



5 May 2006

Christchurch City Council  
P O Box 237  
Christchurch

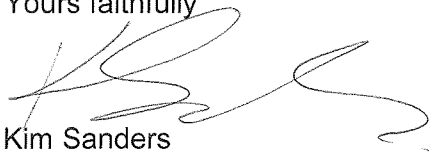
Dear Sir / Madam

**Re: LTCCP - Submission**

We attach herewith our submission to your Draft Policy on Development Contributions. We understand submissions close today and hearing of submissions will start from 7 June 2006. We have indicated we would like to be heard.

If you require any further information please contact the writer.

Yours faithfully



Kim Sanders  
**COMPANY ENGINEER**

**SUBMISSION ON DRAFT LONG TERM COUNCIL COMMUNITY PLAN –  
DRAFT DEVELOPMENT CONTRIBUTION POLICY**

**Select which applies:**

I do NOT wish to present my submission at the hearing, and ask that the submission be considered

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

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**\*Are you completing this submission:**  For yourself  On behalf of a group or organisation

**If you are representing a group or organisation, how many people do you represent?**

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**\*My submission refers to:**  Full Version  Page Number **OR**

Summary Version  Page Number

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**Do you also want to respond to:**  Development Contributions

Aquatic Facilities  Other

<b>*Contact Name:</b>	Kim Sanders
<b>Organisation Name (if applicable):</b>	Suburban Estates Limited
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<b>*Contact Address:</b>	PO Box 13349 Christchurch

Please be as specific as possible to help us understand your views

**1) Do you have any comments on the major projects in our Draft Community Plan?**

**Your Comments:**

**Hint:** This comments field will expand as you enter your text.

**2) Do you have any comments on groups of activities (The activities and services the Council provides?)**

**Your Comments:**

**3) Do you have any other comments or suggestions you want to make?**

**Your Comments:**

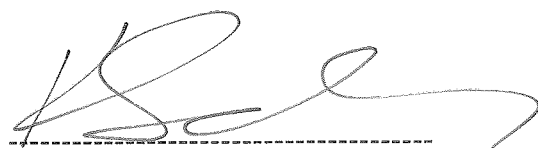
Please see attachment marked "A"

**If you would like a copy of your submission emailed to you, please enter your email address below: (Hint: Please ensure your email address is correct - if it is not, you will not receive a copy of this!)**

Kim@suburban.estates.co.nz

Submit Comments

Dated this 5<sup>th</sup> day of May 2006



K Sanders

“A”

**SUBURBAN ESTATES LIMITED SUBMISSION**

**LTCCP – DEVELOPMENT CONTRIBUTIONS POLICY**

- 1 As residential land developers Suburban Estates Limited (SEL) accepts it should contribute towards new or additional infrastructure or any increase in its capacity caused by its developments. However, where these infrastructure upgrades directly benefit existing areas (eg roading networks, sewer compliance with Ecan issues, leisure facilities, reserves) then it should not be required to contribute.
- 2 SEL submits that:
  - 2.1 The draft policy is unfair, unreasonable and not transparent;
  - 2.2 Is not based on the increased demand on infrastructure caused by the development;
  - 2.3 The methodology that underlies the policy is seriously flawed.
  - 2.4 The draft policy defeats the stated intention to “ensure that the level of contribution does not generally act to discourage development” (see clause 1.2, page 7);
  - 2.5 The draft policy is contrary to other Council policies seeking to encourage growth;
  - 2.6 The new charges are being unfairly implemented and will seriously burden existing section owners and current and future developments; and
  - 2.7 Council has brought all these costs in but has not rezoned land to provide for the projected growth over the next 10 years.
  - 2.8 The practical effect of the policy is to fund capital expenditure for infrastructure through development contributions in circumstances where the charges are not related to new growth and operate as a de facto targeted rate.
- 3 Council has previously charged reasonable amounts and when extra is needed in certain areas (eg. Halswell sewer cost share \$404 per lot) the developers have not complained. Network Infrastructure increases are on average 6.5 times above the previous charges and the reserve contribution remains the same at 7.5%. However market values have increased such that Council will receive significantly more for reserves as well.

