



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Local Government and Environment Committee

on the

**Local Government Act 2002
Amendment Bill (No 3)**

P O Box 6645

Wellington

February 2014

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Summary of recommendations

- The key principles that should underpin local Government are: democratic participation, effective structures and practices which are fit for purpose (local governance for local issues, regional governance for regional issues), a strategic focus, public ownership management and control of public assets and services, and best practice in employment of local and regional government workers.
- The CTU supports changes that build strong local government because of the critical role of local government in ensuring a democratic society. We oppose any reduction in the level and extent of democracy in local government processes and have concerns regarding inappropriate and unwarranted central government intervention into local government.
- There is a clear need for a better working relationship between central and local government– the “two spheres” of government. We support the proposal that central and local government should join forces to prepare and agree on a protocol or protocols to work together collaboratively.
- We oppose moves to reduce development contributions to give developers more free rein in housing and business developments without having to pay for the cost for the infrastructure that inevitably goes with such developments. These provisions pose serious risk to council and also to residents - especially in low income areas and communities.
- The CTU opposes the replacement of the definition of community infrastructure with a definition of a list of assets which excludes public amenities previously listed including libraries, swimming pools and recreational facilities.
- The wording in new Section 197AB (a) “cumulatively have created” should be amended to read *if developments **create or cumulatively create*** “ to ensure that there is consideration and investigation of infrastructure costs in advance of development. The final wording should ensure that previous, current and future developments are taken into account.

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- The CTU opposes increasing the role of the private sector in local government which also risks adverse outcomes due to actions by private developers. New Zealand has an appalling record in relation to privatisation experiences in the public sector.
- The provisions in the Bill including a new category of commissioners to consider objections in relation to development contributions are complicated, litigious and introduce a new layer of complex bureaucracy.
- The CTU opposes the amendment to remove the special consultative procedures when consulting on the creation of a council controlled organisation.
- There are concerns about the time frame of the amendments and the cost implications of them. We urge that changes be delayed until the costs are investigated and known.

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1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. Local government has a direct impact on people's daily lives and in the communities, in which workers and their families /whanau live, work and socialise. Local government plays essential functions in ensuring democracy in the immediacy of people's lives and in their region, city, district or community. Cheyne describes the role of strong local government as, "*....enhancing democracy at all levels.... and often as the catalyst for local action to address social, economic and environmental challenges*".¹
- 1.4. Unions have significant membership in the local government sector. The Public Service Association (PSA) represents over 6,000 members working in local government. Other unions with membership in local government are the Southern Local Government Officers Union (SLGOU) and the Amalgamated Workers Union. The Engineering, Printing and Manufacturing Union, FIRST Union and the New Zealand Educational Institute also have some union membership in local Government.
- 1.5. There have been many changes in local government in the last 6 years ranging from legislative changes, reorganisations and restructurings in councils along with the focus on amalgamations and some collaboration in shared service arrangements.
- 1.6. Unions, union members and council workers are not averse to change. Local council workers aspire to work in local government services that deliver high quality, value-

¹ <http://www.stuff.co.nz/dominion-post/comment/6616715/Reforming-local-government-a-delicate-affair>

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for-money services to ratepayers and citizens and to work in high-quality jobs within high-performing workplaces. They expect that local government services and structures will be in place that work well for them as employees and that function well in the communities in which they live.

- 1.7. The amendments to the Local Government Act 2002 in 2012 made significant changes to the purpose of the Act. The CTU, along with many other submitters opposed removing local government's role in the social, cultural, economic and environmental wellbeing of communities and the shift of emphasis towards financial prudence and cost effectiveness in local government.
- 1.8. This Bill - the final part of the Better Local Government Reform - package follows the same pathway. Its aim is stated as contributing to *“more competitive and productive economy, improving the delivery of public services and improving housing affordability, by supporting councils to operate more effectively and efficiently”*.² The explanatory note to the Bill emphasises this, stating that for Councils to play their part in creating an environment conducive to sustained economic growth, *“they need effective processes and governance arrangements, fair and efficient decision making and charging practices and sound asset management planning”*.
- 1.9. Evidence for many of the amendments is either not provided or not compelling. For example, the three Regulatory Impact Statements³ acknowledge that changes to development contributions are unlikely to significantly improve housing accountability.
- 1.10. There are also concerns about the time frame for implementation of the amendments and their cost implications. We support calls for changes to be

² Local Government Act Amendment Bill P (No 3) Page 1

³ Regulatory Impact Statement – Development Contributions Review

³ Regulatory Impact Statement - Agency Discloser Statement for Better Local Government, Improving Infrastructure Delivery and Asset Management

³ Regulatory Impact Statement – Opportunities to improve efficiency

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delayed until these are investigated and for implementation to be spread over a longer time period to allow councils to prepare for the changes.

