

**Submission**

to the

**New Zealand Productivity Commission**

in response to

**Local Government Funding and Financing**  
Issues Paper November 2018

**February 2019**

## **Introduction**

This submission is made by Foodstuffs (NZ) Ltd on behalf of the Foodstuffs group of companies – Foodstuffs North Island Ltd, Foodstuffs South Island Ltd, and their Federation organisation - Foodstuffs (NZ) Ltd.

The regional Foodstuffs companies are involved in grocery warehousing, distribution, store development and retailing. Retail stores are franchised to cooperative members and owner-operated under various Foodstuffs-owned brands including PAK'nSAVE, New World, and Four Square.

Foodstuffs has wholesale facilities or stores in every local government area. The breadth of Foodstuffs activities requires the organisation to engage with local authorities on multiple fronts, but principally as commercial rate payers, commercial road users, and commercial property developers. Liquor licensing and emergency management are also drivers for contact with local government.

Due to the nature and scale of Foodstuffs operations, local government costs are, in aggregate, significant for the organisation. Engagement processes also involve significant cost in terms of people time. These costs have been growing at a rate that is disproportionate to the value of services received from local government. As a significant enterprise in both national and local economies, Foodstuffs has a strong interest in ensuring local government runs efficiently and effectively, and is funded appropriately. We welcome the current Inquiry.

## **Purpose of Local Government**

The creeping scope of local government is a driver for cost increases, and Foodstuffs therefore believes some focus on the scope of local government activity is warranted. Proposed amendments to the Local Government Act to restore the "four well-beings" (promotion of the social, economic, environmental, and cultural well-being of communities) will further broaden the scope of local government activity, with cost implications. It is therefore timely that the Productivity Commission consider the ramifications of the proposed legislative change, and make recommendations on appropriate funding mechanisms for the new types of activity likely to be engaged in.

Foodstuffs believes it is desirable to constrain growth in the scope of local government activity to some degree. To this end we believe the core activities of local government should be defined and spelt out in the Act. What the core activities of local government are will require wide debate, but this is a debate worth having.

Once the core activities of local government have been defined, local government should only be permitted to act outside this brief with the mandate of their constituency.

## **Structure of local government**

It is Foodstuffs view that New Zealand is over-governed for its size and population. There are too many councils for local government processes to be efficient and this over-supply sub-optimises effective governance.

Foodstuffs and other nationally based businesses incur significant transactional costs having to deal with the very large number of councils that we currently have. Additionally, the wide variation of approach across councils leads to higher costs for developers who need to tailor each project to local requirements. As a property developer of some significance, it would be desirable to participate in all the relevant consultative processes undertaken by councils – consultations in relation to long-term community plans and annual plans by regional, city and district authorities, however this is not possible in practice. We also need to maintain on-going relationships with councils in relation to the many resource consents we lodge for new buildings, extensions and refurbishments. With 11 regional councils, 67 territorial authorities, and 6 unitary authorities, this represents a significant cost to our business operations.

There is considerable overlap of activity between regional and territorial authorities. Common activities undertaken by regional and territorial authorities include resource management, transport planning, civil defence and emergency management, transport services, management of parks and reserves, water supply and economic development. As a developer we often need to apply for resource consents for the same activity from both regional and local councils. An example would be for consent to discharge storm-water, as regional and local authorities are responsible for the management of different parts of the storm-water infrastructure. This involves additional work and associated cost for us. The issue is further exacerbated by the fact that regional and local councils are often reluctant to consult or even liaise with one-another.

Business transaction costs and the administrative overhead of local government would be reduced if there was further rationalisation of local government. Rationalisation would also result in better planning and investment decisions as restructuring could accommodate demographic and other relevant changes e.g. advancements in communications technology, since the current structure was implemented. For these reasons, Foodstuffs supports, in principal, proposed legislation for the establishment of more urban development authorities, although this is only a partial solution and the potential for overlap may add to business transaction costs.

While Foodstuffs believes the optimal number of councils would be significantly less than we currently have, it is vitally important that local government boundaries replicate “communities of interest.” Accordingly, there is greater need to rationalise local government in build-up areas than provincial and rural areas.

## **Planning and Accountability**

In making decisions, the Local Government Act 2002 requires councils to identify all reasonably practicable options; assess the costs and benefits of each option; the effectiveness of each option (advantages and disadvantages); and consult with the community and affected parties. This is all well and good, but the Act also provides councils with too much discretion about how to achieve compliance with these requirements.

Councils, particularly smaller ones, do not always have the resources, capability as well as capacity, to provide elected representatives with consistently high-quality policy advice. Public consultation processes do not always present all the relevant information on which to base an objective decision. In our assessment the quality of decision-making varies tremendously between councils. However, in all cases accountability processes are weak. A three yearly election process is a blunt tool for accountability.

The current mix of rating and voting systems creates strong incentives for councils to push costs onto sectors that are poorly represented at the ballot box. For example, the total rates burden met by the business community feels disproportionate to the services the business community receives from councils.

Central government has adopted institutions and frameworks which provide appropriate checks and balances against the powers vested in Government. Three central agencies – Treasury, the Department of Prime Minister and Cabinet, and the State Services Commission are collectively responsible for providing leadership, coordination and monitoring across the entire public sector. The Government has a statutory responsibility to act with fiscal responsibility; Regulatory Impact Statements are required for all discussion documents and government bills; and the Ministry of Business, Innovation and Employment (MBIE), provides guidance on policy development and regulatory impact analysis. Other agencies undertake sector-specific performance monitoring e.g. the ERO monitors the performance of schools which are managed by community elected School Board Trustees.

Local Government has none of these checks and balances. Some ongoing independent monitoring of the sector would provide impetus for performance improvement and enhance local government accountability.

### **Development Contributions**

Development contributions (DCs) are permitted by Subpart 5 of the Local Government Act 2002. They are intended to enable territorial authorities (TAs) to recover, from developers, a fair and equitable proportion of the costs of the capital expenditure which TAs incur to service growth. DCs are an increasingly common tool for local councils to use to pay for growth with DC and financial contributions increasing from \$120m in 2003 to \$387m in 2017.<sup>1</sup>

While we consider the use of DCs as justified, Foodstuffs has had occasion to question the reasonableness of individual charges and believes some councils are using their statutory powers to charge developers a disproportionate share of infrastructural development costs. Public opposition to rate increases is a likely driver of such behaviour. This problem is exacerbated by historic under-investment in infrastructure and the now urgent need to “catch-up” on deferred capital works. Such matters have been brought to a head by the statutory requirement to develop Long Term Community Plans.

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<sup>1</sup> *Development Contributions: A report prepared for Foodstuffs NZ, TDB Advisory, November 2018, page 11*

The Productivity Commission's Inquiry into Housing Affordability in 2012 identified its own concerns with the DC regime, including inappropriate use of DCs, variation in charging methods, a lack of transparency, and the inability for developers to challenge DC charges.<sup>2</sup> The Commission's recommendations lead to a formal government review of the regime in 2013 and legislative amendments in 2014 implementing several of the Commission's recommendations for improving the DC system. This included purpose and principles sections for the DC regime, a more focused definition of community infrastructure, and a new objection process.

While these changes were welcomed by Foodstuffs and others, and have improved the DC regime to some extent, several of the Commission's recommendations were not implemented. The recommendations that were not implemented included: the development of guidelines on how DCs should be calculated and recovered; training on this guidance; and a quality assurance process to help councils implement DCs effectively and share the lessons from experience.<sup>3</sup> In their absence, Foodstuffs experience indicates that the way some TAs are continuing to use DC charges is not always commensurate with the legislated principles introduced in 2014.

In 2018 Foodstuffs commissioned TDB Advisory (TDB) to capture Foodstuffs concerns and enquire into their legitimacy. TDB's report, which is attached as Appendix 1 of this submission, identifies several issues that the principles were intended to address but which remain problems with the DC regime. These include:

- disproportionate charging for council infrastructure;
- variation in charging;
- inappropriate timing of charging;
- lack of transparency; and
- issues with system reliability.

TDB's report discusses these issues in depth, finding that many of the issues stem from the lack of a clear charging methodology for local councils to employ. As an example, the TDB report refers to the very recent issue with Auckland Council's revised draft DC Policy 2018<sup>4</sup>, released in October 2018, which proposed a 500% increase in DCs for transport, to be levied on retail and commercial developments. The draft policy contained no specific narrative explaining the basis for the increase. After TDB presented its report to Foodstuffs in November, and following public consultation on its revised draft policy, Auckland Council withdrew the proposal reverting to its prior 2015 policy for transport charges. While this was a relief to local developers, we are none the wiser about the original rationale for the proposed increase in transport charges.

TDB recommends, and Foodstuffs concurs, that updated Best Practice Guidance for Development Contributions is now critical, along with the previously recommended training for council officials and elected representatives. Foodstuffs also believes that independent oversight of councils' DC policies, would help ensure councils' charging mechanisms are commensurate with the purpose and principles of DCs.

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<sup>2</sup> *Housing Affordability Inquiry Report*, Productivity Commission March 2012, Chapter 7

<sup>3</sup> *Ibid*, page 11.

<sup>4</sup> *Development Contributions: A report prepared for Foodstuffs NZ*, TDB Advisory, November 2018, Case Study 5, pages 21 & 22

## Funding

As outlined above we believe there is considerable scope to improve the efficiency of local government activity by more clearly defining and possibly restraining the role of local government, and by rationalising local government structures. Greater oversight (accountability) might also encourage more discipline, while best-practice guidance in relation to DCs would improve the consistency and the quality of DC policies.