**Flawed process**

- 4 The Local Government Act 2002 (LGA) requires the Development Contributions Policy within the LTCCP to be established pursuant to the special consultative process set out in Part 6 of the LGA. This invokes the principles of consultation set out in section 82.
- 5 SEL submits that the special consultative procedure adopted by the Council in this process is completely inadequate and is therefore in breach of the Council’s duties under the LGA.

It fails to reflect the importance of the issues that the Council must decide and is flawed in the following respects:

- 5.1 The information supplied as part of the process is completely inadequate to enable any meaningful submission to be made on the policy. For example, the Council has been unable to provide any documents justifying the HUE conversion ratios. This is a fundamental element underlying the entire funding system established by the policy.
- 5.2 Essential methodology data is not properly available. The LGA requires the policy to be established in a transparent and fair manner. It must keep available for inspection the full methodology that demonstrates how the calculations for contributions were made. Interested persons must be given reasonable access to relevant information in a manner and format that is appropriate to their needs and preferences. The Methodology for Determining Development Contributions Charges document and other important background information is available for inspection at the Civic Offices only. This is a breach of the Council's duty under the Act. It can be inspected only within the confines of the Civic Office and cannot be copied, transmitted or handed to third parties. It is not readily available so as to enable any meaningful critical review of the policy.
- 5.3 The methodology is flawed. The methodology provided in support of the policy is lacking in detail and completely fails to "demonstrate" how calculations have been carried out to determine the link between projected capital expenditure and the funding of this by new development over the next 10 years. It fails to justify how it has attributed units of demand to particular types of development on a consistent and fair basis and so as to meet capital expenditure required to meet demand resulting from growth. This failure in methodology and justification invalidates the entire policy.

### **Reasonableness – causal connection**

- 6 The Council's powers under the LGA to require development contributions must be exercised fairly and reasonably. The basis on which development contributions may be required is set out in section 199. Development contributions may only be required in relation to developments if the effect of the developments is to require new or additional assets or assets of increased capacity and, as a consequence, the Council incurs capital expenditure to provide appropriately for reserves, network infrastructure or community infrastructure.
- 7 Section 199 clearly establishes that there must be a causal connection between the development and any contribution towards capital expenditure required for new or additional assets or increased capacity. To the extent that any development contribution is sought under the policy in circumstances where the causal connection cannot be established, then the policy is unlawful.
- 8 SEL's main submission is that the policy is invalid because, in many respects, there is no direct link (or causal connection) between the development types and the contribution required to fund new, additional or upgraded infrastructure. For the purposes of this submission, it challenges the policy at two levels:
  - 8.1 The actual amount of charges that would be levied on a given residential development under the draft policy are unreasonable and exceed by an

enormous margin contributions currently required under the existing policy. The effect will be to discourage development (especially residential development) in the District; and

- 8.2 A preliminary assessment of the methodology and background documents which supports the view that there are a number of invalid assumptions in the policy that result in developments being levied for capital expenditure on infrastructure works that they do not directly (or even indirectly) cause. The result is that the draft policy effectively seeks to fund capital expenditure on infrastructure through developers by way of a de facto targeted rate.

### **Specific Issues - Reserves**

- 9 No justification is given for imposing reserve contributions at the maximum level of 7.5 per cent. It should be noted other District Councils throughout New Zealand are reducing from 7.5 per cent due to them not being able to justify the maximum level (Waimakariri 5 per cent, Selwyn 6.5 per cent, Manakau 6.5 per cent). 7.5 per cent is not the statutory starting point. The Council has a discretion to take reserve contributions. This means it must justify any contribution up to the maximum allowed level of 7.5 per cent. As with all contributions, this requires the Council to justify the contribution on the basis of the causal connection between the new development and capital expenditure on reserves. Why are Council spending so much on developing reserves when others are not? Why are they purchasing so much land for Waterway Enhancement, a concept which is not necessarily always needed on such a large scale and is not sustainable for the City as a whole. There is no justification for the level of contribution towards district reserves, sports grounds or reserves distant from the development. Any reserves which are planned & developed for the whole City (Port Hills, Halswell Quarry etc) should be paid for by the whole City with new development paying their percentage share. We believe, considering Christchurch is already blessed with many significant & historic reserves (Hagley Park etc), that the reserve contribution should be charged at no more than 5 per cent. High market prices, due to lack of supply, will ensure Council still receive a significant sum for each lot (a \$160,000 section would yield \$8,000 for reserves at 5 per cent). This does not account for potential over-collection if actual development exceeds the projected growth rate.
- 10 It should be noted, in particular, that credits/remissions for enhancement works carried out on the reserve land within a new subdivision (eg footpaths, trees, planting, etc.) should be allowed as is currently the case. This would be subject to Council approval of the works and not include items like fountains and entrances which developers may choose to install.
- 11 Given that retention areas and wetlands are on Council's preferred wish list and that amenity values are gained from waterway enhancement, a developer must receive some credit for creating them. Currently a developer is credited for any reserve land not inundated by a 5 year storm flood. That credit should remain.

