

## Memo



<b>Date</b>	<b>25 January 2022</b>
<b>From</b>	<b>Dwayne Fletcher, Vale Consulting</b>
<b>To</b>	<b>Parvati Rotherham, Chris Page, Hutt City Council</b>
<b>Subject</b>	<b>Review of Financial contributions</b>

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### Purpose

1. The purpose of this memo is to provide Hutt City Council my assessment of the current financial contribution provisions within Chapter 12 of the District Plan, along with my recommendations for change.

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### Context

2. The current District Plan was publicly notified in 1995 and became operative in the early 2000s. The bulk of the financial contribution provisions were set through this process, prior to the Local Government Act 2002 and the introduction of development contributions. Plan change 12 (operative from 2011) is the only change I could identify that has amended chapter 12, introducing caps on reserve financial contribution.
3. The provisions reflect a time when the council used financial contributions as its primary growth infrastructure funding tool. Since then, the Council has shifted to using development contributions to fund planned growth related infrastructure for the three waters and roading. Many other councils have also made this transition and subsequently updated their financial contribution provisions.
4. More recently, the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (The Act) provides for councils to:<sup>1</sup>
  - charge financial contributions for all classes of activity except prohibited (i.e. including permitted activities); and
  - make changes to its financial contributions provisions to give effect to this using a 'streamlined' intensification planning instrument process.
5. This provides the opportunity to make changes needed to modernise the council's financial contributions provisions and address any effects expected from the permissive intensification enabled by the Act.

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<sup>1</sup> See sections 77E and 77T of the [Act](#).

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## Conclusions

6. The policies and rules in chapter 12 provide for most of the situations where financial contributions can be usefully employed – particularly the funding of reserves and recovering the cost of off-site infrastructure.
7. However, the rules are too restrictive and narrow in their application, differ for different services and land uses, and compel contributions from council which are not always required or are too high. Chapter 12 also covers matters that are not financial contributions.
8. My review of these provisions and those of other councils indicates that the chapter should be substantially overhauled. The exception to this are the reserve financial contributions provisions, which I recommend are largely retained for now and more substantially reviewed as part of the development of the 2024 LTP.
9. My recommendations are below. These are intended to provide a robust financial contributions system that Hutt City can rely for all developments. They:
  - Clearly delineate between developer works obligations and financial contributions
  - Provide clear authority to impose conditions to undertake external works.
  - Provide a financial contribution system that compliments the development contributions system in place, including ensuring contributions toward growth costs from Crown developments.
  - Provide for reserve financial contributions that better align with the Council’s forecast expenditure on the development of reserves.
  - Broaden the range of circumstances where financial contributions may apply and widen the scope for setting financial contributions, including widening the net to cover permitted activities enabled by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act.
10. However, these changes may be too comprehensive to progress in the short term through the intensification planning instrument process. Consequently, I have also identified a narrower set of changes necessary in the short term to manage just the impact of intensive housing enabled by the Act (short term changes).

## Summary of general recommendations

- Clearly distinguish within the District Plan between obligations to undertake work within or external to a developer’s site and financial contributions.
- Provide the general ability to set conditions related to offsite extensions or upgrading works for infrastructure including transport/roading, utilities, telecoms, gas and power.
- Include upsizing provisions for all services and change the default cost share method to the marginal cost method, unless the Council agrees to an alternative approach.
- Retain the ability to levy financial contributions for works needed to extend or upgrade infrastructure, but broaden its application and make it consistent between subdivision and other types of developments. These contributions should:
  - Provide funding to Council to undertake the work(s) in lieu of a condition for the developer to undertake the work(s) themselves; or

- Contribute to unplanned works (that serve or benefit multiple properties) but are not included in the Council’s development contributions system; or
  - Enable the Council to recover contributions from the Crown in lieu of development contributions.
- Remove the cost share calculation methods for off-site works and replace it with a presumption that the developer will pay full cost, unless the Council agrees to contribute (guided by a range of factors).
  - Retain the reserve financial contribution provisions in the immediate term, including the maximum assessment rate of 7.5% and \$10,000 cap.
  - Consider as part of the LTP 2024 whether the assessment rates and cap should change, or growth funding for reserves should transition to development contributions.
  - Provide for financial contributions to offset environmental effects such as a reduction in trees, vegetation, neighbourhood amenity or provide for local improvements, such as streetscaping.
  - For permitted activities, enable financial contributions to be imposed when a building consent or service connection is granted, and establish clear payment dates.

### **Short-term changes recommended**

11. In relation to housing enabled by the Act, the key short term changes that the council should focus on are summarised below.

#### **All services (not a financial contribution)**

12. Provide the ability to impose an obligation to undertake external works where those works are needed for a specific development. There is no clear ability to do this in part 12.2.2 of the District plan which deals with developments that are not subdivisions. This obligation should be to meet the full cost of this work without any expectation that Council fund any part of the work.
13. This obligation would be imposed only if needed for a specific development and site.

