

**ARC Policy Case for Regional Councils Gaining the Power to Levy Development Contributions – extracted from ARC’s submission and further evidence presented to the Local Government and Environment Select Committee in May 2006**

**1. The ARC seeks the following:**

- That regional councils acquire the same powers as territorial authorities, to require development contributions to recoup the growth-related costs of infrastructure investment.
- That the definition of community infrastructure, network infrastructure and reserves is extended to include infrastructure owned by council controlled organisations.
- That regional councils acquire a mechanism to enable them to levy and collect development contributions through requiring territorial authorities to collect them on their behalf.

*1.1 The Policy Case*

2. Many local authorities do not consider it reasonable that current (or future) ratepayers should bear the full burden of funding infrastructure that is required to service growth.

3. Most councils have long used the provisions of the Resource Management Act 1991, S108(2)(a) that enable them to levy *financial contributions*, in conjunction with a resource consent, for the infrastructure required to service *the site* (or have required developers to provide the infrastructure directly).

4. Financial contributions under the RMA have proved inadequate for recouping costs brought about by the *cumulative* effects of growth – for example the need to upgrade an arterial road or a treatment plant.

5. Consequently new powers were granted to territorial authorities under S198 of the Local Government Act 2002 to require *development contributions* to recoup cumulative costs of growth. Within the Auckland region, six of the seven territorial local authorities have now adopted policies that enable them to use these powers. These councils have chosen to apply development contributions because they consider that new development should be required to pay for the new or upgraded infrastructure that councils must invest in, in order to meet the needs of that new development. The alternative would be for the whole community to bear the cost through higher rates (whether in upfront payments or to repay debt.)

6. Regional councils were not granted these powers under the Local Government Act 2002. There is no difference between regional and territorial local authorities with respect to the ability to own assets, including

infrastructure. The ARC, in particular, funds significant regional parks acquisition and passenger transport infrastructure. In the future, the ARC could conceivably fund other regional community infrastructure, to which development contributions could also be applied.

7. S103(2) of the Local Government Act 2002 identifies a number of sources of funding that are available to local authorities, including rates, fees and charges, borrowing, interest and dividends, proceeds from the sale of assets, etc. "Development contributions" are the only funding source in this list not available to regional councils. All other sources are available to both regional and territorial authorities.

8. The ARC believes this to be an anomaly that is a carry-over from the period prior to the Local Government Act 2002 when regional councils were constrained in their ability to own infrastructure. These restrictions were removed in 2002 with the passing of the Local Government Act. This was reinforced by the Land Transport Management Act 2003, which removed the constraint on regional councils owning and funding passenger transport infrastructure.

9. Now that regional councils have similar powers to territorial authorities to own and invest in infrastructure they incur similar types of expenses including the costs involved in providing new or expanded infrastructure for new development in the region. The ARC, therefore submits, that the anomaly in the legislation should be removed, by extending the powers to require to development contributions, to regional councils.

10. Regional councils do retain the more limited powers to levy financial contributions. Some regional councils (for example those with responsibilities for flood control) are able to make use of these powers to fund some of their capital expenditure; however, the powers are not sufficiently broad or relevant to be able to be used by regional councils to fund their growth related capital expenditure in areas such as transport and regional parks.

The ARC, therefore, requests that regional councils have access to the same funding tools as territorial authorities.

11. The ARC also requests that the definition of infrastructure includes that owned by council owned companies (CCOs). This is particularly to enable the ARC to fund the growth related expenditure made by the Auckland Regional Transport Authority (ARTA), an ARC owned CCO created by statute. While the ARC funds ARTA, legislation requires ARTA (and prevents the ARC) from actually making the expenditure.

12. One of the impediments within the Auckland region to achieving the objectives of the region's growth strategy and the integration of land use and transport outcomes is that new developments do not face the full costs that they impose on the regional community.

The requested amendments provide the ARC with the ability to shift the incidence of costs in a way that may be far fairer and provide the market with a better reflection of the real costs of growth.

13. At the same time the requested amendments would assist regional councils to meet their responsibilities under the financial management provisions of the LGA 2002 (S101).