In relation to potential funding mechanisms for local government, Foodstuffs supports the following principles:

- User charges should be utilised whenever Council services are captured as private benefits e.g. library book rental, car-parking, dog registration, food safety programme approvals for food businesses etc. Costs should be fully recovered.
- Uniform annual charges may be appropriate for funding private benefits where a user-pays approach is not viable because of high transaction costs e.g. residential rubbish collection.
- A general rate should be levied to fund all services falling within the “public good” category, including network and community infrastructure.
- Councils should be permitted to apply variable rates (higher or lower) to ratepayers in clearly defined locations, commensurate with differences in the level of services provided to the identified catchment e.g. rural areas probably justify a lower level of rating because they receive fewer council services.
- Councils should be permitted to apply a targeted rate to a defined subset of ratepayers to fund a specific project or activity e.g. irrigation scheme; provided that the affected ratepayers give consent.
- Rating differentials must relate to genuine differences in the level of services provided. Cross subsidisation between business and residential ratepayers, rural and urban ratepayers, should be eliminated or minimised. Differentials to deal with affordability concerns are inappropriate. Issues relating to rates affordability are better dealt with by welfare systems e.g. income support or extension of the rate rebate scheme.
- DCs should be levied only for the increased demand on the Council infrastructure attributable to the specific development being levied and be supported by robust economic and financial analysis. Best practice guidance and training, and independent oversight is also required.
- Greater borrowing by councils may be appropriate to better spread the cost of new infrastructure across the generations or ratepayers that will benefit from the expenditure.
- Greater financial support/funding from central government may be appropriate in some circumstances. The Productivity Commission might consider principles for assessing when central government contributions are justified, as well as how “fair” contributions might be calculated.

End



APPENDIX

## Development Contributions

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A report prepared for Foodstuffs NZ

**Foodstuffs** <sup>NZ</sup>

27 November 2018  
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# 1. Introduction

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TDB Advisory (TDB) has been engaged by Foodstuffs NZ Ltd (Foodstuffs) to undertake an independent review of development contribution (DC) charging mechanisms currently used by local councils.

Foodstuffs, as a major developer of properties for supermarket purposes, has had a variety of experiences with DC charges across different parts of the country. Foodstuffs has found that while DCs operate under sound legislative principles within the Local Government Act, 2002 (LGA), in practice there appear to be situations where local councils do not act in accordance with the legislation. In particular, Foodstuffs has found that in many cases, the DC purpose and principles legislated in the 2014 Amendment to the LGA are not being well implemented by local councils.

TDB has been engaged to undertake an analysis of the current DC charging regime, identify the key problems with the system and the underlying causes of the problems. Our process for undertaking this review involved:

- examining DC legislation and its development;
- meeting with Foodstuffs' property development managers and consultants and investigating key DC case studies from Foodstuffs' experiences;
- identifying and assessing the key issues with the current system and their underlying causes; and
- presenting a set of recommendations for improvements to the current system.

This report presents our findings.

Section 2 provides background on the DC legislation and its development, while Section 3 discusses the current situation with DC charging. Section 4 establishes the key issues we have identified with the current system, followed by discussion of some of the possible underlying causes in Section 5. Section 6 presents our conclusions and finally recommendations in Section 7.

## 2. Background

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Development contributions are a tool used by local councils to help fund the cost of growth-related infrastructure. All types of developments, including residential, commercial, industrial and retail sites can be subject to DC charges by local councils, provided they create an additional demand on council-provided infrastructure. Infrastructure that can be funded by DCs tends to relate to stormwater, wastewater, water supply, transport and reserves (applicable to residential developments only).

Since the DC charging system was introduced, there has been significant discussion around how DCs are charged. This section provides an overview of the development of DC charging and the surrounding legislation.

### 2.1 The development of development contributions

Before the introduction of DCs, the main tool used by local councils to fund development related infrastructure was financial contributions (FCs). FCs were set up under the Resource Management Act (RMA) in 1991 to provide local authorities with a further means of avoiding, remedying and mitigating the adverse environmental effects of development. Though there is some crossover in the nature of DCs and FCs as cost-recovery tools, FCs differ from DCs in that they can only be charged through resource consents, do not have to be directly linked to growth and can be charged by regional councils (unlike DCs which can only be charged by local councils).

During the development of the LGA, a number of issues were recognised with FCs as a cost recovery tool for growth related infrastructure. These included the inability for councils to charge FCs on infrastructure not linked to a resource consent, an inefficient appeals process and the lack of any clear principles and methodologies surrounding FCs. Councils tended to take a wide variety of approaches to FCs, with inconsistencies in implementation resulting in uncertainty and unpredictability for developers.

Acknowledging the limitations of FCs, the DC system was developed and implemented through the LGA, as a more direct growth-related infrastructure cost-recovery tool for local authorities. The LGA established the ability for local councils to use DCs as a cost-recovery tool for growth-related infrastructure connected to a development, if the infrastructure is not already provided by the developer, funded by a third party or being funded through FCs.<sup>1</sup> The DIA describes DCs as:

*“a charge imposed on a developer by a council to recover some of the capital costs incurred by the council when providing infrastructure services for the development.”<sup>2</sup>*

Since DC charging was legislated in 2002, it has become a common cost-recovery method used by local councils (see Section 3). While FCs are still used in certain situations, it is now common for councils to charge DCs for direct growth-related infrastructure like wastewater, water supply and transport. FCs are now more commonly used for funding reserves and parks, or by councils in small, low growth areas.

In order to charge DCs, the LGA requires each local council to develop a DC policy. The DC policy details a council’s DC charging methodology and the charging rates per DC category for each catchment. These

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<sup>1</sup> Local Government Act, 2002, section 200.

<sup>2</sup> [https://www.dia.govt.nz/vwluResources/BLG-QandA-1b/\\$file/BLG-QandA-Dev-cons-June-2014.pdf](https://www.dia.govt.nz/vwluResources/BLG-QandA-1b/$file/BLG-QandA-Dev-cons-June-2014.pdf)

charges are set based on the anticipated infrastructure costs set out in the local council's 10 year-plan Long Term Plan (LTP).

When DCs were first introduced, an initiative between Local Government New Zealand, New Zealand Society of Local Government Managers (SOLGM) and the DIA was established to develop a Best Practice Guide to Development Contributions. The guide was released in 2003 and:

- explains the legal framework surrounding FCs and DCs;
- guides users on the stages of analysis and the process the legislation contemplates;
- presents recommendations on good practice regarding charging systems and processes.<sup>3</sup>

The Best Practice Guide to Development Contributions released in 2003 is the only guide of such nature to be released thus far.<sup>4</sup>

## 2.2 Charging based on Housing Unit Equivalent (HUEs)

Local councils tend to charge DCs on a variety of developments using a common unit often known as 'housing unit equivalents' (HUEs).<sup>5</sup> This is required by the LGA, which establishes that local councils set DC charges in accordance with an established unit of demand, which must

*"be attributed to particular developments on a consistent and equitable basis"*<sup>6</sup>

One HUE represents the average measure of impact on council infrastructure generated by one house. With this common measure, councils can subsequently calculate the anticipated transport, water supply, wastewater, stormwater and reserve cost of one household, and set DC charges accordingly.

If there is pre-existing infrastructure on the site, HUE credits are applied to the development, reflecting the reduced demand on council infrastructure generated by the site. For example, if a house were to be knocked down and a new house built in its place, the new house would connect to existing water supply and stormwater infrastructure. A portion of the DC costs of this infrastructure have already been accounted for by previous tenants, thus resulting in a HUE credit for the site.

When it comes to residential developments, HUEs are relatively straightforward in application (as one house generally equates to one HUE). Assessing DCs for commercial and retail developments is where this system is more complicated. Local councils tend to use HUES as a proxy for calculating DCs for non-residential properties, employing various multipliers to estimate the relative impacts of a development. Ground floor area (GFA) or site area (ISA) is often used to calculate the HUEs for each DC for a development. This process requires assumptions on how characteristics of a non-residential development correlate with the HUE measurement.

As with residential developments, if there is already pre-existing infrastructure on a development site (ie, it is a brownfield development), the local council is to apply HUE credits to the site.

In its DC policy, each council establishes the DC charge (per HUE) for each DC category and each catchment within the district. Setting DC charges by catchment recognises the differences in infrastructure requirements and costs across different geographical areas.

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<sup>3</sup> Productivity Commission', "Housing affordability inquiry", page 142.

<sup>4</sup> However for whichever reason, it does not currently seem available to find online.

<sup>5</sup> Also referred to as Dwelling unit equivalents (DUEs) and Dwelling equivalent units (DEUs).

<sup>6</sup> Local Government Act 2002, section 106 (2A).

## 2.3 2012 review of development contributions

Ten years after DC charging began, a range of issues surrounding the system seemed to have accumulated. On March 1, 2012, the Productivity Commission released its Housing Affordability Inquiry. This enquiry discussed a number of concerns surrounding DCs, including whether the system promotes efficiency and equity; transparency of charge setting; council resources and capability to administer the charges; and the ability of developers to challenge charges. The Commission also noted that the Best Practice Guidelines to Development Contributions had not been updated since their development in 2003.

Reviewing these issues in turn, the Productivity Commission provided the following four major recommendations to the government surrounding DC charging:

1. updating the Best-Practice Guidelines to improve understanding of development contributions and how they should be used, alongside developing a set of DC principles to be incorporated in the LGA
2. the establishment of a training programme for local authorities to improve practice around development contributions;
3. the introduction of reporting requirements to demonstrate compliance with the guidelines; and
4. the introduction of a dispute resolution process similar to that in the Resource Management Act, 1991 (RMA).<sup>7</sup>

In response to the Productivity Commission's enquiry, the Government agreed that the Department of Internal Affairs (DIA) facilitate a consultative process for updating the Best-Practice Guidelines for DCs, and develop a set of high-level principles to be included in schedule 13 of the LGA. The Government also recommended that the DIA identify information that local councils would need to provide in regular reports, in order to demonstrate performance against the Guidelines, as well as develop a dispute-resolution process for DC charges.<sup>8</sup>

What followed was the 2014 Amendment Act to the LGA, which included changes to the DC charging system. In the end a Best-Practice Guideline for DCs and a requirement for regular local council reporting were not implemented in the Amendment Act, however the high-level principles and a number of other changes were.

## 2.4 Local Government Act, 2002 Amendment Act, 2014

As recommended by Government, in 2013 the DIA initiated a 'Development Contributions Review' with the intention to incorporate its findings in the LGA, 2002 Amendment Act, 2014. The DIA's review discussed a range of issues with the system, including those identified by the Productivity Commission's enquiry. Key amongst these issues were:

1. DCs were being used to pay for infrastructure that was not directly associated with servicing a development, such as community facilities (e.g. art galleries, cemeteries, and aquatic centres);
2. variability in how councils apportioned the costs and benefits of infrastructure between developers and the community;
3. less than optimal transparency and accountability, particularly around the ability of developers to challenge DCs; and

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<sup>7</sup> Productivity Commission, 'Housing affordability inquiry', page 269.

