

SUBMISSION

To the **Local Government and Environment Committee**
on the **Local Government Act 2002 Amendment Bill No.3**

INTRODUCTION

1. This submission is from the Dunedin City Council, PO Box 5045, Moray Place, Dunedin 9058. The submission was considered by the Council's Planning and Regulatory Committee on 11 February 2014.
2. The Dunedin City Council does not wish to appear before the Local Government and Environment Committee to speak to our submission.

GENERAL

3. The Local Government Act 2002 Amendment Bill No.3 (the Bill) amends the Local Government Act 2002 (the Act) with the objective of supporting councils to operate more efficiently and effectively by providing for more effective processes and governance arrangements, fair and efficient decision-making and charging practices and sound asset management planning. The Dunedin City Council supports the objective of the Bill, but has specific concerns with some aspects as currently drafted and these are outlined below.
4. It is noteworthy that the timing of the Select Committee's consultation period on the Bill, which came soon after triennial elections and included the Christmas/New Year holiday period, was challenging in terms of ensuring that the Council were able to fully consider the Bill and approve this submission.
5. The Dunedin City Council supports the general direction of the submission made by Local Government New Zealand (LGNZ). Where the Dunedin City Council disagrees with LGNZ, this is noted in our submission.

Recommendation 1 – *That the Local Government and Environment Select Committee accept the general direction outlined in the submission made by Local Government New Zealand on the Local Government Act 2002 Amendment Bill No.3.*

CONSULTATION AND ENGAGEMENT

6. The Bill provides councils with greater flexibility for public consultation; replaces the Significance Policy with a new Significance and Engagement Policy and; introduces new consultation documents for Long Term and Annual Plans.
7. The Dunedin City Council supports removing the Act's requirements to use the Special Consultative Procedure (SCP) for all but Long Term Plans (LTP) and when adopting, amending or revoking bylaws where there is significant public interest or impact. The SCP's prescriptive submission and hearing process does not always lead to good engagement or result in feedback that usefully assists the Council's decision-making. More meaningful engagement in Council decision-making is often achieved outside the SCP process. Although the Significance and Engagement Policy and consultation principles will provide protections for the community's right to be consulted and

engaged in decision-making, the Dunedin City Council is of a mind that these protections will rely on adequate development and implementation of the policy and this carries some risk.

8. Clause 23 of the Bill reduces the prescriptiveness of the SCP, removing the requirement to produce proposal summaries, publicly notify proposals in local newspapers and provide written acknowledgement of submissions and individual responses and explanation of decisions. The Dunedin City Council considers these procedures to be good practice in many instances but onerous in others and therefore supports the flexibility the Bill provides.
9. The Dunedin City Council supports the intent of the proposed Significance and Engagement Policy as introduced by clause 18. This will require agreement with the Dunedin community on when and how the community and affected parties will be engaged in the Dunedin City Council's decision-making. This has the potential to improve the alignment of our consultation and engagement practices with: community needs and expectations; the discretion Council has over a decision; and, the costs and benefits of engagement. It will encourage use of a wider range of consultation techniques and thus enable consultation that is tailored to the specific situation and more effectively engages the community, particularly those that find the SCP's formal submission process inaccessible. While the Significance and Engagement Policy has the potential to deliver improvements in community engagement practices, the Dunedin City Council is concerned about;
 - (a) the tight timeframe for adopting the first Significance and Engagement policies. Due to the complexity and importance of the policy, a substantial effort will be required by councils to establish; community preferences; procedures for identifying the significance of decisions or proposals; and engagement practices proportionate with different levels of significance; and then consult on a draft policy. The requirement to do this by 1 December 2014 will put pressure on policy development processes, potentially affecting the quality of policies adopted. Implementation of the policies will require the development of internal processes and staff training and a rushed adoption could result in early misinterpretation and implementation of policies.
 - (b) the risk of challenge around implementation of the Significance and Engagement Policy, particularly when issues arise that did not exist, and were not considered, when the policy was developed. This could result in engagement procedures and techniques being utilised where there is no or limited benefit, simply in order to reduce the likelihood of challenge.
10. The Dunedin City Council believes that best practice guidance would support councils to develop and implement Significance and Engagement policies that are workable and achieve the intent and potential of proposed new section 76AA.

