

5. POLICY PREPARATION FOR DEVELOPMENT CONTRIBUTIONS

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This report outlines the process being adopted to prepare a Development Contributions Policy as required by the Local Government Act 2002 and seeks some direction from the Council before consultation with key affected parties.

DEVELOPMENT AND FINANCIAL CONTRIBUTIONS : BRIEF BACKGROUND

Legislative provision has long allowed local government to require that developers and subdividers either provide or meet the cost of infrastructure and open space provisions made necessary by their developments. Traditionally, the trigger for such contributions was subdivision and the requirements covered the provision of reserves as well as roading, drainage (sewerage and stormwater) water supply, electricity or gas services. Typically, a residential or commercial subdivider was required to provide all of the roading and infrastructure services within the subdivision, contribute to the provision of reserves either in land or cash, and could also be required to contribute to infrastructure provision beyond the subdivided area to the extent that the extra provision served the development.

The Local Government Act 1974 extended the contribution provisions to cover developments that could occur without subdivision.

Passage of the Resource Management Act 1991 introduced a new regime for contributions associated with development. The Act allows the taking of **financial** contributions (comprising land and/or cash) as a condition of resource consent, but only in accordance with a rule in an operative District or City Plan¹. The Act is not prescriptive, offering Councils wide discretion in the level and scope of contributions they wish to require. However, the financial contribution rules have to survive the Plan notification process and even when established as rules, are subject to appeal each time they are applied as a condition of consent.

Transitional provisions in the Resource Management Act allow Councils to continue using the Local Government Act 1974 clauses until such time as financial contributions are established as rules in their operative City or District Plan.¹

The Local Government Act 2002 contains new provisions for **development** contributions. Territorial authorities are required to prepare a Financial and Development Contributions Policy and include it in their Long Term Council Community Plan, (LTCCP) enabling its application from 1 July 2004. It will be noted that the Local Government Act 2002 does not repeal the Resource Management Act 1991 financial contribution provisions. A Council must decide which means it wishes to use and may continue to use both as long as there is no double dipping. Whatever is decided the policy to be delivered through the LTCCP must describe both financial (Resource Management Act) and development (Local Government Act) contribution procedures proposed by the Council.

CONTRIBUTIONS PRACTICE EMPLOYED BY CHRISTCHURCH CITY COUNCIL TO DATE

In the years since amalgamation the Council has continued the practice of its predecessors, including the Christchurch Drainage Board, to take contributions for roading, infrastructure and reserves using the Local Government Act 1974.

With the opportunity provided by the Resource Management Act to develop a contributions regime through its City Plan the Council published detailed provisions in its Proposed City Plan but following consideration of problems identified through submissions, the Hearings Panel decided not to confirm these clauses and instead prepare a new variation specifically covering financial contributions. This variation was being worked on, including initial reporting to the Council, when it became clear that the Local Government Act 2002 would contain contribution provisions, and it was decided to cease the variation work in favour of developing policy under the new Local Government Act.

DEVELOPMENT CONTRIBUTIONS UNDER THE LOCAL GOVERNMENT ACT 2002 : KEY PROVISIONS

Before seeking guidance on the direction a draft policy should take it is necessary to briefly cover some key provisions of the new Act.

¹ From 1 August 2003 the rules can be applied if they are contained in a **proposed** scheme.

Triggers for Requiring Development Contributions

A territorial authority may require a development contribution to be made to the territorial authority when granting:

- (a) a resource consent under the Resource Management Act 1991 for a development (including subdivisions);
- (b) a building consent under the Building Act 1991;
- (c) an authorisation for a service connection.

Scope

Development contributions may be required to provide for:

- (a) reserves;
- (b) network infrastructure;
- (c) community infrastructure.

Network infrastructure means provision of roads and other transport, water, wastewater and stormwater collection and management.

Community infrastructure means land, or development assets on land owned or controlled by the territorial local authority to provide public amenities.

The Act allows contributions to be sought for expenditure that has already been incurred by the territorial authority in relation to the development.

Reserves

The Act sets down a prescriptive rule for reserves contributions. They must not exceed the greater of:

- (a) 7.5% of the value of the additional allotments created by a subdivision;
- (b) the value equivalent of 20 square metres of land for each additional household unit created by the development.

It should be noted from this that the Act has restricted the application of development contributions for reserves to subdivisions and to developments that create additional household units with or without subdivision. An omission is the case of industrial/commercial developments that occur without subdivision. There is a way within the Act to cover this case using the community infrastructure provisions as explained later in the report.

Use of Development Contributions

Development contributions can only be used for capital expenditure on the reserve, network infrastructure or community infrastructure. Maintenance is excluded.

Basis for Calculating Development Contributions

The Act retains the principle that a development contribution sought for a particular unit of demand (say a household unit) must match or be less than the share of capital expenditure applicable to that unit of demand.

Another way of saying this is that the liability of the developer for, say, network infrastructure is limited to the extent to which that infrastructure serves the development.

INITIAL SUGGESTIONS FOR THE COUNCIL

Scope

To date, this Council has limited the scope of its contribution requirements to reserves and network infrastructure. As will have been noted, the Act allows an expansion of this to include community infrastructure i.e. such facilities as libraries, leisure facilities, community halls, art galleries and the like. Note that contributions can only be sought for **capital** costs related to **growth**.

When the Proposed City Plan variation on financial contributions was being proposed a Strategy and Resources Committee seminar held in October 2000 was asked if it wished to expand its contribution regime to include community facilities and at that time it was generally agreed to remain with the status quo of reserves and network Infrastructure. Councillors were aware of the opportunity to take some pressure off borrowing through such contributions but were more influenced by a desire to avoid discouraging development through onerous contributions.

