

SUBMISSION ON DRAFT LONG TERM COUNCIL COMMUNITY PLAN

DRAFT DEVELOPMENT CONTRIBUTION POLICY

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CANTERBURY CLUB INCORPORATED SUBMISSION

LTCCP – DRAFT DEVELOPMENT CONTRIBUTIONS POLICY

A. Heritage Buildings

- 1 The Canterbury club is the owner of the historic buildings located on the corner of Worcester Boulevard and Cambridge Terrace. The buildings are listed heritage buildings in the Partly Operative City Plan (Groups 2 and 4).
- 2 The Club submits that the Draft Development Contributions Policy should be amended to expressly exclude contributions relating to heritage buildings or to introduce remissions for contributions in relation to heritage buildings.

Reasons

- 3 The Draft Policy provides that development contributions will be required for any resource consent, building consent or authorisation for a service connection granted on or after 1 July 2004. Any alteration to a listed heritage item requires a resource consent and building consent.
- 4 The statutory basis for development contributions is that the Local Government Act 2002 allows Councils to take fair contributions from developers to fund new or upgraded infrastructure requirements caused by growth. “Developer” is broadly defined in the Policy as an applicant for consent where a development contribution is payable. “Development” is defined as any subdivision or development that generates a demand for reserves, network infrastructure or community infrastructure.
- 5 Improvements or other works may fall within this broad definition of development (for example, if a toilet or bathroom is added to a heritage building).
- 6 The cost of maintaining heritage buildings is high. Many fine examples of the City’s heritage buildings have been lost because the cost of maintenance or conversion to a viable and sustainable use has been prohibitive. However, past contributions policies have allowed remissions for heritage buildings in recognition of the high cost necessary to retain them and the value they add to the City. This has made possible the retention and redevelopment of some historic buildings that would otherwise have been lost. There is no such recognition in the Draft Policy.
- 7 The Club is proposing a major redevelopment of its site to secure the long-term viability of the Group 2 listed buildings. The Canterbury Club complex is particularly significant for its establishment as a purpose built club complex which has remained in continuous use by the same organisation for over 130 years. If the Club is unable to refurbish and redevelop the site, it will have to relocate and consequently discontinue this strong historical connection with the site. The long term viability and future of the buildings would be in doubt.

- 8 As a non-residential activity, any development contribution for the site would be assessed pursuant to the conversion rate for HUEs applying to development. These are based on demand or gross floor area conversion rates.
- 9 The effect of this Draft Policy is that the contribution would be many times that required under the existing policy and there is no ability to remit all or part of the contribution. This would make the proposed refurbishment and redevelopment of the site prohibitively expensive. Even a contribution arising from a building consent to simply maintain the buildings would be uneconomic.

Relief

- 10 The Club also submits that the Draft Policy should be amended to:
- (a) Provide an express exception from the Policy for listed heritage buildings; or
 - (b) Introduce a remissions policy enabling the remission, in part or whole, of development contributions otherwise required for heritage buildings.

B. Process, reasonableness and methodology

- 11 The Club also submits that:
- 11.1 The draft policy is unfair, unreasonable and not transparent;
 - 11.2 It is the product of historic minimum rates increases and financial management that has failed to keep up with capital expenditure for infrastructure (both related to and unrelated to growth).
 - 11.3 Is not based on the increased demand on infrastructure caused by the development;
 - 11.4 The methodology that underlies the policy is seriously flawed.
 - 11.5 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);
 - 11.6 The draft policy is contrary to other Council policies seeking to encourage growth;
 - 11.7 The new charges are being unfairly implemented and will seriously burden existing section owners and current and future developments; and
 - 11.8 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.

Flawed process

- 12 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.
- 13 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:
- 13.1 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.
- 13.2 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.
- 13.3 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

- 14 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.

- 15 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.
- 16 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.

Preliminary assessment of methodology

- 17 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. There is simply no direct link between new development over the next 10 years and much of the programmed capital expenditure.
- 18 A number of concerns about methodology are apparent:
 - 18.1 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.
 - 18.2 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).
 - 18.3 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.
 - 18.4 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.
 - 18.5 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.

- 18.6 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.
- 18.7 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.
- 18.8 The draft policy includes inappropriate capital expenditure items for recovery compounded by a problematic calculation methodology.
- 18.9 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.
- 18.10 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.
- 18.11 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.
- 18.12 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.

- 18.13 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

- 19 The provisions of section 6.6 of the draft policy are inadequate.
- 20 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.
- 21 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.
- 22 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.
- 23 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.
- 24 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."

- 25 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.

Summary

- 26 The level of contributions charged under the draft policy are excessive and unreasonable and based on flawed methodology.
- 27 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. The position is even worse for non-residential developers.
- 28 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:
- 28.1 Decline to adopt the draft development contributions policy;
 - 28.2 Adopt the previous (existing) development contributions policy as an interim measure so as to satisfy the statutory obligations under the Act;
 - 28.3 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;
 - 28.4 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;
 - 28.5 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;

- 28.6 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 contributable attributable to growth.
 - 28.7 All assumptions necessary to properly carry out these assessments should be included; and
 - 28.8 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.
- 29 The provisions relating to postponement, review, remission, reduction and refund of development contributions should be amended to address the concerns raised in this submission.
- 30 The Club confirms that it wishes to be heard in support of this submission.