<sup>8</sup> New Zealand Government, 'Housing Affordability – Government response to the Productivity Commission's Recommendations', page 4.

4. variable local authority capability and capacity to develop and administer DC policies.

The review presented a range of options to address the identified issues, followed by public consultation in February 2013. Upon completion, the findings of the review were considered, which then had influence on the final LGA Amendment Act, 2014. In regards to DC charging, the Amendment Act included the following changes:

- a new set of principles to guide the use of DCs, alongside a defined purpose of DCs;
- clarification on and narrowing the range of infrastructure that can be financed by development contributions (now excluding the likes of cemeteries, art galleries and aquatic centres);
- improvements to the transparency of development contributions policies;
- encouragement of private provision of infrastructure through the use of development agreements;
- introduction of a development contributions objection process, with decisions made by independent commissioners; and
- clarification on legislative provisions to make them more workable and easier to understand.

The date of assent for the Amendment Act was 7 August 2014, however the changes to the DC regime came into effect at different times. From the day after enactment, councils could only charge DCs on community infrastructure that fit under the new definition and the objection process became available. By 1 December 2014, councils were required to finalise the proposed changes to their DC policies as a basis for consultation. By 30 June 2015, councils were required to publish amended DC policies that reflected the new DC purpose and principles.

## 2.5 Development contribution purpose and principles

The DC purpose and principles were an important inclusion in the LGA Amendment Act, providing more clarity and framework to how councils used this cost-recovery tool.

The DC purpose was inserted as Section 197AA of the LGA, stating that the purpose of development contributions is to:

*“enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.”<sup>9</sup>*

Section 197AB of the amended LGA states that all territorial authorities must take into account the following set of principles when preparing a development contributions policy:

**Principle a:** *Development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity;*

**Principle b:** *development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding;*

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<sup>9</sup> Local Government Act 2002, Section 197AA.

**Principle c:** cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets;

**Principle d:** development contributions must be used:

(i) for or towards the purpose of the activity or the group of activities for which the contributions were required; and

(ii) for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required;

**Principle e:** territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used;

**Principle f:** development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority's development contributions policy under sections 106, 201, and 202;

**Principle g:** when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that:

(i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and

(ii) grouping by geographic area avoids grouping across an entire district wherever practical.

Upon making the 2014 amendments to the LGA, the DIA released a number of fact sheets explaining the new changes, including a sheet relating to the purpose and principles clauses. The fact sheet states that these additions have been made based on the following points:

- the act previously contained no statement of why DCs existed and what their purpose was, which caused councils to form varying views on what DCs were for, and subsequent variation in practice and outcomes;
- the principles ensure local councils develop and apply their policies on a more consistent, common basis of understanding; and
- the principles provide direction as to how DCs are to be applied, and a reference point for developers, commissioners and the courts to test appropriateness of DC policies against.

The fact sheet states that in practice this means that the duty to “take into account” the principles requires territorial authorities to actively consider whether and how the principles will be applied while allowing some flexibility to determine how this will be done.<sup>10</sup>

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<sup>10</sup> DIA, 'Better local government Fact sheet: Development contribution purpose and principles'. <https://www.dia.govt.nz/Fact-sheets-for-2014-Act#Development>

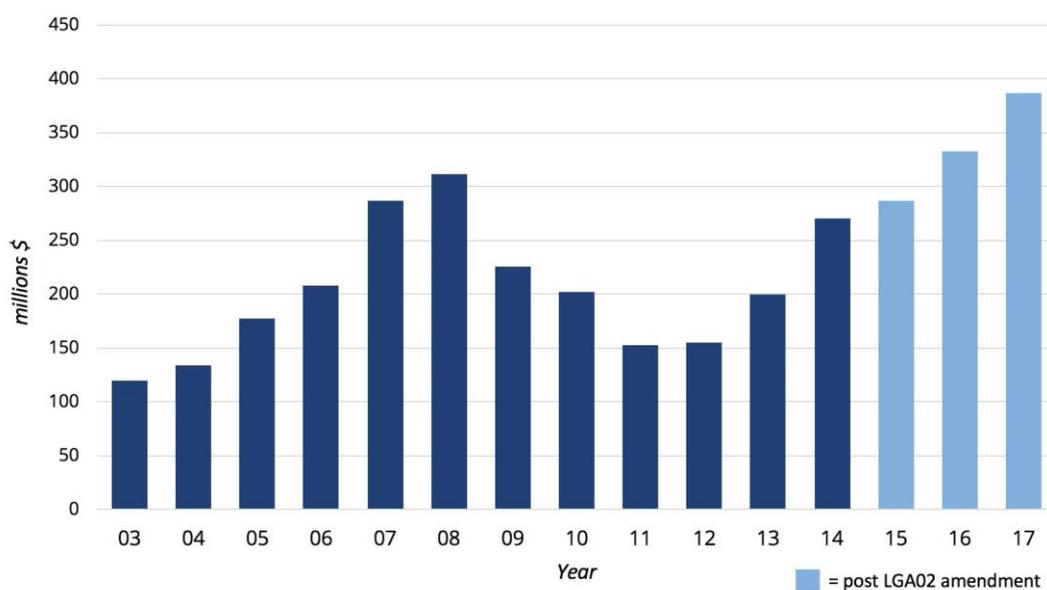
### 3. The current level of DC charging

Four years after the 2014 amendment of the LGA, it seems appropriate to review the DC charging system, in particular the extent to which the legislated DC purpose and principles are being followed by councils.

In this report we first analyse the growth in DC charging since its introduction in 2002.

Unfortunately, the available data from Statistics NZ combines DCs and FCs, which limits our ability to solely view the growth in DC charging. Figure 1 below illustrates the total DC and FC income of all local councils in New Zealand since 2003.

**Figure 1: Total local council development and financial contributions from 2013**



*Note: In real 2018 NZD*

*Source: Statistics NZ and TDB analysis*

Figure 1 shows an overall trend of growing use of DCs and FCs by councils, along with a sharp fall in DC and FC income between 2008 and 2011 (likely caused by reduction in growth resulting from the global financial crisis). Since the introduction of DCs, total DC and FC income for local councils has risen from \$120 million in 2003 to \$387 million in 2017 (in real 2018 NZD), a 223 percent rise.

To understand the scale of the growth in DCs and FCs relative to total local council income, Table 1 below shows annual DC and FC income alongside total local council operating income. Every second year has been provided for conciseness.

**Table 1: DC and FC income alongside total local council operating income since 2003**

(\$ millions)	2003	2005	2007	2009	2011	2013	2015	2017	Total change	Year on year change
DC and FC income	120	177	287	226	153	200	286	387	223%	9%
Total local council operating income	5,792	6,445	7,019	7,333	7,857	8,177	8,672	9,553	65%	4%
Contributions as a % of total operating income	2.1%	2.8%	4.1%	3.1%	1.9%	2.4%	3.3%	4.0%	-	-

Note: In real 2018 NZD

Source: Statistics NZ and TDB analysis

As Table 1 shows, total DC and FC income tends to make up a relatively small but growing percentage of total local council operating income (ranging from around 2 to 4 percent). The DIA's 2013 discussion paper noted however, for some local councils it has been reported that DCs can make up between 10 and 20 percent of total local council operating income.<sup>11</sup>

Also evident in Table 1 is the difference in growth rates between DC and FC income and total local council operating income. DC and FC income has grown 223 percent over the last 14 years, at an average annual rate of 9 percent per year. This compares to total local council operating income growth of 65 percent, at an average rate of 4 percent per year.

Table 2 below investigates the growth rate of DC and FC income vs total council operating income further by showing the growth over the last 14 years, alongside growth rates over the last 6 and 3 years.

**Table 2: Income growth rates over 14, 6 and 3 year periods**

	14Y change (2003-2017)	6Y change (2011-2017)	3Y change (2014-2017)
Total DC and FC income	223%	153%	43%
Total local council operating income	65%	22%	14%

	14Y year on year change	6Y year on year	3Y year on year
Total DC and FC income	9%	20%	20%
Total local council operating income	6%	4%	7%

Source: Statistics NZ and TDB analysis

Table 2 illustrates that, when viewed over a more recent timespan, the difference in growth in total DC and FC income compared to total local council operating income is even more significant.

In the DIA's 2013 Development Contributions Review, projections were made of future contributions revenue relative to local authority operating income. These projections were from 2013 to 2022. We can now compare the first five years of projections with the actual figures, as illustrated in Table 3 below.

<sup>11</sup> DIA, "Development contributions review – discussion paper", 2013, page 17.

**Table 3: Actual and projected contributions as a % of total local council income**

	2013	2014	2015	2016	2017
<b>DIA Projected</b> contributions as a % of total local council income	2.3%	2.8%	3.1%	3.2%	3.5%
<b>Actual</b> contributions as a % of total local council income	2.4%	3.2%	3.3%	3.6%	4.0%

*Source: Statistics NZ and TDB analysis*

For all five years (from 2013 to 2017), the actual contributions as a percent of total local council income has exceeded the levels predicted by the DIA in 2013.

While we cannot conclude that the ongoing (and quite significant) increases in DC and FC income over recent years reflects improper use of these mechanisms by local councils, we consider the significant rise in DC and FC income (particularly in recent years) to be unusual. Given that the LGA amendment involved changes specifically aimed at narrowing the scope of infrastructure that DCs could be used for, as well as principles ensuring the link between DC charges and developer imposed costs, it seems reasonable that a reduction in DCs would occur (and therefore a likely reduction in total local council DC and FC income). On the contrary, the DC and FC income has been increasing at a growing rate. While we note that development growth likely plays a part in increasing DC and FC charges, we also raise the question of whether there is evidence of local council misuse or overuse of these funding mechanisms.

## 4. The key issues

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Having identified that total DC and FC incomes for local councils are growing in significance, this section aims to focus more specifically on how these charges operate at the individual development level.

