

## **Submission of the Society of Local Government Managers on the Housing Affordability Issues Paper**

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### **Introduction**

1. The New Zealand Society of Local Government Managers (SOLGM) thanks the Productivity Commission for the opportunity to comment on the Housing Affordability issues paper ('the paper'). We especially appreciate being allowed a time extension to prepare this submission.
2. SOLGM represents approximately 540 local government managers (including Chief Executives and other managers with significant management, policy or strategic development responsibilities) with membership spanning all of the disciplines required in local government. Its vision is:

*'To be the leading influence for local government managers and staff to advance the sustainability of our communities'*

3. The paper touches on the roles and responsibilities of local authorities in a number of areas. These include the planning framework, the regulatory roles local authorities under the Resource Management Act 1991, and Building Act 2004, the impact of local taxes (rates) and the provision of urban infrastructure and the means of funding this. In addition some local authorities provide social housing, though in most local authorities this is on a small scale.
4. For the most part, housing affordability is an issue in the major metropolitan areas, and some other high growth parts of the country. The local authorities in those parts of the country are in the best position to provide detailed input on the issues as they apply to their own districts. Accordingly our comments are pitched at a general level.
5. We would be happy to discuss any of the points covered here with the Commission, please contact Don Mackay (04 978-1258).

### **The Commission's Approach**

6. We respectfully suggest that the Commission's analysis of housing affordability is questionable in several respects. While some of these may reflect gaps in the terms of reference, our concerns with the analysis are fundamental enough to be placed on record.

## **What Is Housing Affordability?**

7. The Commission expresses a view that housing affordability “reflect(s) both the up-front cost of purchasing a home (accessibility) and the capacity of an individual or household to meet the ongoing costs of housing out of current income.” While we agree with this comment we do not see this reflected in the rest of the paper.
8. In particular we note that:
  - (a) the role that housing and policies designed to influence housing affordability play in the wider economy has largely been ignored. Some commentators have traced the United States banking crisis of 2007/8 to a reliance on so-called “easy credit” policies and the consequences of this in an economic downturn
  - (b) housing affordability is typically measured using some an indicator of housing costs as a percentage of income. The paper discusses some, but not all, aspects of housing costs. But has largely ignored changes in New Zealand’s wealth and income and the interrelationship between income support policies (such as the Accommodation Supplement) and housing affordability
  - (c) the report focuses on the operation of housing markets and perceived distortions in the housing market – while these are significant it should also be noted that the price a freely operating market reaches for any good may not necessarily be affordable to all people. Again, some combination of focus on market distortions and policy interventions aimed at addressing income issues is more likely to provide an optimal solution
  - (d) although the definition that the Commission adopted correctly noted that housing has both an upfront and an ongoing cost element – the paper’s focus has almost entirely excluded the ongoing cost in its analysis. This is akin to central government building a state highway or hospital and forgetting about the cost of maintaining and replacing the assets therein! This focus is most evident in some of the discussion around local authority charges – where there are pointers that development contributions should be constrained, without a recognition that the first impact of this would be to shift the burden to rates (one being a front end cost and the other an ongoing cost). Some of the obvious candidates for inclusion are: household energy costs; local infrastructure costs (rates and charges) maintenance and repair costs; and insurance costs.

### **Recommendation**

1. **That the Commission:**
  - (a) discuss the interrelationship between income distribution, income support policy and housing affordability in its final report
  - (b) broaden its analysis of housing costs to include the ongoing costs of housing (as its own working definition indicated it would do)

- (c) **identify gaps in the stock of data on the ongoing costs of housing and develop indicators to fill these gaps before lodging its final report.**

### **Connection with Other Reviews**

9. There are several issues falling within the scope of your inquiry that are already under review through different processes within Government. These include:
  - the development of the Auckland spatial plan – a new approach to urban planning which potentially could be rolled out to the remainder of the country
  - reviews of the Resource Management Act 1991 and Building Act 2004
  - a comprehensive review of the system of local government (currently known as the *Smarter Government, Stronger Communities* project), that is to take place over the next two years and could potentially change any or all of the role, functions, structure and powers of local government
  - the Ministry for the Environment led review *Building Competitive Cities-Reform of the Urban and Infrastructure Planning System*.
  - the recovery from the Canterbury earthquakes will also undoubtedly focus on building regulation and urban planning, each of which may “spill over” into housing affordability.
10. The Commission must maintain close links with those agencies working on these reviews, and that the interrelationships between these must be fully reflected in the Commission’s final report.