#### **Three waters and roading (i.e. Council owned assets only)**

14. Provide the ability to impose financial contributions to fund the cost of external works where those works are needed for a specific development. This does not apply for non-subdivisions at present except to a limited extent to some non-residential commercial developments for transport. By default, this obligation should be to meet the full cost of this work without any expectation that Council fund any part of the work, and therefore discount the financial contribution.
15. However, the Council should provide itself scope to contribute and guidance on matters to consider when making this determination. Chapter 24 of Hamilton City Council’s District Plan provides a useful starting point for such guidance. In instances where the Council upsizes the infrastructure, I would recommend that the Council’s default approach to cost sharing is to pay only the marginal cost.
16. This financial contribution would be imposed only if needed for a specific development and site.

## Reserves

17. Provide the ability to apply a reserve financial contribution obligation per dwelling on residential developments that are not subdivisions. The basis of the calculation should try to replicate the way reserve financial contributions are levied on unit developments within the District Plan, being the value of each residential unit. While the \$10,000 cap is most likely to apply at present, this valuation basis maintains parity with other high-density developments, which will be important should the cap be removed at some stage in the future.
18. This financial contribution would apply to all developments and sites.

## Environmental offsets

19. Provide the ability to charge a financial contribution for environmental offsets if the mitigation of a significant effect on the environment cannot occur on site but council is comfortable it can be offset in some other way by Council. This is a general enabling provision that could apply in a wide range of circumstances. The financial contribution would be the actual and reasonable costs of undertaking the mitigation.
20. I recommend that the Council consider specific financial contributions to fund changes to the street environment for residential intensification to manage the impact on neighbourhood amenity. This could be used to offset the loss of greenspace and slow the speed environment by funding changes at the local street level, such as planted build outs. In order to pursue this, the Council should first agree that this is how they wish to manage intensification at the street level. The level of financial contribution could be based on a "standard treatment" such as a planted build out, even if the actual works differ from this but achieve the same outcome.
21. These financial contributions would only be imposed on a development if it creates an effect that needs to be managed.

## Triggers for assessment and obligation to pay for permitted activities

22. Assessment - I recommend that financial contributions for permitted activities be assessed at the building consent or service connection application stage. These are main regulatory touch points between the council and the developers that cannot be avoided, and so practically offer the best opportunity to 'mop up' any developments that do not have a resource or subdivision consent. The District Plan will need to specify this.
23. Payments - I recommend that payment of financial contributions be required as soon as is possible following the granting of a building consent or service connection. For reserve financial contributions and environmental offsets, this would preferably be at the time the building consent or service connection is granted, or the 20<sup>th</sup> of the following month if that is the Council's standard practice.
24. Where the financial contribution is for specific future works, the reasonable and actual cost can only be determined in hindsight. I would recommend requiring final payment shortly after the works are undertaken and full costs are known – typically the 20<sup>th</sup> of the month following issue of the invoice to the developer. The Council could also elect to take a deposit toward these costs earlier if it chose.

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## Focus of review

25. The RMA allows councils to require a financial contribution to achieve the sustainable management purpose of the RMA (s.108). Financial contributions generally address the direct impacts of a particular development, and their purpose is to help pay for measures that will avoid, remedy or mitigate adverse effects on the environment, or offset adverse effects in some other way.
26. Whether a development represents “growth” may be of limited relevance when determining if financial contributions should be used.
27. When reviewing how the Council may use financial contributions in the future, I have assumed that the Council does not intend to revisit how it funds planned infrastructure for the three waters and transport i.e via development contributions. Consequently, my focus has been on reserves and how financial contributions can help manage the other impacts of development, including more reactive or unplanned expenditure. This provides a complementary set of tools to the development contributions system already in place.
28. A brief comparison of the development and financial contributions systems is attached in appendix A.

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## HCC provisions

29. In relation to subdivision, HCC’s current Financial Contribution provisions provide for:
  - A. Developers, at their cost, to provide infrastructure networks within their developments (including electricity, gas and telephone), and undertake any site development works.
  - B. Developers to fund all or part of the costs of upgrading infrastructure, or undertake remedial or stabilisation work, outside of their development where needed to provide suitable infrastructure to connect to their development (including electricity, gas and telephone).
  - C. If and when external infrastructure costs are to be shared between the Council and a developer, and how that cost allocation will be calculated.
  - D. How costs will be shared between the Council and a developer when the Council requires the developer to upsize water infrastructure for the benefit of others such as neighbouring properties (n.b similar provisions exist for wastewater or stormwater).
  - E. The ability to recover costs incurred by Council in D. above or in other instances where the Council has otherwise provided the water, wastewater, stormwater or roading infrastructure from benefiting properties when they develop, and how the contribution for an individual development is calculated.
  - F. A contribution to reserves when land is subdivided, or commercial or industrial land is intensified. For subdivision, this is limited to a maximum of 7.5% of the value of the new allotments, with an additional cap of \$10,000 for new lots created in residential zones, and \$5,000 in rural zones.
30. In relation to land development that is not subdivision, HCC’s current Financial Contribution provisions provide for:

- G. Developers of retail or place of assembly developments to fund all or part of the cost to upgrade roading infrastructure outside of their development where needed to provide suitable infrastructure.
- H. If and when external roading costs are to be shared between the Council and a developer, and how that cost allocation will be calculated.
- I. For commercial or industrial developments not involving subdivision, a reserve financial contribution equal to a maximum of 0.5% of the value of any development over \$200,000.