We agree that the purpose and principles in the legislation appear to be sound. However, Foodstuffs has had concern for some time over local councils' adoption and application of these principles. Foodstuffs has had a number of past development experiences where the DC charging of the local council does not appear to have reflected the principles, creating concern for Foodstuffs over the effectiveness of the current system.

By discussing and analysing Foodstuffs experiences and comparing them with the intended functions of DC contributions, this section reviews the key areas of concern we have identified with the current system. Using supporting case studies from Foodstuffs past experiences, the following five key issues are discussed in turn:

- disproportionate charging;
- variation in charging;
- timing of charging;
- lack of transparency; and
- system reliability.

A number of these issues are not new to the wider discussions on DCs. There is significant crossover between the major issues we have identified that Foodstuffs is currently facing, and those identified by both the Productivity Commission in 2011 and the DIA in 2013. The continuation of these key themes in itself suggests that while the 2014 amendment to the LGA may have been a step in the right direction, further change may well be required in order for the legislated purpose of recovering a "fair, equitable and proportionate"<sup>12</sup> portion of growth related expenditure to be achieved.

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<sup>12</sup> Local Government Act, 2002, Amendment Act 2014, Section 197AA.

## 4.1 Disproportionate charging

The first key issue with DC practices of councils we have identified is disproportionate charging. While **Principle a**, **Principle b** and **Principle c** of the act reflect the idea of DC charges being proportionate to actual impacts, past development experiences have shown that this is not always the case.

***Principle a:** development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity;*

***Principle b:** development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding;*

***Principle c:** cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets;*

The Development Contributions Objections Commissioners' Manual (DC manual) produced by the DIA in 2014 gives further explanation of the intended purpose and principles surrounding DCs. In reference to **Principle a**, it states that:

*"a DC can only be required if the effects of a development results in territorial authority expenditure or new, additional or expanded infrastructure. If no effect can be demonstrated, then a DC should not be required."<sup>13</sup>*

This relationship is often referred to as the causal nexus – the link between the impact of the development on infrastructure and the DCs the developer is charged accordingly.

Foodstuffs' recent experience with a supermarket development in Queenstown highlights a number of proportionality issues with DC charging. Details of the Queenstown case are provided in the case study on the following page.

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<sup>13</sup> DIA, "Development Contributions Objections – Commissioners' Manual", August 2014, page 42.

### Case study 1: Queenstown PAK'nSAVE

In 2010 Foodstuffs South Island purchased 302 Hawthorne Drive (Frankton, Queenstown) from the subdividing developer, Shotover Park Ltd (SPL). Foodstuffs worked with SPL to develop the land as a PAK'nSAVE supermarket, which was completed in late 2016. As part of building consent BC150563 for the development, SPL was required by Queenstown Lakes District Council (QLDC) to design an on-site stormwater system, with the ability to handle a 1 in 20 year storm. This on-site system disposes of stormwater for the supermarket in almost all cases (with the exception of a 1 in 20 year storm incident), SPL also provided water and wastewater connections to the site, a cost passed on to Foodstuffs.

On June 14th, 2016, QLDC issued a development contribution notice in respect of building consent BC150563 for the PAK'nSAVE. The DC Notice was assessed under QLDC's 2015/16 DC policy. The assessed charges are shown in Table 4 below:

**Table 4: DC Assessment for Frankton PAK'nSAVE, 2016**

Contributing Area	DC per HUE (\$)	Assessed Number of HUEs	Assessed HUE credits	Total (\$ excl GST)
Water supply	3,109.00	11.64	0	36,188.76
Wastewater	5,972.58	13.09	0	78,181.04
Stormwater	5,178.00	75.12	0	388,971.36
Reserve land	-	-	-	-
Reserve improvements	-	-	-	-
Community facilities	2,443.00	2.62	0	6,400.66
Transportation	2,315.00	140.74	0	325,813.10
<b>Total</b>				<b>835,554.92</b>

Source: DC Notice from QLDC on Frankton PAK'nSAVE<sup>14</sup>

Upon receiving the DC assessment for the Frankton PAK'nSAVE, Foodstuffs noted that not only were there significant DC charges, but QLDC did not assess any HUE credits for the development. This was despite the significant infrastructure that SPL installed during the development, a large amount of which was specifically required by QLDC as part of building consents for the development.

The pre-existing infrastructure that Foodstuffs expected to be taken into account in the DC assessment included:

- **Water supply** – SPL installed two 10,000 litre rainwater tanks on the property, which significantly reduce the requirement for a separate water supply;
- **Stormwater** – As discussed above, as part of building consent BC150563, SPL installed an onsite stormwater system which disposes of stormwater in all but extreme weather cases. The onsite stormwater system means that the Frankton PAK'nSAVE imposes very little demand on council stormwater infrastructure; and
- **Transportation** – As part of the land settlement deed, SPL was required by QLDC to enter into an agreement with Queenstown Central Limited and NZTA to fund the Eastern Access road intersection and related roading. This roading cost of \$451,000 was paid by Foodstuffs in its sale contract with SPL.

<sup>14</sup> QLDC refer to Housing unit equivalents (HUEs) as 'dwelling unit equivalents' (DUEs). We use the term HUE here for consistency.

Foodstuffs made a request to QLDC for reassessment on 28 June 2016, highlighting the lack of acknowledgement of the significant infrastructure provided by the developer. QLDC responded on December 8 2016 to the request for reconsideration confirming the DCs in the original notice.

Foodstuffs made the decision to lodge a notice of objection pursuant of Section 199C of the LGA on 23 December 2016. In the subsequent objection hearing before DC Commissioners, Foodstuffs focused on the issue of the onsite stormwater system, alongside a separate issue surrounding at which stage of development DCs should be charged. QLDC noted that the stormwater charge was towards the area wide public stormwater system. The construction of this system was confirmed in the 2015-2025 10 year plan. The public system was designed to cater for flows from a 1 in 100 year storm event, as well as provide protection for each property from the risk of surface water flows from other properties. Construction of the public system was budgeted at \$8.6 billion, spread over 2016 and 2017. Upon completion, all developments within the Frankton area including the new PAK'nSAVE were to be connected to the public system.

As it pertained to Foodstuffs' PAK'n'SAVE development, QLDC asserted that although the onsite stormwater system may cater for stormwater from the site most of the time, the case of a "critical" 1 in 100 storm event, any reduction in volume or flow rate caused by the on-site system would be insignificant.

The DC Commissioners noted in the hearing that in order for Foodstuffs' objection to succeed, they had to be satisfied that the on-site system substantially reduced the impact on the public system. The Commissioners eventually ruled in favour of QLDC, noting that the on-site system did not remove the need for the development to be connected to the public system, as it could not provide protection in the event of a 1:100 storm.

Case study 1 involves a situation in which the developer has funded infrastructure to service its site, including water supply, stormwater and roading infrastructure (whereby the stormwater and roading infrastructure was part of the building consent requirements set by the local council). At the time of the DC assessment, the local council does not appear to have taken into account the reduced demand on council infrastructure of the development, applying no HUE discounts relating to the provided infrastructure.

In our view the Council's practice in this case does not align with **Principle a**. The charges were not set in a way that was based on the requirements for additional or increased capacity council assets created by the developer. Rather than substantially increasing the need for additional assets or assets of increased capacity, the developer took measures to reduce its impacts on council assets. As a result, it would follow the site receive HUE credits in accordance with its actual, reduced impact.

**Principle b** states that DCs should be determined in a manner that avoids over-recovery of costs. In this example, we see evidence of over-recovery of costs associated with the stormwater system installed by the council. While the developers had installed an on-site stormwater system that significantly reduced the supermarket's requirement for/demand on this infrastructure, the local council charged a DC of \$5,178 per HUE, totalling \$388,972, with no discount. While we understand the requirement for the local council to

generate funding for the public system (totalling \$8.6 billion), this appears to be an example of over-recovery.

**Principle c** further captures ideas of DC charges being proportionate to those who benefit from an asset and those who create the need for it. As stated, we do not consider the DCs assessed in this case to illustrate proportionality. In the case of the transport DC, during the building consent stage the developer was required to fund \$451,000 worth of roading. This was followed by a DC assessment that included a transport charge of \$325,813, with no HUE credits. This shows evidence of DC charges being used by a local council to 'double dip', generating twice the revenue by charging the developer twice for the same infrastructure. Double dipping was an issue discussed in the past review of the DCs by the DIA, and one which we see reason to believe is still a major concern.

Christchurch has been another recent development area for Foodstuffs. Foodstuffs has found that in a number of cases charges have been disproportionate to the actual impact of the development. Case study 2 below details a number of examples.

### Case study 2: Examples from Christchurch

**Hornby:** Foodstuffs recently developed a new South Island distribution centre in Hornby, Christchurch. When the DCs were initially calculated by Christchurch City Council (CCC), the charges were based on an increase in HUEs using the proportional increase of the proposed building extension. Foodstuffs believed that this method overstated the actual impacts of the development, requesting a special assessment. After obtaining actual water usage readings, it was determined that the actual number of HUEs was substantially lower than the Council's average. The DC charges were subsequently reduced from \$1,196,240 to \$384,512.

Foodstuffs also queried the Council on the DC charges applied to a particular part of the distribution centre that houses a pick module system. This is an automated process for storing and accessing goods. CCC initially applied DC charges to this part of the site, despite it being entirely automated, requiring no additional workers (and thus imposed no extra impact on council water care infrastructure. Upon making its case to CCC, Foodstuffs eventually negotiated for the \$51,033 charge on this area to be removed.

**Prestons:** In 2017 Foodstuffs began developing a New World supermarket in the Prestons suburb of Christchurch. The initial DC charges did not fully take into account the history of the development site. Referring to the history of the overall rezoning of the land, Foodstuffs applied for and received discounts for wastewater (based on the pump stations and mains works undertaken by the developers) as well as discounts for stormwater treatment and attenuation. There was a subsequent reduction in DCs from \$349,116 to \$168,276.

