Christchurch City Council

Date: 24 May 2018

To: **Governance and Administration Committee**
Parliament Buildings
Wellington

From: Christchurch City Council

Local Government (Community Well-being) Amendment Bill

1.0 Introduction

1.1 The Council thanks the Select Committee for the opportunity to make a submission on the Local Government (Community Well-being) Bill (**Bill**). This submission was adopted by the Council at its meeting on 24 May 2018.

1.2 The Council wholeheartedly supports this Bill and specific comments on the main objectives of the Bill are set out below. The Council also submits that changes are needed to section 17A of the Local Government Act 2002 (**Act**).

1.3 The Council also asks the new Government that in order to provide better support to local government, particularly in the enforcement of breaches of the Act and Council bylaws, it needs to make the infringement provisions in the Act operative, either by passing the appropriate regulations, or making amendments to the Act.

1.4 The Council also endorses the submissions on the Bill made by Local Government New Zealand and the Society of Local Government Managers.

1.5 The Council wishes to appear in support of its submission.

Submissions on the main objectives of the Bill

2.0 Reinstatement of the four well-beings & removal of section 11A

2.1 The Council objected to the removal of the well-beings from the purpose of local government in its 2012 submission. At that time it noted that this Council '*has its community at its heart. It believes in its community, and the important contribution that the community makes to the Council in performing its role.*' It still holds this view and applauds the Government for its proposal to reinstate the four aspects of well-being.

2.2 The Council has recently consulted on its Long Term Plan, which is all about getting the basics right, but is also an aspirational document for our city and its communities. The Council has identified six strategic directions where it wants to see a change in approach or an increased focus. Together with the new community outcomes, they provide the strategic platform for our long Term Plan and are to guide our decision making. The six strategic directions are:

- Enabling active citizenship and connected communities
- Maximising opportunities to develop a vibrant, prosperous and sustainable 21st century city
- Climate change leadership
- Informed and proactive approaches to natural hazard risks
- Increasing active, public and shared transport opportunities and use
- Safe and sustainable water supply and improve waterways

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2.3 These strategic directions all look to different aspects of community well-being, now and into the future. The Council believes the changes proposed by the Bill provide the much needed recognition of the vital work this and other Councils perform to deliver social, economic, environmental and cultural outcomes for communities.

2.4 Council agrees that local government should strive to provide good quality infrastructure but there are measures already in the Act to ensure this happens, as well as the retention of the definition of 'good quality' in the Act. (Also see the discussion on section 17A below.)

2.5 There was no solid evidence on which the previous amendments to the purpose of the Act were based. They seemed to have been driven by a view that local government had expanded the range of its activities in the last 10 years, and there was excessive spending by local government that was of little benefit to their communities. However, as the Council stated in its 2012 submission, the perception of the public, often fuelled by media stories focussing on the worst problems do not provide a representative picture of what is actually happening in relation to local government spending.

2.6 The biggest drivers increasing local government costs have been the cost of providing and upgrading network infrastructure; that was happening, and is still happening, irrespective of the 2012 change in purpose of the Act.

2.7 The reinstatement of the four aspects of well-being sends a statutory signal to local authorities and their communities, that central government is also concerned about the well-being of communities. Local government is more than just a provider of network services. Their service provision must be focussed on achieving community wellbeing, and good consultation and clear decisions by Councils are the means by which the value and benefits that communities will receive from the Council's spending can be identified.

2.8 The Council also supports the proposed revocation of section 11A (setting out the core services). When this provision was introduced there was a fear that it would limit the activities that could be undertaken by local authorities. Although that fear did not eventuate, and section 11A has largely been symbolic, the Council agrees with the revocation. It will avoid any confusion in future, and remove a potential ground for judicial review against a Council decision to undertake an activity that is not a 'core service'. It is for a Council to choose, together with its communities, the services to be provided to enhance community well-being.

3.0 Development Contributions

3.1 The Council supports the reinstatement of the provisions of the Act relating to development contributions. A narrow definition of community infrastructure (community centres or halls, play equipment and public toilets) is not appropriate. The Act encourages Councils to provide community facilities for new communities in Greenfield areas but the amendment to the community infrastructure definition reduced the ability to pay for them through development contributions, and instead forced an increase in rates.

