of the LGA02 the territorial authority cannot select a commissioner who is working for it or the objector. The restrictions in the provision are designed to remove actual or potential conflicts of interest or bias. Selection of a commissioner who is an employee, elected member, contractor, owner, shareholder or director of the territorial authority or the objector could see the decision of the commissioner being overturned on judicial review, if challenged.

Other conflicts of interest
A conflict of interest exists where the responsibilities of a development contributions commissioner could be affected by another separate interest or duty that the commissioner has in relation to the objection. Those other interests or duties could include:

- a pecuniary interest in the outcome of the decision (going beyond reimbursement for the performance of duties as a commissioner) including:
  - having signed up to purchase a property in the development to which the development contribution that is the subject of the objection relates; or
  - having been promised some material or monetary benefit by one of the parties to the objection (beyond normal fees and expenses normally payable);
- determining an objection relating to development contributions payable by a trade competitor of the commissioner (if they have employment or interests outside their commissioner role) or a person or company for whom the commissioner works;
- personal relationships with persons representing parties involved in the objection;
- the commissioner having said or done something that suggests they have may have pre-determined the outcome of the objection.

Commissioners should, in the first instance, seek to avoid situations where there will be actual or perceived conflicts of interest.

In some instances, these conflicts of interests will not always be immediately apparent when a commissioner is first approached to determine an objection (for example, the objection may have been lodged under a trading name that a commissioner did not recognise).

Should a conflict of interest become evident after the selection has been made by the territorial authority, a commissioner to should immediately notify the territorial authority and other parties of the actual or perceived conflict of interest. If the conflict of interest is incapable of being managed in a manner that is acceptable to the objector and the
respondent territorial authority, then the commissioner should consider standing aside and letting another commissioner determine the objection.

Notes:

Further reading on conflicts of interest

The material provided above gives only a brief overview of potential areas where commissioners could have a conflict of interest.

For further information on conflicts of interest, commissioners should also read the Office of the Auditor General’s publication Managing conflicts of interest: Guidance for public entities, published in 2007.14

6.2 Declaring changes in circumstances

It is important for development contributions commissioners to provide notice of any change in circumstance that may impact on their abilities to carry out their duties to the Minister of Local Government immediately. Such notice is important to uphold the integrity of the development contributions objections process and the role of development contributions commissioners generally.

A change of circumstance could include:

- a new criminal conviction;
- ill health that will impact on the ability to perform the role of development contributions commissioner; and/or
- a new conflict of interest that may result perceptions that a commissioner may have bias, or will predetermine the outcomes of objections.

6.3 Powers of Minister of Local Government

As well as appointing development contributions commissioners, the Minister of Local Government, under s199G of the LGA02 may remove any development contributions commissioner from the register of development contributions commissioners for the following reasons:

- criminal activity or other misconduct of the commissioner;
- inability to perform the functions of office; and/or
- neglect of duty.

CHAPTER 7: Commissioners’ Powers

7.1 Powers to maintain order

**Commissioners have same powers as District Court to maintain order**

Clause 10 of Schedule 13A of the LGA02 states that development contributions commissioners have the same powers as a District Court (in the exercise of its civil jurisdiction) to conduct and maintain order.

**Offences, contempt and penalties**

Sections 29 to 31 of the Inquiries Act 2013 apply to the hearing of an objection as if the hearing was an inquiry.

Under section 29 of the Inquiries Act 2013, any person commits an offence if they intentionally:

(a) fail to attend the inquiry in accordance with the notice of summons;

(b) refuse to be sworn or to affirm and give evidence;

(c) fail to produce any document or thing required by order of the inquiry;

(d) destroy evidence or obstruct or hinder any person authorised to examine, copy, or make a representation of a document or thing required by order of an inquiry;

(e) … [not applicable as it relates to orders made under the Inquiries Act 2013]

(f) disrupt the proceedings of an inquiry;

(g) prevent a witness from giving evidence or threaten or seek to influence a witness before an inquiry;

(h) provide false or misleading information to an inquiry; or

(i) threaten or intimidate an inquiry, a member of an inquiry, or an officer of an inquiry.

However an offence is not committed in respect to (a) to (d) above if

(a) compliance would be prevented by a privilege or immunity that the person would have as a witness or counsel, were that person giving evidence or acting as counsel in civil proceedings before a court; or

(b) compliance is prevented by an enactment, rule of law, or order of a court prohibiting or restricting disclosure, or the manner of disclosure, of any document, information, or thing; or

(c) compliance would be likely to prejudice the maintenance of the law, including the prevention, detection, investigation, prosecution, or punishment of offences, including the right to a fair trial.
At the request of the inquiry (in this instance, development contributions commissioners), the Solicitor-General may commence proceedings in the High Court for contempt of an inquiry. In determining any contempt proceedings the court may make any orders that it considers necessary and just to enable the inquiry to fulfil its purpose.

Should a person who has committed an offence be convicted, then they are liable to a fine not exceeding $10,000.

### 7.2 Summons of witnesses

**Power to summons**

Under cl 11 of Schedule 13A of the LGA02 a development contribution commissioner who is either the chairperson, or a commissioner authorised by the chairperson, or any commissioner deciding an objection on their own may summon a witness to:

- attend the hearing at a time and place specified in the summons; and
- give evidence and produce any papers, documents, records, or things in that person’s possession (or under their control) that are relevant to the subject of the hearing

This power may be exercised on the commissioners’ own initiative, or upon application by a party to the hearing.

An example of a possible witness summons form is provided in Appendix 2 (page 88).

**Service of summons**

The summons must be in writing and may be served by:

- delivering it to the person summoned; or
- posting it by registered letter addressed to the person summoned at their usual place of abode.

**Timeframes for service**

If delivered in person, the summons must be served at least 24 hours before attendance at the hearing is required.

If the summons is posted, it must be served at least 10 days before the date on which the witness is required to attend the hearing. In this instance it must be treated as having been served at the time when the letter would be delivered in the ordinary course of post.

