Objection leads to $1.76 m reduction in development contributions for Ryman village

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Stuart Ryan sets out the objection and reconsideration procedure under the Local Government Act 2002 for development contributions. He refers to a recent objection by Ryman Healthcare Limited which led to a substantial reduction in the development contributions payable for its Possum Bourne Retirement Village in Pukekohe and discusses the implications of the decision.

Territorial authorities have broad power to require development contributions under the Local Government Act 2002 (LGA) if developments have the effect of requiring new or additional assets or infrastructure in relation to reserves, network infrastructure (roads, water wastewater and stormwater) or community infrastructure (community centres, play equipment on reserves, and public toilets). The development contributions are required at the time of grant of resource consent, grant of building consent, or for service connections to require those responsible for development to meet the costs of growth connected with the development.

An amendment in 2014 to the LGA provided rights to challenge development contributions by a request for reconsideration (s199A), or by objection (s199C), which is heard before commissioners appointed by the Minister of Local Government.

The LGA at the time of its enactment provided no mechanism for those subject to requirements for development contributions to object, apart from High Court judicial review. While the remedy of judicial review is preserved by the 2014 amendment, the new rights of reconsideration or objection are likely to be a more cost-effective remedy in most cases.

A decision by commissioners in August 2018 to uphold an objection by Ryman Healthcare Limited (Ryman) against the decision by Auckland Council concerning the Possum Bourne Retirement Village at Pukekohe demonstrates the usefulness of the 2014 amendment.

Exercising both the reconsideration and objection rights, Ryman was able to reduce its development contributions by $1.76 million for its retirement village. The ability to request a reconsideration or to object to a development contribution has received relatively little attention. At the time the Ryman objection was determined by the Commissioners in August 2018, it was only the 8th occasion on which the objection rights had been exercised by any developer since enactment of the 2014 amendment.

The 2014 amendment: What are reconsiderations and objections?

The 2014 amendment to the LGA allows developers to object to or request a reconsideration of a territorial authority's imposition of development contributions.

Reconsideration

A person receiving notice of a development contribution may request that the Council reconsider the requirement for a development contribution under s199A of the LGA. A request must be made within 10 working days and the territorial authority is required to follow an internal process to reassess its request for development contributions, notifying the requester of the outcome within 15 working days. The request for reconsideration is limited to the grounds that:

- the development contribution was incorrectly assessed or calculated against the Council's development contribution policy; or
- the Council's development contribution policy was incorrectly applied; or
- information used in the assessment was incomplete or an error.

Objection

A person receiving notice of a development contribution may also object under s199C of the LGA. The grounds for objection are wider than for reconsideration. Objection may be made after a reconsideration process has ended (within 15 working days from receiving notice of the reconsideration outcome), or by giving notice of objection within 15 working days of receiving notice of the development contributions.

The grounds for making a development contribution objection are set out in s199D. These include where:

- the Council has failed to properly consider the nature of the development which would substantially reduce its impact on Council infrastructure; or
- the contributions are for community assets that are unrelated to the development;
- the requirement is in breach of the principles outlined in s200 (including where the contribution is already previously been required i.e. 'double dipping'); or
- the Council has not properly applied its development contributions policy (DCP).

The objecting party is not entitled to directly challenge the provisions of the relevant DCP (s199C(3)).

Where an objection has been made, a hearing may be heard by Development Contributions Commissioners appointed by the Minister of Local Government. Commissioners are required to consider a set of factors, including the grounds on which the objection was made, the principles of development contributions under the LGA (ss 197AA, 197AB), the Council's own DCP, the cumulative effects of the development with other developments in the area, and "any other relevant factor" related to the issue.

The *Possum Bourne Retirement Village* decision

In May 2016, after granting land use consent for the Possum Bourne Retirement Village, Auckland Council served a development contribution notice on Ryman as owner and developer of the retirement village. The Council had calculated development contributions of $2.36 million according to the 2014 Auckland DCP. This represented the Council's calculation for demand on local infrastructure including reserves, stormwater and recreation facilities.

Ryman requested a reconsideration by the Council. When the request for reconsideration was unsuccessful, Ryman then filed a notice of objection in July 2016 alleging that:

- The Council had failed to take into account the characteristics of the Ryman development, described as a "comprehensive care retirement village". Ryman alleged that the village would substantially reduce its reliance on Council infrastructure;
- the required contributions were for infrastructure that were not related to the retirement village;
- the development contributions were in breach of s 200 of the LGA, including that the contributions required had already been required and represented 'double dipping'
- The Council had incorrectly applied its DCP.

