

DEVELOPMENT CONTRIBUTIONS AND PUBLIC- PRIVATE PARTNERSHIP OPPORTUNITIES FOR STORMWATER IN THE AUCKLAND REGION

Yasenko Krpo, Auckland Council

ABSTRACT

The paper explores the implementation of stormwater infrastructure through public - private partnerships, and alignment with the recent changes to the Local Government Act.

In August 2014, the Local Government Act Amendment No 3 was adopted and many of the changes have affected Development Contributions (DC). This prompted a review of council's DC policy with the aim to:

- Address the framework relating to the objection processes
- Extend planning for infrastructure implementation beyond the ten year horizon of the Long Term Plan
- Enhance programming and budgeting strategy for projects funded through DC's
- Target implementation of capital works with an increased emphasis on public-private partnerships as a delivery mechanism

It is considered that a development which creates a demand for new (or existing) stormwater infrastructure should contribute in a fair and equitable manner towards implementation of stormwater infrastructure within both its own hydrological catchment as well as regional programs. The funds generated through DC shall be used effectively, when and where they are needed for growth.

Stormwater infrastructure for growth is delivered using the following approaches:

- Capital projects that are designed and managed by Auckland Council (which is not the subject of this paper)
- Public-private partnerships, comprising various types of agreement depending on the scale and nature of project
- Strategic land acquisitions for water quality and flood management works

The paper highlights the need for an integrated approach with other service providers including Parks, Auckland Transport, and Watercare and describes how Auckland Council (AC) utilises public-private partnerships to unlock growth in Auckland to ensure efficient delivery of stormwater infrastructure.

KEYWORDS

Development Contributions, Stormwater, Local Government Act, Auckland Council, Infrastructure, the Development Contribution Policy

PRESENTER PROFILE

Yasenko Krpo has been working in Auckland for the last 19 years interchanging between private and public sectors. Currently he is working in Auckland Council's Stormwater Unit

as Principal-Commercial Management and Partnerships, which includes creating opportunities and negotiating development funding agreements for stormwater infrastructure implementation and in partnership with the land development companies, council owned organisations and other council departments.

1 INTRODUCTION

The latest amendments of the Local Government Act focus on DC in line with the government's aim of improving the delivery of public services and improving housing affordability by supporting councils to operate more efficiently and effectively.

Generally the amendments are aimed at regulating councils' powers to require developer contribution, transparency and accountability of the processes.

This paper provides context on how development contributions fit within the broader "support of growth" framework in terms of what projects are funded by council, and how development contributions are related to resource management decisions, with a focus on stormwater infrastructure.

In its conclusion the paper is addressing the question of inter-generational equity and how to have a balance in delivering an affordable infrastructure in a consultative and transparent manner.

Outline of the paper

- Overview of key changes to the LGA 2002
- Proposed Development Contribution Policy 2015
- Infrastructure funding agreement options
- Relationship between Resource Management Act 1991 (RMA) and Local Government Act 2002 including Amendment Act 2014(LGA) within context of stormwater infrastructure funding
- Conclusion

2 OVERVIEW OF KEY CHANGES TO LGA

The power to require development contributions is primarily contained in sections 197AA 2011 of the LGA. This framework provides the assessment criteria, requirements and enforcement of DC. This is separate from the statutory frameworks that govern resource consent under RMA and or Building Act 2004.

Key changes to the LGA are described below.

2.1 NEW PURPOSE AND PRINCIPLES

The LGA amendments created some new principles and provided stronger emphasis on the existing principles. The LGA amendment largely confirms principles of best practice already in place or from existing case law.

A new section 197AB emphasizes the principle that "cost allocation used to establish development contribution should be determined, accruing to, and be proportional to, the persons who will benefit from the assets to be provided including community as a whole as well as those who create need for those assets".

2.2 RECONSIDERATION AND OBJECTION PROCESS

The LGA amendments require council to include the process for reconsideration of an advised DC assessment. This is essentially staff checking the calculation of charges and application of the policy. New provisions also establish a developer's right to object to a DC advised by council through an independent disputes process, run by a commissioner appointed by council from a list approved by the government.

A new objection procedure includes independent commissioners appointed by the government and it is set out in ss199C-199P of the Act and particularly in 199D.