Note that commissioners who issue summons also have the power to do any other preliminary and incidental acts prior to the hearing or consideration of an objection (cl 11(4) of Schedule 13A of the LGA02).

### 7.4 Power to waive or extend timeframes

A development contributions commissioner has the power to waive or extend the following timeframes if they are satisfied exceptional circumstances exist;
• provision of briefs of evidence (s199K(2) of the LGA02);
• dates for the exchange of evidence (cl.3(2) of Schedule 13A of the LGA02);
• the exchange of additional or amended evidence;
• notice of hearings (cl.5(2) of Schedule 13A of the LGA02);
• replies to briefs of evidence (cl6(2) of Schedule 13A of the LGA02);
• service of development contribution objection decisions (cl9(2) of Schedule 13A of the LGA02); and
• the service of a summons under cl11 of Schedule 13A of the LGA02.

Development contributions commissioners do not have the power to waive or extend the timeframe within which objections must be lodged under cl1(1) of Schedule 13A of the LGA02.

Notes:

**Exceptional circumstances**

The term “exceptional circumstances” is not defined in the LGA02. Some broad parallels may be able to drawn from similar wording used in other legislation. Case law provides some guidance, but tends to be context specific.

In *Wilkins & Field Ltd. v Fortune* [1998] 2 ERNZ 70, 76, the Court stated that exceptional circumstances were “unusual, outside the common run, perhaps something more than special and less than extraordinary”.

7.5 Costs

A development contributions commissioner has no power to award costs during, or as the result of the outcome of, development contribution objection proceedings. Instead, territorial authorities are permitted to recover their actual and reasonable costs from the objector in accordance with section sections 150A and 252 of the LGA02. Case law related to s36 of the RMA provides some useful commentary around the words “actual and reasonable”.
CHAPTER 8: Administrative matters

8.1 The role of the territorial authority

Territorial authorities to provide administrative support
Section 199M of the LGA02 states that a territorial authority must supply all secretarial and administrative support services necessary to enable development contributions commissioners to perform their functions.

8.2 Commissioner panel considerations for decisions on papers
Where commissioners have opted to decide a decision on papers, consideration of the objection may take the form of each commissioner separately considering the relevant materials (including the objection and evidence) before the commissioners compare notes and arrive at their decision.

Each commissioner must consider all the matters set out under s199J of the LGA02 that are appropriate to the objection, or they may be allocated specific areas by the chairperson to consider in depth if a matter falls solely within their specific area of expertise.

8.3 Management of sensitive information when deciding an objection
Orders regarding communications
Under s199J of the LGA02 a development contributions commissioner may make an order that prohibits the communication or publication of information supplied to the commissioner, in the course of deciding a development contribution objection.

An order may be made on the initiative of the commissioner themselves, or upon application from the objector or the respondent territorial authority.

In making such an order, the development contributions commissioner must be satisfied that the order is necessary to avoid:

- serious offence to tikanga Māori or to avoid the disclosure of wāhi tapu; or
- the disclosure of a trade secret or commercial information that, if released, would be prejudicial to the business or operations or any party to the objection.

Such an order will apply to all persons who are present at, or a party to, a development contribution hearing.

8.4 Remuneration of development contributions commissioners
The remuneration of development contributions commissioners will follow a similar approach to that for independent hearings commissioners under the RMA.

Development contributions commissioners invoice the territorial authority that is responsible for administering the development contribution objection according to either an hourly rate agreed previously with the territorial authority (plus actual and reasonable expenses) or a
lump sum. The territorial authority then recovers its costs, to the extent allowed by section s150A of the LGA02, from the person who made the objection.

8.5 Interim effect of a development contributions objection

The lodgement of an objection does not necessarily remove the ability of the territorial authority to require payment of the development contribution in the interim. Under s199N of the LGA02, the respondent territorial authority is given a choice to as to whether to require the contribution or not.

**If a contribution is required to be made**

If a territorial authority requires a contribution to be made it may do so, but must not use the money until the objection has been determined.

**Notes:**

A territorial authority may decide to require a contribution to be made if, for example:

- the contribution is required at a late stage of the development process where the territorial authority has already provided the infrastructure and units of development have already been subdivided or built. In this instance the territorial authority may be seeking to manage its debt servicing costs; or

- there is a real risk of a business using the objection process to delay payment and then intentionally or unintentionally avoiding payment entirely by dissolution of the business.

The intent of the restriction of spending the contribution made is to ensure the territorial authority does not spend money that it may have to refund if the objection of the objector is upheld and/or the contribution requirement quashed. Ideally, the territorial authority should be in a position to refund money paid immediately after a decision has been made on a development contribution, if required, so as to reduce financing and other holding costs to the objector.

**If no contribution is required to be made**

A territorial authority that is in receipt of an objection may not require a development contribution to be made pending the outcome of the determination of that objection. However, it may in these circumstances exercise its powers under s208 of the LGA02 to withhold certificates or permissions until such time as the objection has been determined.

**Notes:**

A local authority may decide not to require a contribution to be made if, for example:

- The proposed development is at an early stage (e.g. subdivision consenting stage) and has yet to require the territorial authority to provide new or additional infrastructure; or

- In considering the relationship between, and the respective financial positions of, the territorial authority and the person making the objection, the territorial authority may believe a better outcome would be achieved by not requiring a development contribution until the objection has been decided.
The reference to the powers under s208 of the LGA02 is intended to serve as a signal and a reminder that a territorial authority retains the ability to manage the risk or effect of a contribution not being made through that section, if required.
Appendix 1: Relevant Local Government Act 2002 provisions
101 Financial management
(1) A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.

(2) A local authority must make adequate and effective provision in its long-term plan and in its annual plan (where applicable) to meet the expenditure needs of the local authority identified in that long-term plan and annual plan.

(3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—
(a) in relation to each activity to be funded,—
(i) the community outcomes to which the activity primarily contributes; and
(ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and
(iii) the period in or over which those benefits are expected to occur; and
(iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
(v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and
(b) the overall impact of any allocation of liability for revenue needs on the community.