3.2 The Regulatory Impact Statement notes that "*restoring the ability to fund the full range of community infrastructure through development contributions is likely to remove a barrier to growth, help councils to support growth and may ultimately contribute to increasing housing supply and thereby help to alleviate affordability issues*", and that "*… the restriction on development contributions for community infrastructure is especially important, as it removes a key source of funding for significant community facilities such as sports grounds, libraries, and swimming pools, from local authorities*"

3.3 To the extent that the provision of these types of facilities also benefit existing communities (and so should be paid for from rates) is something that must be considered by Councils when determining their development contributions policies and charges. Development contributions are payable only if the effect of the developments

is to require new or additional assets or assets of increased capacity (section 199) - in other words, necessitated by growth.

3.4 The Council also supports the repeal of section 198A. Reserves are often used as a buffer between industrial and residential activities. The Bill will once again allow the Council to decide, together with its communities, whether it should charge development contributions for reserves to industrial land developers.

3.5 Amenities and facilities are often also required by, and provided for, workers in businesses; they are also generators of the demand for such facilities. This is particularly the case for reserves, where workers will often go for lunch, and during or after work for exercise and recreation. Those workers are not always residents of the Council's district, and would not pay through their rates, therefore Councils should be able to require development contributions for reserves from commercial developments.

3.6 The Council notes that the proposed definition in the Bill of community infrastructure (the reinstated definition) uses the term 'public amenities', which is not defined in the Act. It could be anything from toilets and bus shelters to the examples referred to in the Regulatory Impact Statement. Presumably those drafting the Bill saw no need to put any parameters around what a local authority (and the community) might regard as being a public amenity. However, given it will be private developers who will be contributing to the cost of such amenities when required, there may be some debate in future about what qualifies.

3.7 The Select Committee should consider whether to include a definition of 'public amenities'. For example, *"services, facilities, and resources provided by a territorial authority and available for the general public to use with or without charge*". Alternatively, similar wording could be inserted into the definition of community infrastructure in place of the term 'public amenities'.

3.8 The Regulatory Impact Statement also makes the point that the reinstated provisions can only be used "*subsequent to a consulted change in each local authority's development contributions policy*". This introduces an element of uncertainty, which is unfortunate. The Council considers that in reliance on section 199(2) of the Act it will have the ability to charge development contributions for community infrastructure built during the period when the narrow definition of community infrastructure was in effect. Those assets become investment already undertaken in anticipation of growth and can therefore be included in the schedule of assets.

3.9 Section 201A(3) provides that the schedule of assets "*must also include assets for which capital expenditure has already been incurred by a territorial authority in anticipation of development*", which references back to section 199(2). While this will require consultation (to add these projects to the schedule of assets), the Council submits the Bill needs to remove any doubt about the application of sections 199(2) and 201A(3).

3.10 The Council recommends a 'for the avoidance of doubt' clause is included in the Bill, as a standalone transitional provision or an addition to section 201A, to ensure that territorial authorities can add projects to its schedule of assets that would not have come within the scope of the narrow definition. This will ensure they can charge development contributions for their 'past' growth related community infrastructure investment.

3.11 Finally, the Council also supports the Bill making a correction to the Act so Councils that receive NZTA 'advance financial assistance' on a piece of infrastructure can still assess development contributions in relation to that infrastructure.

Other submissions

4.0 Section 17A

4.1 Section 17A requires local authorities to carry out a review of essentially every aspect of its functions. While the Council, in its 2014 submission generally supported the idea of reviewing services for cost-effectiveness, it highlighted the cost of doing this work to the extent of the new prescriptive requirements proposed in the Act.

4.2 Cost effective management of council functions and services has always been an essential element of any local authority, or successful business, and the Council believes there are already sufficient processes contained in the Act that are capable of achieving the outcomes sought by the Government.