**Wigram:** Foodstuffs developed a New World supermarket in the Wigram Skies subdivision in 2015. In its initial DC assessment, CCC set a DC of \$272,208 for stormwater. Foodstuffs queried this with CCC, on the basis that the New World site is in a subdivision that provides full stormwater treatment and attenuation, with no additional impact on the Council's system. This led to CCC dropping the stormwater charges, reducing total DC charges from \$504,555 to \$232,247.

**Lincoln Road:** A similar situation occurred with the Addington New World site. The site provided full stormwater treatment and attenuation, meaning the supermarket has no impact on the Council's system. Foodstuffs subsequently negotiated for the stormwater charges to be removed and historical credits applied. This reduced the DC charges from \$324,277 to \$68,277.

In each of the cases above, the DC charge assessed by the local council was significantly misaligned with the actual impact of the development. In the Hornsby case for example, the council's original assessment of \$1,196,240 was reduced to \$384,512 once actual water readings were taken. This is more than a 300 percent decrease in charges, after a more accurate methodology was used to assess the impacts of the development.

The propensity for this level of disparity between council-assessed DC estimates and the proportionate level of charging creates real cause for concern over how the system is currently functioning. Foodstuffs has capacity to assess and challenge the charges but other smaller developers may not. The Prestons, Wigram and Lincoln Road cases all involve a concerning difference between assessed DCs and actual impacts, with eventual amendments in charges ranging between 200 and 470 percent.

## 4.2 Variations in charging

Variation in charging is a long-standing issue with the DC system. Issue 4 of the DIA's 2013 review (shown below) addressed this point.

*Issue 4: variability and inconsistency in the use of development contributions means charges are unpredictable and raises questions around fairness and transparency;<sup>15</sup>*

Part of the purpose of legislating the DC principles in 2014 was to address variability and inconsistency issues. **Principle f** shown below directly states that DCs should be predictable and consistent with the council's DC policy methodology.

***Principle f:** development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority's development contributions policy under sections 106, 201, and 202;*

Despite the introduction of DC principles in 2014, problems still exist to do with variations in DC charging. These tend to fall into the following three categories:

- variation between councils;
- variation between developments; and
- variation between policy years.

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<sup>15</sup> DIA, "Development Contributions Review", 2011, page 10.

#### **4.2.1 Variation between councils**

As stated above, one of the intentions of adding the DC purpose and principles to the act was to improve the consistency of charging structures. Despite this, Foodstuffs development managers have advised us that one of the difficulties they find as a nationwide developer is the variation in charging mechanisms between different local councils. The methodology behind DC policies and interpretation of these documents tends to vary to the extent that Foodstuffs' developers can build familiarity with one council's DC policy, only to be entirely lost within another's.

#### **4.2.2 Variation between developments and policy years**

A robust and fair system should be consistent in the way that different developments are charged. Foodstuffs has found however that DC charges from one development to the next can be highly unpredictable, which raises questions about the accurateness of the charges being assessed. If charges are indeed proportionate to the impact a development has on council infrastructure, it would be expected that developments that are alike are charged accordingly.

The Queenstown PAK'nSAVE development discussed in Case study 1 not only highlights a number of proportionality issues, but also provides an example of the propensity for charges to vary between developments.

##### **Case study 3: Queenstown PAK'nSAVE continued**

Directly adjacent to the new Frankton PAK'nSAVE is a Mitre 10 site, which was also developed by SPL. This site is approximately the same size as the PAK'nSAVE site, with an ISA of 17,482m<sup>2</sup> (88 percent of the PAK'nSAVE site). DCs for the Mitre 10 site were assessed under QLDC's 2013/14 DC policy, while the PAK'nSAVE site was assessed under the 2015/16 policy.

At the time of development, the stormwater DC levied on the Mitre 10 totalled to \$86,739. Foodstuffs' new PAK'nSAVE of similar size, immediately next door, was then charged \$388,971 for its stormwater DC.

It should be noted that both sites had similar on-site stormwater systems, and both were connected to the public system upon its completion.

When Foodstuffs raised the discrepancy between the two sites with QLDC, the response was "the charges were based on a different DC policy".

We understand that in Case study 3 above, the two developments were assessed under different DC policies, which included different stormwater charges. The question however becomes, which stormwater assessment was actually proportionate to the impact that the development had on council infrastructure? Regardless of whether one was completed in 2014 and the other in 2016, the two sites are of a similar size and nature, and likely have a similar impact on stormwater infrastructure. The fact that the PAK'nSAVE site was charged a stormwater charge that was five times higher than the Mitre 10 does not appear equitable, and were not in line with the principle of predictability established in **Principle f**.

Case study 4 below details a further example where Foodstuffs has been impacted on by variability of DC charges.

#### **Case study 4: Hamilton PAK'nSAVE**

Foodstuffs is currently in the process of developing a new PAK'nSAVE site in Hamilton. It is a brownfield development, whereby the supermarket will replace multiple industrial tenancies.

Foodstuffs requested a DC estimate from the Council on June 12 2018. Foodstuffs was aware that if the development consent was formally lodged and accepted by the Council prior to June 30 2018, it would be assessed under the 2017/18 DC policy. If the Council accepted the consent lodged from July 1 2018 on the other hand, it would be assessed under the new 2018/19 DC Policy. It is worth noting that at this point, the final 2018/19 DC final policy was yet to be released, however the Draft DC policy was publicly available.

Foodstuffs sent the Council details on the floor area of the development, receiving a DC quote on June 13 2018. The council noted that the final 2018/19 policy was still under consultation, and that the estimate was based on the pre-consultation rates in the 2018/19 draft policy and therefore subject to change.

The quote assessed the following:

DC charges under the 2017/18 policy were estimated at around \$298,853.51 (excl. GST); and DC charges under the 2018/19 pre-consultation draft policy were estimated at \$921,775.65 (excl. GST).

The consent was accepted by the Council shortly after the 1<sup>st</sup> of July 2018. While the charges are yet to be confirmed, at the 2018/19 pre-consultation rate, Foodstuffs would be looking at a DC charge of \$921,775.65, an amount over 300 percent higher than would have been applied under the previous year.

As is the case with Case study 3, the inconsistency between these two DC assessments in Case study 4 undermines the legitimacy of the DC system. If charges are proportionate and based on the causal nexus approach that **Principle a** establishes, this level of inconsistency in charges would not occur.

Case study 5 below provides an example of further variation in DC charges. In this case, the variation occurs in specific DC charges set by Auckland Council between two policy years.

#### **Case study 5: Auckland Council's draft DC Policy update**

In early 2018 the Auckland Council released the draft DC policy 2018. The draft policy imposed DCs on retail developments that were largely consistent with the Council's previous approach.

In October 2018 the Council released a revised draft DC policy, the draft DC policy 2019. The Council's new document is largely based on the draft DC policy 2018, with few changes to the text. However significant changes have been made to Schedule 2 of the policy, relating to development types and unit of demand factors. These changes include:

- the units of demand for transport attributed to retail, hospitality, recreational and personal services increasing by around 500 percent from the 2018 policy; and

- an increase of approximately 100 percent for the units of demand for transport attributed to commercial activities (including offices).

An extract from the draft 2018 policy, followed by an extract from the draft 2019 policy are provided in Figures 2 and 3 below, illustrating the change in DC charges.

**Figure 2: Extract from 2018 draft DC policy Schedule 2**

Development type	Activities	Units of demand
Retail, hospitality, recreation and personal services	Stormwater	1.0 HUE per 292m <sup>2</sup> ISA
	Transport	1.0 HUE per 215m <sup>2</sup> GDA
	All others	0.0 HUE
Commercial	Stormwater	1.0 HUE per 292m <sup>2</sup> ISA
	Transport	1.0 HUE per 271m <sup>2</sup> GDA
	All others	0.0 HUE

**Figure 3: Extract from 2019 draft DC policy Schedule 2**

Development type	Activities	Units of demand
Retail, hospitality, recreation and personal services	Stormwater	0.34 HUE per 100m <sup>2</sup> ISA
	Transport	2.79 HUE per 100m <sup>2</sup> GDA
	All others	0.0 HUE
Commercial	Stormwater	0.34 HUE per 100m <sup>2</sup> ISA
	Transport	0.73 HUE per 100m <sup>2</sup> GDA
	All others	0.0 HUE

As is evident from the two figures above, the units of demand used to calculate HUEs for the transport DC charge have significantly changed, particularly for retail, hospitality, recreation and personal services developments.

To illustrate this change, we use the example of a supermarket development with a GDA of 20,000m<sup>2</sup>. Under the 2018 policy, this development would have been assessed at approximately 93 HUEs. Under the 2019 policy, the transport DC for that same supermarket would be assessed on a total of 558 HUEs. This represents a 500 percent increase in DC costs for transport between these two years for this development type.<sup>16</sup>

The 2019 draft DC policy provides no specific narrative on the basis for the increase in units of demand for transport attributed to these development types.

While it may be justified for local authorities to increase DC charging rates from one year to the next, an increase of 500 percent for this DC category far exceeds what we consider to be reasonable. To our assessment, this kind of variation immediately raises questions about the solidarity of the charging rates in the first place and the extent that they are based on real costs. Once again, if charges are proportionate and based on the causal nexus approach that **Principle a** establishes, a rise in charges of this magnitude would not occur.

<sup>16</sup> It is important to note that this discussion surrounds Auckland Council's draft policies and that these are not finalised documents.

## 4.3 Lack of transparency

We have noted a number of concerns regarding the transparency of the current system. These concerns fit under three main categories:

1. lack of transparency in DC policy development;
2. lack of transparency in DC policy application; and
3. lack of transparency in DC usage.

**Principle e** below relates directly to the issue of transparency.

*Principle e: territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used;*

### 4.3.1 Lack of transparency in DC policy development

Local governments are currently required to update their DC policies at least once every three years. Some councils such as QLDC will undergo this process every year, while others such as Wellington Council (alongside the majority of councils in small communities) opt for the once every three years option. In accordance with the LGA (section 82), any DC policy amendment must involve public consultation.

Local councils generally put together an updated DC policy including proposed amendments, which is then released for public consultation.

Figure 4 below provides an example (from QLDC in 2016) of the timeline involved in such a consultation.