## Comment

31. The policies in chapter 12 (12.1) have reasonable coverage and are consistent with the principle that growth (or development) meets the costs it needs to progress. There are several aspects of the rules giving effect to the policies that warrant change. For example:
- The rules impose an obligation for subdividers to undertake internal works, which are not financial contributions.
  - Notwithstanding this, they arguably omit the ability to impose conditions related to works outside of a development’s site.
  - The rules are quite specific and narrow in their application in many instances.
  - The extent to which council is obliged to contribute to external unplanned costs and the method for calculating that contribution.
  - Subdivision is subject to different rules to other developments.
  - The level and potentially the method for calculating reserve financial contributions.
32. My assessment of the rules is below.

## Developer’s internal works

Relevant rules: 12.2.1.1 (a), 12.2.1.2, 12.2.1.3 (a), 12.2.1.4 (a), 12.2.1.5, and 12.2.1.6 (a).

33. These rules make it clear that those subdividers are obliged to meet the cost of works within their developments. The main issues I see with these rules, and possible changes are outlined below.

Observation	Possible changes
1. These rules do not relate to financial contributions. They provide a statement about the obligations of subdividers. No payment to the Council is contemplated.	1A. Change chapter focus to works and services obligation, and financial contributions. 1B. Alternative change - move these sections to another chapter, provided they address all development, not just subdivision (see below).
2. The obligations apply in relation to subdivision only. However, the principle applies equally in practice to land use changes that does not involve subdivision. For example, within a site, this could be involve private roads and services within a retirement village, the formation of safe access and exits from a site, stormwater detention facilities, or wastewater pump stations.	2A. Widen rules to include development of land more generally. More generally, reform chapter to make most rules applicable to both subdivision and other types of development.
3. The wording used is generally “pay the full and actual costs..”, with only an implied obligation that they undertake the work. The same wording	3A. Make it clear in all rules when the obligation is to undertake works and meet the costs, or to meet the cost of works undertaken by Council.

is used in other rules which <u>are</u> financial contributions but relate to works outside of a subdivision site.	
4. Obligation to provide street lighting is separated from all other aspects of roading (12.2.1.2.).	4A. Include street lighting in general rules related to obligations to provide internal roading services.
5. 12.2.1.3 (c) specifies how the cost of upsized water infrastructure will be shared between the council and a subdivider. This uses an average cost of capacity approach rather than a marginal cost approach, and similar provisions are not provided for wastewater or stormwater. See also issue 9.	5A. Consider whether upsizing costs sharing rules should be retained in the District Plan 5B. If so, relocate out of the financial contributions section, widen scope to include stormwater and wastewater, and change to marginal cost approach unless council elects otherwise (e.g. because of the scale of upgrade requested).

### Funding future external works

Relevant rules: 12.2.1.1 (b) and (c), 12.2.1.3(b), 12.2.1.4 (b), 12.2.16(b), 12.2.2.1 (a), (b), and (c).

34. These state the obligation of developers to meet the cost of any external works needed to serve their developments. In some cases, this obligation is to meet only part of the cost, where the works will serve or benefit other parties.
35. A summary of these provisions and how they address different issues is in Appendix B. The main issues I see with these rules are the:
- Inconsistency between different services and land uses.
  - Obligation on the Council to contribute to external work costs, and the methods for apportioning these costs. These appear to reflect a presumption that these provisions are the Council's primary funding tool for funding growth related infrastructure and reflect a strong need to spread costs incurred over multiple developments.
  - Inability to impose conditions to undertake works rather than require a financial contribution.
  - Limitations imposed by some of the rules.
36. My assessment of issues and possible changes is outlined below. This assessment is strongly influenced by the Council's approach to funding growth infrastructure i.e. planned (and shared) infrastructure costs for the three waters and roading being included in the development contributions policy. This leaves financial contributions for the three waters and roading to help address more reactive or unplanned expenditure that is focused more often on the impact of a specific deployment.

Observation	Possible changes
6. Using financial contributions to fund external upgrade works for specific developments, such as a network upsizing or extensions, is a key role financial contributions play in relation to transport and the three waters.  This is especially important if the council cannot (or cannot easily) impose 'upgrade' conditions via a new service connection or building consent process on a development that is a permitted activity.	6A. Separately from financial contributions, provide the ability to impose conditions on developers to undertake and meet the full cost of external works. This includes where the existing services are inadequate (see issue 7 below), development and stabilisation works, and works associated with electricity, gas and telephone/internet/data.  6B. Retain the ability to require financial contributions where the council undertakes