These responsibilities require local authorities to have regard to a range of factors including the distribution of benefits between the community as a whole and any identifiable part of the community; and the extent to which the actions or the inactions of groups (or individuals) contribute to the need to undertake the activity. The ARC, like many councils, faces enormous public resistance to rates increases, partly because ratepayers do not consider they should bear the burden of costs imposed by others. The absence of a power to charge development contributions prevents regional councils from considering whether new development should pay for a fair share of the new regional infrastructure (such as parks and passenger transport) required to service that development.

14. In summary, it is the Auckland Regional Council's view that development contributions are a tool that can assist territorial authorities to achieve an efficient, transparent and fair allocation of the capital costs of growth. It is also the ARC's view that the same principles apply to the funding of growth related regional-council infrastructure and therefore, the same powers should be extended to regional councils.

## *1.2 Applying Development Contributions through*

### *Territorial Authorities*

15. Regional councils have no direct relationship with the developer at the point at which a development contribution is likely to be applied for regional infrastructure. It is the territorial authority that grants building consents, which is likely to be the point at which a regional development contribution would be applied.

16. Therefore, a key aspect of regional councils gaining the power to levy development contributions would be to provide a mechanism to enable regional councils to levy and collect development contributions through requiring territorial authorities to collect them on its behalf.

17. There was a previous mechanism available to regional councils to levy something akin to development contributions under the Local Government Act 1974 (sections 293 and following). The ARC believes this is a strong precedent for enabling a regional council to levy and collect development contributions through territorial authorities. Essentially, the 1974 Act placed the onus on the territorial authority to notify the regional council.

### Maximum Development Contributions for Reserves

18. Currently under S203 of the Local Government Act 2002, development contributions for reserves must not exceed the greater of 7.5% of the value of additional allotments created by a subdivision or the value equivalent of 20 square metres of land for each additional household unit created by the development. There are no limits for development contributions for either network infrastructure or community infrastructure, however the council policy must clearly demonstrate the costs of providing this infrastructure to new development and the contribution to this cost by each “unit of demand”.

19. If regional councils were to acquire the powers to require development contributions for reserves then a decision would need to be made as to how S203 would be applied to these contributions.

20. The limit for territorial authority reserves is based on an historical standard of 4 hectares of local park per 1000 people. The ARC does not believe that there is an equivalent standard that would apply nation-wide to reserves owned by regional councils. Regional parks lie at an intermediate level between local and national parks. While local urban parks focus on meeting a range of defined recreational and local community needs, and national parks and reserves are managed with an emphasis on habitat conservation and heritage protection, regional parks primarily the regional parks are focused on providing people with the opportunity to enjoy informal outdoor recreation in natural settings. The settings are chosen for their landscape, cultural, natural and recreational values. It is not possible to quantify these values in a formula. Each locality must be assessed on its intrinsic qualities. While the ARC has criteria for assessing the regional park potentials of land it is not expressed simply as a quantity.

21. The ARC, therefore, submits that, rather than establish what would be a somewhat arbitrary limit for contributions required for regional council reserves, the onus be on regional councils to demonstrate the costs “incurred” by a “unit of demand”. In other words the principle that applies to development contributions for community and network infrastructure should apply to contributions for regional council reserves.

22. This approach may require regional councils to undertake more rigorous analysis to establish a fair level of contribution than if the legislation set a limit. A fixed limit may encourage local authorities to set their contributions right up to this limit.

#### Other Issues

23. ***Gaining the power is distinct from implementing the power.*** The ARC acknowledges that regional councils would need to undertake considerable work should they gain powers to apply development contributions and wish to implement them. This further work would include both extensive technical analysis and community consultation. This is no different from the work territorial local authorities must undertake in developing a policy that meets the requirements of the Act.

39. ***Whether development contributions should apply only the ARC or to all regional councils.*** The ARC believes that if the rationale for development contributions is justified for the ARC, then it is justified for regional councils in general. For this reason the ARC is requesting that all regional councils be granted the same powers as territorial authorities.

40. ***Perception of double dipping with local authorities.*** The ARC considers there is no potential for double-dipping between the ARC and territorial authorities because each provides their own, quite separate infrastructure. If the ARC chose to implement new powers to apply development contributions, the onus would be on the ARC (and other regional councils) to meet all legal requirements including the requirement under S200 to avoid any “double dipping”.

