NEW ZEALAND LAW SOCIETY

NZLS EST 1869

LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO 3)

14/02/2014

SUBMISSION ON THE LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL (NO 3)

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Local Government Act 2002 Amendment Bill (No 3) (the Bill).

2. The purpose of the Bill is to implement the Government's decisions "regarding a second phase of legislative reform to improve the operation of local government" (Explanatory Note, 1). The Law Society's submission focuses on technical aspects of the provisions relating to development contributions and consultation requirements.

Development contributions: clause 53

3. The Bill makes major changes to the manner in which development contributions are used and administered. The vagueness of the existing law has been found to be problematic. The extensive Regulatory Impact Statement on these changes analyses in detail the options considered and the reasons for the preferred option. These changes are significant and they could involve significant sums of money. It is important that administrative law fairness resides in the provisions relating to local body decisions on contributions. They are in the nature of a tax to fund new infrastructure. The new provisions aim to provide clarity of objective and improved transparency and cost apportionment.

4. Developers are given a right to object and the Law Society supports the creation of such a right in these matters. A new species of public official named Development Contributions Commissioners are entrusted with appeals. The Commissioners are appointed by the Minister as "suitable persons" who have "knowledge and experience in adjudication and mediation, including the conduct of hearings or inquiries" and "knowledge, skills and experience relevant to the subject matter likely to arise in an objection" and "knowledge of tikanga Maori" (clause 53: new section 199F).

5. These new Commissioners are required to act, so it seems to the Law Society, in an adjudicative capacity. An important point of principle arises in relation to these new decisions makers. Their creation resembles the creation of a new tribunal. New Zealand already has many tribunals. The long and unsatisfactory nature of the efforts to reform tribunals in New Zealand is set out in the Law Commission's 2008 Study Paper on Tribunal Reform. NZLC Study Paper 20 contains an analysis of what is wrong and found that reform is overdue. In the Law Society's view, it may be preferable to use an existing tribunal or court rather than create a new one. The Environment Court was

considered but rejected, as is made clear in the papers accompanying the Bill. The decisions made in this jurisdiction will have economic significance and it is desirable that a system of jurisprudence be built up over time to make matters more predictable.

6. The reasons why Development Contribution Commissioners were preferred to the Environment Court are set out in the *Regulatory Impact Statement – Better Local Government: Improving Development Contributions* (at p25). There it is suggested that "should more than five appeals make it to hearing each year the costs for all parties would be likely to exceed $1 million". No background as to how that figure was arrived at is provided. It is likely the figure was based on contested Resource Management Act cases, rather than this new, much more limited jurisdiction: see new clause 199D and the proposed new Schedule 13A (clause 53 and Schedule 7). Nor is it clear why Commissioners will cost less than the Environment Court. Decisions by an Environment Court Judge will build up a body of precedent that should make the outcome of cases more predictable than decisions of Commissioners, thus reducing the scope for contested cases. The Law Society submits this aspect of the policy should be reconsidered.

Principles of consultation: clause 21

7. The Law Society queries clause 21. Clause 21 replaces one of the principles of consultation, section 82(1)(f), which reads

> *"… that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions."*

with

> *"… that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority."*

8. The Explanatory Note explains that the amendment "… is to clarify that there should be access to a record or description of decisions made for those who present views but individualised or tailored packages of information to those particular persons is not required."

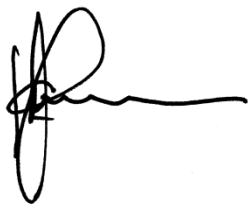
9. In so doing the clause dispenses with the principle – reflected in section 23 of the Official Information Act 1982[1] in the case of affected people – that reasons for a decision should be accessible. The Law Society recommends an amendment to clause 21 that would satisfy the stated

[1] The equivalent provision in the Local Government Official Information and Meetings Act 1987 is s 22.

concern (removing an obligation to provide individual packages of information) while preserving the principle that reasons be given and be accessible:

> *"… that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority, including the reasons for those decisions."*

10. The Law Society does not wish to be heard.



Chris Moore
President
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