Submission on Council Development Contribution Policy
Comprised in Volume 2 of the Draft Long Term Council Community Plan

- Name of Submitter — Warren Haynes

- I am completing this submission on behalf of Eliot Sinclair & Partners Ltd., Consulting Surveyors and Engineers.

- I wish to talk to the main points in my written submission at the hearings to be held between Thursday, 25 May 2006 and Wednesday, 7 June 2006.

- My submission refers to the Full Version of the Council Development Contribution Policy.

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- Signature

on behalf of ELIOT SINCLAIR & PARTNERS LTD.

- Date — 2 May 2006

Introduction

I am a Registered Professional Surveyor employed by Eliot Sinclair & Partners Ltd., Consulting Land Surveyors and Engineers. As consultants, we provide advice to a range of clients who embark on land development projects. Our advice is offered at any stage between concept inception and the completion of a project. Many of our clients' projects involve subdivision which is one of our primary areas of expertise.

The expectations of Eliot Sinclair & Partners Ltd. in making a submission to the draft LTCCP Development Contribution Policy is to ensure that the resulting Policy is fair, rigorous, transparent and capable of clear and concise interpretation. Further, that the Council's systems to ensure the effective administration of this policy are appropriate and in place on or before the effective date for this policy.

Our desire, as a company, is to ensure that the policy is rigorous enough to enable our staff to correctly interpret obligations for payment of contributions, thereby allowing us to provide timely and appropriate advice to clients who intend embarking on a land development project.

Submission

1. Clause 2.1: Implementation Date - 1st July 2006

   - I am concerned for a number of clients who have already embarked on their land development projects who have already secured, say, a Resource Consent but, because of the time constraints, are now unable to secure Building Consent and/or Subdivision Consent before 1st July 2006.

   - Through no fault of their own, the Council's introduction of this new Policy has now potentially prevented these developers from completing developments commenced, with the reasonable expectation that Council's development contribution policy would not change dramatically. Having already outlaid for the purchase of the land and the costs of developing plans and had application for Resource Consent granted, they are now left in a dilemma where they now need to shelve the project until a re-assessment of the project viability can be made once the development contribution policy is finalised and operative. This decision has been carefully considered in light of the advice of their consultants who have stated that even if plans and applications for Building and

Subdivision Consent could be submitted to Council 20 working days prior to 1st July 2006 that there could be no guarantees that Council would be able to fully process these prior to 1st July 2006 in terms of the current LTCCP provisions.

Recommendation

A transition period for the introduction of such a major shift in Development Contribution Policy should be introduced to allow developers who have already made a tangible commitment to a development in Christchurch City to complete the required consenting processes. Land development and, in particular, the Council consenting processes, can not reasonably be expected to be completed within the short period between notification of the draft LTCCP (28 March 2006) and its implementation (1st July 2006). Given the time required by consultants to prepare the balance of Building Consent or Subdivision Consent documentation for developments where PIM's or Resource Consents have already been obtained and the processing time required by Council staff to process each of the consents for these current land development projects, we recommend the introduction of transition period of between six and nine months.

2. Clause 2.3: Existing Applications

The policy currently reads *'A development contribution can be required for any Resource Consent, Building Consent or authorisation for a service correction granted on or after 1st July 2004 and lodged after 19th December 2001.'*.

- The word *'can'* introduces an element of discretion. If a contribution is to be charged, the Policy should state this. This then ensures that an applicant for a Resource Consent, Building Consent or service connection is left in no doubt. If there is to be a remission in respect of the payment of the contribution, the grounds for the remission should be stated.

- This is particularly important if it is that Council intends that all applicants seeking a Resource Consent will now be subject to a development contribution. If there are to be no exceptions, what types of Resource Consents warrant a development contribution? The exceptions should be clearly stated. If only the Resource Consents that will result in an element of growth requiring a demand on infrastructure are to be subject to development contributions, then I recommend that clear guidelines and criteria be

provided in the Policy as to what type of Resource Consents will attract development contributions and those that will not.

e.g. A doctor's surgery wishes to repaint it's premises and to erect a sign to advertise their business. It is deemed that a Resource Consent is required for the size of sign proposed and this is subsequently lodged with Council.

The sign has the intention of advertising a service. The applicant, logically wishes to advertise with a view to increasing the number of patients using their surgery. On processing the application, Council officers could reasonably assess that a development is occurring because, as a result of granting the Resource Consent, there will be a change in demand for reserves, network infrastructure or community infrastructure.