### **Recommendation**

2. **That the Commission seek further advice on the links between the Auckland spatial plan, RMA review, Building Act review, the review of local government, Building Competitive Cities and Canterbury earthquake recovery and housing affordability before lodging its final report.**

### **Urban Planning, Design and Land Use Policies**

11. The papers highlight the debate about the respective merits of urban expansion and intensification of existing urban areas as means of accommodating urban growth. While we agree this is a valid issue, it is an issue primarily of concern in two or three metropolitan centres (Auckland, Tauranga and possibly Hamilton and Wellington).
12. Setting out the two focuses in an “on the one hand, on other fashion” is a useful device for teasing out differing perspectives and identifying relevant factors. It

does however, risk setting up something of a false dichotomy – that urban expansion and intensification are somehow different and irreconcilable at a level of principle, that one is the right answer, and the other is the wrong answer, at all times and in all places. We are disappointed that the questions posed at the conclusion of this section of your paper seek input in a way that seems to us to invite such unrealistic polarized responses.

13. This is simply not a “black and white” issue. The debate is about the appropriate balance between the two, and by what tools, and to what extent, should planning and regulatory policy facilitate each of these means of accommodating growth. The appropriate balance will actually be different in different places and at different times, reflecting the different circumstances that apply.
14. From an affordable housing standpoint, we suggest that appropriate balance between expansion and intensification will in part depend on the definition of housing costs. A focus simply on the front end cost of construction and sale prices of new dwellings may well generally tend to suggest that urban expansion will provide lower cost housing. However, where the broader ongoing costs are included, and a whole of life of the structure timeframe is considered this may not continue to be so clearly the case. And ultimately the answer in one location will not necessarily be entirely transferrable to another.
15. We would also reflect that much of the debate and advocacy around the question of intensification has been driven by the Auckland Metropolitan Urban Limit (MUL), a particular tool used as part of the previous Auckland Regional Growth Strategy as a means of shifting the balance of development towards intensification. Following the reorganisation of local government in the Auckland region the Auckland Council is now well advanced in developing its first spatial plan. At this point the debate about the MUL is probably most appropriately regarded as a historic rather than current one. We would suggest that you may wish to consult directly with staff of the Auckland Council about their current work.

## **Building Controls**

16. We support many of the points Local Government New Zealand makes in their submission on these matters, rather than reproducing them here we refer you to that submission.
17. Section 9 of the paper starts by stating that “local authorities have an important role in regulating the quality safety and amenity of buildings”. There is a risk of over stating the extent of local influence over building regulation. Local authorities are responsible for issuing consents and for employing building inspectors, and carry the liability risk associated with those inspections. The standards that buildings are required to meet are not however determined locally, and it is probably an overstatement to describe the system as one where local authorities are the regulator. The system is more accurately described as a

centralised system of regulation with local administration undertaken by local authorities.

18. Building is a challenging area to manage. The skills required for staff to perform effectively as building inspectors are to a substantial degree the same skills that are required to undertake building and construction. Typically, building inspectors are people who have a background and a considerable length of experience working in some area of the building industry.
19. As a result, the capacity to recruit skilled staff as inspectors is dependent on the availability of a sufficient supply of skilled staff within the building industry. To the extent there are constraints on the supply of skills in the construction industry as a whole, these will also apply to the available pool of potential inspection staff. Over recent years specific qualifications have been developed for building inspectors as part of a focus on improving the long term capability of inspection staff.
20. In addition, the pattern of “boom and bust” that is so strongly evident in the building industry poses significant additional challenges to local authorities in seeking to develop and maintain appropriate levels of capacity in building inspection. Self evidently the right number of staff during the “boom” will look extravagant over capacity in the “bust” and vice versa. During the “boom” local authorities find themselves competing with the rest of the construction to recruit and retain staff.
21. The paper that building consent processing times have lengthened, and that this was in part attributed to local authorities taking a risk averse approach as a consequence of the leaky buildings problem. We do not know how accurate this suggestion is, but we are puzzled by the implication that it is somehow inappropriate for local authorities to be risk averse. Local authorities owe a fiduciary obligation to their residents and ratepayers. Surely anything other than a risk averse approach would be open to the accusation of irresponsibility, especially when the local authority has often been left as “the last man standing” for civil claims.