2.3 SCHEDULE OF ASSETS

The LGA amendments require a 'Schedule of Assets' for which the development contributions are intended to be used or have already been used. For each applicable new asset or programme of works the Schedule will include and set out capital costs, allocation of costs between development contributions and rates (or other funding sources), and other information relating to growth assets. The Schedule is required to be publically accessible. This important amendment is provided under s201A.

The schedule must list:

- a) Each new asset, additional asset, asset of increased capacity, or programme of works for which the development contributions requirements set out in the development contributions policy are intended to be used or already have been used; and
- b) The estimated capital costs of each assets described in paragraph (a); and
- c) The proportion of the capital costs that the territorial authority proposes to recover through development contributions; and
- d) The proportion of capital costs that the territorial authority proposes to recover from other sources.

2.4 DEVELOPER AGREEMENTS

A new section 207A of the LGA states that a territorial authority may enter into a development agreement. Section 207C contains list of matters which a development agreement must and may include. Section 207E contains restrictions on what development agreement may require. However, there are also agreements which are not "development agreements" as defined in the LGA, but are entered into pursuant to a territorial authority's power under s12 of LGA, that deal with the matters listed in s204E of LGA.

Council ultimately has the discretion over decisions whether to enter into such agreements. Various formats for development agreements are discussed later in the paper.

2.5 NON-RESIDENTIAL RESERVES CHARGING

Councils will no longer be able to charge DC for reserves for non-residential developments. However this change does not apply to stormwater assets.

2.6 PRODUCER PRICE INDEX ADJUSTMENTS

The LGA amendments require that producer price index (PPI) adjustments be restricted to only the portion of each charge that is directly attributable to capital expenditure - i.e.

excluding capitalised interest. This results in a reduced PPI adjustment from that currently applied.

2.7 CONSULTATION

The LGA amendments explicitly set out that no public consultation is required in order to amend the development contributions policy to comply with new reconsideration provisions or the Schedule of Assets.

Before 1 December 2014, councils must have made publicly available consultation information including a draft policy with proposed changes, reasons for the proposal and analysis of options. This forms part of the DC Policy review (aligning with the 2015-25 10-Year Plan) to be adopted 30 June 2015.

3 DEVELOPMENT CONTRIBUTION POLICY - DRAFT 2015

3.1 OVERVIEW

The purpose of the development contributions (DC) is to recover monies from persons undertaking developments in a fair, equitable portion of the total cost of capital expenditure necessary to service growth over a long period of time.

The Development Contributions Policy 2015 (DC Policy) has been developed in accordance with the purpose and principles in Section 197AA and 197AB of the Local Government Act 2002 (LGA 2002) and to give effect to the LGA amendments. Further to the LGA council has to prepare DC policy which enables the council to require funds for growth related capital projects and programmes identified in the long term plan and annual plan.

The proposed DC policy 2015 has been released to the public for consultation from 1 December 2014 to March 2015.

The proposed DC policy aims:

- to provide certainty to stakeholders that infrastructure for growth is to be funded in an organised and transparent manner;
- to provide for those involved in development to pay their share for infrastructure that benefits current and future residents and businesses;
- to determine contribution charges at levels that supports Auckland Plan vision.

In simplified terms the contribution amount is determined by dividing the growth capital expenditure in the Long Term Plan (LTP) 2015-2025 by estimated number of new residential and non- residential developments.

The contributions payment can be timed and deferred to suit different development needs.

The DC policy also makes references to financial contributions. There are a number of financial contribution provisions in the District Plans. Also, Section 106(2) (f) of the LGA 2002 requires that the DC policy summarises and addresses the financial contribution provisions in the district plans and proposed unitary plan. With reference to Schedule 6 of the proposed DC Policy 2015 council may:

a) require a financial contribution on a resource consent in relation to a development in cases where the development is exempt from paying development contributions for the same purpose.

b) require financial contributions which are different from any purpose for which it requires development contributions under this policy.

The proposed DC policy does not waive any requirement in the District Plan and RMA related to avoiding, remedying or mitigating the effects of a development.

The LTP consultation process included consultation on Draft DC policy that was closed in March 2015.

3.2 STORMWATER CONSIDERATIONS

Generally the Amendment Act has not made significant changes to stormwater activities. The DC policy further consolidates direction set in the earlier period. The DC policy provides funds for construction of new infrastructure and improvement on the existing infrastructure, flood management and water quality works on both man-made and natural assets.