Recommendation 2 – *That best practice guidance be developed to support councils to successfully develop and implement Significance and Engagement Policies.*

11. The existing requirements for draft Long Term and Annual Plans result in documents that are too long and detailed to enable effective community engagement. Clauses 29 and 32 introduce focussed consultation documents to engage the community on the issues faced and options available. The Dunedin City Council supports the new consultation document as it will support more effective community engagement and make it easier to engage individuals and sectors of the community that do not currently participate in council decision-making processes. The Dunedin City Council notes that although the consultation document is likely to support improved community consultation and engagement it is unlikely to create the desired efficiencies. The proposed consultation documents will likely be too large to circulate to all residents and ratepayers, so summaries may be required, as well as some form of draft plan document to meet audit and Local Government Official Information and Meeting Act 1987 (LGOIMA) purposes.

PLANNING

12. The Bill makes Annual Plans exception-based documents; requires councils to undertake asset management planning and develop and publish 30-year infrastructure strategies; and, requires additional disclosures.
13. The Dunedin City Council supports clauses 31 and 32 which make Annual Plans exception-based documents, focussing on any material changes from the LTP. The current Annual Plan process is onerous and opens up decisions made through the LTP for re-litigation. Exception-based Annual Plans will focus the community, through the consultation, on the immediate issues faced and the changes that the Council is proposing. This will reduce expectations that other aspects of the plan are likely or able to be changed through the Annual Plan.
14. The Dunedin City Council supports the Bill's requirement for councils to undertake asset management planning (clause 7(2)) and to develop and publish 30-year infrastructure strategies that cover the five mandatory groups of activities (clause 34). Asset management planning is good practice and helps ensure prudent stewardship of resources. The Dunedin City Council also supports the proposed section 101B(5) that would enable councils to adopt combined financial and infrastructure strategies. The Dunedin City Council does not, however, support the requirement to publish annual capital and operating expenditure projections outside of the ten years covered by the relevant LTP. Doing so would be inconsistent with the ten-year timeframe of the LTP and would distract from the plan's immediate considerations of years one to three in detail and years four to ten in outline. The proposed requirement for annual expenditure projects to year 30 would also be inconsistent with recent changes through earlier amendments to the Act to reduce the complexity and detail provided in LTPs and with the Auditor General's report on 2012-22 LTPs, which called for less detailed plans. To provide annual expenditure to year 30 would also require significant assumptions to be formed, and these would have a level of associated risk. For example, discharge standards and resource consent conditions will be a major issue for wastewater and stormwater infrastructure within the next 30 years. Without knowing future environmental standards and technologies it will be difficult to make an accurate assumption around timing and cost of any future infrastructure works to address this issue. While it is understood that this information is intended to be indicative only there is a risk that publishing costs and timeframes in LTPs could create community expectations that are not formed on solid information.

Recommendation 3 – *That proposed section 101B (clause 34) be amended to clarify that expenditure projections for years 11 to 30 of an infrastructure strategy need not be published at the annual level.*

15. The Dunedin City Council supports clause 71 and Schedule 5 which amend Schedule 10 of the Act to require disclosure of information on rating units and insurance arrangements. These disclosures will create little additional compliance effort and the information is already publicly available under LGOIMA. Although the rating disclosures will increase scrutiny of a council's financial sustainability, they will not enable direct comparisons between councils as appears to be the intention. For example, a significant proportion of Dunedin's rating units are non-rateable properties. These properties will be included in the figures disclosed and therefore in any subsequent use of those figures. This will distort comparisons if, for example, they were used to show average rates per property.

Recommendation 4 – *That the Select Committee note that the proposed rating base disclosures will not enable direct comparisons between councils.*

DECISION MAKING

16. Clause 19 of the Bill amends section 77 of the Act which sets out requirements in relation to decision-making. The list of matters that Council must consider when assessing practicable options would be repealed and replaced by 'the benefits and costs of the options' only. Considerations including the benefits and costs in terms of present and future interests of the district; the extent to

which community outcomes would be promoted or achieved; the impact on the local authority's capacity to meet its present and future needs; and, any other relevant matters, will be repealed. The Dunedin City Council is concerned about the potential for this change to raise expectations that cost-benefit analyses will be undertaken in all decision-making. It is also possible that the proposed change could open councils up to the risk of challenge on decisions where factors other than the direct costs and benefits are considered. The Dunedin City Council seeks clarification that the change does not preclude consideration of wider costs and benefits, including those repealed by the change. The Council also supports LGNZ's recommendation that consideration be given to the wording of the clause to ensure there is no misalignment with the purpose of local government.