102 Funding and financial policies
(1) A local authority must, in order to provide predictability and certainty about sources and levels of funding, adopt the funding and financial policies listed in subsection (2).

(2) The policies are—
(a) a revenue and financing policy; and
(b) a liability management policy; and
(c) an investment policy; and
(d) a policy on development contributions or financial contributions; and
(e) a policy on the remission and postponement of rates on Māori freehold land; and
(f) in the case of a unitary authority for a district that includes 1 or more local board areas, a local boards funding policy.

(3) A local authority may adopt either or both of the following policies:
(a) a rates remission policy:
(b) a rates postponement policy.

(4) A local authority—
(a) must consult on a draft policy in a manner that gives effect to the requirements of section 82 before adopting a policy under this section:
(b) may amend a policy adopted under this section at any time after consulting on the proposed amendments in a manner that gives effect to the requirements of section 82.

(5) However, subsection (4) does not apply to—
(a) a liability management policy:
(b) an investment policy.

106 Policy on development contributions or financial contributions

(1) In this section, financial contributions has the meaning given to it by section 108(9) of the Resource Management Act 1991.

(2) A policy adopted under section 102(1) must, in relation to the purposes for which development contributions or financial contributions may be required,—
(a) summarise and explain the total cost of capital expenditure identified in the long-term plan, or identified under clause 1(2) of schedule 13 that the local authority expects to incur to meet the increased demand for community facilities resulting from growth; and
(b) state the proportion of that total cost of capital expenditure that will be funded by—
(i) development contributions:
(ii) financial contributions:
(iii) other sources of funding; and
(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
(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
(e) if development contributions will be required, comply with the requirements set out in sections 201 and 202; and
(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.

(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 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 allowed by section 203.

(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 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 will be applied that does not relate to interest and other financing costs; and

(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).

(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.

(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.

(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.

(6) A policy adopted under section 102(1) must be reviewed at least once every 3 years using a consultation process that gives effects to the requirements of section 82.

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.
Part 8
Subpart 5 - Development Contributions

197AA Purpose of development contributions
The purpose of the development contribution 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 so service growth over the long term.

197AB Development contributions principles
All persons exercising duties and functions under this subpart must take into account the following principles when preparing a development contributions policy under section 106 or requiring development contributions under section 198:

(a) development contributions should only be required if 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:

(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:

(c) cost allocations used to establish development contributions should be determined according to, and be proportionate 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:

(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:

(e) territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used:

(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:

(g) when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided:
   (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.

197 Interpretation

(1) In this subpart and Schedule 13,—

allotment has the meaning given to it in section 218(2) of the Resource Management Act 1991

development means—
(a) any subdivision or other development 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

methodology means the methodology for calculating development contributions set out in Schedule 13

network utility operator has the meaning given to it by section 166 of the Resource Management Act 1991.

(2) In this Act, unless the context otherwise requires,—

accommodation unit means units, apartments, rooms in 1 or more buildings, or cabins or sites in camping grounds and holiday parks, for the purpose of providing overnight, temporary or rental accommodation

community facilities means reserves, network infrastructure, or community infrastructure for which development contributions may be required in accordance with section 199

community infrastructure means the following assets when owned, operated, or controlled by a territorial authority:
(a) community centres or halls for the use of a local community or neighbourhood, and the land on which they are or will be situated:
(b) play equipment that is located on a neighbourhood reserve:
(c) toilets for use by the public.

development agreement means a voluntary contractual agreement made under sections 207A to 207F between 1 or more developers and 1 or more territorial authorities for the provision, supply, or exchange or infrastructure, land, or money to provide network infrastructure, community infrastructure, or reserves in 1 or more districts or a part of a district

development contribution means a contribution—
(a) provided for in a development contribution 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
development contribution objection means an objection lodged under clause 1 of schedule 13A against a requirement to make a development contribution

development contribution policy means the policy on development contributions adopted under section 102(1)

development contributions commissioner means a person appointed under section 199F

network infrastructure means the provision of roads and other transport, water, wastewater, and stormwater collection and management

objector means a person who lodges a development contribution objection

resource consent has the meaning given to it in section 2(1) of the Resource Management Act 1991 and includes a change to a condition of a resource consent under section 127 of that Act

service connection means a physical connection to a service provided by, or on behalf of, a territorial authority.

198 Power to require contributions for developments

(1) A territorial authority may require a development contribution to be made to the territorial authority when—

(a) a resource consent is granted under the Resource Management Act 1991 for a development within its district:

(b) 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):

(c) an authorisation for a service connection is granted.

(2) 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.

(2A) 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 service connection was submitted, accompanied by all required information.

(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.

(4A) 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.

(5) In this section,—

building consent authority means a person whose name is entered in the register referred to in section 273(1)(a) of the Building Act 2004

chief executive has the meaning given to it in section 7 of the Building Act 2004

198A Restrictions on power to require contributions for reserves
(1) Despite section 198(1), a territorial authority may not require a development contribution to be made to the territorial authority for the provision of any reserve—
(a) if the development is non-residential in nature; or
(b) for the non-residential component of a development that has both a residential component and a non-residential component.

(2) For the purpose of subsection (1), accommodation units are deemed to be residential.

(3) In this section, reserve does not include land that forms or is to form part of any road or is used or is to be used for stormwater management purposes.”

199 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:
(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.

199A Right to reconsideration of requirement for development contribution
(1) If a person is required by a territorial authority to make a development contribution under section 198, the person may request the territorial authority to reconsider the requirement if the person has grounds to believe that—
(a) the development contribution was incorrectly calculated or assessed under the territorial authority’s development contributions policy; or
(b) the territorial authority incorrectly applied its development contributions policy; or
(c) the information used to assess the person’s development against the development contributions policy, or the way the territorial authority has recorded or used it when requiring a development contribution, was incomplete or contained errors.

(2) A request for a reconsideration must be lodged and decided according to the procedure set out in a development contributions policy under section 202A(2).
A request for a reconsideration must be made within 10 working days after the date on which the person lodging the request receives notice from the territorial authority of the level of development contribution that the territorial authority requires.