### **Specific Issues – Network Infrastructure**

- 12 Sewer & Water Supply - These per lot charges have increased from \$1647 to \$6791 (4 times). How could these charges increase so much, where is the justification? Is the developer paying for all of the upgrades in this field when very clearly the existing ratepayers benefit, and some of the upgrades are to comply with the existing discharge consent? For example, new Ecan rules require only one or two accidental spills into rivers per year (rather than previously 6 or 8). These spills are generally caused by infiltration into old leaking pipes during rainfall. Upgrades (proposed to be paid by developers) will fix all

those problems. However, the need for the upgrades are caused by new environmental standards and not new development. Similarly, new developments produce pipework which has a lifespan of 80 maintenance free years. Therefore for the next 80 years new development's rates will pay towards renewals within existing areas of the City "as well as" paying a significant amount up front at the development stage. This is double dipping.

- 13 Surface Water Management - These should be site specific. Most subdivisions deal with their own surface water management. It is usually dealt with "within the subdivision" via treatment and detention areas making stormwater run-offs no more than what occurs in its current rural undeveloped state. This should be recognized in the policy as a remission. If & when off-site works are required that should be charged specifically as a cost share scheme.
- 14 Transport - Can this charge be proved as correct? Once again existing houses use improved roads (including out of district people, Selwyn & Waimakariri – including Pegasus Town), therefore a developer should only pay for a fair percentage.
- 15 Leisure facilities - quite simply, should be substantially covered by rates. To the extent that funding is provided by development contributions, there must be a direct link between the development and the new or upgraded leisure facility. Developers should not be expected to subsidise Council's social policies such as free library services. Such costs should be funded by general rates. Note that Waimakariri charge only \$170 per lot, that may be acceptable.

#### **Specific Issues – Administration**

- 16 Timing of assessment – Clause 6.1 provides that an assessment of contributions will be made at each stage of the development. This means it is assessed at resource consent, building consent and service connection stages. Each stage is to involve a reassessment. It appears Council will charge at subdivision stage but if that amount is proved to be insufficient they will have a second opportunity to charge at building consent stage. This is not acceptable. There is a need for greater certainty in the policy about the circumstances where a reassessment may occur. There should only be one provision to charge unless the Land Title in question is further subdivided. A tag could be added to this which allows a charge at a later stage (building consent or connection) if it can be proved Council had no previous opportunity to charge. The real concern is the potential for a re-assessment when there is no additional subdivision and the contribution is increased after the fact. The development will already have been budgeted and financed on the basis of the earlier assessment. This is made worse by the lack of transitional provisions for developments already being processed under the existing policy.
- 17 Timing of payment - Similarly it appears Council are asking for the payment "at resource consent approval stage" not at 224 completion certificate stage. This is a significant change from current policy. There is no justification for requiring payment before demand on the services. Clarity is needed on payments for staged subdivisions as it is not appropriate to require payment on future stages at the time of consent when there is no demand on those services. As with single stage subdivisions, payment for staged subdivisions should be required at the time the section 224 certificate for each stage is uplifted.
- 18 Transitional provisions - Clause 2.3 "Existing applications" (Page 10 of the Policy). This states that all applications lodged and granted on or after 1 July 2004 will be subject to the policy. This is unacceptable. It means all the purchasers of sections on subdivisions in the last two years who have not built their house will have to pay over \$10,000 as a top up to what was paid in the original resource consent. Adjacent neighbours who have built their

house already would not be charged. This is unfair, unjustified and cannot be attributed to a direct relationship between the development and growth effects on infrastructure capital expenditure. A suitable transition provision must be included. Council should not charge any section on any past subdivision which was part of a previous resource consent unless it is further subdivided.