41. ***Developer resistance.*** The ARC acknowledges that there may be developer resistance to paying a development contribution to both a territorial and a regional council. This is no different, however, than a ratepayer paying territorial and regional rates. In fact the Local

Government (Rating) Act 2004, which introduced mandatory direct rating for regional councils, was premised on the principle that regional councils should have access to the same set of rating tools that territorial authorities have. In terms of the specific funding sources available to local government and set out in (a) to (i) of S103(2) of the LGA 2002, development contributions are now the only source not currently available to both regional and territorial authorities.

42. ***The financial implications for the development industry.*** If regional councils were to apply development contributions there would be a small financial impact on developers. For example, if the ARC required a contribution of \$1000 per residential dwelling this would add approximately 0.33% to the cost of the average new development (approximately \$300,000 including land.) If land costs were excluded then contributions could add an average of 0.5% to the cost of development. However any method of recouping costs has distributional implications. In the absence of the power to apply development contributions there is a financial impact on the community as a whole, which the ARC considers, may be unfair. In developing a policy the council would clearly identify the likely impacts on all parties, would consult with them, and would take both the impacts and the consultation into account.

## **SCHEDULE OF AMENDMENTS SOUGHT**

### **1.2.1.1 Regional Development Contributions**

43. The ARC requests amendment of Part 8, sub-part 5 of the Local Government Act 2002 to allow regional councils to require development contributions to include the following:

- The *power* to charge development contributions to be extended to regional councils under S198 of the Local Government Act (2002) (including consequential changes to other sections).

- The *ability* to require development contributions for infrastructure owned by council controlled organisations.
- A *mechanism* for regional councils to levy and collect development contributions *in conjunction with territorial authorities* issuing resource consents, building consents or an authorisation for service.
- An amendment to S203, so that the test in clause (2) applies to the maximum development contributions for reserves owned by regional councils.

### **1.2.1.2 BACKGROUND**

#### Legislative Background – Local Government Act 2002

24. The Local Government Act 2002 introduced new provisions (S197-210) for territorial authorities to require development contributions when granting a resource or building consent (or an authorisation for a service connection). Development contributions can only be required for capital expenditure and must be used to pay for new infrastructure or upgraded infrastructure to service new development. Development contributions cannot be used for operational expenditure and cannot be used for investment to provide enhanced levels of service to the community as a whole.

25. Development contributions are generally quite different to financial contributions that can be required under the Resource Management Act 1991. Financial contributions are usually required to pay for infrastructure to the site – such as upgrading a local road to service a new development. Conversely development contributions are used to pay for community facilities and can cover things such libraries; roads; water and wastewater infrastructure – to the extent that investment in off-site infrastructure is required to cater for new development.

26. Although development contributions and financial contributions are generally used for quite different purposes and the powers to charge developers such contributions fall under separate pieces of legislation there is, an exception in that territorial authorities can require contributions for reserves *either* in the form of development contributions under the LGA 2002 *or* financial contributions under the Resource Management Act 1991.

27. Before territorial authorities can require development contributions they must adopt a development contribution policy. This policy must be underpinned by a very robust justification for development contributions. S201 specifies the required contents of the policy. To meet these requirements detailed information from asset management plans must be married with sound financial and demographic modelling in order to calculate the proportion of growth related expenditure that will be incurred by the council. The expenditure that has been identified then needs to be attributed to a “unit of demand” (for example a subdivision or new dwelling) requiring the council to have robust projections of the quantity of new development expected in particular locations over specific time periods. In other words there must be an

established “rationale nexus” between the development and the contribution that is being charged.

28. Councils are well aware that their policies must withstand close scrutiny. Development contribution policies can be challenged in the High Court. In fact North Shore City Council is currently facing a challenge, and it is likely that challenges to other councils’ policies will follow.

29. If regional councils were to gain the power to require development contributions they would have to undertake the same level of analysis that territorial authorities are required to undertake before introducing a development contribution policy. The technical analysis is only one part of what is required. Councils are required to prepare a Revenue and Financing Policy as part of their Long Term Council Community Plan (LTCCP), spelling out the proposed sources of funding for their LTCCP. This must be consulted on through the Special Consultative Procedure – which includes a formal submission and hearing process. Councils face intense public scrutiny in relation to all their funding sources – and particularly in relation to rates, debt and financial or development contributions. Regional councils would not be able to introduce development contribution policies without *both* sound technical analysis *and* extensive community consultation.