#### Figure 4: Consultation timeline for QLDC DC policy amendment

6 October 2016	Approval to commence consultation
10 October 2016	Commence consultation
7 November 2016	Consultation ends
Mid November 2016	Hearing of submissions
End of November 2016	Final decision on proposal

The public had approximately four weeks to process the new changes and form a submission. This was followed by one day of hearing of submissions, with a final decision on the proposal approximately two weeks later. This is the only forum for public input into DC policies.

Foodstuffs, alongside a number of members of the Property Council has expressed that while the current system provides a platform for public input, in reality the process equips the public with little opportunity to engage with councils in a meaningful way. The single day of submission hearings, followed by a decision on the proposal two weeks later does not provide councils with the ability to respond to legitimate concerns or make any real changes to their methodology at this point.

Inability to properly engage with the council is compounded by the fact that the consultation period occurs at the end of the policy creation process. By this point councils tend to be matured in their thinking, reducing their responsiveness to major concerns or suggestions.

This consultation period is the only chance for the public to be part of DC policy formation. Particularly if the local council updates its policy every third year, this provides a very small window, with a limited capacity to create change.

It is important at this point to note that once a DC policy is finalised, it is outside of the powers of a developer to question the contents of the policy. This means that whether or not the developer believes the policy is fair or representative of real costs, they have no ability to challenge the policy itself.

Instead, under section 199A of the LGA, developers are only able to challenge whether or not:

- the DCs have been correctly assessed under the policy;
- the policy has been correctly applied; and/or
- incomplete information was used to assess the development.

Another important factor surrounding the current DC policy consultation process is that it requires a high level of resources, funding and time to contribute meaningfully into this discussion. This is a reflection of the complexity of the calculations and assumptions. This can lead to the following issues:

- only large companies/developers are likely to have the resources to engage in this process, while smaller firms may be unrepresented;
- difficulties for nationwide developers to actively stay updated with and participate in DC policy discussions of multiple local councils; and
- developers only considering resourcing a challenge if they anticipate significant financial implications of failing to do so.

The current system is not consistent with a transparent or collaborative process. As a result, councils can get away with putting together poor policies with widespread effects on developers. At this point it appears to be common for a local council to respond to any issues with the system with the response:

*“it’s in the policy, if you disagree you should have submitted when we updated the policy.”*

Case study 5 involving Auckland Council’s unexpected 500 percent rise in DC charges relating to transport for certain development types is also a case of DC policy development lacking transparency. The changes in Schedule 2 of Auckland Council’s draft DC policy 2019 were not discussed before the document was released, nor was any explanation provided on the reasons for the increase. This lack of transparency does not coincide with **Principle e** and likely contributes significantly to animosity between developers and local councils.

#### **4.3.2 Lack of transparency in DC policy application**

Our discussion with Foodstuffs’ property development managers has revealed that when developers receive their DC assessment, there is often a sense of ambiguity over the breakdown of the charges and what each represents.

It is our understanding that there is currently no common format for DC assessments, nor is there a requirement for councils to include clarity on the development specifications used to calculate the set of charges. Instead councils tend to simply state that the charges are calculated ‘as per the Development Contributions Policy.’

At present, the amount and depth of information that local councils provide developers in DC assessments varies from council to council. CCC, for example, provides a minimal amount of information in DC assessments. Figure 5 below gives an example of the details attached to a DC assessment from CCC.

**Figure 5: DC Assessment example from Christchurch City Council**

Assessment Summary			HUE Credits					DC Rate (incl GST)	DC Charge (incl GST)
			Current	Assessed	Discounts	Assessed HUE After Discount	Change		
Location: <b>Marshland</b>			HUE A	HUE B	C	HUE D	HUE E	G	F= E x G
Activity	Catchment								
<b>Network Infrastructure</b>									
Water supply	District-wide		0.00	2.64	0%	2.64	2.64	\$2,785.59	\$7,367.32
Wastewater collection	District-wide		0.00	3.27	69%	1.01	1.01	\$6,582.60	\$6,675.23
Wastewater treatment and disposal	District-wide		0.00	3.27	0%	3.27	3.27	\$3,385.35	\$11,074.15
Stormwater & flood protection	Avon Greenfield		0.00	0.00	92%	0.00	0.00	\$1,443.69	\$0.00
Road network	Greenfield		0.00	11.71	0%	11.71	11.71	\$2,872.70	\$33,639.32
Active travel	District-wide		0.00	11.71	0%	11.71	11.71	\$375.35	\$4,395.33
Public transport	District-wide		0.00	11.71	0%	11.71	11.71	\$488.96	\$5,725.69
<b>Total Community and Network Infrastructure</b>									\$68,877.04
<b>Reserves</b>									
Regional parks	District-wide								\$0.00
Garden and heritage parks	District-wide								\$0.00
Sports parks	District-wide								\$0.00
Neighbourhood parks	Greenfield								\$0.00
								15.00%	\$8,983.96
<b>Total Development Contribution</b>									<b>\$68,877.04</b>

This assessment shows the developer that their impact on water supply infrastructure has been assessed at 2.64 HUEs; they did not receive any HUE credits or discounts; and the DC rate for water supply was \$2,785.59, which means that the water supply DC charge for their assessed 2.64 HUEs comes to a total of \$7,367.32 (including GST).

What this assessment fails to inform the developer is how CCC came to an assessed water supply infrastructure impact of 2.64 HUEs. The developer is not shown the inputs, (like the GFA, ISA or estimated water usage) used in these calculations.

The lack of transparency in these calculations creates barriers for developers to cross check and confirm the accuracy of the DC charges. Considering the short, ten day window given to developers to request a reconsideration, this system puts developers in a disadvantaged position. This is particularly the case for smaller developers who have not had extensive past experience with DC charges. It would require significant time and resources to:

- understand the workings of the given council’s DC policy;
- input their own specific development’s characteristics into the council’s methodology; and
- reconcile their calculations with the council’s charges and pinpoint where in the calculation errors may have occurred.

CCC is an example of a council that provides minimal supporting detail in its DC assessments. However, some other authorities (including neighbouring Selwyn District Council for example) do provide more detail. Figure 6 below provides an example of a DC assessment from Selwyn District Council.

**Figure 6: Assessment example from Selwyn District Council**

The following should be noted with regard to the calculations below:

- 1 All \$ totals are GST inclusive and are subject to annual PPI adjustments.
- 2 The Activity Based HUE Equivalent is as per the Development Contributions Policy included in the 2015-2025 Long Term Plan.
- 3 The total HUE is calculated as per the Development Contributions Policy and is applied based on actual land use.

Water Contributions								
Litres / day	Total litres per site	Total HUE	Development Contribution per HUE (GST excl)	Total for category	HUE Credit Available	Total credit available	Total (GST Excl)	Total (GST Incl)
545	3544	6.5	\$2,698	\$17,545	0	\$0	\$17,545	\$20,176

Wastewater Contributions								
Litres / day	Total litres per site	Total HUE	Development Contribution per HUE (GST excl)	Total for category	HUE Credit Available	Total credit available	Total (GST Excl)	Total (GST Incl)
700	3544	5.06	\$8,056.00	\$40,786.72	0	0.00	\$40,786.72	\$46,904.73

Transportation Contributions								
Activity Based HUE Equivalent	GFA (m2)	Total HUE	Development Contribution per HUE (GST excl)	Total for category	HUE Credits Available	Total Credit Available	Total (GST Excl)	Total (GST Incl)
0.0184	1145	21.07	\$2,168.00	\$45,675.42	0	\$0.00	\$45,675.42	\$52,526.74

<b>Total including GST</b>								<b>\$119,607.71</b>
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Columns on the left-hand side of the assessment provide the developer with information on the characteristics of the development that were used to calculate the DC charges, including GFA and estimated water usage.

We note that this assessment provides information on specific inputs into the DC calculations, including the GFA used to calculate transport contributions and the litres / day of water that apply to the water and wastewater contributions. In comparison to the Christchurch example, the developer has more clarity on some of the basis for charging.

If the developer wanted to further understand what they are paying for in the \$8,056.00 per HUE charge for wastewater however, it would have to undertake a deep dive into Selwyn District Council’s DC policy and Long Term Plan. This assessment gives no details on the particular stormwater project, where it is located or how it relates to this development. Considering these contributions have been calculated based on the impact of this development on each category of council infrastructure, more accompanying detail on how these charges relate to infrastructure costs does not seem impossible especially for an invoice of \$119,600. In this regard, while Selwyn’s DC assessment is more detailed than CCC, there is still a lack of transparency that impedes developer confidence that their contributions are being appropriately calculated and spent.

Developers can (under section 106(3) of the LGA), request to view the full methodology that demonstrates how the calculations for their contributions were made. However, Foodstuffs’ property development managers have found that the responsiveness to such a request is highly variable between councils. Developers have found that delays in successfully making contact with the correct person combined with the process required to get the calculations, make it not possible to properly engage with these calculations within the 10-day reconsideration period provided for in the Act.

#### **4.3.3 Lack of transparency in DC usage**

Finally, in this section is the issue of lack of transparency in local council usage of DC funds. Our discussions with developers have revealed that part of the frustration that is felt with the current system is based on

the fact that developers do not feel assured that their DC payments are being used for the purpose they were collected. Once a DC assessment is paid, developers currently have no insight into how their payments are being spent and the infrastructure growth that these payments have contributed to.

We acknowledge the administrative complexities involved in tracking and reporting on every dollar collected and spent by councils, however do feel that the current system lacks an appropriate level of transparency and accountability for the financial costs that developers must contribute.

#### **4.4 System reliability**

There is concern over the reliability of the current DC system and the charging mechanisms employed by each territorial authority. Foodstuffs has seen cases where inaccuracies in both DC policies and DC policy application have led to significantly inflated/deflated charges. Examples of this include:

- typos in DC policies with a significant impact on final charges;
- discounts accidentally being inversely applied;
- inaccurate site information resulting in misapplication of HUE credits; and
- simple arithmetic errors in DC charging.

The impacts of such inaccuracies vary in magnitude, depending on the scale of the development. For large scale commercial developments, a mistake in the calculation or a typo can have a significant impact on the final figure. Case study 5 detailed below gives a real-life example of one such case.