A person may not apply for a reconsideration of a requirement if the person has already lodged an objection to that requirement under section 199C and Schedule 13A.

**199B Territorial authority to notify outcome of reconsideration**

(1) The territorial authority must, within 15 working days after the date on which it receives all required relevant information relating to a request, give written notice of the outcome of its reconsideration to the person who made the request.

(2) A person who requested a reconsideration may object to the outcome of the reconsideration in accordance with section 199C.

**199C Right to object to 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.

(3) The right of objection conferred by this section does not apply to challenges to the content of a development contributions policy prepared in accordance with section 102.

**199D Scope of development contribution objections**

An objection under section 199C may be made only on the ground that a territorial authority has—

(a) failed to properly take into account features of the objector's development that, 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

(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

(ba) required a development contribution in breach of section 200; or

(c) incorrectly applied its development contributions policy to the objector’s development.

**199E Procedure for development contribution objections**

Schedule 13A applies in relation to objections under section 199C.

**199F Appointment and register of development contributions commissioners**

(1) The Minister must appoint suitable persons as approved development contributions commissioners who are to decide development contribution objections.
(2) The Minister must compile and keep a register of approved development contributions commissioners.

(3) The Minister must ensure that the persons named in the register individually or collectively have—
   (a) knowledge and experience in adjudication and mediation, including the conduct of hearings or inquiries; and
   (b) knowledge, skills, and experience relevant to the subject matter likely to arise in an objection; and
   (c) knowledge of tikanga Māori.

(4) The Minister may, by notice in the Gazette, specify additional criteria for the appointment of development contributions commissioners (being in addition to, but not inconsistent with, the criteria specified in subsection (3)).

(5) Before compiling the register or specifying additional appointment criteria, the Minister must consult persons that the Minister considers are representative of parties that are most likely to be participants in development contribution objections.

(6) The term of appointment for a development contributions commissioner on the register expires—
   (a) 3 years after the date on which his or her appointment takes effect; or
   (b) at the close of the term of his or her reappointment; or
   (c) at the close of the extension of his or her term; or
   (d) as soon after the completion of his or her term of appointment or reappointment as is necessary to enable him or her to complete any outstanding work, but not later than the notification of his or her final decision as a commissioner.

(7) The Minister must notify all appointments of approved development contributions commissioners in the Gazette.

199G Removal of development contributions commissioners
The Minister may remove any development contributions commissioner from the register kept under section 199F, but only—
   (a) because of the criminal activity or other misconduct of the commissioner; or
   (b) if the commissioner is unable to perform the functions of office; or
   (c) if the commissioner has neglected his or her duty.

199H Who may decide development contribution objections
(1) Any person named in the register of approved development contributions commissioners and selected by a territorial authority in accordance with clause 2 of Schedule 13A to decide a development contribution objection may hear and decide the objection.

(2) A person who is not named in the register of approved development contributions commissioners may hear and decide a development contribution objection only if—
   (a) the territorial authority is satisfied that—
       (i) the objection relates to matters that require skills or knowledge that is not available from persons named in the register who are available to deal with the objection; and
       (ii) another suitable person with such skills or knowledge is available to deal with the objection; and
(b) the Minister approves the territorial authority's selection of that other person to decide the objection.

(3) A person approved by the Minister under subsection (2)(b) must be treated as a development contributions commissioner for the period necessary to enable the person to decide the relevant objection.

199I Development contribution objection hearings

(1) The applicable fees and allowances for a witness appearing at a development contribution objection hearing must be paid by the party on whose behalf the witness is called.

(2) Before or at the hearing, a development contributions commissioner may request the objector or territorial authority to provide further information.

(3) If information is requested before a hearing under subsection (2), the party required to provide the information must serve copies of it on the other parties to the objection.

(4) Only the territorial authority and the objector have a right to be heard at the hearing of an objection. The commissioners may, at their discretion, invite any other person or organisation to attend and be heard to the extent allowed by the commissioners.

(5) Part 2 of Schedule 13A sets out supplementary provisions that apply in relation to development contribution objection hearings.

199J Consideration of development contribution objection

When considering a development contribution objection and any evidence provided in relation to that objection, development contributions commissioners must give due consideration to the following:

(a) the grounds on which the development contribution objection was made:
(b) the purpose and principles of development contributions under sections 197AA and 197AB:
(c) the provisions of the development contributions policy under which the development contribution that is the subject of the objection was, or is, required:
(d) the cumulative effects of the objector’s development in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the development contribution is to be used for or toward:
(e) any other relevant factor associated with the relationship between the objector’s development and the development contribution to which the objection relates.

199K Additional powers of development contributions commissioners

(1) In addition to his or her powers under section 199I and Schedule 13A, a development contributions commissioner has, for the purposes of a development contribution objection hearing, the following powers:

(a) to direct the order of business at the hearing, including the order in which evidence is presented and parties heard:
(b) to direct that evidence presented at the hearing be taken as read or presented within a stated time limit:
(c) to direct that evidence be limited to the matters relevant to the dispute.
(2) Whether or not a hearing is held, a development contributions commissioner may direct that briefs of evidence be provided within a specified period ending not later than,—
(a) if a hearing is to be held, 10 working days before the hearing commences; or
(b) in any other case, 10 working days before the date on which the commissioner or commissioners intend to begin their consideration of the objection.

(3) A development contributions commissioner may waive or extend any period specified in this section or Schedule 13A (except the period specified in clause 1(1) of Schedule 13A) if satisfied that exceptional circumstances exist.

(4) A development contributions commissioner may, on his or her own initiative or on application from the objector or the territorial authority, make an order that prohibits the communication or publication of any information supplied to the commissioner, or obtained by the commissioner, in the course of deciding a development contribution objection, if satisfied that the order is necessary to avoid—
(a) serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu; or
(b) the disclosure of a trade secret or commercial information that, if released, would be prejudicial to the business or operations of any party to the objection.