A key change is that development contributions are determined for geographic funding areas that are aligned with the consolidated receiving environments (CRE's). The DC rates are different and commensurate to the specific requirements of each CRE. A map with the stormwater funding areas is shown in Figure 1 and proposed rates in Table 1.

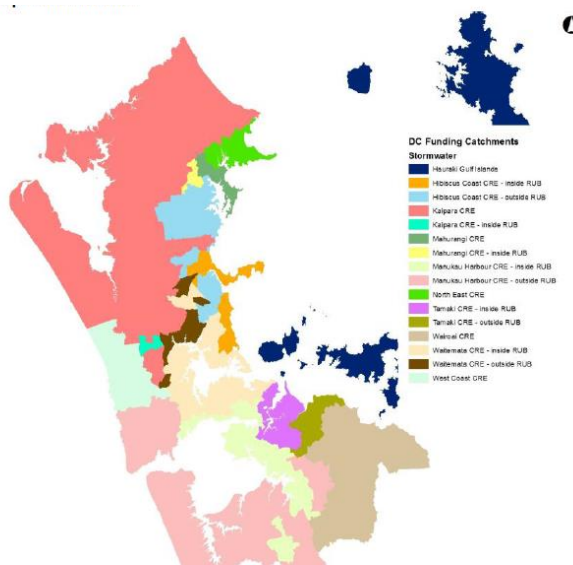


Figure 1: Stormwater Contribution Areas

excluding GST	DC per HUE 1 July 2015 – 30 June 2016	DC per HUE 1 July 2016 – 30 June 2017	DC per HUE 1 July 2017 – 30 June 2018

Hibiscus Coast (RUB)	\$2867	\$2955	\$3074
Hibiscus Coast (Outside RUB)	\$30	\$31	\$32
Kaipara (Outside RUB)	\$231	\$238	\$247
Kaipara (RUB)	\$2615	\$2695	\$2804
Mahurangi (RUB)	\$6192	\$6381	\$6639
Manukau (RUB)	\$7286	\$7507	\$7812
Manukau (Outside RUB)	\$599	\$617	\$642
Tamaki (RUB)	\$3516	\$3623	\$3770
Tamaki (Outside RUB)	\$97	\$100	\$104
Wairoa	\$2970	\$3060	\$3184
Waitemata (RUB)	\$6486	\$6683	\$6954
Waitemata (Outside RUB)	\$3298	\$3398	\$3536
RUB (Other areas)	\$0	\$0	\$0

Table 1: Stormwater contribution rates by area and period

4 INFRASTRUCTURE FUNDING

4.1 STORMWATER ASSET MANAGEMENT PLAN

The Stormwater Asset Management Plan 2015-2045, (SWAMP) sets out the proposed investment on supporting growth, improving customer and environmental levels of service of the city and ensuring the fabric of the stormwater system is maintained in a manner that aligns with the council's vision of "*creating the world's most liveable city*".

SWAMP includes all aspects of stormwater management across the Auckland region and it is a complex undertaking, closely connected with growth and land use, and freshwater management, and requires integrated infrastructure solutions. The Stormwater Unit is committed to delivering on these complex functions using best practice asset management to efficiently and prudently ensure our public receives the best value for money possible. The key stormwater priorities are:

- Asset operation/renewals: effective operation, maintenance and renewal of the assets we already have to ensure optimum performance
- Growth: supporting and servicing the Auckland Plan's growth strategy demonstrating innovation and best practice
- Flooding: progressively reducing existing flood risk across the region; and
- Environmental Improvement: reducing existing negative effects on the environment, particularly streams and coastal areas.

SWAMP has been developed in conjunction with the council's Long Term Plan and contributes to Auckland Plan outcomes and also informs the proposed DC policy. In this way, it is aligned with the vision for Auckland. Therefore servicing growth relies on a robust forward planning and investment optimisation.

Stormwater management is closely linked to Auckland Transport (AT); Parks and Water utilities (WU) – Watercare and Veolia. AT's assets include the roads and associated drainage which both carry stormwater and rely onto the stormwater system. The roads are also significant source of stormwater contaminants. Treatment and flow management facilities and overland flow paths are in shared open spaces. The main interactions with Water utilities are coordinated efforts in supporting the growth.