## **Local Authority Rates and Infrastructure Charges**

### **Rates**

22. The paper has discussed infrastructure charges and rates as separate issues. In fact, they are two of a suite of tools available for local authority revenue and financing needs.
23. The first point we would note is that the costs of infrastructure actually account for the lions share of local authority expenditure. Two 2006 studies found 74 percent of the capital programme was spent on network infrastructure and flood protection and land drainage i.e. services that provide value to homeowners.
24. The second point is that local authorities in New Zealand raise an unusually high (by international standards) proportion of their revenue locally. Almost 85

percent of local authority funding comes from the local community as opposed to central government, of which about 60 percent comes from rates. The only significant funding from central government is for land transport (mostly funded from fuel excise).

25. Development contributions are a tool that allows local authorities to recover the cost that development imposes on network and community infrastructure. Financial contributions are a charge to help local authorities manage the environmental effects of development. Rates are a tax on property available to fund any local government activity. The three are not unrelated – and in practice there is often some degree of crossover between the first two and the third (i.e. some capital cost imposed by development may be recovered via the rating system but not vice versa).
26. Section 8 focuses on the impact financial and development contributions have on the front-end cost of new housing. The counterfactual, however, is that in the absence of these mechanisms, the same costs would instead be added to the sum to be recovered through rates. At the aggregate level, whatever was subtracted from the up-front cost of new housing, would simply be added to the ongoing cost of housing across the district in the future. The timing of the payment would differ, and that costs would inevitably be distributed differently among households, but essentially the same costs for the same infrastructure would still be met by households within the district concerned over time.
27. The levels of local authority rates have been a matter of considerable political interest over recent years. This has been a response to the fact that since the late 1990s, the general level of increase in the levels of local authority rates has been greater than the rate of general price inflation as represented by the CPI.
28. Criticisms of development contributions, rates and other local authority charges as lacking in transparency or accountability ignore the legal requirements place on local authorities. Among other things this requires consideration of:
  - the local authority's policy objectives and how funding may or may not contribute to the achievement of these objectives
  - who benefits
  - the people whose action or inaction contributes to a need for the expenditure
  - intergenerational equity
  - the costs and benefits of funding activities separately
  - impacts on social, economic, environmental and cultural wellbeing.
29. Failure to consider any of these matters can and has led to decisions between overturned on judicial review. A development contributions related example can be found in the decision in *Neil and Others vs North Shore City Council*. Decisions can also be challenged on administrative law grounds.
30. The process as a whole is designed to ensure high levels of transparency and support effective accountability of councils to their local communities. But the

process is not well understood by many outside the sector, and understandably if often attacked by those who have not got the outcome they desired from the process. We would be happy to further explain the process and case law in the area if the Commission would find that useful.

31. The decision to use contributions reflects a consideration of the extent to which it is considered appropriate for the costs of infrastructure required by growth to be targeted to where the growth is occurring (“growth pays for growth”) as opposed to being diffused more generally across the community and collected through rates. This is partly a judgment based on considerations of equity (is it fair for existing residents to pay the costs of growth related infrastructure?) and partly about efficiency (contributions can be seen as sheeting home what would otherwise be cost externalities). Even those local authorities that do use contributions usually settle for a sharing of these costs between the two mechanisms.
32. The result of the degree of focus on levels of rates over recent years is a general acceptance that the driver of these increases is the increasing cost of providing core local infrastructure. SOLGM has commissioned historic analysis and regular projections of the likely level of cost increases in key areas of local authority costs BERL. These have consistently showed key input costs, and in particular those that relate to the provision of infrastructure increasing at levels above the level of general inflation across the economy. Obviously this impacts most significantly in areas where growth is occurring as this drives the demand for new infrastructure. The most recent BERL “adjustors” are available online at [http://www.solgm.org.nz/site/Policy\\_Work/Berl.aspx](http://www.solgm.org.nz/site/Policy_Work/Berl.aspx)
33. The costs to local authorities (and hence to ratepayers) of providing local infrastructure have been rising over the past decade. On the face of it one would expect that this would impact negatively on the cost of housing, if not in terms of the front-end cost of purchase, then at least in terms of the ongoing cost of being housed. In the light of this, the conclusion presented in your Figure 10 showing rates declining as a proportion of the value of property is not immediately intuitive. We would suggest that what it indicates is that some other factor or combination of factors of far larger magnitude is driving the sale prices of house. It may not be entirely correct that rates are not impacting on housing costs, so much as that their impact is immaterial in the context of other factors.

#### **Recommendation**

3. **That the Commission note the analysis of drivers of local authority funding requirements and that funding decisions are made through a transparent accountable process.**

## Infrastructure Charges

34. We were surprised to find that the sweeping assertions made by the Local Government Forum and Property Council given such prominence in your paper. We feel that some response to each of those assertions is required.