<p>The current wording is ambiguous about whether these rules require the developer to undertake the work, it always falls onto the council, or whether it is intended to cover both instances. The same wording is used for the internal works “pay the full and actual costs”...</p> <p>It is implied but not stated that the contribution is for works that the Council will undertake on behalf of the developer.</p> <p>A related issue is that the rules do not provide for the ability to impose a condition on the developer to undertake the work as an alternative to council undertaking the work as seeking a financial contribution.</p>	<p>necessary external works for a specific development.</p>
<p>7. The obligation to meet the full costs of external work only applies where the current services are adequate.</p> <p>Where transport services are below the required levels of service, the rules for transport specify how the costs will be attributed/shared – essentially on an average cost of forecast use basis (12.2.1.1(c) and 12.2.2.1 (b)).</p> <p>These seem overly generous as there is likely to be a contribution in existing infrastructure that is not taken into account using the current cost sharing method.</p> <p>A related issue is whether it is appropriate in all instances to dilute the obligation for developers to meet the full cost when existing services are deficient. While the intent of such rules is to be fair, they also impose an obligation on the Council which may not be met by a funding commitment. Some discretion is required here.</p> <p>There are also instances where it is entirely appropriate to require developers to provide and meet the full cost of infrastructure, even when there is a deficiency with the existing networks. This is often the case for the roading network where developers are expected to upgrade road frontages - including footpath and parking.</p> <p>There are no rules for instances where the 3 waters networks are already inadequate. This leaves a gap – how are the costs of required external works related to the 3 waters shared (if at all) if they are currently inadequate?</p> <p>A minor issue is that 12.2.1.1 (c), starts with “notwithstanding (b) above...” yet applies to different circumstances. The phrasing creates the potential for confusion that (c) may apply where service are adequate.</p>	<p>7A. Remove the requirement that full costs only apply where the existing services are adequate.</p> <p>7B. Include provisions for all Council provided services for the Council to elect to reduce the financial contribution from full and actual costs where the works provide significant benefits to other parties, such as other development sites or address an existing and meaningful level of service deficit, and has authority to contribute. Hamilton City Council’s rules are a useful starting point.</p> <p>7C. Merge the rules for subdivision and other developments (see issue 8).</p> <p>7D. Provide ability to impose conditions on developers to undertake and meet the full cost of external works. This includes where the existing services are inadequate. This may require some provisions similar to those recommended in 7B enabling the council to elect to contribute to the works.</p>
<p>8. There is no ability to levy financial contributions for external works for the three waters for developments that are not subdivisions.</p>	<p>8A. Merge rules for subdivision and other developments.</p>



<p>Also, the ability to impose roading financial contributions on developments that are not subdivisions is limited to retail over 3,000 m<sup>2</sup> and places of assembly in rural or residential activity areas. This is very specific and narrow and ignores the ability of places of assembly within commercial or retail zones, or land uses like petrol station to generate large traffic volumes.</p>	<p>8B. Widen scope of financial contributions for transport to all zones for a wider range of land uses.</p>
<p>9. (Same as issue 5 but for external works) 12.2.1.3 (c) specifies how the cost of upsized water infrastructure will be shared between the council and a subdivider. This is not a financial contribution, uses an average cost of capacity approach rather than a marginal cost approach, and similar provisions are not provided for wastewater or stormwater.</p>	<p>(Same as 5A and 5B but for external works)</p> <p>9A. Consider whether the upsizing cost sharing rules should be retained in the District Plan.</p> <p>9B. If so, relocate out of the financial contributions section, widen scope to include stormwater and wastewater, and change to marginal cost approach unless council elects otherwise (e.g. because of the scale of upgrade requested).</p>
<p>10. In some cases, the infrastructure (i.e. specific project) for which a financial contribution is sought may already be included in the Council's LTP and be funded via development contributions. A financial contribution may not be necessary in these instances.</p> <p>However, if the relevant project is several years away, the delay may effectively halt the relevant development. A financial contribution or works related consent condition may be useful to secure project funding and delivery early, if the relevant development can fund all or most of the works.</p> <p>Note that section 200 of the LGA prohibits double dipping in these instances. If the financial contribution is sought or works required, a development contribution for the same project cannot be levied.</p>	<p>10A. Include criteria that states that the Council will consider whether the infrastructure works are funded via development contributions when considering whether to impose a financial contribution or works related consent condition. This will include considering how far out the project is scheduled, the criticality of the infrastructure to the relevant development, the extent to which the project is growth related, and the size of the development.</p> <p>10B. It may also be worth acknowledging in the District Plan the prohibition of double dipping for the benefit of readers.</p>

### Funding past external works

Relevant rules: 12.2.1.1(d) and (e), 12.2.1.3 (d), and 12.2.1.4 (c),

37. These rules enable the Council to recover the cost of past works from benefiting parties. This is still a useful power even for reactive works, as it enables the Council to share costs among developers where unplanned works will be able to serve multiple developments. For example, I have used similar provisions in the past to enable the construction of a single localised stormwater detention facility that served a small number of developable land parcels. This avoided the council inheriting the maintenance of four separate detention basins.
38. The main issue with these rules is that they only apply to subdivisions, and some tidying up of other rules is required.

Observation	Possible changes
<p>11. No ability to levy financial contributions on developments for past works for any services on non-subdivision developments</p>	<p>11A. Merge rules for subdivision and other developments, including the ability to impose financial contributions on all developments for past works.</p>

<p>12 Water has provisions to upsize infrastructure, and this is referred to specifically in 12.2.1.3 (d) as a cost that can be recovered for past works from benefiting parties.</p> <p>Wastewater and stormwater do not have an equivalent rule (see issue 8). Despite this, 12.1.4 (c) refers to how costs are incurred by council "either by" but refers only to one way. I believe it is meant to replicate 12.2.1.3 (d) but does not have an equivalent (c) (upsizing) rule to reference.</p> <p>Transport uses a different form of expression to the three waters. They could be made consistent.</p>	<p>12A. Broaden financial contributions provisions for all services to ensure future and past work is covered.</p>
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### Miscellaneous issue

39. 12.2.1.4 (d) provides for provisions in section 12.2.1.4 to apply to all stages of a subdivision. I am not sure why this is necessary, but if it is, it should also apply to the other services which currently do not have a similar rule.

