

<p>Officer responsible Environmental Services Manager</p>	<p>Author Melinda Smith and Rachael Gurnsey</p>
<p>Corporate Plan Output: Resource Consents</p>	

The purpose of this report is to advise the Committee of the current situation with regard to the collection of reserve contributions. It will then explore the difficulties of working under the existing policies in the Transitional period until the Proposed Plan becomes operative, and introduce options for improving the decision-making framework in the interim period.

INTRODUCTION

Under the Transitional Provisions of the Resource Management Act 1991, the Council’s ability to collect reserve contributions in association with development or subdivision remains. Sections 407 and 409 of the Resource Management Act enable such collection to proceed in accordance with the saved Local Government Act provisions, until such time as the Proposed City Plan rules relating to reserve contributions become operative.

Prior to the introduction of the Resource Management Act 1991 the Council was able to collect reserve contributions under the provisions of the Local Government Act 1974. That Act included specific formulae to enable collection of reserve contributions up to a maximum value.

COUNCIL POLICY

The Local Government Act provisions were enabling, in that they allowed a council to require a developer or subdivider to contribute towards reserves. Where it was intended to take reserve contributions the Council was required to include a reserve policy in its district scheme. Historically, the Council has chosen to seek the maximum amount able to be charged in either land or cash. This is reflected in the policies of five of the six sections of the Transitional Plan. It does this in an attempt to share the costs of reserve provision evenly across the city and to enable it to work toward achieving the highest quality environmental outcomes for the city, in line with the garden city image.

Post-amalgamation and pre-Resource Management Act, the Council developed a formal policy relating to reserve contributions. This was adopted in August 1990. It has recognised in its Policy Register that in some instances it may not be appropriate to collect the maximum permissible contribution, depending on the details of a particular case. That part of the Council's policy which relates to reductions in reserve contributions is as follows:

“(b) Consideration of reserve contribution reductions be made on an individual basis in situations where, for example, major landscaping works have to be undertaken by the developer; where private recreation areas or facilities are provided; where important natural, physical or cultural features are preserved; or where the new development generates less than usual demand for new recreation facilities.”

The wider framework and more detail about the formulae and methods of collecting reserve contributions are detailed in an overview report produced for a Resource Management Hearings Panel in December 1998. A copy of this report is attached as Appendix 1.

THE COLLECTION OF RESERVE CONTRIBUTIONS

Prior to the enactment of the Resource Management Act, reserve contributions were collected at the time a building consent for a development was applied for or when a subdivision was approved. The transitional provisions of the Resource Management Act make it clear that any intention to collect such a contribution must now be highlighted as a condition of the resource consent applying to the development or subdivision. This was a new process insofar as it related to development.

It is important to note that the inclusion of this issue as part of the resource consent process under the Resource Management Act means that decisions are now made in the context of Section 104 and 105 of that Act. This is important in that any conditions of consent must be considered in the context of the Act, including Part II, even though Transitional Plans and some relevant policies outside the Plan will have existed prior to the formulation of that legislation. In this respect, any conditions of consent must be for a resource management purpose. This is quite different to the old Local Government regime, where contributions primarily just needed to be shown to be fair and reasonable. Under the Resource Management Act they need to be fair and reasonable and for a resource management purpose.

In considering a resource consent, a consent authority is required to ‘have regard to’ any relevant provisions of a Plan or Proposed Plan, as well as any other matters it considers relevant and reasonably necessary to determine the application. This would include any relevant Council policies formulated outside the Plan process.

It should be noted that the proposed rules in the Proposed City Plan relating to financial contributions (which include reserve contributions) are quite different to all other proposed rules. Such provisions do not have 'effect' until they have been right through the process of consultation, submissions, decisions and appeals. All other rules in a Proposed Plan have effect from the day the Plan is notified.

The challenge to the Council in this transitional period will be to make sense of a process formulated outside of the thinking of the Resource Management Act in a manner that accords with the direction of that Act.

THE PROCESS FOR CHALLENGING THE REQUIREMENT FOR A RESERVE CONTRIBUTION

Prior to the Resource Management Act, the Local Government Act provided an objection and appeal process for challenging contributions. While contributions charged on subdivision were regularly challenged under these provisions, contributions on developments were rarely challenged in Christchurch. The Resource Management Act continues to provide for this right of objection, and it does so through giving applicants an ability to object to conditions of resource consent under Section 357 of the Act. Such objections are considered by the Resource Management Hearings Panel and may be appealed to the Environment Court. Under this regime there has been an increase in applicants registering their objection to the amount of the contribution to be collected. Officers have found it difficult to assess the appropriateness of recommending whether a reduction in the amount charged is justified or not, as the current Council policy on this matter is quite general in nature and the Transitional Plans provide minimal guidance.