199L Liability of development contributions commissioners
A development contributions commissioner is not liable for anything the commissioner does, or omits to do, in good faith in performing or exercising the functions, duties, responsibilities, and powers of a development contributions commissioner under this Act.

199M Residual powers of territorial authority relating to development contribution objection decision
(1) This section applies to a decision of a development contributions commissioner.

(2) The territorial authority affected by the decision retains all the functions, duties, responsibilities, and powers of a territorial authority in relation to the requirement for the development contribution that is the subject of the decision as if the decision had been made by the territorial authority.

(3) Subsection (2) does not confer on a territorial authority the power to change, amend, or overturn a decision made by a development contributions commissioner.

(4) However, nothing in subsection (3) affects a territorial authority's right to apply for judicial review of a decision made by a development contributions commissioner.

199N Objector’s right to apply for judicial review unaffected
Nothing in this subpart affects the right of an objector to a development contribution to apply for judicial review of a decision made by a development contributions commissioner.

199O Territorial authority to provide administrative support for development contributions commissioners
A territorial authority must supply all secretarial and administrative services necessary to enable development contributions commissioners to perform their functions under this Act.
Interim effect of development contribution objection

1. If a development contribution objection is lodged, the territorial authority may still require the development contribution to be made, but must not use it until the objection has been determined.

2. If a territorial authority does not require a development contribution to be made pending the determination of an objection, the territorial authority may withhold certificates or permissions in accordance with section 208 until the objection has been determined.

Limitations applying to requirement for development contribution

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 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;

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.

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 assets 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.

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.

Contents of development contributions policy

1. If a territorial authority has determined to seek funding for community facilities under this subpart, the policy 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 allotments 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.

201A Schedule of assets for which development contributions will be used

(1) If a territorial authority has determined to seek funding for community facilities under
this subpart, the policy required by section 102 must include, in addition to the matters
set out in sections 106 and 201, a schedule that lists—
(a) each new asset, additional asset, asset of 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.

(2) For the purposes of subsection (1), assets for which development contributions are
required can be grouped together into logical and appropriate groups of assets that
reflect the intended or completed programmes of works or capacity expansion.

(3) A schedule under subsection (1) must also include assets for which capital expenditure
has already been incurred by a territorial authority in anticipation of development.

(4) Information in the schedule under subsection (1) must group assets according to the
district or parts of the district for which the development contribution is required, and by
the activity or group of activities for which the development contribution is required.

(5) A territorial authority may make changes to the schedule required by subsection (1) at
any time without consultation or further formality, but only if—
(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—

(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.

202 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.

(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.

202A Reconsideration process to be in development contributions policy

(1) 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.

(2) The process for reconsideration must set out—

(a) how the request can be lodged with the territorial authority; and

(b) the steps in the process that the territorial authority will apply when reconsidering the requirement to make a development contribution.

203 Maximum development contributions not to be exceeded

(1) Development contributions for reserves must not exceed the greater of—

(a) 7.5% of the value of the additional allotments created by a subdivision; and

(b) the value equivalent of 20 square metres of land for each additional household unit or accommodation unit created by the development.
(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, and as amended for any Producers Price Index adjustment adopted in a development contributions policy in accordance with section 106(2B) by the number of units of demand assessed for a development or type of development, as provided for in clause 2 of Schedule 13.

204 **Use of development contributions by territorial authority**

(1) A development contribution—

(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

(b) must not be used for the maintenance of the reserve, network infrastructure, or community infrastructure.

(2) Subsection (1) is subject to section 205.

205 **Use of development contributions for reserves**

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—

(a) the development of community or recreational facilities associated with the use of a reserve:

(b) the provision or improvement of recreational facilities at a school established or about to be established under Part 12 of the Education Act 1989, if—

(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.
Alternative uses of development contributions for reserves

Despite sections 197(AB)(d) and 205, if the territorial authority considers that the district in which the development is 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).

Power to use money collected and held under Local Government Act 1974 or Resource Management Act 1991

(1) This section applies to money collected—

(a) as contributions under Part 20 of the Local Government Act 1974:

(b) as contributions under sections 407 or 409 of the Resource Management Act 1991.

(2) If, at the commencement of this subpart, a territorial authority holds money to which this section applies, the territorial authority may, with the written approval of the Minister, use the money as if it had been collected in accordance with this subpart,—

(a) in the case of money collected under Part 20 of the Local Government Act 1974, in accordance with this subpart; and

(b) in the case of money collected under sections 407 or 409 of the Resource Management Act 1991, in accordance with the conditions imposed under those sections.

Development agreements

Request to enter development agreement

(1) A territorial authority may enter into a development agreement with a developer if—

(a) the developer has requested in writing that the territorial authority enter into a development agreement with the developer; or

(b) the territorial authority has requested in writing that the developer enter into a development agreement with the territorial authority.

(2) This section does not limit section 12.
207B  **Response to request for development agreement**

(1) A territorial authority that receives a written request from a developer to enter into a development agreement must consider that request without unnecessary delay.

(2) The territorial authority may—
   (a) accept the request in whole or in part subject to any amendments agreed to by the territorial authority and the developer; or
   (b) decline the request.

(3) The territorial authority must provide the developer who made the request with a written notice of its decision and the reasons for its decision.

(4) A developer who receives a request from a territorial authority to enter into a development agreement may, in a written response to the territorial authority,—
   (a) accept the request in whole or in part subject to any amendments agreed to by the territorial authority and the developer; or
   (b) decline the request.

207C  **Content of development agreement**

(1) A development agreement must be in writing and be signed by all parties that are to be bound by the agreement.

(2) A development agreement must include—
   (a) the legal name of the territorial authority that will be bound by the agreement; and
   (b) the legal name of the developer that will be bound by the agreement; and
   (c) a description of the land to which the agreement will relate, including its legal description and, if applicable,—
      (i) the street address of the land; and
      (ii) other identifiers of the location of the land, its boundaries, and extent; and
   (d) details of the infrastructure (if any) that each party to the agreement will provide or pay for.