### Reserves

Relevant rules: 21.2.1.7 and 12.2.2.2.

40. These rules require a contribution of 7.5% up to a maximum of \$10,000 per additional residential, commercial or industrial lot when land is subdivided. The determination of the percentage rate that is applied to a particular development and site is made based on a range of factors. However, land value increases since these provisions were set mean that the \$10,000 cap figure is almost universally applied.
41. Commercial and industrial land development over \$200,000 in value that increase or intensify land use is also subject to a reserve impact fee. In these cases, a contribution equivalent to 0.5% of the value of the development in excess of \$200,000 is required.
42. These rules are geared toward funding new reserve land provision from residential greenfield subdivision, and to a more limited extent, non-residential subdivision. The link to the value of new lots is a rational basis for setting contributions towards new reserve land in this context. However, this context is changing. The \$10,000 cap has long since severed any relationship between lot value and the cost of reserve land acquisition. More importantly, while greenfield development will still occur, much more of Hutt City's future growth is planned to be in the form of intensification of existing areas, including adjoined and multi-storied residential units.
43. In discussions with staff, they highlighted that the city largely meets its reserve land provision levels of service. Consequently, the focus for the future is not on land acquisition. Instead, the Council's long term capital expenditure on reserves is intended to largely develop existing reserves, providing more improvements to the land and assets/facilities on the land. This is intended to make better use of the reserves for existing residents as well as provide urban reserves more suitable for higher density living.

44. This largely severs any remaining relationship between the cost of land in subdivisions and the cost of the assets being funded by reserve financial contributions. However, there are other reasons for retaining a value-based assessment (discussed below).
45. Council's LTP indicates that some \$23m is planned on levels of service improvements for reserves over 10 years, and a further \$67.8m is planned on renewals.<sup>2</sup> No expenditure is specifically attributed to growth. I assume this is simply a matter of coding project expenditure to its primary purpose, rather than apportioning costs, in the LTP. Consequently, I expect that there are significant elements of the capital programme that relate to, or benefit, growth.
46. Without a project-by-project assessment, it is difficult to determine how much of this relates to growth, and therefore should be recovered via financial contributions. However, I have undertaken a macro level assessment using city wide growth forecasts to get an indication of how much charges might need to be to recover this cost- and therefore whether the current charges are adequate.
47. Around 3,200 new households are expected over the next 10 years, 6,700 over 20 years and 10,200 over 30 years. When using the future beneficiary split approach, that means around 7% (10 years), 14% (20 years) and 20% (30 years) of future households relate to growth since 2021.
48. Using the upper limit figure of 20% against all capital expenditure, it would suggest that no more than \$18m should be recovered from reserve financial contributions. That translates to around \$1,765 per dwellings. This calculation included all the expenditure - including renewals. It is likely the capital expenditure related to growth is much lower, and so would be the appropriate charge per dwelling.
49. This strongly indicates that either the Council may need to lower its financial contribution limit, and/or reconsider how it calculates its reserve financial contribution, and/or reassess its level of planned reserve expenditure related to growth.
50. One issue that came up in discussion with staff is how to apply the existing rules to unit developments. No new land allotment is created potentially, and even if it did, how would you value it for each unit? My reading of the law indicated that each unit is considered an allotment for the purposes of the RMA<sup>3</sup>, and therefore each unit is subject to paying a financial contribution up to 7.5% of its estimated value.
51. This topic also shone light on another (constrained) feature of the current system. The whole value of the unit is assessed for the purposes of determining the financial contribution payable, not just the land. This difference does not generate any concern for developers currently because the contribution is capped at \$10,000. However, without the cap, the rates levied on units could be much higher than the contributions required from a subdivision lot.
52. One attractive feature of this system is that it would generate higher financial contributions from higher density housing than it would from greenfield housing, likely reflecting a greater demand on public reserves. This is an aspect of the system that the council may wish to retain in the future, even if the rates fall.

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<sup>2</sup> Page 71 of the Council's [LTP](#).

<sup>3</sup> Section 218(2)(C) of the RMA. I am unsure how rights to occupy and cross leases are treated in this regard and wish to discuss this with Hutt City Council staff.

53. The main alternative is to set a charge per lot, dwelling, or building (for non-residential developments) based on a share of the total costs of growth. This will require more complex rules, particularly for non-residential developments. It would likely reassemble how reserve development contributions are set and administered but would become out of date over time, which logically leads to a question about whether the council should simply transition to that system for reserves.
54. At this stage, I recommend retaining a system that assesses the contribution based on an assessment of lot value for subdivisions, and the value of the development for other developments. Aside from the relationship with likely demand, it is also simply to administer and likely to change less frequently.
55. In light of all of the issues above, I recommend that Hutt City:
  - focus on ensuring permitted activities are subject to the existing reserve financial contributions provisions in the immediate term.
  - Reconsider its approach to funding growth related reserve infrastructure as part of the development of the LTP 2024, including whether it needs to change its maximum percentage and cap if the current system is retained. This requires more fundamental consideration of the underlying issues than the timelines for the IPI allow.