## Case study 6: Assessment issues

In this DC case, the Council agreed with the developer to apply a 50% discount on waterways and land drainage (stormwater) to take into account previous infrastructure on the site. When the DC assessment was provided to the developer, it was found in the first instance that the council had in fact granted a 25% discount instead of the agreed upon 50%.

The second, and even more significant issue with the DC assessment was that somehow there had been miscalculations on the wastewater collection and waterways and land drainage assessments, whereby the discounts were inversely applied. As highlighted in Figure 7 below, the gross wastewater charge is \$168,368.10, which rises to \$407,515.52 after a 69% “discount” is applied. The gross waterways and land drainage on the other hand was assessed at \$70,849.84, which rose to \$414,880.33 after the 25% “discount” was applied.

**Figure 7: Original development contributions assessment (extract)**

### Assessment Summary

		HUE Credits			DC Rate (incl GST)	Gross DC Charge (incl GST)	Transition Year Discount	Net DC Charge (incl GST)
Location:		Current	Assessed	Change				
Activity	Catchment	HUE A	HUE C	HUE D	E	F= D x E	G	
<b>Network Infrastructure</b>								
Water supply	City-wide	2.00	54.00	52.00	\$1,326.84	\$68,995.45	0%	\$68,995.45
Wastewater collection	City-wide	2.00	54.00	52.00	\$3,237.85	\$168,368.10	69%	\$407,515.52
Wastewater treatment and disposal	City-wide	2.00	54.00	52.00	\$2,421.76	\$125,931.62	0%	\$125,931.62
Waterways and land drainage	Avon	2.00	54.00	52.00	\$1,362.50	\$70,849.84	25%	\$414,880.33
Road network	City-wide	2.00	54.00	52.00	\$2,254.82	\$117,250.46	0%	\$117,250.46
Active travel	City-wide	2.00	54.00	52.00	\$54.90	\$2,854.85	0%	\$2,854.85
Parking	City-wide	2.00	54.00	52.00	\$2.69	\$139.93	0%	\$139.93
Public transport	City-wide	2.00	54.00	52.00	\$136.14	\$7,079.12	0%	\$7,079.12
<b>Total Community and Network Infrastructure</b>					\$13,010.85	\$676,564.04		\$1,259,741.95

Upon receiving this assessment and realising its inaccuracy, the property consultant involved communicated with the Council, resulting in the reassessment shown on the following page.

**Figure 8: Subsequent development contributions assessment (extract)**

**Assessment Summary**

		HUE Credits			DC Rate (incl GST)	Gross DC Charge (incl GST)	Transition Year Discount	Net DC Charge (incl GST)
Location:		Current	Assessed	Change				
Activity	Catchment	HUE A	HUE C	HUE D	E	F = D x E	G	
<b>Network Infrastructure</b>								
Water supply	City-wide	2.00	54.00	52.00	\$1,328.84	\$68,995.45	0%	\$68,995.45
Wastewater collection	City-wide	2.00	54.00	52.00	\$3,237.85	\$168,368.10	69%	\$52,194.11
Wastewater treatment and disposal	City-wide	2.00	54.00	52.00	\$2,421.76	\$125,931.62	0%	\$125,931.62
Waterways and land drainage	Avon	2.00	54.00	52.00	\$1,362.50	\$70,849.84	50%	\$35,424.92
Road network	City-wide	2.00	54.00	52.00	\$2,254.82	\$117,250.46	0%	\$117,250.46
Active travel	City-wide	2.00	54.00	52.00	\$54.90	\$2,854.85	0%	\$2,854.85
Parking	City-wide	2.00	54.00	52.00	\$2.69	\$139.93	0%	\$139.93
Public transport	City-wide	2.00	54.00	52.00	\$136.14	\$7,079.12	0%	\$7,079.12
<b>Total Community and Network Infrastructure</b>					<b>\$13,010.85</b>	<b>\$676,564.04</b>		<b>\$524,965.13</b>

As illustrated above, amendment of the waterways and land drainage DC from 25 to 50 percent, alongside correcting the discount calculation resulted in a new community and network infrastructure total charge of \$524,965.13. This amended total is \$734,776.82 lower than the original assessment.

While the correction process for this particular DC assessment was neither complex nor disputed, the ability of the Council to make errors of this nature with such substantial ramifications does not assure developers of the soundness of this system. Considering these major errors were made in the discount application calculation (gross DC charge x discount = net DC charge), it would not be unreasonable for the developer to question the reliability of the numerous calculations underlying each charge within the assessment.

Foodstuffs South Island’s property development consultant stated that his experience with unreliable and inaccurate DC charges has led him to query almost every DC assessment he receives. While some cases may involve simple fixes (like Case study 5 above), others include errors in underlying calculations, which can require a high level of familiarity and understanding of the DC policy to uncover. Foodstuffs’ consultant stated that only through extensive experience analysing different DC assessments in Christchurch City could he reach this level of understanding. He now has generated his own spreadsheets replicating CCC’s calculation methods. For each assessment received by a client, he will input the specifications of the development into his spreadsheet and cross-reference the calculations.

Foodstuffs’ property consultant stated that few developers he is aware of have the scale or the resources to reach this level of familiarity with complex development contributions charges. He noted that the majority of developers he knows will receive DC assessments and though they do not understand the calculations that lead to the final charges, they may quickly check the required figures shown on the invoice and pay the charges, in order to get the code of compliance so their development can proceed.

Foodstuffs South Island’s property consultant has built up a strong level of understanding of how CCC’s DC policy operates, however he stated that the same does not apply for the DC Policies of Selwyn and Queenstown. Despite his understanding of DC charging by CCC, he stated that the calculations underlying Selwyn District Council’s DC Policy are exceedingly difficult for him to understand. As for Queenstown Lakes District Council, he stated that it took him four days of analysing the DC policy alongside the ‘Detailed Supporting Document’ to understand how a portion of DC charges were calculated, and whether or not these charges had been calculated correctly.

We see the following major issues with this current situation:

- the prevalence of mistakes like these in DC assessments reduces developers' trust in the system;
- while large developers may have the resources to employ the assistance of property consultants who have built up understanding of the respective DC policy, small – medium sized developers are disadvantaged through lack of resources to do so; and
- it requires significant time and resources to become familiar (to the point that underlying calculation errors can be identified) with DC policies in multiple districts, and even more resources to participate in the submission stages of DC policies across multiple districts.

Another comment from Foodstuffs South Island's property consultant was that the level of receptiveness and responsiveness to a query with a DC assessment often depends strongly on the strength of a relationship between the developer and the particular council's staff member. Issues that could be resolved over a 'coffee and a catch up' in some instances may go all the way to a formal objection in others.

Overall, we appreciate that DC charges are complex in nature and that no system can be entirely free of the potential for human error. The question is whether the system could be improved in a way that minimises this potential for human error.

## 4.5 Time of charging

Section 198 of the LGA establishes that local councils are able to charge DCs at the resource consent, building consent or service connection stage of development.<sup>17</sup> In Foodstuffs experience, it is common for developers to be charged at the building consent phase, whereby DC payment is required in order to gain Code of Compliance (CoC) for the development. For commercial developments, once the CoC is received, doors can be opened, and business begins.

Our discussions with Foodstuffs have revealed that the timing of DC charging, particularly in the final building consent phase, creates important issues relating to the balance of power between the council and the developer and budget forecasting. This section elaborates on these two issues.

### 4.5.1 Power imbalance

Foodstuffs has found that with the current timing of DC charges, the developer has an unreasonably short timeframe to discuss and query DC charges. As has been established in section 4.3 and 4.4 above, interpreting and understanding DC charges and their methodology can be complex and time consuming. With only ten days to make a request for reconsideration, some developers find it unrealistic to properly engage with councils over their DC charges.

At a higher level, considering a developer must pay DCs in order to gain CoC and thus open its store on time, the ability of the developer to resolve DC issues with local councils becomes very limited. Particularly for commercial developments, any delays in opening the doors of a new store are extremely costly in terms of revenue foregone. As a result, a developer may be forced to take the 'shut up and pay' approach to its DC assessment (even if it is sceptical about the appropriateness of the charges), in order to avoid delaying the Code of Compliance and thus delaying opening shop.

While developers do have the ability to request for DC reconsideration, and the ability to formally object to charges, the timeframe they have to do so within the current system puts the developer in a disadvantaged position.

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<sup>17</sup> Local Government Act 2002, Section 198.

#### **4.5.2 Budget forecasting**

Foodstuffs has found that the timing of DC charges can also create issues for developers around their ability to accurately budget for DC costs. In many cases, there is a significant discrepancy between original estimates provided by the local council and the DCs charged in the final assessment. In Foodstuffs' experience, the discrepancy between these two figures can be upwards of \$600,000, which can present significant issues relating to budgeting and cash-flow.

Foodstuffs has noted that some councils, including Auckland City Council, CCC, Hamilton and QLDC provide an online calculator tool that can be used to generate an estimate of DCs. The developer has the ability to enter the specifications of their development and receive an estimate of their DC charges, based on the charging levels of the DC policy in place at the time. However, Foodstuffs has found that in areas where these online tools exist, the ability to budget for DCs is improved. Foodstuffs also identified the following limitations:

- with the exception of Auckland, most online calculators do not have the capacity to calculate HUE credits for brownfield developments. As a number of the case studies above have identified, brownfield developments and HUE credits are often the area of DC charging where issues and inconsistencies arise; and
- some categories of DCs are excluded from some online calculators. The estimator for Auckland City Council for example does not include water or wastewater, as these are dealt with by a separate 'organisation' (Watercare). Considering these two contributions can make up a reasonable portion of DC charges, the calculator is limited in its value as it only shows a portion of the DC picture.

## 5. Underlying causes of the current issues

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Our analysis above has identified a number of the major issues with the current DC charging regime. In doing so, we have also considered some of the possible underlying causes behind these issues. These include the application of HUEs, incomplete building records, poor internal communication between council staff in different departments, the capability and capacity of local councils and political pressures.