(3) A development agreement may also include, without limitation, information relating to all or any of the following:
   (a) a description of the development to which the agreement will relate:
   (b) when infrastructure will be provided, including whether the infrastructure will be provided in stages:
   (c) who will own, operate, and maintain the infrastructure being provided:
   (d) the timing and arrangements of any vesting of infrastructure:
   (e) the mechanism for the resolution of disputes under the agreement:
   (f) the arrangements for, and timing of, any transfer of land between the territorial authority and the developer:
   (g) the nature, amount, and timing of any monetary payments to be made between the parties to the agreement:
   (h) the enforcement of the development agreement by a suitable means in the event of a breach, including, but not limited to,—
      (i) a guarantee; or
      (ii) a bond; or
      (iii) a memorandum of encumbrance.
207D  Effect of development agreement
(1) A development agreement is a legally enforceable contract.

(2) A development agreement has no force until all parties that will be bound by the agreement have signed it.

(3) A development agreement does not oblige a territorial authority or any other consent authority to—
   (a) grant a resource consent under the Resource Management Act 1991; or
   (b) issue a building consent under the Building Act 2004; or
   (c) issue a code compliance certificate under the Building Act 2004; or
   (d) grant a certificate under section 224 of the Resource Management Act 1991; or
   (e) grant an authorisation for a service connection.

(4) A territorial authority or other consent authority must not refuse to grant or issue a consent, certificate, or authorisation (as the case may be) referred to in subsection (3) on the basis that a development agreement has not been entered into.

(5) If there is any conflict between the content of a development agreement and the application of a relevant development contributions policy in relation to that agreement, the content of the development agreement prevails.

207E  Restrictions on use of development agreement
(1) A development agreement must not require a developer to provide—
   (a) infrastructure of a nature or type for which the developer would not otherwise have been required to make a development contribution; or
   (ab) infrastructure of a higher standard than that which would have been provided for if the developer had been required to make a development contribution; or
   (b) infrastructure of a scale that would exceed the infrastructure that would otherwise have been provided for if the developer had been required to make a development contribution.

(2) However, a developer may agree to provide infrastructure of a nature or scale that is additional to, of greater capacity than, or of a different type to the infrastructure that would have been provided if the developer had been required to make a development contribution.

207F  Amendment or termination of development agreement
(1) A development agreement may be amended at any time through mutual agreement of all parties who are signatories to the agreement.

(2) A development agreement terminates—
   (a) on a date set out in the development agreement; or
   (b) on the date on which all actions, undertakings, or obligations that were agreed to by each of the signatories to the agreement have been fulfilled; or
   (c) on a date mutually agreed in writing by all parties that are signatories to the agreement.

208  Powers of territorial authority if development contributions not paid or made
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 the Statutory Land Charges Registration Act 1928, as a charge on the title of the land in respect of which the development contribution was required

209 Refund of money and return of land if development does not proceed
(1) 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.
(2) A territorial authority may retain any portion of a development contribution or land referred to in subsection (1) of a value equivalent to the costs incurred by the territorial authority in relation to the development or building and its discontinuance.

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
   (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.
211  Application of other Acts
This subpart is in addition to the Building Act 2004 and the Resource Management Act 1991.

252  Recovery of Debts
Money payable by a person to the local authority for works, materials, or things provided or done by the local authority, and money payable by a person to the local authority as a development contribution, is recoverable by the local authority as a debt.
Schedule 13A

Procedure relating to development contribution objections

Schedule 13A - Part 1

General provisions

1 Lodgement of objection
(1) A person exercises the right under section 199C to lodge a development contribution objection by serving notice of the objection on the territorial authority within 15 working days after the date on which the person received notice from the territorial authority of the level of development contribution that the territorial authority is proposing to require.

(2) However, if a person has received notice of the outcome of a reconsideration under section 199B, the 15-working-day period in subclause (1) begins on the day after the date on which the person receives the notice of the outcome.

(3) The notice of objection under subclause (1) must—
(a) be in writing; and
(b) set out the grounds and reasons for the objection; and
(c) the relief sought; and
(d) state whether the objector wishes to be heard on the objection.

(4) A territorial authority may, in its discretion, allow an objection to be served on it after the 15-working-day period specified in subclause (1) or (2), as the case may be, if satisfied that exceptional circumstances exist.

1A Withdrawal of objection
(1) A person who has served notice of an objection in accordance with clause 1 may, at any time, withdraw the objection by serving notice of the withdrawal on the territorial authority and any development contributions commissioner appointed to decide the objection.

(2) The withdrawal of an objection under subclause (1) does not affect the right of the territorial authority to recover any actual and reasonable costs in respect of the objection under section 150A.

(3) The withdrawal of an objection under subclause (1) does not affect the right of the person to lodge another objection, whether on the same or different grounds, under clause 1 within the periods specified in that clause.
2 Selection of development contributions commissioners

(1) A territorial authority that has received an objection under clause 1 must, as soon as practicable after receiving the objection, select not more than 3 development contributions commissioners to decide the objection.

(2) The development contributions commissioners must—

(a) be selected from persons named in a register of commissioners appointed by the Minister under section 199F or be selected in accordance with section 199H(2); and

(b) not be elected members or employees of the territorial authority whose development contribution requirement is the subject of the objection; and

(c) not be board members, shareholders, owners, employees, or contractors of the objector; and

(d) in the opinion of the territorial authority, individually or collectively have the skills, knowledge, and experience necessary to—

(i) conduct a fair and appropriate hearing; and

(ii) understand and determine the principal matters in contention.

(3) If the territorial authority proposes to select more than 1 commissioner, it must appoint one of them as the chairperson.

3 Development contributions commissioners to set date for exchange of evidence

(1) Development contributions commissioners who have been selected to decide an objection must give the parties notice of the date by which briefs of evidence relating to the objection must be exchanged.

(2) The briefs of evidence, and any additional or amended evidence, must be exchanged not later than 10 working days before—

(a) the commencement of a hearing under clause 5; or

(b) if there is no hearing, a date fixed by the commissioners.