To date the Resource Management Hearings Panel has considered five such objections and in four of those five cases the reporting officer has reported that there are grounds, in accordance with the Council's policy, to allow for some reduction in the contribution collected. In these four cases, the Panel has held a hearing, and in some instances has agreed to substantial reductions of the contribution to be collected.

PRINCIPLES FOR THE CHARGING OF RESERVE CONTRIBUTIONS

Some of the objections to the amount of the reserve contribution proposed to be charged have been accompanied by legal challenges regarding the manner in which the Council collects reserve contributions. In response to these challenges the Council has obtained legal opinions to clarify its responsibilities and powers. The following principles have been identified from this process:

- the policy of always taking the maximum contribution possible without any further consideration is ultra vires (outside the law), as it fetters a discretion that statute gives Council
- the Transitional Plan policy of requiring the maximum contribution should therefore be given little weight in decision making
- the Council **may** take into account the provision of open space on the application site for the sole use of persons to live within that land
- the Council **shall** take into account any earth works, tree planting or other work on the land that has been required by the Council
- Council should consider whether a development will cause an increased level of activity in relation to reserves
- The need for reserves in the locality of the development or elsewhere in the City should be considered by Council
- A reserves policy not contained in the Plan is of less significance than a similar policy contained in the Plan which has been the subject of scrutiny and challenge
- Any condition must fairly and reasonably relate to the subject of the consent and accordingly must be fair and reasonable in the circumstances of the case
- Any condition must be for a resource management purpose

The application of these principles and the Council's policy in a fair and consistent manner is important and to date has proven to be difficult. In the short to medium-term, until a variation to the Proposed Plan can be finalised and made operative, it is necessary to fine tune the existing framework for decision making to enable better application of the principles and policy.

OPTIONS

In the longer term the Proposed Plan rules and provisions which consider the whole issue of financial contributions, specifically in the context of the Resource Management Act, will become operative. However, this is some way off, as the information considered during the Proposed Plan hearing process highlighted some deficiencies in the proposed rules relating to financial contributions. The Council decided that the financial contribution section of the Proposed Plan, as notified, would not proceed any further. Instead, a variation to the Proposed Plan would be initiated at a later date. The initial investigations regarding this project have commenced. Although the provisions of any proposed variation will be matters the Council shall 'have regard to' in considering applications for resource consent, they will have little effect on the day-to-day operation of the Council exercising its discretion until such time as they become operative.

In the interim it is proposed that either the Transitional Plan or the Council's policy can be strengthened to provide more guidance on what matters are relevant in considering what level of contribution to require.

It would appear that there are two options available for such fine tuning.

Option One

Promote a formal change to the Transitional Plan.

This option is not favoured because the content of the proposed change would need to be thoroughly researched in accordance with Resource Management Act requirements. This could potentially direct resources away from preparing a more comprehensive variation to the Proposed Plan. In addition, as any change to the Transitional Plan would not have effect until the provisions became operative, it is difficult to see any short to medium-term benefit from this option.

Option Two

Strengthen the Council's existing reserves contribution policy to provide more specific guidance to decision makers in the short to medium-term.

As an interim measure it is proposed that the Council continue to use the existing framework as the basis for collection of contributions. This is based on using the maximum values specified in the Local Government Act formulae as a starting point to calculation. The Council has to acknowledge that it may not be appropriate to require this level of contribution where it can be demonstrated that there is less demand for new facilities or upgrading of existing facilities. The achievement of other resource management objectives, particularly those recognised in the Council policy, may also then be considered in this context. Using this policy, reductions in contributions may be applied to developments or subdivisions that achieve these other benefits for the community. This would provide for the continuation of the transitional Local Government calculation, based on providing reserves totalling not less than four hectares for every 1,000 of the likely maximum resident population of the locality.

It is therefore suggested that the existing Council policy be amended to provide more detailed parameters against which to consider appropriate reserve contribution charges on a case-by-case basis. This option would also have the advantage of providing guidance to developers about the types of circumstances likely to be seen as having a public benefit worthy of recognition through a reduction in reserve contribution. This may provide an incentive for developers to design their developments in a manner which enables them to benefit financially from providing for these public benefits.

For the above reasons, option two is the preferred option.

