Local Government Act 2002 Amendment Act 2014
Changes to development contributions provisions

Questions and answers
July 2014

Q: What are development contributions?
A: Development contributions are a charge imposed on a developer by a council to recover some of the capital costs incurred by the council when providing infrastructure services for the development. Development contributions can also include a transfer of land (for example for reserves).

Q: What changes does the Act make to development contributions provisions?
A: Changes to development contributions fall into six categories:

1. **new purpose and principles provisions** in legislation that provide direction to councils about what development contributions can be used for and how they should be applied;

2. **focusing development contributions on the infrastructure required by development**, so developers are not charged development contributions for infrastructure that is not needed to service their development, or for community infrastructure projects that benefit everyone in a community;

3. **a development contributions objection process** to allow developers who believe they are being charged incorrectly to challenge the charge and have the outcome of that challenge determined by an independent commissioner;

4. **more detailed information about what a council is using development contributions for** to enable developers and the community to see what development contributions are paying for and how the costs of infrastructure projects are being apportioned between developers and the community;

5. **recognition and encouragement of development agreements**, where councils and developers enter into agreements that allow the developer to provide more of the infrastructure needed to service their development in return for lower development contribution charges; and

6. **technical changes** to address some interpretation and administration challenges.
Q: What problems are the changes in the Act intended to address?

A: Early in 2013, the Department of Internal Affairs undertook a review of development contributions. The review found four main problems with the way development contributions were being used:

1. development contributions being used to pay for infrastructure that is not directly associated with servicing a development, such as community facilities (art galleries, cemeteries, and aquatic centres, for example);

2. variability in how councils apportion the costs and benefits of infrastructure between developers and the community;

3. less than optimal transparency and accountability, particularly around the ability of developers to challenge development contribution charges; and

4. variable local authority capability and capacity to develop and administer development contributions policies.

The review also found more creative and cost-effective ways of providing infrastructure for new development could be used if councils and developers entered into development agreements.

Q: Why did the government undertake a review of development contributions?

A: Development contributions were introduced in 2002 and had not been reviewed since. A review was overdue. The Government was aware of a range of issues associated with the use of development contributions, including concerns about inconsistent application, concerns over fairness, and concerns about the possible impact they have on housing affordability.

Q: How do the changes in the Act assist housing affordability?

A: Charges imposed on a development are often passed on to the eventual buyers of new houses. The changes to development contributions provided for in the Act will help reduce the costs to developers by:

- ensuring that developers are not charged for projects that don’t relate directly to their development;

- improving transparency and accountability of development contributions so developers and the community can challenge incorrect or inappropriate development contribution charges; and

- encouraging councils and developers to explore alternative ways to finance infrastructure for a development. Where a developer can provide the required standard of infrastructure at a cheaper price than the council, the savings can be passed onto new house buyers.
Q: What changes in the 2014 Act better focus development contributions?

A: The broad definition of “community infrastructure” that allowed a local authority to charge development contributions for any land or asset owned or controlled by the authority for public amenity purposes has been replaced by short list of items. These are community centres/halls, public toilets, and play equipment. In addition, a prohibition has been placed on charging development contributions for reserves where a particular development does not involve the creation of additional housing or accommodation.

Councils will still be able to collect development contributions for network infrastructure: roading, water, wastewater, and stormwater systems.

Q: Why have these changes been made?

A: The purpose of the changed definition of community infrastructure is to make development contributions fairer and ensure that they do not unnecessarily contribute to rising house prices. It focuses on the provision of infrastructure at the suburban level that would be used by residents in new developments, rather than projects (such as sports stadiums and aquatic centres) which are for the benefit of, and accessed by, residents from throughout a district.

This change in approach is based on the philosophy it is appropriate for developers pay for, or provide, the infrastructure that is required by and directly benefits their development but is not of benefit to the wider community. The wider community should pay for infrastructure that is for the benefit or use of the wider community.

Changes made in respect to reserves are based on the basis that in commercial or industrial developments either:

- there is either a lower requirement for active recreational space; or
- users of the reserve in that area tend to be drawn from the wider community, such that the reserve is for the benefit of the wider community and its costs should paid for from a general revenue source that reflects that.

Where reserves are primarily for the purpose of avoiding, remedying or mitigating environmental effects, then it is appropriate for these to be provided as a condition of a resource consent or a plan change under the Resource Management Act 1991.

Q: Are councils still able to collect development contributions for community infrastructure that has already been built or is currently under construction?

A: Yes, there are provisions in the Act that enable councils to continue to require and collect development contributions for community infrastructure that is not covered by the new definition, until the debt for this infrastructure has been repaid.

To provide transparency about these matters, the Act requires councils to identify this infrastructure in a schedule to their development contributions policies. They will also need to state the outstanding value of the capital expenditure on each infrastructure asset that is still to be recovered, and the time period in which this money is expected to be paid off.

Q: When calculating development contribution charges, are councils able to group developments?

A: Yes, one of the development contributions principles in the Act clarifies that, when calculating and requiring contributions, councils can group specific developments together by
geographic area or category of land use. This is to be done in a manner that balances administrative efficiency with considerations of fairness and equity.

Q: The Act provides for an objection process. What are the main features of this process?

A: People with concerns about the development contributions they are being charged have two new avenues through which they can seek to have their concerns addressed:

1. a reconsideration process whereby the person can formally request a local authority to reassess a development contribution because the person believes an error has been made or information that needed to be considered was incomplete; and

2. a development contribution objection process whereby a person, regardless of whether or not they had sought a reconsideration, can formally object to a development contribution charge and have their objection considered by a commissioner selected from a register of independent commissioners appointed by the Minister of Local Government. The commissioners will have the power to make binding recommendations that the development contribution be quashed or amended, or may dismiss the objection.

Q: Are councils required to enter into development agreements with private developers?

A: The Act requires councils to consider requests from developers who are interested in providing infrastructure associated with their development, and includes provisions for contractual arrangements between these parties. It does not oblige councils to enter into agreements.

In some instances councils and developers may want to enter into agreements or contracts that have some features similar to a development agreement, but is not strictly a development agreement. The Act clarifies that this is still possible by making is clear that the general enabling powers in section 12 are not affected by the development agreement provisions.

Q: When do the changes affecting development contributions happen?

A: The changes relating to development contributions come into effect at different times. This means that:

- from the day after enactment, councils cannot collect development contributions for new community infrastructure that is inconsistent with the new definition, or for reserves that are in non-residential developments;
- from the day after enactment, the development contributions objections process is available;
- requirements for development contributions policies to incorporate a schedule of assets commence one month after enactment;
- by 1 December 2014, councils will need to have finalised the proposed changes to their development contributions policies, as a basis for consultation; and
- provisions for new principles come into force on enactment but amendments to development contributions policies to reflect those principles must have been made by 30 June 2015.