### ***Non-residential land use developments***

56. It is not clear how the 0.5% assessment rate that is applied to development's value was determined, but given the assessment above, it is likely that any link between reserve provision and this assessment rate has weakened over time.
57. Notwithstanding this, the main issue I see with these provisions are their application to only industrial and commercial developments. The rationale for this is not at all apparent. If it is accepted that businesses should contribute to reserve provision because their employees enjoy the benefits of these facilities, then this principle applies to all businesses. Accordingly, my main recommendation is to widen the scope of activities that the reserve impact fee applies to.

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### **Permitted activity financial contributions**

58. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 has 'clarified' that the Council has the ability to levy financial contributions on activities that may not require a resource consent i.e. permitted activities. The requirement to pay a financial contribution is instead a condition of being a permitted activity that developers must comply with. The District Plan must specify the purpose of the financial contribution, how the contribution will be determined, and when they will apply.
59. This power has been provided to enable financial contributions to be imposed on developments complying with the medium density residential standards, which may not require a resource or subdivision consent.
60. In my view, there is no need to differentiate between financial contributions imposed as a condition of consent and those imposed as a condition of a permitted activity. The provisions outlining the purpose of financial contributions, how financial contributions will be determined, and when they apply can be drafted broad enough to apply to both (with an exception related

to reserves). This is consistent with a theme to broaden and generalise the financial contributions provisions that runs through many of my recommendations.

61. In relation to upgrading or extending services needed for a specific development, whether a financial contribution will be required, requires an assessment of the impact of the development on network services. The cost of the financial contribution would be the actual and reasonable cost of undertaking the work.
62. Reserve financial contributions (assuming they are retained) will need to apply to each dwelling rather than lots or units. The Council will also need to create an assessment basis that values the contributions from these developments in a similar way to other developments. While this is less of an issue while the cap is applied in most instances, a fair basis still needs to be established. It will become more important if the level of contribution is reviewed in the lead up to the 2024 LTP, as recommended in this memo.
63. I recommend that financial contributions be able to be assessed and taken at the building consent or service connection stage for permitted activities. These are touch points between the council and the developers that cannot be avoided, and so practically offer the best opportunity to 'mop up' any developments that do not have a resource or subdivision consent. The District Plan will need to specify this.
64. The act does not address when payment must be made or what the council's recourse is if payment is not made. Presumably the Council can pursue any outstanding money as a debt following its normal debt recover processes. The timing of payment would appear to be up to the Council to determine and specify in the District Plan. There are four main options:
  1. Immediately (the time the building consent or service connection is granted).
  2. The 20<sup>th</sup> of the month following issue of building consent or service connection.
  3. The 20<sup>th</sup> of the month following completion of the works (for upgrading or extending services).
  4. Prior to the code compliance certificate being issued (similar to development contributions for building consent).
65. There are pros and cons for each, but as a general principle, the earlier the payments are required, the more likely the Council will be paid without difficulty. On balance, I recommend payment be made immediately, except where the financial contribution is for specific future works. In this case, the reasonable and actual cost can only be determined in hindsight and payment required shortly after the works are undertaken – typically the month following issue of the invoice to the developer.

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## **Review of other financial contributions systems**

66. I have reviewed a sample of other council financial contributions provisions to determine if there are any learnings or opportunities that can be gleaned from these. A summary of these is contained in Appendix C.
67. Overall, the councils reviewed are either:

- Refocusing their financial contributions to complement their development contributions system;<sup>4</sup> or
  - Relying almost entirely on development conditions and removing their provisions related to financial contributions.
68. Overall, I favour using financial contributions to complement development contributions provisions. They can still be useful to:
- A. Provide funding to Council to undertake the work(s) in lieu of a condition for the developer to undertake the work(s) themselves.
  - B. Contribute to unplanned works (that serve or benefit multiple properties) but are not included in the Council's development contributions system.
  - C. Provide funding for reserve funding in a manner that is simpler than using development contributions.
  - D. Enable the Council to recover contributions from the Crown in lieu of development contributions.
  - E. Address other environmental, potentially unrelated to growth impact on infrastructure.
69. Comments on A-C and provided above in a review of Hutt City Council's existing provisions. My comments below focus on D and E.

### **Crown exemptions**

70. Hutt City's existing provisions are potentially wide enough to levy financial contributions on Crown developments, but the contribution is limited. Hutt City and Tauranga City Council are explicit in their District Plan that they use financial contributions to address the statutory exemption of the Crown from the provisions of the Local Government Act 2002 - including development contributions. They have provisions that try to replicate, as close as possible, the charge that would otherwise be levied via development contributions.
71. Development contributions can allow quite a degree of cost sharing or pooling which is unlikely to be permitted by the RMA. The degree of connection or nexus required by the RMA between the development and individual infrastructure projects is likely to be much higher, so it is unlikely that financial contributions will be a complete substitute in these situations.
72. Nevertheless, this approach provides the council the opportunity to impose considerable charges on Crown developments that might otherwise not pay toward growth infrastructure. In my view, they are a useful tool to have in the Council's toolkit.
73. Care will need to be taken to construct rules that specifically apply to Crown developments. This is to ensure there is a link to the growth infrastructure in the development contributions policy that the development will benefit from, when setting the level of the financial contribution.

