BUDDLEFINDLAY

Legal update - Development contributions update

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The Local Government Act 2002 Amendment Bill (No 3) 2013 (Bill), which is likely to be passed later this year, proposes several changes to development contributions provisions in the Local Government Act 2002 (Act). The Department of Internal Affairs' website states that these changes are intended to make contributions "fairer, better focused, more transparent and more workable".

This update outlines:

- The current legal framework for development contributions
- The proposed changes
- Potential implications for territorial authorities.

What are development contributions?

Development contributions are the fees charged by a territorial authority for capital expenditure incurred, or to be incurred, to provide appropriately for community facilities (such as stormwater, roads, reserves and public amenities) needed as a result of new development. Development contributions may also be a contribution of land.

When are they payable?

- The development contributions that are payable must be specified in the development contributions policy of a territorial authority
- Development contributions policies usually require developers to pay development contributions for new developments such as houses and apartments, non-residential developments, subdivisions, and for some changes of land use
- Subject to some specific exemptions set out in section 200 of the Act, development contributions may be required when a resource consent or building consent is granted, or an authorisation for service connection is granted for those developments.

How are they calculated?

- Development contributions are calculated in accordance with the development contributions policy of a territorial authority
- Some territorial authorities have on-line tools which give developers an indication of the charges that may apply.

What are the proposed changes?

The Bill proposes several changes to the development contributions provisions in the Act. The changes are intended to make contributions "fairer, better focused, more transparent and more workable". This will be achieved by:

- A new purpose for development contributions, and principles to direct and guide their use
- Clarifying and narrowing the range of infrastructure that can be financed by development contributions
- Improving the transparency of development contributions policies
- Encouraging greater private provision of infrastructure through the use of development agreements
- Introducing a development contributions objection process, with decisions made by independent commissioners
- Clarifying legislative provisions to make them more workable and easier to understand.

The proposed changes are explained in more detail below:

New purpose and principles

The Bill proposes to insert a section providing that the purpose of development contributions is to enable territorial

authorities to recover from developers a fair, equitable and proportionate share of the costs of capital expenditure necessary to service growth. The Bill also requires all persons exercising development contribution duties and functions to take into account development contributions principles, which include:

- Development contributions should only be charged if developments create, or cumulatively have created, a requirement for the territorial authority to provide new or additional assets of increased capacity
- Development contributions should be determined in a manner that is 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
- Territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used
- 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 fairness and equity.

Narrower definition of community infrastructure

The proposed new definition of community infrastructure covers community centres, halls, play equipment and public toilets, compared to the current definition with includes all council owned or controlled public amenities. Territorial authorities can only charge development contributions for this narrower class of assets. For example, territorial authorities may not be able to charge development contributions for swimming pools, libraries and cemeteries.

Restriction on reserves contribution

A territorial authority may no longer require development contributions for the provision of any reserve if the development is non-residential.

Objections process

The Bill introduces a two-stage objections process. First, the Bill provides a right to reconsideration of a development contribution by the territorial authority if the developer considers that the contribution was incorrectly calculated or the development contributions policy was incorrectly applied. The reconsideration process must be stipulated in the development contributions policy. Territorial authorities must give their decision within 15 working days of receiving all relevant information relating to a request for reconsideration. Secondly, developers may object to the assessed amount of the contribution on the grounds that the territorial authority:

- Failed to properly take into account features of the development that would substantially reduce the impact of the development on requirements for community facilities; or
- Required a development contribution for community facilities not related to the development; or
- Incorrectly applied its development contribution policy to the development.

Objections are heard by independent commissioners.

Greater transparency

Development contributions policies must include a schedule showing which asset or programme of works will be funded from development contributions.

Development agreements

The Bill encourages development agreements, which are voluntary contracts between developers and territorial authorities, with the developer providing infrastructure (and/or money) instead of paying development contributions under the territorial authority's development contributions policy. Territorial authorities must consider, but are not bound to accept proposals for such agreements, and must give their response to a proposal, with reasons, without unnecessary delay.

Timeframes

Enactment of the proposed changes seems highly likely, given that the Bill has received its second reading and Labour has indicated support. Territorial authorities should therefore prepare themselves for the changes becoming law. However, due to a busy legislative agenda, the Bill will not be passed by Parliament before the general election on 20 September 2014. The legislative agenda will be determined once Parliament reconvenes after the election. Until the Bill is passed the existing provisions of the Local Government Act 2002 and other Acts amended by the Bill continue to apply.

Next steps

- Territorial authorities should be prepared to revise (and consult on) their development contributions policy and ask the

following questions:

- Is the policy charging in line with the new purpose and principles?
- Are non-residential developments being charged for reserves?
- Does the policy reflect the new objections process?
- Are development agreements facilitated?
- Does the policy charge development contributions for facilities that no longer fall within the narrower definition of community infrastructure?
- Does the policy provide a schedule showing assets or a programme of works to be funded by development contributions?

- Territorial authorities should also prepare themselves for potential loss of revenue stream (eg from the narrower definition of community infrastructure) and consider other revenue options
- Territorial authorities should align changes to the development contributions policies with revenue and financing policies.

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