- 1.11. Efficiency and sound governance and management are principles the CTU supports, but they are not enough on their own for the delivery of good local government. Key principles that should underpin local Government are: democratic participation, effective structures and practices which are fit for purpose (including the principle of local governance for local issues, regional governance for regional issues), a strategic focus, public ownership, management and control of public assets and services, and best practice in employment of local and regional government workers.

2. Local Government Reform

- 2.1. The CTU opposed the 2012 changes to the Local Government Act 2002 removing the four well-beings and expressed its concerns that the amendments would alter the relative power balance between central and local government in favour of central government, reduce the participation of electors in decision making about their own communities and strip back council services and functions.⁴
- 2.2. The 2012 changes were based on the Better Local Government (BLG) reform programme which called for tighter financial management in local government. But the picture painted in the background BLG papers of local government being in crisis was incorrect and misleading and some of the evidence was later withdrawn as it contained inaccuracies.
- 2.3. This current Bill continues in the same direction of the 2012 changes with the same view: that there is a need for more amalgamation of local government and greater control of local government by central government.
- 2.4. We reject that view and direction. This undermines the objects and purpose of the Local Government Act, 2002. We share the concerns expressed by the PSA in their submission on this Bill that central government is using its legislative powers to limit

⁴ NZCTU Submission, Local-Govt-Act-Amendment-Bill-2012

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the scope of local government and amend its role to being an agent of central government.

- 2.5. Local government has a different sphere of government from central government. This Bill diminishes and devalues the different and important role of local government. Its provisions will bring to the surface the tensions that exist between local and central government. Significant recent reports have already identified this tension: the Productivity Commission Report on Local Government⁵, submissions to the Constitutional Review Panel⁶ and a recent Transparency International report.⁷
- 2.6. The argument that central government should have greater control over local government is ideologically driven – it is not based on evidence that local government is not performing. The recent Transparency International paper concludes that New Zealand local government is “*abundantly fit for purpose*”.⁸
- 2.7. There is an acknowledged need for a better working relationship between central and local government– the “two spheres” of government. We support the suggestion identified in the Transparency International paper that central and local government should join forces to prepare, and agree on, a protocol or protocols for working together collaboratively.⁹
- 2.8. This Bill increases the role and influence of the private sector in local government. There is now a wealth of experience nationally and internationally, some of which is cited by the PSA that calls for much greater caution in moving in this direction.

3. Local Government Act 2002 Amendment Bill (No 3)

- 3.1. The CTU endorses the submission of the PSA. This CTU submission comments on only some of the components of this Bill namely:

⁵ <http://productivity.govt.nz/inquiry-report/towards-better-local-regulation-final-report>

⁶ http://www.ourconstitution.org.nz/store/doc/FR_Other_Issues.pdf

⁷ <http://www.transparency.org.nz/docs/2013/Integrity-Plus-2013-New-Zealand-National-Integrity-System-Assessment.pdf>

⁸ Ibid page 5

⁹ Ibid

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- Narrowing the range of infrastructure that can be financed by development contributions¹⁰ and creating an objection process
- Providing for development agreements
- Removing requirements for the use of “special consultative procedures” and establishing new significance and engagement policies
- A new infrastructure strategy in long term plans.

4. Development contributions

- 4.1. The changes to development contributions proposed in the Bill result from a 2013 review which as part of the BLG reform programme. The Bill provides for changes to the purpose of development contributions, and clarification and narrowing of what can be financed by them. It introduces a development contribution objection process with decisions and appeals by independent commissioners.
- 4.2. There are risks that these changes taken together could significantly reduce the level of development contributions and shift the burden more to communities and rate-payers. The Committee needs to consider detailed analysis and projections on this aspect.
- 4.3. New provisions in the Bill (197AA and 197AB) change the definition of the purpose of “development contributions” to enable territorial authorities to recover from developers a fair, equitable and portion of the costs of capital expenditure necessary to service growth and introduces the principle, to only charge if the developments create, or have cumulatively created, a requirement for the territorial authority to provide new or additional assets or assets of increased capacity.
- 4.4. The fundamental issue and risk here is that the reduction in costs to developers from changes to development contribution provisions will be borne by

¹⁰ 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).