### **Environmental offset and positive impacts**

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<sup>4</sup> Wellington also proposes to use financial contributions to help fund assisted housing. This approach is novel but only works in the context of wider inclusionary housing provisions. Hutt City is not actively considering inclusionary housing, so this use of financial contributions is of limited value at present.

74. Several councils use financial contributions to enable environmental offset or improvements in some way. These costs are not always related to growth infrastructure but enable a loss to be avoided or mitigated, consistent with the purpose of the RMA. Most target this in a very specific way, such as landscaping or bush loss.
75. However, the principle has wider application and can address impacts that development contributions cannot. Consequently, I recommend that Council consider providing the general power to levy for the actual and reasonable cost on the basis of this principle for a range of activities. One specific use that warrants consideration in my view is a charge to upgrade the local streetscape for developments that intensify an area. The works involved can be buildouts and other devices to slow traffic, seats, street plantings, and other projects to improve local amenity etc.

## Appendix A. Financial Contributions and Development Contributions

1. Development contributions under the LGA02 and financial contributions under the RMA can both be used to fund growth related infrastructure and councils can choose to use neither, one, or both.
2. While financial contributions and development contributions have some similarities, they are not the same, nor are they good substitutes in many cases - but can act in a complementary way. Where both are used, this must be designed in an integrated way. Under LGA02 s.200, a development contribution cannot be required if a financial contribution has already been required from a development for the same purpose. Together with LGA02 s.106, this has been interpreted as meaning that councils should choose to apply development contributions or financial contributions, but not both, in respect of the cumulative impacts on each activity. This helps provide predictability for developers.<sup>5</sup>
3. However, there are cases where financial contributions and development contributions can be used in relation to the same activity. For example, a developer may be required to fund a pipe to connect their development to the council's network (financial contribution) and also pay for an appropriate share of network-wide capacity increases through development contributions. While the contributions are for the same activity, they are for different assets and purpose (a pipe vs intake, treatment, reservoir).
4. There are significant differences between development contributions and financial contributions in relation to:
  - Their purpose and how charges are determined.
  - The range of developments that can be charged.
  - The amount of effort required to develop and administer the charges.
5. Despite being more onerous to develop and administer, development contributions are generally regarded as a better tool for funding infrastructure upgrades required to meet cumulative demand growth arising from multiple unrelated developments.

Development contributions	Financial contributions
Operate under the Local Government Act 2002	Operate under the Resource Management Act 1991
Can only be used by territorial authorities (including unitary authorities)	Can be used by territorial authorities and regional councils
Fully integrated with growth, asset management and financial planning	No required integration with asset management or financial planning

<sup>5</sup> [Domain Nominee Ltd v Auckland City Council \[2009\] 1 NZLR 113.](#)



Imposed based on share of fiscal effect of growth for a development (past or planned capital expenditure related to growth, also allowing for cumulative effects)	Imposed based on the environmental effects of a development (allowing for cumulative effects). The environmental effects need not be related to growth effects)
Imposed through a requirement to pay upon granting of a resource consent, building consent (or certificate of acceptance), or authorisation to connect to a service	Imposed as a condition of resource consent
Cannot be charged to the Crown	Able to be charged to the Crown, except for the Ministry of Education or the Ministry of Defence
Must be documented in the council's policy on development and financial contributions	Must be in the District Plan or Regional Plan – and be summarised in the council's DCP
Objection process: Judicial review (policy adoption) Reconsiderations, objections, and judicial review (policy application)	Objection process: Appeals (plan adoption) Objections and appeals (plan application)

## Appendix B: Summary of Hutt City Council financial contributions provisions for works

Tone	Character
	Not a financial contribution
	Can be a financial contribution, or obligation to undertake works
	Financial contribution

Service	Future works			Past works	Internal works
	External services are currently adequate	External services are not currently adequate	Ability to upsize	Ability to share costs incurred by Council with benefiting properties	Impose obligation to undertake
Roading	Subdivision - Pay full cost of external works (12.2.1.1(b))  Other developments - Limitations in place	Subdivision - Yes, shared cost basically based on average cost (12.2.1.1(c))	Not addressed	Subdivision -Yes, and how costs determined are specified (12.2.1.1 (d) and (e))  Other developments – No	Subdivision – Yes,  Other developments – not addressed Yes
Water	Subdivision - Pay full cost of external works (12.2.1.3(b) and 12.2.1.4 (b)).  Other developments – no ability to levy financial contributions	Not addressed	Subdivision - Yes, and cost are shared on average cost of capacity basis (12.2.1.3 (c))  Other developments – no ability to levy financial contributions	Subdivision - Yes (12.2.1.3(d))  Other developments – No	
Wastewater		Not addressed	Not addressed	Yes (12.2.1.4 (c)) but missing some text  Other developments – No	
Stormwater		Not addressed	Not addressed	Yes (12.2.1.4 (c)) but missing some text  Other developments – No	

Service	Future works			Past works	Internal works
	External services are currently adequate	External services are not currently adequate	Ability to upsize	Ability to share costs incurred by Council with benefiting properties	Impose obligation to undertake
Other (development/stabilisation /gas/electricity/data)	<p>Subdivision – - Pay full cost of external development/stabilisation works</p> <p>Other developments – no ability to levy financial contributions</p> <p>*note, only an issue if it is council taking on the works – not likely in most cases except for stabilisation works which may occur in reserve, drainage or utility reserve, or road reserve land</p>	N/A	N/A	N/A	