### 5.1 HUE application

Our analysis has seen evidence of issues with DCs assessed using HUE calculations on non-residential developments not being directly proportionate to the actual impacts of the development. Developments in Case studies 1 and 2 illustrated examples of this, particularly the Hornby case. The warehouse site that DCs were applied to is almost entirely automated, with minimal staff and therefore minimal restroom water and sewer use, or additional staff vehicles on surrounding roads. As a result, the HUEs based DCs calculated by CCC were not reflective of the actual site impacts.

While this example relates specifically to the applicability of HUEs to a highly automated development site, our discussions with Foodstuffs and property development managers have revealed a wider level of concern about the applicability of some HUE calculations to non-residential developments.

Under the current DC system, it is up to each local council to apply its own methodology to calculating HUEs for non-residential developments, with no agreed upon standard or best-practice method. Accordingly, it appears that cases are arising where HUEs are not fit for purpose, particularly for non-residential developments. This raises the question of whether the appropriateness of HUEs for non-residential developments requires further consideration.

### 5.2 Building records

For understandable reasons, a number of the DC cases where issues tend to arise are brownfield developments. While greenfield investments benefit in simplicity from being a blank canvas, in order to properly assess DCs for brownfield developments, councils must understand and accurately account for the pre-existing infrastructure on the site. Pre-existing infrastructure is accounted for through HUE credits, which reduce the total DCs. HUE credits can also be applied to greenfield developments (to account for infrastructure built by the developer during the development process), however HUE credits more commonly apply to pre-existing brownfield infrastructure.

As in Case studies 1-5, in Foodstuffs property development experience it is common for councils to:

- forget to account for pre-existing infrastructure;
- assess only part of the pre-existing infrastructure; or
- make an incorrect or inaccurate assessment of pre-existing infrastructure.

One of the major factors contributing to this pre-existing infrastructure issue appears to be poorly managed and maintained council building records. Instead of being able to quickly access site information on its database or online, often councils will have to seek out archival blueprints and site papers to understand the infrastructure surrounding the site. If the building records cannot be located or are incomplete, incorrect HUE credit calculations may well follow.

### **5.3 Communications within councils**

Another major cause of incorrect DC charges is poor communication within councils. This often links directly with issues surrounding building records, as to whether or not the records have successfully (and in their entirety) been passed between the members of staff involved. Developers often find that throughout the six years it takes to complete a development (for example), there can be multiple staff change-overs. This can lead to inconsistencies in information and communications across this period, and ultimately incorrect charges.

A small communication issue within a local council can result in a mistreatment of HUEs, with consequences that can be worth tens of thousands of dollars. This begs the question of whether a major funding system like this justifies the use of better and more reliable systems.

### **5.4 System complexity**

It is widely agreed that DC charges are not simple mechanisms. DC policies can be anywhere up to the 64 page 2018/19 DC Policy complemented by a 94 page detailed support document used by QLDC. Among these documents are a series of calculations ranging from easily understood arithmetic to complex formulae that can require an economic or mathematically orientated mind to comprehend. Through their experience with different councils over the years, Foodstuffs has realised that often very few council members truly understand the ins and outs of the DC policies they administer. This of course varies from council to council, however especially for those councils with particularly complex charging mechanisms, there can often be a comprehension gap within the council itself. This does not assist in creating an environment where developers feel confident in the accuracy of the assessments they pay.

As an example, it appears that QLDC's 2018/19 DC Policy and 'detailed support document' were produced in conjunction with Rationale Ltd, an infrastructure consultancy firm. It seems quite possible that despite the fact that this is QLDC's system, council members themselves also struggle to fully understand the workings of this complex system. Especially considering QLDC updates its DC policy annually, it can be particularly challenging for all involved to keep up with the system. New or newly promoted staff are likely to find it particularly challenging to harness these charging mechanisms, and may be particularly prone to making mistakes, with hefty financial consequences.

### **5.5 Council's resources**

Given the complexity and technical nature of DC charging, the development, application and renewal of this system can be quite labour-intensive for councils. Through our discussions we found that it is not uncommon for councils to have to extend timelines for their amended DC policies, or generate sub-optimal policies that are rushed in their development. If a council releases a policy with inaccurate charging mechanisms or mistakes in the calculation due to insufficient resources in policy development, this has implications for the charges paid by developers.

### **5.6 Lack of unification of DC charges**

DC charging is currently set-up whereby each local council creates and applies its own charging methodologies. While the LGA establishes a set of DC principles that local councils must take into account, it does not prescribe a set DC charging methodology, nor is there currently a set Best-Practice guideline for DC charging. While this appears to be based on allowing each local council to make policies in accordance with its own values, we consider that a number of issues stem from this this lack of harmonisation and guidance on DC charging.

These issues include:

- the current variation in charging mechanisms from council to council;
- the development of policies with flawed methodologies, errors and typos;
- significant time and resource pressure on local councils to individually develop and regularly update DC policies; and
- difficulties for developers working with multiple local councils and therefore multiple DC charging methodologies.

Accordingly, we consider scope for change towards either a national unified DC charging regime (with one charging methodology, but where each local council would input its own charging rates, reflecting its local costs within each DC category), or the development of new 'Best-Practice guidelines' for local councils to charge DCs in accordance with.

## **5.7 Political pressures**

Ideally, developers would pay for their full share of developer created growth costs, and ratepayers would pay for their full share of use of council infrastructure and services. However, there are inevitable politics underpinning these systems and the associated charges. In some cases this may lead to overcharging, whereby councils prefer to recover costs through DC and FC charges rather than charging ratepayers for infrastructure. Political influence can also lead to undercharging, whereby despite growing costs, a council doesn't want to disrupt growth through increasing DC levels. This can lead to underinvestment in infrastructure and ultimately reduced economic growth.

## 6. Conclusions and recommendations

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Since being legislated for in 2002, DCs have become an increasingly common tool for local councils to use to pay for growth, with DC and FC income for local councils increasing from \$88 million in 2003 to \$381 million in 2017. As DC use increases, it becomes more and more pertinent to ensure that this tool is used appropriately.

In 2012, the Productivity Commission expressed concerns with the DC system, identifying a number of issues including inappropriate use of DCs on unrelated infrastructure, variation in charging methods, lack of transparency and inability for developers to challenge DC charges. This sparked the 2013 DIA review, later resulting in a number of changes being made to the DC system, as legislated in the 2014 LGA Amendment Act. These changes included the new DC purpose and principles, a more focused definition of community infrastructure and a new objection process (alongside other refinements to the system).

The 2014 amendments were largely welcomed by developers, including Foodstuffs. In particular the addition of the DC purpose and principles gave local councils more clarity on the intended use of DC charges. What Foodstuffs has found, however, is that while the legislation is solid, in practice the way local councils are using DC charges is not always commensurate with the legislated principles. As a result, a number of the issues that the principles were intended to address still exist within the system.

Section 4 of this report has highlighted a number of issues that we have found to currently exist within the DC system. These include:

- disproportionate charging;
- variation in charging;
- timing of charging;
- lack of transparency; and
- system reliability.

A number of the issues we have identified in this review not only appear to have existed since DCs were first introduced in 2002, but are also reminiscent of some of the pre-DC issues with FC charges. In particular, issues surrounding the lack of a clear charging methodology for local councils to employ lead to a wide variety of approaches across the country. Just as was the case with FCs in the past, this has led to inconsistencies in implementation and uncertainty and unpredictability for developers.

Given the above, we recommend that the Productivity Commission readdress the idea of developing a new **'Best-Practice Guide to Development Contributions'**, for local councils to follow. This process would involve consideration of the most effective means of implementation and education on moving towards a best-practice system.

An updated best-practice guideline was one of the recommendations made by the Productivity Commission in its 2012 Enquiry. It recommended the following:

- the Government should create updated best-practice guidelines for development contributions and provide training in their implementation. The process for developing the guidelines should be based on broad consultation, and cover matters such as when the contributions should be applied, how they should be calculated and how costs should be recovered; and

- conformity with the guidelines would be encouraged by:
  - making it a legal requirement that councils have regard to the guidelines and with broad principles that would be legislated;
  - better reporting by councils of how they are complying with them; and
  - external assessment of performance to encourage continuous improvement.<sup>18</sup>

These recommendations were not picked up in the Amendment to the LGA in 2014 (the DC principles were however). Considering the issues with DCs that remain, we believe the system needs to be further reconsidered and that the development of a robust best-practice guide would be a strong way to address these issues.

As with the original 2003 best-practice guide, a collaborative initiative could be established, with representatives from the public and private sector. Through a consultative process, this initiative could consider the range of issues that currently exist and form a best-practice guide for all councils to employ. The guide would focus on consistent mechanisms that are “fair, equitable and proportionate”, as per the DC purpose. While each council could follow the single best-practice methodology, each local council could input its own charging rates, reflecting its local costs within each DC category.

As the Commission suggested in 2012, this best-practice guide could be directly legislated as a new uniform approach to DC charging or it could be referred to in the legislation but ‘softly enforced’, through training, monitoring and reporting regulations.

We consider the implementation of a new best-practice guide would have the following key advantages:

- **iron out the kinks in the system:** a collaborative and consultative approach to developing the best-practice guide would ensure that the range of issues within the system are acknowledged and addressed, reducing animosity between developers and local councils;
- **relieving pressure on councils:** being able to implement an established best-practice approach would reduce the responsibility and resource requirement on councils of having to create and regularly updating complex DC policies;
- **improving understandability and transparency:** a best-practice approach would be easier for developers operating across the country to become familiar with, understand and cross-check;
- **increasing reliability:** the DC system where all local councils operate independently is prone to errors and typos, both in DC policy development and application. A best-practice approach should reduce the frequency of these sorts of issues and increase the likelihood that any issues that occur would be discovered and resolved; and
- **reducing variability:** importantly, a best-practice approach would significantly improve the consistency of charging mechanisms across the country.

Overall, DC charging is a complex issue. Amendments to the system that occurred in 2014 may have been aimed in the right direction, however they do not appear to have been effective in practice, as a number of issues remain. At this point, we consider the best way to achieve consistent, fair and equitable charges is to carefully develop and implement a new best-practice guide for DC charging.

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<sup>18</sup> Productivity Commission, ‘Housing Affordability Enquiry’, page 126.