(3) Copies of the statements of evidence referred to in a brief of evidence must be provided to—

(a) each development contributions commissioner appointed to decide the objection; and

(b) the territorial authority; and

(c) the objector.

4 Obligation to hold hearing

A hearing on an objection need not be held if—

(a) the objector has—

(i) indicated that the objector does not wish to be heard; or

(ii) otherwise agreed that no hearing is required; or

(b) the development contributions commissioners who will hear and decide the objection are satisfied, having regard to the nature of the objection and the evidence already provided, that they are able to determine the objection without a hearing.
5 Hearing date and notice
(1) If a hearing on an objection is to be held, the development contributions commissioners must fix the date, time, and place of the hearing.

(2) Notice of a hearing must be served on the territorial authority and the objector at least 5 working days before the date on which the hearing commences.

6 Replies to briefs of evidence where no hearing is held
(1) Where no hearing is to be held, a development contributions commissioner may direct that the territorial authority and the objector provide written replies to each other’s evidence and provide copies of those replies to the commissioners.

(2) A direction made under subclause (1) must specify the period within which the written replies must be served on—
(a) the development contributions commissioners; and
(b) the territorial authority; and
(c) the objector.

7 Development contribution objection hearings
(1) If a hearing is required, it must be held on the date and at the time and place specified in the notice given under clause 5.

(2) The development contributions commissioners must establish a procedure that is appropriate and fair in the circumstances and that—
(a) avoids unnecessary formality; and
(b) recognises tikanga Māori where appropriate.

(3) A hearing under this clause need not be held in public.

8 Decisions on objections
(1) Development contributions commissioners must give a decision on an objection in writing, whether or not a hearing is held.

(2) A decision on an objection must—
(a) uphold all or part of the objection; or
(b) dismiss all or part of the objection.

(3) A decision may quash, or direct that amendments be made to, the requirement for a development contribution.

(4) A decision must be given in writing and state—
(a) the reasons for the decision; and
(b) a summary of the issues that were in contention; and
(c) the relevant provisions of the development contributions policy of the territorial authority that required the development contribution; and
(d) a summary of the evidence presented.

(5) In their decision on an objection, the development contributions commissioners must not direct the amendment of a development contributions policy, but may make observations on the policy.
9 **Service of development contribution objection decision**

(1) Written copies of the development contributions commissioners' decision under clause 8 must be served on—

   (a) the objector; and
   
   (b) the territorial authority that required the development contribution; and
   
   (c) the Secretary.

(2) Service of the decision must be given within 15 working days after—

   (a) the end of the hearing; or
   
   (b) if no hearing is held, the last day of the commissioners' consideration of the evidence.

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Schedule 13A - Part 2

Provisions supplementing section 199I

10 **Development contributions commissioners' powers**

(1) The commissioners conducting a hearing on an objection have the same powers that a District Court, in the exercise of its civil jurisdiction, has to conduct and maintain order.

(2) Sections 29 to 31 of the Inquiries Act 2013 apply to the hearing of an objection as if the hearing was an inquiry within the meaning of section 4 of that Act.

11 **Power to summon witness**

(1) A written summons may be issued requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the hearing.

(2) A summons may be issued by a development contributions commissioner on his or her own initiative or on application.

(3) The commissioner who issues the summons must be—

   (a) the chairperson; or
   
   (b) any commissioner authorised by the chairperson; or
   
   (c) if there is no chairperson, any commissioner participating in the hearing or consideration of the objection.

(4) A commissioner who may issue a summons may do any other act preliminary or incidental to the hearing or consideration of the objection.

12 **Service of summons**

(1) A summons to a witness may be served—

   (a) by delivering it to the person summoned; or
   
   (b) by posting it by registered letter addressed to the person summoned at that person's usual place of abode.

(2) The summons must,—
(a) if served under subclause (1)(a), be served at least 24 hours before the attendance of the witness is required:
(b) if served under subclause (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.

(3) If the summons is posted by registered letter, it must be treated for the purposes of subclause (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

12A Service of notices

(1) Where a notice or other document is to be served on a person for the purpose of section 199I or this schedule, it may be given—
   (a) by delivering it personally to the person; or
   (b) by delivering it at the usual or last known place of residence or business of that person, including by fax or by electronic mail; or
   (c) by sending it by prepaid post addressed to the person at the usual or last known place of residence or business of the person.

(2) Where a notice or document is to be served on a corporation for the purposes of section 199I or this schedule, service on an officer of the corporation, or on the registered office of the corporation, in accordance with subclause (1) is deemed to be service on the corporation.

(3) Where a notice or document is to be served on a partnership for the purposes of section 199I or this schedule, service on any one of the partners in accordance with subclause (1) or (2) is deemed to be service on the partnership.

(4) Where a notice or document is sent by post to a person in accordance with subclause (1)(c), the notice or document is deemed, in the absence of proof to the contrary, to have been given on the third day after the day on which it was posted.

13 Evidence

The development contributions commissioners may, for the purposes of a hearing,—
   (a) receive any evidence that, in their opinion, may assist them to deal effectively with the development contribution objection, whether or not the evidence would be admissible in a court of law; and
   (b) take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by any commissioner; and
   (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by oath or affirmation.

14 Other immunities and privileges of participants

(1) Witnesses and other persons participating in a hearing (other than counsel) have the same immunities and privileges as if they were appearing in civil proceedings and the provisions of subpart 8 of Part 2 of the Evidence Act 2006 apply to the inquiry, to the extent that they are relevant, as if—
   (a) the hearing were a civil proceeding; and
   (b) every reference to a Judge were a reference to a commissioner.