Parks and public open spaces department is a key partner to stormwater unit as the most of council’s wetlands, ponds and stormwater management corridors are closely related to parks or located within parks.

The Government and the council entered into an accord targeted at increasing housing supply and improving housing affordability in Auckland. The identification of growth priorities for planning and investment for (stormwater) infrastructure has been informed by the Forward Land and Infrastructure Programme. To date many Special Housing Areas (SHAs), associated dwellings and sections have been approved which sets priorities for infrastructure investment. The council prioritisation is based on growth priority areas (GPAs) that were determined through considerations of the timing of anticipated brownfield and greenfield development and inputs from regional infrastructure providers, including Auckland Transport, Watercare, Parks & Open Spaces and the Stormwater Unit.

The Stormwater unit also acknowledges the special place of mana whenua and their participation in decision-making with the aim to build lasting, reciprocal relationships with Auckland’s Maori. Approach to consultation with mana whenua is based on the council’s commitment to meeting its responsibilities under Te Tiriti o Waitangi/ Treaty of Waitangi and its broader legal obligations to Maori. Consultation with mana whenua is carried out through the council’s Maori Strategy and Relations department, Te Waka Angamua, which facilitates liaison with relevant iwi. The types of engagement are:

- Project level
- Engagement on the responsibilities of the Stormwater Unit and how we work
- Regular one-to-one meetings with each iwi group
- Stormwater Customer Surveys

The stormwater capital expenditure is constrained by a tight funding envelope because of the council’s requirement to cap rates and sustain the overall debt at an affordable level. The stormwater capex forecast is provided in Table 2.

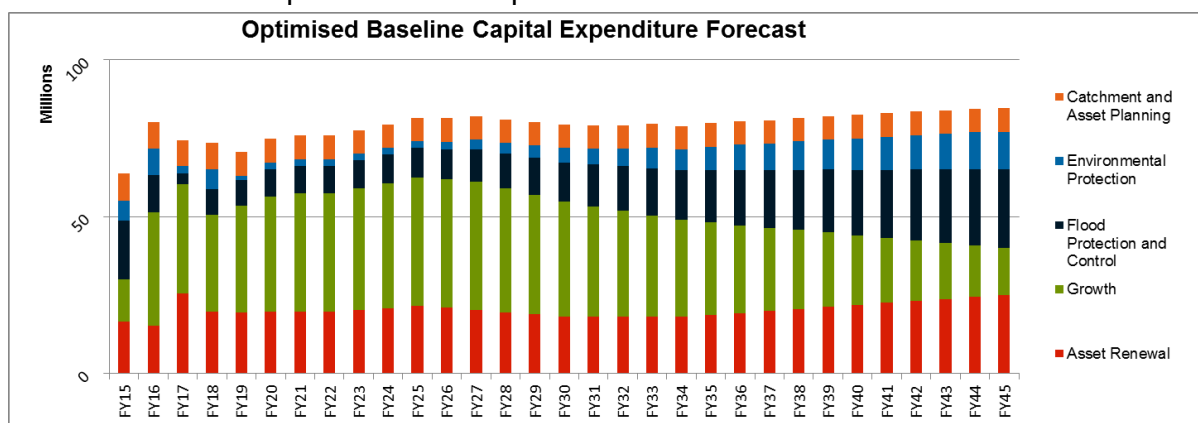


Table 2 – Stormwater capex forecast per key activity

Prudence and prioritisation of capital works with risks based approach, increased resilience through education and consultation play a vital part of the growth support strategy.

4.2 DEVELOPMENT AGREEMENTS

Development agreements (DA) are a *form of public private partnerships defined under s197 of the LGA 2002: DA "means a voluntary contractual agreement made under sections 207A to 207F between 1 or more developers and 1 or more territorial authorities for the provision, supply or exchange of infrastructure, land, or money to provide network infrastructure, community infrastructure, or reserves in 1 or more districts or part of a district"*

The amendment however provides a process for dealing with requests by either party to enter into such agreement. A new ss207A – 207F provide for developers agreements. In line with the amendment, the proposed DC policy 2015, items 86-89 outline the councils approach:

"Development Agreements

86. The council may enter into development agreements or infrastructure funding agreements in circumstances where there is a need to allocate responsibility between developers and the council for the construction and funding of public works associated with a development in order to support outcomes in the Auckland Plan.