Will Council assess a development contribution in this circumstance?

e.g. A Council Enforcement Officer identifies that an activity is occurring on a site which, for one reason or another, requires a Resource Consent to rectify.

Will Council assess that a development contribution is payable where, say, a change of use requires a Resource Consent application?

Recommendation

- There, ultimately, will be a point where Council officer discretion is required as to whether a Resource Consent matter constitutes a development or not. To ensure uniformity of interpretation, Council needs to issue comprehensive guidelines to the Council staff they intend leaving this discretion to.

- Council should review the previous two years of Resource Consents received and processed, and determine which types of applications constitute developments and which do not before writing this guideline.

- Those guidelines should form part of the Policy to ensure clear and transparent interpretation by applicants, consultants and Council staff. In the event of a dispute of interpretation as to whether a Resource Consent application is for a 'development', there needs to be a mechanism for resolution with Council which is cost effective and not time consuming, i.e. decision within 24 hours. This too should be outlined in the Policy.

3. Clause 2.4.1: Historical Credits

We consider the principles for assessment of historical credits are deficient and do not consider a range of credits which a development should be entitled to, e.g.

3.1 In a non-residential development, where the new building incorporates carparking , then the GFA should not include any carparking area which replaces that which was previously available on the site prior to the development. GFA should include only additional floor area associated with the additional carparking and not include carparking replaced within the building.

3.2 In a non-residential development, GFA should not include a top floor used for any activity if it is not roofed. The historic credit principles should be amended to exclude unroofed uses from GFA. The top floor can be used for recreation, open space, carparking, HVAC (heating, ventilation and air conditioning) equipment etc.

3.3 The second bullet point describing the 'Principles of historic credits' should be expanded to include ...'or for subdivision of land containing any existing residential unit.' There can be no increase in demand for reserves if no new vacant dwelling sites are being created. In the case where subdivision involves existing buildings, credits for reserve contribution should apply.

3.4 In a non-residential development, the credit described as follows is insufficient -

'... on any application for consent or authorisation in respect of a non-residential development, or a subdivision containing any existing non-residential development, credits for each activity shall be assessed by applying the GFA of the existing development to the Appendix 5 GFA conversion tables for that activity.'

Explanation

If a subdivision of an existing non-residential complex of buildings occurs, there is no new demand made on reserves, network infrastructure or community infrastructure. Additional demand is only created in this circumstance where there is a new building activity or a change of use. Subdivision of sites with existing buildings should be treated no differently to a boundary adjustment with no development contributions payable.

Example

A large factory site spread over 20 hectares and long established in the area wishes to sell off a sector of its business which is in a small self contained part of the site with existing plant and buildings of, say, 4000m². The smaller site has its own self contained carpark for its own visitors and employees. The draft LTCCP development contribution policy fails to acknowledge that a nil contribution should apply in the circumstance of the subdivision of sites containing existing buildings including reserves, network infrastructure and community infrastructure.

This is plainly unfair. No new growth has occurred. It is more appropriate that this be established as a principle for assessment of historical credits than to have to apply under Clause 4.4 for Extraordinary Circumstances. Clause 4.2 states that Reserve Contributions will be assessed without reference to a HUE analysis for the lot. This suggests that irrespective of the status of buildings on the site, a development contribution for reserves will apply. This, again, is plainly wrong. No new demand on reserves results if existing buildings are subdivided.

There is no argument in such circumstances that contribution charges are being unfairly borne by future potential purchasers in this circumstance. Future purchasers know that if they increase the GFA of buildings, a Building Consent is required and that they will need to pay a development contribution.

Recommendation

That the policy for Historic Credits be amended to address the matters raised above.

4. Clause 4.2: Non-Residential Applications

Non-residential development can involve a wide range of activities. At the time of subdivision of vacant non-residential land, it is almost impossible to gauge what type of activity will be carried out, e.g. in the *Business 5* zone, an allotment, five years after subdivision, may be a gravelled yard used for the storage of pipes and manholes with no associated buildings. Alternatively, it could contain a large factory employing 40 to 50 staff.

It is our submission, particularly in the non-residential zones where vacant allotments are being created by subdivision, that development contributions other than, perhaps, the Reserve Contribution, should not be secured by Council at the subdivision stage and should be deferred to the Building Consent stage. In this way the proposed activity at Building Consent stage is capable of full assessment of it's impact on growth. It therefore becomes a fairer and more equitable method of assessing contribution on an activity by activity basis. In a residential scenario, the expectations of proposed land use activity are, perhaps, more certain at the subdivision stage as, inevitably, a single residential dwelling will be established on each vacant residential allotment.