(2) Counsel appearing at a hearing have the same immunities and privileges as they would have if appearing before a court.
Appendix 2: Forms for decisions and notices
Possible form of commissioner decision

IN THE MATTER of the Local Government Act 2002

AND

IN THE MATTER of a development contribution objection under section 199C of the Act

BETWEEN [Name of objector]
Objector

AND [Territorial authority]
Respondent

A DECISION BY DEVELOPMENT CONTRIBUTIONS COMMISSIONERS

[Names of the commissioners – denoting the chair in parenthesis, e.g. “Name (Chair)”]

HELD at: [Location of hearing venue or where commissioners made the decision]

on: [Date of hearing (or consideration if the decision is made on papers)]

DECISION ON OBJECTION

Decision issued: [date of decision being released]

[Commissioners may provide a summary of the decision in this space, such as confirming whether an objection is upheld or dismissed in whole or in part, and whether a requirement for a development contribution has been quashed]
Introduction

[1] …

[Commissioners summarise the circumstances which led to the objection]

Preliminary Matters

[2] …

[This section is optional and need only be included if commissioners have to make decisions over such things as waivers of timeframes, admissibility of evidence, protection of sensitive evidence, or invitations for persons other than the objector and the territorial authority to speak at the hearing]

Issues in contention

[3] …

[Commissioners may set out the grounds on which the objection was made, claims made by the objector, and other matters such as differences in opinion or evidence between the objector and the respondent territorial authority]

Summary of evidence

[4] …

[Commissioners summarise the main points from evidence presented by the objector, the respondent territorial authority, and any expert witnesses that may have appeared on their behalf. If commissioners have invited or allowed other parties to speak at the hearing, then their comments, statements or views may appear here also].

[If matters of interpretation related to sections of the LGA02 arise, these may be discussed here also]

Relevant provisions of the development contributions policy

[5]…

[Commissioners summarise the relevant provisions of the territorial authority’s development contributions policy. Commissions may also express any observations on the policy at this point (as enabled by cl8(5) of Schedule 13A of the LGA02)]

Decision

[6] I [or we] determine that….

[Here follows the commissioners decision to:

- uphold all or part of the objection;
- dismiss all or part of the decision; or
- quash, or direct amendments to, the requirement for a development contribution]
Reasons for the decision

[7]...

[Commissioners set out the reasons for their decisions as succinctly as possible]

DATED this day of 20XX

[Signatures of development contributions commissioners]
Development Contributions Commissioners
LOCAL GOVERNMENT ACT 2002
NOTICE OF DEVELOPMENT CONTRIBUTION HEARING

Notice is hereby given of a hearing under clause 5 of Schedule 13A of the Local Government in the matter of a development contribution objection under section 199C of the Act:

BETWEEN [Name of objector]

Objector

AND [Territorial authority]

Respondent

COMMENCING: [Date, including day of the week]

TIME: [Time, including AM or PM as appropriate]

VENUE: [Street address, name of building and room as appropriate]

PROCEDURES

At the start of the hearing the development contributions commissioner(s) may consider:

(a) any request to withdraw the development contribution objection;
(b) requests to waive or extend time limits;
(c) requests that the hearing not be held in public;
(d) requests for an order for the non-communication of sensitive evidence.

The development contribution commissioner(s) will decide the process for the hearing, including the order in which parties will present their evidence.

_______________________ [signature and date]

Chairperson [or commissioner, if appropriate]
Possible form for witness summons

LOCAL GOVERNMENT ACT 2002

WITNESS SUMMONS

TO:  
[Name of witness]  
[Occupation]  
[Place of residence]

IN THE MATTER of an objection to a development contribution under section 199C of the Local Government Act 2002 between:

BETWEEN  
[Name of objector]  
(Objector)

AND  
[Territorial authority]  
(Respondent)

Notice is hereby given that you are summoned to attend the development contribution objection hearing at: [venue, date and time] and on each subsequent day until you are discharged from attendance, to give evidence on behalf of [objector or territorial authority] in relation to the objection.

[delete the following paragraph if not required]

You are ordered to bring with you and produce at the same time and place [details of documents and things to be produced]

_______________________ [signature and date]

Chairperson [or commissioner, if appropriate]
Appendix 3: Environment Court Practice Note
Excerpt

Expert Witness Code of Conduct
**Expert witnesses - code of conduct**

5.1  **Expert witnesses to comply with code of conduct**

5.1.1 A party to proceedings who engages an expert witness must either give the expert witness a copy of this code of conduct, or be satisfied that the expert witness has seen the code of conduct and is familiar it.

5.1.2 An expert witness must comply with the code of conduct in preparing any affidavit for filing with the Court, or in the preparation of a proposed brief of evidence, or in giving any oral evidence in any proceeding in the Court.

5.1.3 The evidence of any expert witness who has not read, or does not agree to comply with, the code of conduct may only be adduced with leave of the Court.

5.2  **Duty to the Court**

5.2.1 An expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.

5.2.2 An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.

5.3  **Evidence of an expert witness**

5.3.1 In any evidence given by an expert witness, that person must, in the body of the witness's statement or affidavit (if the evidence is in writing) or orally (if the evidence is being given orally) -

(a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it;

(b) state the witness's qualifications as an expert;

(c) describe the ambit of the evidence given and state either that the evidence is within the expert's area of expertise, or that the witness is relying on some other (identified) evidence;

(d) identify the data, information, facts, and assumptions considered in forming the witness's opinions;

(e) state the reasons for the opinions expressed;
(f) state that the expert witness has not omitted to consider material facts known to the
witness that might alter or detract from the opinions expressed;

(g) specify any literature or other material used or relied upon in support of the opinions
expressed;

(h) describe any examinations, tests, or other investigations on which the expert
witness has relied, and identify, and give details of, the qualifications of any person
who carried them out; and

(i) if quoting from statutory instruments (including policy statements and plans), do so
sparingly. A schedule of relevant quotations may be attached to the statement of
evidence, or a folder produced containing relevant excerpts may be produced.

5.3.2 If an expert witness believes that his or her evidence, or any part of it, may be
incomplete or inaccurate without some qualification, that qualification must be stated in the
evidence.

5.3.3 If an expert witness believes that his or her opinions are not firm or concluded because
of insufficient research or data, or for any other reason, that must be stated in the evidence.

5.3.4 If after the exchange of a brief of evidence has occurred, an expert witness changes
any of his or her opinions, that must be communicated without delay to the party or parties
wishing to call the witness.
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