### **Cost Increases and Comparisons**

- 19 A 100 lot subdivision under the new method will cost \$1.1M (\$11,000 per lot) more than the old and a similar increase occurs when we compared it with the two adjacent Districts (Selwyn & Waimakariri District).
- 20 The increase compared to the old method equates to:
- a Double the total contribution.
  - b 6.5 times the previous Network Infrastructure contributions.
  - c at least 20% of the total Bare Land Value of a residential subdivision (\$1.1M extra for land with a value of \$5M). Note, a common acceptable Profit & Risk element for a developer of residential land is 25% (there is only 5% left!). The market will not bear this cost. The policy will therefore encourage new residential development to locate in adjoining districts within commuting distance of the City.

### **Preliminary assessment of methodology**

- 21 The elements of the assessment of contributions are set out in Section 3 (Determination of Development Contribution Charges). This section summarises matters such as levels of services, growth models, funding models and the cost allocation methodology. The schedule of charges is set out in Appendix 1. These charges relate to both network infrastructure and community infrastructure. The extraordinary increase in contributions for both residential and non-residential developments calls into question the validity of the methodology underlying the charges. As a residential developer with a great deal of experience in providing significant new residential subdivisions in and around Christchurch, SEL challenges the contributions charges in the policy and the methodology. There is simply no direct link between new development over the next 10 years and much of the programmed capital expenditure.
- 22 The complexity of the economic analysis required for a fair and reasonable contributions policy means that an economist is required to thoroughly assess the validity and reasonableness of the methodology and assumptions. SEL has been unable to engage an economist at this point because of:
- 22.1 The statutory minimum 1 month submission period adopted by Council; and
  - 22.2 Council's refusal to provide copies of all relevant background documents.
- 23 As a result, SEL is not in a position to properly set out its concerns about the adequacy of the methodology as part of this written submission but requests the opportunity to provide this information at the hearing if it is available.
- 24 With that said, a number of concerns about methodology are apparent:



- 24.1 The forecast growth is modest but the corresponding contribution to capital expenditure from development is enormous and out of all proportion to past and current levels of contribution.
- 24.2 The Council has not applied recognised economic models specifically designed to address assessments relevant to appropriate contributions towards monopoly services (such as roads and pipes etc).
- 24.3 There is no proper recognition of cost drivers of capital expenditure other than development (such as renewal, improved levels of service, deferred works etc). Consequently there is a failure to properly apportion contributions based on cause and relative benefits and costs.
- 24.4 A good example is the upgrade of the Christchurch Wastewater Treatment and Disposal System. This is a major item of projected capital expenditure. However, it is driven by regulatory imperatives (the limited duration on the Estuary outfall and the consequential consent for an ocean outfall and improved treatment standards). It is not caused by new development. The upgrade costs shall be incurred whether or not the City grows over the next 10 years.
- 24.5 There is no proper recognition and assessment of whether the projected capital expenditure includes provision of over-capacity that cannot be attributable to new development.
- 24.6 The policy proceeds from an unjustified assumption that new development equates to new users. This assumption is flawed as there is no necessary relationship between new residents and the occupation of new subdivisions. Our experience is that new homeowners are typically existing ratepayers. This results in double dipping in which residents of new subdivisions pay directly or indirectly the cost of development contributions while at the same time paying rates that include recovery for the decline in the service potential of assets. The “new entrant” pays twice for the use of the assets funded by development contribution while also paying towards the depreciation of the assets used by “existing” residents.
- 24.7 The methodology provides for modest growth and makes no provision for over-collection if growth rates are exceeded. If this occurs, the amount required per residential equivalent will have been overstated.
- 24.8 The draft policy includes inappropriate capital expenditure items for recovery compounded by a problematic calculation methodology.
- 24.9 In broad terms, the methodology is highly subjective in respect to the many required assumptions; relies on inadequate information; is value based in terms of apportionments; depends on forecasts with the potential for significant error; and is backward looking in terms of recovery of sunk costs and double counts.
- 24.10 An important element of the methodology is the use of housing unit equivalents and land use differentials. This enables non-residential activities to be converted into housing unit equivalents using land use differentials. Such differentials often involve highly subjective and disputable assessments. The land use differentials for non-residential activities are

classified in broad groups that generally coincide with rating categories. However, the impacts of new development vary substantially depending on land use type, location, etc. and these are not addressed in the methodology.

