

Round two local government reform done

The passage of the Local Government Amendment Act (No 3) in the last week before the House rose for the elections completes the eight point reform programme announced by National in 2012.

We outline the changes with particular focus on the new development contributions regime.

Broad reform directions

The reforms have:

- redefined the purpose of local government away from the three well-beings (social, economic and cultural) to delivering *good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses*
- reduced the impediments to inter-council amalgamation
- expanded the Auckland local board and mayoral model to the rest of the country
- provided for increased fiscal responsibility
- strengthened central government's ability to intervene when there is a significant problem with local governance
- required councils to prepare infrastructure strategies to manage infrastructure assets (such as water supply and sewerage) into the future, including identifying significant decisions on capital expenditure, and

- streamlined consultation requirements to limit the use of the 'clunky' special consultative procedure.

With the help of the reform, we anticipate more local government amalgamations similar to Auckland's super city 'unitary authority' model being rolled out across the country. From our experience in Auckland, such amalgamations are likely to have a wide range of potential impacts on business, particularly during the transitional phase. Watch this space for more information post-election when the pathway for further amalgamations is likely to be clearer.

Development contributions

The initial development contributions discussion paper proposed a range of reform options from minor tinkering to radical legislative change (see Chapman Tripp's commentary¹). However, despite the scope of the reforms available to it, the Government has made relatively minor amendments to the regime.

Development contributions now have a purpose and principles that must be taken into account. They are to be used 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.

Right to a reconsideration

Property developers can now apply to have a council's decisions on development contributions reconsidered through a specialised challenge process. The grounds for reconsideration are:

- incorrect calculation or assessment under a development contribution policy
- incorrect application of a development contribution policy, and
- incomplete or wrong information used by the territorial authority.

Applications will be heard by Development Contributions Commissioners². The process for reconsiderations, including evidence exchange and hearings is set out in a new schedule to the Act.

This reform will be good news for property developers, given the previous uncertainty and broad discretions involved in applying development contributions policies. Having a decision maker at arms-length from the benefiting party (councils) should also lead to more transparent, fair and efficient resolution of development contribution disputes.

Development agreements

Development agreements between councils and developers are now explicitly recognised in the Act. These must include details of the infrastructure that each party will provide or pay for.

Helpfully, the Act now includes a list of non-mandatory requirements that should trigger developers and council to consider matters such as staging, operation and maintenance, vesting and transfers, timing of payments and enforcement of the agreement.

Footnotes

1. <http://www.chapmantripp.com/Search/Results.aspx?k=development%20contributions&s=All>
2. <http://www.beehive.govt.nz/release/development-contributions-commissioners-appointed>



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Our thanks to Jill Gregory for writing this Brief Counsel.

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Every effort has been made to ensure accuracy in this newsletter. However, the items are necessarily generalised and readers are urged to seek specific advice on particular matters and not rely solely on this text.

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