## Appendix C. Summary of other council's financial contribution provisions

Council	Links	Comments
Wellington	<a href="#">Current</a> <a href="#">Proposed</a>	<p><b>Current plan</b> Current plan has development impact fees (essential similar to development contributions) for the three waters and reserves, provisions requiring payment for network upgrades or extensions needed for an individual development, and provisions requiring the vesting of land.</p> <p>These apply to both residential and non-residential developments comprehensively.</p> <p><b>Proposed plan</b> New plan proposes to use financial contributions only for assisted housing as part of a wider inclusionary zoning package. Section 3.4.</p>
Porirua	<a href="#">Current</a> <a href="#">Proposed</a>	<p><b>Current plan</b> Current provisions include a mix of actual financial contributions and obligations or potential obligations on developers to undertake certain works – such as landscaping.</p> <p>Reserve contributions for residential and non-residential activity, including esplanade reserve.</p> <p>Network upgrade provisions when networks need to be extended or upgraded for a development.</p> <p>Specific network charges in certain areas for water, roading, and wastewater.</p> <p>Ability to impose obligations or recover cost for screening, bush protection, landscaping and earthworks.</p> <p><b>Proposed plan</b> New plan proposes to remove any financial contribution provisions. All reserve growth costs have been recovered via development contentions since 1 July 2021.</p>
Dunedin	<a href="#">Current</a>	<p>No use of financial contributions except in current district plan in lieu of parking provision, which are no longer effective since parking requirements are no longer applicable.</p> <p>Relying on development contribution only, including for reserve and community infrastructure.</p>
Hamilton	<a href="#">Current</a>	<p>Financial contributions are provided to:</p> <ul style="list-style-type: none"> <li>• Address the statutory exemption of the Crown from the provisions of the Local Government Act 2002 by taking financial contributions for subdivision and/or development undertaken by the Crown.</li> <li>• Enable the ongoing collection of, and potential review of, existing consent conditions that require a financial contribution.</li> </ul>

		<ul style="list-style-type: none"> <li>• Take financial contributions for reserves, other than esplanade reserves.</li> <li>• Offset the adverse effects of subdivision and development on infrastructure not otherwise addressed by Council’s Development Contributions Policy under the Local Government Act 2002.</li> </ul> <p>All rules apply consistently to subdivision and other types of development.</p> <p>Most of the rules are contained in section 24.3. For network upgrades, they provide a useful starting point, although their rules seem to limit contributions from the crown to the same matters they can take from other developments.</p> <p>The rules for reserves are not helpful to Hutt City as they largely appear to be land “level of service” based, which is not the change facing Hutt City.</p>
Tauranga	<a href="#">Current</a>	<p>Financial contributions are provided to:</p> <ul style="list-style-type: none"> <li>• Address the statutory exemption of the Crown from the provisions of the Local Government Act 2002, and so the Development Contributions system, by taking financial contributions for subdivision, land use and development undertaken by the Crown;</li> <li>• Enable the ongoing collection of and potential review of existing consent conditions that require a financial contribution;</li> <li>• Take contributions for local neighbourhood reserves and community infrastructure in existing urban growth areas and infill areas to mitigate the effects of greater population density resulting from subdivision, land use and development;</li> <li>• Mitigate the effects of the removal of a protected tree, landscape planting on industrial road frontages and parking impact fees to offset the physical provision of parking in the City Centre</li> </ul> <p>Most of the rules are contained in section <a href="#">11A.2</a>.</p> <p>Tauranga has city wide and local rules which apply only to exempted parties (essentially the Crown). These replicate a simplified form the Council’s development contributions policy and even refer to the projects in the policy. They exist to essentially circumvent the exemption that the crown has from development contributions. They also have another charge which relates to unforeseen impact of subdivision for exempted parties.</p> <p>The provisions have local area rules in urban areas that apply to specific areas unless financial contributions or development contributions have already been paid. Also applies to development outside of this if they need the local infrastructure.</p> <p>The provisions have rules which state that additional dwellings on a site will be treated as an additional lot, rules for change of use for buildings, new connections for existing buildings, credits, etc</p> <p>Rule 11A.2.21 requires financial contributions in industrial areas for street landscaping based on the length of frontage.</p> <p>Rule 11A.2.22 can require a financial contribution to pay for a new tree if a development removes a protected or notable tree.</p>

Auckland	<a href="#">Current</a> (chapter I)	Auckland has limited its financial contributions for paying for specific infrastructure in three precincts.  See <u>schedule 6</u> of the development and financial contributions policy for a convenient summary of these.
Nelson	<a href="#">Current</a>	Note that while this chapter still exists, Nelson City Council now relies on development contributions. The financial contributions provisions essentially provide for contribution towards planned growth infrastructure city wide, akin to development contributions for reserves, transport and the three waters. They also provide for non-planned infrastructure.
Christchurch	<a href="#">Current</a>	General provisions to enable the impact of a specific development to be mitigated. A financial contribution charge is set at a level needed to offset or mitigate adverse effects on the natural and physical environment, including infrastructure services, caused by the new development. However, it appears to apply in a very narrow set of circumstances related to the erection and use of temporary or relocatable buildings for workers' temporary accommodation until 31 December 2022.