- 24.11 The policy includes development contributions towards leisure facilities. No attempt is made to apportion these based on growth. No recognition is made as to the appropriateness of development contributions towards leisure facilities and whether developers should be held financially accountable for them. This is particularly the case for community facilities such as libraries which are a service provided to residents free of charge as part of the Council's social policy. It is inappropriate to fund leisure facilities from development. Developers have no control over these costs, nor are they responsible for the level of use of such facilities.
- 24.12 Ultimately, the methodology is full of subjective and debatable assumptions that requires an appropriately trained person to assess it and understand it. The allocation of benefit is subjective and based on a crude cost allocation methodology based on "modified shared drivers". Such allocations are based on unsubstantiated and unjustified assumptions, many of which have not been disclosed and forecasts which may never be realised. The supporting data is incomplete or missing.
- 24.13 Development contributions should be forward looking and based on the effect of development on infrastructure and capital costs incurred in upgrading that infrastructure to provide for new development. In this respect, it should be directed at assessing the contribution towards the next increment of supply required by the development. The policy fails to do this.

#### **Postponement, review, remission, reduction and refund of development contributions**

- 25 The provisions of section 6.6 of the draft policy are inadequate.
- 26 The Council should amend clause 6.6.1 to set out the circumstances in which it is appropriate for the Council to postpone the payment of a contribution.
- 27 The proposal to provide no ability to review development contributions is unreasonable. Clause 6.6.2 should be amended to allow the Council to review development contributions in appropriate cases. For the reasons already given, a number of concerns have been raised about both the process for determining the policy and its methodology. Given the importance of ensuring that all contributions are fair, reasonable and lawful, it is important that a power or review is available to the Council to guard against unforeseen circumstances and potential inequities. This is especially so since the policy will not be adopted following a fully tested, quasi judicial process. There is no ability to challenge any particular application of the policy (in the absence of an application for judicial review to the High Court). Accordingly, it is appropriate when the interests of fairness require it, for the policy to provide to the Council a discretion to review a contribution.
- 28 Clause 6.6.3 provides that there shall be no remissions or reductions to be applied for or granted. This should be deleted and substituted with a provision for remissions from development contributions. The Council should continue with its current policy to consider remission of contributions in appropriate cases. The direct relationship between developments and the requirement for new or additional assets or increased capacity of infrastructure in section 199 makes it appropriate and necessary to factor the contribution

each development makes to network and community infrastructure as part of the overall determination of development contributions.

- 29 The use of remissions enables the Council to achieve a broad range of community outcomes in a manner that is fair and reasonable. These include other matters addressed in the LTCCP including the provision of an attractive and well designed City (including high quality reserves and open spaces), use of facilities for dual purposes (such as reserves providing passive or active recreation in addition to stormwater retention), improved water quality and so on. The Council's refusal to provide discretion for remission is short-sighted and reduces its ability to properly achieve the various outcomes sought by the LTCCP.
- 30 Clause 6.6.4 provides limited circumstances in which a refund of development contributions shall be provided. This includes the following provision:

"For the avoidance of doubt, and except in relation to any money or land taken for a specified reserves purpose, the Council will not refund a development contribution where any specific project does not proceed, unless the activity for which the development contribution was taken is not provided."

- 31 This policy is in breach of the requirements of section 209 of the LGA. This lists circumstances in which the Council must refund contributions. The provisions are mandatory and each listed circumstance is disjunctive. If any one of those circumstances arises, then the Council has no discretion to retain the contribution, it must refund it. This is not reflected in clause 6.6.4. The provision quoted above should be deleted.

### **Implications of the draft policy**

- 32 Attached to this submission is an example of an assessment of the draft policy against a hypothetical (but realistic) residential development subdivision. This shows that the effect of the draft policy is to double the total amount of contribution in real terms (from \$1.33 million to \$2.46 million). Some aspects of the increases in network infrastructure represent a six-fold increase in charges. Most importantly, all assessments that SEL has undertaken indicate that the net effect of the application of the draft policy to residential development is the imposition of a development contribution equating to a minimum 20 per cent of the total bare land value of a residential subdivision. This is an enormous increase in the percentage of contribution against the total capital value of residential development. Its potential impacts cannot be under-estimated. As an established and well respected residential developer with many years experience in the Christchurch market, it is our assessment that the market simply cannot bear this level of contribution. It will cause developers to look to adjoining districts for development opportunities ahead of the Christchurch district. This is a perverse result as the preferred locations will all be within commuting distance of Christchurch City and will therefore continue to impact on its infrastructure requirements.