- Recommendation:**
1. That no variation to the Transitional plan be considered at this stage.
 2. That paragraph (b) of the Reserve Contributions policy dated 16 August 1990 be replaced with the following new section:

“(b) In some circumstances, it may be appropriate for a reduction to be made in the amount of reserve contribution required. The Council will consider reserve contribution reductions on a case by case basis, having regard to, but not limited to, the following:

Demand

- *the likely increase in population on the site as a result of the proposed development and the extent to which this will result in demand for reserves*
- *whether a need is identified for additional areas of open space and amenity reserves in the locality to meet the needs of present and future generations*
- *whether existing land held as open space and amenity reserves in the locality is developed to a standard capable of catering adequately for any increase in demand*
- *whether a need is identified for additional areas of district sports fields to meet the needs of present and future generations*
- *whether existing land held as district sports fields is developed to a standard capable of catering adequately for any increase in demand*
- *whether the proposed development would generate less than the usual demand for open space and amenity reserves and other recreational facilities*

- *the extent to which private recreational facilities are to be provided on the site that will result in a reduction in demand on public reserves. In the Higher Density Zones, less open space is required than in the LI and LH Zones and their derivatives. Choice of high density living (other than for special uses, eg frail elderly) may therefore represent a decision to use open space recreation on publicly held rather than privately held land. The provision of open space in a development beyond that required by the higher density zone will not per se constitute grounds for a lower reserve contribution.*
- *whether any provision is to be made for public pedestrian links through the site*

Equity and Land Values

- *where a need is identified for additional open space and amenity reserves or upgrading of existing reserves in the locality, the cost of purchasing land in that locality*
- *where a need is identified for additional district sports fields or upgrading existing district sports fields, the average cost of purchasing that land*
- *whether land value rates applicable when the reserve contribution was calculated are still appropriate*
- *if the land in consideration was sold recently, the price for which it was purchased*

Heritage

- *whether the site contains a building, object or place that is listed in the Operative or Proposed City Plan, or by the New Zealand Historic Places Trust, and the group/category of the listing (with particular reference to the reasons for listing the building, object or place)*
- *whether the heritage elements of the building, object or place are to be retained*
- *where the heritage elements of the building, object or place are to be retained, the extent to which they are to be altered and the intrusiveness of any alterations*
- *the extent to which the setting/context of the heritage element(s) is/are to be retained, enhanced or protected*
- *the contribution the heritage elements of the building, object or place make to private and public amenity in terms of the character and streetscape qualities of the local or City environment*
- *the extent to which retention of the heritage elements of the building, object or place constrain the form of development able to be undertaken on the site (with reference to the relevant planning documents)*
- *the additional cost to the developer/subdivider of retaining the heritage elements of the building, object or place as opposed to incorporating them into or building a new structure of similar quality and proportions (with reference to the relevant planning documents), and keeping in mind the value likely to be added to the proposed development as a result of retaining the heritage elements*
- *whether the developer/subdivider has received, has applied for, or is eligible for, funds for retaining the heritage elements, and the amount of any such grant*

- *whether the building, place or object is subject to a Heritage Order or Heritage Covenant, or whether the owner will agree to a Heritage Covenant or some other agreement with the Council to protect the heritage elements*

Vegetation / Trees

- *whether any of the trees on the site are listed as protected trees in the Operative or Proposed City Plan*
- *whether the application provides for the long term retention and good health of any tree(s) listed as protected trees in the Operative or Proposed City Plan*
- *whether it is proposed to retain vegetation/trees on the site that would add to the amenity of the wider neighbourhood*
- *whether major landscaping works are proposed on the site, over and above the minimum requirements of the Operative and Proposed City Plans, which will contribute significantly to the amenity of the wider neighbourhood*
- *whether the layout of the proposed development provides for areas of open space, over and above the minimum requirements of the Operative and Proposed City Plans, which would contribute to the amenity of adjoining neighbours and the wider neighbourhood*
- *whether any provision is to be made for landscape links through the site*
- *whether the vegetation/trees on the site are subject to a Covenant, or whether the owner will agree to a Covenant or some other agreement with the Council to protect the vegetation/trees*

Natural Features / Ecology / Habitats

- *whether the site contains any natural/ecological or habitat values, such as Ecological Heritage Areas, including those identified in the Operative or Proposed City Plan*
 - *whether the natural/ecological or habitat values are to be retained*
 - *where the natural/ecological or habitat values are to be retained, the extent to which they are likely to be affected by any development/activity on the site*
 - *whether the site contains any waterway or wetland*
 - *whether the waterway or wetland is to be maintained and enhanced as a natural feature*
 - *the additional cost to the developer/subdivider of retaining the natural/ecological or habitat values*
 - *whether the developer/subdivider has received, has applied for, or is eligible for, funds for retaining the natural/ecological or habitat values on the site, and the amount of any such grant*
 - *whether the natural/ecological or habitat values on the site are subject to a Covenant, or whether the owner will agree to a Covenant or some other agreement with the Council to protect those values.”*
3. That, in terms of the development of policy for the proposed City Plan variation, a joint seminar of the Strategy and Resources Committee and Resource Management Committee be held in mid-June, to which all Councillors will be invited.
3. That priority be given to the preparation of a variation on financial contributions.