87. Development agreements will not be used to reduce the amount of any contribution charge calculated under this policy.

88. Where an applicant undertakes work on behalf of the council, this will be done within normal procurement procedures and paid for under the terms of that engagement. Development contributions will still be payable by the applicant where they are required under this policy.

89. Sections 207A to 207F of the LGA 2002 sets out criteria to be included in a development agreement."

Land acquisitions are processed under Public Works Act using a specific or standard real estate agreement based on particular circumstances. Easements, covenants and other legal instruments are also used as appropriate. These processes are supported by Auckland Council Property and Legal Service teams.

AC established the infrastructure funding agreement (IFA) and parallel development funding (PDF) protocols that are used for infrastructure installation and construction works. The PDF protocol is basically a simplified IFA used for small scale projects. (Both are addressed as IFA below.)

The purpose of IFA is to allow parties to agree on specification, deliverables, and procurement strategy for the proposed infrastructure. Under IFA protocols the developer is responsible for consents, and appointment of a contractor and full implementation of the assets.

IFA also can also be used to deal with following:

A "demand test" determines if a development is subject to stormwater development contribution. However there are cases where contributions are not payable, but for example the council elects to service catchment outside of the development and enters into IFA to buy excess capacity from that development. The excess capacity may include additional network capacity, land area and stormwater treatment capacity necessary to service the whole hydraulic catchment. Council has set criteria that include:

- A percentage of serviced catchment areas including a level of impervious areas for various land uses allowed by district / unitary plan.

- A difference in a pipe diameter (Indicator for network capacity) to service development only versus maximum permitted development (MPD)
- If developer proposes works which may not be council's priority or not included in the schedule of works within LTP and DC policy, but enables growth, there is also an option to set a specific contribution, so called "Agreed Contribution", which can enable council to enter into IFA and recover costs from direct beneficiaries of a particular project.

In order to facilitate growth the council also established a protocol in conjunction with IFA by which development contribution may be deferred until the sale of newly created allotments. This approach recognizes that demand from residential development generally occurs one year after issue of 224 (c) certificate. Deferral agreements are subject to some specific requirements including registering interest against the title as security so at the time of property sale the appropriate funds are automatically transferred to the council.

4.3 RMA VS LGA

There is an obvious tension between decision under RMA to adopt a plan change and LGA as to what infrastructure is to be funded by council, to what extent and by when.

It is a common perception within the development industry, that the council when making a plan change operative should then be committed to supporting the implementation of future public infrastructure to support the plan change.

However, the decision on infrastructure works determined under one statute does not pre-determine decisions that may be made under another statute. Hence, under LGA framework capital expenditure decisions are determined by LTP not by RMA consents.

The decision to make plan changes operational and enable growth from a regulatory perspective does not automatically commit the council to provide funds for infrastructure, depicted in the plan change.

The RMA framework requires developers to mitigate impact of their own developments only and accept and manage upstream flows. This is an ongoing challenge for prioritising and budgeting as council is often requested to facilitate or intervene in order to enable implementation of public assets as proposed in a plan change and facilitate growth in a timely manner. This becomes more apparent in cases of fragmented land ownership.

Where council decides to fund a programme or projects from the budget adopted through the LTP, it can use developer contributions to fund growth related capital expenditure.

5 CONCLUSION

There is a perception that the LGA amendments favour developers rather than territorial authorities, aiming to address government concerns on housing affordability and availability. On the other end a more robust and transparent framework has been introduced by the LGA amendments that provide for sustained economic growth. Funding for growth should be scalable and flexible to suit the council objectives and to enable the delivery of LTP. However it is evident that the shortfall in meeting real costs of infrastructure is being met via rates, which has limitations. This raises interesting questions around intergenerational equity and what would be the appropriate balance between investments made by the current generation and responsibility the current generation holds in loading too much debt onto the future generation. In other words,

what we should pay now for (environmental) benefits that would be enjoyed by future generations?

However, this question is larger than stormwater infrastructure, which could last for generations, if built properly. In order to find answers and eventually reach the balance we need good quality and affordable infrastructure delivered through a consultative and inclusive processes; and higher level of accountability and transparency.

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