### **Summary**

- 33 The level of contributions charged under the draft policy are excessive and unreasonable and based on flawed methodology.
- 34 SEL's primary submission is that the draft policy will defeat its stated goal of ensuring that the level of development contribution does not generally act to discourage development. This is exactly the effect that it will have on residential development.

- 35 The effects of the draft policy and the inadequacies in its methodology are such that the Council should not adopt it. Given its statutory requirement to have a policy adopted by 1 July 2006 (section 280 of the LGA), the primary relief sought is as follows:
- 35.1 Decline to adopt the draft development contributions policy;
  - 35.2 Adopt the previous (existing) development contributions policy as an interim measure so as to satisfy the statutory obligations under the Act;
  - 35.3 Immediately commence a more thorough and comprehensive analysis and assessment of the effect of developments on new or additional assets and increased capacity of infrastructure over the life of the LTCCP and the basis upon which the capital expenditure incurred as a result of this development should be calculated and recovered by the Council by way of development contributions;
  - 35.4 Once a robust, fair and reasonable development contributions policy has been prepared, the policy should be formally amended and considered under a subsequent special consultative procedure;
  - 35.5 In the alternative, the draft development contributions policy should be significantly amended so that it is based solely on requirements in accordance with section 199 of the Act. This requires the contribution assessment criteria to be justified on the basis of a clear and direct causal connection between each development and the contribution required towards capital expenditure for new or additional infrastructure or increased capacity in infrastructure;
  - 35.6 The amendments should involve a substantial overhaul of the method of calculating contributions, the identification of capital expenditure items, and the link between each item and development contribution attributable to growth.
  - 35.7 All assumptions necessary to properly carry out these assessments should be included; and
  - 35.8 A consequential significant reduction should be made in the level of charges and the proportion of contributions sought from development. This should be in the range of half the existing charges for residential development in the draft policy.
- 36 The provisions relating to postponement, review, remission, reduction and refund of development contributions should be amended to address the concerns raised in this submission.
- 37 SEL confirms that it wishes to be heard in support of this submission.

## LTCCP – DEVELOPMENT CONTRIBUTIONS

### EXAMPLE – RESIDENTIAL SUBDIVISION

Assumptions: 100 lot subdivision valued at \$150,000 each on 10 hectares, assumed land value \$5M (\$500,000 per hectare). Compare Christchurch City Council's old method with new method, and relate that to what Waimakariri District would charge.

	<u>C.C.C (OLD)</u>	<u>C.C.C (New)</u>	<u>Waimakariri</u>
<b><u>RESERVES</u></b>			
Method	7.5%	7.5%	\$6102 per lot (5%)
Contribution (100 lots)	\$1.125M	\$1.125M	\$610,000
Land if Vested	All deduct the market value of land vested as reserve off the above		

### NETWORK INFRASTRUCTURE

Water Supply	\$562	\$1499	\$1166
Sewer	\$1084	\$5292	\$2283
Sewer (Halswell)	\$404 extra		
Stormwater	\$0	\$2174	\$615
Transport	\$0	\$2627	\$1947
Leisure	\$0	\$1807	\$174
<b>Sub Total</b>	<b>\$2050</b>	<b>\$13399</b>	<b>\$6185</b>

### TOTAL CONTRIBUTIONS FOR RESERVES & INFRASTRUCTURE (100 LOTS)

<b>\$1.33M</b>	<b>\$2.46M</b>	<b>\$1.23M</b>
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### SUMMARY

A 100 lot subdivision under the new method will cost \$1.1M (\$11,000 per lot) more than the old and a similar difference more than the adjacent Waimakariri District under their current LTCCPs.

The increase equates to:

- ◆ Double the total contribution.
- ◆ 6.5 times the previous Infrastructure contributions.
- ◆ An increase which equates to at least 20% of the total Bare Land Value of a residential subdivision (\$1.1M extra for land with a value of \$5M). Note, a common acceptable Profit & Risk element for a developer of residential land is 25% (only 5% left!)