Recommendation 5 – *That the wording of clause 19 be clarified to ensure that the 'costs and benefits' to be considered under section 77, are not restricted to immediate costs and benefits.*

MEETING PARTICIPATION

17. The Dunedin City Council supports enabling councils, via standing orders, to permit and regulate remote participation at meetings by way of audio-visual link (as per clause 70 and Schedule 4 which amend Schedule 7 of the Act). This will enable participation in meetings by members who elected members are out of town on council business. The Council does have a concern that allowing audio only participation could increase risks to the integrity of the remote participation process, though suggests this should be a decision for individual councils to make. If members are permitted to participate and vote remotely, the Dunedin City Council sees no reason for a statutory requirement for a quorum to be physically present. Councils should be able to determine for themselves whether members participating remotely should be counted towards quorum.

Recommendation 6 – *That the proposed new Clause 25A(3) of Schedule 7, which would require a quorum to be physically present, be deleted from Schedule 4 of the Bill.*

GOVERNANCE ARRANGEMENTS

18. The Bill introduces a requirement for councils to regularly review the cost-effectiveness of their activities; enables the Local Government Commission to establish local boards (similar to those in Auckland), council-controlled organisations (CCOs) and joint committees in local government re-organisation; and makes other minor amendments to encourage collaboration between local authorities.

19. The Dunedin City Council supports the requirement for councils to regularly review the cost-effectiveness of their activities in achieving the purpose of local government. However, the Council has serious concerns that the proposed section 17A, as currently drafted in clause 11, would require a thorough review of the governance, funding and delivery of all council activities every three years. The Council understands that the Department of Internal Affairs' intention was not to require thorough or onerous reviews. If so, the Council supports the Bill being amended to clarify this. If the intention is to require thorough, all-encompassing reviews, the Dunedin City Council would not support this. The Council does not believe a thorough review would be practical or useful every three years. To do so would not only create a significant additional resourcing and compliance burden, but also result in ongoing uncertainty for the community and staff and could potentially hamper long-term planning. The Council suggests that such reviews are best undertaken as the need or opportunity arises, and that this does not necessarily coincide with the electoral cycle.

Recommendation 7 – *That the Bill be amended to require councils to adopt a policy establishing a process by which they will identify council activities to undergo a thorough service delivery review.*

20. The Dunedin City Council supports the ability for local boards to be established by the Local Government Commission as part of the governance structure of unitary authorities. This option will enable local democracy and decision-making to be protected, particularly if existing territorial authorities are merged to create new unitary authorities. The Dunedin City Council is, however, strongly opposed to CCOs and joint committees being imposed upon communities by the Local Government Commission. The decision to devolve power from a council to less democratic CCOs and to joint committees could potentially constrain a community's decision-making abilities and should be a decision made by the community through its elected members. The Dunedin City Council's position varies from LGNZ's on this issue. If the Local Government Commission is given the ability to impose CCOs and joint committees through re-organisation, the Dunedin City Council requests that it be made clear that councils have the ability to withdraw from these structures as they see fit.

Recommendation 8 – *That proposed new clause 43(h) of Schedule 3, which would enable the Local Government Commission to establish CCOs and joint committees as part of a re-organisation, be deleted from Schedule 2 of the Bill.*

21. The Bill makes no provision for the existence or status of local boards to be considered through representation reviews, effectively meaning they can only be reviewed and improved through re-organisation. This will mean that local boards are not subject to a regular (at least once every six years) review of whether they provide fair and effective representation for individuals and communities. The representation review process recognises that the demographics and the governance needs of communities change over time and the process enables changes to representation arrangements to be made where they will improve fairness and effectiveness. Representation reviews include an appeal/objection process that would protect local boards from any change that is not based on solid evidence and community support.

Recommendation 9 – *That the Bill be amended to enable local authorities to review the existence and representation arrangements of local boards through representation reviews as per section 19J of the Local Electoral Act 2001.*

22. The Dunedin City Council supports the proposed changes to the triennial agreement (clause 8), the clarification of the transfer of responsibilities between regional and local authorities (clause 10), and the inclusion of 'actively seeking to collaborate and co-operate' in section 14 which sets out principles relating to local authorities (clause 7(1)). These changes will further encourage and enable collaboration and shared services where they will deliver efficiencies or improved outcomes to the community.

DEVELOPMENT CONTRIBUTIONS

23. The Bill amends the purpose and principles of development contributions, narrows the range of community infrastructure that can be financed by development contributions; introduces a reconsideration and objection process; formalises the ability for councils to enter into developer agreements for private infrastructure provision; and, makes other changes to provide clarity and improve the workability of development contributions.

24. The Dunedin City Council supports clause 48 which adds a purpose (new section 197AA) and principles (new section 197AB) for development contributions to the Act. The Dunedin City Council supports LGNZ's recommendation that accompanying best practice guidelines be developed to ensure consistent interpretation and mitigate against the potential for legal challenge.