*Development contributions lack transparency and weaken accountability of elected representatives*

35. We have already summarized the processes that local authorities are required to follow in adopting contributions. While it is true that the formulae for determining development and financial contributions are complex, much of that complexity arises from the need to clearly separate out the growth components of capital expenditure from the non-growth components (level of service increases and renewals). Recent changes to the Local Government that require local authorities to identify capital expenditure by driver make the things contributions fund more obvious to developers. On the whole, the clear separation of growth from non-growth actually advantages developers and means that development contributions are most definitely not a tax.
36. The other main aspect of complexity in development contributions lie in the “catchment” approach that councils take. Most councils apply development contributions on a catchment by catchment approach, to minimise the potential for situations where high growth developments might subsidise low growth one. Local authority policies must contain a schedule of the charges, and the methodology for calculation must also be set out. It can be argued that any perceived lack of transparency in contributions comes not because too little information is available, but too much. Differences in contribution arise out of differences in the cost of providing infrastructure due to patterns of settlement, topography, geologic conditions, the availability of civil contracting resource both nationally and in the local area and the like. Differences in local policy settings also account for differences in the charge – some councils have a “growth pays for growth” policy whereas others take the view that they should encourage as much growth as they can and charge little (or even no) contribution

*Infrastructure charges are being inappropriately imposed on individual developments, when they should be spread more widely*

37. This is a rather sweeping statement of opinion unsupported by any real evidence. There is an element of inconsistency in the claims that the LGF report makes in that on the one hand it says development contributions are not transparent, yet the more finely grained policies that go to individual catchments and attempt to assess the charges on a basis that is close to the cost of “individual developments” represents an inappropriate imposition

*Proceeds of development contributions are being used to “gold-plate” and “green-plate”*

38. We are not aware of any evidence that supports this claim. Development contributions can only legally be used to fund the costs directly related to growth. Both gold-plating and green-plating are levels of service improvements, and as

such can not be funded from development contributions. Were there real evidence of gold-plating, we are sure that this would have been used to challenge the legality of the contributions concerned through the Courts. There is no body of case law of such challenges.

*The level of spending on infrastructure is often set politically or administratively often without regard to the willingness of users to pay*

39. Decisions to invest in the provision of infrastructure are taken as part of the statutory planning processes outlined earlier. This is inherently a political decision made by elected councilors who are accountable to their communities. As virtually all local authority capital works (especially network infrastructure) is put out to competitive tender the level of the cost of providing that infrastructure is a market tested price.

*Residents of developments are effectively paying twice for some infrastructure through both upfront charges and rates or ongoing charges (double charging)*

40. It is true that the residents of developments pay both the contributions (to the extent that these are passed through the purchase price) and rates on an ongoing basis as residents. The implication that this somehow involves double payment is however totally specious. The costs recovered through development contributions, and the costs recovered through ongoing rates and charges, are for two separate aspects of whole of life asset costs. Development contributions may only be legitimately assessed to recover the capital costs directly attributable to development. The mechanism that is then available to fund the ongoing operating needs – operating costs, maintenance, depreciation and like – is the rating system. As all connected to a network (both in developments and outside developments) are using the asset and giving rise to a need for operating costs, and consuming future service potential, it is both equitable and efficient for all users to contribute

*Funds are not being spent on the designated purpose*

41. No evidence has been provided to support this assertion. Legally, development contributions are tied to funding only those works necessary to service growth. Again, if there were evidence of funds being spent inappropriately then this would provide grounds for the contributions to be challenged through the courts. We are not aware that there has ever been such a challenge.

Lack of scope for, or excessive cost in, appealing against particular charges or requirements

42. Like any other local authority funding decision (such as setting rates), a development contribution may be judicially reviewed on grounds of failure to comply with the law, or unreasonableness (in the administrative law sense). Financial contributions set under the RMA are also appealable through the Environment Court.

43. It is unclear to us what makes a decision to levy a development contribution and the level of that contribution so different from say, a decision to set a rate, that would warrant a different appellate process, or different standard of proof.
44. We note the principles for infrastructure charges set out on page 29 of the paper. Notwithstanding the comments from the Local Government Forum and Property Council, the current legislative provisions for development and financial contributions seem to us to be consistent with these.

**Recommendation**

4. **That the Commission note the above analysis of the assertions made in the Local Government Forum report.**