In a non-residential scenario, Council's position that charges should be recovered at the earliest opportunity and should not be unfairly borne by future potential purchasers of subdivided sites is less relevant. The purchaser of a subdivided site will be aware that if he puts a building on the site, the development contribution is directly proportional to GFA and impervious surface areas and type of activity he establishes. These are matters over which the subdivider has no control and are more appropriately assessed at Building Consent or authorisation for service connection stage.

5. Clause 6.1: Timing of Development Contributions - General

The Policy states that Council will require payment of a development contribution upon granting -

- A Resource Consent (Subdivision or Land Use); and
- A Building Consent;
- An authorisation for a service connection.

Whilst it might be desirable from a processing perspective to request payment as the decisions are granted, the Act provides a suitable back-stop for Council to secure payment by withholding the release of the Code Compliance Certificate and/or Subdivision Conditions Certificate. Accordingly, we recommend this Policy be amended to require payment to occur at any time prior to the release of these two documents. However, it is important that at the time the Consent or authorisation is issued, that the development contribution is identified with a statement that it can be paid at any stage prior to the issuance of the Code Compliance Certificate or Subdivision Conditions Certificate. If not paid within, say, one year, Council should retain the ability to re-assess the contribution in terms of the then current LTCCP policy.

If the contribution is paid within the prescribed time there should be no ability for Council to undertake any further re-assessment of the contribution in respect of that subdivision.

Explanation

A cash development contribution is payable on a subdivision. The subdivision is, however, not completed to a point where the Subdivision Conditions Certificate can be issued within one year of the Consent Decision. If the development contribution payment is paid by the applicant prior to the one year Consent Decision anniversary, the applicant should not fear that Council will re-elect at the time of the applicant's request for the Section 224(c) Certificate that there be a further re-assessment where credit is given for the previous payment and a further balance contribution payable prior to uplifting the Certificate.

Recommendation

The policy must explicitly state that when development contribution payment is made within the prescribed period, there will be no further liability for payment 'top-ups'.

6. Clause 6.1: Timing of Development Contributions (Changes in Development)

- In Clause 6.1 Timing of Development Contributions, a sub-clause 'Changes in Development' refers to the credits and debits that Council is prepared to re-assess at the time of subsequent application for Consent or service authorisation. If the subdivider pays the first round of contributions and the purchaser of the allotment does not develop the site to the Council assumed standard of GFA, impervious area or type of activity, the credit would, in theory, be passed to the allotment purchaser if requested at the time of the purchaser's subsequent application for consent or service authorisations.

  This clause is open to misuse if the subdivider is to be required to pay an upfront contribution based on an assumed average type of development. What is to stop a purchaser of a subdivided vacant site lodging a fictitious Resource Consent application for the erection of a shed 0.1 metres within the prescribed street setback? The consent would be granted, an assessment would then be made that the nature of activities is significantly less than envisaged and a reimbursement made to the applicant. The applicant then immediately sells the property hoping to secure an unsuspecting purchaser having stripped the contribution credits from the property.

Recommendation

Council modify its policy to still allow credits and debits to be identified and addressed as proposed (as this is fair and reasonable), but not require the payment of these contributions any sooner than at a time when the type of activity proposed for a site is known. It is only then that the effects on growth can be assessed.

- We are fundamentally concerned with sub-clause 6.6.2 'Review of Development Contributions'. Once a contribution payment has been made by a subdivider to Council, the subsequent owner of the subdivided property is completely dependent on Council correctly crediting each individual allotment in the subdivision with a portion of the total contribution paid by the subdivider.

  In the absence of the Development Contribution Policy detailing how each allotment is credited with portions of the contribution and in the absence of a formal review process, We are fearful that the Council administration of these contributions will be deficient and unreliable.

  We strongly recommend that the policy clearly sets out in detail how contributions will be allocated as credits to each allotment so that new allotment purchasers (and the subdividers) can be confident that the credits have been correctly carried forward in advance of a subsequent application for consent or service authorisation.

  In any circumstance, it should be possible for a subdivider or an allotment purchaser, at any time, to request a 'statement' for their property which confirms the development contribution credits that currently apply and, in particular, how this contribution was calculated. Please consider the following examples.