The proposed change to the definition of community infrastructure (clause 49) would restrict the range of community facilities that councils could charge development contributions for to;

community centres and the land they are situated on; play equipment on neighbourhood reserves; and public toilets. This change would remove the ability for councils to charge development contributions for growth-related costs of core community facilities such as libraries, aquatic facilities and community sports centres. Although the Dunedin City Council does not currently charge development contributions for any of these facilities, the Council supports retaining the ability to do so. If this ability is removed, the full capital cost of community facilities will remain with ratepayers, even where there is a growth-related component and community support for development contributions to be utilised.

Recommendation 10 – *That clause 49(2) be deleted from the Bill.*

25. The Dunedin City Council supports the proposal to introduce objection and reconsideration processes. The Dunedin City Council's position varies from LGNZ's on this issue because the Council considers it is appropriate to provide an independent process for considering objections. However, the Dunedin City Council does not support objections on the basis of the two points (in proposed section 199D) noted below without explicit recognition in the Bill of the averaging across developments that is inherent in the calculation of development contributions across land use categories and geographic areas:

- (a) Failed to properly take into account features of the development that increase or decrease the demands on Councils infrastructure;
- (b) Required a development contribution for community facilities, activities, or groups of activities not required by, or related to, the applicant's development.

Recommendation 11 – *That a new principle along the following lines be added to proposed new section 197AB (clause 48 of the Bill): "for the purpose of calculating and charging development contributions, certain developments may be grouped together by distinct geographic areas and/or categories of land use in a manner that balances practical and administrative issues with fairness and equity considerations".*

26. The Dunedin City Council does not support the addition of new clause 60 on the private developer provision of infrastructure. The Dunedin City Council opposes this addition because the ability to enter into private developer agreements already exists and we do not consider imposing further statutory requirements is necessary. The Dunedin City Council supports LGNZs recommendation for best practice guidance to be developed for councils on developer agreements.

Recommendation 12 – *That clause 60 be deleted from the Bill and instead best practice guidance is provided to councils on developer agreements.*

27. The Dunedin City Council supports the following clauses which provide legislative clarity and will improve the workability of development contributions, including;

- (a) clause 36, which amends section 106 to allow development contributions to be calculated over the capacity life of assets or group of assets, the provision for annual adjustment of development contribution charges in accordance with Producers Price Index Outputs for construction provided by Statistics New Zealand and the new subsection (2C) that provides that increases may be made without consultation, formality or a review of the development contributions policy if the contributions are made public before any increase takes effect.
- (b) clause 50, which amends section 198, to enable a territorial authority to require a contribution from a developer when a certificate of acceptance is issued under the Building Act 2004.
- (c) clause 52, which amends section 199(2) to ensure that the reference in that provision to development is a general reference and not a reference to a particular development.

- (d) clause 54, which amends section 200 to clarify limitations on when councils can charge a development contribution and in particular the clarification that this section does not prevent a territorial authority from requiring a development contribution if income from rates is being used to meet a portion of the capital costs of the community facilities.
- (e) clause 58, which amends the maximum development contribution to include increases arising from adjustments on the basis of the Producers Price Index.
- (f) clause 59, which amends section 206 to ensure that the principle in new section 197AB(d) does not prevent operation of section 206.
- (g) clause 73 and Schedule 6, which amends Schedule 13 to extend the time period over which capital expenditure can be included in a development contributions policy.

CONCLUSION

- 28. The Dunedin City Council supports the objective of the Local Government Act 2002 Amendment Bill No. 3 (the Bill) to support councils to operate more efficiently and effectively by providing for more effective processes and governance arrangements, fair and efficient decision-making and charging practices and sound asset management planning. However, the Dunedin City Council has some specific concerns and these have been identified above.
- 29. The Dunedin City Council requests that the Office of the Auditor-General, the Department of Internal Affairs and the local government sector work together to establish consensus on best practice regarding the changes made to procedures and processes as a result of the Bill. This would ensure efficient implementation of the amendments. Local authorities are now commencing their planning for the 2015/16 LTP, any intention to change the timing and nature of audit activity in response to the amendments should be advised to ensure that local authorities programme the development of the consultation and final plan documents appropriately.
- 30. Finally, the Dunedin City Council suggests that the Better Local Government reforms could be further strengthened by the inclusion of measures to better align National Land Transport Programme and LTP planning timelines. This would improve local authority's ability to deliver LTP capital programmes that reflect actual NLTP funding subsidy levels.