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communities and ratepayers. This will occur through changes to the wording, the exclusion of some infrastructure cost from development contribution levies and the establishment of development agreements as a means to resolve disputes over development contributions.

- 4.5. These changes will inhibit councils from looking forward to future needs and the sensible spreading of those costs and result in a build-up of unmet infrastructure needs, create inconsistent treatment of developments and very uneven charges over time depending on the “cumulative” state of facilities when a development occurs. They may leave communities without community facilities long after they are needed which would damage community coherence and amplify social problems particularly in areas with few other resources.
- 4.6. To recognise the need for planning in advance of development the CTU recommends changing section 197AB(a) to be amended to read “ *development contributions can be required if developments **create or cumulatively create**, a requirement for the territorial authority to provide new or additional assets or assets of increased capacity.* The intention is to ensure that the wording ensures that previous, current and future developments are taken into account.
- 4.7. The Bill (Cl. 49(2)) also proposes replacing the definition of “community infrastructure” with a very narrow definition which excludes a wide range of public amenities previously included such as libraries, swimming pools and many other recreational facilities. Their exclusion will reduce private developers’ costs at the expense of residents and communities’ wellbeing.
- 4.8. Community infrastructure is important in all communities but it is particularly important in new housing developments and even more important when developments are geared towards the lower-income population. The provision of libraries, swimming pools and other cultural and recreation facilities has critical links to the social, educational and cultural needs of children and families as well as wider community welfare. The presence and availability of community facilities

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must be an integral consideration in new developments because of the value and benefits they provide.

- 4.9. The change in the core services list to be considered by a local authority in performing its role as a consequence of the amended definition of “community structure” has important flow-on effects. This change would remove community infrastructure from the list of core services. Pools, libraries and museums are all part of a community infrastructure and therefore cannot be exempt from removed from developer responsibility and accountability.
- 4.10. These concerns are backed by a study quantifying the benefits from public libraries in Queensland which looked at how libraries contribute to community welfare and found that the benefits exceed their provisioning costs by a factor of 2.4: that public libraries contribute to the Queensland Gross State Product and support significant employment.¹¹
- 4.11. We strongly oppose this change which favours developers at the expense of communities, which may end up paying for the facilities through rates or user charges. Adequate infrastructure must be provided for in new developments and costs should be borne by developers not ratepayers.
- 4.12. The CTU affirms the points made in the PSA submission on the Bill that there is minimal evidence to show that the benefits from changes to development contributions would exceed the costs and that there are significant risks for councils and communities in changing the process to development contributions.
- 4.13. The Bill also inserts new provisions which allow developers to require a review of development contributions for specific applications.
- 4.14. We are not opposed to the right of objection and need to ensure fair process and natural justice but are concerned that it gives developers further influence in what

¹¹ SGS Economics and Planning Pty. Ltd. (2013) *‘Understanding the Value of Community Facilities’* page 9, Southeast Queensland Insights May 2013 edition , SGS Economics and Planning, Australia

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should be community decisions. We would strongly object to any right of developers to require a review of the content of a development contribution plan.

- 4.15. The provisions in this Bill including the new category of independent commissioners are litigious and introduce a new layer of complex bureaucracy. Their complexity may well favour developers. The structure seems disproportionate. We understand that Local Government New Zealand is of the view that judicial reviews remain available for dissatisfied parties for significant development contribution-related disputes.

5. Development agreements

- 5.1. Section 207A of the Bill enables a territorial authority to enter into development agreements with developers. The CTU opposes increasing the role of the private sector in local government. New Zealand's record in relation to privatisation experiences in the public sector is appalling.
- 5.2. There is already provision for council to enter into development agreements so this is both unnecessary. It is also like that this will increase pressure on councils to enter such agreements if there are more enabling provisions in the Act.
- 5.3. The CTU shares the concerns regarding the statement that *"developers would not need to match the standard of infrastructure that would have been provided by the territorial authority as stated in the Development Contributions Discussion paper.* It is very extremely concerning that there is an acceptance of building infrastructure of an inferior quality.
- 5.4. The Society of Local Government Managers and numerous local councils have raised concerns regarding the provision of privately-provided infrastructure. The PSA states in their submission the risks including being below council standards, not acceptable to community standards, lack of maintenance, difficulties in maintenance when responsibility is split between parties, different standards across communities, altered economies of scale by the provisions of privately

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provided infrastructure and an inability for private provider to meet acceptable council standards.