  6.1 As a surveyor prior to building demolition, we should be able to present to Council a plan and/or assessment of the existing Gross Floor Area, impervious areas and an assessment of the current on-site activities and for this assessment to be accepted onto the property file for that address to be used as a basis for assessing existing credits. Council's Historic Credit Policy (Clause 2.4.1), third bullet point, does not state how this existing credit is to be calculated. It refers only to existing GFA and not existing impervious areas or activity type which also impact on the method of calculating the total contribution credit. Will aerial photographs suffice or is a detailed measure-up certified by a measurement specialist, such as a surveyor,

required for this information to be accepted by Council as a basis for an existing credit? A guideline outlining by whom and to what standard this assessment of credits for an existing site is to be carried out should be incorporated into the Development Contribution Policy.

6.2 For a recently completed subdivision of a property, which previously contained a single dwelling that required demolition to create the three new vacant sites, how is the credit for the existing but demolished house to be distributed to each of the three new sites together with any previously paid contribution so that after 1st July 2006 a purchaser of any one of these three vacant allotments is not unduly penalised and the risk of double-dipping minimised? In this circumstance -

(a) Historic credits = 1 HUE for the single existing residential activity.

(b) Actual credits for the whole subdivision are as follows -

- Reserve Contribution paid at 7½%, say 2 @ $9,750.00 based on $130,000 average value = $19,500.00.
- Water Headworks Charge, say 2 @ $281.26 = $562.50.
- Wastewater Treatment Capacity Upgrade, say 2 @ $607.50 = $1,215.00.
- Sewer Reticulation Capacity Upgrade, say 2 @ $477.00 = @ $954.00.

We are not confident that Council's new system of policing the paid credits and for these to be tagged to each of the three resulting allotments in this circumstance will be rigorous enough to calculate it correctly unless it is clearly specified in the development contribution policy.

The credit each of the three new allotments should take following subdivision will be as follows -

- Reserve Contribution -
  1/3 HUE + 1/3 x @19,500.00
  (But how is this possible if Council's policy states that Reserve Contribution is to be assessed without reference to HUE analysis for the household unit or lot? (Clause 4.1))

- Network Infrastructure -
  1/3 HUE + 1/3 x $562.50 + 1/3 x $1,215.00 + 1/3 x $954.00

- Community Infrastructure -
  Nil.

Our view is that if the Development Contribution Policy does not take time now to spell out, in detail, how the contributions paid on subdivisions completed before and after 1st July 2006 are to be credited at the time of subsequent Building Consent or service authorisation, then there will be a large volume of queries as to how Council assessed contributions and arguments sighting 'double-dipping'.

We recommend that at the time of the release of a Section 224(c) Certificate to the surveyor for all future subdivisions, a Council certificate should be released to the applicant stating how any financial contribution paid at the time of subdivision has been distributed to each of the new allotments. The surveyor or Subdivision Consent holder should then have the ability to correct this calculation before the details get onto the property file from which future assessments will be made at subsequent Building Consent, Resource Consent and service connection application stages.

The issue becomes more complex if the subdivider undertakes the demolition of existing buildings that may not be residential in nature as to how these credits should be allocated to each of the resulting vacant allotments. But, again, the policy should be sufficiently robust that the method of calculation is spelt out so that assessment credits can be clearly calculated.

Further complexities in the Policy can be expected if land is vested as Reserve as part of the subdivision. How does the credit of land set aside as Reserve get transferred to each and every one of the new subdivided lots so that no double-dipping occurs in subsequent Consent phases? The Policy should state in detail how this is to be done.

Our recommendation is that Council engage a surveyor to jointly examine with policy authors all the various subdivision possibilities so that a comprehensive guideline is developed and incorporated into the policy for the benefit of Council staff, applicants and consultants. In our view, it is essential for the credibility of the policy that it be incorporated into the operative version of this Development Contribution Policy.

This policy will require nothing less than a comprehensive database to be set up to include each rateable property in Christchurch City. This database has to be capable of audit to show that the policy has been correctly and uniformly applied.

From a subdivision consultant's perspective, it would be our desire from 1st July 2006 that we could fill in a Council form with an address or legal description and fax it to a Unit within Council who could then extract from their database the full scope of reliable actual and historic credits available to that particular property as at that date. This would allow us to then provide comprehensive advice to a client as what development contributions would be incurred for any subsequent development proposal. Is Council sufficiently resourced for this to occur from 1st July 2006?