4.3 For example the performance of Council Controlled Organisations (CCOs) is monitored through six monthly and annual reports. They are required to submit statements of intent to Councillors for approval each year. The purpose of these includes stating publicly the activities and intentions of the CCO for the year and the objectives to which those activities will contribute, and to provide an opportunity for the Council to influence the direction of the CCO. In addition the Act (schedule 10) requires each Long Term Plan to identify a local authority's significant policies and objectives in relation to ownership and control of its CCOs, the nature and scope of the activities to be provided and key performance measures.

4.4 Effectiveness and efficient management of the activities of a Council are a clear focus for a Council's chief executive (see section 42 of the Act), and the need for prudent financial management is a key requirement for all local authorities (see subpart 3, and other financial provisions in the Act).

4.5 Section 17A has added a layer of bureaucracy with its detailed prescription, that ratepayers must bear (at a time when Councils are trying to minimise rates increases), for no real benefit. The Regulatory Impact Statement states (at page 6) that "*the changes* [proposed in the Bill] *are likely to have a positive impact in reducing the compliance burden on local authorities when deciding to undertake services that meet the requirements of the LGA 2002. The current lack of clarity about the role of local government and the perceived increased risk of legal challenge based on the purpose statement will be removed*".

4.6 That may be so, given the uncertainty around the current requirement to meet the needs of communities "in a way that is cost-effective for households and businesses". However, there is also an opportunity in the Bill to improve the alignment between section 17A and the role and purpose provisions. One way to do this might be to amend section 14(g) (one of the principles relating to local authorities) so that it reads (suggested new words added in bold):

> "(g) A local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by:
> **(i) meeting the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions; and**
> (ii) planning effectively for the future management of its assets;

4.7 It could be argued that section 17A should be removed altogether, given that meeting the needs of the community for good-quality local infrastructure, local services, and performance of regulatory functions is no longer one of the purposes of local government. However, if the Select Committee believes there is still a place for the delivery of services to be reviewed, then it is suggested that section 17A(1) be amended to read:

"*A local authority must review the current arrangements for the delivery of infrastructure, public services, and regulatory functions within the its district or region for the purpose of ensuring those arrangements are of good quality and continue to meet the needs of its communities*."

This means the key performance measure would no longer be the cost-effectiveness of those arrangements. Instead, the review would measure the arrangements against the definition of 'good quality' which is now to be included in section 5(1) - "*efficient, effective, and appropriate to present and anticipated circumstances*".

4.8 The Council submits that the remaining prescriptive and inflexible requirements in section 17A, for an options analysis for all Council services, should also be removed.

5.0 Infringement Regime

5.1 The Council, and Local Government generally, has continually submitted, since 2002, that the infringement regime provided for in the Act must be made operative through the introduction of regulations. Alternatively, amendment to the act to introduce specific offence provisions may be appropriate.

5.2 If the Council could enforce offences under the Act and when a bylaw provision is breached through the issue of infringement offences and the collection of instant fines, this would provide a number of benefits.

5.3 It would encourage better compliance with provisions of the Act and Council bylaws that might be ignored or openly flouted because it is too expensive for the Council to bring a prosecution in court for these relatively "minor" offences. Examples include water wastage and water race offences (ss224 and 228), obstruction offences (s229), failure to comply with notices or directions (ss230, 231 and 238), and damage to Council property (s232).

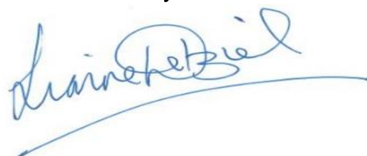
5.4 Councils already use infringement notices for breaches of traffic bylaws, freedom camping bylaws and for many Resource Management Act and Building Act offences. The delay in making the infringement regime operative places an additional burden on the community, both as a result of offences not being enforced due to the high cost of bringing a prosecution, and if a high cost prosecution is pursued. Council enforcement processes would become more cost effective and efficient with the introduction of an infringement regime.

6.0 Concluding Remarks

6.1 If you require clarification on the points raised in this submission, or additional information, please contact Judith Cheyne, Associate General Counsel at Judith.Cheyne@ccc.govt.nz

6.2 I look forward to presenting the submission on behalf of the Council. Please contact my office to make arrangements in relation to the oral hearing of the Council's submission on (03) 941-8999.

Yours faithfully



Lianne Dalziel

Mayor
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