The author has canvassed Council units again to assess enthusiasm for community infrastructure contributions and found that there is limited support. The Libraries Team confirmed their earlier view that providing for growth in demand for library services may not in the future be met by building more libraries. Community Relations also did not foresee a major capital investment in growth-related community facilities, rather a focus on an increase in the utilisation of existing buildings through joint use arrangements and the like.

Leisure showed more interest but had no facilities programmed for the short to medium term that would qualify as growth-related improvements. Similarly, the Art Gallery showed interest in development contributions that could assist future gallery improvements associated with growth but implementation of such a charge should await the appearance of the work in the ten year LTCCP capital programme.

On balance it is recommended that the Council signal in its policy that it is prepared to consider such contributions but has no plans to seek them in the short to medium term. This can be reviewed through the three year LTCCP process.

There is, however, another use of the community infrastructure provisions that the Council will need to invoke if it wishes to continue to collect land or cash contributions for open space from industrial and commercial developments that occur without subdivision. The ability to collect such contributions was allowed by the Local Government Act 1974 and was continued in the Council's Proposed City Plan provisions (placed on hold in favour of a variation) but, as noted above, has been excluded from reserve contribution clauses in the Local Government Act 2002.

To secure this opportunity, the Council can establish a policy that will take land or cash in lieu of land for such developments using the definition of community infrastructure:

- "...means (a) land, or development assets on land owned or controlled by the territorial authority to provide public amenities"*
- (b) includes land that the territorial authority will acquire for that purpose."*

Use of Financial Contributions Through City Plan Provisions

For clarity from the developer's viewpoint it is recommended that the Council concentrate its contribution regime within a Development Contributions Policy prepared according to the provisions of the Local Government Act 2002. Nonetheless, a variation to the Proposed City Plan is still required to either withdraw or tidy up the original financial contribution provisions. This variation will also be used to cover those exceptional circumstances where contributions could reasonably be claimed under a City Plan rule but are not permitted by the Local Government Act 2002.

Types of Development Contribution

Network Infrastructure

Current Council practice is to seek contributions for infrastructure costs associated with growth in three different ways, depending on the situation.

The first involves a city-wide new lot charge that involves the capital cost of provision for growth where it can be shown that every additional property connected to the network contributes to the need for more capacity. Christchurch has two examples - a water supply headworks charge and a Christchurch Treatment Plant capacity upgrade charge.

A second type is similar but covers only a defined cost share area where the new lot contribution covers the cost of new infrastructure required to serve that area. The Council has some 55 of these cost share areas covering sewerage, water supply and stormwater services. All are required to be separately detailed in the Development Contributions Policy, including any new cost share areas where capital expenditure is proposed in the LTCCP 10 year programme.

Finally, contributions are taken from individual developments or subdivisions where one-off works are required to improve or extend the infrastructure. For example, roading contributions are currently taken for upgrading existing roads and construction of new roads on unformed legal road.

The proposal is to continue with these methods of taking contributions.

Reserves

Within the maxima specified by the Act, and reflecting work already done by the Council during the Proposed City Plan preparation, policy relating to Development Contributions for reserves will cover a number of situations where modifications such as reductions from the maxima could be considered. Examples are:

- procedures where the contribution is part land, part cash
- possible distinctions for the Central City Zone and Special Purpose Zones
- valuation processes
- reductions where the development is housing for the elderly
- reductions in some circumstances where esplanade reserves or reserves for stormwater management purposes also provide for open space and recreation use
- provision for bonding subdivision contributions where payment is permitted to be delayed.

These matters will be refined during consultation and referred back to the Council when the Development Contributions Policy is being finalised for inclusion in the draft LTCCP.

Community Infrastructure

The use of this category to acquire land or cash in lieu of land where commercial/industrial development is occurring without subdivision will require policy that details how the contributions will be calculated. For example the Proposed City Plan provision sought 2 square metres of land or equivalent cash for every additional 100 square metres of gross floor area created by developments in the Central City Zone.

POLICY DEVELOPMENT PROCESS

An officer team is currently working on the preparation of a Development and Financial Contribution Policy as required by the Local Government Act 2002. Following the direction given through the consideration of this report it is intended to consult with key affected parties before bringing back to the Council a draft policy for consideration and approval in November. The agreed policy will then be included in the LTCCP and go through the public notification and submission procedure associated with the plan. This should allow the policy to be finalised with the LTCCP and be ready for application from 1 July 2004.

Staff

- Recommendation:**
1. That the Council note the programme for preparation of a Draft Development and Financial Contributions Policy, including early consultation with stakeholders.
 2. That the Council adopt the principle that it will endeavour to identify all of its development contribution intentions within the scope of its policy prepared under the provisions of the Local Government Act 2002, using the financial contribution provisions of the Resource Management Act 1991 only for exceptional situations that cannot be covered by the Local Government Act.
 3. That development contributions be limited to the provision of network infrastructure (roads and other transport, water, wastewater and stormwater collection and management) and reserves and land for public amenity purposes.
 4. That the Development Contributions Policy include a procedure for community infrastructure contributions for public facilities but signal that the Council has no plans for applying these in the short to medium term.

5. That the Development Contributions Policy allow for infrastructure contributions based on city-wide and local cost share areas as well as individual developments.
6. That following consultation a draft policy be brought back to the Council later this year in time for consideration and inclusion in the LTCCP.

**Deputy Chairman's
Recommendation:**

For discussion.