Ryman argued the Council had not considered the specific features of its comprehensive care retirement village and its internal provision of community facilities, a local recreation reserve and stormwater infrastructure. The development contribution had therefore not been charged fairly, equitably, and proportionally, as required by the LGA.

The Council argued that Ryman's objection amounted to a challenge to the DCP, in breach of s199C(3), therefore the objection by Ryman was outside the scope of the Commissioners' jurisdiction.

The Commissioners did not consider Ryman's objection to be a direct challenge to the content of the DCP. They stated that considering specific features of the retirement village in question is "exactly the enquiry [they] are expected to make". Whether the development contributions were appropriate required a factual analysis in the circumstances of the development.

Under the first ground, Ryman argued that their village had a substantially diminished demand on council facilities. The mean age for residents of the village was over 80 years old, many had reduced mobility, deteriorating health and memory issues. There were also services onsite, and a local recreation reserve which had already been provided by the village through the terms of the previous resource consent.

Ryman was not required to show that their village was significantly different to other retirement villages, as the Council had argued, but needed to establish that the village residents interacted with Council infrastructure less than the average Auckland household. Survey information demonstrated that the village residents used community facilities around half as much as other Aucklanders did. The Commissioners found that a 50% reduction in demand was enough to amount to a "significant reduction" in demand as required under s199D(a).

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Ryman also argued that it should not pay contributions for district stormwater systems. When the land use consent had been obtained, a condition of the resource consent required the Village to provide stormwater mitigation by achieving hydraulic neutrality (similar or lower peak-discharge rates when comparing the location post-development and pre-development). Ryman's proposed stormwater system as built had received Council engineering approval and had been installed on this basis. The Commissioners held that the Council could not point to any stormwater projects that the village would realistically place a demand on. Therefore, the first ground of objection was accepted by the Commissioners in relation to reserves (everything except stormwater) and stormwater facilities.

Under the second ground of objection, Ryman submitted that the Council had charged development contributions for assets that had no relation to the retirement village. Residents used existing facilities significantly less than the average Aucklander, and there was no causal connection between the village and any new assets that would have to be established. The Commissioners found it difficult to perceive any direct link between the village and community infrastructure listed in the Council's development contribution policy, or upcoming projects referred to by the Council.

Additionally, because the Village had achieved hydraulic neutrality as a condition of resource consent, the Council was not able to point to any evidence suggesting that the village would place demand on offsite stormwater infrastructure. The second ground of objection succeeded in relation to reserves and stormwater.

The third ground of objection was referred to as a 'double dipping' argument. Section 200 of the LGA provides that Councils must not request development contributions for community facilities or infrastructure if they have already been provided for by the developer via other means, such as a consent condition or other funding. Ryman contended that since it had funded the development of a local recreation reserve as part of a previous subdivision consent condition, to require development contributions for the same reserve would be in breach of s200. The commissioners found that the DCP was unclear on the status of the reserve (not listed as one of the projects in the DCP). They declined to make a decision on this point, deeming it unnecessary as the first ground of objection had already been made out.

The final ground was not made out, the Commissioners finding no evidence to suggest that the DCP had been wrongly applied.

Having found that the first and second

grounds of objection were established, the commissioners recalculated the development contributions owed by Ryman, with substantially reduced demands on community infrastructure. The original sum of $2.36 million was reduced to $606,808 – a reduction of approximately $1.76 million.

Implications and future directions

Ryman succeeded in showing that the nature of Possum Bourne retirement village generated substantially less demand on community infrastructure then the amount generally prescribed for retirement villages in the council's DCP. Ryman also succeeded in establishing that demand on district infrastructure had already been addressed by previous resource consent conditions and therefore represented an unlawful form of 'double dipping'. Auckland Council was unable to identify particular projects or expenditure related to Possum Bourne Retirement Village and was therefore unable to establish the necessary causal-connection between the infrastructure or reserves and the retirement village.

The *Ryman* decision illustrates that in the right case, reconsideration or objection procedures can lead to substantial reductions in development contributions. ■

CONTRIBUTING AUTHOR

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