- 5.5. We agree with the analysis by Peter Harris in, *Better Local Government? An analysis of the government's proposals for local body reform*¹², 'that "*privatising the operation of local services, or building infrastructure using private/public partnerships simply shift where fall costs: they seldom reduce the costs of maintaining a robust asset base*".
- 5.6. The CTU opposes the addition of provisions relating to development agreements into the Local Government Act 2002 on the basis of them being unnecessary and likely to lower the quality of the infrastructure and its maintenance.

6. Changes to consultative procedures

- 6.1. The explanatory note to the Bill implies that current consultation, decision-making and planning processes are limiting councils' abilities to achieve desired results and prevent little scope for flexibility or innovation. It states that "*the length, presentation and technical complexity of council long term planning documents are viewed as hindering effective public consultation on important matters*". The Bill introduces a new consultation document for long term plans and annual plans to reduce duplication.
- 6.2. Changes to consultative procedures strike at the heart of what local government is about and also local democracy. Sen¹³, articulates this saying,
- "democracy has an important instrumental value in enhancing the hearing that people get in expressing and supporting their claims to political attention", and that "the practice of democracy gives citizens an opportunity to learn from one another, and helps society to form its values and priorities"*
- 6.3. Democracy may be time consuming but it is the way that individual and communities participate in society. The ability for genuine community participation

¹² P. Harris (2012) '*Better Local Government? An analysis of the government's proposals for local body reform*' A Report commissioned by the PSA page 15

¹³ Sen, A. K. (1999) Democracy as a universal value. *Journal of Democracy*, 10(3), 3-17.

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is a fundamental principle of the Local Government Act 2002 and the purpose of having “special consultative procedures”.

- 6.4. We believe that consultation requirements should not be lessened and that the implications of this proposal have to be considered for ensuring the expression of local democracy.
- 6.5. Councils and territorial authorities must be bound by the principle of democratic decision –and by the purpose of the Local Government Act in Section 10 (1) (a) “*to enable democratic local decision-making and action by, and on behalf of, communities*”.
- 6.6. New Clause 16 amends Section 56 and the new sub clause no longer requires the use of the Special Consultative Procedures in the creation of a council controlled organisation (CCOs). The CTU opposes this amendment given the importance, the controversial nature and the significant impacts from a council decision to establish a CCO. We support the provisions for new and more modern ways of consulting with communities and enhancing the ability of public participation in public participation.

7. Infrastructure strategy in Long Term plans

- 7.1. The CTU supports the concept of a long range infrastructure strategy but there is a lot of work needed to be done to support good planning over such a long time frame. Several reports point to the shortage of investment in large scale infrastructure: State of Environment Report 1997, Office of the Parliamentary Commissioner for the Environment 1997-2000 ¹⁴and ‘Future Face of Urban Water Services in New Zealand; A Discussion Document by Water New Zealand circa 2011.¹⁵ Preparing an infrastructure strategy could be massive job for Councils and requires more time. There are also legitimate concerns about the financial implications of this.

¹⁴ http://www.pce.parliament.nz/assets/Uploads/Reports/pdf/under_seige_small.pdf

¹⁵ http://www.waternz.org.nz/documents/comment_and_submissions/future_face_of_urban_water_services.pdf

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8. Conclusion

- 8.1. The amendments in this Bill risk undermining the fundamental purpose of the Local Government Act 2002 including to provide for democratic and effective local government, to promote the accountability of local authorities to their communities and to provide for good quality infrastructure and local public services for the current and future needs of communities.

- 8.2. There is strong evidence that local government is performing well in New Zealand. Nevertheless there are significant challenges. The imposition of further changes in local government which are not based on strong evidence and analysis are intended to be implemented quickly and have costs for councils and communities are of major concern. The CTU urges the Select Committee to carefully consider the evidence and submissions on these points and ensure the integrity of the Local Government Act 2002.